

Louis Fisher: Government and the Academy

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A dozen years before this *PS* symposium, several political scientists came together in a similar manner to honor Louis Fisher's scholarship and highlight his contributions to the discipline (Spitzer 2000). Many wonderful insights and observations were made to shed light on Fisher's versatility and impact. However, that effort missed an opportunity to highlight a key contribution of Fisher's work: a revival of pre-behavioral era functions and concerns within political science. In many ways Fisher is a throwback to a traditional political science approach where scholars did not select sub-fields or specialties but sought to engage in broad public debates about governing and, most importantly, believed that normative and empirical studies could and should go hand in hand. With the latter approach Fisher has made his most important contribution to political science.

Unlike the public law scholar Edward S. Corwin (1929) Fisher has made only limited attempts to directly engage in a debate over the meaning or nature of political science (2009). Certainly he has urged a return to the study and use of law in political science (2007, xi), but he has not waged any battles over methodology as so many others have done in recent decades. Yet, one cannot help but see in Fisher's work the rejection of a pure positivist view of the discipline where research is focused primarily on the use of quantitative data to test theories that are divorced from any normative assessment.

Fisher has also done much to counter the view that public law and political science should be walled off from each other. He once remarked that "[s]tudying the presidency without reference to legal boundaries and values is to treat the United States as any other country, including those that are authoritarian and fascist" (Fisher 2009, 813). As a result, his work takes seriously the need to study government by interweaving law and politics in scholarly analyses.

Fisher's promotion of the public law approach in political science has not been without challenges. His career took off when the behaviorist movement had come to dominate political science. At that time the field began to fracture as behaviorists focused not only on value-free analysis but started to neglect important traditional areas of political science such as political theory and public law. In fact, one of the most famous and well-regarded presidential scholars is the late Richard Neustadt. His book *Presidential Power*, still read today in many graduate programs, failed to even reference the Constitution (1960). In addition, Fisher never has held a full-time faculty position in a PhD-granting political science department, which has meant he has not had the same opportunities to train and develop students in his own image like so many other politi-

cal scientists.¹ Nevertheless, Fisher's books and articles have been assigned readings in various undergraduate and graduate courses ranging from presidency seminars to constitutional law capstones (Fisher 2004, Fisher 2011a). Consequently he has functioned as an important counterweight to the popular dismissal of the public law approach, a development chronicled and explained in greater detail in Robert Spitzer's contribution to this symposium.

AN OVERVIEW OF LOUIS FISHER'S SCHOLARSHIP

To understand Fisher's relationship, impact on, and struggles with the political science discipline we must outline his work. Fisher came of age when the country and academia were in the midst of a love affair with the presidency. Almost no one questioned Neustadt when he wrote: "What is good for the country is good for the President, and vice versa" (1960, 185). Neustadt was not alone. Writing in 1965, James MacGregor Burns argued, the "stronger we make the Presidency, the more we strengthen democratic procedures and can hope to realize liberal democratic goals" (330). Two years later, Grant McConnell explained: "To ask what is to become of the presidency is to ask what is to become of the entire American political order" (1967, 87).

Fisher recognized that those scholars were developing a theory of the presidency with few or no limits. Such a view of how government functioned did not even conform to the idealized visions of Franklin D. Roosevelt's or John F. Kennedy's administrations that many academics had in mind when writing about the presidency, let alone what the Constitution or the practical experience of governing over 150 years provided to that point. As a result, Fisher's scholarship begins with a basic premise that the Constitution's source of legitimacy and authority is the people and that government should function in ways to uphold its commitment to democratic principles (Fisher 2010a, vi; Fisher 2011b, 3, 21).

Far from stopping there, Fisher points out that the framers created a governing system of "separated powers" to prevent centralized authority from threatening liberty and to "preserve republican government" (Devins and Fisher 2004, 77). But Fisher rejects a simplistic view of the separate branches of government working in isolation and only coming together to battle one another (Fisher 2007, 6). Instead, he explains that the framers did not construct a government solely to restrain power, but to also have the capacity to govern itself effectively (Fisher 2007, 6–11). This meant providing for "a separate and independent executive" particularly after the framers' experiences under the Articles of Confederation (Fisher 2007, 8; see also, Fisher 1972, 1–27, 241–70).

The placement in the Constitution of “a separate and independent executive” led some scholars to argue for greater and greater presidential powers. However, Fisher disagrees with such a view and argues that “[w]ithout a strong Congress, we cannot speak of democracy” (Fisher 2011b, xi; see also, Fisher 2010a, vi). The reasons for this view are clear to Fisher. In 2002, he wrote *Religious Liberty in America*, which not only provided the counterargument to the notion “that the courts, not the political process, protect individual rights” (1) but also presented substantial empirical evidence that Congress has done well in defending personal rights and minorities.

Fisher is not, however, a cheerleader for congressional supremacy. Throughout all his work he explains that Congress operates within a larger governing framework with no institution being infallible: “all three branches [are] part of a political system, each branch capable of good and bad decisions” (Fisher 2011b, 319). Fisher has spent a large portion of his career highlighting Congress’s institutional failings, particularly in the areas of war and spending (Fisher 2000; Fisher 2011b, 316). Of course Fisher has provided the same level of scrutiny to his study of the presidency where he has docu-

The current trend of the declining institutional position of Congress in matters of war and spending, along with the preferential position given to the presidency, should cause “genuine alarm” according to Fisher (2000, 163). He cautions that if the present course is allowed to continue the United States could have a governing system “where citizens vote for lawmakers but the important decisions of public policy are left primarily to nonelected executive officials and federal judges” (Fisher 2010a, vi). He explains that such “a decline in the power of Congress is a decline in the power of the people that the legislative branch represents” (Fisher 2010a, 13).

What are the solutions? Broadly, Fisher argues that each branch needs to act for itself to “preserve” its own “institutional powers while working jointly with the other branches toward national solutions” (Fisher 2011b, 319). More specifically he explains: “Congress needs to assert its ample powers” which will do much to reinvigorate a branch that has the institutional authority and powers to correct “presidential and judicial mistakes” (Fisher 2010a, 26–27; see also Fisher 2000, xiii). Yet, Fisher admits that few members of Congress “have much understanding or interest in the constitutional prerogatives they are expected to exercise and defend” (Fisher 2000, 163).

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mented a number of problems with the executive branch (Devins and Fisher 2004; Fisher 1975; Fisher 2000; Fisher 2004; Fisher 2005; Fisher 2007, 19; Fisher 2008; Fisher 2010a, vi). In many cases Fisher has found that deceit in the executive branch is not unprecedented. In his 2007 study of Congress and the presidency, Fisher wrote that the past few decades “reveal conspicuous examples of Presidents and executive officials releasing false claims and presenting as fact what is mere assertion on tenuous, suspect grounds” (Fisher 2007, 294; see also Fisher 2008, 364; Fisher 2010b).

Fisher’s scholarship reveals a deep understanding of each branch’s failings, but the central problem he continues to face is the tendency of academics, the public, and even members of Congress to idealize and idolize the president, which encourages failings by the executive branch to be discounted or dismissed. To give an example, Fisher cites Eric A. Posner and Adrian Vermeule who claim that the executive branch “is better than courts or legislators at striking the correct balance between security and liberty during emergencies” (Fisher 2008, 364). Such confidence is misguided, as Fisher explains, because nowhere in their work do Posner and Vermeule recognize some of the “costly presidential decisions in Korea, Vietnam, and Iraq II” (364). No one should rely, Fisher notes, on imaginary virtues attributed to the executive branch (Fisher 2010a, vi), and he warns that presidential worship does not promote a “durable constitutional system” (Fisher 2011b, 319).

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EMPHASIZING PUBLIC LAW AND NORMATIVE SCHOLARSHIP

Fisher traces the challenges of political science to more fully engage members of Congress back to the “neglect of public law” and the belief “that presidential power was our best hope for promoting the public good and should be unfettered by constitutional and statutory restrictions” (Fisher 2007, xi). Political scientists could start by “publishing studies of direct interest to Congress and making sure that those materials are placed directly in the hands of key committee staffers, including the chief counsel and staff director” (Fisher 2009, 812). In short, political scientists need to stop writing primarily to a professional audience and avoid technical jargon that few outside their immediate subfield can understand. Fisher sees his prescription as a return of political science to its roots of teaching not only students in a classroom but the public in general about constitutional government. The current trend of neglecting the public law roots of political science and transforming the discipline into a scientific enterprise akin to the natural sciences has done much to

marginalize the profession and largely left the governing and policy debates to others.

Fisher's positions are not without controversy. Many contemporary political scientists reject normative scholarship and use the very term as a pejorative rhetorical device intended to disparage any work that falls outside their own views of what political science ought to be. Criticism of normative scholarship has roots partially in real blunders by early twentieth-century political scientists like Corwin. Some see Corwin's shifting positions on increasing the size of the Supreme Court during President Franklin D. Roosevelt's court-packing plan as a clear sign that normative scholarship has no place within political science. In that case Corwin, who once opposed a change in the size of the Supreme Court as a prescription to the constitutional impasse of that time, made a 180-degree turn and supported Roosevelt's court-packing plan. As Cornell W. Clayton noted: "it's not surprising that the politically flexible Corwin became the subject of criticism" (2006, 297).

Unlike Corwin, however, Fisher has never changed his conclusions about a governing or public policy issue to suit the political party that controls the White House. Regardless of whether Republicans or Democrats are in control of the levers of power, Fisher has offered the same advice and understanding of the Constitution and laws. Despite the real differences between Corwin and Fisher, behavioral scholars would argue that both men confuse the basic nature of political science

guide makes value choices for the entire profession (Committee on Professional Ethics, Rights and Freedoms 2008). The "normative" aspects of Fisher's work are not personal value choices but, instead, are the result of decades of study, writing, and hands-on views of actual governing. Fisher has approached his research in a scientific way by searching for evidence that a particular value is important and required within the governing process. For example, Fisher has documented extensively that the decision to engage in war is entrusted to Congress by the Constitution. He has also shown that there are certain instrumental values, such as checks and balances and separation of powers, that are means to identifiable ends: the protection of liberty and promotion of an effective government. Labeling Fisher's work as normative and, as a result, unworthy of political science research is misguided. Rejecting the kind of scholarship Fisher is known for is to disengage from important aspects of government activities, leaving public officials to seek counsel from potentially less-informed individuals who do not support their analysis and conclusions with solid evidence.

Interestingly, Fisher faced a politically explosive and career-changing event as Corwin did with the court-packing controversy. In 2003, Fisher wrote an article "Deciding on War in Iraq: Institutional Failures" in *Political Science Quarterly*. He argued that members of Congress from both parties had failed to uphold their "constitutional duties when they authorized

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which is a discipline concerned with understanding "what is, not with what *ought* to be" (Dahl 1961, 770). However, in the study of American political systems, positivists sometimes miss a key point that normative scholarship is often just as or even more descriptive and grounded in empirical evidence as any other work in political science.

The debate between the positivist and normative camps within political science is an old one, and thorough coverage is beyond the scope of this article (Somit and Tanenhaus 1967). Yet, what Fisher's career indicates is that political scientists can engage in important work in an objective fashion while carefully evaluating the facts and values of a given situation. In particular, one of the most significant changes to take place within political science during the behavioral revolution has been the elevation of "neutral" work above all other research pursuits. Fisher's scholarship stands against that orientation.

The term "neutral" as defined by Merriam-Webster as "not engaged on either side" or "not aligned with a political or ideological grouping" is unhelpful to our analysis in that no person is neutral or unbiased in his or her work. Everyone holds values that inform his or her decisions. The act of selecting a research topic or choosing a particular methodological approach requires choices. Even APSA's professional ethics

war against Iraq" (2003, 410). Fisher supported his conclusion with a detailed review of the steps leading to the Iraq war including a thorough analysis of the unsubstantiated claims of the Iraq threat to the United States and the doctoring of intelligence reports to support the George W. Bush administration's advocacy for war. Although writing on new events, Fisher's prescription remained the same. The article would likely have been overlooked by many if not for *Washington Post* columnist David Broder who devoted an op-ed to it (2003, B7). This produced a response from Representative Henry Hyde (R-IL), chair of the House International Relations Committee, who defended Congress's actions in authorizing war (2003, A20).

The matter might have ended there but the Congressional Research Service (CRS), Fisher's employer, took notice. After a long series of events, including an outpouring of support from academics and various professional organizations including the APSA, the Library of Congress decided to transfer Fisher to the Law Library where he "recovered in full [his] intellectual and professional freedom" (2011b, 306). The important takeaway is that Fisher's analysis, unlike Corwin's, did not bend when faced with changing political events. Instead, Fisher remained resolute in his assessment of the Iraq war.²

Other examples of Fisher's meticulous work to assess institutional arrangements and processes abound. In his book *Congressional Abdication on War & Spending*, Fisher argued that in the years following World War II Congress has let its institutional standing erode to the point of ceasing to behave like a coequal branch alongside the presidency in the areas of war and spending (2000. See also, Fisher 2010a, 143). Fisher left

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LOUIS FISHER'S LEGACY

Despite Fisher's consistent analysis across administrations, his commitment to normative work has somewhat marginalized him within the political science profession. Although Fisher has published hundreds of social science and law review articles in such journals as *Congress & the Presidency*, *Political Science Quarterly*, *Presidential Studies Quarterly*, *PS: Political Science and Politics*, *Public Administration Review*, and *Western Political Quarterly* his work has never appeared in the *American Political Science Review* or other "top" political science journals. One could argue that Fisher will only have a minor impact on the development of the public law field as he has, for the most part, remained within the historical-institutionalist camp and not engaged in the dominant behavioral research including the attitudinal and strategic persuasions.

However, it would be misguided to evaluate Fisher's career only through a behavioralist academic lens. Fisher began his career making an affirmative choice to become a practitioner who could apply what he learned to real world governing problems (Fisher 2011c, 2; Spitzer 2000, 230). That is why Fisher joined the Congressional Research Service where he advised members of Congress and their staff on various issues related to separation of powers, the federal budget, and war powers. To do that he was expected to pass judgment on the constitutionality of legislation. That meant being "normative" (i.e., making professional judgments and reaching conclusion). In the halls of Congress such an approach was never seen as a liability as it often is in academia. As Walter Olesek's piece in this symposium makes clear, members of Con-

gress treated Fisher as an expert and wanted his advice. In the early 1970s, Fisher's scholarship attracted the attention of Senator Sam Ervin (D-NC) when the impoundment controversy arose during Richard Nixon's administration. In the 1980s, Fisher testified that the Gramm-Rudman deficit control bill was unconstitutional, as it was later found to be by the Supreme Court. He was the only person to testify on the

bill's constitutionality. In 1987, Fisher became research director of the House Iran-Contra Committee and wrote major sections of its final report (2011c). It is informative to understand that a modern scholar whose work adopts much of the pre-behavioral era qualities of political science would have such a significant impact on governing concerns but have no permanent home, largely by choice, within academia. That is both a tragedy for political science and a blessing for Fisher. The tragedy is that political science scholarship increasingly marginalizes itself by failing to engage the outside world in any meaningful way. As a result, other disciplines have taken the place of political science including, but not limited to, public administration experts and lawyers.

Perhaps Fisher's career can serve as a reminder of what political science has lost and may seek to regain. The simple fact is that there will always be a need for Congress to receive the kind of advice Louis Fisher gave for so many years (and continues to give). A new generation of political scientists could likely learn much from Fisher and how he served Congress and the public. The discipline could do much worse than following in Fisher's path of seeing value in empirical analysis based on normative concerns—and in being prepared, at the end of the day, to make policy prescriptions and institutional judgments. As public law scholar, and a pioneer of judicial behavior, C. Herman Pritchett once wrote: "let a hundred flowers bloom" (1968, 509). A rejection of normative work like Fisher's by some parts of the profession takes a big step away from Pritchett's advice of a more tolerant and open study of politics and government. ■

NOTES

1. Although Fisher has not mentored a generation of PhD students in the capacity as a tenured university professor, arguably he has had a far deeper impact than many traditional faculty by having encouraged, assisted, cultivated, indeed truly mentored, scores of students and scholars during his long career.
2. A detailed account of Fisher's story can be found in Fisher, *Defending Congress and the Constitution*, 290–309.

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