some no longer living: Appleby, Follett, Friedrich, Gaus, Sayre, White—I observe that most were trained as political scientists. Perhaps this is only an accident of timing and career opportunities. But perhaps it is a significant datum, and if so raises the question whether I have been unfair to Political Science. Perhaps so; perhaps it should not be taxed with a failure to solve "insoluble" problems. In any case, the matter is relevant to the future of programs in Public Administration—under whatever name academic fashions and strategies may dictate: *In* or *Out* of Political Science departments. . . .

During the sixties and seventies, at least, I think the better case was for separation. Lucky the program in Public Administration that suffered no worse than disdain in those times. In the preface to his *The Development of the Modern State,* in 1978, Gianfranco Poggi observed that "As for political science, over the past thirty years or so it seems to me to have gone to incredible lengths to forget the state. . . ." As if reminded, a few years later the American Political Science Association took as the theme of its annual meeting The State. While this was rather like the American Medical Association devoting its annual meeting to The Body, I welcomed the move. There are other hopeful signs, including notably the size and vitality of the recently recreated Section on Public Administration in the Association. . . .

We shall see; and I shall not predict. But if institutional or programmatic separation is to continue and become decisive, then those in Public Administration programs—again I add: under whatever fashionable names—will have to become their own Political Scientists. They will, that is, if the cleft is not to widen and if they are to discharge successfully their educational function. I can at least hope that those of the other side of the cleft will become increasingly aware of and knowledgeable about administration. Even—here I fantasize—that they give it highly informed and serious attention. □

Constitutional Aspects of Major Policy Controversies

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In honor of the Bicentennial of the U.S. Constitution, the plenary sessions slated for this year's American Political Science Association meeting focused on the constitutional aspects of major policy controversies. The panel chaired by APSA President Samuel P. Huntington (Harvard University) explored the struggle for the control of foreign policy between the legislative and executive branches, while the other session, chaired by APSA Program Chair Robert Jervis (Columbia University), examined the question of whether the Constitution does, or should, contain social welfare rights. Although intense debate ranged over a host of contending positions, the participants maintained a high level of amicability and humor as well as intellectual acuteness.

The participants on Huntington's panel, entitled "The Constitution and Foreign Affairs," included H. Bradford Westerfield (Yale University), John Norton Moore (University of Virginia School of Law), and Representative Barney Frank (Democrat, Massachusetts). Westerfield reminded the audience that conflict between Congress and the President over issues of American expansionism and foreign involvement have reoccurred throughout American history, from the Jacksonian era to Irangate. For Westerfield, there is a continuity between the debates of the mid-1980s, the 1970s, the 1938-1940 period, and the 1930s. Accordingly, neither partisanship nor an alleged constitutional revolution in foreign affairs account for the current struggle beween Congress and the President for authority.

Westerfield pointed out that executive impulses toward greater foreign involvement or intervention sometimes elicit little controversy. In these cases, careful, advance preparation on the part of the executive, coupled with the existence of durable, supportive coalitions in Congress, has meant that the pursuit of "covert actions" like American assistance to rebels in Afghanistan and Angola fail to provoke congressional scrutiny or public outcry. In contrast, where conditions of coalition building and consensus are lacking, as in the Irangate affair, stalemate and the debilitation of the administration are likely to follow.

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Moore advanced a markedly different view. Although he acknowledged that there always has been a struggle for the privilege of directing foreign policy, indeed that the Constitution invites such a conflict, he nonetheless perceives something new, and alarming, in the current tensions between Congress and the President. According to Moore, current confusion over the respective roles of the two branches of government is "significantly harming American foreign policy."

In Frank's view, people use arguments about what the Constitution says in order to promote their policy positions.

Moore argued that Congress has overstepped traditional bounds in several areas. These include: (1) a post-Watergate, post-Vietnam explosion of foreign policy activism, especially in the Senate; (2) congressional actions that undermine U.S. efforts to deter other governments from undertaking particular courses of action; and (3) the espousal of overly broad constitutional and legal arguments that justify greater congressional intervention in foreign policy. Finally, Moore advocated a framework for working out procedures for foreign policymaking.

With respect to greater activism, Moore noted that in the last 10 to 15 years the Senate and House Foreign Affairs Committees have doubled the amount of national security law. Moreover, an examination of recent foreign policy controversies show a Speaker of the House launching a Central American Peace Plan; debate over the applicability of the War Powers Act to the Persian Gulf situation; controversy over the scope of congressional power in interpreting the ABM Treaty; and Senator Goldwater's suit against President Carter over the termination of a security treaty with Taiwan.

With respect to deterrence, Moore asserted that Congress lessens the prospects for success by continually sending signals that America will never become involved in particular situations. Indeed, he accused Congress of acting as if the principal thing to deter is the executive branch rather than North Vietnam, Angola, or Nicaragua. He especially blamed congressional amendments in the wake of the Paris Peace Accords, amendments which stated that the United States would take no military action on behalf of South Vietnam, for North Vietnam's confidence that it could send virtually all its divisions into South Vietnam, leaving Hanoi virtually undefended.

According to Moore, several ideas and myths serve as rationales for congressional activism. There is the myth of superior congressional wisdom, a stance rooted in the Vietnam War experience; of Congress itself altering the Constitution by stating where the line separating the power between the executive and legislative branches should be drawn; of Congress using its appropriations power to gain the authority to do anything; of Congress claiming special status as "the democratic branch" of government.

As a corrective to excessive congressional activism, Moore called for the creation of a joint executive-congressional commission. This commission, made up of diplomats, political scientists, lawyers, and others, would recommend procedures regarding the proper authority of the two branches of government in foreign policymaking. This approach would be preferable to resorting to the courts or allowing Congress to set the standards.

In order to defend himself against the charge of "Congress bashing," Moore did acknowledge the positive contribution Congress has made in the area of human rights, citing congressional participation in the Helsinki process as an example.

Representative Frank offered another perspective. He expressed skepticism about appeals to the Constitution for guidance in foreign policy decisionmaking, noting that while Hamilton, Madison, and Jefferson were brilliant people, they have "nothing relevant to say about ICBMs."

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In Frank's view, people use arguments about what the Constitution says in order to promote their policy positions. Hence, discussions of the constitutional aspects of foreign policy parallel debate over whether policy should be decided at the federal or state levels: it depends on whether you will prefer the decision. As an example, Frank related how liberals, in a reversal of their prior position, now say that off-shore oil is a state issue, while conservatives now contend it is federal. All this, "so that California and Massachusetts can keep the Energy Department from looking for it."

For Frank, then, the Constitution provides few specifics regarding executive and congressional roles in foreign policymaking. He did, however, identify a general pattern of interaction, agreeing with Westerfield that where consensus exists, as on the Afghan question, Congress gives the executive broad leeway. There are, after all, no congressional investigations about where the funds supporting "covert actions" in Afghanistan go. But where the policy is not broadly supported, then Frank noted that "there ought to be a problem." He suggested that it is where the executive acts totally without Congress, as in Iran, that "screw-ups" occur.

Frank objected to the characterization of congressional participation in foreign policymaking as "interference," as a situation in which the President declares policy and Congress then "interferes." Instead, Frank argued that policy should come jointly from the President and Congress. For the Congressman, the answer to the question "What is the United States?" highlights the requirement that both the influence of Congress and the President be brought to bear on foreign policy issues.

With respect to the spending power of Congress, Frank stated that if Presidential goals require money and public support, then the executive needs Congress. He debunked the notion that issues like interpreting treaties are purely a matter of presidential prerogative. He pointed out that President Reagan seeks to change the interpretation of the ABM Treaty so that he can spend more money on Star Wars, and that Congress can say "sorry." In light of this fact, it would be a "grave error not to consult Congress."

Frank concluded that arguments over Congress's role in foreign policymaking have been "overconstitutionalized," that from a practical viewpoint, the President "can do whatever he wants to do unless Congress can stop him."

In the discussion that followed, Westerfield challenged Moore's proposal to establish a commission, arguing that it could not resolve the problems of 200 years and would make no difference. He also labelled Frank's view that whatever the president can get away with goes, as long as it does not cost the U.S. Treasury money, shortsighted, since it would allow the president to build covert actions worldwide out of other people's and other governments' money. For Westerfield, "what is really different about congressional assertiveness today is that it is deeply staffed."

Moore criticized the idea that a President should only take action on the basis of an extraordinary consensus. He noted that sometimes Presidents must provide leadership in unpopular settings, as FDR did in securing the passage of the Selective Service Act in 1938. This Act passed by one vote and contained the proviso that American troops could not be sent out of the hemisphere to fight. Moore accused Congress of simply following public opinion polls, relating, how in the cases of the Iran hostage-rescue effort, the Mayaguez incident, and Grenada, congressional reaction depended on whether a foreign policy initiative succeeded.

For Westerfield, "what is really different about congressional assertiveness today is that it is deeply staffed."

To the charge that he was willing to grant the President too much power, Frank responded that while he had no desire to hand a blank check to the President, there was no constitutional way he could

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stop him from "calling up the Saudi king and saying, 'Hey, it would be wonderful if you gave $33 million to these people.' " He dismissed criticism of congressional foreign policymaking, remarking that "Congress does stupid things and the President does stupid things and they cancel out."

The economic business of the courts thus remains substantial, a point sometimes missed by political scientists.

Turning to the domestic arena, the plenary session entitled "The Constitution, Property Rights and the Welfare State," examined arguments focusing on whether welfare entitlements should be transformed into constitutional rights. Participants included: Frank Michelman, Harvard University School of Law; Richard Posner, United States Court of Appeals, 7th Circuit; and Martin Shapiro, University of California, Berkeley, School of Law. Shapiro set the stage for the debate by asserting that, contrary to the standard version of the history of the Constitution, the Supreme Court did not leave economic questions to the "political branches" after 1937.

Emphasizing that civil rights and liberties cases often double as economics cases, Shapiro pointed out that gender discrimination involves issues related to participation in the economy and economic interests, while due process cases concerning the right to a welfare check touch on new forms of property. The economic business of the courts thus remains substantial, a point sometimes missed by political scientists.

Where will the economic cases go in the future? Shapiro noted a wide range of choice, depending on who gets on the Supreme Court. At one extreme looms the "constitutionalization of the welfare state," of the right to subsistence, housing, and so on. This shift, from entitlement to constitutional rights, would represent an enormous victory for advocates of the welfare state, since benefits would be accorded a high priority and could not be subject to budget cuts.

At the other end of the continuum is the belief that virtually all government economic regulation diverges from the public interest. Regulations are deemed unreasonable, as quasi-monopolies granted by legislatures as a result of interest group activity.

Michelman defended the position that welfare rights could legitimately be read into the Constitution. He contended that there is no "killer logic" in the Constitution against welfare rights but that history has ruled out constitutional obligations.

Arguments connecting welfare rights with the Constitution stem from a consideration of: the meaning of natural rights philosophy; universal citizenship; the obligations of mutual aid; the material prerequisites of real citizenship; the need to correct for a history of oppression; and recognition that the rights of property (of independence and self-direction) are not universal.

For Michelman, liberty in a republican constitution requires access to material necessities, a citizenry that is educated, healthy, and well-fed. While many regard the Constitution as a charter of "negative liberties," where the "only [government] duties are duties not to act," Michelman sought to establish that the Constitution does contain "affirmative duties" of relevance to the welfare rights question.

For Michelman, liberty in a republican constitution requires access to material necessities. . . .

He insisted that the framers of the Constitution assumed that government would act "affirmatively in accustomed ways to secure the blessings of liberty." There is, for example, no government duty found within the Constitution concerning police protection. It was understood as necessary for the protection of life and liberty.

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For Michelman, a similar argument can be made regarding the right to subsistence. He contended that the natural rights tradition prevalent at the time of the Constitutional Convention included a welfare entitlement: the principle that one is entitled not to starve if there is a surplus in the community. What that baseline is today, he argued, is a matter appropriate for judicial judgment.

Posner took issue with both Shapiro and Michelman. While agreeing that economic issues are pervasive in court cases, he nonetheless stressed that it was misleading to think of welfare rights cases as involving economic principles. For Posner, these cases are "asserted in the teeth of economics": instead of deploying economic principles or showing an understanding of how the economy works, they assert claims to inefficient results. As an example he raised the issue of whether an individual who failed to meet payments for an item bought on credit deserves a due process hearing before the store procedes to use state power to repossess the appliance. The end result, according to Posner, would help "economic deadbeats," force interest rates up, make it more difficult to repossess goods, and harm society in general.

In many instances, where people perceive a deprivation of rights, Posner argued that a more accurate interpretation would involve negligence. Governmental failure to competently render services does not, in Posner's view, provide attractive cases for federal judicial intervention. He offered the example of a couple driving along an Illinois highway, who ran into a tree and burned to death. Although a police officer had arrived, he assumed that no one was in the car, and instead of rendering assistance, called the fire department and directed traffic while the car was burning.

According to Posner, every car accident, every dispatching of an ambulance, the police, or a fire department, would involve a possible federal case, if these situations were regarded as potential violations of the Constitution. Posner insisted, however, that no constitutional rights involving the "deprivation of property or liberty or life" can be found in these cases, only negligence.

Posner asserted that the goal of reading welfare rights into the Constitution reflected an extreme interpretation of that document. Nonetheless, he admitted that the doctrine is fluid, that the Constitution, because of its age and the way it is written, is "protean"—"a mirror in which people see their own images."

Posner asserted that the goal of reading welfare rights into the Constitution reflected an extreme interpretation of that document.

In light of that fluidity, Posner pleaded for judicial restraint. He noted that if a Reagan Supreme Court were to hold welfare unconstitutional, and then, 20 years later, the Supreme Court reinstated welfare, there would be extreme instability.

In closing, Posner criticized what he termed the "dualism" of the Supreme Court's record. He asserted that the Court had eviscerated those clauses in the Constitution protecting property, while expanding other clauses related to personal rights. According to Posner, this dualism demonstrates the "absence of a principled foundation." □

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