

Protecting Future Presidents

I grant that appeals to authority are to be treated with some circumspection. But I also think that, since we are engaged by a major crisis, some historical and theoretical background is needed. Thus, I appeal to the authority of "Publius," the pen name of Hamilton, Madison, and Jay in "The Federalist," in defending President Nixon's oft disparaged assertion that giving into the pressure now would "make it more difficult for future Presidents to make the tough decisions."

It is clear that "Publius" agreed with the view of Edmund Burke that a representative owes his constituents not merely his industry but also his judgment—that, indeed, a representative betrays his constituents if he sacrifices his judgment to their opinion. The vital issue which faced the Framers at the Constitutional Convention was, in effect, how to avoid demagoguery (and "factions") and have Burke-type representation, while at the same time having a popular, partly democratic government.

The Framers' general solution, as I see it, was to apply the insight that "the best security for the fidelity of mankind is to make [men's] interest coincide with their duty" (I borrow this phrase from "The Federalist," essay 72). Their general solution was to try to curb and channel the representative's own self-interest. Their specific solutions involved limits on governmental powers, "checks and balances," and indirect elections of the President and the Senate (now, of course, elected directly). (As a matter of fact, the Framers intended that the

President would not campaign for election and that, ideally, he should not know the characters to whom he owes his election—so that he would have a minimum of political debts.) More important, the main idea was that the executive should have "energy" and "vigor"; in other words, he should be somewhat (but not too much) independent of the legislature and the people.

How does this bear on the current crisis? I must state my "biases" beforehand: I think the President does have creditable and credible defenses, as outlined in his legal memos, which were largely ignored by members of the media (excepting Jude Wanniski of the Wall Street Journal). Also—and this is purely my opinion—most of the people I've talked to who want impeachment want it, in large part, for non-Watergate reasons; that is, they are vocal for impeachment largely because of Mr. Nixon's policies on Vietnam, welfare rolls, etc. Thus, I think that if the President is to be tried in the Senate, it will be largely because of his non-Watergate actions.

This is wrong. The President is one of the most powerful men on earth (too powerful, I think), but, paradoxically, he is becoming less and less "vigorous" and "energetic," because his independence from the legislature and from the people is being progressively undermined. As Hamilton feared, the trend is to "mere parchment delineation" of the separation of powers. Therefore, future Presidents will have tougher times making the "tough decisions."

MARK PETERSON.

Washington.

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