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"CONGRESS, THE FIRST BRANCH OF GOVERNMENT"

BACK IN 1972, AFTER THE UNITED STATES HAD MINED
HAIPHONG HARBOR AND BOMBED HANOI, A JOKE CIRCULATED IN
THE SENATE OF THE UNITED STATES THAT WENT SOMETHING
LIKE THIS:

ONE SENATOR ASKING ANOTHER: "WHY WERE
THE RUSSIANS SO SLOW TO REACT TO THE
MINING AND BOMBING?"

THE OTHER SENATOR ANSWERING: "BECAUSE
THEY ARE RULED BY A COMMITTEE AND WE BY
ONE MAN."

THE TALE, OF COURSE, MAKES A POINT. PRESIDENTS OF THE UNITED STATES AT LEAST AS FAR BACK AS LINCOLN HAVE ACTED FIRST AND CONSULTED WITH CONGRESS LATER -- ESPECIALLY IN TIME OF WAR AND FOREIGN CRISIS.

BUT THE TALE, AS TOLD BY TWO SENATORS, MISSES THE ESSENTIAL POINT BECAUSE IT IMPLIES THAT SOMEHOW CONGRESS HAS NO POWER OVER IMPORTANT DECISIONS DUE TO THE VICES OF POWER-USURPING MEN IN THE WHITE HOUSE.'

THIS IS STRANGE TALK FROM MEN AND WOMEN WHO OFTEN REFER TO THEIR BRANCH OF THE GOVERNMENT AS "THE MOST POWERFUL LEGISLATURE IN THE WORLD."

THE FOUNDING FATHERS MADE CONGRESS THE FIRST BRANCH OF GOVERNMENT WHEN THEY DEVOTED ARTICLE I OF THE CONSTITUTION TO IT, AND DECLARED THAT "ALL LEGISLATIVE POWERS HEREIN GRANTED SHALL BE VESTED IN CONGRESS."

THE POWERS SPELLED OUT AND IMPLIED IN THAT SECTION OF OUR FUNDAMENTAL LAW ARE ENORMOUS.

FIRST OF ALL, THERE IS THE POWER TO LEGISLATE --
TO PASS THE LAWS THAT GOVERN OUR LIVES. (THE CONSTITUTION
ALLOWS THE PRESIDENT TO SHARE IN THE LEGISLATIVE PROCESS
BY GRANTING HIM THE VETO POWER.) INCLUDED IN ITS
LEGISLATIVE PREROGATIVES ARE THE POWER TO TAX AND
THE POWER TO SPEND.

SECTION 8 OF ARTICLE 1 FURTHER INVESTS IN CONGRESS
THE POWER "TO PAY THE DEBTS AND PROVIDE FOR THE COMMON
DEFENSE AND GENERAL WELFARE OF THE UNITED STATES."

THERE ARE OTHER POWERS: THE POWER TO REGULATE
COMMERCE WITH FOREIGN NATIONS AND AMONG THE STATES;
TO BORROW AND COIN MONEY; TO SET UP COURTS INFERIOR TO
THE SUPREME COURT; TO RAISE AND SUPPORT ARMIES; TO
PROVIDE AND MAINTAIN A NAVY -- AMONG OTHERS.

FINALLY, THERE IS THE SWEEPING LANGUAGE OF THE
LAST PARAGRAPH OF SECTION 8. CONGRESS SHALL HAVE POWER
"TO MAKE ALL LAWS WHICH SHALL BE NECESSARY AND PROPER
FOR CARRYING INTO EXECUTION THE FOREGOING POWERS, AND
ALL OTHER POWERS VESTED BY THIS CONSTITUTION IN THE

GOVERNMENT OF THE UNITED STATES."

AND I HAVE NOT MENTIONED THE NON-LEGISLATIVE FUNCTIONS OF CONGRESS. CONSIDER THESE: 1) IT PROPOSES AMENDMENTS TO THE CONSTITUTION (THE PRESIDENT IS NOT INVOLVED); 2) IT MAY DECLARE WAR; 3) IT CAN IMPEACH AND TRY THE PRESIDENT OR OTHER CIVIL OFFICERS, INCLUDING JUDGES; 4) IT MAY RULE ON PRESIDENTIAL DISABILITY (UNDER THE 25TH AMENDMENT); 5) IT HAS THE POWER TO DECIDE WHETHER A PROSPECTIVE MEMBER HAS BEEN PROPERLY ELECTED OR SHOULD BE SEATED.

AND ON AND ON

THE HOUSE MAY CHOOSE THE PRESIDENT IN THE EVENT OF A DEADLOCK IN THE ELECTORAL COLLEGE.

THE SENATE APPROVES OR REJECTS TREATIES AND PRESIDENTIAL APPOINTMENTS.

IN ADDITION, CONGRESS EXERCISES OVERSIGHT POWERS OVER THE EXECUTIVE BRANCH AND THE REGULATORY AGENCIES.

IN VIEW OF THE MASS OF POWER THE CONSTITUTION PLACES IN THE NATIONAL LEGISLATURE, WHY IS IT THE CONGRESS TODAY THAT IS SOMETIMES REFERRED TO AS THE "BROKEN BRANCH" OF GOVERNMENT?

THE ANSWER IS -- IN LARGE PART -- THAT CONGRESS HAS (THROUGH ITS OWN ACTIONS) TRANSFERRED AWESOME MAGNITUDES OF POWER TO THE EXECUTIVE. CONGRESS, IN OTHER WORDS, HAS BEEN DONE IN BY ITS OWN HAND.

THE END OF AMERICAN PARTICIPATION IN THE VIETNAM WAR, THE EXTENSIVE USE OF IMPOUNDMENT BY THE INCUMBENT PRESIDENT, THE AGGRESSIVE USE OF THE VETO POWER AND THE BROAD CLAIMS OF EXECUTIVE PRIVILEGE, -- ALL HAVE WORKED TO AROUSE MEMBERS OF CONGRESS TO REDISCOVER POWERS THE CONSTITUTION GAVE THEM LONG AGO. THIS IS GOOD. THIS IS A HEALTHY SIGN FOR OUR DEMOCRACY, ESPECIALLY IN AN ENVIRONMENT OF DEPLETED PRESIDENTIAL LEADERSHIP AND ERODED PUBLIC CONFIDENCE.

BUT CONGRESS, IN ASSERTING ITS POWERS, MUST EXERCISE SELF-DISCIPLINE. IT MUST ADDRESS REALISTICALLY THE URGENT PROBLEMS AT HAND -- THOSE EFFECTING AND CONCERNING MOST DIRECTLY OUR PEOPLE.

TO DELAY OR DUCK THE DIFFICULT DECISIONS THE NATION'S ECONOMIC, POLITICAL AND INTERNATIONAL SITUATIONS REQUIRE AT THIS TIME COULD BE FATAL TO THE CONGRESS AND FURTHER ERODE PUBLIC CONFIDENCE IN GOVERNMENTAL PROCESSES.

NONE IS MORE IMPORTANT THAN THE QUESTION OF POSSIBLE IMPEACHMENT. CONSIDERATION MUST BE RESPONSIVE, OBJECTIVE AND SWIFT; THE PUBLIC WILL NOT TOLERATE ANY UNREASONABLE DELAY.

FOR IMPEACHMENT IS ONLY THE BEGINNING OF THE MANY CHALLENGES FACING THIS CONGRESS -- IF THE PEOPLE ARE SAYING ANYTHING THESE DAYS, THEY ARE SAYING: DO NOT FORGET THE PRACTICAL PROBLEMS OF OUR LIVES OR THE NEEDS OF OUR NATION.

THAT MEANS THIS CONGRESS WILL BE JUDGED BY ITS WILLINGNESS TO HSARE THE RESPONSIBILITY FOR THOSE HARD POLICY CHOICES FACING THE NATION -- THE ALLOCATION OF SCARCE RESOURCES OF ENERGY, MATERIALS AND REVENUES; THE MANAGEMENT OF THE COUNTERVAILING FORCES OF INFLATION AND RECESSION; THE BALANCING OF DOMESTIC NEEDS AND INTERNATIONAL OBLIGATIONS.

LET ME DIGRESS FOR A MOMENT ON ONE OF THESE PROBLEMS. CONGRESS, IN MY VIEW, WAS SLOW TO PERCEIVE AND ACT ON THE ENERGY CRISIS. I CAN SAY, IN ALL MODESTY, THAT IT IS A PROBLEM WE ADDRESSED OURSELVES TO SOME TIME AGO IN THE NORTH CAROLINA DEPARTMENT OF JUSTICE.

LAST SUMMER I TESTIFIED BEFORE THE UNITED STATES SENATE SUBCOMMITTEE ON ANTITRUST AND MONOPOLY.

AT THAT TIME, MY DEPUTY JEAN BENOY AND I PRESENTED FACTS AS TO THE IMPACT OF THE ENERGY SHORTAGE AT THAT TIME ON THE PEOPLE OF NORTH CAROLINA, THE BUSINESS COMMUNITY AND GOVERNMENT ITSELF.

FURTHER, MY OFFICE WAS ALREADY CONDUCTING -- BACK IN JUNE -- AN INVESTIGATION INTO THE MARKETING OF GASOLINE, AS WELL AS THE IMPACT OF MERGER ACTIVITY.

ON THE ENERGY PROBLEM AND OTHERS -- FROM BUDGETARY AND TAX REFORMS TO WAGE-PRICE CONTROLS TO THE TRADE AND DEFENSE BILLS -- CONGRESS IN THE 1973 SESSION SHOWED A TENDENCY TO WAVER, TO PROCRASTINATE AND, OFTEN, TO PASS THE BUCK.

SO CONGRESS BEGINS THIS YEAR WITH THE PUBLIC ALMOST AS SKEPTICAL OF ITS RELIABILITY AS IT IS OF THE PRESIDENT'S. IT MUST DEMONSTRATE IMMEDIATELY, THEN, ITS SELF DISCIPLINE AND WILLINGNESS TO TACKLE THE MAJOR PROBLEMS FACING IT.

HOW CAN CONGRESS REDEEM ITS OWN REPUTATION AND SERVE THE PUBLIC INTEREST?

HERE ARE SOME SUGGESTIONS ON HOW CONGRESS CAN PUT ITS OWN HOUSE IN ORDER.

1. CONGRESS CAN ATTEMPT TO TAKE BACK WHAT IT HAS GIVEN AWAY -- TO PUT IT SIMPLY.

LET ME ILLUSTRATE BY DRAWING YOUR ATTENTION TO THE CATALOG OF EMERGENCY POWERS STATUTES.

WITHOUT PROVIDING FOR OVERSIGHT OR TERMINATION, CONGRESS HAS GRANTED ENORMOUS EMERGENCY POWERS TO THE EXECUTIVE BRANCH.

ACCORDING TO A SPECIAL COMMITTEE OF THE UNITED STATES SENATE, THERE HAS EVOLVED OVER THE PAST FOUR DECADES A PATTERN OF LAWMAKING BY WHICH CONGRESS IN ALL BUT NAME HAS TRANSFERRED THE ESSENCE OF ITS CONSTITUTIONAL RESPONSIBILITY TO THE PRESIDENCY AND THE EXECUTIVE BUREAUCRACY.

FOR EXAMPLE, IF HE PROCLAIMS A NATIONAL EMERGENCY, A PRESIDENT MAY LEGALLY SEIZE PROPERTY, ORGANIZE AND CONTROL THE MEANS OF PRODUCTION, CALL UP RESERVE FORCES AMOUNTING TO 2 1/2 MILLION MEN, INSTITUTE MARTIAL LAW, SEIZE AND CONTROL ALL MEANS OF TRANSPORTATION, AND RESTRICT TRAVEL.

AND THIS, ALL CAN BE DONE WITHOUT THE HELP OF CONGRESS.

THE PATTERN IS CONSISTENT. CONGRESS, THROUGH ITS OWN ACTIONS, HAS TRANSFERRED AWESOME MAGNITUDES OF POWER TO THE EXECUTIVE.

SINCE 1933, CONGRESS HAS PASSED OR RECODIFIED OVER 470 STATUTES DELEGATING TO THE PRESIDENT POWERS THAT

HAD BEEN THE PREROGATIVE AND RESPONSIBILITY OF THE LEGISLATIVE BODY SINCE THE BEGINNING OF THE REPUBLIC.

CONGRESS WOULD DO WELL TO RECLAIM WHAT IT HAS LET SLIP THROUGH ITS FINGERS.

2. THE TIME HAS COME FOR CONGRESS TO ADOPT A NEW SYSTEM TO DEAL MORE EFFECTIVELY WITH A BUDGET THAT WILL SURPASS \$300 BILLION IN FISCAL YEAR 1975.

THERE IS A CRYING NEED TO TIE TOGETHER VOTES ON SPENDING WITH AVAILABLE TAX-PRODUCED REVENUE, AND TO EXERCISE GREATER OVERSIGHT OVER SPENDING PRIORITIES. LONG-TERM COSTS OUGHT TO BE GIVEN MORE CONSIDERATION WHEN PROGRAMS ARE BEGUN.

MANY TIMES THE ARGUMENT IS HEARD THAT "THIS PROGRAM WILL NOT COST MUCH." IT MAY NOT THE FIRST YEAR, BUT IT PROBABLY WILL FIVE YEARS LATER.

AS MANY OF YOU KNOW, SEN. ERVIN HAS INTRODUCED THE BUDGET REFORM ACT WHICH IS NOW BEFORE THE SENATE. THE HOUSE ALREADY HAS PASSED ITS VERSION OF BUDGET REFORM LEGISLATION.

BRIEFLY, THIS LEGISLATION WILL ALLOW CONGRESS TO ESTABLISH NEAR THE BEGINNING OF EACH SESSION THE APPROPRIATE LEVEL OF REVENUES, SURPLUS OR DEFICIT, AND THE APPROPRIATE LEVEL OF SPENDING IN MAJOR CATEGORIES SUCH AS DEFENSE, EDUCATION, ENVIRONMENT.

THE BILL CALLS FOR SEPARATE BUDGET COMMITTEES IN THE HOUSE AND SENATE -- MANY COMMITTEES IN BOTH BODIES NOW DEAL WITH TAXES AND LEVELS OF APPROPRIATIONS -- BACKED UP BY AN EXPERT CONGRESSIONAL COUNTERPART OF THE INCREASINGLY POWERFUL OFFICE OF MANAGEMENT AND BUDGET (OMB) IN THE PRESIDENT'S EXECUTIVE OFFICE.

THIS LEADS ME TO ANOTHER NECESSARY REFORM.

3. CONGRESS HAS NO STANDING COMMITTEE REGULARLY OVERSEEING THE PRESIDENCY AS A UNIT (AS DISTINGUISHED FROM THE CABINET DEPARTMENTS AND AGENCIES). THE PERSONNEL, BUDGET AND RESPONSIBILITIES OF THE EXECUTIVE OFFICE OF THE PRESIDENT (E.O.P.) HAVE GROWN IN LEAPS AND BOUNDS. SINCE 1970, NINE NEW OFFICES WITHIN THE E.O.P. HAVE BEEN CREATED.

BOTH HOUSES OF CONGRESS SHOULD HAVE COMMITTEES TO RIDE HERD ON A GROUP OF SPECIAL OFFICES SURROUNDING THE OVAL OFFICE.

TO SUM UP, IF THE MEMBERS OF CONGRESS WANT TO EXERCISE REAL POWER -- INSTEAD OF DELUDING THEMSELVES WITH THE ILLUSION OF POWER - THE TIME HAS COME TO USE WHAT THE CONSTITUTION GAVE THEM.

WITH GREAT POWER COMES GREAT RESPONSIBILITY. IF CONGRESS USES ITS POWERS WITH RESTRAINT, IT WILL SERVE AS AN IMPORTANT CHECK AND BALANCE IN OUR CONSTITUTIONAL SYSTEM.

I NEED NOT TELL YOU THAT WITHOUT OPERATIVE CHECKS AND BALANCES AMONG OUR NATIONAL INSTITUTIONS, WE CAN NOT CONTINUE TO HAVE A GOVERNMENT OF LAWS.