

# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

The American presidency has, through the past decade, been in turmoil. The executive branch has grown larger than ever, yet it has lost much of its popular appeal. Vietnam demonstrated the massive growth of presidential power; Watergate revealed the ease with which it could be misused. As a result, the presidency has been under attack. The courts have been trying to define and limit long disputed presidential prerogatives. Congress has sought to reassert itself in national policymaking. The academic community has been rethinking its traditional support of a strong executive.

The product of these disputes has been renewed interest in the old debate over a strong presidency. This symposium reflects that interest. It begins with a basic premise—that the rise of modern presidentialism challenges Constitutional principles; that a dominant executive threatens the core American concepts of checks and balances, of separated institutions sharing power. It attempts to explore this problem by looking closely at the condition of the modern presidency; its place under the Constitution, the evolution of its powers, its relationship to the other branches of federal government and to the public, the case for and means of reform. The twelve papers presented here study the presidency from several perspectives; they have been written by historians, political scientists, and lawyers. They look at presidents in several contexts; in domestic and foreign policymaking; in making war and in trying to prevent it; in exercising legislative initiative and the veto; in maintaining government secrecy and in gathering information for national security.<sup>1</sup>

This volume represents the third symposium on the presidency which *Law and Contemporary Problems* has published in the last twenty years. The three collections differ greatly in the questions they raise and the tone which their articles adopt. These differences suggest some of the ways in which scholarship and popular concern about the presidency have changed.<sup>2</sup> For example,

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1. The papers in this symposium were first prepared for and presented to a conference at Duke University in January 23rd and 24th, 1976. This conference was organized by Duke University's Institute of Policy Sciences and Public Affairs and its School of Law, in conjunction with the Center for National Security Studies in Washington, D.C. The conference was supported by The Field Foundation. A transcript of the discussions at this conference is on file at the Institute of Policy Sciences and Public Affairs.

2. The two previous symposia were *The Presidential Office*, 21 *LAW & CONTEMP. PROB.* 607 (J. Paschal, ed., 1956), and *The Institutionalized Presidency*, 35 *LAW & CONTEMP. PROB.* 427 (N. Thomas & H. Baade, eds., 1970).

in 1956, Symposium Editor J. Francis Paschal wrote in these pages, “. . . we hear little nowadays—and none at all in this symposium—of the ancient cry of presidential autocracy. Rather, the fear now is that the power of the President will prove unequal to the task of satisfying the expectations centering on him.”<sup>3</sup>

By 1970, that fear had largely been dismissed. Symposium Editor Norman C. Thomas observed that the presidency had greatly “expanded in both structure and functions”; the office, in other words, had become “institutionalized.” Thus despite the “definite limitations” of the presidency, it remained for Professor Thomas both the “focal point of American political life” and “the most effective means available for mobilizing energy and resources for the achievement of national goals.”<sup>4</sup>

Today the “ancient cry of presidential autocracy” can again be heard. Indeed, that cry echoes throughout this symposium. The papers here suggest not that the President has too little power, but that he may have too much. They are less concerned with the limitations of the presidency than with its apparent excesses, less interested in the potential of presidential power for solving national goals in the future than with actual abuses in the past. They focus not on the internal organization of the presidency, but on its external influence—on the ability of presidents to dominate domestic and foreign policymaking, to sway the Congress, courts, and public. In so doing, they consider both the visible and the covert—the ability of presidents both to persuade in public and to manipulate in secret.

Inquiry into the American presidency has thus completed a circle. This symposium appeals to a tradition of scholarship and political theory that had, in recent years, lost currency. Accordingly, it revives a venerable set of arguments and principles—in particular, the belief that the core values and tenets of the Constitution remain vital; that they must be allowed to regulate the performance of all public institutions; that before accepting the trend toward presidentialism, its impact on those values must be carefully weighed.

The debate over the American presidency will continue. Indeed, the health of American democracy hinges on the vitality of that and similar debates. Thus this symposium hopes not to be a final word, but simply a contribution to the ongoing scrutiny of democratic institutions.

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3. Paschal, *The Presidential Office—Foreword*, 21 *LAW & CONTEMP. PROB.* 607, 608 (1956).

4. Thomas, *The Institutionalized Presidency—Foreword*, 35 *LAW & CONTEMP. PROB.* 427, 427-28 (1970).