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Book Review: Resignation in Protest, by Edward Weisband & Thomas M. Franck

Book Reviews

RESIGNATION IN PROTEST, EDWARD WEISBAND & THOMAS M. FRANCK,
New York: Grossman/Viking, 1975. Pp. 230. (\$11.50).

A. INTRODUCTION

The domestic turmoil that the United States has experienced as a result of the Vietnam War and the Watergate scandal has led an increasing number of observers to argue that the American polity is experiencing the consequences of basic institutional defects, which require urgent attention. Much of the recent political literature has been devoted to the examination of the crises of the last decade, an identification of their sources, and the development of political and social reforms to correct the apparent deficiencies. Significantly, these analyses have had practical effects in two major instances: having persuaded Congress to adopt war powers legislation to prevent the recurrence of 'unauthorized' wars, and a campaign reform act to eliminate the potential for abuses in campaign financing.

Resignation in Protest falls squarely within this class of investigative political literature with a practical purpose. The authors, Edward Weisband and Thomas M. Franck, share with several other observers the belief that America's recent difficulties point to a dangerous expansion of Presidential power beyond the institutions designed to restrain it and that radical steps have become necessary to bring the Presidency under control. Their proposal, however, is somewhat novel. Instead of seeking to remove specific powers from the executive branch, to create new watchdog institutions, or to bolster the power of Congress, they propose an internal check on the Presidency, designed to turn the executive branch from "a network of personal relations between a President and his staff" to "a part of the public process in which the central role is assigned to the people."¹

As the title of their book suggests, the key to the Weisband and Franck solution lies in encouraging executive branch officials who oppose administration policies to act upon their consciences by resigning and to stimulate public debate by stating openly the sources of their disagreement. Yet, according to the authors, the prevailing American ethic of "team play" presently exacts so great a price from a protest resigner that public officials are seldom able or willing to exercise the "ethical autonomy" necessary to take such action. Through a survey of the case histories of twentieth century American resigners, they have found that protesters invariably suffer intense personal anxiety in making the decision to leave in protest, and often sacrifice their

¹ E. Weisband & T. M. Franck, *Resignation in Protest* (New York: Grossman/Viking, 1975) at 85.

professional prospects by doing so. Statistically, only 3 per cent of those who resigned in protest in this century ever regained a position equivalent or higher to the one they left, while only 11.8 per cent were readmitted to government at all. By contrast, 20 per cent of those who resigned quietly regained equivalent status and 35.8 per cent rejoined government in some capacity. Under such circumstances, the authors conclude, it is not surprising that only 8.7 per cent of all U.S. officials who resigned in this century did so in protest, and that such resignations have become increasingly rare.

Significantly, Weisband and Franck argue that more frequent protest resignations not only would restrain Presidential power, but would offer specific advantages to the system, that contrast sharply with the existing disadvantages to individual officials. By elevating the level of democratic discourse, enlivening the political process, and stimulating public consciousness, each protest resignation benefits the system, "quite regardless of whether the protest resigner and his followers actually do succeed in changing a particular policy, or whether their policy is, indeed, better for the country."² Moreover, the authors note that each resignation has the potential to expose unconscionable governmental policies, draw public attention to hidden or insufficiently debated issues, supply the public with essential 'inside' information, and obtain reversal of objectionable policies through legitimate political action. While some protest resignations achieve these results to a greater extent than others, Weisband and Franck believe that the potential alone makes any protest resignation a significant moral achievement, placing the dissenting official in an ethical position well above those who resign quietly or who simply 'go along'. In their view, only officials who stay on to subvert objectionable policies represent a viable alternative to a protest resignation when important issues are at stake.

The authors support their overall thesis by contrasting the American experience with British practice, where, they argue, protest resignations are encouraged even at the risk of jeopardizing governmental policy or revealing classified information. In Britain, 53.8 per cent of all twentieth century resigners went public. Significantly, 45.2 per cent of these subsequently returned to equivalent or higher positions, while only 41.7 per cent of the officials who resigned quietly did so. Weisband and Franck attribute Britain's advantage to the character of its Cabinet, which encourages "ethical autonomy" through the de-centralization of responsibilities, and ensures that executive officials have an independent political base in Parliament from which to operate if they decide to resign. As a result, the British system makes resignation a more palatable alternative for public officials, and encourages them to air their grievances in their dual roles as government ministers and parliamentary members.

The specific reforms presented in *Resignation in Protest* take their cue from these observations on British practice. Weisband and Franck propose a constitutional amendment requiring all Cabinet posts to be filled by Members of Congress (excluding committee chairmen) who would retain their con-

² *Id.* at 22.

gressional seats while serving in the administration. This measure, they argue, would bring into the Cabinet officials with diverse political backgrounds (in place of the largely corporate-oriented, upper-class 'yeasayers' who now serve), and would ensure that these officials have both an interest in resigning when they oppose administration policy and a platform from which to publicize their disagreement. Finally, to foster the acceptance of "ethical autonomy" among the American citizenry, the authors also recommend a reorientation of the education system to emphasize "the degree of genuine autonomy with which decisions are made and whether they are made with reference to generalized principles of right conduct which are genuinely those of the individual, *i.e.*, which he has freely and deliberately chosen and made his own."³

B. "ETHICAL AUTONOMY" AND THE RESIGNATION EXPERIENCE

The case that *Resignation in Protest* presents for resignation depends heavily upon the view that the political process benefits from "ethical autonomy" regardless of the specific issues involved. In the authors' study of the case histories of protest resigners, this preference for "autonomous values" over opinions of any specific content leads them to praise both 'liberal' and 'conservative' protest resigners, those whose judgment proved correct, and those who were short-sighted. Quality of vision and personal motives appear irrelevant to their analysis. At the same time, the authors deny that "ethical autonomy" implies that an "individual's ethical standards *in any particular instance* are 'better' or 'higher' than those of society or his team."⁴ Yet, overall, they seem to regard conduct based on that principle as more likely to represent conscious deliberation and mature judgment than that based on the ethic of "team play." Consequently, *Resignation in Protest* repeatedly offers stern judgments on the motives of those who resign quietly and those who stay on. Some of these are described simply as psychologically weak, while others are said to be motivated by "concern about the loss of a painstakingly built and carefully projected image of eligibility for high office."⁵ Moreover, the authors' statistical survey implies that those who resign quietly avoid protest chiefly out of a selfish concern for their professional standing.

Ethical autonomy thus lays claim to certain moral authority because the officials acting on "autonomous values" are capable of transcending selfish and self-satisfying motives, such as a desire for psychological peace or occupational security. It apparently frees an official to consider problems in terms of broad, consistent principles which he has chosen self-consciously. But, importantly, individual action in the face of group pressures — the trademark of a protest resignation — is no guarantee that an official has decided an issue on the basis of objective principles or mature reflection. Indeed, the authors too easily discount the disruptive influence that overweening ambition or an inability to accede to superiors can have upon the reasoning of an official in

³ *Id.* at 188.

⁴ *Id.* at 4. (emphasis added)

⁵ *Id.* at 58.

such situations. For example, they praise Harold Ickes for his "courage" in relinquishing his post in Truman's Cabinet on moral grounds, and conclude that, because he was too old at the time of his resignation to run for President, there was "not the slightest chance of Ickes' motives being self-interested."⁶ But they dismiss without sufficient explanation President Truman's account of the matter: that Ickes "got to thinking he was more important than he was," that he was notorious for "resigning" from the Roosevelt Cabinet whenever he failed to get his way, and that, despite his age, "he wanted to be President in the worst way."⁷ While Truman's view of the matter may have been self-serving, at the very least it raises doubts about the status of Ickes' protest resignation as an example of disinterestedness and detachment in perspective or careful deliberation in action.

Notably, in cases of this sort, protest may actually be a sign of psychological weakness rather than strength of character. Whether he resigns in protest or quietly, every departing official has some stake in personal vindication. Protest resigners are often those who exhibit a certain self-importance but who ultimately lack sufficient confidence in their own views. They thus require the approval of public opinion to support the moral universe implied in their resignations. Such tendencies raise doubts about the relative importance of the specific policies at issue and the desire for public pre-eminence among the motives for a protester's actions. It is no accident that the ranks of protest resignations are filled with the names of Presidential aspirants.

These characteristics, in turn, make for a certain rigidity within the understanding of the protester. Men commonly defend their most superficial opinions with the greatest vehemence and abandon views that derive their support from numbers only with severe public embarrassment. By contrast, a quiet resigner is often one who is genuinely open-minded, willing to recognize the other point of view even if he cannot agree with it, and interested in the opportunity for continued reflection once he has left his post. These attributes can be of great importance whenever taking an alternative opinion seriously requires some deference to its author and his position. Thus, Dean Acheson, whose 1933 departure from the Roosevelt administration over national economic policy the authors cite as a model of the "ritualistic" quiet resignation, recognized that his was not the only possible viewpoint, and that his disagreement was with the President of the United States, the man the American people elected to exercise his discretion over such matters. Although personally unwilling to implement Roosevelt's policies, Acheson did not believe he had the right to cripple them by subjecting them to a sensational public debate. Instead, his resignation made clear to Roosevelt the sharpness of his disagreement, while leaving the President to answer for his policies before Congress and at the ballot box.

Conduct of this sort represents the very moral and intellectual sophistication, mirroring the complexity of events, that Weisband and Franck seem to favor in their praise of ethical autonomy. Given the importance of broad-

⁶ *Id.* at 21.

⁷ Merle Miller, *Plain Speaking: An Oral Biography of Harry S. Truman* (New York: Berkeley Publishing Corp., 1970) at 226-27.

minded officials in making policy for a country of America's size and wealth, the frequent appearance of such qualities in quiet resigners may explain some of their success in regaining government positions. Yet, ultimately, the virtues of a few quiet resigners do not prove silence superior to protest in every case, any more than a claim to ethical autonomy can elevate the latter over the former. Rather, it demonstrates that resignations cannot be evaluated on the basis of moral abstractions, but must be viewed in terms of the particular situation, the official's motives, and the quality of his judgment and opinions. In short, protest resigners are too often simply self-interested, and quiet resigners too often self-conscious and public-spirited for the authors to justify a simple preference for one over the other.

The so-called Saturday Night Massacre during America's Watergate crisis offers a further insight into the resignation problem. Weisband and Franck praise Elliot Richardson and William French Smith for their "rare, quite solid achievement" in resigning at this critical moment in the scandal in part because "[t]hey had asserted their ethical autonomy on a question of principle."⁸ The situation was actually far more complex. Richardson's stand, for example, occurred not on broad ethical and constitutional issues, as the authors suggest, but on narrow personal grounds, *viz.* his promise to the Senate Judiciary Committee not to fire Cox without cause. Furthermore, during the week prior to the firing, Richardson participated in the vain attempt to gain Cox's acceptance of various compromises on the White House tapes which would have greatly limited the special prosecutor's power to seek further evidentiary material. Consequently, the depth of Richardson's disagreement with the President on the substantive issue of curtailing the Watergate prosecutions is open to question. But, most importantly, these resignations cannot be evaluated seriously without considering the role of Richardson and French Smith in forcing President Nixon to yield the White House tapes, causing the appointment of a new special prosecutor, and providing the initial impetus for the House Judiciary Committee's impeachment investigation. Weisband and Franck seem to regard these events and the subsequent resignation of President Nixon as good for the country, an assumption which lends great force to the example. At the very least, however, it seems fair to say that the authors would be unwilling to praise Richardson and French Smith so unequivocally if they viewed the denouement of Watergate as a great national disaster. Ultimately, they cannot separate ethical autonomy from the results that it had. That is, ethical autonomy here does not represent a victory for the individuals and the system, independent of the issues involved. Rather, the resignations represent a praiseworthy moral achievement only if one believes that the particular consequences were good for the country as a whole. To put it somewhat differently, that a decision has been made upon broad principles chosen independently and self-consciously is an insufficient guarantee that it will not result in national disaster.

The example of the Saturday Night Massacre also demonstrates the inadequacy of focussing solely on the difficult moral dilemmas faced by protest resigners. In discussing the episode, the authors' preoccupation with protesters

⁸ *Supra*, note 1 at 17.

and ethical autonomy seems to blind them to the achievement of another official who chose *not* to resign in the midst of the crisis. Solicitor General Robert Bork, who eventually fired Cox, is frequently regarded as the villain of the affair. Yet Bork, too, opposed the firing of Cox, and considered resigning in the face of the White House's order. But as he later explained his actual conduct to a congressional subcommittee:

When the order to discharge Mr. Cox came to me, I reflected that, and I had very little time for reflection, I reflected that if I refused and resigned, the Department of Justice, I think, would have been in chaos and would have been crippled. I think there would have been, after that pattern had been set by a man who had no special commitments to the Senate. I doubt that any of the presidential appointees or senior officers would have stayed. It would have been easy to resign at that point, personally. Mr. Richardson and Mr. Ruckelshaus both said that if I discharged Mr. Cox, they thought that I should stay on to give the Department some continuity. It was clear that the decision at the White House to discharge him was final. If I did not do it, the only result would be to badly cripple, badly hurt the Department of Justice. I did it for that reason.⁹

In short, Bork placed the future of the Justice Department and the integrity of the governmental process above the gratification of personal preferences. Painful and unpopular, his decision required, in the authors' own terms, at least as much courage as the courses chosen by the two 'heroes' of the affair. Moreover, since it was Bork who kept the Watergate Special Prosecution Force running at this juncture, and who appointed Leon Jaworski to serve as special prosecutor under workable guidelines, his loyalty to the team proved to be not a mere "social grace", as the authors suggest, but an important part of the successful prosecution of the Watergate case, and, hence, a vital contribution to the continued functioning of the American democracy. It is also significant that, in the end, Bork may have suffered a greater personal loss as a result of his action than either Richardson or Ruckelshaus. For, without his participation in the Saturday Night Massacre, Bork may well have been the leading candidate to replace Justice Douglas on the U.S. Supreme Court. His failure to get the appointment simply demonstrates that difficult moral decisions, whether they result in loyalty to the team or individual action, almost always involve personal sacrifice.

Considerations of this sort — the tendency of protesters and quiet resigners alike to have self-interested motives, the ability of both to act with moral and intellectual sophistication, the moral achievement often represented by the decision not to resign, and the continuing relevance of the political context in evaluating the decisions of all public officials — raise doubts about the value of protest resignations sufficient to invalidate any attempt to draw specific conclusions from a statistical survey. Figures cannot adequately represent reality when the variety of motives is so great, the relevant factors are so complex, and the effects are so diverse. Did the quiet resigner simply tire of Washington or did he leave for high moral reasons? Did the protester lose his chance to re-enter government because of his resignation or because of a change of administration or because he became so disillusioned with govern-

⁹ Hearings Before the Subcommittee on Criminal Justice of the Committee on the Judiciary, House of Representatives, 93rd Congress, First Session (1973), "Special Prosecutor and Watergate Grand Jury Legislation" at 256.

ment that he did not want a new post? The authors' statistics provide no answers to these and the countless other questions that are necessary for a clear picture of resignations in America.

A further example illustrates the point. Weisband and Franck define a protest resigner as one who offers public criticism that is "reasonably loud, clear, and, above all, attributable,"¹⁰ during a period from six months before his resignation to two years after. Notably, looking beyond the twentieth century, these requirements would place Thomas Jefferson's 1793 resignation from Washington's Cabinet among those which represent "the buying of a separate peace at the expense of the entire process of republican government."¹¹ Yet Jefferson's claim to high morals and a mature intelligence in this instance is indisputable. Because of a concern over how a more public role might damage the fledgling government, he did not allow himself to criticize President Washington and his policies openly. During the summer of 1793, however, Jefferson had encouraged James Madison to respond publicly in the *Helvidius* papers to Alexander Hamilton's *Pacificus* defence of Washington's neutrality policy. His efforts with Madison behind the scenes helped to found America's first opposition political party. Moreover, although he returned to Monticello for two quiet years as a private citizen after his resignation, Jefferson re-entered politics to head that party in the 1796 election. He subsequently led it to success at the ballot box, bringing the eventual defeat of the policies he opposed. Thus, although Jefferson was a quiet resigner, his achievement (and the achievement of twentieth century officials like him), cannot be described as a systemic reward for his silence, as the authors' survey would have it, and would compare favorably with the actions of any officials in the protest column.

C. DOES THE SYSTEM BENEFIT?

The case histories in *Resignation in Protest* fail to demonstrate that protest resigners are more likely to reflect the moral and intellectual sophistication that Weisband and Franck favour or that "ethical autonomy" can be considered apart from the specific issues involved. For these reasons, the authors' assertion that a protest resignation always benefits the political process in the long run, outweighing any detrimental effects it may have on specific policies or the day-to-day workings of government, takes on special importance. The example of Jefferson raises some doubts about this thesis as well, but protest resignations do seem to have one advantage which operates in every instance: more informed discussion of policy in the public realm. The other benefits that Weisband and Franck cite either depend on the specific situation or draw their force from the information factor.

The relationship of protest resignations to informed public debate is somewhat questionable, however. Weisband and Franck point to the recent rise in the number of government leaks to the media as evidence that much essential information is not now available to the public. They argue that this

¹⁰ *Supra*, note 1 at 197.

¹¹ *Id.* at 12.

practice has thrived in part because the systemic bias toward silent resignation prevents information from becoming public in more legitimate ways. Presumably, the authors prefer protest resignation to leaks as a source of information because the latter are usually incomplete or self-serving, and are occasionally simply false. But would the information provided by a resigning official necessarily be more reliable? Having extended himself in public, the official who has resigned is seeking to justify as well as to explain. Not only may his position warp his understanding, but his desire for vindication may well lead to a selective or slanted presentation of information. Few people knew, for example, that Elliot Richardson joined the White House in seeking to restrain Cox during the weeks prior to the Saturday Night Massacre or that he encouraged Bork to execute the President's order.

At the same time, Weisband and Franck ignore the ways in which a protest resignation can actually hinder intelligent debate. A biased official offering an inflammatory protest against the complicated anti-discrimination policies pursued by an administration would hardly be raising the level of democratic discourse. This problem is often compounded by a President's inability to respond fully in every situation. The most controversial issues are often extremely sensitive. They may involve national security matters or a domestic problem where swift and sudden executive action is the only effective response. Timely Presidential disclosure of the full, factual story might, in these cases, silence a protesting official, but it might also cripple the original policy, in effect giving the protester what he seeks. For this reason, a President is often forced to discredit the defector — as distasteful as that may be — instead of joining him in reasoned debate. Weisband and Franck regard this alternative as a vicious, systemic response against the official who has violated the spirit of "team play", but often such action is a simple manifestation of the harsh realities that dominate political life. In such cases, the information originally available to the public becomes less useful as *ad hominem* arguments begin to crowd the field.

Most importantly, by treating the public information element of protest resignations as an unequivocal advantage, the authors seem to argue that all issues can and should be debated publicly, *i.e.*, that secrecy in the executive branch is seldom, if ever, justified. Yet, since the founding, the secrecy of which the executive is capable has generally been recognized as both necessary to the formulation of Presidential policy, and advantageous to the conduct of national affairs. In modern times, secrecy may have become more pervasive and dangerous, but it is no less important, given both America's role as a world power and the complexity of economic affairs. In the case of policy formation, the Supreme Court in *U.S. v. Nixon* has noted a "public interest" in "candid, objective and even blunt or harsh opinions in presidential decision-making" which require that a President and his advisors "be free to explore alternatives in this process of shaping policies and making decisions . . . in a way many would be unwilling to express except privately."¹² In the execution of policy, the element of surprise can be essential, for example, to prevent speculators from profiting in anticipation of a dollar devaluation or companies

¹² 418 U.S. 683 (1973) at 708.

from raising prices prior to the institution of economic controls. To argue, as Weisband and Franck do, that secrecy has at times led to policy errors, is not to prove that officials should be encouraged to disclose information of this sort whenever they genuinely oppose the views of their superiors.

Since the founders of the United States did acknowledge that executive branch secrecy can have adverse effects, the constitutional framework does give the Senate some responsibility for overseeing the handling of governmental information. The ineffectiveness of that body in recent years has been the result of a wide number of factors. Among these has been the decline in the collective responsibility necessary for the task, in favour of individual action governed by a low threshold for moral outrage or political ambition. The excesses of the McCarthy investigations indicate the dangers of this trend in their most extreme form. Unfortunately, frequent protest resignations may only exacerbate these tendencies, by providing those acting under base partisan motives or self-serving moral imperatives with a ready source of distorted, incomplete information damaging to the executive branch. The result will be even greater reluctance among Presidents and administration officials of both parties to entrust sensitive information to the Senate, and an even greater loss of credibility for an institution already held in low esteem by an alarming percentage of the population. In short, by advocating their new means of controlling executive branch secrecy, Weisband and Franck may actually be helping to undermine the institutional means created by the founders to do so.

The authors' shortsightedness on this issue reflects a more profound misunderstanding of the principles of American government generally, which appears most clearly in their comparison of resignations in Britain and the United States. The authors dismiss the theoretical differences between the British and American forms of government in a few sentences; yet these differences are severe enough to make a comparison virtually meaningless. In Britain, since no separation of governmental powers exists between the executive and legislative departments, no adversary relationship exists between those who make the laws and those who conduct national policy. No governmental department has the institutional 'interest' and the necessary power to oversee and control executive decision-making. Opposition parties are always understaffed and usually have only so much power as the majority is willing to concede. They seldom have access to 'inside' information. They may appeal to the electorate only at infrequent and indefinite intervals, and usually at times chosen by the majority party. A dissident Cabinet official serves as a valuable rallying point for the opposition, precisely because the minority often has no firm institutional means for offering a substantive challenge to governmental policies.

These factors combine to make protest resignations a vital part of government as a means for those out of power to obtain important information, counter majority party dominance of the governmental machinery, and, ultimately, force an election. Indeed, quiet resignations also become more useful and accepted under such circumstances. Thus, the authors' survey shows not only that protesters returned to government more frequently in Britain than in the U.S., but that a larger percentage of quiet resigners in

Britain also regained their former status when compared with their American counterparts. Resigners simply have a more basic political role in parliamentary democracy.

Until recently, the genius of the American system was said to consist in competing institutions that lessen the government's reliance on the action of individuals and provide some recourse to the minority, short of precipitating a crisis. In Britain, individual action and crisis politics are more important precisely because no similar institutions are available. Significantly, the British dependence upon such expedients has led to some glaring failures in governmental policy. Thus, during the appeasement era, the courageous objections of Anthony Eden and a handful of lesser officials merely highlighted the absence of an effective dissent within the government, despite the existence of significant anti-appeasement sentiment within the country. Furthermore, despite its reliance on protest resignations, British practice is not as tolerant of information disclosures or dissent in general as Weisband and Franck suggest. For example, when Winston Churchill's resignation over India policy established him as an important critic of governmental policy generally, the brilliant statesman was vilified by party insiders and consistently portrayed to the public as an eccentric and a war-monger. In the Eden resignation, despite a round condemnation of Chamberlain, the former Foreign Secretary remained silent about the incident that precipitated his resignation, *viz.*, Chamberlain's rebuff of Roosevelt's secret diplomatic initiative. There is, in fact, considerable evidence to suggest that British practice is more tolerant of information disclosures because British tradition uniquely trains public officials to exercise such self-restraint on the most sensitive matters.

D. THE PROBLEMS OF CONSTITUTIONAL REFORM

The value of the constitutional amendment proposed in *Resignation in Protest* becomes somewhat doubtful once the benefits of protest resignations and the differences between party and constitutional government are thus considered. Yet, even if a case for protest resignations remains, the practical difficulties in the Weisband and Franck plan seem insuperable. Is it possible for one person to manage a sprawling Federal agency and simultaneously to serve a congressional constituency? The authors answer that, in Britain, single people do serve in both capacities without excessive difficulty. Yet Britain is a country which, in territory and population, is only a fraction the size of the United States. It has no agencies that match the Department of Health, Education and Welfare, or the Department of Defense, and its parliamentary constituencies are considerably smaller than almost all congressional districts. Called upon to manage both an agency of 100,000 employees and a congressional district of close to 500,000 inhabitants, an American Cabinet official would be forced to neglect one or the other, and, perhaps, ultimately both.

More importantly, here too, differences in the form of government vitiate the comparison. Members of Parliament serve as representatives to the national government based upon their identification with a specific party and specific policies. Their activities centre around the national capital. By contrast, American congressmen spend the bulk of their time providing services

to their constituents. Each congressman stands or falls upon his success in winning government contracts for local businesses, attracting public works projects to his district, and helping individuals gain the benefits they deserve from the Federal bureaucracy. Party identification constantly gives way to these local interests, which accounts for both the broad range of views found on both sides of the congressional aisle, and the frequency with which incumbents are challenged in party primaries in their districts. In the case of the Senate, this emphasis on local interest may be somewhat unfortunate. But the founders seemed to welcome it in the case of the House as a means of ensuring Federal concern for those issues closest to the people.

These considerations raise profound questions about a Cabinet official's ability to make independent judgments on particular issues under the arrangement proposed by Weisband and Franck. Every President would face pressure to appoint a Secretary of Agriculture, for example, who represents a farming district or state. Once in the Cabinet, however, that Secretary may be called upon to restrict grain shipments to the Soviet Union for foreign policy reasons at a time when grain prices are depressed. His larger responsibility might be quite clear to him, but he would be equally aware of the next election (which might come as often as every two years), and the need to explain himself to his constituents. Moreover, since the Secretary would have little time to campaign in his district or to provide other services to the voters, he would be forced to run solely on this issue and other aspects of his record in the Cabinet. Still further, since the proposed amendment requires that he not be a congressional committee chairman, he might well have little seniority, and might come from a marginal or politically-volatile district. Could the Secretary still follow his independent judgment under such pressures?

In parliamentary democracy, close party identification, party control over the nomination process, and infrequent elections which focus on a few key issues insulate an M.P. from many of these pressures. Without adherence to the separation of powers principle, a U.S. department head would be at their mercy. To be sure, under the present system, a U.S. Cabinet official does have a constituency of private interests that he must appease. But this is a concern primarily for the President, who alone must answer for the Secretary's actions. And, since the President runs on his record in all policy areas at once, he is able to manage agricultural policy within a comprehensive context where all competing interests are considered. Only in such a context can sound national policy be developed.

Weisband and Franck also ignore the ways in which their proposal could undermine congressional independence. With a Cabinet of congressmen, the President would have a powerful tool for manipulating individual members of congress. Cabinet officials would undoubtedly trade on their status continually, suggesting that they alone have the full story or are privy to the President's desires. The resources and the image of authority provided by their agencies would also greatly enhance their bargaining power, since they would be able to influence undecided members with the promise of favorable treatment for their districts. Perhaps most importantly, the President would be able to manipulate individual members by a promise of a future place in the Cabinet. Or, he might intimidate a dissident department head by threaten-

ing to fire him in disgrace, action which, if timed properly, might well cost him his congressional seat as well as his Cabinet post. In short, by allowing the President to manipulate some congressmen at will, the proposal would undermine the independence of that institution which provides many of the checks and balances now restraining executive branch power.

During the Federal Convention, the founders rejected proposals similar to that presented in *Resignation in Protest* for precisely these reasons. They believed that a congressionally-based executive council, whether simply advisory or actually sharing power, would seriously compromise the doctrine of the separation of powers, which provided the logic of their plan of government. Although they have themselves paid insufficient attention to the principle in the case of executive-legislative relations, Weisband and Franck are willing to argue that the founders' understanding of the separation of powers contained a fundamental miscalculation. They maintain that, in drafting the Constitution, the founders seriously underestimated the potential for growth in the executive branch, and hence the need for an internal check on Presidential power.

The authors' view of the Presidency draws heavily upon Arthur Schlesinger's recent book, *The Imperial Presidency*. Schlesinger argues that since the founding and especially since World War II, American Presidents have upset the balance of powers within the government by using national security issues and economic crises to encroach on powers originally legislative. As a result, the original checks and balances of the U.S. system no longer adequately restrain Presidential power, thus allowing for significant executive abuses, and the possibility of constitutional crises. As Weisband and Franck put it, "Vietnam and Watergate: the names are synonymous with insufficiently fettered Presidential discretion."¹³

Although persuasive in some respects, Schlesinger's thesis suffers greatly from his acceptance of the conventional view that the founders adopted the separation of powers principle solely as a means of checking governmental power. In fact, the philosophic origins of the principle, together with the founding documents, suggest that the separation of powers was also viewed as a means of compensating for the natural inefficiency of republican government. Among the originators of the separation of powers concept, Locke and Montesquieu in particular were troubled by the indecisiveness and delay inherent in direct popular rule, with its sudden passions, partisan divisions, limited perspective, and shifting priorities. They concluded that modern government could survive only if the republican principle — that every free man rules himself by participating in the law-making process, either directly or through representatives — could be made to accommodate the energy and discretion which only monarchies had previously realized. Framers such as James Wilson, Gouverneur Morris, Alexander Hamilton, and, at times, James Madison, also recognized this problem, and believed that its resolution was essential to the success of the government they were creating. As Hamilton noted in *Federalist* 70:

¹³ *Supra*, note 1 at 190.

There is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles.¹⁴

The great size which America was expected to attain added even greater force to their concern.

The separation of powers principle solved the dilemma by creating a branch of the government which could act independently and efficiently, but which would be bounded by institutions that could ensure safety in a republican sense. Thus, the American Presidency inherited a separate constituency, fixed tenure, and a basic unity on the one hand and limited jurisdiction, periodic election, and the risk of impeachment on the other. In short, in adopting the doctrine, the founders acknowledged the necessity of a unified executive branch of significant potential, even while providing external checks against repeated abuses.

Clearly, these attributes of energy and decisiveness have become more important with the increasing complexities of domestic policy in a country of 215 million and with America's emergence as the foremost power in the international arena. Consequently, while unjustifiable Presidential encroachments on congressional powers may explain some of the growth of the executive branch, far more is attributable to an increasing number of modern problems that demand the energy only a President can muster. In the end, history seems to have vindicated the founders' belief that a unified department of government would be necessary for the success of the Constitution. If they did miscalculate, it was in failing to discern how many problems would require Presidential attention in the twentieth century.

In theory, this explanation of the growth of Presidential power differs only slightly from that suggested by Weisband and Franck, but its practical implications make any proposal for restraining the executive branch from the inside far more problematic. An internal check on the President's power might reduce the potential for abuse, but only at the price of destroying the energy and efficiency that are essential to the regular performance of his duties. The number of abuses may decline, but only after America's ability to pursue its goals has been crippled. The proposal would give each Cabinet official an independent power base from which to bargain within the executive branch, thereby restricting the President's ability to make quick decisions in times of crisis. Through the threat of resignation alone, a Cabinet official might force a President to abandon any number of options which may be necessary or useful for the formulation of sound policy. Frequent resignations would deny the President the power, given him by the founders, to exercise his discretion, free from the momentary whims of the electorate and independent of the partisan divisions and narrow interests found in Congress. Significantly, Cabinet resignations would be most effective, and hence most destructive,

¹⁴ Alexander Hamilton, *Federalist 70*, ed., E. M. Earle (New York: The Modern Library) at 454.

when, at a time of crisis, a President must institute policies temporarily unpopular, but ultimately necessary for the safety and well-being of the Republic.

Finally, a look at the recent history of U.S. politics raises the possibility that, even without the Weisband and Franck proposal, Presidential discretion has already been reduced to a level below that required for the well-being of the country. A succession of legislative acts has greatly limited the President's ability to defend America's international interests and has subjected budgetary policy to the whims of regionally-based committee chairmen and the pressures of locally-inspired interests. Whether or not these changes are salutary in the short run, they do raise questions about America's ability to respond with energy, consistency, and intelligence to the problems of modern democracy. Moreover, the legislation of the last decade has so burdened the bureaucracy with responsibility for programme development, rule-making, regulation and information-gathering as to make firm Presidential control virtually impossible. Significantly, the frustrations of managing national policy under such circumstances was the primary reason for the unhealthy growth of the White House staff during the Nixon administration, and was at least partly responsible for the willingness of Presidential aides to use the questionable or illegal means of control that contributed to the Watergate crisis.

E. CONCLUSION

One of the epigrams that Weisband and Franck have selected to introduce their book is a quotation from Alexis de Tocqueville related to the tyranny of the majority. Although the pages that follow testify to the authors' concern over this threat to modern democracy, their analysis betrays a deep misunderstanding of the source of the problem. Tocqueville's reasoning on the tyranny of the majority ran as follows: In modern democracy, men quite properly learn to distrust the authority of other men's opinions. Yet this very distrust of external authority deprives men of any confidence in their own views, leading them in contradictory fashion to rely on the majority in forming their most important judgments. The test of a personal opinion becomes the approval of numbers rather than its internal consistency or scholarly merit. Developed in this way, moral views easily take on an absolutist quality and are subject to the storms of passion and outrage that characterize the majority. According to Tocqueville, public opinion in democracy becomes despotic when each individual adopts it in this way, believing it to be the result of a personal decision. In short, the tyranny of the majority occurs not when the desire for individualism is weak, but rather when it is so great that it overwhelms the authority of sound opinion and genuine reflection.

As noted earlier, the emphasis of *Resignation in Protest* is upon "ethical autonomy" rather than opinions of any particular content. Weisband and Franck emphasize this aspect in a final chapter, which calls for educational changes that stress "one's own internalized values" and "autonomous, principled judgments of right and wrong."¹⁵ As a call for mature decision-making, the authors' intentions here are unimpeachable. But, as Tocqueville's observa-

¹⁵ *Supra*, note 1 at 188.

tions suggest, this focus on individual opinions is not only insufficient but potentially dangerous. If mass morality is not to dominate in the name of personal values, Americans must turn their attention not simply to making opinions "autonomous" and "authentic," but to forming sophisticated judgments that reflect the intricacies of political and social realities. They must learn not to prefer their own views in every case, but to evaluate their decisions in concert with others. They must consider their position not only in a personal light, but in substantive terms that include the importance of the situation, a comprehensive view of the issues involved, and a concern for the immediate and long-term impact of their conduct for better and for worse.

Moral decision-making, especially in democracy, requires vigorous attention to the soundness of opinions, in addition to their origin or style. In the case of public officials, such decision-making presupposes a firm grasp of the government's basic characteristics and goals, and an understanding of the proper role of the individual within the larger whole. Ultimately, this kind of perspective offers the best available guarantee that government figures will manage national affairs in the best interest of all American citizens.

The decisive flaw in *Resignation in Protest* is the authors' failure to investigate the resignation experience in such substantive terms. Theirs is an apolitical understanding of complex political events, abstracting from both the deepest principles of the American founding and the practical workings of contemporary U.S. government. By relying upon the observations of recent theoreticians and psychologists, Weisband and Franck have forfeited the lessons offered by those men most familiar with the complexities of American political life. First among these are the American founders, whose writings on U.S. government and politics are of unparalleled insight and sophistication. By their very failure to consult such sources, *Resignation in Protest* points the way to the kind of study necessary before America can resolve her present dilemma.

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