

It's the Constitution, stupid

By George A. Borden

A few days ago the consensus among the Sunday-morning pundits was that despite some successes, such as the budget and North American Free Trade Agreement, the recent defeat of the initial version of the crime bill and the morass of health care reform indi-

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cate that the Clinton administration is endangered and embattled.

One could not help but wonder whether there is something seriously amiss in our politics when a president cannot achieve his highest priorities. But a re-reading of the works of the framers of the Constitution shows otherwise. Just such an embattled presidency is exactly what our Founding Fathers had in mind when they minted our form of government, at a least when the president in question proposes measure that citizens perceive as fundamentally affecting their personal freedom.

An important part of the debate that preceded and accompanied the ratification of the Constitution addressed the problem of balancing a necessary energy in government with protections of individual liberty. Thomas Jefferson conceded that the lack of energy of American government prior to the Constitution was inconvenient, but he also noted that "[o]n the other hand that energy which absolute governments derived from an armed force, which is the effect of the bayonet constantly held at the breast of every citizen . . . must be admitted also to have its inconveniences. We weigh the two together, and like

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best to submit to the former."

It is, of course, no accident that Congress is the shoal upon which the Clinton administration has run aground, for it was by the creation of checks and balances between coordinate branches of government that the founders intended to limit the energy of the federal government. Thirty years after the constitutional convention, James Madison considered the idea of separation of powers to be an experiment the results of which were not yet known. Recent events could only confirm Madison's optimism that the experiment would succeed in achieving its desired effect. Naturally, we can still debate the wisdom of such checks and balances, but the debate is academic unless we intend to scrap the Constitution.

Both the crime bill and health care reform pose interesting cases for study. The initial defeat of the crime bill has widely been attributed to the efforts of the National Rifle Association, whose members considered the bill's ban of assault rifles as an unconstitutional or at least undesirable limitation on their freedom. They were successful in convincing a substantial numbers of legislators of their position. And although it now appears that a modified version of the bill (including the assault rifle ban) is likely to become law, it did not happen without a significant expenditure of energy on the part of an already winded administration.

Health care reform, too, seems to have come undone because it presents at least a perceived threat to take from us some of our liberty. There are growing concerns on the part of citizens that whatever improvements might result would be outweighed by a loss of personal control over one's health. The theme sounded by congressional Republicans — namely, that the Clinton proposal would have created a massive bureaucracy that would make basic health-care decisions for us — struck a chord.

Thus, whether or not one agrees with those who oppose the crime bill and health care reform, it is hard to deny that the factors that derailed both are precisely the type of concerns that the founders meant to block an energetic executive. Of course, there are spheres in which the executive branch is given relative freedom to act, principally foreign and military affairs, and there are times when domestic crises justify giving energetic government the upper hand, such as the Great Depression. But absent such exigencies, our system is skewed to make unusually energetic domestic government very difficult to achieve, lest personal

liberties suffer.

The problem of the modern Democratic Party, the present administration included, is that its principal selling point, generously viewed, is energetic government. Indeed, Bill Clinton is a particularly sterling example of the man with a plan, the "policy wonk" who has studied every problem of public policy in detail and who purports to have a solution. The last Democrat to win the presidency, Jimmy Carter, also fit that mold. Such a candidate may be attractive to the national electorate as a challenger to an unenergetic leader, and that is largely why Clinton defeated President Bush. Candidates, of course, are not required prior to election to demonstrate that they could actually implement the proposals they set forth.

It is only after the election that the difficulties of implementing an energetic domestic agenda from the White House become manifest. Each measure of proposed legislation encounters in concrete terms the results of the founders' experiment in checks and balances. Usually, as now, the obstacle in Congress, with its 535 members among whom almost any interest group can find a friend. The present situation demonstrates that a president from the same political party as the majorities in Congress is no

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solution to gridlock. Or, as in the case of the early New Deal legislation, the judiciary may be the roadblock. Frequently, the impingement of the legislation on the everyday lives of at least some people is the critical factor blocking passage.

There is, then, an incompatibility of the Democrats' approach with the basic framework of our government, and that incompatibility is the reason that even Democrats elected to the presidency once have trouble getting reelected. Because President Clinton is himself responsible for lifting the citizen's expectations, it is he who ultimately suffers from the altogether predictable failure of at least portions

of his domestic program. The modern exception to this rule was Harry Truman, who managed to shift blame for his lack of success to the "do nothing" Congress (barely and unexpectedly) in the election in 1948.

A logical end point of all this is that the electorate has the potential to skip like an old record from leader who promises energy to another who points up the failure of the first to accomplish his or her goals and then on to yet another who promises more energy. The problem may be avoided by emphasizing foreign and military affairs, a traditional tactic of Republican candidates with a seemingly energetic domestic agenda. There is, however, an approach that can steady the middle of domestic politics as well because it is more in harmony with the framers' mindset.

There is a form of energetic domestic government unlike any which characterizes Mr. Clinton and his fellow Democrats, one that does not appear to threaten encroachment upon the liberties of citizens and therefore that does not suffer from the same systemic ills. Concerning the separation of powers, James Madison wrote that "[i]n framing a government which is to be administered by over men, the great difficulty lies in this: You must first enable the government to control itself." An energetic policy aimed not at controlling the governed but rather at controlling the government itself, the perfectly attuned to the form of government the framers created.

The prime example of this approach was Ronald Reagan. Whether or not one believes he succeeded or agrees with the means employed, there can be no doubt that President Reagan's primary domestic message was that the energy of the federal government in the lives of the citizens must be reduced. And Mr. Reagan succeeded in the picture of energy, at least until his age caught up with him. Mr. Reagan delivered his message directly to the people, and he was the only president since Eisenhower to serve two full terms.

The implications for 1996 beyond are clear. Bill Clinton is in trouble, unless he can pull a rabbit out of a hat. The Republicans have a golden opportunity to recapture the White House, but their victory could be pyrrhic if they choose the wrong candidate. If they hope to stay in power for more than a single term, they must nominate a candidate who combines the usual Republican strengths in foreign and military affairs with a domestic agenda animated by the spirit of a controlling government.