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Power in Washington: Congress Versus the White House*

Stan A. Taylor**

I would like to preface my remarks to you with three personal affirmations which I hope are not inappropriate.

First, I am very grateful for the restored Gospel of Jesus Christ and its power of salvation and exaltation. I find deep personal satisfaction and consolation in my testimony of our Savior. I also find immense and continual professional benefit from that knowledge. I feel it is appropriate to testify that, as a social scientist, I find that every social problem which I analyze has as its root, at some place, to one degree or another, the failure of man to abide by the teachings of our Lord. I have come to feel that, at least in my own field and especially among Mormon scholars, one ignores sacred teachings at the peril of making his scholarship sterile and superficial.

Second, I want to express my deep respect and appreciation for this great university. Only one who has taught at non-Church institutions can appreciate the warm collegiality which exists between students and faculty who share such central beliefs about man and God. When I announced that I was going to leave a college in Boston where I had been Chairman of the Government Department, and go to Brigham Young University, one of my fellow teachers there was very concerned about my future. He approached me one day and asked if I thought I could be happy at a church university where I would not have sufficient academic freedom to teach what

*A Forum address delivered at Brigham Young University, 17 July 1973.

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I wanted to teach. I have since told him that I personally have never enjoyed that freedom more than at Brigham Young.

I have taught or lectured at four other schools and was never free to show how insightful the Holy Scripture could be. After enjoying this freedom for three years here, I now find it difficult to conceive how I would explore fully the role of government, for example, without benefit of the 134th Section of the Doctrine and Covenants. It is perhaps paradoxical and even pitiable that Professor James Wilson of Harvard recently said, "the list of subjects which cannot be publicly discussed in a free and open forum [at Harvard] has grown steadily, and now includes the war in Vietnam, public policy toward the urban ghettos, the relationship between race and heredity, and the role of American corporations in certain overseas regimes." [James Q. Wilson, "Liberalism versus Liberal Education," *Commentary*, June 1972.] I am grateful for this university where I feel free to discuss all things in the light of the Gospel.

Third, let me affirm my respect for the constitutional principles on which this nation, and other nations are based. I take with considerable seriousness the scriptural descriptions of these principles. I believe, as stated in the Doctrine and Covenants, that "Government is instituted of God for the benefit of man." (134:1) There are many people and groups today who try to convince us that government is a necessary evil. It is not. The absence of government is anarchy and there is no liberty therein.

It is the nature of constitutional government about which I want to talk today.

At base, any government is constitutional which, by either law or tradition or both, limits the power of the government and specifies certain procedures for the government in the exercise of its power. In effect, then, constitutional government exists when there is a proscription of power and a prescription of procedures. Note that a government can be constitutional without a written constitution and a government can have a written constitution and still not be constitutional in this sense. It is constitutional government when power is proscribed and when government procedures are prescribed. This leads to my central thesis, which is that over the last twenty or thirty

years in America, virtually all federal power has drifted into the Executive Office, which in itself is now separate from the Executive Branch and, in fact, constitutes a fourth branch of government.

I personally believe this development to be contrary to the intent of the framers of the Constitution. It was not an historical accident that Article I of the Constitution created the Legislative Branch. That it was listed and dealt with first in the Constitution is evidence of the intent of the framers to avoid the excesses of executive misrule with which they were familiar in the Europe of their time. They created, deliberately and consciously, a Legislative Branch which was to have *all* lawmaking authority, and an Executive Branch whose prescription was to "faithfully execute" the laws passed by Congress.

Now, I do not claim that the framers gave all power to the Legislative Branch, merely a sort of primacy of power. We all know that the two other branches were created to share government power in a specified way. But it is instructive to note that Article II, which establishes the Executive Branch, is very penurious in its allocations of power. Other than the executive's responsibilities in foreign affairs (which he shares with the Senate) and in military matters (as Commander-in-Chief), about all the Constitution says about the executive's power is the prescription that he shall see that the laws of Congress are faithfully executed.

For the last ten or fifteen years in Washington, I submit that there have been four branches of government rather than three, and that the Executive Branch (or what I prefer to call the Executive Office) has amassed overwhelming power into its own hands.

The evidence of this is quite well known and need not be recited here. You may be interested to know, however, that just in terms of size, the Executive Office (the White House) has grown from approximately 300 or so personnel during Truman's presidency to over 6,000 today, with a payroll of approximately \$150 million annually.¹ This excludes, of course, the Executive Branch of government—the Cabinet, Departments, Bureaus, etc. It even excludes 13,000 or so C.I.A. per-

¹See Thomas E. Cronin, "The Swelling of the Presidency," *Saturday Review* (February 1973), p. 30.

sonnel and some who, technically, report directly to the President. It has been said for some time in Washington that the size of the White House is exceeded only by its delusions of grandeur.

This creates a number of problems. First, by growing to such an enormous size, the Executive Office has lost one of the advantages it used to have—maneuverability. It now has a vast bureaucracy of its own separate from the bureaucracy of the Executive departments.

The historian Daniel Boorstin said recently that

there are something like forty persons who bear such titles as counsellor to the President or assistant to the President or something of that sort, [many of whom we now know seldom see the President]. Now this is a relatively new phenomenon: the opportunity for the President to get out of touch with the people who speak in his name.²

I believe there is great danger in exorbitantly large numbers of non-elected officials running the country. The strength of democracy lies in the constant and frequent reaffirmation of mandate that comes from facing the people at election time. This is why I do not like the 22nd Amendment, which limits any president to two terms, and why I oppose the current proposal for a single six-year presidential term. The notion that any political leader, especially a president, once elected, may never have to face the electorate again, is a frightful specter to me.

Second, this has brought about the demise of the Cabinet as it has historically developed. Cabinet officers, of course, head the Executive Branch Departments, and are now no longer a part of what I call the Executive Office. A concomitant loss of morale throughout the bureaucracy naturally has resulted from this. Cabinet appointments are no longer sought after as much as are White House positions. As George Ball once said, "nothing propinques like propinquity," and the Cabinet is no longer close to the President. President Nixon holds virtually no Cabinet meetings, and President Johnson held them only when the press would criticize him for ignoring the Cabinet. In fact, a current joke going around Washington is that the Republicans, looking ahead to the 1976 nomination,

²*Congressional Quarterly*, 7 July 1973, p. 1795.

are searching for someone totally unknown—maybe even a member of the Cabinet!

Third, the growth in the Executive Office has brought about a vast duplication of efforts overlapping seriously with some of the Cabinet departments. John Ehrlichman used to head a Domestic Affairs Council and staff of approximately 350 persons, and Henry Kissinger still heads a National Security Council and staff of 360, duplicating, between them, many of the upper-level jobs in nearly every Cabinet department.

Fourth, this growth of power is intrinsically dangerous in a democratic society. Such power invested in one man gives evidence of enormous arrogance. It is sad but true that those who try to be a de Gaulle all too often end up as a Napoleon, a sphinx without a riddle—all power, but no authority. I fear that at least the last two administrations, and perhaps even before, have been uncommonly devoted to enhancing the power of the White House by attempting to discredit, destroy, or cripple competing power centers.

Lord Acton has said, as you all know, that power corrupts and absolute power corrupts absolutely. I have never believed that, but I do believe, with the British poet Stephen Spender, who wrote in his remarkable essay on why he left the Communist Party, "that power is saved from corruption [only] if it is humanized with humility. Without humility, power is turned to persecution . . . and public lies."³

Moreover, I interpret as an absence of humility in the White House the development of peerlessness. I feel that no man should be without peers. George Reedy, President Johnson's Press Secretary, and therefore a man who should know, has noted that "Power breeds isolation. Isolation leads to the capricious use of power [which] in turn . . . breaks down the normal channels of communication between the leader and the people whom he leads. This ultimately means the deterioration of power and with it the capacity to sustain unity in our society."⁴ No leader, especially the President, should be free of "adversary debate with equals, or their sensitivity deteriorates," yet today's presidents cannot have that kind

³In Richard Crossman, ed., *The God That Failed* (New York: Harper & Row, 1949), pp. 254-255.

⁴George Reedy, *The Presidency in Flux* (New York: Columbia University Press, 1973), p. 43.

of "adversary relationship with other people" because everyone around them is a subordinate. You all remember the fairy tale about the Emperor's New Clothes. It occurs to me that a peerless president without proscribed power can be virtually a naked emperor whom no ones dares correct.

Those who have been capable of performing this role with President Nixon (Moynihan, Kissinger, Burns, Peterson, Harlow, and others), have effectively been isolated from the President by Haldeman and Ehrlichman and have eventually, with the exception of Kissinger, left the Administration.

I hope no one feels I am being too critical or harsh with President Nixon, with the late President Johnson, or with any other president. I do feel that we may need to be reminded, as Brother Benson reminded us recently in General Conference, quoting President Theodore Roosevelt, that "patriotism means to stand by the country. It does not mean to stand by the President or any other public official save exactly to the degree in which he himself stands by the country Every man who parrots the cry 'stand by the President' without adding the proviso 'so far as he serves the Republic' is wrong."⁵

Thus, the power of the Executive Office has grown virtually unchecked at the expense of the Cabinet, but even more seriously, it has grown at the expense of Congress. Many commentators have been telling us for some time that Congress is dead. After working with Congress for the last two years, I can assure you it is not dead—moribund perhaps, but not dead. It is even showing some signs of life now that the Executive Office has fallen on hard times.

And, if the reports of the death of Congress have been a little premature, so also has the identity of the culprit been a little unclear. It is true that there has been some degree of homicide present and that it has most likely emanated from the Executive Office. But there has also been present some degree of suicide. It is true that much of the blame for this development needs to be laid at the feet of Congress, who, failing to process the necessary leadership and procedures to forge a viable national agenda, seem to be all too ready to hand all power to the President.

The House, for example, in the closing days of the 92nd

⁵As quoted by Ezra Taft Benson, "Civic Standards for the Faithful Saints," *The Ensign* 2:60 (July 1972).

Congress passed a greatly misunderstood bill called the Debt-Ceiling Bill which would have given to the President one of the few remaining Congressional powers, the power to determine and allocate priorities for the funding of national programs—or, in other words, the power of the purse. The *Washington Post* editorialized that very morning that the House sat around for 364 days complaining about the growing powers of the President and then on the 365th day passed a bill handing the President the last set of powers they had. Fortunately, that bill was killed in the Senate, which is one of the few examples of the Senate showing better judgment than the House in the 92nd Congress.

The Library of Congress recently completed a survey which indicated that in the last thirty years, Congress has passed 580 emergency delegations of power to the Executive Office, none of which contained a terminal date, and none of which has been rescinded.

There is no question but that Congress is slow and deliberate, many times to the point of seeming inaction. But Congress, for all its faults, is the most democratically elected body we have. As such, it is probably the most representative expression of the majority of Americans. Perhaps part of the value of Congress is, in fact, its deliberateness. If the Founding Fathers had wanted speedy and aggressive legislative activity, they never would have produced the document they did. It is very enlightening, especially after reading criticisms of Congress for its slowness, to read from the records of the Constitutional Convention.

In the legislature, promptitude of decision is oftener an evil than a benefit. The differences of opinion and the jarrings of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberations and circumspection, and serve to check excesses in the majority.

Those words of nearly 200 years ago seem very wise today.

I don't mean to suggest that Congress does not need reform. It does most desperately. During the two years I was with a Congressional office, 1,778 bills dealing with education were introduced. Of these, 758 went to the Education and Labor Committee, while the remaining 1,020 were handled by 18 other committees. The Executive Branch of government

has changed beyond recognition in the last ten years, yet Congress, which was given the responsibility to oversee the Executive Branch, is virtually unchanged in structure and procedures.

Some people have suggested that although the stature of Congress vis-a-vis the Executive has diminished, the scope of its responsibilities has expanded. In other words, they suggest, even though the legislative role of Congress has been weakened relative to the Executive, the kinds of things requiring governmental concern have increased. This, of course, is probably just a charitable way of saying that Congress is doing less and less about more and more things.

In fact, there must be a redress in the balance of power between Congress and Executive. Ideally, I would hope that Congress would put its own house in order and then reassert itself, and that the Executive would recognize that an imbalance of power is not in the best interests of the country and voluntarily give up some of its power. I do not expect this, however. There appears to be more of a commitment in Congress now to have a showdown with the President. Perhaps such a showdown would clarify some Constitutional principles, and thus be a good thing for the country. But I am afraid that it would not. The broad social, economic, and environmental problems of today require a certain degree of harmony and cooperativeness between Congress and the Executive which a showdown will not encourage. Whether the President wins and Congress loses, or vice-versa, the country will probably lose. Neither a victorious Congress and an embittered, obstructionist President, nor a victorious President and a recalcitrant Congress, augers well for the electorate. "As we all know, Congress and the President were meant to do battle. In the end, their capacity to do business at all rests upon a set of mutual restraints and accommodations, because in the last analysis, either branch can do the other in."⁶

Let me conclude by mentioning just briefly two specific developments which in my judgment violate what I identified earlier as the very heart of any constitutional government, that is, the proscription of power and the prescription of procedures.

First, let me mention a specific power which the Constitution does not grant the President; one which I would conclude is therefore proscribed. Some of you may argue that this

⁶Nelson W. Polsby, in the *Washington Post*, 6 June 1973, p. C2.

appears to be a very strict constructionist approach to the Constitution, but I would reply that since this Administration announced itself as strict constructionist, this becomes a reasonable basis for argument. I have reference to what is referred to as executive privilege.

Executive privilege is an unwritten doctrine that Presidents have used to withhold testimony or documents from investigative agencies, particularly congressional committees. It is based on the separation of powers principle underlying the Constitution but is not mentioned in that document or in the statutes. Presidents have assumed the power to invoke executive privilege in order to guard the privacy of their operations from public scrutiny.⁷

President Nixon has now invoked executive privilege twenty-one times. While the scope of this doctrine was at one time very narrow and applied only to the President himself, former Attorney General Kleindienst, speaking for the Administration, claimed last March that it applies to all members of the Executive Branch, past, present, and future. President Nixon personally said that the "doctrine of executive privilege is well established. It was first invoked by President Washington and it has been recognized and utilized by our Presidents for almost 200 years since that time. This doctrine is rooted in the Constitution. . . ."⁸

I must disagree with the statement. As nearly as I can determine, the use of the doctrine in this form goes back only to 1954. President Washington never did invoke the privilege. When Congress requested documents from him relating to the disastrous defeat of General St. Clair at the hands of some Indians, Washington discussed the request twice with his Cabinet and ordered all papers to be turned over to Congress. It is further stated by the present Administration that President Washington invoked the privilege a second time in 1796 when he refused to release papers and instructions sent to John Jay in connection with a controversial treaty with England. Again, my personal review of that incident revealed that Washington did indeed refuse the House request, but immediately turned the papers over to the Senate, reasoning that he shared foreign affairs powers with the Senate, but not with the House.

⁷*Congressional Quarterly*, 31 March 1973, p. 720.

⁸*Ibid.*, 17 March 1973, p. 608.

One of the more interesting statements from Congress on executive privilege came in 1948 in response to an order from President Harry Truman forbidding the FBI from giving certain records to the House Un-American Activities Committee. A young California Congressman on that Committee argued that executive privilege was untenable "from a constitutional standpoint" and that to let that doctrine stand would mean a President "could have arbitrarily issued [such an order] in the Teapot Dome Scandal . . . denying the Congress . . . information it needed to conduct an investigation of the Executive Department and the Congress would have no right to question the decision." That statement may turn out to be prophetic, and was uttered by Congressman Richard M. Nixon of California.⁹

In sum, I believe that the privilege of the Executive Branch of withholding information unilaterally from Congress and hence from the public, is a power not granted by the Constitution nor implied by any constitutional principles.

The second development to which I referred is the practice of presidential impoundment of congressionally appropriated money. This practice specifically contravenes the prescribed procedures of the Constitution for the passage of laws and for the spending of appropriated funds. The Constitution is clear that all federal expenditures must be made from money appropriated by Congress in the form of legislation, and that the President must "faithfully execute" these laws. Moreover, the Constitution specifically denies the President the right to item veto. It requires that the President must veto a bill with which he disagrees and that if it is passed over his veto it becomes the law of the land. He cannot enforce parts of a bill and not the rest. Yet, this is precisely what impoundment allows the President to do.

As of today, the present administration has impounded \$17 billion of duly appropriated money. This is not merely economizing where possible, nor deferring some expenditures to obtain better bargains; this is the wholesale dismantling of congressionally approved programs. I personally think Congress should and would support an overall reduction of all federal expenditures as long as it applied evenly to all federal

⁹Quoted in *Ibid.*, 29 March 1973, p. E1981.

programs. But they are not willing, and should not be willing, to abdicate legislative responsibility.

There are undoubtedly some who support the President in impounding money, whatever the program. I believe that if we want greater economy in government we should try to get it by electing congressmen and senators sympathetic to that problem, and not try to get it through encouraging the President to take unconstitutional action. Fiscal crisis can be used to justify presidential action, but no crisis of any kind should require nor justify the President to act unconstitutionally.

Past Presidents have impounded money in some ways. Jefferson impounded some money appropriated by Congress for the construction of gunboats, but apologized for impounding it and spent it in the subsequent year for gunboats which he felt were a better buy than the ones available when the appropriation was made. With the exception of one impoundment by President Grant, I cannot find an example of presidential impoundment made in an area other than weapons procurement or specific defense spending, until the present administration, which has impounded money in the areas of housing, public health, food stamps, veterans' benefits, highway improvement, and water-pollution control. You may be interested to know that eight district court cases in different states during the last year have all decided against this practice, yet it continues.

An Assistant Attorney General in 1969 issued an opinion which said that, "With respect to the suggestion that the President has a constitutional power to decline to spend appropriated funds, we must conclude that the existence of such a broad power is supported by neither reason nor precedent."¹⁰ That Assistant Attorney General was William Rehnquist, who is now one of President Nixon's appointees to the Supreme Court.

Thus, the practices of impoundment and executive privilege, and the separation of the Executive Office from the Executive Branch, have created a new and dangerous center of governmental power in America. The precarious balance of power which was so carefully structured by the Constitution no longer exists. The pendulum is swinging, however, and I only hope that it does not swing so far that we end with unnecessarily

¹⁰Ibid., 5 April 1973, p. S6803.

weak executives. What has developed is not the result of some global conspiracy nor even the fruits of sinister perversity. But to say that it is the result of folly and not malice does not reduce its seriousness—in fact, it should cause greater concern. Dietrich Bonhoeffer once said,

Folly is a more dangerous enemy to the good than malice. You can protect against malice, you can unmask it or prevent it by force. Malice always contains the seeds of its own destruction, for it always makes men uncomfortable, if nothing worse. There is no defense against folly.¹¹

The present situation is the result of the decisions of many who, over a number of years, have attempted to do what they felt was best for their country. But we are not always sensitive enough to the long range results of short run programs. Regarding the present developments, it is true, as someone has written:

Thus the world we made
Pays back what we paid;
Thus the dark descends
And our means become our ends.

Watergate was not the result of desperation nor even of corruption, but rather of unbridled power, of peerlessness in the Presidency, and of a severe imbalance between Congress and the White House.

I have great faith in this country. I even have great faith in politicians, strange as that may seem to some of you. I find that the overwhelming proportion of Congressmen are dedicated and honest individuals, trying to do what they think is best for the nation. I even take some consolation from the fact that, at least thus far, no elected officials have been involved in Watergate—not necessarily because they are intrinsically more moral or honest, but because they know you don't win elections by bugging and dirty tricks. In other words, they are afraid of the people. You know, Madison remarked at the Constitutional Convention that the ultimate restraint on power comes from the people as they exercise their electoral responsibilities. I hope and pray we may exercise it wisely.

¹¹*Letters and Papers from Prison*, rev. ed., Eberhard Bethage, ed. (N.Y.: Macmillan Co., 1953), p. 30.

POSTSCRIPT — 29 OCTOBER 1973

The almost daily recurrence of government crises since this Forum Address was delivered on July 17th has prompted the Editor to invite me to add a brief postscript. It is interesting, if not mind-boggling, merely to catalog these developments: we have learned that the highest government official in our land taped all of his conversations from the Spring of 1971 to July of 1973 without permission of those with whom he was conversing; we have seen the legal disposition of these tapes become a major constitutional question, relating to the issue of executive privilege discussed in the Forum Address, and we do not know at the time of the writing of this postscript whether these tapes will or will not be available in unadulterated form to assist in the prosecution of fundamental criminal justice; we have seen a series of clean cut, square-jawed young men, none of whom were ever elected to a public office, yet who were directing the highest affairs of this nation, give contradictory statements, the truth of which is yet to be found but the moral mentality of which is frightening; we have seen the second highest government official in the nation vehemently deny that he was guilty of any wrongdoing, then later virtually confess to income tax evasion of illegally obtained money, resign from office, and then claim he had never enriched himself at public expense; we have witnessed the dismissal of a Special Prosecutor who was appointed and authorized to pursue an independent investigation of "the Watergate Case and related matters" and about whom it was said he "would not be removed from office except for extraordinary improprieties on his part" (*Washington Post*, October 21, 1973); and we have most recently seen a veto of a War Powers bill which would have reaffirmed the Constitutional imperative that the President cannot involve the country in a war without Congressional consent.

This list of facts is in itself depressing. The central thesis of the Forum Address was that an excessive amount of power has been accumulated in the Executive Office which has had the effect of isolating the Chief Executive from the people and from Congress. The events subsequent to that address have convinced me that if I erred in my analysis, I erred in not recognizing the full extent of this development. Perhaps the apex of this long trend was reached in a President who ran an election without his party, ran domestic affairs without the House of Representatives, ran foreign policy without the Senate, and ran the country without concensus. In sum, we have witnessed the development of a single center of unprecedented power surrounded by men who have not shared the notion voiced by William Pitt the Elder that "there is something behind the throne greater than the king himself."

Government is a very precious commodity, yet we treat it very lightly. We have erroneously assumed in America that religion and ethics were inextricably intertwined and that since we could not teach

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