Imbalance of Powers: Congress, the President and the Constitution after 9/11

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At Berkeley, Gordon Silverstein teaches courses in constitutional law, civil liberties, comparative constitutionalism, and the separation of powers. Before joining Berkeley’s faculty, Silverstein held faculty positions in political science, law, and administrative science at Rice University, Dartmouth College, the University of Minnesota, and Lewis & Clark College. In addition, he served as a program director for the nonprofit, nonpartisan New America Foundation in Washington, D.C. The author of Imbalance of Powers: Constitutional Interpretation and the Making of American Foreign Policy (1997), he is working on a new book titled How Law Kills Politics. Following his undergraduate education at Cornell University, where he served as editor-in-chief of the Cornell Daily Sun, Silverstein worked as a journalist for the Wall Street Journal in New York and Hong Kong and the San Francisco Chronicle before receiving a PhD from Harvard University.
Fixing the imbalance starts with a written set of principles that clearly defines the board’s responsibilities and establishes a crisp line between the board’s job and management’s. This is especially important when the board chair and the CEO are the same person. Good governance requires a balance of power between the board and the CEO, and a healthy tension between them. That requires trust, the free flow of ideas, and a board that is comfortable challenging management. With great powers come great responsibilities and fears. In the Role of fear in overdiagnosis and overtreatment, Iona Heath eloquently described the everyday inner conflicts of patients and doctors.

All three branches of government have been complicit in the imbalance of powers, which aids in separating the will of the people from their own power. The only way government is keeping up with its unwarranted growth of power is to swell up in size. Delegation has run rampant; there are over 430 agencies, departments and sub-agencies in the federal government. Partisan fighting and inefficiency has followed this massive increase. We talk about draining the swamp. Well, this continued expansion is the swamp.