
Political Extremism: Is It New? Is It Different? Is It Curable?

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Introduction of Abner Mikva by Robert Kastenmeier '53
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It's a great pleasure, as well as a privilege, to introduce an old friend—going back many many years—a true son of Wisconsin, someone who in that context was honored last year by the University of Wisconsin. He's a person who attended this great institution; a person who was born and raised in Milwaukee and who has done great honor to this state. Ab Mikva has spent nearly 40 years in the service of this country from the Illinois state legislature, in the practice and teaching of law, and in the Congress, the Federal judiciary and as counsel to the President. He has a fully unique, I think, career in that regard. I first remember when he came to the Judiciary Committee in 1969 and what we were able to accomplish together in those years, before Ab went on to other things. The subcommittee of which we were members had very broad jurisdiction. It dealt with crime, prisons, privacy, civil liberties, the courts, the federal court system, and intellectual property. But I believe when Ab was a member of that committee, the thing that I take the greatest pride in and give him the greatest credit for, was repeal of Title 2 of the Internal Security Act. Young people, particularly, do not remember that we at one time in this country not so many years ago authorized detention of Americans in "concentration" camps without due process of law, as commonly understood. We successfully



repealed that. It came out of the subcommittee and it was due largely to Abner Mikva that we achieved that, even in the Nixon administration. All the Nixon administration wanted in the final analysis was statutory language to preserve the constitutional powers of the president as the commander-in-chief. We refused to do that. We said if a president ever on his own initiative imprisoned Americans in such a fashion, he would not have any congressional or statutory authority to so act. He would have only the Constitution itself to rely upon.

Subsequently Abner Mikva came back to the Congress and the Ways and Means Committee and then, I think, in a bold move elected to go to the Court of Appeals of the District of Columbia. There are federal judges here. I know that our good friend John Reynolds is in the crowd, as well as Tom Fairchild, who was Chief Judge of this circuit. But I have

always said that Abner Mikva was the tenth ranking judicial member in the country. I say that because, as Chief Judge of the Court of Appeals for the District of Columbia, with all its jurisdiction was superior in a practical sense to the other geographical circuit jurisdictions as well as to the Supreme Courts of the several states. Some may challenge that, but that's my opinion. Other than the nine justices of the Supreme Court, I always felt that Ab had that much authority and power and he served magnificently. He surprised people by ultimately going to the White House as Chief Counsel to the President. But in a sense that was a fulfillment, at least in my sense of Abner Mikva because we long singled him out as the one person we could see in the congress who could serve equally, with great distinction in the executive branch, in the judicial branch or in the legislative branch. As a matter of fact, he proved that.

And now, he joins me and others in retirement. I can only say that we are very honored and privileged to have Ab Mikva here to share his thoughts with us at this lecture. I present to you my friend Judge Ab Mikva.



Robert W. Kastenmeier Lecture, University Of Wisconsin The Law School, March 1, 1996

BY ABNER J. MIKVA

This is a very special occasion for me. First off, Madison remains one of my favorite towns. I have reconstructed my undergraduate days here as halcyon beyond measure. I have forgotten completely that I went from straight A's before the war at the Milwaukee Extension of U.W. to straight C's at Madison after the war. I remember the 3.2 beer at the Union, the sailing, the simplicity of the decisional process: should I go to class or not?

But it's a special occasion because it gives me an opportunity for the first time since he left the Congress to say to his constituent base how grateful everybody in the Congress and elsewhere in the country was for you sending us Bob Kastenmeier. There are Members of Congress who are renowned for the legislation that bears their names. The Smoot-Hawley tariff bill, the Dyer Act which made it a federal offense to joyride an automobile from Chicago to Gary, Indiana, the Volsted Act which gave us Prohibition. The Members whose names accompanied those laws are remembered appropriately for their contributions. Bob Kastenmeier passed a lot of legislation, some of it very vital to our justice system, to our intellectual properties law. But those contributions paled into insignificance compared to one of the great qualities he brought to the House Judiciary Committee and the Congress.

There are a lot of bad proposals that are *not* the law of the land because of the commitment, the tenacity, the decency that Bob brought to his work as a Member of and as Chairman of one of the key subcommittees of the House Judiciary Committee. He kept a flag-burning amendment from being added to the Constitution; he kept *Roe v. Wade* from being overturned by a constitutional amendment; he kept the constitutional prohibition against prayer in the schools. There were dozens of such issues, large and small, where Bob used a unique quality that in Milwaukee was called "zitsfleish" to keep the forces of evil from prevailing. I'm not sure that his constituency ever appreciated what a national treasure he was to the Congress. Indeed, the House of Representatives has not been the same since he left, which leads me to the topic of the day.

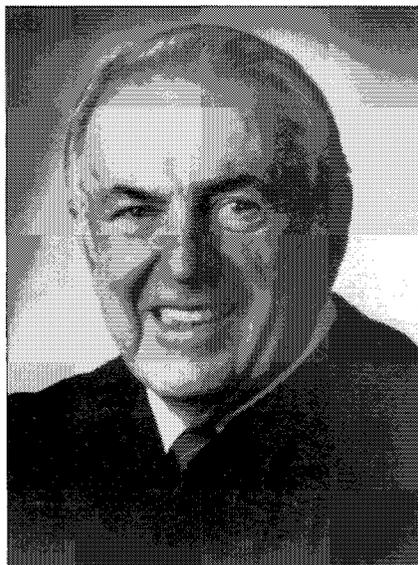
There were extremists in the Congress even when Kastenmeier and I were there. They were easier to deal with and had less of an impact for a number of reasons. First of all, there were fewer of them. And none of them achieved any important leadership positions. No one ever accused John McCormack of being an extremist—or Tom Foley, or Dick Gephardt. I remember when the current Speaker first was elected to Congress. I safely predicted he would be a one-termer, because he was much too radical for the country. Most voters fall between A and B on the political landscape; the notion that as a country we tolerate people all the way to Z is not historically accurate. Some of the South-

erners called Abraham Lincoln an extremist, but he was elected without committing himself to abolition, without laying down any gauntlets to the nullification talk of the South, indeed without any of the rhetoric which became the propaganda of the Civil War. He was not even sure of what to do about the defense of Fort Sumter, when the rebels fired on it, and you will recall that it was lost. We are and always have been a country of moderates. When one looks at the genealogy of the leaders of the Revolutionary War, all save a very few could have happily lived out their lives as colonial citizens quite loyal to the Crown. It was the excesses of King George, the framers of the Declaration of Independence remind us, that forced the severance of the ties between the colonies and England.

So, is this outbreak of radicalism in the Congress a unique circumstance occasioned only by the absence of Bob Kastenmeier to serve as one of the great moderators of the institution? Not exactly. I need hardly tell a Wisconsin audience that extremists get elected from the strangest places and at the strangest times. Take Wisconsin in 1946, for example. The country was finally returning to a post-war normalcy. There was reasonably full employment, the dollar was stable, and Wisconsin had been ably served by several generations of LaFollettes, young Bob being the current senior Senator from Wisconsin.

As a further sign of the moderation of the times. Senator LaFollette decided to return to the Republican Party, since the "populism" of the Progressive Party which he had been elected from, seemed out of step with the normalcy of the times. I was a student at Madison at the time, and we Democrats had a splendid candidate for the senate by the name of Howard MacMurray, a political science professor here at the University. We knew it would be virtually impossible to beat anybody named LaFollette in Wisconsin. We decided to take advantage of the open primary law in Wisconsin, and even though most of us were too young to vote (it was before 18 year old voting) we urged all of our Democratic friends to cross over to the Republican primary and vote for an obscure, upstate divorce judge from Appleton, by the name of Joseph McCarthy. I can still recall wearing a McCarthy button, and thinking it all too clever. Years after we reaped our primary success, and our Autumn failure, I thought of the consequences of that escapade and guilt still abides. I remember that when another McCarthy, Gene McCarthy, made his effort to win the Democratic nomination, I winced every time I saw a Democrat wearing a McCarthy button.

Joe McCarthy did not have too many real allies in the Congress. Aside from Richard Nixon, Martin Dies, and a few other opportunists, the anti-communist extremists were few in number. But they struck fear into hearts of a lot of people who should have known better. President Eisenhower chose Richard Nixon as his running-mate *because* it appeased the right wing of the Republican party. Newspapers, with the possible exception of the Cap-Times, went out of their way to avoid clashing with McCarthy and his ilk. And a lot of good moderate citizens, in and out of Wisconsin, while thinking that perhaps McCarthy went too far, believed that it was necessary to bell the Communist cat, and that he and his tactics were worth the price. It is not too similar from some of the apologies I hear made from some of my former colleagues who end for



extreme proposals, knowing they are bad, but feeling it is necessary to bell the big government cat, (or the Socks cat), and therefore Gingrich is good for the country. Now I want to make it perfectly clear that I am not comparing Speaker Gingrich to Joe McCarthy. McCarthy never called himself a radical. And Newt Gingrich did nothing to help Phil Gramm stay out of the Army. I merely point out that extremist rhetoric and extremist proposals in the Congress can come about (indeed usually do come about) in perfectly normal times, when the body politic ought to be reasonably happy with their government. It is paradoxical that when the political system really is in extremis—the Great Depression, the earlier economic disasters, the corruption scandals of a Teapot Dome or a U.S. Grant or a Richard Nixon—the electorate are more likely to turn to moderates for leadership and for membership in the Congress. I realize that there are some who still think that Social Security or rural electrification are radical proposals, but for the rest of us) the New Deal was a moderate shift in our economic system that preserved its capitalism roots.

The biggest difference in today's radicalism is that the civilian counterpart of the extremists in government *seem* more dangerous than their predecessors. There always are counterparts: the McCarthy movement had its auxiliaries among some

of the veterans' groups, among some of the ethnic groups that were vigorous opponents of the Soviet Union and its role in Eastern Europe. But the violence was by and large in the rhetoric. Extremists during the post-Reconstruction era were pretty vigorous. Whether one looks at the Ku Klux Klan which came into prominence somewhat later, or the Klan's antecedents—the armed, masked riders who formed lynching parties to distribute justice their way—they were pretty scary. But they did not seem to be engaging in frontal attack on the institutions of government.

But when a national campaign official of one of the leading candidates for President says that the Oklahoma City bombers descended to the level of the FBI—that is pretty frontal. When the various militia groups around the country emphasize their authority with their large arsenals of guns and their paramilitary training, that is frontal and scary. I will admit that I am afraid of guns. I was afraid of them when I handled them in the Army, and I am even more afraid of them just from seeing their impact on our society. I am also afraid of them politically. I have seen—and felt—the power of the National Rifle Association in our electoral politics.

Wisconsin always has been a harbinger of all kinds of political tidings—it is hard to find a state that had a succession of U.S. Senators as varied as Robert LaFollette, Joseph McCarthy and William Proxmire, one after the other. If this were not my home state and I didn't know better, I would think that Wisconsin voters almost exult in their perversity. But Badgers certainly do come in bright colors when it comes to extremism. Wisconsin has some militia groups in the western part of the state that have organized their own Supreme Court. And they threaten to enforce their orders "vi et armis"—by force of arms as it was explained to us in law school. This Wisconsin court claims its legitimacy comes from the Constitution, the Magna Carta and the Bible. I have carefully examined my copy of my contract with America, the Constitution of the

United States, and I can't find any encouragement for the lawlessness of the current Wisconsin group or any of their counterparts.

But there is no question that the present is more fraught with clear danger. One need only look at the bloody calamities involving the Branch Davidians in Waco, the extremists at Ruby Ridge, Idaho and the Oklahoma City bombing to realize that this current bout with extremism in our country is more violent and more squarely challenging the very bedrock of our government.

We can't be too surprised at the escalation of radical expression and action both in the public and the private sectors. When one looks at the 1994 election results, almost without exception, the successful challengers to incumbents were those who challenged not only the incumbent and his or her record, but challenged the very notion of government as well. Many of the freshmen members of Congress came to Washington having run against the Congress, against the federal government. Most of the issues on which they campaigned were hostile to government: term limits for elected officials suggest that the people need to be protected against their weakness in reelecting incumbents too often. The proposed balanced budget amendment to the Constitution is premised on the notion that the people need protection against representative government—that you cannot trust government officials to do the right thing. The two shutdowns of the federal government both came about because many of the freshmen members of the house think that stalemate is good for the country—that we can get along without government very well. (flat earth society story about balancing the budget.)

The House of Representatives is taking great pride in their proposal to sell off one of the House buildings—any building, just so they can show that they have shrunk government.

One need look no further than Iowa, New Hampshire and Arizona to note that the primaries for the 1996 election, at least on the Republican side, have escalated the rhetoric of nihilism, anarchy, anti-anybody who has ever been to Washington. Mr. Forbes takes great pride in the fact that he has never held any office of any kind. Mr. Buchanan pretends that he was never an insider, hoping that people will forget his long tenure with the Nixon Administration. Governor Alexander hopes that by wearing a plaid shirt, he can prove that he has nothing to do with the political establishment. It is true that he never wore such a shirt to work when he was Secretary of Education, or even while he was Governor of Tennessee. And Mr. Buchanan seems to have set the tone of the primaries so far by his soundbite which covers all situations where he disapproves of decisions that have been made, whether they deal with trade, with Bosnia, with affirmative action, whatever. Says Candidate Buchanan, "What would our ancestors have done when confronted with such a decision by government? They would have said 'Lock and load.'"

Someone opined to the late essayist and newspaperman, Robert Benchley, that people get the kind of government they deserve. "Wrong," said Benchley: "They get much better government than they deserve." It is pretty hard to find a measuring stick that has any credibility for measuring the efficacy of government today. Most political scientists would say that government is not functioning very efficiently, but most would still defend the structure as basically sound. What seems to be wrong with government mostly is that the electoral process is being used as a protest vehicle rather than as a means for electing effective officials. The most recent elections seem to be saying that the people don't want anybody who will do it right—they don't think it *can* be done right. I would even say that a political malaise has overtaken the electorate, except that the last Democrat who said that lost the next election, one Jimmy Carter.

I think that the biggest problem with the electoral process is the way it is financed. One of the reasons that government is held in such low repute is that people sense that their elected officials are not responsible to their constituency as much as they are responsible to their financial patrons, If I had to seek a single reform measure to push, it would be a campaign reform measure that broke the lock between big money and elections. When a Huffington can spend over 40 million dollars in a senatorial campaign, and barely lose only because a very credible incumbent was able to spend \$36 million, something is wrong. When a Steve Forbes is able to come from nowhere and almost upset the frontrunner personally and does upset him vicariously) by spending a good piece of his personal fortune in a few states, there is clearly a need for reform. The problem is that some of the reforms being suggested are not going to do very much, if anything.

We need to recognize that it is no more likely that an elected official can take money from a lobbying interest and still make his decisions on the merits as it is that a judge can accept expensive presents from a litigant and still make his decisions on the merits. I would bar anyone from making a contribution to any candidate who can have an input into a decision that will benefit the contributor financially. And I would bar elected officials from voting on any matters where their contributors, past, present or future, are involved. The details and the enforcement would be complicated, but nowhere near as complicated as some of the Mickey Mouse campaign finance laws we now have on the books.

Would campaign finance reform diminish extremism? Not directly. But anything that breaks down the cynicism of the present body politic is an absolutely necessary condition precedent to doing anything about the problem.