RAVAGING THE REPUBLIC

DAVID JEFFERS

"Posterity: you will never know how much it has cost my generation to preserve your freedom. I hope you will make good use of it."

John Quincy Adams

The brilliance of the United States Constitution is its balance of powers; three branches of government where no one single branch becomes autocratic over the others. Today's republican form of government is upside down and if the ship is not righted it will continue to circle the drain until it is deposited into history's trash heap. The blood of too many Americans has been spilled defending our freedom to allow that to happen.

A closer look at the three branches of government at the state and national level will show government working quite contrary to what the Founding Fathers envisioned.

A Languid Legislature

If any branch of government would be stronger than the other, it would have to be the legislative branch. Our legislators are elected by the people and are supposed to represent these people. Congress has the constitutional powers to pass laws, declare war, impeach and try the President and judges, just to name a few. This power is tempered by judicial review of laws as pertaining to their constitutionality and by the President's right to veto.

It was further tempered by having two houses in the legislature. That advantage has been lost since the ratification of the Seventeenth Amendment (more on that in a bit).

The House of Representatives was designed to be directly influenced by the people and to keep those elected officials on a short leash, hence being elected every two years. We read in Federalist Paper # 52 the intent of the Framers for the House of Representatives:

As it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured.

The House of Representatives is elected every two years and the apportionment of seats determined by population. On the other hand, the Senate was to represent each state equally, regardless of size, and the original intent was the state selected its two senators. The state would have real power at the federal level by its two representatives in the Senate.

This allowed the smaller states the same power as the larger states. We read about the Senate in Federalist #52:

In this spirit it may be remarked, that the equal vote allowed to each State is at once a constitutional recognition of the portion of sovereignty remaining in the individual States, and an instrument for preserving that residuary sovereignty. So far the equality ought to be no less acceptable to the large than to the small States; since they are not less solicitous to guard, by every possible expedient, against an improper consolidation of the States into one simple republic.

Again that advantage was lost to the states because they no longer have control over their senators; they are elected by general election like the House of Representatives. The state no longer has its senators on a short leash; there is no direct influence by the governor or the state legislature. Influence is solely upon the will of the people. We need to repeal the Seventeenth Amendment and bring the balance of power back to its original intent.

When senators are elected by the people every six years, they are under less restraint than if they were beholden to the states. This is why you see career senators who can build up huge campaign war chests and are practically immovable from office. Only a highly informed and involved electorate can keep a senator in line.

We now have a US Congress, and in some cases, state legislatures who have usurped their constitutional powers of passing laws. One oxymoron that has become part of the American lexicon is “judicial tyranny.” That is pure nonsense! Tyranny is defined as “arbitrary or unrestrained exercise of power; despotic abuse of authority.”

It is impossible for the judiciary to be tyrannical because it has no powers to exercise or abuse. The public has been lied to when it is told that some court has enacted some law through judicial tyranny. Let's look closer:

An Injurious Judiciary

The judiciary branch was designed to be the weaker of the three branches and was to cause no harm to the other branches. Notice what Alexander Hamilton wrote in Federalist Paper #81:

It may in the last place be observed that the supposed danger of judiciary encroachments on the legislative authority, which has been upon many occasions reiterated, is in reality a phantom. Particular misconstructions and contraventions of the will of the legislature may now and then happen; but they can never be so extensive as to amount to AN INCONVENIENCE, or in any sensible degree TO AFFECT THE ORDER OF THE POLITICAL SYSTEM. This may be inferred with certainty, from the general nature of the judicial power, from the objects to which it relates, from the manner in which it is exercised, from ITS COMPARATIVE WEAKNESS, AND FROM ITS TOTAL INCAPACITY TO SUPPORT ITS USURPATIONS BY FORCE. And the inference is greatly fortified by the consideration of the important constitutional check which THE POWER OF INSTITUTING IMPEACHMENTS IN ONE PART OF THE LEGISLATIVE BODY, and of determining upon them in the other, would give to that body upon the members of the judicial department.

THIS IS ALONE A COMPLETE SECURITY.

THERE NEVER CAN BE DANGER THAT THE JUDGES, BY A SERIES OF DELIBERATE USURPATIONS ON THE AUTHORITY OF THE LEGISLATURE, WOULD HAZARD THE UNITED RESENTMENT OF THE BODY INTRUSTED WITH IT, WHILE THIS BODY WAS POSSESSED OF THE MEANS OF PUNISHING THEIR PRESUMPTION, BY DEGRADING THEM FROM THEIR STATIONS. While this ought to remove all apprehensions on the subject, it affords, at the same time, a cogent argument for constituting the Senate a court for the trial of impeachments. (Emphasis added)

The judiciary is not to cause AN INCONVENIENCE nor is it TO AFFECT THE ORDER OF THE POLITICAL SYSTEM. Why is that? It is because the judiciary has no real power because of ITS COMPARATIVE WEAKNESS, AND FROM ITS TOTAL INCAPACITY TO SUPPORT ITS USURPATIONS BY FORCE. Let me play that last clause one more time a little louder (you'll forgive me for shouting):

…AND FROM ITS TOTAL INCAPACITY TO SUPPORT ITS USURPATIONS BY FORCE.

Therein lays the whole basis of the argument; why are we going to the courts instead of the executive branch to fight our battles? If it is because they will not support us, then take it to the people.

And if we have runaway judges it is because we have a legislative branch that has removed the fear from the judiciary of the HAZARD THE UNITED RESENTMENT

OF THE BODY INTRUSTED WITH IT might actually bring. In fact, the last time a legislator spoke of the power that the legislature, THIS BODY (that is) POSSESSED OF THE MEANS OF PUNISHING THEIR [the judiciary's] PRESUMPTION, BY DEGRADING THEM FROM THEIR STATIONS; in other words, bringing rogue and runaway judges up for impeachment…the last man to do so was Tom DeLay and he was excoriated in the press. The evangelical community and all freedom loving federalist conservatives should have hailed him as a hero.

Hamilton additionally wrote in Federalist Paper #78 the following:

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, THE JUDICIARY, from the nature of its functions, WILL ALWAYS BE THE LEAST DANGEROUS TO THE POLITICAL RIGHTS OF THE CONSTITUTION; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever.

It may truly be said to have neither FORCE nor WILL, but merely judgment; and MUST ULTIMATELY DEPEND UPON THE AID OF THE EXECUTIVE ARM EVEN FOR THE EFFICACY OF ITS JUDGMENTS.

A Feeble Executive

In the case of same-sex marriage in both Massachusetts and California, it was not the courts that committed judicial tyranny; it was executive tyranny that illegally brought same-sex marriage certificates to be affected.

A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government. (Alexander Hamilton, Federalist Paper #70)

If Alexander Hamilton and the rest of the Federalists could see our government now they would no doubt shake their heads in disgust. To call most of our elected government executives feeble is almost a compliment.

While in office President George W. Bush did an overall great job of keeping our country free from terrorist attacks since 9/11, his message to keep our country on a war-footing was not only feeble; it was also been anemic.

"I suppose my critics will call that preaching, but I have got such a bully pulpit!"

Those words from Teddy Roosevelt ring hollow today.

Very few elected government executives use their bully pulpits in the way TR advocated. I would imagine him thinking of them nothing less than moral cowards, because they are.

We have Governors illegally instituting same-sex marriage by altering state marriage licenses and they claim they were only following judicial mandates. Mitt Romney has been beyond the pale in his executive tyranny.

Salvaging the Separation of Powers

Is a Governor or President bound by the Constitution to adhere to a Supreme Court ruling? Some would say yes since Marbury vs. Madison, however there is precedence for executives ignoring the judiciary. It is also important to remember that the Marbury ruling merely set the precedence of judicial review through Marbury's filing a writ of mandamus. Chief Justice John Marshall acknowledged that although the court had jurisdiction over Marbury's petition, it did not however have the power to force the executive branch to act on its findings.

In other words, if the executive branch decided to ignore the Court's rulings, the Court would be powerless to enforce its wishes. As I said there is historical precedence for the executive branch to ignore judiciary findings.

President Abraham Lincoln refused to enforce the Dred Scott decision and for good reason. Another case of judicial malfeasance that should have been ignored by the executive branch is Plessy vs. Ferguson, that legalized racial segregation.

The ruling in Plessy vs. Ferguson was so wrought with racist thinking, unfortunately a sign of those times, that

very few clear thinking men saw the lunacy of the decision. One such man was Supreme Court Justice John Marshal Harlan; he wrote:

But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.

How is that only one man out of eight sitting on the highest court could see the constitutional equal protection provided to all men?

When our courts exercise judicial malfeasance through fiat, it is incumbent upon both the executive and legislative branches to reel the court back in to its actual constitutional powers.

But that would take moral courage; the kind that will only come from a national demand from America's citizenry.

Power to the People!

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

So begins the Declaration of Independence whereas thirteen colonies unanimously decided to throw off the chains of tyranny and chose liberty. Fifty-six men from varying backgrounds pledged “to each other our Lives, our Fortunes and our sacred Honor.” Each man kept their sacred honor, many at the expense of their fortunes, and some with their lives. These men epitomized moral courage, the type that is lacking in our three branches of government as a whole.

So what are a free people to do when its elected representatives lose their collective moral courage? Let’s revisit the Preamble to the US Constitution:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Did you catch that? It is “We the People”, the citizens of the United States, who ordained and established our constitution…OUR CONSTITUTION! And when OUR elected officials do not carry out their sworn constitutional duties, it is the responsibility of the citizenry to either infuse the elected with moral courage, or replace them with others already possessing it.

Why do the elected virtually ignore the electorate? Because the electorate are no threat to the elected!

The electorate go about their workaday world running little Johnny to soccer practice and little Suzie to ballet lessons, text messaging this and that contact, that most Americans do not have the time nor the desire to pay attention to Washington D.C. Most Americans think it is a waste of time because the elected do what they want once they get inside the Beltway. Well that much is true but it is OUR fault, the electorate, not the elected. The elected only get away with what the electorate allows.

A look at Federalist Paper #1 by Alexander Hamilton explains the important role the electorate would play with respect to constitutional powers:

It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.

If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind.

My fellow Americans, we have once again arrived at a crisis. We are rapidly coming to a decision that will not only determine the outcome of our republic, but also affect mankind in general.

We are the greatest nation in history; I know many America-hating leftists will scoff at this belief, but history proves this to be true.

And yet We the People sit back and allow this republic to be turned on its head. The legislature was designed to be the most powerful of the three branches of government. It has the power to pass laws, to override any vetoed legislation by the executive branch, and to seat and unseat judges. Look at our US Congress today; it is totally incapable of passing legislation that will secure our nations borders and use our natural resources. The legislative branch today is the weakest branch of government!

The executive branch was designed to be the sword of the government, to enforce laws and protect the citizenry. And yet we have watched across this land elected executives enforcing unconstitutional judicial rulings..

If We the People do not hold our elected officials accountable to their constitutional duties then we have no reason to complain about our government. It is past time for us to rise up and be counted once again, but we must give up at least one 30 minute television show to do some research every day, keeping up with the important issues of our day at the local, state, and federal levels.

For too long the lie that the courts can establish “the law of the land” have perpetrated by those who have sworn to defend against such abuse of power.

Abraham Lincoln rejected this notion and the late Paul Weyrich, the Father of the Modern Conservative Movement, wrote in his Townhall.com article titled "History and the Judiciary" wrote:

For the sake of this republic I urge my friends, fellow leaders and Americans emphatically to repudiate the devastating myth that judges have the power to make and redefine our laws. We should do so rapidly and forcefully before our republic is replaced by the irresistible tyranny of men and women who believe that nihilist elites should make the rules and pass them to judges for formal announcement when the time is ripe for the latest step into the post-rule of law, post-moral abyss. Otherwise our "conservatism" will continue to be merely the rearguard for subtle left-wing revolution.

I urge all freedom-loving Americans who are sick and tired of judges ruling the day, legislatures being do-nothing bodies, and executives kowtowing to judicial malfeasance to first read Mr. Weyrich's article above and then to contact all your elected officials and tell them you expect them to defend the Constitution.

We can no longer sit by while our Republic is ravaged before our very eyes. Stopping this is one of the goals of Aletheia Group L.L.C.

I invite you to join us in this worthy venture.

Cover art by Jason Zoglmann.