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The Search for Consensus

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The
Search
for
CONSENSUS



By M. JUDD HARMON
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TWENTY-NINTH FACULTY HONOR LECTURE

The
Search
for
CONSENSUS



by M. JUDD HARMON
Professor of Political Science

THE FACULTY ASSOCIATION
UTAH STATE UNIVERSITY
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AUTHOR'S NOTE

ALMOST IMMEDIATELY upon completion of the writing of this lecture, Walter Lippmann provided me with analytical support in an article entitled "A Critique of Congress" (*Newsweek*, January 20, 1964). As a long-time admirer of Mr. Lippmann, I was glad to have it, but I wish he had permitted me to state the case first since my effort antedated his. Nevertheless I strongly encourage the politically interested to read the Lippmann column, for it is a perceptive bit of political writing, and it states more clearly and succinctly than I have done in the pages which follow one of the essential points that I have tried to make. The "principle" of legislative supremacy, Lippmann says, is abused when it is employed by the Congress in the cause of "smothering and strangling" measures deemed to be of national interest by the President and presented to the national legislature for its consideration. Ours is, he adds, a difficult system to operate, and its success depends upon the application of "a very large supply of common sense." In short, Mr. Lippmann warns us against a reverence for so-called principles and forms that obscure the ends they were designed to achieve.

In fact there is nothing substantially new in what either Mr. Lippmann or I propose. The failure to heed the warning, however, has always brought grief to the human race. It seems appropriate, then, to state it anew. The worst mistake men can make, in my opinion, is to assume that they have now arrived at that stage of perfection of institutional development which precludes the necessity of further alteration and adjustment. Yet no mistake is so persistently made, and each generation is compelled to learn again the sad truth that public problems can never be permanently solved, and that what have been almost universally regarded as fundamental and immutable principles become woefully inadequate in the course of time. They often become, indeed, a camouflage for those who employ them for selfish purposes.

One of my minor heroes, the Marquis of Halifax, stated almost three hundred years ago that what men call "fundamentals" are "a nail everybody would use to fix that which is good for them; for all men would have that principle to be immovable that serves their use at the time. . . . Fundamental is a word used by the laity, as the word sacred is by the clergy, to fix everything to themselves they have a mind to keep, that nobody else may touch it."

I wish I had said that.

— M. JUDD HARMON

THE SEARCH FOR CONSENSUS

PROFESSIONAL political scientists develop a particular way of looking at the world and interpreting its events. Because of the forces which act upon us all, the view may be excessively narrow, its importance may be exaggerated, and it may be inaccurate as an interpretive device. Yet it is a key to understanding for the person who employs it. He inclines to view all public problems in its light and tends to assume that the solution of social problems is contingent upon an adequate understanding and appreciation of it.

My own view, and I make no claim to originality in expressing it, is that the political process in a democratic community involves essentially the search for a consensus. This necessitates the development of methods of arriving at conclusions on public policies which are in the public interest and are acceptable to majorities. In authoritarian communities where the principle of consent is of no substantial importance, this is not a major problem. In these polities, decisions are made and imposed by leaders who may or may not take the public interest into account but who, at any rate, are not required to consult the public before making decisions. In democratic communities the matter is more complex. Since democratic government requires the consent of the governed, it must be discovered what that consent involves and whether or not it is really given. Consensus means a general agreement. Not everyone need consent to a particular proposition but a majority must, and the position of a dissenting minority must be noted and respected. Finally, that minority ought not to be outraged; at least to the extent that it is, consensus is minimized.

The difficulty of developing a consensus in a free community is that the particular interests of individuals and associated groups of individuals often stand in the way. As my more attentive students, past and present, will affirm, I have long argued that the conflict between particular interests and the general interest is, and has always been, the chief political problem confronting mankind. Past failure to resolve the conflict has resulted in domestic and international strife. Future failure may have far more dire consequences. I am not optimistic about the prospects. The problem is both ubiquitous and persistent; the solutions proffered are plethoric. I have recently completed the writing of a history of political thought covering the period from the Greek city-states of antiquity to the totalitarian regimes of the mid-twentieth century. In the course of this project I have reread the writings of the great political thinkers of history and noted, as I have in the past, that each of them was vitally concerned with the social ill that I have described. The study of political thought is indeed concerned largely with this matter. Some of the solutions prescribed are stimulating but unrealistic; some are revolting to decent and freedom-loving people; some are worthy of greater attention than has been given them.

It is discouraging to a student of the political process that man appears to be no closer to a solution of the problem of interest conflict now than he was more than two thousand years ago. But although it is discouraging it is understandable. Its cause is deeply rooted in human nature; at least I am convinced that it is. The problem in simple terms stems from the fact that as individuals each of us has desires which set us in conflict with our fellows. The motivation for self-gratification may not be as powerful as Thomas Hobbes, among others, thought it was, but it is there and must be reckoned with. In some instances the pursuit of selfish goals may have no effect upon our fellows. We can, for example, breathe all the air we want without concerning ourselves with the welfare of our neighbors. But the list of meaningful actions which an individual can take without impinging in some manner upon others is indeed short.

It is also possible that the individual pursuit of self-interest may be of benefit to society. Adam Smith formulated his enormously influential economic doctrine on precisely this assumption. If each person is left free, he stated, to pursue his own economic interest the unseen hand of competition will mysteriously but inevitably work in the general interest and produce a kind of utopian society. Whatever benefits may have flowed from the functioning of an economic system based upon this premise, and there have undoubtedly been many, it also gave rise to a predatory economic system which brought misery to millions. It did not, in short, result in that service to the public interest which Smith, relying upon logic rather than empiricism, had thought would be inevitable. It seems fair to conclude that in the search for consensus *laissez-faire*, economic or otherwise, is of limited value. The fact is that much of what we might do, if we were unrestrained, would be harmful to others. We may resent the restraint if we are doing the harm; we demand it when we are being harmed.

There is another view which is pertinent. It has been argued that there is in fact no conflict between a *real* personal interest and the general interest. When the individual acts in a manner that is injurious to his fellows he is really harming himself; he is serving his *apparent* rather than his *genuine* interest. This point was made by Jean Jacques Rousseau, who attempted to synthesize the particular and the general interest in his theory of the General Will. Rousseau's principal contribution, however, lies in his perception of the problem rather than in any practicable solution of it. The General Will was little more than the absolute rule of the majority and is repellent to one concerned with the protection of minorities. Rousseau himself concluded that the General Will could function only in the city-state form of political organization.

If the knowledge of man's failure to provide a satisfactory solution to this problem is depressing, it is positively frightening to note that as time goes on the problem becomes more difficult to solve. There are a number of reasons for this. A rapidly increasing population multiplies the number of personal interests. An industrial society promotes divergency of interest. Modern methods of communication and transportation increase our inter-

dependency. If the accommodation of interests was so difficult within the small and relatively simple society of, say, the Athenian city-state, how much more so is it in the populous and complex nation-state of the present! In the twentieth century the people of a number of nations, appalled by the confusion attending a conflict of interests which appeared to them to border on anarchy and unable to develop a voluntary consensus, have surrendered their freedom and accepted the authority of an absolute government. Both Hitler and Mussolini promised to relieve their people of the terrible burden of making decisions in a troublesome and complicated world. The results of that abdication of personal responsibility demonstrate the futility and danger of any solution based upon the complete relinquishment of individual freedom.

I do not wish to imply that a total solution is desirable, for it could create a worse situation than that which provoked it. We could assume, for example, that men are so evil and selfish that if they are granted *any* freedom to pursue individual goals they would inevitably damage the general interest; the only remedy in such a case would be an autocratic regime and a correlative suppression of personal liberty. This was the conclusion of Hobbes as it was, and is, of the totalitarians of the present century. A second possibility is anarchy. If men are naturally good and altruistic and have become corrupted only because of institutional restraints, then the obvious answer lies in the elimination of the institutions. This is what Marx proposed should follow a period of preparation in the proletarian dictatorship; it is also very nearly what Adam Smith suggested, although the anarchist implications of Smith's theory are not so well understood.

Some argue that the danger of such extremist views can be circumvented through an institutional arrangement which anticipates conflicts of interest and reconciles or restrains them. This is the direction in which Locke points and the position most clearly taken by Montesquieu. The philosophies of both were influential with the framers of the Constitution of the United States. I intend to devote attention to this matter later. Suffice it to say at this point that whatever may have been, or is, the value of such institutional arrangements as separation of powers, checks and balances, federalism, and others, they have by no means solved the problem of interest conflict. Indeed they often prevent rather than facilitate solutions, and they demonstrate to me that to the degree that such institutional arrangements are inflexible they are worse than useless. They contribute to stalemate by requiring that problems be solved within a rigid and established institutional framework which too soon becomes anachronistic. The world of contingency and change is much larger than the rigid institutionalists imagine. Here is the essence of the problem which I intend to discuss.

There is an element of validity in each of the three proposals I have cited. All men require some restraint and some a great deal. They also want some freedom. And the institutionalists are correct in advocating structural arrangements capable of reconciling conflicts of interest; they are incorrect, however, in assuming that any such arrangement can solve all problems and

more so when they propose that institutions adequate to the needs of one time and place should be regarded as universal and immutable. We may safely acknowledge that the necessity for *government* is universal. We cannot similarly universalize *forms* of government; neither can we assume their permanent validity.

Certain assumptions, then, seem warranted. One is that it is impossible to organize society in such a manner as to preclude all conflict of interest. But it is also necessary to hold conflict within reasonable bounds. Failure to do so will result in the collapse of society. Human nature being what it is, however, complete homogeneity and absence of conflict can be achieved only at the cost of freedom. A corollary of this assumption is that even a proximate solution will be difficult to find and will be incapable of achieving universal approbation. It is natural, I presume, to wish to have all of our problems solved; this, however, is impossible even on a personal level. Its impossibility should be even more apparent when it comes to national and international problems. The attractiveness of radical movements of both left and right lies largely in that each promises to solve problems of great magnitude swiftly and simply. The leftists argue that abandonment of the private ownership of the means of production will result in utopia. The rightists say that the state of blessedness is contingent upon abolition of the income tax, the federal government, foreign aid. The perceptive student of politics knows that solutions are not so easily found. He may not be able to provide an answer, but he understands that any answer will be enormously complex and only partially satisfactory.

A second assumption is that although government is necessary its form will vary with both time and circumstances. A governmental structure adequate for Americans would probably be hopelessly inappropriate for Abyssinians. The point is difficult for many to comprehend, but far less difficult than it is to understand that a governmental structure which may have served Americans well in 1800 could only fail if it were pitted against the conditions of the mid-twentieth century. Those who contend that the national salvation is contingent upon a return to the supposed purity of the principles of the Founding Fathers are either abysmally ignorant of the realities of political life, or they are guilty of attempting to disguise their own selfish goals with a cloak of spurious respectability. The validity of governmental structures is relative. I see no sanctity in any of them; on the contrary I see great danger in attributing that quality to them. Thomas Jefferson stated this idea with great force.

Some men look at constitutions with sanctimonious reverence and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. . . . I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections go hand in hand with the progress of the human mind. . . . As new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to

remain ever under the regimen of their barbarous ancestors. . . . Each generation . . . has a right to choose for itself the form of government it believes the most promotive of its own happiness. . . .

Jefferson was an ardent champion of states' rights; it is unlikely that he would be today. In his time the states' rights doctrine supported governmental responsibility and democracy; today it is too often a cover for Neanderthal politicians who pursue a policy of race discrimination and outrage the rights of minorities within their states. This is only one of a great many examples which could be cited to illustrate the point that we too often lose the substance while retaining the form. It should also demonstrate that a government should be judged by what it does, not by the form it takes.

It seems to me, in other words, that we have a tendency to confuse the ends we seek with the means which are developed to achieve them. If we grant that the proper goal is the attaining of a consensus and that this necessarily requires the accommodation of the particular and the general interest (which is another way of saying that we seek the general welfare), then we err if we fail to achieve it because of our reluctance or refusal to modify methods, regardless of how successful they might previously have been. I am not suggesting that the end always justifies the means. I have already stated that I reject the solutions of the extremists, and I further repudiate the notion that the general welfare can ever be achieved unless the substantive liberties of the individual are preserved. I confine my discussion and recommendations to methods and institutional adjustments which, I believe, would not outrage the sensitivities of those who, rightly, are concerned with means as well as ends.

As a people we ought to develop a new way of looking at political problems. We should view them more critically and with a greater fund of knowledge supporting the criticism. We must first recognize the distinction between means and ends and, second, we should abandon our attitude of reverence toward the means. We should devote less time to extolling the virtues of our institutions and praising their past successes and more to a critical appraisal of them in the light of present conditions. We need less oratory and more pragmatism. Such proposals, of course, always cause conservative hackles to rise, and throughout the land the warning goes forth against "revolution." But wise conservatives, as well as progressives, also know that it is the failure to adjust the means, to alter institutions as conditions demand, that is most responsible for revolution. This is a lesson that history has repeatedly taught, and it is remarkable that it has not yet been learned by many. Remarkable but understandable. There develops in every society a vested interest in the status quo, one with social, political, and economic manifestations. Those who benefit most from the status quo are most reluctant to consider suggestions for change. Even when they are precariously poised on the precipice of revolution they tend resolutely to look the other way and to reject the reforms that might salvage at least part of their heritage. The pages of history are replete with accounts of this fatal weakness. The collapse of the Bourbon, Stuart, and Romanoff dynasties provides

only three examples; there are many more. It is also a fact that the people are generally conservative. They prefer the established ways. They will endure considerable inconvenience, even hardship, before sanctioning change.

In our own country a greater alteration of institutions has occurred than is recognized by most. The political party system, without a shred of constitutional sanction, has developed and brought to government a measure of democracy and responsibility that would have received the most profound disapproval of the framers of the Federal Constitution. The commerce and taxing clauses of the Constitution have been put to uses on behalf of the general welfare that would have evoked cries of anguish from the members of the Philadelphia Convention. And perhaps most important of all, the cumbersome and complex electoral college system now permits rather than precludes the democratic election of a President of the United States.

These and other developments have maintained the viability of our system. Without them we would have had either to abandon it or see it become authoritarian. We have, therefore, at least implicitly acknowledged the necessity of institutional metamorphosis. We must extend the operation of the principle to other areas. This is an enormously difficult task, and I am not sanguine about the prospects of accomplishing it. Under the most favorable circumstances people are reluctant even to question the validity of institutional arrangements, let alone alter them substantially. The reluctance is compounded in a period of international tension such as we have been undergoing for the past quarter of a century or more. Yet it should be done, and the range of criticism and analysis should not stop short of some of the most fundamental aspects of our system.

I can do no more here than suggest a few of the more important reforms that I regard as desirable. There are others, but in my own thinking these have come to occupy a central position. They are fundamental in the formulation of that context within which I tend to interpret the functioning of our governmental system. And if I am wrong in my concern I am not alone. Few political analysts have suggested an exhaustive analysis and basic alteration of some of the most hallowed of our governmental structures. Nevertheless, the almost total preoccupation of students of government with problems arising from the malfunctioning of these structures indicates to me that some such action is necessary. I shall consider here four of them: the separation of powers and checks and balances, federalism, legislative supremacy, and direct representation.

THE SEPARATION OF POWERS AND CHECKS AND BALANCES

SEPARATION OF POWERS and checks and balances is the theory that the best way to avoid despotic government is to assign the three major functions of government, legislative, executive, and judicial, to three separate agencies and to provide each with powers to prevent the abuse of authority by the others. In its basic elements the concept is very old. In the seven-

teenth century it was advocated by John Locke in the *Second Treatise*, and it received its fullest consideration and development in Montesquieu's *The Spirit of the Laws* in the middle of the eighteenth century. It is necessary to understand the circumstances in which Locke and Montesquieu wrote. Each was interested in attacking the abuses of power by absolute monarchs — Locke those of the Stuarts and Montesquieu those of the Bourbons. Since Montesquieu was, with respect to this doctrine, more influential among Americans than Locke I shall use him here as the main point of reference.

In most respects, Montesquieu's separation of powers theory was reactionary. It regarded absolute monarchy as an innovation, which it was, and looked back nostalgically to the class structure of commoners, nobles, and royalty that had prevailed in the medieval period. His animosity toward the Bourbon autocracy of his own time led Montesquieu to take a distorted view of the past. He believed that medieval times had been stable and peaceful and that this was because there had existed a well-defined class structure, each part of which had its established and protected prerogatives. He assumed that the turbulence of his own era had resulted from the destruction of that system. In fact medievalism had not been as utopian as Montesquieu thought. The particularism resulting from the will to power of the feudal aristocracy had led to a forced unity imposed by a king supported by the middle class, which believed that its own advantage would be secured by such action.

Montesquieu's theory was appealing to Americans who, around the time of the Revolution, understandably tended to equate governmental power with tyranny and executive authority in particular with the policies of the sometimes mad George III. Upon declaring their independence, Americans proceeded in the establishment of their own governments to regard them with the same suspicion that had marked their view of their former British masters. A concept of government designed originally to maintain a balance of power among contesting classes was adopted unquestioningly by a people who, for the most part, rejected the notion of a society based upon a rigid class structure. The French statesman Turgot, watching these developments with great interest, commented sardonically but perceptively:

I see in the greatest number of the American State Constitutions an unreasonable imitation of the usages of England. Instead of bringing all the authorities into one, that of the nation, they have established different bodies — A House of Representatives, a council, a governor, — because England has a House of Commons, lords, and a King. They undertake to balance these different authorities, as if the same equilibrium of powers which has been thought necessary to balance the enormous preponderance of royalty could be of any use in republics, formed upon the equality of all citizens; and as if every article which constitutes different bodies was not a source of divisions. By striking to escape imaginary dangers, they have created real ones.

Precisely. And this situation led to the development in the American mind of a kind of political schizophrenia. It has long seemed incredible to

me that the American people are often strident in their demands for governmental action and at the same time suffer a guilt complex because of this supposedly immoral conduct. We need, perhaps, mass psychiatric treatment capable of convincing us that democratic and responsible government can be strong without being despotic and can provide service without necessarily contributing to the corruption of our morals.

Americans take great pride in the principle of separation of powers and checks and balances, often attributing to it the successes our system has enjoyed over the years. What is not sufficiently understood is that, whatever the advantages that may flow from a system based upon the principle, to the degree that separation of powers and checks and balances "work," government does not. The process of a bill being passed by Congress, vetoed by the President, repassed over the presidential veto by a two-thirds majority of rebellious legislators only to be nullified by the Supreme Court may be an exciting one, but it is certainly unproductive. It is full of sound and fury signifying stalemate. Such a system was tolerable during a period of our history when the necessity of efficient and operable government was not so great. The near paralysis that often results from its operation in the vastly different political climate of the mid-twentieth century makes it a much more pressing problem today. It appears to me that separation of powers and checks and balances dangerously encourage factionalism and bar the path to the consensus that is necessary for national survival. Moreover, in the light of the British experience it is obvious that the principle is not indispensable to the operation of a democratic system. It is one of the strange quirks of history that at the very time we were copying and implementing what we conceived to be a system based on the English model of separation and checks, the British themselves were in the process of developing the parliamentary and cabinet system which negates it. And whatever criticism one might level against the British system of government, only the unenlightened could charge that despotism was the result of that repudiation. I suggest that the idea of the general interest being better served by a policy of government cooperation than by one of warring branches is neither unwise nor immoral. It is, rather, only common sense.

FEDERALISM

MANY OF THE criticisms of separation of powers may also be leveled against federalism. Montesquieu advocated a federal system because he believed that a consensus was impossible in anything other than a small polity. Again, Montesquieu was influenced by his reverence for medieval institutions. He could not see that the particularism of the feudal system had resulted in its demise and the consequent rise of monarchical power. There was already the necessity for a national consensus, but this was not apparent to Montesquieu, whose major concern was a restoration of the prerogatives of the aristocracy. Montesquieu conceded that the demands of security required a greater degree of cohesion where matters of military and foreign policy were concerned; thus he proposed a confederative system in

which domestic policy would be in the hands of the component units of the confederation whereas military and diplomatic matters would be directed by a central government.

It was this assumption that a national consensus is necessary in foreign and military affairs but not in domestic affairs that so greatly influenced Americans in the post-Revolutionary period. The assumption was unfounded when Montesquieu made it, still more wrong when Americans incorporated the principle into their own system, and I believe it is almost wholly anachronistic today. That Americans had carried the confederate principle too far in the Articles of Confederation, which rather faithfully followed Montesquieu's idea, was argued by the Federalists — Hamilton, Adams, Marshall, and others. They were successful in obtaining the ratification of the present Constitution, which departs considerably from the confederative principles of the Articles. Hamilton would have gone further. He urged the elimination of the states altogether and the creation of a single nation. Many of his compatriots agreed in principle but recognized that the public, already suspicious of events in Philadelphia, would reject such a proposal out of hand. The Founding Fathers settled for a new constitution which vested an imposing array of powers in the national government but left undetermined the central issue of whether the United States comprised a single nation or a coalition of independent states, each of which voluntarily lent a portion of its sovereign powers to the national government to be exercised at the pleasure of the states.

This was an issue that arose almost as soon as the Constitution was placed in operation; it became more critical as the years passed. Were we a nation, or weren't we? Was there a national interest or were there merely the particular interests of the states? Under the circumstances was it legitimate to think in terms of a national consensus, or was this contrary to the constitutional intent of the Founding Fathers? The United States became a nation when a majority of Americans possessing a superior force of arms became convinced that there was a national interest on an issue of overriding importance and that it should prevail over the particular interests of the Southern States. A bloody civil war was required to establish the point, and there is considerable evidence that it has not yet been learned by many, but this is nonetheless what that unfortunate and "irrepressible" conflict was about. The American Civil War is a striking illustration of the fact that institutions must conform to changing conditions or die. My own feeling is that in the bitter debate that preceded the conflict, the spokesmen for the South had the better of the constitutional argument. This counted for nothing in the end because they were making the classical error of attempting to maintain the status quo. Such efforts, irrespective of how admirable they may be, must inevitably be cast upon the ash heap of history.

Whatever one's personal feelings on the matter may be, the fact is that we must be a nation or we shall perish. The major domestic problems of our society are manifestly national problems. The growing imbalance of state and national power, in favor of the latter, is almost wholly attributable to

the fact that states have been unable or unwilling to meet the needs of their people. If the national government has itself often been found wanting in this regard, if it has been less efficient than it might have been, the fault lies in large part in the federal principle. A member of Congress who is compelled to pursue the national interest with one foot always in his own constituency will be generally found running in circles. I intend shortly to explore this issue in more detail. Suffice it to say here that in my opinion the national government does the job of governing better than do the states.

To a great many people who still think in terms of the Jeffersonian tradition of local government, the inexorable enlargement of national power is frightening. We have been nurtured by a tradition which holds that despotism expands in proportion to the increase of geographic distance between the citizen and those who govern him. Thus local government is ideally honest, responsible, responsive, efficient, and incorruptible. The national government, centered in faraway Washington, is dishonest, irresponsible, unresponsive, inefficient, and corrupt. This belief is without foundation in fact as most informed students of government agree. I am not suggesting that all federal officials are paragons of virtue and efficiency or that the national government is a model of competence. But compared with the governments of most of the states and especially the sub-units of the states, the national government is greatly superior. In our daily lives most of us acknowledge this without thinking much about the matter. Bitter experience has taught us that if national resources are to be conserved the national government, not the states, must conserve them. If we wish the apprehension of a dangerous criminal we hope that there is a federal issue involved so that the Federal Bureau of Investigation or some other federal agency may have jurisdiction, because we have greater respect for their abilities than we do for those of the local constabulary. A great variety of examples could be offered to substantiate the view.

Jefferson's contention that local governments were more responsive to the will of the people was based upon the fact that with the primitive methods of transportation and communication which existed at the time, the people could not be as knowledgeable of the operations of their national government as they were of the governments of their communities. Today, however, the affairs of Washington and the world are no further than an electric switch or the newspaper on the front porch. Moreover those affairs are highly publicized. Great and powerful news organizations vie with one another to root out information for the public. Today the vast majority of citizens are more interested in and have a more detailed knowledge of the functioning of their national government than they do of their local governments. Given this greater interest and knowledge, given the fact that the national government provides a large variety of services and imposes many regulations, and recognizing that those who make national policy are elected just as are the officials of local government, it follows that the responsiveness of the national government to the demands of constituents is more sub-

stantial than that of local officials. Indeed, in my opinion, the responsiveness may well be excessive, and I shall comment on this subsequently.

All this serves to illustrate another manifestation of that national schizophrenia to which I earlier referred. In fact we demand national service and generally recognize it as superior in quality to that provided by state and local governments. Yet because this is contrary to a tradition with which we have long lived we tend to regard ourselves as culpable because of our actions. We applaud the impassioned oratory of states righters and term it "American"; at the same time our interest is focused upon the national government, and our real hope for a solution to the important public problems lies there. This is further evidence of our confusion over ends and means. The increasing complexity and ramification of political issues has nationalized them and considerably outdated federalism. Why should this so deeply concern us? The goal of government is still the same — to provide a community in which the good life, moral and material, may be lived. If this is better accomplished by the national than by state governments, why should we not employ it. If there is Scriptural support for federalism I have not found it. I do not argue that state and local governments and services be abandoned wholesale. I do suggest that we approach the problem of the assignment of responsibilities logically rather than emotionally. Of course we have over the years steadily been altering our federal system. But we have done so grudgingly and have experienced inconvenience and sometimes flirted with disaster because our predilection to sanctify the means produces indecision. And the guilt we feel when we alter our path often makes us susceptible to the exhortations of the dim witted who chastise us for departing from the "traditions of the Fathers." I have admiration and respect for the teachings of the past. A study of history, and particularly the history of political thought, leads me to conclude, however, that the greatest lesson history has to offer is that man cannot live in the past, cannot use the institutions appropriate to one generation for a later generation, and that attempts to do so have been consistently fatal to the polities of yesterday.

LEGISLATIVE SUPREMACY

THE MIDDLE CLASS in England and Europe in the seventeenth and eighteenth centuries became disillusioned with the absolute monarchs whom they had helped to power. There ensued a series of revolutions the chief purpose of which was to substitute the authority of representative legislative bodies for that of the king. Locke in his *Second Treatise*, which subsequently provided a handbook for our own revolutionary forebears, stated that the "legislative" should be "the supreme power in every commonwealth" and that the best kind of government was that in which "the *Legislative* power is put into the hands of divers Persons who, duly Assembled, have by themselves, or jointly with others, a Power to make Laws." The reason for the abandonment of the monarch by the middle class in favor of a body of its own representatives is easily discoverable. The king had been supported

earlier because it appeared that only he was capable of suppressing a disorderly nobility, which had for centuries obstructed the channels of commerce and cut deeply into the earnings of the bourgeoisie. But monarchs ultimately forgot their debt to the middle class. The expense of consolidating their own powers and of satisfying extraterritorial ambitions was great, and the thirst for revenues could only be slaked at the fountain of bourgeois profits. The resentful middle class proceeded to remove the heads of the more intransigent monarchs and strip the rest of most of their powers. The ultimate result was the rise of republics and constitutional monarchies in which representative legislative bodies exercised the bulk of political power. Once again we see the operation of that irrevocable historical rule that institutions must alter or perish. Or to state the case differently, when the established means are no longer capable of achieving the desired ends their replacement is imperative.

At the time of the framing of our own state and national constitutions the principle of legislative supremacy was almost unanimously approved. Americans restricted both the terms and the prerogatives of their own executives, making them essentially figureheads and subservient to the legislatures in whom the bulk of power was lodged. It soon became apparent that they had gone too far. Shortly after the beginning of the nineteenth century constitutional conventions were held in a number of states to repair the damage resulting from a serious imbalance of legislative-executive authority. That the people's earlier views had been colored by their colonial experience could now be more clearly seen. As a delegate to the New York constitutional convention of 1821 put it:

An erroneous idea seems to have prevailed in relation to the powers and origin of the governor. Who is he? and by whom is he appointed? Does he derive his authority from the king of Great Britain? Is he an usurper? If so, let us unite to depose him. But, sir, he is the man of the people — elected by their suffrages and identified with their interests. He is a watchful sentinel to guard us from evil and a zealous friend to admonish us of error.

The issue could hardly be stated more clearly. There is a difference, extensively sensed and felt but not often enough thought out and coherently understood and expressed, between an hereditary and divine right monarch on the one hand and an executive elected by a majority in a system of universal suffrage on the other. The first is irresponsible, the second is responsible. The first is removable only by force (or by pressure which threatens force), the second must bow to the will of the electorate expressed through the voting process.

The organization of national political parties in Jefferson's time and the broadening of the suffrage in the Jacksonian era brought the first of the popular chief executives who have ever since captivated the interest and often the hearts of the American people. Ours became a presidential rather than a congressional system of government. The eyes of the nation are on the White House far more than on Capitol Hill. Interest in presidential

elections greatly surpasses that in congressional or state elections. In the majority of the struggles between President and Congress, the executive has won, and he could not have done so without popular support. A President may be loved or hated; he is always the focal point of national interest and the object of the nation's concern.

These developments are attributable to a number of causes, but the main one is that the President of the United States is the only official (I except the Vice President whose authority and prestige are only potential) who is, by virtue of the manner in which he is elected, the representative of the general interest. By the same token Congress is representative of the particular interests. It could well be fatal for a Congressman to support the national interest rather than the interest of his state or district on an issue where the two are in conflict. But a President cannot afford to be the captive of a particular interest. At any rate if he is and the fact is discovered his influence and power are seriously jeopardized. There have been such Presidents in the past; history has relegated them to an inferior status as compared with those who have struggled for the national interest against the omnipresent and potent special interests.

Legislative supremacy was advocated as a solution to a problem arising out of certain conditions. The question today is whether different conditions justify a continued adherence to the principle. In short, is the legislative ordinarily more representative of the general interest than is the executive? My own feeling is that it is not. Nor does it possess the expert knowledge necessary to frame the intricate and detailed legislation that is called for in modern times. The great majority of important bills introduced in Congress today originate with the executive. Congress, as students of government well understand, has become a debating and ratifying body rather than a legislative body in the traditional sense of the word. Unfortunately Congress is also often an obstructive body. It has evolved an elaborate system of organization, rules, procedures, and customs which places disproportionate power in the hands of a few who often use it to frustrate the majority will. It is a situation which cannot be explored here, but a cursory reading of a daily newspaper suffices to illustrate it. Some of the more responsible members of Congress have lectured their colleagues on the errors of their ways but without visible effect. Legislative bodies should heed the lessons of history, or they are likely to find themselves in the unhappy position of the monarchs whose authority they appropriated. Even the most apathetic public is eventually bound to be impressed by the barrage of criticism that has been leveled against Congress by its critics.

The national consensus today is far more likely to be reflected in policies and actions of the President than in those of Congress. This indicates the desirability of an altered role for our legislative body. It should always have the power to say "no" to the President, but the basis upon which it does so should be changed considerably. If this is to be done, Congress must be reformed. Under our system it can only reform itself. I cannot detail the desired reforms here, but they are well known. Fundamentally reform must

be directed toward making Congress more capable of reflecting a national consensus, a general interest. Changes in procedures to facilitate majority rule and the curbing of obstructionist tactics are necessary. The Supreme Court's 1962 decision in *Baker v. Carr*, upholding the jurisdiction of federal courts over law-suits challenging malapportionment of the legislative districts of a state is bound to have far-reaching and beneficial consequences in the struggle to increase the representative quality of the House of Representatives. Other views of this problem will be discussed in the following section.

In this, as in other aspects of the problem that we have been considering, it is apparent that practice has outrun the theoretical functioning of our institutions. Framers of our Constitution thought that the President would be an arbiter between the House of Representatives and the Senate and that he would act as an executive agent of the Congress. The President has, of course, become far more powerful than this. He is today the chief legislator as well as the chief executive, and his authority has far exceeded that for which even the most ardent supporters of executive power in the Philadelphia Convention hoped. This would not have occurred had not changing circumstances demanded it and had not the public endorsed it. The change of means was necessary to the achievement of the same end. Again, we sense this — indeed we demand it. But we still experience that feeling of guilt in doing so. We still tend to equate executive power with despotism and a President of the United States with a divine right monarch. This often leads us to place unnecessary barriers in our own path. For instance we elect a President who pledges support to a program designed to accomplish the general interest, and we then commend as “independent,” and thus admirable, those legislators, even in his own party, who obstruct him in his pursuit of that goal. We admire and demand strong presidents, but there are many who level the charge of dictatorship when one appears. We attack a President for infringing upon the prerogatives of Congress, as if the prerogatives of Congress should be anything less than the serving of the general interest. And whoever heard of a dictator submitting to the will of the electorate every four years? There ought to be, within Congress and without, a more intelligent recognition of the appropriate scope of Congressional action in the present era. It is still a highly important one involving debate, the airing of public issues, criticism, passage of legislation, investigation, watchdog duties, and more. But it is not what it used to be, and the principle of legislative supremacy can no longer be regarded as it was formerly. New institutional arrangements must mirror the conditions of the changing society.

DIRECT REPRESENTATION

THE CHIEF OBSTACLES to the development of consensus in the Congress are the methods by which the members are nominated and elected. In part, this impediment was imposed by the framers of our Constitution who provided that a member of Congress must be an “inhabitant” of the state

he represents. Direct representation was a part of the English political tradition that Americans inherited along with their language. It was, however, reinforced by the conditions that prevailed at the time we won our independence and established our own governments. As we have seen previously, this was a period of intense state loyalty. Men generally considered themselves as citizens of their respective states first and citizens of the United States second, if at all. No one thought that his own interest and that of his fellow citizens within a state could be fairly and adequately represented by a resident of another state. Again, we were not yet a nation and the concept of a common interest outside of military and diplomatic necessity was undeveloped.

But a nation was established and a common interest requiring a national consensus for its achievement was recognized more generally. The problem was, and is, the formulation of such a consensus in the face of the existence of a system of nomination and election which reflects the particular more than it does the general interest. Our salvation, thus far, has been the office of the President precisely because the method by which the President is elected requires him to represent the generality. The President has also developed "carrot and stick techniques" to assist him in obtaining support from a recalcitrant Congress. The particularism of Congress does not reflect upon the character of its members, the overwhelming majority of whom are honorable men. But Congressmen, responsible for their nomination and election to their own constituencies, understand that if they are to win and maintain their positions they must satisfy those constituencies. What constituencies want and what the national interest demands are all too often different things. Irrespective of a southern senator's personal feelings on the matter he may be advised to oppose a civil rights bill. The representative of a constituency containing a preponderance of members of organized labor would perhaps be unwise to support compulsory arbitration even if he were convinced that the nation as a whole would be better off if he did. The legislator representing an agricultural state, regardless of his views with respect to the national interest, feels a strong compulsion to vote on farm legislation the way his constituents demand.

It has been argued that out of the welter of conflicting particular interests the general interest somehow emerges. This mysterious process supposedly functions in a manner similar to Adam Smith's "unseen hand." In fact it does sometimes; often it does not, and stalemate or the benefiting of the particular interest is at least as likely to result. A member of Congress is understandably reluctant to concede that the desires of his constituents are in opposition to the interests of the nation as a whole. He is more likely to assert that what is good for his constituents is good for the country. Undoubtedly this is sometimes the case, but it would be naïve to assume that it is always true. The recent outcry of "economy-minded" Congressmen against the decision of the administration to deactivate a number of unessential military installations is but one of many recent illustrations of the

point. Congressmen generally favor governmental parsimony, but not if it adversely affects conditions in their own states or districts.

Today the Congress seems more to occupy the position of an antagonist than that of a co-worker with the President. This is not so much a matter of party affiliation as many think. Support for and opposition to the President in Congress overruns party lines. The fact is that the national interest today is represented by the President. The opposition to this development is in the states, and they are represented by Congress. The President has the force of history on his side, but he has no monopoly of institutional controls in his hands. Great powers are constitutionally in the hands of Congress, which can use them to frustrate the President. I do not argue that this ought never to be done, but it ought to be done intelligently and in the national interest, not irresponsibly and for the particular interest.

This is probably the most difficult and persistent of all our public problems. To call for institutional reform capable of transforming Congress from a representative of the particular into a representative of the general interest is to ask the people, on occasion, to sacrifice their own interest to that of their fellows. And although it is not difficult to obtain a hypothetical consent to such a proposition, the willingness to make the actual sacrifice is a different matter. I can imagine the vast lack of enthusiasm, in Congress and the country, with which a proposal to alter the residency qualification for Congressional membership would be greeted. It is embarrassing even to mention it as part of a theoretical analysis of governmental reform. The British have evolved a method of producing a national consensus in their Parliament through the centralized control of nominations. This makes the legislator more responsible to the central party organization and thus to the nation as a whole than to the members of the constituency from which he is elected. It also makes possible a degree of party discipline that increases legislative efficiency of action. It is true that there is no residency qualification in Great Britain as there is in the United States, but it appears to me that this is less consequential than the matter of central control. This change could be effected in the United States without a constitutional amendment, but the prospects for such a reform seem dim. It would be difficult to explain its advantages to a public reared in a tradition so different. And we may be certain that the local politicians who now play the dominant role in the nominating process would oppose such a change strenuously. All of the slogans of Jeffersonian localism, now anachronistic but effective nonetheless, would be hauled out, dusted off, and employed in the interest of a divisive particularism. All of the enormous (and largely unfounded) prejudice of Americans against the term "centralized control" would be exploited to the hilt.

If change occurs here it will be the result either of a long and arduous educational program designed to convince the American people of the benefits of such a reform, or of some cataclysmic experience capable of demonstrating the inadequacies of the present system. Until then we can only hope to have Presidents who are effective enough to create a national consensus

and act upon it. We have thus far survived the handicaps imposed by a system of direct representation, but we should recognize that such a system has great disadvantages. The inability of Negro citizens to enjoy their constitutional rights, the difficulty of obtaining the enactment of effective tariff laws, the wastefulness of defense spending are all largely attributable to our failure to develop a national consensus in an institutional arrangement which exaggerates the importance of local interests through direct representation.

CONCLUSIONS

DURING THE YEARS of the cold war I have noted with interest the growing scope of criticism of the functioning of our governmental system. This criticism has mainly followed the lines I have considered here, and it has emanated from a great variety of sources. There has, as yet, been no serious advocacy of sweeping and fundamental changes, but the area of concern is so vast that it seems fair to infer that something more than superficial remedies are required.

The late President Kennedy, an intellectual of high order, well understood the realities of political life, especially as they involved the relations of the legislative and executive branches of our government. His attempts to weld the two into an effective consensus-producing and executing whole were a constant frustration to the less patient, who demanded swifter solutions to national problems. Political analysts often remarked that the President, himself a long time member of the Congress, had a too great respect for the "system" ever to question the validity of its principles. I believe, however, that President Kennedy's enthusiasm for those principles was much less than unqualified. As an intellectual he was not only aware of the criticism, which had reached a high point during the few months preceding his death, but he was also capable of thinking realistically about the problem. That he had done so even before his election to the presidency is implicit in the following words, which comprised a part of his first major address to the Congress on January 30, 1960. The President said:

Before my term has ended we shall have to test anew whether a nation organized and governed such as ours can endure. The outcome is by no means certain.

It is remarkable that these words have received so little attention, since they quite clearly express some doubt concerning the viability of our system.

Just as clearly, the President was not suggesting revolution. Nor do I. A truly revolutionary effort would necessarily be directed against the *purposes* of the nation, not merely some of its organizational aspects. An attack, for example, upon the principles stated in the Preamble to the Constitution would appear to me to constitute a genuinely revolutionary effort, whereas proposals to establish a unicameral legislature or to abolish direct and geographic representation I would regard as reform measures.

I am only proposing once more the desirability of distinguishing between means and ends. We must bear in mind that to establish our nation,

it was necessary to concede a degree of particularism which is no longer consonant with the kind of unity that is the *sine qua non* of survival today. In the past we were better able to afford the luxury of disagreement and stalemate. Their consequences were inconvenience and perhaps domestic hardship. But what we did then did not have the impact upon our relations with other nations that it does today. The lynching of a Negro fifty years ago was no less regrettable than it would be today, but it did not then affect our attempts to entice the African nations to our side in the cold war. Unemployment has always been deprecated, but particularly so when we are trying to demonstrate the superiority of our own economic system to that of the Communists. In the past we supported education largely because we believed its value was intrinsic; now we are interested as well in our ability to compete with our friends and enemies abroad.

In sum, it seems to me that the public must advance in its knowledge of the science of government. This, I believe, would be highly desirable even aside from the international aspects of the problem. Government would be less expensive and more efficient if we were capable of viewing its structure in the same critical and analytical manner that we do those of, say, business organizations. Of course we have not done this. The aura of tradition which surrounds government is too great. It is unfortunate that it seems more attached to the structure than to the principles of government. We have sanctified the means and often lost sight of the ends.

I do not wish to overstate the case, although I understand that many would argue that I have already done so. I realize that changes have been made, and that the means employed have altered considerably. We have shared, to a considerable extent, the genius of our British cousins for varying the substance without changing the form. With few changes in our Constitution in 175 years we have made it more democratic, more representative, more responsible. It has been adapted from a predominantly agrarian to a predominantly industrial society. I admire the great process of transmutation which has occurred. This, however, does not provide irrefutable evidence of future success. The burden of domestic depression, hot war, and cold war has been enormous. And, as I have suggested, the situation during the last decade or so has been especially difficult because the threat from without creates a social aversion to internal change. We tend to cling to the old — or what we are told the old was. We are less inclined to accept the changes necessary to achieve a national consensus, and most do not understand either our failure to do so or its causes.

President Kennedy stated that “The outcome is by no means certain.” Surely this is the most optimistic view that can sensibly be taken. The maintenance of our system as we know it depends, I believe, upon the ability of the people to understand what is involved, for they must give their consent. Powerful forces stand in opposition to change. Who is going to tell the people? Who dares tell them, knowing that to do so is to lay oneself open to the charge of revolution, radicalism, disloyalty, or, at best, weak-headedness. Of course there is nothing new in that. It is, in large part, the story of history.

TWENTY-NINTH HONOR LECTURE
DELIVERED AT THE UNIVERSITY

APRIL 30, 1964

A basic objective of the Faculty Association of the Utah State University, in the words of its constitution, is:

To encourage intellectual growth and development of its members by sponsoring and arranging for the publication of two annual faculty lectures in the fields of (a) the biological and exact sciences, including engineering, called the Annual Faculty Honor Lecture in the Natural Sciences, and (b) the humanities and social sciences, including education and business administration, called the Annual Faculty Honor Lecture in the Humanities.

The administration of the University is sympathetic with these aims and shares the cost of publishing and distributing these lectures.

Lecturers are chosen by a standing committee of the Faculty Association. Among the factors considered by the committee in choosing lecturers are, in the words of the constitution:

(1) creative activity in the field of the proposed lecture; (2) publication of research through recognized channels in the fields of the proposed lecture; (3) outstanding teaching over an extended period of years; (4) personal influence in developing the character of students.

Dr. Harmon was selected by the committee to deliver the Faculty Honor Lecture in the Humanities. On behalf of the members of the Association we are happy to present his paper: THE SEARCH FOR CONSENSUS.

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