SYMPOSIUM

Louis Fisher: A Public Intellectual

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During the 1950s, Isaiah Berlin wrote a famous essay entitled "The Hedgehog and the Fox." The point behind the title is that the hedgehog knows one big thing and the fox knows many things. From this distinction, Berlin suggests there are two intellectual types: one who relates everything to a single idea and the other who explores a diversity of ideas. It is difficult and unrealistic to pigeonhole Fisher as one or the other intellectual type. The reality is that Fisher combines both types. My sense is that Fisher's wide diversity of scholarly and policy-influencing accomplishments, and his skepticism of conventional wisdom, put him in Berlin's second category rather than first. However, my position at the Congressional Research Service (CRS) also prompts me to say, on the other hand, one big idea has animated Fisher's contributions to the academic and political/legislative worlds. That idea is highlighted in the title of one of his plethora of publications: *Defending Congress and the Constitution* (2011). Of course, when you write about the Congress and the Constitution, you analyze—like Berlin's fox—a host of interrelated ideas and relationships: history, law, the presidency, the judiciary, and more.

My objectives in participating in this *PS* symposium are to highlight and underscore how Fisher has successfully enriched the work of Congress and expanded the knowledge of people in the academy and the general public. Unlike many in the scholarly community, Fisher is not an abstract theorist or modeler who writes largely for fellow scholars. His audience is much larger. Fisher's focus is on the real world of politics and policymaking, someone who has worked directly with numerous lawmakers and congressional staff on legislative and investigative issues of direct concern and interest to congressional members and the nation. In defending Congress's constitutional prerogatives, Fisher's influence can be found on many major policy initiatives. Accordingly, this brief essay addresses three topics: a few personal reflections based on more than 40 years of friendship; Fisher's role as a practitioner on Capitol Hill; and, lastly, a few thoughts for political scientists.

REFLECTIONS

In defending Congress and its constitutional role over several decades, Fisher became a scholar of national and international renown. His scores of governmental and academic publications cover a range of interests and topics that few scholars today have matched. Consider his acknowledged expertise in legislative-executive relationships, federal budgeting, the presidency, the war powers, public law, and more. If interdisciplinary means competency in at least two disciplines, Fisher is clearly multidisciplinary in his approach. His sophisticated understanding of so many disciplines made him an invaluable resource to policymakers as they grappled with legislation that cross-cut many fields and raised numerous questions, such as a measure's constitutionality, its budgetary implications, or even what House or Senate procedures might enhance its enactment by the legislative branch. (Yes, Fisher is also knowledgeable about congressional procedures.)

Today, intellectual specialization characterizes the work of many academics, which fosters the fragmentation of knowledge. Fisher, by contrast, has long functioned as a "one-person" think tank. His in-depth familiarity with so many disciplines made Fisher an intellectual force in influencing the policy process in Congress and elsewhere. By elsewhere, I mean, as examples: Fisher being invited to the Department of Justice to talk to attorneys about constitutional interpretation; testifying on topics that range from recess appointments to budget reform to executive branch reorganization; or advising lawmakers on what the framers intended when they assigned Congress the power to "declare" war rather than "make" war. Not tied to a narrow policy paradigm, Fisher utilized a wide range of analytical perspectives to aid lawmakers in resolving public issues.

Fisher's well-written and thought-provoking analyses across such a wide range of topics constitute a remarkable record of achievement. Importantly, Fisher is comfortable blending two disparate worlds: the academic and the practical. To him, they were not fundamentally different universes but mutually reinforcing sources of insight, analysis, and learning. Thus, my definition of Fisher as a public intellectual is someone who can address issues of concern to policymakers (lawmakers, executive officials, and so on), as well as to academics and the general public. He is a scholar who can communicate thoughtfully, systematically, and clearly to diverse audiences: legislative, academic, legal, administrative, or foreign parliamentarians.

CAPITOL HILL PRACTITIONER

During his many years of public service to lawmakers and congressional staff, Fisher analyzed fundamental issues that still confront and confound lawmakers today—for example, how is power actually shared between and among the three branches of the federal government? By whose authority should the country go to war? How are constitutional conflicts, nay power struggles, resolved between Congress and the president? And Fisher answers these types of questions. As an example, long a champion of congressional prerogatives, Fisher has been consistent over the decades in supporting the view that the president must first seek congressional approval before he can use military force against another country. That Fisher's published studies influenced Congress's actions goes without saying, as these three examples illustrate.

Presidential Impoundment of Appropriated Funds

Fisher was a major contributor to the crafting of the landmark Congressional Budget and Impoundment Control Act

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of 1974. In fact, his 1969 and 1970 articles on impoundment were among the factors that prompted Congress to undertake a major overhaul of its budgetary procedures. Fisher also directly aided Chairman Sam Ervin, D-NC, during Senate committee markup of an impoundment control bill, sitting next to the chairman as a sign of his significant role. In the end, Congress enacted the landmark Budget and Impoundment Control Act. That legislation, among other things, included restraints on presidential impoundments, the creation of the Congressional Budget Office (CBO), and annual (but not always) legislative adoption of a concurrent budget resolution. Subsequently, after monitoring implementation and use of the 1974 Act, Fisher suggested that Congress might be better off without the concurrent budget resolution process, an idea that provoked considerable discussion in the halls of Congress. Deliberation over substance and politics is central to legislating, and if ideas like Fisher's provoke internal debate among lawmakers, that result can aid lawmakers in determining whether they even want to draft legislation on a topic.

The Balanced Budget and Emergency Deficit Reduction Act of 1985

As the nation's debt and deficit soared in the early 1980s, three senators (Phil Gramm, R-TX, Warren Rudman, R-NH, and Ernest Hollings, D-SC) came up with a deficit reduction plan that became law. Its core feature included enactment of statutory deficit targets that, if not met, would trigger what we hear so much about today: sequestration (across-the-board spending cuts in domestic and defense programs). During the law's development, Fisher testified before a House panel, along with the OMB Director, the Comptroller General, and the CBO Director. Because of Fisher's deep understanding of the Constitution, he was the only one of the four who said the proposed law was unconstitutional because it granted executive powers to legislative officers (GAO and CBO). As Rep. Mike Synar, D-OK, exclaimed: "I want to take this opportunity to thank you because, very frankly, you sit there as the only person whom I can find in this city or anywhere in this country who has done the type of constitutional scrutiny and analysis which is necessary to give any of us assurances that we are not going down a path that may be dangerous." The Supreme Court declared the 1985 Act unconstitutional because it gave executive powers to a legislative officer.

House Iran-Contra Committee

In November 1986, the American public learned that the Reagan administration was secretly selling arms to Iran to fund a rebel force (called the Contras) in Nicaragua, contrary to public law. The next year, a leader of the House Iran-Contra Committee investigating the executive branch tapped Fisher to be the research director of the panel. Why? Because that leader was familiar with the published works of Fisher and recognized that he was the nation's preeminent scholar of legislative-executive matters. Perhaps most importantly, the panel leader knew of Fisher's expertise involving Congress's authority to hold executive officials, including the president, accountable for their actions and decisions.

IMPLICATIONS FOR POLITICAL SCIENCE

Political scientists regularly engage in discussions about the state and direction of their discipline. Some of these debates emphasize quantitative over qualitative research and analysis. Others contend that political science is not science, because it deals with messy political issues or problems that are sometimes hard to quantify. My sense is that Fisher, although open to the diversity of methodological approaches in political science, is not that interested in these kinds of debates. His focus is on analyzing and explaining a host of the constitutional, legal, budgetary, judicial, and administrative complexities that infuse our constitutional system. In the process, and this is something worth noting for budding political scientists, he is not reluctant to challenge conventional wisdom in a thoughtful and objective manner.

He is also willing to make judgments and draw conclusions based on his extensive research and where the weight of evidence leads him. Some political scientists suggest that making normative judgments is inappropriate for scholars. That is certainly not Fisher's perspective, which is why he is regularly invited to testify before congressional committees and to meet personally with lawmakers to discuss issues of direct concern to them, their constituents, and the country. In short, political scientists might include in their studies, as appropriate, options or recommendations that could assist problem solving by local, state, or national decision makers.

Political scientists might also emulate Fisher in three other ways. First, Fisher is a lucid writer. His many publications are accessible to virtually anyone with an interest in public issues. Clear writing is probably a skill he learned when he worked as a technical writer in New York City. "Writer's block," moreover, is something foreign to Fisher. He has always been able to meet writing deadlines despite pressures that might emanate from various quarters, such as congressional party or committee leaders. To be sure, there are many political scientists who, like Fisher, are clear and productive thinkers and writers, such as Richard Fenno and Roger Davidson. There are also other political scientists who might place more emphasis on producing studies that are accessible—devoid of jargon and numeric equations—to many outside the discipline. This approach could enable public officeholders, not to mention many attentive citizens, to learn about important political science findings that could have a real-world impact.

Second, and closely related, Fisher has sought to inform a diverse audience. Consider that his scholarly works appear in peer-reviewed books and journals. In addition, he has published widely in newspapers, the *National Law Journal*, and in a variety of other publications that reach beyond an academic audience. Moreover, Fisher understands the audience he is trying to reach—whether it is judges, lawyers, political scientists, or the broader populace—and writes accordingly. Consider that Fisher prepares *amicus* briefs for submission to federal courts, as well as "op-ed" articles for publication in newspapers.

Third, Fisher's career as a practitioner exemplifies noteworthy public service. He worked for decades in a legislative world suffused with vigorous and rigorous debate on the major issues of the day. His professional reputation for objective and reliable

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information and analysis prompted many lawmakers and staff to ask Fisher for advice on how to turn their ideas, or his, into practical legislation. Fisher's contribution to this symposium indicates a number of ways in which scholars can bridge the academy and the world of practice. Thus, academics might consider a stint as a practitioner for a time, both to share their insights with policymakers, to enrich their scholarship and teaching, and to consider new ways of thinking about our constitutional system.

For example, Fisher's *Constitutional Dialogues* (1988), which was based on his long Capitol Hill immersion in analyzing legislative-judicial interactions, emphasizes that constitutional law is made by all three coordinate branches. The Supreme Court may believe it is the "ultimate decider," and it may be at times, but Congress and the executive have also been "instrumental in fixing the meaning of the Constitution." Fisher bolstered that view in his book on *Religious Liberty in America: Political Safeguards* (2002). The fundamental thrust of that book is that Congress has been more effective in defending religious liberty and individual rights than the federal courts. And in scores of books and articles, Fisher urged and reminded Congress that it is constitutionally relevant in deciding when the nation goes to war. The framers did not expect one person to make that decision. One legislative response, according to Fisher, is that Congress must exercise the many prerogatives and tools at its disposal, particularly its control over the purse strings, to check and balance the president.

To conclude, Fisher's great talent is to conduct thorough research of a topic, present the findings in a clear and well-organized manner, and to draw conclusions that expand our understanding of American governance. Other political scientists may disagree with those conclusions, but they surely will not dismiss them out-of-hand because his views and positions are thoroughly researched and genuinely thought-provoking. Moreover, Fisher operates from a value structure that is plain to those who read Fisher's works. To expand on my view of Fisher's big idea mentioned at the start of this short article, let me quote from the preface to *Defending Congress and the Constitution:*

> There are two messages to this book. The first is to members of Congress. In order to protect your independence and the system of checks and balances, do not defer to the Supreme Court or to the President because of their presumed competence. Accept their judgments only when they convince on evidence. Go on reason, not faith. . . . The second message is to the public: understand the importance of Congress in protecting and defending your rights and liberties. Without a strong Congress, we cannot speak of democracy.

In the final analysis, then, it is up to Congress to debate and decide through political and public processes the constitutional balance of power. After all, Congress is the nation's public arguing society. And for decades Fisher has contributed to the legislative and public conversation through the clarity and high quality of his research and analysis.

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