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James L. Sundquist

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## THE QUESTION IS CLEAR, AND PARTY GOVERNMENT IS THE ANSWER

JAMES L. SUNDQUIST\*

We have had enough quarreling with Lloyd Cutler's ideas.<sup>1</sup> I will not fulfill that role today. I will speak on his side. He and I have worked together on the Committee on the Constitutional System since 1982, and we generally see things eye-to-eye with differences only in nuance. What I will do today is pick some points in his thesis to emphasize and embellish. If I quarrel with anybody, it will be with the preceding two speakers—who certainly have given plenty of openings for that purpose.<sup>2</sup>

I would emphasize Mr. Cutler's basic point that our political system has gone through a profound revolution in the last thirty years.<sup>3</sup> Although Erwin Chemerinsky depicted Lloyd Cutler as a dangerous radical trying to lead us into new and unknown territory,<sup>4</sup> I think of him as a counterrevolutionary. In essence, he is trying to take us back to the system that worked very well in this country for 150 years and from which we have departed only recently. Phil Bobbitt hesitates to depart from the constitutional principles laid down by the founding fathers.<sup>5</sup> However, the founding fathers themselves rejected their own basic model as soon as they took over responsibility for making government work. They originally conceived a nonpartisan government. They designed the Constitution to deliberately obstruct and discourage the formation of national parties. In the Constitutional Convention proceedings you cannot find a single word in praise of parties. The founding

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\* Senior Fellow Emeritus in the Governmental Studies Program, The Brookings Institution.

1. See Cutler, *Now is the Time for All Good Men . . .*, 30 WM. & MARY L. REV. 387 (1989).

2. See Chemerinsky, *The Question's Not Clear, But Party Government Is Not the Answer*, 30 WM. & MARY L. REV. 411 (1989); Bobbitt, *The Committee on the Constitutional System Proposals: Coherence and Dominance*, 30 WM. & MARY L. REV. 403 (1989).

3. Cutler, *supra* note 1, at 388.

4. See Chemerinsky, *supra* note 2.

5. See Bobbitt, *supra* note 2.

fathers viewed national parties as something subversive, as something to be feared, as guilty of intrigue and corruption, and as the source of oppression.<sup>6</sup> This attitude continued into George Washington's administration. In his farewell address, as you know, he warned us against "the baneful effects of the spirit of party."<sup>7</sup> When the framers' generation assumed responsibility to run the government, however, they found it absolutely necessary to concert the organs of power that they had dispersed, to find a way of bringing together the Senate, the House, and the executive branch.

The instrument invented for that purpose, which was new on the face of the earth at that time, was the political party. As Mr. Cutler said, for 150 years we had a doctrine in this country, a theory, a system, which was essentially that of party government.<sup>8</sup> The parties would present their programs in the election campaign. They would ask for control of the entire government. The people would choose between the parties by their votes. The winning party would put its program into effect. At the next election, the people would then either accept what the governing party had done and restore it to power or reject what it had done and put the other party in power. The democratic system works this way everywhere else in the world. And it worked well here for 150 years. The people were satisfied with it; they generally elected Presidents and congressional majorities of the same party. They voted straight tickets.

True, straight tickets were to some degree an artifact of the ballot system, as Mr. Cutler mentioned.<sup>9</sup> Splitting the ticket was very difficult. The voter went to the polling place and got his ballot from a party representative—a ballot that had been printed by the party—and then dropped it into the box. About the turn of the century, somebody discovered the Australian ballot. We call it the secret ballot now. After I made this remark to another audience, a woman during the question period said, "I am surprised—even

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6. See, e.g., THE FEDERALIST No. 10 (J. Madison); see also THE FEDERALIST No. 47 (J. Madison); THE FEDERALIST No. 48 (J. Madison); THE FEDERALIST No. 62 (J. Madison); Washington, *Farewell Address* in 1 MESSAGES AND PAPERS OF THE PRESIDENTS 213-24 (J. Richardson ed. 1896).

7. Washington, *supra* note 6, at 218.

8. Cutler, *supra* note 1, at 389-90.

9. *Id.* at 393.

shocked—that you attribute all our ills to the secret ballot.” I replied that it is not the secrecy of the ballot that is the problem but its form. It gives voters the opportunity, even the encouragement, to split their tickets. Ticket splitting gave us divided government, instead of responsible party government.

Until quite recently, the concept of party government was well settled, accepted by all our political leaders and by the public at large. In the political science literature, it came to be the accepted explanation of how our government ought to operate. V.O. Key, Jr., probably the most respected political scientist of the early postwar period, wrote: “For government to function, the obstructions of the constitutional mechanism must be overcome. And, it is the party that casts the web, at times weak, at times strong, over the dispersed organs of government and gives them a semblance of unity.”<sup>10</sup> “Semblance” is a well chosen word!

A corollary to the proposition that the country should have party government is that the President would be the leader of that government. The President should be the leader of the government not because he is the Chief Executive, or because he is the head of state, but because he is the leader of the governing party. He is the party’s standard bearer, who carries its banner in the campaign; so when the election is won, he is the natural leader of the Congress. The President’s role as chief legislator was institutionalized thoroughly over the years.<sup>11</sup> By the 1930s the standard practice was for the party leaders in Congress to meet with the President every Monday to map out the congressional program for the coming week.<sup>12</sup> Congress got into the habit of waiting for the President’s program to come to Capitol Hill before it acted on any legislative matter. “The President proposes and the Congress disposes” was the catch phrase. Every modern political science textbook contains a section on the President as legislative leader, often using the term “chief legislator” in the title of the section.<sup>13</sup>

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10. V.O. KEY, JR., *POLITICS, PARTIES, AND PRESSURE GROUPS* 656 (5th ed. 1964).

11. For a discussion of the President’s role as chief legislator, see J. SUNDQUIST, *THE DECLINE AND RESURGENCE OF CONGRESS* ch. 6 (1981).

12. *Id.* at 139-41.

13. See, e.g., J.M. BURNS, *CONGRESS ON TRIAL* 164-72 (1949); M. CUMMINGS, JR. & D. WISE, *DEMOCRACY UNDER PRESSURE* 345-48 (2d ed. 1974); R. DAHL, *PLURALIST DEMOCRACY IN THE UNITED STATES* 103 (1967); R. PIOUS, *THE AMERICAN PRESIDENCY* 176-77 (1979); C. ROSSITER,

Well, the system worked. Erwin Chemerinsky worries about Presidents being too strong.<sup>14</sup> Yet the Presidents in history whom we revere were the strong Presidents who were able to get their programs accomplished through the instrument of party government. We don't remember the Presidents who were obstructed, who were inert leaders, and who failed to meet their responsibilities. We instead think of Theodore Roosevelt on the Republican side and of Woodrow Wilson and Franklin Roosevelt—and in his early years Lyndon Johnson—on the Democratic side. We had great bursts of activity under those leaders. They gave their names to eras. Yes, the model worked—until the middle of this century.

Then we entered the new period that Lloyd Cutler defines as one of divided government<sup>15</sup>—I prefer to call it coalition government—where one party controls the Presidency and the other party controls one or both houses of the Congress most of the time. As Mr. Cutler said, for more than seventy years—seventeen elections between 1884 and 1956—no President on taking office had to confront a Congress in which either house was controlled by the opposition party.<sup>16</sup> Since then, beginning in 1956, that has occurred five out of eight times (and if the portents are correct, it will be six out of nine times after the election this November).<sup>17</sup> Coalition governments of that sort—so-called “grand coalitions” where the major parties of the left and right have to agree for anything to happen—have never worked anywhere in the history of the world. They are not working here, in the sense of getting things done. You can make a case for its advantages. Erwin Chemerinsky proposes that we ought to muddle through, that is the desirable system, to give us stability.<sup>18</sup> Phil Bobbitt made the case pretty well on behalf of sludgy government,<sup>19</sup> one that has difficulty operating. That is a value judgment, and the case can be made. The

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THE AMERICAN PRESIDENCY 83 (1956); J. SUNDQUIST, *supra* note 11, ch. 6; Huntington, *Congressional Responses to the Twentieth Century*, in *THE CONGRESS AND AMERICA'S FUTURE* 23 (D. Truman ed. 1965).

14. See Chemerinsky, *supra* note 2, 414-15.

15. Cutler, *supra* note 1, at 390.

16. *Id.* at 389-90.

17. The 1988 election did make the record six out of nine times. The previous elections that resulted in divided government were those of 1956, 1968, 1972, 1980, and 1984.

18. Chemerinsky, *supra* note 2, at 414-15.

19. Bobbitt, *supra* note 2.

question is whether one fears government and expects it to make mistakes most of the time—as people thought in the 1780s—or whether one feels that, on the whole, the government ought to be able to act on the assumption that it will usually act wisely and well—or, if it does not, it can be held accountable and a subsequent government will have the capacity to correct the mistakes. Like Lloyd Cutler, I come out on that side of the question.<sup>20</sup> If you believe that government ought to be able to act, then you have to conclude that divided government is a fundamental fault in our system.

People ask: “Why don’t those people in Washington just get together and do the right thing? Why are they so partisan?” Well, it’s in the nature of political parties. The very reason that they are organized is to compete for power. Each party is out to defeat and discredit the other, because it wants to win the next election. When one party controls one branch of government and another party controls the other, the institutions of government themselves come into collision and seek to defeat and discredit each other. History has demonstrated this over and over during the last thirty years. If the President sends a measure to Congress, the Congress *has* to reject it. It cannot follow the President’s leadership because he is not *their* leader. He is the opposition leader, the enemy that they have to defeat in the next election. If they accept his leadership, they are building him up for reelection. That is not why they are in business. By the same token, the President must veto a congressional initiative—reject it and send it back and condemn the Congress. Government, then, degenerates into a flow of recrimination and conflict, and in the end, people lose confidence in both branches of the government. The branches sometimes do get together, but only when things get bad enough to compel them to do so.

Take the case of the budget that Lloyd Cutler mentioned.<sup>21</sup> The President has his plan for overcoming the budget deficit, which he presented to the country and the Congress rejected. Whether it would have worked is conjectural, but he did have a plan; he knew where he wanted to take the government in fiscal matters. The

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20. Cutler, *supra* note 1, at 397.

21. *Id.* at 390-91.

Democrats have condemned the deficit with equal vociferousness, and they have floated their suggestions—which the President announced in advance that he would veto. As a result, for six years after these deficits began to appear the government has been in a state of impotence, floundering around on this question. It took a half-trillion dollar drop in the stock market—\$500 billion—before the “summit” meeting that the Democratic leaders had been urging on the President could be held. That meeting, last November, did produce some results. Yet a measure of our system is that it was easier for Gorbachev to get a summit meeting with the President of the United States than for the Speaker of the United States House of Representatives to do so.

Now, Mr. Chemerinsky is probably right in saying that divided government isn't the whole problem, that the trouble is that the people cannot agree on what to do about the deficit.<sup>22</sup> His argument is defective, however, in its underlying assumption that leaders, instead of leading the people, should wait for the people to make up their minds and then follow them. In any case, if either the Republicans or the Democrats were in full control of the Congress as well as the Presidency, the country could hold somebody responsible. Under the present system, it cannot. We enter this election with everybody denouncing the deficit. Yet the President is saying, “Don't blame me, it's those people up on Capitol Hill; they did it!” And the Democrats say, “Don't blame us, it's the lack of leadership down there in the White House.” The people in their one sovereign act, the decisive political act of voting, have no way of placing blame and fixing responsibility and resolving the issue.

I agree with Phil Bobbitt that Lloyd Cutler has been talking about two different problems in regard to the establishment of party government.<sup>23</sup> One is the division of government between the two parties, and we have covered that. The other is the internal cohesion within each party. If we talked about this subject in 1951, say, or even in 1961, we would have said the obstacle to party government was not divided government but conflict within the majority party. The government was not divided then. The Democrats had control of both the executive and legislative branches. Indeed,

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22. See Chemerinsky, *supra* note 2, at 413.

23. Bobbitt, *supra* note 2, at 405-06.

the Democrats had complete control of the government from 1932 until 1952, except for a couple of years, and again in the Kennedy-Johnson era. Yet the country didn't have party government in any greatly successful sense during most of that time. The Democratic Presidents tried to lead their Democratic Congresses, but the Democrats in Congress were, as we all well know, made up of wings. A mainly Southern wing was made up of rock-ribbed conservatives who voted with the Republicans most of the time, forming the Republican-conservative Democratic coalition that actually ran the House of Representatives and the Senate. Recently, however, the party system, too, has gone through a revolution—and this is the one bright light in the whole picture from my standpoint. As a result, both parties have become significantly more cohesive and more homogeneous.

Let's talk about the Republicans first. Remember when we were very young, the G.O.P. had an aggressive Western insurgent wing identified with people like Hiram Johnson and George Norris and Robert La Follette, Sr. They were called the "Sons of the Wild Jackass" by one of their Eastern opponents. Those Western insurgents, however, died out quite a while ago. The liberal tradition of the Republican party—which goes back to Theodore Roosevelt and to some extent to Lincoln—lived on for a while in Easterners like Nelson Rockefeller, Clifford Case and Jacob Javits. Earl Warren of California and Linwood Holton of Virginia also would be in that group. Not long ago, they were still strong enough to actually compete for the Presidency. The last liberal Republican who tried to win the nomination was John Anderson, and you know what happened to him—he left the party and had to run as an independent. Now when you look around Capitol Hill for a liberal Republican in that old tradition you find Senator Weicker of Connecticut and that's about where you stop.<sup>24</sup> Republicans are as homogeneous a party as you could ever hope for in our system, and probably would ever want. They have followed Ronald Reagan's leadership solidly, and he, in turn, has been able to lead them.

On the Democratic side, much the same thing has happened, as we here in the South probably know better than anyone else. When I was on Capitol Hill thirty years ago, about one-third of the

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24. Senator Weicker was defeated for reelection in 1988.

Democrats in the Senate and the House were part of that rock-ribbed conservative bloc that voted with the Republicans. Take Willis Robertson of Virginia. When he couldn't come to Senate committee meetings, he gave his proxy not to the Democrats but to his Republican friends. They cast his vote. However, these Democratic gentlemen are thinning out with every election. John Stennis is leaving the Senate this year, and when he leaves, that old group represented by James Eastland, Richard Russell, Spessard Holland, John McClellan, Harry Byrd, Judge Howard Smith of Virginia, and Willis Robertson, will be all gone. The kind of Democrats coming to Washington from the South now fit nicely into a cohesive Democratic party. Bill Spong is typical, and Chuck Robb will have no difficulty fitting into the national Democratic party. At the last election, the Democrats who came to the Senate out of the South were Terry Sanford, Wyche Fowler, Bob Graham, John Breaux, Richard Shelby—none of whom are at odds with their Democratic colleagues. The same transition has been taking place in the House. So the Democrats in the Congress are now the most cohesive, homogeneous Democratic party that anyone can remember—probably since before the Civil War. I think when the time comes, if it ever comes, when the Democrats are back in the White House the nation will discover that it has party government in a very real and effective sense.