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## What is Wrong with Divided Government?

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*Wilmer, Cutler & Pickering*

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# WHAT IS WRONG WITH DIVIDED GOVERNMENT?

LLOYD CUTLER\*

Bob Strauss likes to say about an introduction like that—"I liked it, and my mother would have believed it." I was told when I got here that we would be all done by 9:45. Well Richard, I have about two minutes left, and you speak about four times as fast as I do. I will just take one second to add to Peter's story about the tombstones in the graveyard. Tonight the reason why we are so late is the leisurely manner in which we were served. It was Dorothy Parker who coined the "waiter's epitaph," which reads "Death finally caught his eye."

What Richard and I have agreed to talk about, and I suppose he can mop up the floor with me, is divided government, by which I mean when one party holds the White House and the other party holds a majority of one or both houses of Congress. Divided government does not work nearly as well as unified government, when one party holds all three power centers. My thesis is plain enough. I can put it into three sentences. First, divided government has become the norm rather than the exception. Second, divided government results in deadlock and a diffusion of political accountability for the outcomes of government. Third, because of this, we need either a new political science theory—we do not have one yet—about how to make divided government work better, or we need to devise some ways to make it less likely that divided government will happen.

We have had two polar shifts in the American political economy since World War II. One is the shift from party government, unified government, which prevailed most of the time from John Adams through Harry Truman, to divided government, which has prevailed most of the time since 1956, and virtually all of the time since 1968. The second polar shift is from balanced budgets or small budget deficits to very deep deficits exceeding three percent of the gross national product—a level that most economists agree is not sustainable over an extended period. Putting wars and great depressions aside, we never had deep deficits, deeper than three percent of the gross national product, until well after World

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War II. Since World War II we have had eleven of these deficits exceeding three percent of the gross national product.

There is a remarkable fit between the two polar shifts, the increase in divided government and the increase in budget deficits. Every single time we have had a deficit in excess of three percent since World War II has been a time of divided government. That was true under Truman in fiscal 1948, Ford in 1975 and 1976, and Ronald Reagan in eight straight years from 1982 through 1989.

Now big deficits like this, of course, have never been, at least since John Keynes, an intended goal of national policy, except in the depths of a severe depression. Presidents and congressional leaders of both parties strongly oppose deep deficits. Most polls show that the public shares this view by a very wide margin. High deficits occur when the President and the Congress cannot form a consensus on a mix of taxes and expenditure programs that will create some reasonable balance between inflows and outflows. High deficits are a consequence of deadlock between the executive and legislative branches in exercising their shared power to legislate. When government is divided in this way, there is no accountability when government fails. There is no one to blame for the deadlock, and virtually everyone gets re-elected.

Conversely, when one party holds all three power centers, there is accountability, there is a party to blame and that party's incumbents in the White House and Congress are not going to risk defeat by running up deep deficits of the type the public would blame them for, and of which the public so heavily disapproves.

Incidentally, one could make the same point about the exercise of the war powers. Every confrontation about the War Powers Resolution since World War II has come during a time of divided government. That was true of the passage of the War Powers Resolution itself over President Nixon's veto. It was true every single time the Congress exercised its power to disapprove the sending of our troops abroad or sending arms to a country where Congress did not want them sent. Under unified government, disapproval practically never occurred.

The Constitution, of course, may have something to do with this, but not because deadlock must result from the separation of powers, or from a transgression by one branch into the powers of another. As Richard Neustadt put it, we do not have a government of separated powers, we have a government of separate branches exercising shared powers. Montesquieu's adherents, at best, gained only half a loaf at the Constitutional

Convention. As this audience certainly knows, the strict separation of powers was blurred in order to advance what Forest MacDonald called the other and nearly irreconcilable basic principle of the Constitution, namely checks and balances. The failure to follow Montesquieu's idea of strict separation was one of the strongest arguments against approval of the Constitution during the various state ratification conventions.

Madison said that the departments must be "connected and blended" to give each a constitutional control over the others. Of course the Constitution contains numerous examples of that principle, in the veto, in the Presidential power to appoint, and in the Senate's power to confirm. The same is true of treaties. The same is true of appropriations and all the other powers. All sharers of power, like the President and Congress, have to figure out a way to cooperate with one another to get anything done. It is always true, and remains true today, that neither of these two major branches can do very much without the other.

The way the framers got themselves out of this dilemma, when they began making this brave new system work, was to very quickly form broadly based national political parties. It is true, of course, that the Constitution does not even mention parties, except a passing reference that now appears in the twenty-fourth amendment which abolishes the poll tax for primaries as well as general elections. But the framers formed parties when they began to run the government in order to offset, at least to some degree, the centrifugal force of these two powerful and antagonistic branches being asked to exercise shared powers.

For the first 150 years, the party system had remarkable success in fostering cooperation between the branches. In thirty-five of thirty-eight elections from 1796 to 1948, the party winning the White House also won the majority of both the House and the Senate. Taylor, Hayes, and Cleveland, I think, in his second term, were the only exceptions. Now, of course, the opposite happens. Beginning in 1956, in six out of nine Presidential elections we ended up with divided government. Beginning in 1968, in five out of the last six Presidential elections, twenty of the last twenty-four years projected forward to 1992, we have had divided government. I am sure that Richard will disagree with me, but I do not think this has happened because the voters affirmatively want divided government, that is, a President of one party and a Congress of the other party, but because they just do not think party affiliation is important anymore. One might paraphrase Shakespeare's Cassius in *Julius Caesar*

to say, "The fault, dear voters, is not in our stars, but in ourselves, that we are ticket splitters."

All of this is very pleasing to incumbents. Over ninety percent of all congressional incumbents—on average a little over eighty percent of the Senate and probably ninety-six percent of the House—get themselves re-elected. Almost every incumbent President in modern times who has run for another term while in office as President at a time of divided government has been re-elected. The only exception to that was Gerald Ford, who almost won against Jimmy Carter.

Woodrow Wilson was the first to call attention to the problem of divided government in the 1912 election when the Democrats held the House, but not the Senate or the White House. During most of his campaign his central thesis was to put the Democrats in power in all three branches. He said without the same party in control of all three branches, "you have an arrested government. You have a government that is not responding to the wishes of the people. You have a government that is not functioning; a government whose very energies are stayed and postponed. If you want to release the full force of the American people you have to get possession of the Senate and the Presidency as well as the House."

I think it is fair to say that political science theory in the United States has always held, and until recently was historically justified in holding, that because of our two party tradition, one party would almost always win control of all three power centers, the White House and the two houses of Congress, and that this on the whole was beneficial because party loyalty offsets the centrifugal force of the separate departments. Now that divided government is the rule rather than the exception, we need a new theory of how to make it succeed. I will certainly concede that the pragmatists like George Bush and Jim Baker are perhaps well on the road to a theory. They know they are sharing power. They know that they have to cooperate with Congress to make it work. But the jury will have to be out for several more years before we find out whether their pragmatism will work. If we cannot develop such a theory, then we need some new legislative, or perhaps even constitutional arrangements, that will make it less likely that divided government will happen in the future. This, I would submit, is our most daunting American political task as our Constitution, our wonderful Constitution, enters its third century.