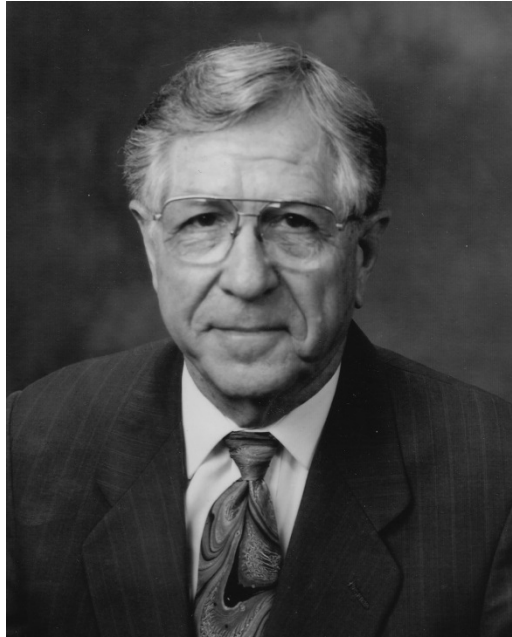


DEDICATION TO CONGRESSMAN NEAL SMITH

*By David S. Walker**



The 2013 Constitutional Law Symposium, sponsored by the Constitutional Law Center at Drake University Law School, and published in this volume of the *Drake Law Review*, focuses on a timely and important question: *The U.S. Constitution and Political Dysfunction: Is There a Connection?* From 1959 to 1995, Congressman Neal Smith represented Iowans with distinction and also provided national leadership during eighteen terms of service in the U.S. House of Representatives. For many reasons, it is most appropriate to dedicate this symposium to him.

As the years pass by, some—even some Iowans—may ask, who is Neal Smith? Neal Smith is a member of—and would serve as an excellent standard-bearer for—what Tom Brokaw has called “the greatest generation,” that generation of Americans that lived through and dealt

* Dwight D. Opperman Distinguished Professor of Law, Drake University Law School.

with the Depression, fought World War II, and came back to build America and lead the world.¹

Born in 1920, Congressman Smith grew up on a farm and came of age during the Depression.² Everyone was poor, he has said, so they really didn't know how poor they were, and because they lived on a farm, they had food and could—and did—share what they had with homeless people who jumped off trains or walked by their house and asked for food.³ When Franklin Roosevelt was elected President in 1932, he implemented a government program providing nonrecourse loans to farmers for corn.⁴ Farmers repaid the loans with corn they grew that the government stored and later drew upon during food shortages in World War II.⁵ The loan program's success convinced Congressman Smith that "government can be good and that its purpose is to serve other people," and "that the government can help people do what individuals cannot do singly but can do collectively"⁶

This lesson about the role and need for government was reinforced by Congressman Smith's experience in World War II. There had been considerable popular and political opposition to FDR's efforts to prepare America for the possibility of war and the need to help the Allies.⁷ Then Pearl Harbor occurred.⁸ Congressman Smith set aside plans for college, for which he had been saving, and went into the Army on his twenty-second birthday.⁹ He served for three-and-a-half years in the Army Air Force, earning a Purple Heart, a Pacific Asiatic Campaign Medal with nine Battle Stars, and the Air Medal with four oak leaf clusters, among other decorations.¹⁰ "By the time I was discharged," he says, "I was a much changed person."¹¹ He never relates details, and doesn't intend to.¹² He "did what 11 million other service personnel did" and believes "any talk

1. TOM BROKAW, *THE GREATEST GENERATION* xix-xx (1998).

2. NEAL SMITH, *MR. SMITH WENT TO WASHINGTON: FROM EISENHOWER TO CLINTON* 3, 5 (1996).

3. *Id.* at 5.

4. *Id.* at 24.

5. *Id.* at 25.

6. *Id.*

7. *Id.* at 33-34.

8. *Id.*

9. *Id.* at 29.

10. *Id.* at xxi.

11. *Id.* at 30.

12. *Id.*

should be about those who did not return,”¹³ who included “some of the best men [he has] ever known.”¹⁴ His experiences in World War II turned him to “a life of public service instead of solely a business career;”¹⁵ gave him “far more respect for the viewpoints of others” and made him “far less tolerant of bigotry and prejudice;”¹⁶ and caused him “to resolve, without formally doing so, that [he] would use [his] life to make this a better world.”¹⁷

Following discharge from the service, with the support of the G.I. Bill, he completed college, and with his wife and lifelong partner Bea, he entered Drake University Law School.¹⁸ Perhaps not surprisingly, constitutional law was the future congressman’s best subject, and he earned an *A* in the course. Congressman Smith and Bea graduated in 1950, and they decided to go into private practice together instead of accepting offers from an insurance company that discriminated against Bea because she was a woman and would have paid her \$100 per month less for the same job.¹⁹ Congressman Smith and Bea’s practice flourished, but he had also become active in politics and his capacity for leadership and initiative became evident.²⁰ He formed a Young Democrats Club while at Drake, campaigned for President Harry S. Truman, became President of the national Young Democrats Organization, and worked hard to register voters in Polk County.²¹ “Chief Justice Taft once said,” Charles Evans Hughes said, “that a constitutional lawyer was one who had abandoned the practice of the law and had gone into politics.”²² Perhaps that is so, for in 1958, despite the Smiths’ flourishing law practice, Smith decided to run for Congress.²³ He won a contested primary, and then he won the election.²⁴ Congressman Smith and Bea closed their practice, and while continuing to operate their family farm,²⁵ they moved to Washington, D.C., where

13. *Id.*

14. *Id.* at 33.

15. *Id.* at 32.

16. *Id.* at 33.

17. *Id.*

18. *Id.* at 36.

19. *Id.* at 51–52.

20. *Id.* at 52–53.

21. *Id.* at 47, 58–59.

22. 2 MERLO J. PUSEY, CHARLES EVANS HUGHES 625 (1951).

23. *See* SMITH, *supra* note 2, at 60.

24. *See id.* at 61.

25. *Id.*

Congressman Smith kept on winning reelection for the next seventeen terms of Congress. The Depression and World War II had made a deep impression on him, and he wanted “to make government work better, to increase economic opportunities, and to reduce the cause of wars.”²⁶

An immediate reason for dedicating this symposium to Congressman Smith is that it was through his work and his collaboration with others in Congress that Drake University Law School *has* a Constitutional Law Center. The time was 1986, the nation was looking ahead to the bicentennial of the Constitution the next year, and there was growing understanding of the need not only to celebrate “the miracle at Philadelphia,”²⁷ but to renew efforts to ensure broad public understanding of the Constitution and the values it enshrines. Congressman Smith also recognized the need for legislators to act and stay within the powers the Constitution grants to Congress when drafting and enacting legislation and he would talk about the efforts of legislators to do so.²⁸ To serve both of these needs, the congressman sponsored legislation leading to the establishment of the Constitutional Law Center at Drake University Law School. The stated purpose of the legislation was

to establish four centers where nationally recognized experts in Constitutional law will produce, on a periodic basis, articles of current interest relating to the Constitution of the United States which are suitable for use by . . . scholars, educational institutions, law school reviews, bar associations, and the news media.²⁹

To encourage Drake and three others universities identified in the

26. *Id.* at 28–29.

27. *See generally* CATHERINE DRINKER BOWEN, *MIRACLE AT PHILADELPHIA: THE STORY OF THE CONSTITUTIONAL CONVENTION MAY TO SEPTEMBER 1787* (1966) (telling of the issues confronted and the deliberations at the Constitutional Convention in 1787, the roles played by various Founding Fathers, and the resulting “miracle” in their approval of the Constitution subsequently ratified by the states). Chief Justice Warren Burger, Chair of the Commission on the Bicentennial of the United States Constitution, came to Drake University on October 26, 1987 to dedicate the Neal and Bea Smith Law Center. That evening, at a celebration banquet attended by more than 800 persons, the Chief Justice spoke warmly and admiringly of Congressman Smith and his wife Bea. Drawing on Ms. Bowen’s book, he made the subject of his remarks “the miracle at Philadelphia.”

28. *See, e.g.,* SMITH, *supra* note 2, at 85–86 (discussing legislative efforts to provide loans and grants for college facilities without violating the First Amendment’s prohibition on aid to religious schools); Symposium, *Opening Remarks*, 1 CONST. L. SYMP. 17, 18–19 (1990) (remarks of Congressman Neal Smith).

29. 20 U.S.C. § 4516(a) (2006).

legislation to establish such centers, an endowment for each school was appropriated.³⁰ Drake University gratefully responded, made a commitment to provide and sustain crucial additional funding, and established the center in 1989. The first symposium was held in March 1990,³¹ and the center has sponsored a symposium such as the proceedings published here by the *Drake Law Review* every year since that time. As intended, the subjects have always explored important issues relating to the Constitution; the center and the symposium have attracted distinguished scholars and speakers; and the audience has included members of the public, jurists, practicing lawyers, professors from many disciplines, students, and representatives of the media. It has truly been a grand tradition.

Congressman Smith was also instrumental in Drake University's receipt of a substantial endowment appropriation to support clinical education at the law school. That legislation enabled law students supervised by experienced faculty to represent low-income persons who needed legal representation in civil matters, and it also provided funding for the home of Drake's clinical programs, suitably named by the university as the Neal and Bea Smith Law Center.³² Iowa's public universities also benefitted from attention Congressman Smith gave to the state, and each instance offers an example of Congressman Smith thinking in ways that would benefit the many constituencies he had been elected to serve.³³ When Congressman Smith secured funding for Iowa State University to support research and development of advanced technology,³⁴ for example, the legislation he sponsored did not just support education; it also was

30. *Id.* § 4516(f).

31. The subject of that symposium was *Values in Conflict: Twenty-Five Years After New York Times v. Sullivan*. Symposium, *Background Reading*, 1 CONST. L. SYMP. 11 (1990).

32. See Supplemental Appropriations Act, Pub. L. No. 99-88, 99 Stat. 293, 305 (1984).

33. See Kenneth Pins, *Influence Pays for State, Drake*, DES MOINES REG., Nov. 4, 1990, at 1, 9A; Neal Smith, *What is Making Neal Smith So Angry*, DES MOINES REG., July 19, 1991, at 11A; David Yepsen, *When Smith Talks, State Leaders Listen*, DES MOINES REG., July 22, 1991, at 9A.

34. See *Neal Smith 2006*, IOWA ST. U. ALUMNI ASS'N, http://www.isualum.org/en/awards/distinguished_awards_celebration/honorary_alumni_award/neal_smith_2006.cfm (last visited Sept. 4, 2013) (crediting the congressman with "support [leading] to the creation of the Institute for Physical Research and Technology, . . . the Center for Crops Utilization Research, [the] Center for Designing Foods to Improve Nutrition, [the] Food and Agricultural Policy Research Institute and [the] National Soil Tilth Laboratory. . . [as well as] the new College of Veterinary Medicine").

intended that the technology developed would be transferred to the private sector to create good jobs and strengthen Iowa's economy.³⁵ Similarly, in the case of funding for clinical legal education at Drake University Law School, and at other law schools as well,³⁶ the ensuing benefit was not just for law students, but also for people needing but unable to afford legal representation. The funding came at a time when legal services programs nationally were not able to meet the need, and thus benefitted the entire community. Congressman Smith intended law students to obtain experiential legal education so that they would actually be prepared to serve people in their communities, would see and understand the need for the kind of public service to which the legal profession is dedicated,³⁷ and would appreciate the relationship between their work as attorneys and the rule of law. Quite fittingly, Drake University's celebration of the bicentennial of the Constitution and dedication of the Neal and Bea Smith Law Center was titled *Dedication to Justice*.

Congressman Smith's personal dedication to the rule of law and his profound commitment to public service are additional reasons for dedicating this particular symposium to him. The Constitution, which is the subject of the Constitutional Law Center's focus and work, was designed "to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our

35. Smith, *supra* note 33, at 11A ("This great university asset in which Iowa taxpayers have invested so much can serve this additional mission; and while it is extremely helpful and complementary to the function of educating both undergraduate and graduate students, this whole process of advanced technology research and development will also create jobs for those Iowa taxpayers who support the education function at the university.").

36. In addition to the support for clinical legal education at Drake, Congressman Smith was the author and sponsor of the Law School Clinical Legal Education Program, which provided grant funding for law schools seeking to establish legal clinics. See, e.g., Supplemental Appropriations Act at 305 (allocating funding to Loyola University in New Orleans).

37. One thinks of Roscoe Pound's celebrated definition of "profession" in distinguishing it from other pursuits for earning a living:

The term refers to a group . . . pursuing a learned art as a common calling in the spirit of public service—no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of public service is the primary purpose.

ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 5 (1953).

Posterity”³⁸ That fairly well describes Congressman Smith’s personal mission and life work as a congressman. Clearly the Constitution was designed to provide a means by which issues could be addressed and problems solved by majority vote of elected representatives.³⁹ The point was “to form a more perfect Union” than had been possible under the Articles of Confederation.⁴⁰

Today, however, myriad issues of vital significance to the Union are caught in political stalemate and seemingly unresolvable conflict. That is one of the reasons for the subject of this symposium. Examples abound: implementation of the Affordable Care Act and the Dodd-Frank Act; climate change and environmental regulation and protection; the economy, unemployment, and jobs; tax reform and the budget, as illustrated by contentious gridlock over the debt ceiling, the so-called fiscal cliff, and now the “sequester”; agriculture and a farm bill that serves not just producers but also the poor and, thus, includes support for the food stamp program; immigration reform; and many more.

Admittedly, each of these issues is challenging and conflicting views about them are many and sharply drawn, but at any given time in our history, the nation has faced daunting issues that have spawned heated and lengthy debate. The expectation of most people—perhaps especially with issues of crucial importance and national, even global, significance—is that the people we send to Washington, D.C. will work together to find mutually acceptable solutions, and if none can be found that differences will be resolved in the ordinary way of a republic, namely, by a vote in which the majority prevails. In truth, instances are legion in American history in which senators and representatives have worked across the aisle in each of the legislative contexts mentioned above and succeeded in finding workable compromises and legislative solutions that have bridged differences and moved the nation forward.⁴¹ Only the exceptional issue of slavery and its abolition eluded the finding of a political solution.

Does our Constitution bear responsibility for the stalemate on major issues that we are witnessing, and is the solution to the gridlock only to be found for sure in constitutional change? Some believe so, and these are views articulated and debated in this excellent symposium—nicely

38. U.S. CONST. pmbl.

39. *See* U.S. CONST. art. I, § 5.

40. U.S. CONST. pmbl.

41. *See, e.g.,* SMITH, *supra* note 2, at 245 (describing “considerable bipartisan support for farm legislation” in the 1960s).

summarized and canvassed by Mark Kende, Director of the Drake Constitutional Law Center and James Madison Chair in Constitutional Law—in his *Foreword* to the symposium.⁴² We would do well to listen to and consider these views. And yet, something Theodore Roosevelt once expressed is worth remembering. “Alike for the nation and the individual,” he wrote, “the one indispensable requisite is character—character that does and dares as well as endures, character that is active in the performance of virtue no less than firm in the refusal to do aught that is vicious or degraded.”⁴³ What is required to find solutions for problems we face are people who are willing and able to provide leadership, to work with others to solve problems, to think in terms of the national interest, and to accept compromise—just as the Founders did in 1787 and as Congress has done on occasions since that time too numerous to mention.

In his Keynote Address for the 2013 Symposium, Norman Ornstein⁴⁴ opened by saying that he was pleased to see Congressman Smith in attendance:

I’ve known Neal during the time that he was in Congress, and he was the quintessential problem solver—somebody who focused on finding ways working both across the aisle and in depth in his committees to make things work. His presence here only makes me more acutely aware of how few problem solvers we have now.⁴⁵

And that is a further reason to dedicate to Congressman Smith this symposium focusing on sources of political dysfunction and the role of the Constitution. Congressman Smith *was* a problem solver, and he both worked with others and personally helped lead the way to address important issues of his time.

Legislation that Congressman Smith authored or sponsored includes the Wholesome Meat Act of 1967, the Egg Products Inspection Act of 1970, the Small Business Development Centers Act, legislation establishing

42. Mark S. Kende, *Drake Law Review Foreword 2013*, 61 DRAKE L. REV. __ (2013).

43. Theodore Roosevelt, *Character and Success*, 64 OUTLOOK 725, 727 (1900).

44. Norman Ornstein is a Resident Scholar at the American Enterprise Institute for Public Policy Research and has authored numerous books and articles, including the recent and widely heralded *It’s Even Worse Than It Looks: How the American Constitutional System Collided with the New Politics of Extremism*.

45. Norman Ornstein, *Why “It’s Even Worse Than It Looks”: Parliamentary Parties in the American Constitutional System*, 61 DRAKE L. REV. 1117, 1117 (2013).

the Commodity Futures Trading Commission, and the 1986 Grain Quality Improvements Act. Becoming a member of the House Appropriations Committee and chair of one of its subcommittees, he advocated for, secured, and sustained support for the judiciary and the State Department, all the while tending to the needs of Iowa and his constituents at home.⁴⁶ Congressman Smith's approach was always to talk to the leadership from both parties, work with people to identify and serve common interests, and focus on issues rather than party. There were three parties back then, he will tell you—Democrats, southern Democrats, and Republicans⁴⁷—and he worked for solutions that would achieve a majority among the three. Landmark legislation—for example, the Civil Rights Act of 1964,⁴⁸ Medicare, the War Powers Act, and tax reform legislation in the 1980s quickly come to mind—was passed, and politics was *not* dysfunctional.⁴⁹

46. See SMITH, *supra* note 2, at 77.

47. See *id.* at 71 (distinguishing “Dixiecrats” from national Democrats).

48. Congressman Smith was the only representative from Iowa who supported civil rights legislation in 1963. See *id.* at 81. His support for civil rights had been longstanding and was influenced by his experiences during World War II and President Truman's leadership. See *id.* at 127. When he was elected to Congress in 1958, the *New Republic* profiled him. Joseph Freehill, *New Faces*, NEW REPUBLIC, Oct. 13, 1958, at 13. Although the Young Democrats Clubs of America had been controlled by southern conservatives and eastern big-city machines,

The Chattanooga national convention of the Young Democrats in 1949 changed all of that: a new national caucus took shape there to corral the votes for a piece of rank heresy—a resolution praising Harry S. Truman's leadership in civil rights. The principal caucus leader in 1949 who has followed through, in the years since, to install and maintain in power a Northern-Western coalition is deceptively soft-spoken Neal Smith of Iowa.

Id.

49. That is not to say that the process is always, or even usually, quick or smooth. In his book *Grain Grades and Standards: Historical Issues Shaping the Future*, Professor Lowell D. Hill of the College of Agricultural, Consumer and Environmental Science at the University of Illinois describes the lengthy road to enactment of the 1986 Grain Quality Improvement Act, which Neal Smith authored. See LOWELL D. HILL, *GRAIN GRADES AND STANDARDS: HISTORICAL ISSUES SHAPING THE FUTURE* 153–70 (1990). Surviving decades of resistance by the grain industry, that legislation prohibited adulteration of grain at any time after its purchase from the original producer and forbade introduction of foreign material into export elevators. See Grain Quality Improvement Act of 1986 § 303(a), 7 U.S.C. § 87b(d) (2012). This practice had produced international scandal a decade earlier, harmed America's reputation, damaged commerce, and hurt farmers. See HILL, *supra*, at 141–48. In the process, Hill wrote, “the record for perseverance is probably held by Neal Smith.” *Id.* at 166. Smith authored the 1986 Act and attracted twenty-six congressmen as cosponsors for the bill. *Id.* at 166–70 (describing Smith's efforts spanning more than a decade to secure this

Today, much has changed. As Norman Ornstein also describes, instead of focusing on *issues*, a kind of “tribalism” has developed and the focus is instead largely on *political party*.⁵⁰ In the Senate, there has been unprecedented use of the filibuster or cloture to block debate and vote on legislation that a majority—but not a supermajority of 60%—support, and in the House, the Republican majority subscribes to the “Hastert Rule,” under which the GOP leadership will not bring to the floor for debate and vote, except on rare occasion, legislation that lacks support from a majority of GOP members.⁵¹ The filibuster rule and the Hastert Rule, if they do not breed tribalism, do allow it to flourish and obstruct problem solving. But as we consider the subject of the symposium—whether the Constitution is responsible for the political dysfunction we are witnessing in Washington, D.C.—it is important to note neither the filibuster nor the Hastert Rule is mandated by the Constitution. They are only legislative rules and might be changed. Even without change, they need not be invoked. The political dysfunction that the rules have produced, therefore, cannot be attributed to the Constitution, though it is nonetheless real.⁵² It is the character of the people who have been elected to serve, along with their willingness to work across political differences to serve the national interest and solve problems, that makes the difference between a functioning democracy and political dysfunction.

Anyone who knows Congressman Smith knows that he is a Democrat, but putting party above national interest was not something he did. As the congressman tells it, he learned early “that the government can help people do what individuals cannot do singly but can do collectively and that commonsense actions by government can be good.”⁵³ Contrary to those who “think that government is not needed,”⁵⁴ Congressman Smith believes that

legislation).

50. See Ornstein, *supra* note 45, at 1119.

51. See Molly Ball, *Even the Aide Who Coined the Hastert Rule Says the Hastert Rule Isn't Working*, ATLANTIC (July 21, 2013), <http://www.theatlantic.com/politics/archive/2013/07/even-the-aide-who-coined-the-hastert-rule-says-the-hastert-rule-isnt-working/277961/>.

52. A further problem is gerrymandering in the House of Representatives and a growing lack of popular representativeness of those elected to serve in the House. That is a problem the Founders did not address in the Constitution and in truth made possible, and of course, the Senate was structured to provide equal representation regardless of population. U.S. CONST. art. I, § 3, cl. 1.

53. SMITH, *supra* note 2, at 25.

54. *Id.* at 407.

Government permits people to do jointly what they cannot do separately. Government should not be a legal substitute for Robin Hood or Jesse James, but rather a tool to correct social injustice without doing injustice. Government is a tool to be used so that many individuals can join together to do what they separately cannot do. It must be considered to be that way, or all of us will lose.⁵⁵

Regardless of party, he believed, people have “shared dreams” and interests in common, and as a campaign leaflet he used in 1994 expressed, “The heart of the solution is in believing, believing in ourselves, our neighbors and in our capacity to work together to make our shared dreams come true.”⁵⁶ And so he focused on issues, not parties, and worked with others—Democrats, Republicans, and southern Democrats—to achieve solutions and “to make government better.”⁵⁷

As we consider the issues raised and explored in this symposium on the Constitution and political dysfunction, a place to start is with the character of those who serve and their philosophy of government. In recognition of one who served his constituents and his country well and who helped to make government better, the 2013 Constitutional Law Symposium is dedicated to Congressman Neal E. Smith.

55. *Id.* at 408.

56. See David Rogers, *Mr. Smith's Stay in Washington Reflects House Democrats' Plight in Iowa and Nationwide*, WALL ST. J., Oct. 20, 1994, at A24.

57. See SMITH, *supra* note 2, at 28.