

MAR 17 1974

SUNDAY, MARCH 17, 1974

# Clipping White House Wings

By Richard N. Goodwin

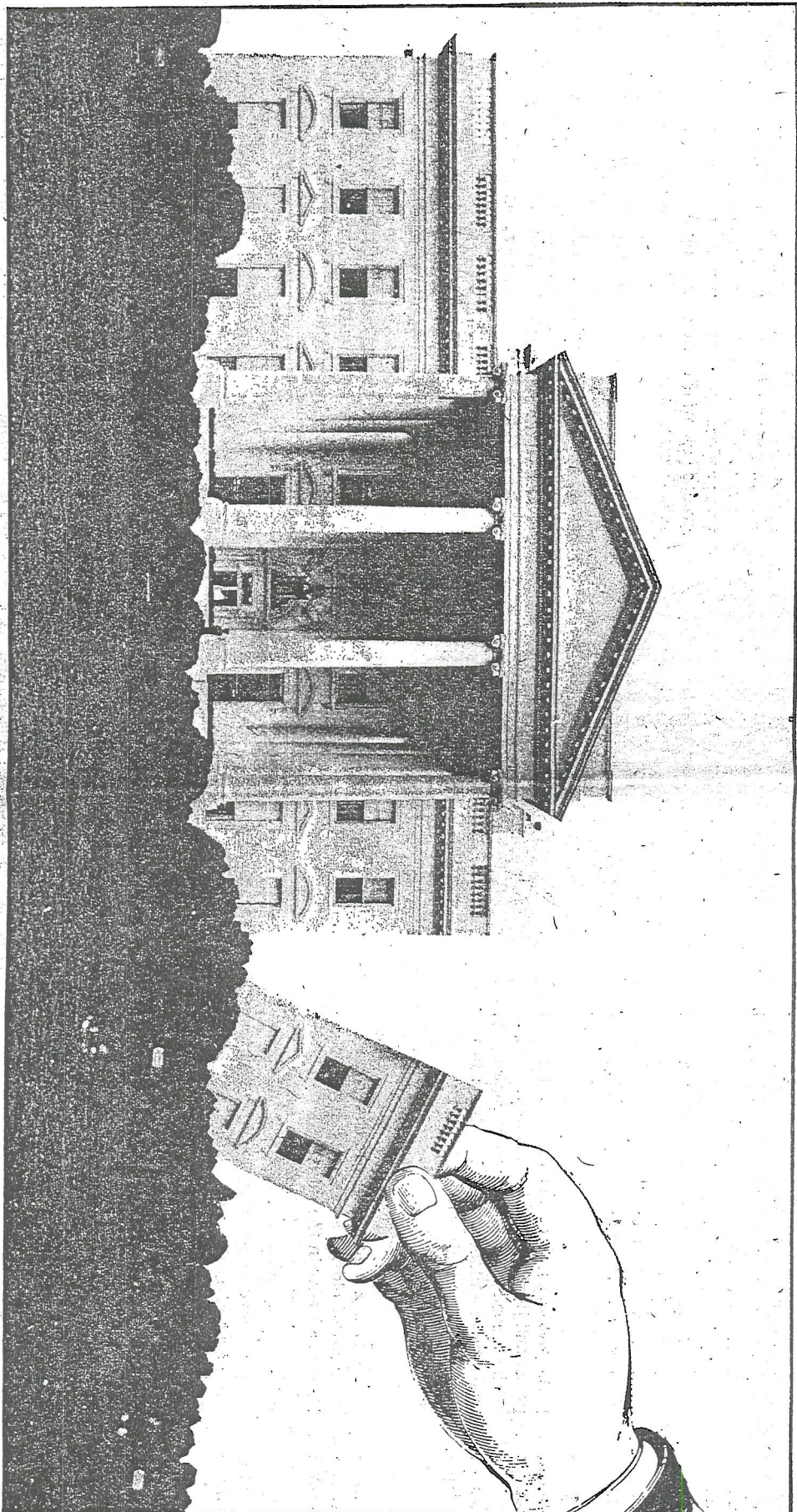
*Goodwin, a speechwriter for Presidents Kennedy and Johnson, is the author of "The American Condition." This article is excerpted from the current issue of Rolling Stone.*

WE MAY YET have one reason to be grateful to Richard Nixon if his conduct in office awakens us from our obsessive concern with the character, personality or intentions of individuals, and reminds us that decency and self-restraint are interesting qualities but not to be counted on. The realities of the past few years are personal to the character of this administration, but the fact they could be committed can only mean that the democratic struggle has broken down.

Every modern President, with the possible exception of Eisenhower, has had occasional fantasies of benevolent tyranny and sincerely believed that the welfare of the country would be improved if he could run things as he wished without the interference of Congress, courts, press and public opinion. Most of them have expressed such sentiments to intimates. They were restrained from exercising such power, not by abstract convictions about the nature of democracy, but by institutions, laws, traditions, and centers of private power within the society.

We failed to respond to the erosion of these restraints largely because most of our Presidents have been honest and relatively benevolent and their purposes have coincided with those of the citizenry. It took the advent of Lyndon Johnson and Richard Nixon to remind us of history's elemental lesson: Some must be permitted power but no one can be trusted with power—not Gerry Foidl, Henry Jackson or even Henry Kissinger.

We have had strong Presidents



throughout our history. Nevertheless, the presidency which has developed during the last decade does not differ only in degree from its predecessors, nor is it an adaptation of traditional structures to new historical circumstances. It is a novel institution, a rupture with tradition which cannot be masked by the most diligent efforts to compare Jefferson's handling of the Barbary pirates to the war in Vietnam or Polk's authority to order a few troops into disputed territory with the power to blow up the advanced industrial world.

Franklin Roosevelt managed to conduct the entire New Deal and World War II with a personal staff smaller than the number of men needed to

cook lunch for the battalions of faceless ministers who now swarm through the corridors of the White House, the Executive Office Building, and, perhaps, other structures whose existence has not yet been disclosed. These men are not advisers; merely to listen to them for five minutes each would consume most of a presidential term. They are an independent bureaucracy whose authority extends to every function of government. In a kind of constitutional mockery, the Congress dutifully evaluates and confirms presidential appointees and its committees sternly interrogate cabinet members,

while the real government toils on in seclusion, its activities so extensive that even the President cannot keep informed of its myriad deeds.

Congress' loss of authority has coincided—and not by coincidence—with a transforming change in the function of government from framing and enforcing legislation to regulation and the conduct of foreign affairs. A presidential staff charged with drafting laws for submission to Congress was an innovation, but not a danger. One which is invested with the modern power to regulate the economic process, and the multiplying relationships between the

citizen and the state, has usurped the authority to govern.

By allowing its own powers to be diminished, Congress has seriously weakened what Hamilton described as "the two greatest securities" of the people "for the faithful exercise of any delegated power." "First, the restraints of public opinion" which, Hamilton pointed out, would "lose their efficacy" if it was necessary to divide censure among a number or if there was any "uncertainty on who it ought to fall; and, secondly the opportunity of discovering with facility and clearness the misconduct of the persons they

trust, in order either to their removal from office, or to their actual punishment in cases which admit of it."

The impeachment of the President will not, by itself, restore these restraints; the conditions which permit abuse would still remain. It is not enough to throw out the thieves, it is also necessary to dismantle the den; to reduce the power of the executive and rebuild, as best we can, barriers against presidential ambition and desires.

For decades American Presidents have been probing and extending the limits of the emerging executive

power, and Mr. Nixon, for all his excesses, probably fell far short of existing possibilities, undone by incompetence and triviality. For power breeds power and, if the process is not checked, will some day override all restraints; if, indeed, that point has not already been passed without our having noticed or understood.

THE LANGUISHING democratic process cannot be restored simply by exhorting the President to self-restraint or the Congress to self-assertion. "Power" is an abstraction, but its exercise requires tangible organization and institutions. Those involved in women's liberation have repealed Freud's dictum that anatomy is destiny, but it is still true that in government, structure is power. The present executive metastasis can be arrested only by changes in the instruments which permit the exercise and accumulation of an authority which is both unnecessary to the national well-being and dangerous to the nation's liberty. We already have the formal power to make such changes. And one can readily illustrate the kinds of modifications which are required.

One would begin, for example, by eliminating the presidential bureaucracy—through a simple congressional refusal to renew its annual authorization and approval. The President should be permitted a few speechwriters and personal assistants, a couple of press secretaries and a crony or two. But a President, mindful of tradition, might restrict himself to 11—the number who served Franklin Roosevelt. The presidency does not need a private super-department to manage the public departments who officials he also appoints and directs.

We have been told by every President since Eisenhower that a mushrooming foreign policy staff was a necessity of the complex modern world. Then Henry Kissinger moved down the street to the State Department, trailing clouds of power as he went. The justifications for other, less sensitive activities secluded within the White House are equally mythological.

Nothing is done—legally and in the public interest—by the presidential staff which cannot be accomplished by public agencies subject to those public and congressional restraints provided by the democratic process. Perhaps a good President might be trusted with a private government, but only theologians can be permitted to rely on the coincidence of goodness with power.

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The ability to conduct national affairs in secret deprives Congress and public of influence on the process of decision; it encourages conspiracy between private interests, executive employees and a handful of powerful congressmen. Moreover, the systematic abuse of power requires a lot of time and a lot of people. Even the most corrupt, power-hungry and energetic President cannot—by himself or with a few assistants—run a spy system, issue secret orders to "independent" agencies, infiltrate the department with loyal subordinates, pay off friends and supporters, monitor the media and pursue "enemies." A general without a loyal army may abuse his authority but he cannot become a tyrant.

**T**HE INDEPENDENT regulatory agencies should follow the presidential bureaucracy into the limbo of discarded deformities. These agencies were established to regulate import sectors of the economy—railroads, airlines communications and media, stock market, etc. Since their decisions directly influence the personal fortunes of individuals and the earnings of companies—the ability to bestow or deny wealth—careful effort was made to insulate the agencies from the pressures of politics and the coercion of politicians.

Time and corruption transformed this “independence” into a shield behind which agencies and the industries they were to regulate formed alliances against the public interest they were to protect. As a result, in the late Fifties and early Sixties, a variety of studies—conducted privately and by the government—recommended their abolition. But the businesses which had violently protested their creation fought to preserve them. And nothing was done. The Nixon administration, with its genius for innovative advance, discovered that regulatory agencies could be used, not only to help business in general, but to serve those particular interests and companies thought specially deserving of presidential favor, and those who had yielded to presidential blackmail.

It is time to follow recommendations—made by many during recent decades—to transfer the judicial functions to courts, whose independence is more secure, and to place the legislative power in government departments

more readily subject to the corrective scrutiny of Congress and public. Even better, Congress might enact general regulations into law thus reassuming the legislative authority it has abdicated in the name of permitting “administrative discretion.”

It will be harder to guard against the sprawling apparatus dedicated to enforcing the law, collecting taxes, compiling intelligence, spying on individuals, and protecting the national security against all enemies real or imagined. Like all good bureaucracies, these organizations want to grow—to add functions and extend jurisdiction—but never to eliminate the redundant or obsolete. And that mischief which is due to idle hands, the need to make use of an excess of money or an agent, is sheltered by their relative secrecy of operation. By undertaking to redraft and reenact the legislation which establishes those varied functions, Congress could provide a public review which might at least serve to expose waste, incompetence and obsolescence.

Although one cannot eliminate all the dangers inherent in the inconsistency between democracy and a national police, some protection could be provided by the establishment of joint congressional committees to share presidential authority over the bureaus of intelligence and law enforcement. It would be necessary to equip such committees with professional staffs large enough to monitor all their operations. It cannot be assumed that any congressional committee will prove a zealous guardian of civil liberties, but, if only from self interest, a congressional group might be counted on to obstruct lawless acts intended to advance the political fortunes of the President and his party. Certainly, it will increase the number of those who must be enlisted for illegal conspiracies.

**R**EDUCTIONS in presidential authority will not, by themselves, eliminate the varied incapacities which have brought the Congress to its present low estate. Congress has been enfeebled, not by the personal defects of its members, but by the nature of modern politics and by the inadequacies of congressional organization.

Every member of Congress must share his constituency with the President. Open conflict is a risk made to

appear far more dangerous by the President's exclusive access to mass media. Potentially damaging controversy can most readily be avoided by abandoning responsibility, by letting the President decide. This is the course dictated by contemporary political wisdom, except when issues touch the immediate interests of a district, or on those rare occasions when public passions force a congressman to a choice. Moreover, the same large private interests which benefit from presidential power also support and influence members of Congress, while the President can use his power over federal resources to enrich the districts of the faithful.

Reducing executive authority along the lines suggested here will dilute some of those political weapons of control, but opposition to even a moderately popular President will never be made to seem a safe or easy course.

And even if changing political conditions instill Congress with the will and courage to reassert its powers, the way will be blocked by a legislative organization based on impotence. Congressional committees, for example, are often little more than executive enclaves within the legislative branch, “Key congressmen”—the ranking members of important committees—are permitted to share the rewards and even the authority of the administration, in return for helping to protect the executive against unwanted interventions by the Congress. Their relationship with the executive, with which they also share a distaste for the hazards of public debate and legislative interference, is far more rewarding than their ties to other members, or to the Congress as an institution. That is why the White House staff has hastened to assert jurisdiction over these congressional relations which once helped executive departments to maintain some independence of the presidential will.

**T**HE MOST IMPORTANT source of congressional subservience, however, is not the committee structure or the seniority system, but the inability of members to obtain and use that expert knowledge and information which, given the complexity of modern government, has become necessary to the exercise of power. The official who visits Capitol Hill to argue the President's case is backed up by studies and memos, supported by battalions of specialists and statisticians, flanked by assistants eager to provide a missing fact or suggest the answer to an awkward question. The congressman, on the other hand, is rarely equipped to debate the executive, or even to comprehend what is being newly proposed or what ongoing activities he is expected to support.

A Congress determined to share in the conduct of affairs will need its own counterpart to the Bureau of the

Budget—a congressional institution large enough to monitor and evaluate executive activities, to master the details of complicated legislation, and to provide new ideas and specific recommendations for congressional initiatives to resolve important national problems.

Congress is not an assembly of critics, designated to censure or applaud the president's performance. It is also, and equally, responsible for ending inflation, reducing crime, or helping the poor. We cannot be sure that congressmen will want to forfeit the relative comfort and tranquility made possible by the abdication of this responsibility. But the most zealous Congress cannot act without the resources need to examine and understand the afflictions of the nation.

This new congressional agency will not be effective if it simply disgorges vast quantities of memos and studies for men who are already inundated by more material than they can read or master. Its officials and experts should participate directly in committee interrogations of their executive counterparts. Their expertise, their scrutiny of executive actions, and their continu-

ing examinations of national problems would be freely available to all members and, in most cases, to the public.

Congress is democracy's only public forum, and its power to force debate and disclosure is also the most important instrument for the participation of the citizen. That power is drained of all content and meaning by congressional ignorance, or by congressional dependence on information that the executive tells it. If the deeds and policies of government are not subjected to the open clash of the diverse interests and ideas which Congress represents, there can be no public will or popular government, only a plebiscite.

**I**T WILL NOT be easy to reverse the accumulation of presidential authority. Yet the prospects have been brightened by the emerging realization that the restoration of democratic principle

is also a necessity of effective government. It now appears that even though the President's power is a consequence of modern conditions, it is not a necessity. Our problems and circumstances do not require a usurping executive and an enfeebled Congress.

Indeed, the clearest lesson of the past decade is that the removal of restraints breeds massive incompetence, increases the likelihood of actions and policies which damage the national well-being. The large industrial bureaucracies which dominate the modern economy have been a principal cause and support of increased presidential power, finding it more congenial to deal in secret with a small group of fellow executives than to master the confusions of the democratic process. They now discover that the price of this support has been an end to the sustained economic expansion of the

postwar period. Surely an entire decade of misrule is enough to convince even the most skeptical that we are not the victims of bad luck, but of more fundamental defects in the organization of the state.

There is no guarantee against error, but to concentrate power over the immense complexities of modern life, to reduce public debate and congressional participation, is to make error inevitable, and to ensure recurrent crises each of which will lead to further encroachments by an executive anxious to mask its failures and subdue the opposition which failure arouses. We are far more likely to increase our economic well-being, resolve our social problems, and avoid self-destructive world policies amid the confusions of democracy than in the quiet intrigue of executive chambers.

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