113TH CONGRESS
2d Session

COMMITTEE PRINT

S. PRT.
113–30

THE EVOLVING CONGRESS

COMMITTEE ON RULES AND ADMINISTRATION

UNITED STATES SENATE

DECEMBER 2014

PREPARED BY THE

CONGRESSIONAL RESEARCH SERVICE

LIBRARY OF CONGRESS

THE EVOLVING CONGRESS

113TH CONGRESS
2d Session

COMMITTEE PRINT

S. PRT.
113–30

THE EVOLVING CONGRESS

COMMITTEE ON RULES AND ADMINISTRATION

UNITED STATES SENATE

DECEMBER 2014

PREPARED BY THE

CONGRESSIONAL RESEARCH SERVICE

LIBRARY OF CONGRESS

U.S. GOVERNMENT PRINTING OFFICE

89–394 PDF WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

LETTER OF SUBMITTAL

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, November 12, 2014.

Hon. CHARLES E. SCHUMER,
Chairman, Committee on Rules and Administration, U.S. Senate

DEAR MR. CHAIRMAN: I am pleased to submit the study entitled "The Evolving Congress," which was prepared by the Congressional Research Service.

This compendium of 22 reports was written by staff of the Government and Finance Division during the CRS centennial year. It is a fitting contribution by the Service whose mission is not only to analyze the domestic and international issues that impact the legislative agenda but also to advise on the future organization and operations of Congress and the institution's policymaking process. The goal of this project is to inform the legislative debate moving forward by examining how and why Congress evolved over the previous decades to where it is today.

In addition to the analysts and information professionals who prepared the various pieces that make up "The Evolving Congress," the project was coordinated and reviewed by Government and Finance Division staff, including Pamela Jackson, Walter J. Oleszek, John Haskell, Michael L. Koempel, Matthew E. Glassman, James Saturno, and Robert Jay Dilger. I trust the committee will find the study thought provoking and valuable as you consider issues of congressional operations. It should also serve the wider audience of congressional scholars and all those interested in the history and processes of the First Branch.

Sincerely,

Dr. MARY MAZANEC,
Director.

PREFACE

For 100 years, the Congressional Research Service has been charged with providing nonpartisan and authoritative research and analysis to inform the legislative debate in Congress. This has involved a wide range of services, such as written reports on issues and the legislative process, consultations with Members and their staff, seminars on policy and procedural matters, and congressional testimony. In recent years, CRS has expanded its service by providing a wider range of electronic products and enhancing its Web site to facilitate ease of Member and staff use.

For this congressional committee print, the Government and Finance Division at CRS took a step back from its intensive day-to-day service to Congress to analyze important trends in the evolution of the institution—its organization and policymaking process—over the last many decades. Changes in the political landscape, technology, and representational norms have required Congress to evolve as the Nation's most democratic national institution of governance. The essays in this print demonstrate that Congress has been a flexible institution that has changed markedly in recent years in response to the social and political environment.

In assessing Congress, it is also important to be mindful of what has not changed. For one thing, the institution has always been subject to criticism, as described by Walter Oleszek in one of the two overview pieces in Part I of this committee print, "The Evolving Congress: Overview and Analysis of the Modern Era." Often the criticism centers around so-called "gridlock" on major issues. But it bears mentioning that the constitutional design, another constant, militates against speed and efficiency and in favor of deliberation.

That Congress is not moving fast enough on certain issues to satisfy certain observers overlooks the fact that, historically, major legislation has almost always taken time to enact. Civil rights and Medicare both required debate and deliberation stretching over multiple Congresses before enactment. Today, the big policy debates are every bit as complex as those were, and in some respects may be more so given rapidly evolving technologies and the international dimension of so many issues. Cybersecurity, environment challenges, fiscal pressures from entitlements, and immigration reform, to name a few, present daunting challenges to lawmakers in the coming years.

Partisanship is also a constant. Indeed the current level of partisanship that is often decried—characterized by the relative ideological homogeneity within the two parties along with the ideological distance between them—is by no means unprecedented. It is also true that contemporary polarization is a reflection of a prin-

cipled struggle over the proper role of the Federal Government. A serious debate is taking place in Congress that reflects disagreement and unease throughout the country, and there is nothing "wrong" or "broken" about that debate.

However, this era of strong partisanship is likely no more permanent than others in the past. New issues and new movements inevitably disrupt the status quo in the country, the Congress, and the party system. Witness the impact of the rise of the Progressives early in the 20th century, changes in the composition of both parties as a result of the civil rights movement, and controversial Supreme Court decisions in the 1960s, 1970s, and beyond, as well as the effect of the tax revolt in the late 1970s.

After Walter Oleszek's piece, Michael Koempel looks broadly at how the job of a Member has evolved in the last half century. He addresses the dramatic changes in the information environment, resulting in increased demands from constituents; the social changes that have profoundly affected the context of representation; and the way the campaign environment—increased costs and fundraising pressures—has evolved. These changes, together with the evolution of the party coalitions and the environment of partisanship described by Oleszek, have led to a different context for the consideration of legislation. Koempel describes how the roles of party leaders and committees in both Chambers have evolved; even the way legislation is handled on the floors of the two Chambers is different in important ways now than it was 30, 40, or 50 years ago. The message: the life of Members, with respect to both their legislative and representational roles, has changed in irrevocable ways since the 1960s and 1970s.

Part II of the print, "The Members of Congress," building on Oleszek's and Koempel's contributions, includes several reports describing specific aspects of the life of a Member of Congress. Matthew Glassman considers how social media may affect Members in the performance of their representative role. Mark Oleszek takes a different tack in assessing the life of a Member, by investigating the nature of relationships in the Senate over the last 30 years. He finds that collaborative relationships are central to lawmaking but that opportunities to work together have decreased in recent years.

Jennifer Williams, Ida Brudnick, and Jennifer Manning examine the changing demographics of the congressional membership, a membership that is much more diverse than previously, but which still is not representative of the Nation in significant ways. Brudnick separately details how congressional staffing has evolved over time, with implications for how Members do their work.

Kevin Coleman and Sam Garrett write about the changing environment in congressional election campaigns in recent decades. They note in detail the differences in the campaign context 50 years ago or so and now, but ultimately conclude that the fundamentals of campaigns are the same—candidates still need to identify, communicate with, and motivate potential voters. New technologies and other innovations in electioneering are merely means to the same end.

Jessica Gerrity analyzes the public's view of Congress over the last 40 years. She concludes that Congress' consistently low popularity is, in part, due to factors beyond its control, but at the same

time may have systemic consequences. At the end of this group of reports, Jacob Straus wades into the question of measuring the productivity of one Congress against another. His contribution is that glib representations of a given Congress' productivity, or lack thereof, not only ignore methodological complexities, but also generally fail to consider that any such judgments are inherently value-laden.

Part III, "The Institutional Congress," looks in detail at developments in the legislative process. The Constitution is nearly silent on how Congress needs to go about its legislative and oversight responsibilities. Like the life of a Member, the legislative process itself has evolved in significant ways. Even what is thought of as "regular order" is far from static when viewed through a historical lens.

Megan Lynch and Mark Oleszek consider developments in the use of special rules in the House. Authorizing legislation is, of course, the legal foundation for the actions of executive branch agencies. Jessica Tollestrup details notable changes in the structure, content, and frequency of authorizations in the last few decades. In recent years in particular, Congress has attempted to embed transparency in agency operations, as described by Clinton Brass and Wendy Ginsberg. This topic is likely an area of continued reexamination for Congress going forward.

An important question that faces Congress on a regular basis is how to organize for legislative business. The action in this area revolves around the relative roles of party leadership and committees in the development and processing of legislation. Judy Schneider delves into the implications for Members and the policymaking process of the increased control that party leaders exert over some aspects of the process.

Part IV, "Policymaking Case Studies," aims to shed light on the various ways policy is made in the current Congress, and how that has evolved. In different ways, these case studies of congressional policymaking show that the institution is fully capable in different ways of addressing the competing demands of a diverse nation.

For example, Edward Murphy and Eric Weiss describe Congress' response to financial crises. In 2008, for example, we see that Congress' hands are neither tied nor forced by policies and institutions put in place by previous Congresses; in fact, Congress proves able to pass far-reaching legislation even in an era of supposed legislative gridlock. Similarly, post-9/11, Congress acted forcefully in various ways, including by creating the Department of Homeland Security. William Painter describes the creation of the new department and what, in retrospect, that experience tells us.

In another report, Colleen Shogan studies the passage of the defense authorization bill. How does this massive undertaking happen on an annual basis when many other reauthorization efforts stall out? Robert Dilger and Sean Lowry consider the case of small business policy, where creative approaches to the legislative process have at times yielded public law. Jennifer Williams describes a particular case involving congressional actions to direct Census Bureau policy through appropriations legislation. This reflects a trend of congressional direction coming through appropriations bills instead of authorizations. Other reports cover Congress' evolving

role in responding to disasters (Bruce Lindsay and Francis McCarthy), and the evolution of block grants as a policy instrument (Eugene Boyd and Natalie Keegan).

Two reports look at tax policy—Molly Sherlock discusses rule-driven policy in the case of so-called "tax extenders," and Jane Gravelle reminds readers that comprehensive tax reform is not something that happens easily. In fact, her historical analysis reveals that there are identifiable preconditions for tax reform that, by and large, are not currently in place. The idea commonly put forward that Congress is "overdue" to enact comprehensive reform ignores not just history, but also the nature of the particular tax issues facing lawmakers today.

As noted earlier, Congress faces major challenges going forward in a complex and interdependent world. Its decisions, given its central role in the policymaking process, will profoundly affect the future of the Nation. With this committee print, CRS is fulfilling its traditional role of informing Congress on the domestic and international challenges that lie ahead, as well as assessing the future character of the institution and its policymaking process. The CRS goal is to enrich this debate by examining how and why Congress evolved to where it is today.

This committee print could not have happened without the efforts behind the scenes of Pamela Jackson, Walter J. Oleszek, Michael L. Koempel, Matthew E. Glassman, James Saturno, and Robert Jay Dilger, as well as two former CRS staffers, Jessica C. Gerrity and Kevin Kosar. Karen Wirt and Tamera Wells-Lee, along with Suzanne Kayne of the Government Printing Office, worked long hours to enable the print to come together. In addition, Amber Wilhelm, assisted by Jamie Hutchinson, brought order to the production of graphics, and numerous editors polished the final products. Of course, as always, the real work of fulfilling the CRS mission to inform Congress was performed by the analysts and specialists who wrote the products whose contributions are described above.

JOHN HASKELL,
Assistant Director, Government and Finance Division.

CONTENTS

	Page
Letter of Submittal	iii
Preface, by John Haskell	v
I. Overview	
The Evolving Congress: Overview and Analysis of the Modern Era, by Walter J. Oleszek	3
Being a Member of Congress: Some Notable Changes During the Last Half Century, by Michael L. Koempel	61
II. The Members of Congress	
Tweet Your Congressman: The Rise of Electronic Communications in Congress, by Matthew E. Glassman	95
Collaborative Relationships and Lawmaking in the U.S. Senate: A Perspective Drawn from Firsthand Accounts, by Mark J. Oleszek	107
The 113th Congress and the U.S. Population: Discussion and Analysis of Selected Characteristics, by Jennifer D. Williams, Ida A. Brudnick, and Jennifer E. Manning	129
Congressional Staffing: The Continuity of Change and Reform, by Ida A. Brudnick	145
The Unchanging Nature of Congressional Elections, by Kevin J. Coleman and R. Sam Garrett	163
Understanding Congressional Approval: Public Opinion from 1974 to 2014, by Jessica C. Gerrity	189
Comparing Modern Congresses: Can Productivity Be Measured?, by Jacob R. Straus	217
III. The Institutional Congress	
Recent Innovations in Special Rules in the House of Representatives, by Megan S. Lynch and Mark J. Oleszek	245
Changes in the Purposes and Frequency of Authorizations of Appropriations, by Jessica Tollestrup	259
Congress Evolving in the Face of Complexity: Legislative Efforts to Embed Transparency, Participation, and Representation in Agency Operations, by Clinton T. Brass and Wendy Ginsberg	281
Committee Assignments and Party Leadership: An Analysis of Developments in the Modern Congress, by Judy Schneider	299
IV. Policymaking Case Studies	
Congress and Financial Crises, by Edward V. Murphy and N. Eric Weiss	325
Shocks to the System: Congress and the Establishment of the Department of Homeland Security, by William L. Painter	353
Like Clockwork: Senate Consideration of the National Defense Authorization Act, by Colleen J. Shogan	369
The SBA and Small Business Policymaking in Congress, by Robert Jay Dilger and Sean Lowry	383
Use of the Appropriations Process to Influence Census Bureau Policy: The Case of Adjustment, by Jennifer D. Williams	399
The Evolution of U.S. Disaster Relief Policy, by Bruce R. Lindsay and Francis X. McCarthy	413
Congress' Role in the Evolution of Federal Block Grants as a Policy Instrument: From Community Development to Homeland Security, by Eugene Boyd and Natalie Keegan	425

Page

IV. Policymaking Case Studies—Continued

The Tax Extenders: How Congressional Rules and Outside Interests Shape Policy, by Molly F. Sherlock 441

The Dynamics of Congressional Policymaking: Tax Reform, by Jane G. Gravelle 457

I. OVERVIEW

The Evolving Congress: Overview and Analysis of the Modern Era

WALTER J. OLESZEK

Senior Specialist in American National Government

Congress is an institution that constantly undergoes change. Sometimes the changes are big and sometimes they are small. The changes are driven by a variety of external and internal factors, many of which are highlighted in this report. The report's basic purpose is to analyze the relationship between two main centers of power in the House and Senate: committee power and party power. Sometimes one center of power appears to dominate in shaping policies; at other times it is the other, or both might be in some degree of equilibrium. Specifically, the report focuses on the configuration of internal power in the House: from the party government era (1890–1910), to the committee government period (1920–the early 1970s), to the subcommittee government stage (1970s–1980s), and the recentralization of authority in the party leadership (1990s). Comparable eras are examined for the Senate, with significant attention given to the 1950s Senate, the "individualist" Senate (1960s–1990s), to the polarized Senate (1990s–) of today. The time periods for the different House and Senate eras are approximations. The report closes with an assessment of the tension between gridlock and governance in the contemporary Congress.

To celebrate the centenary of the Congressional Research Service (1914–2014), analysts in the Government and Finance Division prepared a series of reports to highlight the evolving character and role of the legislative branch. The Founders expected Congress to be the "first branch" of government. Consider that half the words in the U.S. Constitution define the roles and responsibilities of the Nation's bicameral national legislature. Congress was granted "all legislative powers" as well as explicit authority (article I, section 8) to make "all Laws which shall be necessary and proper for carrying into Execution" all the powers enumerated in the Constitution (the power to tax, spend, borrow, and to create executive offices and inferior courts, for example). Congress also has implied powers, such as the authority to investigate and oversee the administration of laws. Provisions in the Constitution and the 17th Amendment also provide for the election of House and Senate Members.

In brief, Congress' pivotal role in the Nation's separation of powers system, with its panoply of "checks and balances"—overlapping powers accorded the three branches, such as the ability of the President to veto bills passed by Congress, subject to an override by a two-thirds vote of each Chamber—is rooted in the Constitution. In the view of a congressional scholar:

> The Constitution has successfully provided two features of national political life that seem unassailable. The first is a Congress that is institutionally robust and capable of gathering information and seeking opinions independently of the president [and initiating legislation in its own right]. The second is that Congress is . . . linked directly to the people through elections. The president is a stronger rival than he once was, but he is not the only game in town. It is that unbreakable electoral link that provides [Congress's] continuing legitimacy, ensuring real political power.[1]

Despite Congress' prominent place in the Nation's separation of powers system, public criticism of the legislative branch has been common since its creation. Many factors account for this recurrent pattern, such as people's dislike of various features of the lawmaking process (arguments, partisan conflicts, imperfect solutions, and so on). As two scholars have noted, Congress is "structured to embody what we dislike about modern democratic government, which is almost everything."[2] Various lawmakers also express disappointment in Congress' performance, while many commentators regularly call our contemporary national legislature broken, overly partisan, unproductive, or dysfunctional. There are also Members who state that Congress is functioning as the Framers intended despite the stalemates (policy and procedural), delays, and conflicts that understandably suffuse the lawmaking process.[3]

In a country as diverse as the United States, with scores of competing interests, it is not easy for elected representatives to come together to enact legislation that promotes, as noted in *The Federalist* (No. 57), "the common good of the society." What constitutes the "common good" is not self-evident and is open to profound disagreement, especially when the two parties—as in today's Congress—are sharply divided by philosophical, ideological, geographical, and political differences. One consequence: confrontation rather than compromise creates considerable turbulence and uncertainty in congressional policymaking.

That Congress has shortcomings goes without saying. Lawmakers themselves are cognizant of institutional ailments and regularly propose ways to improve the organization and operation of the House or Senate, as the case might be. From its earliest days, many Members have worked to improve and strengthen Congress' fundamental responsibilities—lawmaking, representation, and oversight—so Members might better address and resolve the Na-

[1] Charles Stewart III, "Congress and the Constitutional System," in Paul Quirk and Sarah Binder, eds., *The Legislative Branch* (New York: Oxford University Press, 2005), p. 30.

[2] John R. Hibbing and Elizabeth Theiss-Morse, *Congress as Public Enemy* (Cambridge, United Kingdom: Cambridge University Press, 1995), p. 158. See also the related CRS centennial report in this volume, *Understanding Congressional Approval: Public Opinion from 1974 to 2014*, by Jessica C. Gerrity.

[3] Senate Majority Leader Harry Reid, despite the many controversies that occur in the Chamber, stated: "Congress is not broke. Congress works the way it should. Does that mean it is always a very pleasant, happy place? Do I wish it weren't as difficult as it has been in the last few months? I wish it was much better than that. That is where we are . . . . Through all the years and conflicts we have had, we have been able to come together and reach reasonable conclusions. The great experiment that started in 1787 has been very successful . . . ." *Congressional Record*, v. 157, August 1, 2011, p. S5156.

tion's pressing problems. Although frustrations, disputations, and conflicts typically accompany consequential initiatives to revamp legislative structures and operations, change and innovation are part of Congress' DNA. These attributes enable Congress to remain a vital and effective instrument of governance.

While Congress cannot resolve every national or international problem, its record of achievement over 200 years merits high praise—the Bill of Rights; the elevation of public health as a national priority and the provision of resources to treat many diseases; the creation of a system of land-grant colleges and universities; the construction of an interstate highway system; a strong military; and so on. If laws failed to ameliorate problems or even make them worse, the Nation's open system enables feedback from Members, attentive constituents, outside groups, and others that can prompt corrective actions by the legislative branch. Constituents often overlook or simply do not appreciate or recognize the legislature's many accomplishments and how these attainments affect their lives. As a Congressman pointed out:

> [A] group of constituents visiting my [district] office told me that Congress was irrelevant. So I asked them a few questions. How had they gotten to my office? On the interstate highway, they said. Had any of them gone to the local university? Yes, they said, admitting they'd got help from federal student loans. Did any of them have grandparents on Social Security and Medicare? Well sure, they replied, picking up on where I was headed. Their lives had been profoundly affected by Congress. They just hadn't focused on all the connections before.[4]

The focus and connection of the reports in this committee print are to demonstrate that Congress plays a multiplicity of crucial roles in the Nation's constitutional system; that it is responsive to constructive criticism; that it can mediate conflicts and differences in the polity; that it regularly strives to strengthen its legislative, representative, and oversight functions; that it can produce effective and innovative policies; that it is a vital check on the "Presidential branch" of government; and that it is responsive to the concerns and needs of constituents, American society, and the world community.

Important to emphasize is that Congress has always been subject to various criticisms, some warranted and some not. Today, a major criticism is that Congress cannot address a plethora of pressing national problems because it is often in a state of policymaking paralysis. Two points about national policymaking merit mention. First, consequential laws are the product of the House, the Senate, and the President. No single elective unit or person can make laws on their own. Second, as James Madison stated in *The Federalist* (No. 52), Congress is "a substitute for a meeting of the citizens in person." If the people are divided on what they want done to resolve major national problems, then their divisions will manifest themselves in Congress. In the view of former Speaker Carl Albert (1973–1977), major legislative accomplishments occur "only because

---

[4] Lee Hamilton, "What I Wish Political Scientists Would Teach About Congress," *PS: Political Science & Politics*, vol. 33, December 2000, p. 758. Hamilton was a Member of the U.S. House of Representatives for 34 years (1965–1999). Currently, he is the director of the Center on Congress at Indiana University.

the American people had reached that point in their history where they wanted them done."[5]

This report analyzes the evolution of Congress: how and why it constantly adapts to new circumstances, issues, and problems. For example, the "regular order" of policymaking in one era is often displaced in whole or in part by a new "regular order," commonly prompted by an array of external and internal developments. The report's principal focus, then, is institutional change: how the House and Senate have evolved as policymaking assemblies, especially with regard to the role of parties and committees. Selected historical changes in the membership makeup of Congress, such as the professionalization of lawmakers' careers, are also included in the discussion.

The report is structured to examine several objectives. First, it begins with a discussion of some of the external and internal forces that commonly trigger major revisions to the distribution of power in the House and Senate. These drivers of change typically involve the combination of external stimuli and internal advocates. Both act as catalysts to bring about fundamental congressional change: for example, a new equilibrium of power that replaces or modifies the previous one. Second, because the election of new lawmakers is sometimes a major factor in instigating congressional alterations, the next section addresses selected changes in the membership and career patterns of lawmakers.

Third, the report provides an overview of the evolution of power in the House, and suggests why different institutional patterns of policymaking periodically emerge in the Chamber. Specifically, this part examines the evolution of the House from an era of "party government"—the speakerships of Thomas Reed (1889–1891; 1895–1899) and Joseph Cannon (1903–1911)—to "committee government" (roughly 1920–1970) to "subcommittee government" (the 1970s to the early 1980s). These governing models reflect the central tendency of each era rather than a time when party leaders, committee chairs, or subcommittee chairs totally dominated Chamber proceedings. After all, parties need committees to review and process legislation, and committees need party leaders to schedule and structure proceedings on the floor.

The fourth objective, encompassing two sections of the report, is an examination of the reemergence of strong party leadership, focusing on the speakerships of Newt Gingrich (1995–1999), Dennis Hastert (1999–2007) and Nancy Pelosi (2007–2011). The speakership of John Boehner (2011–) is also briefly noted.

Fifth, the report provides an overview of three Senate eras: the 1950s Senate, the individualist Senate (1960s to 1980s), and the polarized Senate of today. (The time periods specified for these eras, as for the House, are approximations.) Sixth, several summary observations conclude the report.

I. Drivers of Congressional Change

Congress and its membership are constantly changing and adapting to various conditions, pressures, and forces. Every election cycle, for instance, produces large or small changes in the makeup

[5] *Congressional Record*, v. 112, May 23, 1966, p. 10637.

of the House and Senate membership and in the salience of various issues. Historical circumstances can also provoke legislative change. Consider enactment of the Legislative Reorganization Act of 1946, the first comprehensive reform in Congress' history. Many leaders inside and outside Congress expressed concern about the condition of the legislative branch. During the Depression and New Deal period of the 1930s, they had witnessed a dramatic increase in the authority of the executive branch. Then, on the eve of World War II, they watched the rapid fall of many European parliamentary systems to Hitler's military onslaught.[6]

As a result, public interest in congressional reorganization became widespread among lawmakers, in the press and popular journals, and on the radio. Academics, led by the Committee on Congress of the American Political Science Association, prepared reports on ways to improve Congress. They also mobilized scholarly and public support for congressional reform. These conditions provided the incentive and motivation for numerous Members in both parties and Chambers to come together to strengthen their own branch of government.

External Forces

Many other external and internal developments can impel institutional change. Three are noted for illustrative purposes. First, new media technologies have altered how lawmakers communicate with their constituents and with each other. For example, the late Senator Edward Kennedy lamented the decline of face-to-face interactions with colleagues as lawmakers increasingly "speak" to each other 24/7 via various social media.[7] A House chair said he reached out to constituents with a social media campaign, "lending his voice to an 'explainer' video walking laymen through the ins and outs of reauthorizing water infrastructure projects."[8]

Second, global events constantly impact Congress' agenda and activities. The agenda of the contemporary Congress, for example, is replete with issues such as the humanitarian crisis associated with the large number of child immigrants from Central America fleeing violence and crossing the Nation's southwestern border; civil wars in Iraq and Syria; an assertive China; or Russian President Vladimir Putin's aggressive actions against Ukraine.

Third, unlike the post-World War II era when there were liberals and conservatives in both parties, today, as a current Senator noted, "most Democrats are far left; most Republicans are to the

---

[6] As Representative (later Senator) A.S. Mike Monroney, the vice chairman of the joint committee that drafted the 1946 LRA, pointed out, "[I]n almost every country of the world, the parliamentary system has failed. In countries where dictators have taken over, it has always been because the parliamentary systems have proved their inability to cope with the complex and difficult problems that face modern society. That is the real significance of congressional reorganization. An effective and efficient Congress is our first bulwark against dictatorship and the leading institution we have today to protect our liberties and democracy." See A.S. Mike Monroney, "The Legislative Reorganization Act of 1946: A First Appraisal," in A.S. Mike Monroney, et al., eds., *The Strengthening of American Political Institutions* (Ithaca, New York: Cornell University Press, 1949), p. 31.

[7] John Stanton, "Kennedy Memoir Recalls Chummy Senate," *Roll Call*, September 15, 2009, p. 26.

[8] Emma Dumain and Nathan Hurst, "House GOP Sees Water Bill as Post-Earmark Success," *Roll Call*, May 19, 2014, p. 8.

right."[9] Centrist lawmakers are a vanishing breed on Capitol Hill. This development occurred over time, but the political reality today is that Democratic and Republican lawmakers have intense disagreements on a host of domestic and international issues. These divergent perspectives reflect the views of their respective electoral coalitions.

The South, for instance, was once a solid Democratic region. Today, the South—a region generally reputed for being antitax, promilitary, strongly evangelical, and antilabor, for example—is a GOP stronghold triggered by events such as the civil rights movement, the rise of the religious right, changes in societal attitudes and values, and demonstrations against the Vietnam war. Conservative southern Democrats switched parties to become conservative Republicans. The result: a partisan regional realignment that has "southernized" the Republican Party on Capitol Hill. The switch in party dominance in the South also moved the Democratic Party in a more liberal direction.

In brief, the two major parties differ *racially* (a large percentage of Democrats are nonwhite, Republicans are predominately white); *culturally* (for example, Democrats tend to favor same-sex marriage, many Republicans do not); and *ideologically* (Democrats favor an activist government, Republicans prefer to shrink the role of the government). Unsurprisingly, constituents in "red" and "blue" States vote for lawmakers who strongly support their values and policy preferences. The result of the sharp divide between the two parties is often policy gridlock, triggered by the inability of Democrats and Republicans to resolve their differences by compromise. Add to this perplexity a constitutional separation of powers system that "was not designed to work under conditions of intense partisan polarization."[10]

Internal Forces

Institutional change is fostered by a number of internal challenges and concerns. For example, aggressive Presidents can provoke legislative change, especially if they take actions perceived as undermining Congress' constitutional prerogatives. When President Richard Nixon clashed with Congress over spending priorities by impounding (refusing to spend) funds for programs he disliked—even though he had signed them into law—it prompted Congress to reclaim its budgetary prerogatives by enacting a landmark overhaul of its budgetary system: the Congressional Budget and Impoundment Control Act of 1974. President Nixon's impoundments, wrote a scholar, were "designed to rewrite national policy at the expense of congressional power and intent."[11]

House and Senate changes are also advanced by individual lawmakers, ad hoc groups, and by each congressional party. There is little doubt that strong-willed and change-oriented individuals have always influenced public policy and played major roles in promoting legislative change. Many people may have forgotten that,

[9] Kathy Kiely and Wendy Koch, "Committee Shaped by Party Ties," *USA Today*, October 5, 1998, p. 2A.

[10] Alan I. Abramowitz, "The Electoral Roots of America's Dysfunctional Government," *Presidential Studies Quarterly*, vol. 43, December 2013, p. 727.

[11] Allen Schick, *Congress and Money* (Washington, DC: Urban Institute Press, 1980), p. 46.

over the decades, many reform-oriented lawmakers promoted major revisions in how Congress operates in making decisions. These lawmakers include Senator Robert La Follette, Jr., and Representative Monroney (authors of the Legislative Reorganization Act of 1946); Representatives Richard Bolling (a champion of budget and committee reform in 1973–1974) and David Dreier (a leader in revamping House rules when Republicans won control of that Chamber in 1994); and Senators Adlai Stevenson, Jr. (chair of the Senate panel that revamped committee jurisdictions in 1977) and Howard Baker, Jr. (a strong advocate of televising Senate floor proceedings, which occurred in 1986). The evolution of Congress is shaped in large measure by the people elected to serve in the House and Senate and their commitment to improving and strengthening the legislative branch.

II. Membership Composition: Then and Now

The membership characteristics and party affiliations of the people who served in the House and Senate in 1953 and 2013 are highlighted in Table 1. The table contrasts individual attributes of the people who served in those years. Generally, changes in the composition of the House and Senate occur slowly; however, when the makeup does exhibit major change, it suggests that larger economic, political, and social forces are underway in the electorate—an increase in the minority population and its access to and interest in civic participation, for example. Broad societal developments may (1) influence who seeks to serve in Congress, (2) shape the agenda priorities of the House and Senate, and (3) reveal shifts in the regional composition of the two parties. Three features of Congress' composition—the number of lawyer-politicians, its gender and ethnic diversity, and the professionalization (a full-time occupation) of legislative careers—spotlight important membership patterns and trends.[12]

THE LEGAL PROFESSION

Lawyers have usually dominated the membership of both Chambers. As one account noted, "From 1780 to 1930, two thirds of senators and about half the House of Representatives were lawyers."[13] The actual proportion varies over time. For example, in the 105th House (1997–1999), Members with business backgrounds (181) outnumbered lawyers (172) "for the first time since Congressional Quarterly began keeping records of Members' occupations in 1953."[14] However, lawyers outnumbered business people in the Senate, keeping Members with law degrees as the number one occupation in the 105th Congress.

[12] See the related CRS centennial report in this volume, *The 113th Congress and the U.S. Population: Discussion and Analysis of Selected Characteristics*, by Jennifer D. Williams, Ida A. Brudnick, and Jennifer E. Manning.

[13] Mark C. Miller, "Lawyers in Congress: What Difference Does It Make?" *Congress & The Presidency*, vol. 10, spring 1993, p. 2. Also see Mark C. Miller, *The High Priests of American Politics: The Role of Lawyers in American Political Institutions* (Knoxville, TN: University of Tennessee Press, 1995).

[14] Allan Freeman, "Lawyers Take a Back Seat in the 105th Congress," *CQ Weekly*, January 4, 1997, p. 27.

Table 1. Selected Characteristics of Congress, 1953 and 2013

Category	Year	House	Senate
Ethnicity:			
Hispanic/Latino Americans	1953	1	1
	2013	31	4
African Americans	1953	2	0
	2013	40	1
American Indian/Native Americans	1953	0	0
	2013	2	0
Asian Pacific Americans	1953	0	0
	2013	10	1
Gender:			
Women	1953	11	1
	2013	78	20
Occupations:			
Attorneys	1953	249	59
	2013	156	55
Physicians	1953	5	0
	2013	16	2
Party Affiliation:			
Democrats	1953	213	47
	2013	201	53
Republicans	1953	221	48
	2013	234	45
Independents	1953	1	1
	2013	0	2

Source: "How Congress is Different These Days," *U.S. News and World Report*, Jan. 30, 1978, p. 32. Current data compiled by Jennifer E. Manning, Information Research Specialist, Knowledge Service Group, CRS.

Constituents seem to believe that, more than other occupations, lawyers have the requisite training to make laws, such as indepth knowledge of the U.S. Constitution and heightened capacity to understand the procedures and rules that shape substantive decisions. Lawyers also have certain political marketing advantages. An observation about lawyers made by a House Member in 1897 still retains some currency today. He wrote: "If [a lawyer] is reasonably successful his name is constantly in the newspapers published in his locality, and he generally needs no introduction to the people of his congressional district. When a vacancy occurs in the representation he is likely to have friends everywhere who are zealous in promoting his cause." [15] Lawyers are also viewed as skilled in advocacy, argumentation, and persuasion, qualities viewed as essential to the lawmaking process.

Despite the significant number of lawyers in Congress, contemporary Congresses have witnessed a large number of Members elected with an array of different occupational experiences and professions. They are also not all career politicians. There have been actors, athletes, and astronauts who have served in Congress, not to mention physicians, professors, teachers, military officers, or

[15] Representative William H. Moody, "Lawyers in Congress," *The Illustrated American*, October 23, 1897, p. 523.

journalists.[16] Compared to earlier eras, there is a broader cross section of Americans that run and win seats in Congress.

Diversity

White males have been overrepresented in the House and Senate from its very beginning. By contrast, women have always been underrepresented in the House and Senate. Remember that only with the ratification of the 19th Amendment in 1920 did women attain the right to vote. That amendment stated: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex." In 1917, GOP Representative Jeannette Rankin of Montana, an activist in the women's suffrage movement, became the first woman to be elected to Congress. Montana was among several States, prior to the ratification of the 19th Amendment, that had granted women the right to vote.

Today, there are a record number of women in the 113th Congress (2013–2015), which also includes African American, Hispanic American, and Asian/Pacific Islander women. At the start of the 113th Congress, there were 78 females in the House and 20 in the Senate, still far below their proportion (over 50 percent) in the general population. Although there have been elections called the "Year of the Woman," as in 1992, the influx of female lawmakers has occurred slowly, in part because of the power of incumbency (most Members are male), family choices, and a shortage of competitive seats. Nonetheless, the role of women in today's Congress and in the workforce has changed significantly. A historic event occurred in January 2007 when Democratic Representative Nancy Pelosi of California was elected to be the first female Speaker in the House's history. During the 1920s, women lawmakers "were a curiosity both for their male colleagues and the national press, which devoted considerable attention to their arrival."[17]

A profile of congressional Members makes plain that America's major ethnic groups—African Americans, Hispanics, and Asians—are underrepresented in Congress. The recent decennial census of 2010 indicated that African Americans constitute about 13 percent of the overall population and 10 percent of Congress; Hispanics are near 17 percent of the national population and around 7 percent of Congress' membership; and Asians are about 3 percent of Congress' membership but around 5 percent of the national population. Despite the obstacles each group has confronted in winning seats in Congress, such as bigotry and "Jim Crow" laws, there has been progress (albeit slow).

Important to note is a recent and historic House membership change. In 2013, the Democratic Party was reshaped demographically: it became a "majority-minority" party. More than half of House Democrats are women, African Americans, Hispanics, and Asians. A significant consequence of the change is that women and

[16] David T. Canon, *Actors, Athletes, and Astronauts* (Chicago: University of Chicago Press, 1990).

[17] *Women in Congress, 1917–2006* (Washington, DC: GPO, 2006), p. 2. This volume was prepared under the direction of the U.S. Committee on House Administration and by the Office of History and Preservation, Office of the Clerk of the House.

ethnic minorities inform the policymaking process in a manner that a Chamber filled almost exclusively with white men cannot.

THE PROFESSIONALIZATION OF CONGRESSIONAL SERVICE

The career patterns of lawmakers have undergone over time a number of important changes that have transformed the work and role of both Congress and its Members. A brief "then" (the 19th century and early part of the 20th century) and "now" comparison highlights several developments that led to today's professionalized Congress. Among the changes worth noting are these two.

PART-TIME TO FULL-TIME INSTITUTION

Congress functioned largely as a part-time institution until around the post-World War II era. One rough indicator of the shift to a full-time institution is to compare the date of a Congress' beginning and the date of its adjournment.[18] By the 86th Congress (1959–1961), setting aside the war years (1941–1945), Congress always adjourned during the fall or the winter months, at times late in December and even into January 3 of the new year. A major contributor to year-round sessions was an increase in and the complexity of Congress' workload, triggered by events such as wars and economic crises. Unsurprisingly, a full-time Congress places large demands on today's lawmakers. They must handle the requirements of policymaking and oversight while in Washington, DC (often on a Tuesday to Thursday schedule), as well as return to their district or State regularly to serve the needs of their constituents. Lawmakers today work an average of 70 hours per week. As the wife of a former Senator noted: "It is a 24/7/365 [day] position." [19]

By comparison, consider the comments of Representative Joseph Martin, who served continuously in the House for 42 years (1925 to 1967), including stints as Speaker during the 80th (1947–1949) and 83d (1953–1955) Congresses. Contrasting the House when he was first elected to the House at the end of his career, Martin stated:

> The great difference between life in Congress a generation ago and life there now was the absence then of the immense pressures that came with the Depression, World War II, Korea, and the Cold War. Foreign affairs were an inconsequential problem in Congress in the 1920s. For one week the House Foreign Affairs Committee debated to the exclusion of all other matters the question of authorizing a $20,000 appropriation for an international poultry show in Tulsa. This item, which we finally approved, was about the most important issue that came before the committee in the whole session.[20]

Today's year-round Congress grapples with numerous global, technological, and domestic issues that surely would surprise former Speaker Martin, from climate change to same-sex marriage to net neutrality to the threat of terrorist attacks on the United States. Unsurprisingly, large increases in the Nation's population contributed to an expansion of Congress' agenda and gradual in-

[18] This information is available in the statistical part of the *Official Congressional Directory, 113th Congress*, which is published by the U.S. Government Printing Office.
[19] Quoted in *Life in Congress: The Member Perspective*, A Joint Research Report by the Congressional Management Foundation and the Society for Human Resource Management, 2013, p. 33.
[20] Joseph Martin, *My Fifty Years in Politics* (New York: McGraw-Hill Book Co., 1960), p. 47.

creases in the size of the House (hikes in population)[21] and the Senate (the admission of new States). The Nation's population surged from 76 million in 1900 to 152 million in 1950 and more than doubled again to 310 million in 2010. One result of the population increases: there was a concomitant buildup of legislative staff for Members, committees, party leaders, and various administrative units (the Clerk of the House, the Secretary of the Senate, the Capitol Police, the legislative support units, and so on).

Committees, party entities, and parliamentary procedures have also evolved since the First Congress. From reliance on temporary select committees used by both Chambers in their early days, the House and Senate established permanent (or standing) committees. For example, in 1816 the Senate established a system of permanent committees "whose basic structural philosophy has remained unchanged to this day."[22] The idea of "structural philosophy" means that committees were created to address Congress' expanding workload through a division of labor. Committees also enabled lawmakers to develop the specialized expertise required to make informed public policy. A number of Senate standing committees created in 1816 exist in both Chambers today, such as panels dealing with foreign relations, commerce, the judiciary, and military affairs.

LENGTH OF MEMBER SERVICE: YESTERYEAR AND TODAY

Common during Congress' first several decades was a large turnover in the membership of each Chamber following every election.[23] "Very high turnover and resignations," wrote a political scientist, "were hallmarks of the national Senate and House of Representatives throughout the entire pre-Civil War period."[24] Setting aside the First Congress, when everyone was a newcomer, "turnover of House members exceeded fifty per cent in fifteen elections—the last of which was held in 1882."[25] As for the Senate, prior to 1875, "the average senator served four years; after 1893, this figure

[21] In 1911, the size of the House was statutorily set at 435.

[22] Walter Kravitz, "Evolution of the Senate's Committee System," *The Annals of the American Academy of Political and Social Science*, vol. 411, January 1974, p. 28.

[23] Something that merits brief mention is the large number of contested election cases that occurred during the 19th century, gradually declining in both Chambers by the start of the 20th century. The U.S. Constitution (article I, section 5) states: "Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members . . . ." During the latter part of the 19th century, evidence suggests that the majority party in the House prevailed in these contests as a way to boost their partisan edge in the Chamber. As Speaker Thomas B. Reed wrote in 1890: "The decision of election cases invariably increases the majority of the party which organizes the House, and which . . . appoints the majority of the Committee on Elections," the panel that reviewed contested election cases. Thomas B. Reed, "Contested Elections," *The North American Review*, vol. CLI (1890), p. 114. For a detailed study of House election contests, see Jeffrey A. Jenkins, "Partisanship and Contested Election Cases in the House of Representatives, 1789–2002," *Studies in American Political Development*, vol. 18, fall 2004, pp. 112–135; and Matthew N. Green, "Race, Party, and Contested Elections to the U.S. House of Representatives," *Polity*, vol. 39, April 2007, pp. 155–178. Partisanship also influenced the outcome of election contests in the Senate, but to a lesser extent than in the House. Prior to the direct election of Senators in 1913 (the 17th Amendment), there were a number of election contests involving Senators-elect who either bribed State legislators "or voters in state legislative elections." Jeffrey A. Jenkins, "Partisanship and Contested Election Cases in the Senate, 1789–2002," *Studies in American Political Development*, vol. 19, spring 2005, p. 57. Professor Jenkins' two articles contain an array of data to support his analysis of the contested election process.

[24] H. Douglas Price, *Explorations in the Evolution of Congress* (Berkeley, CA: University of California Institute of Governmental Studies Press, 1998), p. 54.

[25] Nelson W. Polsby, "The Institutionalization of the U.S. House of Representatives," *American Political Science Review*, vol. 62, March 1968, p. 146.

doubled."[26] On the other hand, there were famous Senators (Daniel Webster, Henry Clay, and John Calhoun, for example) who served in five consecutive pre-Civil War Congresses. After the Civil War and Reconstruction, lengthy service in the Senate was not unusual. By the end of the 19th century, Missouri Senator "Thomas Hart Benton's record of 30 years of service [1821–1851] was beaten . . . ."[27]

One reason for the rapid turnover of pre-Civil War House Members was the "rotation principle"—Members served a term or two and voluntarily chose not to run for reelection. Lengthy service in the House "was disregarded by many citizens, was feared by others as conducive to an aristocracy of officeholders, or was deemed noxious for incumbents themselves because 'power was too apt to turn the head.' "[28] By the end of the 19th century, the rotation principle gradually gave way to membership stability because politicians and voters alike recognized the value of careerism "as the national government became the center of policy-making. A nationalization of politics led to the formation of a political career structure in which the Senate and House ranked high on the hierarchy of public offices."[29] The emergence of one-party States and districts—the South after the Civil War, for example—also facilitated the reelection of lawmakers.

In today's year-round Congress, longevity of service is quite common in the contemporary House and Senate, but is subject to change with the infusion every election cycle of new lawmakers in both Chambers. Democratic Representative John Dingell, Jr., of Michigan is the longest serving Member of Congress ever. He was elected in 1955 in a special election and announced that he would voluntarily retire at the end of the 113th Congress (2013–2015) after 59 years of consecutive service. Representative Dingell broke the congressional longevity record of over 57 consecutive years set by Senator Robert C. Byrd of West Virginia, who also served in the U.S. House from 1953 to 1959 and then in the Senate until his death in June 2010.

The rise of the seniority system (discussed below) and the power of incumbency also contributed to the attractiveness of continuous legislative service. Incumbency is powerful in that incumbent House and Senate legislators running for reelection are hard to defeat, with a reelection rate of over 90 percent quite common for the House but with somewhat more fluctuation for Senate incumbents. Importantly, House and Senate incumbents usually enjoy a number of advantages over challengers, such as name recognition, staff resources, access to the media, and the ability to raise significant campaign funds.

III. The Evolution of Power in the House, 1880–1975

Two traditional centers of power in the House (and Senate) are committees and parties. During certain historical eras, party lead-

[26] Thomas E. Mann, "United States Congressmen in Comparative Perspective," in Ezra N. Suleiman, ed., *Parliaments and Parliamentarians in Democratic Politics* (New York: Holmes & Meier, 1986), p. 232.

[27] Price, *Explorations in the Evolution of Congress*, p. 59.

[28] Ibid., p. 87. Abraham Lincoln observed the rotation principle and served but a single House term.

[29] Mann, "United States Congressmen in Comparative Perspective," p. 233.

ers are the major legislative actors rather than the committee chairs, or vice versa. A prominent scholarly theory—called "conditional party government"—explains why party (centralized authority) or committee (decentralized authority) government commonly characterize legislative dynamics on Capitol Hill.[30]

The theory posits that two conditions must exist for party government. First, each party must be internally united in their policy preferences and political values. Second, the policy preferences and political values of one party must be sharply divergent from the other party's. If these two conditions are present, rank-and-file partisans will empower and support the agenda put forth by their top leaders. In contrast, if the two parties are each riven by internal conflicts and disagreements over policy and other matters—conditions that promote cross-party coalitions as the pattern in enacting consequential legislation—then committee government is the norm. Under committee government, rank-and-file lawmakers are unwilling to cede power to their top leaders. Why? Party leaders might exercise their authority in a manner detrimental to Members' legislative, political, and career interests.

In brief, there is an inverse relationship between party power and committee power. "That is, the party's power 'waxes and wanes' with the committee power."[31] A back-and-forth pattern between a centralized (party) and decentralized (committee) House of Representatives characterizes the 1880 to 1975 period.

THE PARTY GOVERNMENT ERA (1880–1910)

During the period from the late 1880s to 1910, two powerful Speakers, Thomas Reed and Joseph Cannon, dominated House proceedings by centralizing power in the speakership. Among their parliamentary powers were these: each determined the agenda and schedule of the House; referred measures to the standing committees; appointed Members to the standing committees; exercised as Presiding Officer an unappealable right of recognition; and, importantly, each chaired the Rules Committee, which establishes the conditions for debating and amending legislation.

It was common also during this era for other top party leaders (the majority leader and majority whip, for example) to chair important committees, such as Appropriations and Ways and Means. Having top party leaders chair influential committees promoted and strengthened party government. In addition, as the Nation moved from an agricultural to an industrial society, the constituency bases of the two parties largely reflected that divide. As two scholars concluded, "the high levels of party voting in the 1890–1910 era were largely the result of the polarization of congressional parties along both an agriculture-industrial continuum and sectional lines plus the political power inherent in the centralized leadership in the House."[32]

---

[30] See David W. Rohde, *Parties and Leaders in the Postreform House* (Chicago: University of Chicago Press, 1991).

[31] David W. Brady, "After the Big Bang House Battles Focused on Committee Issues," *Public Affairs Report*, March 1991, p. 8. This publication is produced by the Institute of Governmental Studies, University of California, Berkeley.

[32] David W. Brady and Phillip Althoff, "Party Voting in the U.S. House of Representatives, 1890–1910: Elements of a Responsible Party System," *Journal of Politics*, vol. 36, August 1974,

Continued

SPEAKER REED (1889–1891; 1895–1897; 1897–1899)

Reed preferred that his party should govern without much consideration of minority party viewpoints. He acted to ensure that result by riveting into the House rulebook the principle of "majority rule." For decades, an obstructionist tactic in the House was called "the disappearing quorum," which undermined the ability of the majority party to take action on its agenda. Under the Constitution, a quorum is a majority of the membership. Until the speakership of Reed, a quorum meant those who answered to their names during rollcall votes. As a dilatory tactic, lawmakers who wanted to block action refused to answer rollcalls even though they were present in the Chamber. On January 29–30, 1890, Reed ended the practice by directing the Clerk to record Members as present in the Chamber even if they did not vote, thus determining the presence of a constitutional quorum. He also refused to entertain motions that he deemed dilatory.

Despite the uproar over his actions to end the disappearing quorum, the House adopted on February 14, 1890, a major overhaul of House rules—called the "Reed Rules"—that strengthened the concept of party governance. Even before he became Speaker three different times, he stressed that the majority party must be responsible for governance. Reed said: "The best system is to have one party govern and the other party watch, and on general principles I think it would be better for us to govern and the Democrats to watch."[33] There is little doubt that Speaker Reed's rules and rulings dramatically altered House procedures and processes. As one account noted, the "Reed Rules" changed "the way in which the House did business [more than] a century ago, [and] they continue to shape the House today."[34]

SPEAKER CANNON (1903–1911)

Cannon was also a strong proponent of party government. He had the same parliamentary prerogatives as Speaker Reed, but Speaker Cannon exercised his procedural powers in a more heavy-handed (some would say "dictatorial") fashion. In effect, party government under Cannon became one-man rule (dubbed "Cannonism" by his opponents). As Democratic Representative David DeArmond of Missouri said about the Speaker's control of the Rules Committee:

> The Committee on Rules as now constituted is not really a committee. Nominally it consists of the Speaker and two of his party associates, of his own selection, and two minority Representatives .... This so-called committee has no regular meeting days, or weeks, or months—it convenes upon call of the Speaker. It does not deliberate or in fact determine anything. When the Speaker has determined to do something, with his committee as the instrument to be employed, the Rules Committee is called to meet in the Speaker's room, and his decision ... is put forth as the decision of the committee. Then, there is presented in the House by one of the Speaker's Rules Committee automatons "a privileged report from the Committee on Rules,"

p. 773. Also see David Brady, Richard Brody, and David Epstein, "Heterogeneous Parties and Political Organization: The U.S. Senate, 1880–1920," *Legislative Studies Quarterly*, vol. 14, May 1989, pp. 205–250.

[33] Samuel W. McCall, *The Life of Thomas Brackett Reed* (Boston: Houghton Mifflin, 1914), pp. 82–83. Also see William A. Robinson, *Thomas B. Reed: Parliamentarian* (New York: Dodd Mead, 1930).

[34] *History of the United States House of Representatives, 1789–1994*, H. Doc. 103–324 (Washington, DC: GPO: 1994), p. 180.

and the Speaker's party friends are called upon to enforce by vote of the House the Speaker's decree. It would be precisely the same thing, in effect, though less artful, if the Speaker personally, officially, and directly were to make his own report of his own action and submit to a vote of the House the question of making his action the action of the House.[35]

Numerous Democratic minority Members expressed dismay at Speaker Cannon's autocratic leadership style. For example, he determined when or if legislation would reach the floor and removed lawmakers and chairs from committees if they did not do his bidding. Dissatisfaction with Cannon's leadership began steadily to increase; moreover, there were growing numbers of "insurgent" (progressive) Republicans entering the House. It was the Progressive era in the Nation (1890–1920), and a reform-minded President, Theodore Roosevelt, was in the White House for part of that time (1901–1909).

Scores of progressive initiatives were proposed to address corporate greed, political corruption, unsafe and unsanitary workplace conditions, child labor, and other matters. Although Speaker Cannon voted against numerous progressive measures (for example, legislation to require pure food and drugs, restrictions on child labor, and meat inspections), many made it into law. Why? As a scholar of the speakership explained: "As powerful as he was, Cannon had to calculate the costs and benefits of opposing the popular Roosevelt and the increasingly progressive mood of the country." In short, Speaker Cannon "could not unilaterally stand in the way of the majority sentiment of the country without jeopardizing his own position."[36]

In the end, a combination of factors led to Cannon's downfall: his opposition to progressive policies supported by many voters, fissures within GOP ranks ("regulars" versus insurgents) that weakened the Speaker's centralized control, and his abusive use of parliamentary prerogatives. These factors led to a historic "revolt" of 1910. Insurgent Republicans and minority Democrats combined in March 1910 to bring to a close this period of party government in the House. For example, the Speaker was subsequently removed as chair of the Rules Committee and stripped of his committee assignment prerogative.[37] One analyst stated succinctly that the conclusion of the Cannon period ushered in a different era. "As Mr. Cannon's gavel fell, an epoch in the long ... history of the American House of Representatives came to an end. A new era had begun."[38] There was a brief period of party caucus government that followed, but it was soon replaced by a "new era in which [the House] most resembled a set of feudal baronies."[39]

[35] *Congressional Record*, vol. 44, March 1, 1909, p. 3569.

[36] Ronald M. Peters, Jr., *The American Speakership* (Baltimore: The Johns Hopkins University Press, 1990), p. 78.

[37] The story of the revolt against Speaker Cannon has been told many times in various books, articles, and newspapers. See, for example, Charles O. Jones, "Joseph G. Cannon and Howard W. Smith: An Essay on the Limits of Leadership in the House of Representatives," *Journal of Politics*, vol. 30, August 1968, pp. 617–646.

[38] George Rothwell Brown, *The Leadership of Congress* (Indianapolis, IN: Bobbs-Merrill Co., 1922), p. 152.

[39] Peters, *The American Speakership*, p. 91.

THE ERA OF COMMITTEE GOVERNMENT (1915–1969)

With the end of the strong speakership era, and the limited duration of the "King Caucus" regime,[40] a new governing order gradually took hold. The House transitioned from a centralized, partisan, and hierarchical pattern during the Reed and Cannon eras to a pattern characterized by decentralization, bipartisanship, and negotiation. One manifestation of this development was ending the practice that allowed the top party leaders also to chair the most influential committees. To simplify, the central party leaders lost power and the committee chairs gained power.

With the Speaker shorn of the committee appointment prerogative, Democrats assigned that responsibility to their party colleagues on the Ways and Means Committee, where it remained until 1974. (In that year, Democrats placed the assignment function for their Members in a party panel—the Steering and Policy Committee, where it remains to this day.) Republicans, after the 1910 revolt, placed the assignment function in their party leader for a few years. In 1916, Republicans created a party assignment panel that had weighted voting: a GOP member of the so-called Committee on Committees cast as many votes as there were Republicans in his State delegation, a big State advantage in shaping committee membership. (In 1995, Speaker Gingrich renamed his party assignment panel the Steering Committee, transformed it into a leadership-dominated panel, made the Speaker its chair, and granted the Speaker the right to cast the most votes—five—of any panel member.)

Two key components undergirded the new House committee governing system: (1) the rise of a seniority custom that over time became rigid in determining who became a committee chair, and (2) the powerful role assumed by the Rules Committee in recommending how, when, or whether legislation would be taken up by the House. A new balance of power now existed between party leaders and the committee chairs, with the chairs having the most leverage. Party leaders had little choice but to work with the chairs and ranking members as well as the rank-and-file of both parties, given the overlap of liberals and conservatives in each party. Bargaining and accommodating were the *modus operandi* of party

[40] The era of caucus governance, dubbed "King Caucus" by journalists, occurred after the 1910 "revolt," the year Democrats won control of the House. The Democratic electoral victory was attributed in part to public dismay with "Cannonism." From mainly 1911 to 1915, the House Democratic caucus exercised significant policymaking authority. Major measures were first considered in the Democratic caucus and required a two-thirds vote of the membership before they could be taken up in the House. On the tariff revision of 1913, for example, a scholar noted that the "majority party leaders in the House, through their Majority Leader, [Oscar] Underwood [of Alabama], resorted to the caucus, where . . . the proposed tariff bill was to be given pre-consideration and members attending bound by the [required two-thirds] caucus vote to vote with the majority of their party when the schedule should reach a vote on the floor of the House." See Elston Roady, *Party Regularity in the Sixty-third Congress* (Ph.D. dissertation, University of Illinois, 1951), p. 29. Majority Leader Underwood—who also chaired the Ways and Means Committee during this period—along with other party chieftains exercised significant influence in "King Caucus," because they awed the "other members into submission by their supposed control over the three necessities of congressional existence—perquisites, patronage, and 'pork.'" See Wilder Haines, "The Congressional Caucus of Today," *American Political Science Review*, vol. 9, November 1915, p. 701. Caucus governance was a brief period, in part because President Woodrow Wilson—an admirer of the British parliamentary model—devised a party program and exercised strong leadership from the White House to advance it through the Democratic House and Senate.

leaders. They worked to broker deals with the committee chairs—who could deliver votes to enact legislation.

COMMITTEE SENIORITY

Congressional experts offer various reasons to explain why seniority became the critical factor in determining committee leaders. (Seniority meant during this era that a Member of the majority party who served longer and more continuously on a committee than any other majority party colleague would become the committee's chair.) Some suggest that the 1910 "revolt," which removed the committee appointment prerogative from the Speaker, prompted both parties to focus on seniority in designating committee chairs. "Strict seniority," wrote a scholar, "which had meant almost nothing in the House [from its beginning], had come to mean almost everything in naming committee chairmen and ranking members by 1920." [41]

Others point to the rise of "careerism" as an important factor. As several scholars have noted, "The Congress of the 1800s was infused with 'new blood' each election, but by 1920 it had been transformed from a body of amateur members to a modern legislature of professional politicians with established careers in Washington." [42] Some also imply that the 1896 electoral realignment of the two parties—GOP dominance in most of the country with the South in Democratic hands—created safe seats for most incumbents, which ensured their reelection every 2 years. Another explanation for careerism is the rise of party primaries in the States. With primaries, voters—not party bosses—would determine which candidates should represent them in the House, with their "political contract" subject to renewal every 2 years for good service.[43]

Whatever conditions led to seniority, it soon became an automatic and nearly inviolable method for naming the committee chairs regardless of which party was in the majority.[44] And the chairs asserted authority independent of their party. Moreover, senility, party loyalty, exceptional ability, or various infirmities mattered not in who became a committee chair. As a Texas lawmaker explained in 1938: "If you were the next man in line, you got it—that was the way the unvarying [seniority] rule was." [45] To be sure, many of the chairs exuded an arrogance of power in how they ran their committees.

---

[41] H. Douglas Price, "Congress and the Evolution of Legislative 'Professionalism,'" in Norman J. Ornstein, ed., *Congress in Change* (New York: Praeger Publishers, 1975), p. 17. Also see Polsby, "The Institutionalization of the U.S. House of Representatives," pp. 144–168.

[42] See, for example, David Brady, Kara Buckley, and Douglas Rivers, "The Roots of Careerism in the House of Representatives," paper presented at the annual meeting of the American Political Science Association, September 1–4, 1994, New York City, p. 2.

[43] For a review of the various reasons for careerism, see David Brady, Kara Buckley, and Douglas Rivers, "The Roots of Careerism in the U.S. House of Representatives," *Legislative Studies Quarterly*, vol. 24, November 1999, pp. 489–510.

[44] See Nelson Polsby, Miriam Gallagher, and Barry Rundquist, "The Growth of the Seniority System in the U.S. House of Representatives," *American Political Science Review,* vol. 63, September 1969, pp. 787–807; Michael Abram and Joseph Cooper, "The Rise of Seniority in the House of Representatives," *Polity*, vol. 1, fall 1968, pp. 35–51; David Vogler, "Flexibility in the Congressional Seniority System," *Polity*, summer 1970, pp. 494–507; Raymond E. Wolfinger and Joan Heifetz, "Safe Seats, Seniority, and Power in Congress," *American Political Science Review*, vol. 59, June 1965, pp. 337–349; and James K. Pollock, "Seniority Rule in Congress," *The North American Review*, vol. 222, December–January–February 1925–1926, pp. 235–245.

[45] Robert A. Caro, *The Years of Lyndon Johnson: The Path to Power* (New York: Alfred A. Knopf, 1983), p. 541.

For example, when Lyndon Johnson was assigned in 1937 to the Committee on Naval Affairs, the chair was Carl Vinson of Georgia, who ran the committee with an iron hand. When Johnson tried to question witnesses at a hearing, Chairman Vinson cracked his gavel and recessed the hearing. He took Johnson into the back room and explained, "We have a rule in this committee," he said. "In [the] first year on the committee, a member [is] allowed to ask one question; in his second year, two, and so on."[46] Still, most lawmakers supported the rigid nature of seniority for two key reasons: (1) it minimized intraparty discord that would be created by competitive politicking for these positions, and (2) it prevented outside entities, including the President, from trying to promote as chairs lawmakers sympathetic to their goals and interests.[47]

There is little question that committee chairmen had complete control of their panel's agenda, resources, subcommittee structure, and staffing, as well as a large say in which Members might be appointed to their panel. Frequently, the chair and ranking minority member worked cooperatively to shape the measures reported from their committee because they shared common ideological and policy views. In 1937, after President Franklin Roosevelt's unsuccessful attempt to "pack" the Supreme Court, an unofficial and informal "conservative coalition" of Republicans and southern Democrats emerged to thwart progressive legislation advocated by Presidents and northern liberal lawmakers (for instance, civil rights).[48]

Party leaders such as Speaker Sam Rayburn (1940–1947; 1949–1953; 1955–1961), the most influential Speaker of the committee government period, had to bargain, cajole, and persuade the committee chairs, mainly southern Democrats at the time, to follow his lead. Majority party leaders simply lacked the means to require the autonomous chairs to implement an agenda of party-preferred priorities. The chairs were too influential, the central party leadership too weak, and the party itself was split into a southern conservative faction and a northern liberal faction. As Representative Richard Bolling, a protégé of Speaker Rayburn and one of the ablest legislators of the 20th century, wrote in 1964:

> A modern Democratic Speaker is something like a feudal king—he is first in the land; he receives elaborate homage and respect; but he is dependent on powerful lords, usually committee chairmen, who are basically hostile to the objectives of the National Democratic Party and the Speaker . . . . Rayburn was frequently at odds with the committee oligarchs, who rule their own committees with the assured arrogance of absolute monarchs.[49]

One of the "absolute monarchs" was the chair of the House Rules Committee. A classic example of the authority exercised by some Rules chairs shows in a comment made by Philip Campbell, who

[46] Ibid., p. 537.

[47] In the contemporary House, racial minorities typically support the rigid application of seniority in naming committee chairs or committee ranking members. As one account noted, seniority is a "sensitive issue for the Congressional Black Caucus and Hispanic caucuses, whose members believe that giving deference to tenure is the only way to protect minority members from slights, accidental or intentional, in getting promoted on Capitol Hill." See Emma Dumain, "Pelosi Ignites Caucus by Choosing Side in Ranking Member Battle," *Roll Call*, March 3, 2014, p. 8.

[48] James T. Patterson, "A Conservative Coalition Forms in Congress, 1933–1939," *The Journal of American History*, vol. 52, March 1966, pp. 757–772. By the 1990s, the conservative coalition was in decline as conservative southern Democrats were defeated, to be replaced by conservative Republicans. Congressional Quarterly ended its annual tabulation of conservative coalition votes after the 105th Congress (1997–1999).

[49] Richard Bolling, *House Out of Order* (New York: E.P. Dutton & Co., Inc., 1966), p. 70.

headed the panel during the 66th and 67th Congresses (1919–1923). A resolution authorizing an investigation was supported by many Members, including lawmakers on the Rules Committee. At a meeting of his panel, Chairman Campbell told his Rules colleagues: "You can go to [hell]. It makes no difference what a majority of you decide; if it meets with my disapproval, it shall not be done; I am the Committee; in me reposes absolute obstructive powers."[50]

HOUSE RULES COMMITTEE

In the decades that followed the 1910 revolt, the chair of the Rules Committee, as illustrated by the Campbell example, exercised significant independent influence in determining whether legislation reached the floor for consideration by the full membership. Most measures reported by committees have no ready access—a privileged right-of-way (or "green light")—to the House floor. The way committees acquire this privileged access is to go to the Rules Committee and request that the panel issue a "special rule" (a House resolution) that would make their bill in order for floor action. If the Rules Committee grants the special rule and it is adopted by majority vote of the House, the legislation made in order by the special rule is considered by the membership. In short, the Rules Committee is strategically positioned to control the flow of legislation to the floor, as well as to determine how long measures may be debated and, importantly, whether they may even be amended by the rank-and-file membership.

Traditionally, the Rules Committee had a disproportionate ratio of majority to minority members, regardless of which party controlled the House. The reason: the panel's important scheduling role. Despite the Rules Committee membership (eight majority to four minority after World War II), the bipartisan conservative coalition was much in evidence. It was often the case that two conservative Democrats would vote with Republicans to create a 6 to 6 tie vote. In legislative assemblies like the House, tie votes lose. A particularly formidable Rules Committee chair, Howard W. Smith (1955–1967), was the leader of the conservative coalition on his panel.

THE SMITH CHAIRMANSHIP

"Judge" Smith, as his colleagues called him, presided over his committee with an iron hand. He was neither a "traffic cop" regulating the flow of bills to the floor nor an agent of the majority leadership. Instead, he firmly believed Rules should decide the merit and substance of legislation. Accordingly, he often blocked measures he disapproved of and advanced those he favored. An ardent opponent of civil rights legislation, Smith sometimes refused to schedule meetings to consider those matters. On one occasion, when the Speaker was looking for Smith, a colleague informed Rayburn that Smith had to leave Washington to tend to a barn that

[50] Floyd M. Riddick, *Congressional Procedure* (Boston: Chapman and Grimes Publishers, 1941), p. 95. Riddick enjoyed a noteworthy career in the U.S. Senate. He became Assistant Senate Parliamentarian and served in that capacity from 1951 to 1964. In 1964, he became Senate Parliamentarian, a post he held for a decade.

had burned down on his farm. Speaker Rayburn exclaimed: "I knew Howard Smith would do almost anything to block a civil rights bill, but I never knew he would resort to arson." [51]

Although the Rules Committee lacks authority to amend bills, the Smith-led panel bargained with committee leaders for changes in legislation in return for granting rules. Although many lawmakers were upset with the blocking actions of Chairman Smith, there was no real challenge to his leadership until the 1960 election when John F. Kennedy was elected President on his New Frontier Program.

The President, Speaker Rayburn, and many Members who supported the New Frontier Program realized that Kennedy's initiatives would be blocked by the Rules Committee. Thus, a strategy was devised by the Kennedy-Rayburn forces to enlarge ("pack") the panel to 15 from 12 members, adding 2 Democrats sympathetic to President Kennedy's program and 1 Republican. The expansion resulted from a titanic battle between Speaker Rayburn and Chairman Smith. The Rayburn-Kennedy forces won, but only by the narrow vote of 217 to 212, which underscored the political power of the Rules chair. Smith remained chair, and the panel still retained influence, in part because the new Democratic members did not always support granting rules for liberal legislation.[52]

REFORM SENTIMENT BEGINS TO BLOSSOM

A group of liberal Democrats—frustrated with their party leaders, the committee chairs, and the Rules Committee—organized the Democratic Study Group (DSG) in 1959.[53] For the next few decades, it was this informal group—bolstered by the influx of liberal Democrats—that developed the ideas and mobilized the votes to shift committee government to subcommittee government.[54] In addition, the DSG was instrumental in winning adoption of changes that strengthened the Democratic leadership.

As for reducing the power of the chairs, the DSG recognized that the best way to revamp the seniority system was to avoid amending House rules, which would involve the conservative coalition of southern Democrats and Republicans. Instead, they revived use of the Democratic caucus—the highest partisan instrumentality, where the reformers had the votes—to enact party rules that would hold the committee chairs accountable for their actions or inactions.

The thrust of the changes was to shatter the ability of the "old bulls" to stymie action on liberal legislation (consumer protection

---

[51] Alfred Steinberg, *Sam Rayburn* (New York: Hawthorn Books, 1975), p. 313.

[52] A compelling account of the enlargement of the Rules Committee is found in Neil MacNeil, *Forge of Democracy, The House of Representatives* (New York: David McKay Co., 1963), Chap. 15.

[53] See Mark Ferber, "The Formation of the Democratic Study Group," in Nelson W. Polsby, ed., *Congressional Behavior* (New York: Random House, 1971), pp. 249–269.

[54] Special mention should be accorded to Richard Conlon, the executive director of the Democratic Study Group from 1971–1988, when he lost his life in a boating accident. Former Democratic Representative David Obey, a DSG member, said: "I don't think it would be possible to find any congressman or staff member on the Hill who had as much of an impact as Dick did." Another Democrat, Tony Coelho of California, stated that Conlon "enjoyed such credibility with so many House members that virtually no major legislation could pass without his personal support." The quotations are taken from Nelson W. Polsby, *How Congress Evolves, Social Bases of Institutional Change* (New York: Oxford University Press, 2004), pp. 205–206.

and environmental bills, for example).[55] Under party rules adopted during the 1970s, committee chairs had to stand for separate, secret ballot election within the confines of the Democratic caucus.

A dramatic example of the secret ballot's use occurred following the November 1974 elections when the 75 newly elected Democrats joined with reform-minded colleagues to oust 3 autocratic and conservative committee chairs, all from the South. The three were replaced by northern liberals. This action underscored that Members chair committees at the sufferance of the party caucus, not by their seniority; hence, chairs must be accountable and responsive to the policy preferences of the majority party or face possible ouster by secret vote of their party colleagues.

Paradoxically, the Democratic reforms contained both decentralizing and centralizing tendencies. The changes both dispersed power to subcommittees and to rank-and-file Members, and enhanced the power of the majority party leadership and the Democratic caucus. Reform-minded lawmakers saw no disconnect between the two tendencies. Decentralization granted rank-and-file lawmakers wider opportunities to influence policy, while centralization promoted the leadership's enactment of those policies, which included party-preferred priorities.

LEADERSHIP PREROGATIVES

The majority leadership acquired during the 1970–1975 period an array of resources that augmented their influence. A particularly important party rule was adopted in January 1975. The Speaker won the right to name the chair and the majority party members of the Rules Committee, subject to ratification of the party caucus. Henceforth, Rules became known as "the Speaker's committee," which strengthened the Speaker's agenda-setting and scheduling prerogatives. The Speaker also took charge of the committee assignment process. In 1974 the committee assignment function was removed from the charge of Ways and Means Democrats and transferred to a strengthened Steering and Policy Committee, chaired by the Speaker and composed of many supporters of the Speaker.

In 1975, by House rule, the Speaker also won the authority to refer bills to more than one committee, called multiple referrals (ending in part a standing committee's jurisdictional monopoly of a policy domain). The Speaker could in addition specify deadlines for committee action on legislation. The Speaker won authority in House rules to create ad hoc temporary committees, which he used to create the Ad Hoc Energy Committee in 1977 to coordinate and draft legislation in response to President Jimmy Carter's energy

[55] There was even at least one public law that curbed the authority of the committee chairs: the Legislative Reorganization Act of 1970. That act "required committees to adopt written rules, so that members would know their rights and might adopt rules to curb specific abuses. It also prohibited general, but not specific, proxies [absentee voting] in committee votes, to prevent their indiscriminate use by chairs and other members." See Walter Kravitz, "The Legislative Reorganization Act of 1970," *Legislative Studies Quarterly*, vol. 15, August 1990, p. 377. Another key 1970 Legislative Reorganization Act change was to permit recorded votes in the Committee of the Whole, the principal amending forum in the House. Prior to the change, votes on amendments were recorded without names, such as 150 yea to 250 nay. The change enabled party leaders to exert greater control over floor decisionmaking by knowing which lawmakers voted as their leaders wanted, and who had not yet voted and thus needed to be "whipped" to the floor.

plans, which crosscut the jurisdiction of several standing committees.[56] Add to all this a formidable whip system that works to mobilize the votes to enact the party's agenda. (In the majority after 1994, Republican Speakers have also had comparable prerogatives.)

THE SUBCOMMITTEE GOVERNMENT ERA (1970–1980)

The DSG reformers used the party caucus to win a large number of party rule changes that shifted power from committee chairs to subcommittee chairs. First, however, the reformers had to convince Speaker John McCormack to hold regular monthly meetings of the caucus, which occurred in 1969. For decades the caucus was largely moribund because Speakers preferred not to convene party meetings. Speaker Rayburn "never made much use of the Democratic caucus or other institutional leadership devices, preferring to handle leadership problems in his own way."[57] Representative Bolling wrote that the Speaker chose not to use the caucus to avoid clashes over civil rights between the northern and southern wings of the party.[58] With the monthly caucus meetings, Democratic caucus rules were amended to address numerous reform topics advanced by the DSG. The years from 1970 to 1975 constitute the high water mark for "spreading the action" to numerous subcommittees. Two changes, one in 1971 and the other in 1973, highlight the shift from committee to subcommittee government.

1971

In 1971, the Democratic caucus adopted an important party rules change. It stated that "no Member shall be chairman of more than one legislative subcommittee." The purpose of this rule was to create additional committee leadership opportunities for relatively junior members of the party. Before the adoption of this rule, some Democratic committee leaders chaired as many as four subcommittees. Three major consequences flowed from this party rule: (1) the "reform itself brought in a minimum of sixteen new subcommittee chairmen; (2) the reform spread power to younger, less senior Members; and (3) the reform improved the lot of non-Southern and liberal Democrats."[59] In short, the thrust of these changes was to further decentralize policymaking power to more Democratic Members. As Speaker Carl Albert stated: "Today, in the 21 standing committees of the House, no fewer than 113 Congressmen hold subcommittee chairmanships, an unprecedented distribution of legislative responsibility to more than 25 percent of the entire House of Representatives."[60]

---

[56] Bruce I. Oppenheimer, "Policy Effects of U.S. House Reform: Decentralization and the Capacity to Resolve Energy Issues," *Legislative Studies Quarterly*, vol. 5, February 1980, pp. 5–30.

[57] Hugh Bone, *Party Committees and National Politics* (Seattle: University of Washington Press, 1958), p. 168.

[58] Bolling, *House Out of Order*, p. 66. Jerry Voorhis of California, who served in the House from 1937 to 1947, noted that Democratic caucuses had been "almost non-existent, except for occasions when it was necessary to choose a majority leader or a candidate for Speaker or to elect a member of the Ways and Means Committee." See Jerry Voorhis, *Confessions of a Congressman* (Garden City, NY: Doubleday and Co., 1947), p. 59.

[59] For a detailed account of these developments, see Norman J. Ornstein, "Causes and Consequences of Congressional Change: Subcommittee Reforms in the House of Representatives, 1970–1973," in Norman J. Ornstein, *Congress in Change: Evolution & Reform* (New York: Praeger Publishers, 1975), pp. 102–103.

[60] *Congressional Record*, v. 117, August 3, 1971, p. E7690.

1973

Two conditions facilitated the adoption of additional party reforms: the election of new Democrats receptive to change, and the defeat or retirement of tradition-bound Members. Another significant party reform was the subcommittee "bill of rights" that strengthened the independence of subcommittees and provided for a more equitable distribution of choice subcommittee positions between junior and senior committee members. Specifically, the subcommittee "bill of rights" established a mini-Democratic caucus on each standing committee to meet prior to the full committee's organizational session at the start of a new Congress to select subcommittee chairs; determine subcommittee jurisdictions; establish party ratios on subcommittees that generally reflected the ratio in the full House; ensure that each subcommittee had an adequate budget and staff to discharge its responsibilities for legislation and oversight; and guarantee all Members a major subcommittee assignment insofar as vacancies are available. In addition, the reforms made clear that chairs must refer legislation to subcommittees within 2 weeks, unless the full committee determined otherwise. In short, the subcommittee bill of rights enhanced the role of these panels, strengthened their autonomy, and reduced the authority of the committee chairs. On the other hand, the bill of rights ushered in a new era of centralized leadership control.

IV. Prelude to Centralized Control

Reining in the powers of the committee chairs fostered a more open policymaking process that was welcomed by Members. A participatory ethos permeated the House as rank-and-file lawmakers played a larger role in legislative decisionmaking in committee and on the floor. Many newly elected lawmakers—a "new breed"—dismissed out of hand the old "go along, get along" attitude of the Rayburn era; they were antiestablishment and media-savvy, and wanted to shake up the established legislative order.[61] And many newer Members had the staff resources, subcommittee leadership positions, and encouragement from outside interest groups to assume a larger role in legislative decisionmaking. As a scholar recounted, there was an "explosion of floor amendments" in the House.[62] To a large extent, the floor became the Chamber's center of action and contention.

These various developments—the end of the committee oligarchic system, the election of a new generation of change-oriented lawmakers, more pressure groups skilled in advocacy on Capitol Hill and in Members' constituencies, the rise of new and complex issues, and the proliferation of competing centers of power on Capitol Hill—combined to make the job of governance difficult for the Democratic majority. It was simply harder for majority party leaders to achieve legislative accomplishments for two key reasons: (1)

[61] An important change that facilitated the election of change-oriented lawmakers involved the U.S. Supreme Court. During the 1960s (and after), the Court made a series of landmark decisions that required House districts to be substantially equal in population: the so-called "one person, one vote" principle. A major effect of these decisions was to reduce the number of rural districts and to increase the number of urban and suburban districts.

[62] See Steven S. Smith, *Call to Order: Floor Politics in the House and Senate* (Washington, DC: Brookings Institution, 1989), p. 16.

lawmakers in their own party wanted to offer scores of amendments to legislation, creating uncertainty as to their policy and political implications; and (2) the election of new Republicans who worked constantly to undermine and uproot Democratic control of the House. A GOP freshman elected in 1978, Newt Gingrich of Georgia, was especially skilled in frustrating and angering the Democratic majority.

THE INFLUENCE OF REPRESENTATIVE GINGRICH

Gingrich and his initially small band of allies, which grew over time, devised a strategy to take over the House. Gingrich's plan included: employ the Chamber's parliamentary procedures to frustrate the best-laid procedural and policy plans of the Democratic majority; offer "November amendments" to force vulnerable Democrats to vote on electorally "hot button" issues that could cause them political grief in the next election; recruit and train challengers to Democratic incumbents; and use a nonlegislative debate period at the end of the day when floor business had concluded to launch political and policy attacks over C–SPAN (the Cable Satellite Public Affairs Network) against Democratic leaders and their management of the House. (Coincidentally, Gingrich entered the House as a freshman when C–SPAN in 1979 began gavel-to-gavel coverage of the Chamber's floor proceedings.)

"Conflict equals exposure equals power" was part of Gingrich's formula for winning GOP control of the House.[63] Regularly, House Republicans castigated the Democrats for "abuse of power and [treated] their misdeeds" as equivalent to the "biggest scandals in American history."[64] Representative Gingrich even devised an approach—using ethics as a partisan weapon—to compel Speaker Jim Wright (1987–1989) to resign from the House. After Speaker Wright's resignation, a Democratic chair from Texas, Jack Brooks, exclaimed: "There's an evil wind blowing in the halls of Congress today that's reminiscent of the Spanish Inquisition."[65] To many Democrats, the Gingrich game plan seemed directed at delegitimizing and denigrating Democratic control of the House.[66] In Speaker Wright's view, "Torpedoing Congress and blaming the Democrats has been Newt's route to power."[67] From Representative Gingrich's perspective, an aggressive and militant approach toward the Democratic majority would catapult Republicans into the majority. As Gingrich stated, "I'm tough in the House, because when I arrived, the Republican Party was a soft institution that lacked the tradition of fighting. You had to have somebody who was willing to fight."[68]

---

[63] Howard Fineman, "For the Son of C–Span, Exposure Equals Power," *Newsweek*, April 3, 1989, p. 23.

[64] David Maraniss and Michael Weisskopf, *"Tell Newt To Shut Up!"* (New York: Simon & Schuster, 1996), p. 6.

[65] Dan Balz and Ronald Brownstein, *Storming the Gates, Protest Politics and the Republican Revival* (Boston: Little, Brown and Company, 1996), p. 125.

[66] In the opinion of former Representative Barney Frank, Gingrich "transformed American politics from one in which people presume the good will of their opponents, even as they disagreed, into one in which people treated the people with whom they disagreed as bad and immoral." See Andrew Goldman, "The Not-So-Retiring Barney Frank," *The New York Times Magazine*, January 22, 2012, p. 12.

[67] Balz and Brownstein, *Storming the Gates*, p. 125.

[68] Ronald Brownstein, *The Second Civil War: How Extreme Partisanship Has Paralyzed Washington and Polarized America* (New York: The Penguin Press, 2007), pp. 137–138.

DEMOCRATS RESPOND

By the late 1970s and into the 1980s, the Democratic-led House confronted an array of new challenges, compounded by the election in 1980 of Ronald Reagan as President. President Reagan's agenda was anathema to many Democrats: cut taxes, increase funding for the military, and slash the size of the Federal Government. Noteworthy, with Reagan in the White House and Republicans in control of the Senate (1981–1987), Speaker Thomas "Tip" O'Neill (1977–1987) assumed the role of national party spokesperson for the Democratic Party, expanding the Speaker's public "messaging" role then and now.

To counter the GOP's agenda from the Reagan White House and the Gingrich-led tactics in the House, Democratic Speakers (O'Neill, Wright, and Tom Foley, 1989–1995), urged on by their rank-and-file Members, developed new strategies to achieve their policy goals. In effect, the decentralizing thrust of the earlier reforms gradually gave way to a new configuration of internal power: the recentralization of authority in the majority party leadership. In short, the "postreform Congress" was in the process of being replaced by another governing model: the "postreform-reform Congress."

The Rules Committee played a pivotal role in strengthening the Speaker and the Democratic leadership. The panel developed an array of innovative special rules that granted majority party leaders greater control over floor procedures, such as keeping unfriendly amendments off the floor, those designed to embarrass majority lawmakers or to eviscerate majority party initiatives. In short, innovative special rules were devised to produce greater certainty in a more conflict-ridden and unpredictable environment.[69] By limiting and structuring amendment choices—if any were allowed at all (a closed rule)—the majority party skewed the procedural playing field to get the policy outcomes it wanted. Innovative special rules contributed to the sharp rise in rancorous partisanship. Minority Republicans complained loudly about the lack of democracy in the House. Procedural warfare between the majority and minority parties became intense and commonplace.

AN EARTHQUAKE ELECTION: NOVEMBER 1994

In a dramatic change of power, the 1994 midterm elections produced a resounding victory for Republicans. Long dubbed the "permanent minority" by various analysts and commentators, the GOP won control of the House for the first time in 40 years. And the nemesis of House Democrats, Newt Gingrich, became the Speaker. The 1994 election also saw Republicans sweep the Senate and win 14 gubernatorial contests. In fact, no GOP House Member, Senator, or Governor running for reelection was turned out of office. Only Democratic incumbents were targeted for defeat by the voters. As one defeated House Democrat said: "People thought they knew who

[69] Stanley Bach and Steven S. Smith, *Managing Uncertainty in the House of Representatives: Adaptation and Innovation in Special Rules* (Washington, DC: The Brookings Institution, 1988).

to blame [for the country's economic and social problems] and they did it with a vengeance."[70]

Many reasons accounted for the Democrats' defeat and the GOP's landslide victory. One was voter disgruntlement with President Clinton's agenda, such as the administration's failed attempt to revamp the Nation's health care system. Another was the public's dismay with partisan bickering and policy gridlock and its outrage over a "House bank" scandal that provoked scathing political commentary and negative editorials. For example, a lead editorial about the 103d Congress (1993–1995) in *The Washington Post* had the headline: "Perhaps the Worst Congress." It stated: "This will go down in the record books as perhaps the worst Congress—least effective, most destructive, nastiest—in 50 years."[71]

V. The Return of Party Government

From at least the 104th Congress (1995–1997) forward, the House has functioned in the manner implied by the conditional party government theory: like a parliamentary or quasi-parliamentary body. Recall that the theory states that rank-and-file lawmakers support strong party leaders and organizations when the party is united on its policy preferences. In addition, those preferences must diverge significantly from the other party's. When those conditions exist, the House functions in a strong leadership environment. If they do not exist, when there is little homogeneity of policy and ideological agreement within each party, the House operates in a weak leadership environment. Think of Speakers like Rayburn during the 1950s: they had to win the support of committee chairs and senior lawmakers, including liberal and conservative centrists in each party, to enact legislation.

Today, the House is as partisan and polarized as the Congresses that preceded the Civil War. On the partisan side, there are record levels of party unity on key votes.[72] Like parliamentary bodies, on numerous issues a majority of Republicans vote on one side and a majority of Democrats on the other side. Party unity occurs regularly because the two parties exhibit a high degree of ideological cohesion, which reflects the electoral bases of the two parties. Voters who share "blue" or "red" policy and ideological views now align either with the Democratic or Republican Parties. Regularly, voters cast straight party-line votes in congressional and Presidential elections.[73]

The beliefs of American voters "have grown more internally consistent, more distinctive between parties, and more predictive of voting in national elections." Unsurprisingly, voters have joined or voted with the political party most in line with their views and values, and this reality has "given the congressional parties more internally homogenous, divergent, and polarized electoral bases."[74] By contrast, it was common in the post-World War II Congresses that liberal and conservative lawmakers were plentiful in both

[70] Edward Walsh, "Democrats Seeking Reversal of Fortune in House Races," *The Washington Post*, September 10, 1995, p. A6.

[71] "Perhaps the Worst Congress," *The Washington Post*, October 7, 1994, p. A24.

[72] John Cranford, "Hard Lines Made Harder," *CQ Weekly*, February 3, 2014, pp. 168–201.

[73] Gary C. Jacobson, "Partisan Polarization in American Politics: A Background Paper, *Presidential Studies Quarterly*, vol. 43, December 2013, p. 700.

[74] Ibid., p. 691.

major parties. That condition is not the case today.[75] In its place are two parties with sharply different and distinct world views on a host of issues, many tied to the role and reach of the national government. Finding majority consensus in this environment can be a difficult, time-consuming, and sometimes fruitless process.

COMPROMISE UNDER STRESS

One result of polarization is not only that bargains and compromises are much harder to achieve today, but anticompromise sentiment is evident in Congress and in the country. As a House Republican remarked, "When it comes to compromise, half of a bad deal is still a bad deal."[76] An analyst concluded that a number of Members and outside groups are "*ideologically* opposed to compromise. They have made a reasoned judgment that compromise has served the country and the Constitution poorly."[77] [emphasis in original] Many lawmakers also worry that if they work with opposition party Members to craft policy compromises, they will be challenged in the next primary election by someone more liberal (the Democratic worry) or more conservative (the GOP concern) than they are.

Yet despite acrimonious partisanship, and the reelection interests of Members and the two parties, a fundamental job of the Speaker is to search for common ground within the majority party, between the two parties and Chambers, with the White House, and with outside interests. Otherwise, legislative accomplishments will be few and far between. As a seasoned journalist explained:

> There is one unavoidable fact about legislating in a democratic system. No single person, faction, or interest can get everything it wants. Legislating inevitably means compromising, except in the rare circumstances when consensus is so strong that one dominant view can prevail with ease.[78]

Bipartisan compromises may be good or bad, but they cannot be achieved if the two parties emulate parliamentary systems: one party governs and the other opposes. The Nation's congressional-Presidential system, with its many checks and balances, usually blocks governance exclusively by the majority party. Recall that the Constitution does not make lawmaking easy, in part to ensure deliberation, the ventilation of diverse views, and the consent of the governed. One elective branch cannot impose its will on the others, even if controlled by the same party.

How, when, or if to make a deal—to balance compromise with conviction, party loyalty with constituency opinion—rests to a large extent on the talents of party leaders. Compromises may "leave everyone unhappy to a degree," stated a House Member, "but also with something they wanted."[79] To be sure, party leaders may

---

[75] One analysis found that, during the last 30 years, centrists in the U.S. House have largely disappeared. "In 1982, 344 out of 435 House members were viewed as being in the ideological middle, drawing equally from both parties. In 2012, only 13 House members were classified as being in the middle." See Michael Kranish, "Ideas Abound for Breaking Logjam, but D.C. Isn't Listening," *The Boston Globe*, August 8, 2013, p. 5.

[76] Meredith Shiner, "The Speaker of the Unruly," *CQ Weekly*, September 10, 2012, p. 1834.

[77] Jonathan Rauch, "Rescuing Compromise," *National Affairs*, fall 2013, p. 121.

[78] Robert Kaiser, *Act of Congress: How America's Essential Institution Works, and How It Doesn't* (New York: Knopf, 2013), p. 174.

[79] Lee H. Hamilton, "We Need To Embrace Compromise, Not Insult It," The Center on Congress at Indiana University, May 16, 2011, p. 2.

want to follow a "no compromise" strategy on certain measures or matters. Inaction rather than action may serve their policy, partisan, and political interests. A Congress castigated as "do nothing" depends on whether one agrees with the lack of action on various policy matters. As a Member of the current House Republican majority pointed out, the membership is "stopping bad legislation and initiatives," which is plainly doing something rather than nothing.[80]

A "no compromise" strategy is sometimes employed by the minority party to foil favorable action on priorities of the opposition party. The minority's electoral goal: to permit minority party Members and outside supporters to campaign against the majority party in the next election for presiding over a so-called "do nothing" Congress. Whether gridlock on a measure is better than compromise might depend on whether party leaders believe they can get a better deal by waiting, or whether they prefer no deal in order to engage in "contrast politics" on the campaign trail.[81]

Three recent Speakers—Republicans Newt Gingrich (1995–1999) and Dennis Hastert (1999–2007), and Democrat Nancy Pelosi (2007–2011)—consolidated in their hands procedural, political, and policy control of the House. Much has been written about their respective speakerships,[82] so only a few pertinent observations will be made about each leader. Unlike earlier eras, the portfolio of contemporary Speakers is much more extensive. The job today involves more than presiding over the House, referring measures to the appropriate committees, or naming lawmakers to serve on conference committees. Speakers now must exercise political and policy leadership inside and outside Congress; act as their party's public spokesperson; recruit, fundraise, and campaign for their party's candidates; develop legislative and political strategies for the party they head; and develop and promote the party's message and "brand" to the general public in a 24/7 communications environment. Party leaders use the media to complement their legislative strategies, generate grassroots support for policy initiatives, respond to partisan criticisms, and promote their agenda.

SPEAKER GINGRICH (1995–1999)

When Republicans won the House in November 1994, Newt Gingrich was the party's unanimous choice for Speaker. He was a unique Speaker in many respects. For a time in the mid-1990s, he rivaled the White House in setting the agenda of Congress and the Nation, functioning like a prime minister in a parliament. His initial agenda, which the party campaigned on, was the "Contract with America."[83] Consisting of ten broad policies, Gingrich promised that within the first 100 days of the 104th Congress (1995–

[80] Billy House, "Doing Nothing Is—to Some—Doing Something," *National Journal Daily*, July 9, 2014, pp. 1, 8.

[81] For an excellent analysis of "getting to yes" in Congress, see Sarah A. Binder and Frances E. Lee, "Making Deals in Congress," in Jane Mansbridge and Cathie Jo Martin, eds., *Negotiating Agreement in Politics* (Washington, DC: American Political Science Association, 2013), pp. 54–72.

[82] See, for example, Balz and Brownstein, *Storming the Gates*; Jonathan Franzen, "The Listener: How Did a Former Wrestling Coach End Up Running the House of Representatives?" *The New Yorker*, October 6, 2003, pp. 85–99; and Ronald M. Peters, Jr. and Cindy Simon Rosenthal, *Speaker Nancy Pelosi and the New American Politics* (New York: Oxford University Press, 2010).

[83] Some Democrats called the GOP plan the "Contract on America."

1997), the GOP-controlled House would vote on every Contract item. The House accomplished the goal in less than 100 days. Nearly every Republican marched in lockstep to vote for the Contract proposals. Why? Three reasons account for the party unity. First, most Republicans believed that they were in the majority because of Gingrich's leadership. He recruited and trained many Members of his new majority and provided them with essential financial support. Second, GOP lawmakers were united in their support of the Contract proposals, such as adding a balanced budget amendment to the Constitution. Finally, the new GOP majority recognized that they needed to succeed at governance after 40 years in the minority. The GOP's responsibility for governing "requires greater assets in the leader's office," said Gingrich.[84] As for governance, Speaker Gingrich was instrumental in winning enactment of consequential measures in such areas as health care, the minimum wage, and welfare reform.

A notable centralizing aspect of Gingrich's speakership was his influence over committees. Not only did Gingrich personally select specific Members to chair committees, ignoring seniority in the process, he also required the GOP members of the Appropriations Committee to sign a written pledge that they would heed the Republican leadership's directives for spending reductions. He often bypassed committees entirely by establishing leadership task forces to process legislation. Most significantly, he changed House rules to impose term limits of 6 years on all committee and subcommittee chairs so that no GOP chair could accumulate over time the influence to challenge the majority leadership.[85]

SPEAKER HASTERT (1999–2007)

Hastert became Speaker following Gingrich's resignation from the House after the party's poor showing in the November 1998 midterm elections. After the turmoil of the Gingrich years, Republicans selected the pragmatic Dennis Hastert to be Speaker, who retained the powers of his predecessor (enforcing term limits on the committee chairs and using the Rules Committee to achieve party objectives, for example). The longest serving GOP Speaker ever (1999–2007), Hastert exercised "top down" command of the House and followed a partisan governing strategy. An example of his leadership influence over committees occurred when the Veterans' Affairs Committee chair at a Republican meeting criticized the party's budget resolution for not spending enough on veterans. Speaker Hastert "got up and shut him down," said a witness to the tongue lashing. "I've never seen anything like that. It was scathing."[86] When the chair continued his advocacy for more spending on veterans, the Speaker removed him as chair and even from the committee itself.

---

[84] David S. Cloud, "Gingrich Clears the Path for Republican Advance," *Congressional Quarterly Weekly Report*, November 19, 1994, p. 3319.

[85] Some term-limited GOP chairs also decide to leave the House. Representative Dave Camp, MI, who chaired the influential Ways and Means Committee, announced that he would not seek reelection to the 114th Congress (2015–2017). As one account noted, without special dispensation from Speaker Boehner, Camp "would go back to being in the rank and file—a rough assignment for a veteran like Camp." See "Dave Camp Won't Seek Reelection," *Politico*, April 1, 2014, p. 14.

[86] Ben Pershing, "Smith Spars with Leaders," *Roll Call*, March 26, 2003, p. 13.

The Speaker also articulated what became known as the informal "Hastert rule." My role, he said, is "to please the majority of your majority . . . . The job of the Speaker is not to expedite legislation that runs counter to the wishes of the majority of his majority." He added: "I do not feel comfortable scheduling controversial legislation unless I know we have the votes on our side first."[87] Thus, even if there was a bipartisan coalition to pass legislation, there was great reluctance on the part of Speaker Hastert to schedule floor action on those measures. To ensure that he had the votes, Speaker Hastert relied on one of the most influential majority whips and then majority leader ever—Tom DeLay of Texas—to enforce party discipline. His nickname was "The Hammer," which highlighted DeLay's persuasive techniques. And with President George W. Bush in the White House, House Republicans worked to stay united in backing administration proposals. A major policy success of Speaker Hastert's was winning enactment into law (2003) of the most significant change to Medicare (a prescription drug benefit for seniors) since Medicare was created during the administration of President Lyndon Johnson.

SPEAKER PELOSI (2007–2011)

Nancy Pelosi, analysts suggest, was the most formidable Speaker in decades, even exceeding the "top down," centralized style of her two immediate predecessors. A hands-on and results-oriented leader, she spent considerable time listening to and wooing her rank-and-file colleagues to support party-preferred policies. To be sure, she was not reluctant to give directions and deadlines to her standing committee chairs and to bring priority legislation to the floor with special rules that limited amendment opportunities for the minority party.

Her persuasiveness is illustrated by these two examples, both involving President Obama's landmark, but controversial, health care overhaul (the Affordable Care Act) that was enacted into law in 2010 when the government was unified for a time under Democratic control. First, when an aide mentioned that the party whips needed to get busy and lobby 68 wavering Democrats who were worried about their reelection if they voted for the President's health overhaul, Speaker Pelosi responded, "I'll take all sixty-eight."[88] Second, when things looked particularly bleak for passage of the Affordable Care Act[89] and the White House was contemplating moving away from a comprehensive change and proposing a pared-back health bill, it was Speaker Pelosi who said no to any "kiddie-care" plan. "We will go through the gate. If the gate is closed," she exclaimed, "we will go over the fence. If the fence is too high, we will pole vault in. If that doesn't work, we will parachute in. But we are going to get [comprehensive] health care re-

[87] Speaker J. Dennis Hastert, "Reflections on the Role of the Speaker in the Modern Day House of Representatives," *The Cannon Centenary Conference*, H. Doc. 108–204 (Washington, DC: GPO, 2004), p. 62.

[88] Sheryl Gay Stolberg, Jeff Zeleny, and Carl Hulse, "The Long Road Back," *The New York Times*, March 21, 2010, p. A1.

[89] Democrats lost their filibuster-proof, 60-vote margin in the Senate when Republican Scott Brown won a special election in January 2010 to replace Senator Edward Kennedy of Massachusetts, who had died.

form passed."[90] Her Senate counterpart, Majority Leader Harry Reid, summed up Pelosi's leadership style: "She runs the House with an iron hand."[91]

SPEAKER BOEHNER (2011–)

Historians and others will assess Speaker John Boehner's leadership approach and legislative record when he leaves office. For now, three general and tentative observations seem pertinent. First, after serving with the three previous Speakers, Boehner wanted to avoid managing the House in a "top down" command style. He preferred to decentralize authority to the committees and follow a more participatory approach to lawmaking. He had some successes in employing this approach, but not as many as he would like for a key reason: the lack of followers. "I've never been shy about leading," said Speaker Boehner. "But you know, leaders need followers."[92]

Second, one of the two conditions essential to strong speakerships, according to the conditional party government model, is sometimes not present in House GOP ranks: internal cohesion and unity on leadership-preferred objectives. House Republicans at times seem more fractured and factionalized than in the Gingrich and Hastert eras. This hampers Speaker Boehner's ability to lead his party in an ideologically charged House. A former House GOP majority leader, Dick Armey of Texas (1995–2003), suggested that Speaker Boehner confronts a more difficult governing environment than faced by either Speakers Gingrich or Hastert. "In the old days, the minority tried to create chaos and the majority tried to create a functioning majority to get things done," he said. "Lately we got both the majority and the minority trying to create chaos, and a public very upset that these guys can't get anything done."[93]

Third, it is hard to advance GOP priorities into law when Democrats control the Senate and the White House. Absent tripartite consensus, legislative gridlock predominates on many critical issues. Moreover, influential outside conservative groups and media commentators often demand that House Republicans remain ideologically pure on many issues or face primary challengers recruited and financed by various conservative entities.

VI. Major Senate Developments

Constitutionally, the Senate is different from the House in many respects: size, term, and constituency, for example. It also seems to be a more tradition-bound institution than the House. For example, the "majority rule" House permitted gavel-to-gavel coverage of its floor proceedings over C–SPAN much sooner than the Senate. Seven years after the House began televised coverage of their pro-

[90] Stolberg, Zeleny, and Hulse, *The Long Road Back*, p. A1.

[91] *Congressional Record*, v. 153, December 5, 2007, p. 32124.

[92] Darren Samuelsohn, "Boehner: House GOP Like '218 Frogs in a Wheelbarrow,'" *Politico*, May 21, 2012, p. 11. Despite the Speaker's problems winning the votes of some GOP newcomers, a journalist noted that he "taught them there's only so much you can do when you control the House, but not the Senate or White House, and a GOP Conference that is divided does even less." See AB Stoddard, "Boehner: A True Leader," *The Hill*, February 13, 2014, p. 19.

[93] Jill Lawrence, "Former House Leaders Say Current Group Has It Rough," *National Journal Daily*, September 23, 2013, p. 1.

ceedings, the Senate followed suit in 1986.[94] Staggered elections—only one-third of the Senate membership is up for reelection every 2 years—no doubt tempers the passions and pressures for major institutional change. Newly elected, reform-minded Senators join two-thirds of the Senate's membership that ran for election or reelection when institutional renewal was not an issue that resonated with the public. Moreover, the ability of a single Senator or small group of lawmakers to block unwanted innovations, through prolonged debate (the filibuster) or other dilatory tactics, means that legislative changes are likely to occur incrementally and only with the consent of at least a supermajority of Senators.

On the other hand, the Senate, like the House, is constantly evolving as new lawmakers are sworn in, veteran Members retire, and outside developments (elections, wars, economic crises, and so on) influence Chamber and Member activity. There are also historic parallels between the two Chambers. The Senate had an early "party government" era (from about 1890 to 1910) that approximated that of Speaker Joe Cannon's. Instead of Cannon's one-man rule, four GOP Senators and their allies exercised oligarchic control over Senate proceedings, with Nelson Aldrich of Rhode Island (1881–1911) their leader. (The press dubbed his leadership "Aldrichism.") The other three GOP Senators were William Allison of Iowa, Orville Platt of Connecticut, and John Spooner of Wisconsin.

The four, along with their allies (many the products of State party machines [95]), chaired or were members of the most important Senate committees. For example, Senator Aldrich chaired the Finance Committee (the other three were also members of the panel) and Allison chaired Appropriations. Members of this group also chaired the party caucus, controlled the committee assignment process, and dominated the party panel (the Steering Committee) concerned with scheduling legislation.[96] As a legislative historian stated, "Never before in the history of the Senate were the outstanding committees so monopolized by the party leaders." [97] Bolstering party government was the 1894–1896 electoral realignment, which "yielded two homogeneous Senate parties with distinctly different electoral bases and different policy positions." [98]

---

[94] Richard F. Fenno, "The Senate Through the Looking Glass: The Debate over Television," *Legislative Studies Quarterly*, vol. 14, August 1989, pp. 313–348.

[95] Much of the 19th century was the era of party machines, or "bossism," in States and localities around the Nation. They controlled nominations to public offices and turned out their supporters at election time. There was intense electoral competition between the parties to control political offices to reap the benefits of patronage. Issues were of less importance than control of the "spoils system." See David Brady, "In Their Heyday, Parties Ran on Patronage and Provided Candidate Insurance," *Public Affairs Report*, winter 2000, pp. 1, 6–8.

[96] David J. Rothman, *Politics and Power: The United States Senate, 1869–1901* (Cambridge, MA: Harvard University Press, 1966), p. 48.

[97] Ibid., p. 58.

[98] David Brady, Richard Brody, and David Epstein, "Heterogeneous Parties and Political Organization: The U.S. Senate, 1880–1920," *Legislative Studies Quarterly*, vol. 14, May 1989, p. 207. The elections of 1894, which produced large GOP majorities in the House (246R, 104D) and Senate (44R, 30D), and 1896 (Republican William McKinley was elected President) produced what scholars call an electoral realignment. In brief, realignments mean that numerous voters opt to change their support for one party and shift it to the other. The result is that the "gaining" party dominates the political environment for a relatively long period of time. In this case, Republicans held the White House and Congress for most of the time between 1896 and the 1932 election of Democrat Franklin Delano Roosevelt as President. Roosevelt's election ushered in another electoral realignment: a long period of Democratic control of the White House and Congress. During Senator Aldrich's time, Republican States were largely industrialized and urban and located in the East and Midwest; Democratic States were mainly rural and situated in the

"Aldrichism" held sway in the Chamber from the late 1890s until Senator Aldrich voluntarily retired in 1911, the last of the big four to depart the Senate. Under Aldrichism, "members' policy preferences were realized through strict party control."[99] Senator Aldrich not only combined party and committee leadership, but his persuasive skills and knowledge of how to win the support of party colleagues is reminiscent of Lyndon Johnson's leadership of the Senate from 1955 to 1960. As a commentator of the time said about Senator Aldrich, he paid

> close attention to everything pertaining to the Senate. He was always in the Senate or near at hand, and he always knew what was going on, either by personal observation or through the activities of a number of lieutenants who were glad to help him . . . . [He] made it a point to see many Senators each day. He rarely remained in his own seat, but was forever on the move, oftentimes on the Democratic side. [His personality was such] that he completely captivated men when he wanted to secure their support for any purpose.[100]

Another contemporary of Senator Aldrich added: "Many reasons have been given for the almost singular power Mr. Aldrich displays in his capacity as party manager in the Senate, but the most that can be said about the secret of his success is, perhaps, that he is a natural manipulator of men and measures."[101]

The oligarchic system of party rule led by Senator Aldrich "swiftly disintegrated" by the early 1920s. "It had been severely strained for several years by the growing number of insurgents in the party."[102] In its place came Senates, such as those of the 1950s, characterized by features such as the diffusion of authority to senior lawmakers and conservative committee chairs. In short, committees again became primary centers of power, even with a formidable majority leader, Lyndon Johnson, steering the Senate. Democrats controlled the House and Senate during the 1950s, except for the 83d Congress (1953–1955), when Dwight Eisenhower was President.

THE 1950S SENATE

Three key features characterized the Senate of the 1950s. First, an array of informal norms and folkways governed the behavior of most Senators. Second, powerful committee chairmen, called the "inner club," dominated policymaking. Third, Majority Leader Johnson exercised significant authority in shaping the Senate's activities. Johnson is often viewed as the most powerful majority leader in U.S. history, a post which became institutionalized sometime during the early 20th century.[103]

South and border States. Among the issues that divided the parties were their views on the money supply—a gold (contraction) versus silver (expansion) standard—and the tariff, protective as favored by Republicans, lower as favored by Democrats.

[99] Brady, Brody, and Epstein, "Heterogeneous Parties and Political Organization," p. 213.

[100] Arthur Wallace Dunn, *From Harrison to Harding, A Personal Narrative, Covering a Third of a Century, 1888–1921*, vol. 2 (New York: G.P. Putnam's Sons, 1922), pp. 63–64.

[101] Orlando O. Stealey, *Twenty Years in the Press Gallery* (New York: Publishers Printing Co., 1906), p. 178.

[102] Randall B. Ripley, *Power in the Senate* (New York: St. Martin's Press, 1969), p. 28.

[103] See Walter J. Oleszek, "John Worth Kern: Portrait of a Floor Leader," in Richard A. Baker and Roger H. Davidson, eds., *First Among Equals: Outstanding Senate Leaders of the Twentieth Century* (Washington, DC: Congressional Quarterly, Inc., 1991), pp. 7–37.

NORMS AND FOLKWAYS

Political scientist Donald Matthews wrote one of the most important books about the 1950s Senate. His analysis stressed the key role of the Chamber's unwritten norms and folkways in shaping policymaking and the workings of the Senate.[104] The norms and folkways included:

Apprenticeship

New Senators should first spend time learning how the Chamber functions before participating in committee and floor matters in an active and sustained way. They should also give deference to the Chamber's committee and party leaders.

Specialization

Senators should concentrate on the issues that come before the committees on which they serve and on those matters that affect their home State.

Legislative work

Senators should focus on their legislative work rather than seek publicity. Senators were to be "work horses" not "show horses."

Courtesy

Senators should treat all their colleagues respectfully and not engage in personal attacks or criticisms of them.

Reciprocity

Senators should assist colleagues whenever that is feasible. This norm includes a two-way exchange: Senators who are aided are obliged to provide assistance in return.

Institutional patriotism

Senators should defend the prestige and prerogatives of the Senate from those who would unfairly castigate its role and work. They were "expected to revere the Senate's personnel, organization, and folkways and to champion them to the outside world."[105] (To be sure, there were Senators who ignored the unwritten norms and folkways.)

Procedural restraint

Senators should exercise restraint in use of their large procedural prerogatives and employ them only in rare circumstances.

Many of these norms no longer apply as they once did, but at least one appears relevant in today's Senate: apprenticeship. Most new Senators take some time to "learn the ropes" of the Senate, with some seeking to observe an apprenticeship period. In the latter camp can be well-known, newly elected Senators, such as Hillary Clinton and Al Franken. To avoid upstaging their less famous colleagues, both deliberately and quietly went about the process of meeting their colleagues and learning Senate practices and procedures. Each, for example, paid their respects to Senator Byrd of

[104] Donald R. Matthews, *U.S. Senators and Their World* (New York: Vintage Books, 1960).
[105] Ibid., p. 102.

West Virginia, the longest serving Senator ever, deferred to for his extensive knowledge of the Senate's history, traditions, and procedures.

The other norms and folkways gradually went into decline for several reasons, such as activist Senators who from the start of their careers advocated action on their portfolio of issues,[106] and the transformation of Washington's policy community with "wall-to-wall" interest groups devoting considerable time and resources to persuading Senators to become advocates for their cause.[107]

"THE 'INNER CLUB'"

This phrase was popularized in a 1956 book written by journalist William S. White titled *Citadel: The Story of the U.S. Senate*. The club consisted mainly of senior Democratic Senators from the South and senior Republican Senators from the Midwest and New England, who dominated the inner workings of the Senate. Everyone not in the inner club, "an organism without name or charter, without officers, without a list of membership, without a wholly conscious being at all," was in the outer club.[108] The inner club, according to White, dominated the Senate's culture and policymaking, often from their perch as committee chairs. Majority Leader Johnson even gave copies of *Citadel* to newly elected Senators, so they would develop an understanding of what was expected of them, which was to follow Speaker Sam Rayburn's quip—"to get along, go along" with the priorities of inner club members.

Prominent club members included Senators Richard Russell, Russell Long, Styles Bridges, and Robert Taft. Lawmakers in the inner club dominated the levers of power in the Senate. To be sure, there were mavericks and outsiders who neither genuflected to members of the inner club nor observed regularly the norms and folkways identified by Professor Matthews.[109] Noteworthy is that some scholars challenge the notion that there was "an all-powerful inner club," given the gradual "progressive centralization of power in the hands of the Majority Leader."[110]

MAJORITY LEADER JOHNSON (1955–1960)

Scores of analysts have examined the period when Lyndon Johnson was the Senate's majority leader (1955–1960), perhaps the most skilled majority leader ever. (Johnson also served as minority leader during the 83d Congress, 1953–1955). Noted historian Robert A. Caro, a Pulitzer Prize winner, has spent much of his adult life writing multiple books that examine the political career and roles of Johnson, including *Master of the Senate* (2002), the third

---

[106] Michael Foley, *The New Senate: Liberal Influence on a Conservative Institution* (New Haven, CT: Yale University Press, 1980).

[107] Barbara Sinclair, *The Transformation of the U.S. Senate* (Baltimore, MD: The Johns Hopkins University Press, 1989).

[108] William S. White, *Citadel, The Story of the U.S. Senate* (New York: Harper & Brothers, 1956), p. 84.

[109] Ralph K. Huitt, "The Outsider in the Senate: An Alternative Role," *American Political Science Review*, vol. 55, September 1961, pp. 566–575.

[110] Nelson W. Polsby, "Goodbye to the Inner Club," in Nelson W. Polsby, ed., *Congressional Behavior* (New York: Random House, 1971), pp. 107, 109.

volume.[111] In Caro's view, Majority Leader Johnson was a legislative and political genius who knew how to mobilize votes and make the Senate work by passing legislation. Although critics said many of his bills were "empty ships" without much substance, they fail to consider Johnson's achievements in promoting policy consensus by reconciling the liberal northern and conservative southern wings of the Democratic Party.[112]

Johnson's mastery of the Senate was facilitated by three factors: (1) a Republican was in the White House, Dwight Eisenhower, which gave Johnson wider latitude to exercise independent leadership; (2) he maintained close ties with powerful leaders from the South, such as Johnson's mentor Senator Richard Russell of Georgia, while he did not alienate liberal Senators (Hubert Humphrey of Minnesota, for example) and reached out to them for support; and (3) his shrewd political intellect and instincts, focus on getting results, and sheer drive to be the Senate's most "powerful persuader." [113] As Johnson told an aide, "I do understand power, whatever else may be said about me. I know where to look for it, and how to use it." [114] Johnson also knew how and when to look to the conservative coalition for support in moving the Senate's business. (Recall that the "conservative coalition" was an informal alliance between Republicans and southern Democrats.)

A leader with a domineering style, legendary arm-twisting abilities, and parliamentary resourcefulness, Johnson could often secure the legislative outcomes he wanted in the standing committees (through allies on those panels) and in the Chamber as well. As a liberal Democrat on the Steering Committee (the committee assignment panel) said about Majority Leader Johnson: he "would come into the Steering Committee with his list, and that would be it. He'd just tell the Steering Committee who would be on [the committees]. [We] had no function at all." [115]

The Democratic leader also "regulated carefully the timing and pace of the floor debate, stalling for time when additional votes were needed and driving the issue to a conclusion when victory was assured." [116] He limited opportunities for lengthy debate—a fundamental feature of the Senate—by specifying in unanimous consent agreements "the precise time that a vote would occur." [117] Senator Johnson's power began to wane after the 1958 midterm elections, however. Northern Democratic Senators, many liberal and activist-minded, now exceeded the number of southerners "by 41 seats to 24 seats." [118] One result: Johnson was more responsive to the reformist goals of liberals in both parties, especially since he was an-

[111] Robert A. Caro, *Master of the Senate* (New York: Alfred A. Knopf, 2002).
[112] Foley, *The New Senate*, p. 23.
[113] Howard E. Shuman, "Lyndon B. Johnson: The Senate's Powerful Persuader," in Baker and Davidson, eds., *First Among Equals: Outstanding Senate Leaders of the Twentieth Century*, p. 199. Also see Ralph K. Huitt, "Democratic Party Leadership in the Senate," *American Political Science Review*, vol. 55, June 1961, pp. 333–344.
[114] Caro, *Master of the Senate*, p. xx.
[115] Norman Ornstein, Robert L. Peabody, and David W. Rohde, "The Changing Senate: From the 1950s to the 1970s," in Lawrence C. Dodd and Bruce I. Oppenheimer, eds., *Congress Reconsidered* (New York: Praeger Publishers, 1977), p. 11.
[116] John G. Stewart, "Two Strategies of Leadership: Johnson and Mansfield," in Nelson W. Polsby, ed., *Congressional Behavior* (New York: Random House, 1971), p. 67.
[117] Ibid., p. 68. Also see Smith, *Call to Order*, pp. 99–101.
[118] Foley, *The New Senate*, p. 27.

gling to win the 1960 Presidential nomination. In 1961, he took the oath of office as Vice President of the United States.

THE INDIVIDUALIST SENATE (1961–1990)

The roots of the individualist Senate can be traced to the late 1950s when junior Senators as well as several seasoned lawmakers began to rebel against the seniority system and urge rule changes that would facilitate enactment of civil rights, labor, and other legislation. As a congressional scholar noted, "the Senate transformed itself from an inward-looking, committee- and seniority-dominated institution in which influence and resources were unequally distributed to an individualist, outward-looking institution with a much more equal distribution of resources .... [Moreover, in] neither the old nor the new Senate did party play a major role." [119] In short, gone was the communitarian, small-town character of the Senate of the 1950s with its norms, folkways, and hierarchical structure. It was replaced by a system—still prominent today—that granted wide opportunities to rank-and-file Senators to influence virtually any policy area. As a commentator noted, the Senate is "increasingly a place where it's easier for a single lawmaker to stop a bill in its tracks than to get it passed by bringing others on board." [120]

A number of external forces accelerated the transition to an individualistic Senate. For example, interest group activity surged in the Nation's Capital given the activism and expansion of the Federal Government (the Great Society, for instance). As James Q. Wilson, a political scientist, pointed out: "Once politics was about only a few things; today, it is about nearly everything." [121] New issues and problems emerged on the agenda of Congress and the national government—affirmative action, automobile safety, abortion, the Vietnam war, gasoline lines, environmental protection, women's rights, and so on—which motivated Senators to respond to their constituents, to the importuning of lobbyists, and to the needs of the country by, for example, introducing bills and holding hearings.

A relatively closed and insular Senate became a more open, permeable, and unpredictable policymaking institution. The press and media increased its coverage and scrutiny of Congress. The institution became a more visible and critical center of action in numerous policy areas, including legislative-executive conflicts over war powers and Federal spending. Senators also acquired additional staff resources, including access to experts in new legislative support units (for example, the Congressional Budget Office, created in 1974). With more staff, Members had wider opportunities to become engaged in substantive areas beyond the jurisdictional domains of the committees on which they served. Legislative staff also assumed more responsibility in the lawmaking process given heightened demands on the time of Senators—fundraising, campaigning, and meeting with constituents as well as dealing with an

[119] Barbara Sinclair, "Congressional Reform," in Julian E. Zelizer, ed., *The American Congress* (Boston: Houghton Mifflin, 2004), p. 631.

[120] Rebecca Kaplan, "Hatch as Hatch Can," *National Journal*, May 18, 2013, p. 35.

[121] Quoted in Robert J. Samuelson, "Suicidal Politics," *The Washington Post*, April 11, 2011, p. A13.

array of complex issues in committee and on the floor. As a result, professional staffers often took the lead in negotiating policy differences with the aides of other Senators, drafting legislation, acting as procedural advisers, preparing reports, and so on.

OTHER CONSEQUENCES OF INDIVIDUALISM

An analysis of the individualistic Senate by a congressional journalist identified four other consequences of the Senate's transition from a place where comradeship and friendly relationships were commonplace to an institution of semistrangers where "individual rights, not community feeling, is the most precious commodity." [122] First, there is little socializing among Senators. Members' schedules are simply too replete with numerous meetings, fundraising, visiting with constituents, or traveling back and forth to their States. Without personal and social connections, trust is hard to develop between and among Senators, and trust is essential to the compromise-making process.

Second, civility and courtesy declined with a resultant uptick in acerbic words and criticisms of a personal nature. The erosion of civility compounds the difficulty of reaching consensus on issues and promotes partisan bickering. A GOP Senator who voluntarily retired expressed dismay with the atmosphere of the Senate. "We've ratched up the violence of our words. I don't like the milieu. Now it all [is about] who's winners and who's the losers." [123] Absent civility, it becomes harder for Senators to achieve consensus on resolving the Nation's problems.

Third, Senators, like House Members, are constantly running for reelection (the "permanent campaign"), mindful that their actions and votes are subject to intensive monitoring by pressure groups, the media, and the attentive public, particularly people who vote in party primaries. Vast sums of money are spent by scores of groups, wealthy individuals, and party organizations to fund attack-oriented campaigns, engage in issue advocacy, energize supporters to vote on Election Day, and, of course, to influence congressional decisionmaking.

Lawmakers, too, devote considerable time to "dialing for dollars." As a Senator explained: "I don't worry about money influencing our votes. I don't think that happens. But I worry about the energy it takes. We're out there raising money all the time. We don't sit down and talk to each other very much anymore. We don't have time. I just don't know how people find the time to think or reflect." [124]

Fourth, individual Senators obstructed the Senate with scores of parliamentary maneuvers. "There is today more power in the hands of a single person, more leverage to impede the process, than there used to be," exclaimed a Senator. "We've given far too much power to the impeders." [125] Peer pressure is often unable to get the impeders to stop their dilatory actions. A Senator who often ex-

[122] Alan Ehrenhalt, "In the Senate of the '80s, Team Spirit Has Given Way to the Rule of Individuals," *Congressional Quarterly Weekly Report*, September 4, 1982, p. 2175.
[123] James M. Perry, "Moderate Republicans Look Like a Dying Breed as Standard Bearers Forsake Acrimonious Senate," *Wall Street Journal*, December 28, 1995, p. A8.
[124] Ibid.
[125] Ehrenhalt, "In the Senate of the '80s," p. 2179.

ploited Senate rules to frustrate Chamber action either for substantive, political, or campaign purposes explained: "If I'm not the most popular guy in the Senate—well, I can live with that." [126]

INDIVIDUALISM AND MAJORITY LEADER MIKE MANSFIELD

An observation about the individualist Senate is important to underscore. The Senator who succeeded Lyndon Johnson as party leader was Democrat Mike Mansfield of Montana, the longest serving (1961–1977) majority leader in the Senate's history. His actions and decisions facilitated establishment of the individualistic Senate. In Mansfield's view, there was no "inner club" in the Senate, because every Senator had equal rights and responsibilities. As he stated: "[T]here's no 'inner club' in the Senate any more. That's the way it should be. Nobody is telling anybody else what to do." [127] A senior Senate aide explained that Senator Mansfield's "principal duty was to maintain a system which permitted individual, coequal senators the opportunity to conduct their affairs in whatever ways they deemed appropriate." [128]

Mansfield's restrained leadership style, in sharp contrast to Johnson's assertive leadership approach, promoted the individualism that remains a prime feature of today's Senate. As congressional scholar Ross Baker concluded about the Mansfield years: "Much criticism of the modern Senate is, in effect, a commentary on institutional features that emerged during Mansfield's term as majority leader. The hyper-individualism, the ability of willful or obstructionist members to hold the institution hostage at times to their own petty interests, the [enlargement] of Senate staff and their assumption of unprecedented, even unwarranted, authority, are all developments of [Senator] Mansfield." [129] Added a congressional scholar, "[A]s the Mansfield era came to an end, Senate individualism was reaching a fever pitch." [130] Interviewed at age 96, Mansfield was asked for his view of "the state of Congress in 2000." He said in part: "There's a lack of compatibility among and between members. There's an individualism to an extent I never thought was possible." [131]

Mansfield's successor as party leader, Senator Byrd of West Virginia, also catered to the individual needs and requests of Members. One of his important jobs, he said, was to wait upon and accommodate his partisan colleagues. "I often say when I am to fill out a form and the form says 'occupation,' I should put 'slave.'" Senator Byrd also called himself the "mitigator" for the "individual ills and problems of individual Members." [132] To be sure, Majority Leader Byrd (1977–1981; 1987–1989), one of the Senate's most ac-

[126] Ibid.

[127] "Why Congress Is In the Doghouse, Interview With the Majority Leader," *U.S. News & World Report*, August 16, 1976, p. 27.

[128] Stewart, "Two Strategies of Leadership," p. 69.

[129] Ross K. Baker, "Mike Mansfield and the Birth of the Modern Senate," *First Among Equals*, p. 293. Also see Francis R. Valeo, *Mike Mansfield, Majority Leader: A Different Kind of Senate, 1961–1976* (Armonk, NY: M.E. Sharpe, 1999).

[130] Steven S. Smith, *The Senate Syndrome: The Evolution of Procedural Warfare in the Modern U.S. Senate* (Norman, OK: University of Oklahoma Press, 2014), p. 118.

[131] Dan Carney, "Mansfield on Leadership, Teamwork and 'Individualism' in Congress," *CQ Weekly*, January 29, 2000, p. 164.

[132] The first quote is from the *Congressional Record*, v. 126, April 18, 1980, p. 8352. The second is found in the *Congressional Record*, vol. 126, May 2, 1980, p. 9759.

complished parliamentary experts ever, could play "procedural hard ball" if circumstances warranted that approach. Senator Byrd also served as minority leader (1981–1987).

THE POLARIZED SENATE (1990–)

Legislating in the modern Senate can be a difficult enterprise given its emphasis on "minority rule"—the right of Senators to debate at length (the filibuster) and to offer nonrelevant amendments. The Senate's procedural differences with the "majority rule" House mean that bipartisanship is usually more important to attain in the upper Chamber than in the lower Chamber. Unless a broad bipartisan consensus exists or there is a voting supermajority, enacting legislation or approving nominations can often be an arduous and lengthy task. To overcome obstructionism, a regular and routine occurrence, is the cost today of doing legislative business. The individualism that permeates the Chamber and—since the 1990s—the sharper partisanship that pervades the Senate means that bipartisan collaboration and compromise are much harder to attain than previously. In short, the combination of heightened individualism, sharper partisanship, and the Chamber's permissive rules underscore the policymaking challenges that confront the contemporary Senate.

One consequence is that the party leadership's influence over policymaking is ascendant compared to the role of committees. Majority party leaders are not reluctant to bypass committee consideration of legislation or take the lead in writing bills or amendments. Moreover, it is easier for them, as well as for individual Members, to use available procedures to circumvent committee consideration and place measures directly on the legislative calendar. (There is no guarantee that these measures will be taken up, however.) Worth mention is that Senate Republicans, but not Democrats, impose term limits on their Members—6 years as a chair and 6 years as a ranking lawmaker—thus limiting their ability to accumulate the authority and clout of committee leaders from earlier eras.

The "little legislatures" (committees) are not unimportant, simply less important than the role of party leaders. The leaders are in charge of legislating on most measures or matters. Among other things, party leaders are responsible for legislative strategy, the party's agenda and message, fundraising, fostering party consensus and unity, communications, and, importantly, winning or holding majority control of their Chamber. In the judgment of one analyst, in "the new political order, nothing is more important than either winning or holding a majority ... so anything that prevents the other party from capturing or holding a majority is justified, even necessary." [133] Senator Byrd expressed this sentiment in stronger language: "Party! It doesn't make any difference how many political corpses you trample on or walk over to get your party on top. The object is to win the next election. The object is to be able to say ... 'Our party will be in control.'" [134] Added Senator Olympia Snowe of Maine, "Congress is becoming more like a parliamentary

[133] Charlie Cook, "Blocking the Vote," *National Journal*, July 26, 2014, p. 15.
[134] Melissa Healy, "Robert Byrd," *Los Angeles Times*, January 30, 1995, p. A12.

system where everyone votes with their party and those in charge employ every possible tactic to block the other side."[135]

Many reasons and trends account for the uptick in partisanship and the sharp ideological divide that characterizes the contemporary Senate. Several of these include:

PARTISAN AND IDEOLOGICAL SORTING

A long-term trend underway for many years has been the partisan and ideological sorting that has occurred in each party and in the country. "Knowing whether a person is a Republican or a Democrat today tells you far more about their views on many issues than it did in previous eras."[136] One result is that bipartisan coalitions on major measures, common during the post-World War II period, are hard to forge in the absence of ideological overlap—conservatives and liberals in both parties. One analyst dubbed the post-World War II period "the age of bargaining," in which "the two parties, both representing ideologically diverse coalitions, regularly reached agreements that blurred the differences between them."[137] The Congresses of the bargaining era are largely outliers. In most historical eras, Congress and the country exhibited strong partisan and policy disagreements.

Consider the years leading up to the Civil War (recall the severe beating of Senator Charles Sumner of Massachusetts administered by the cane-wielding Representative Preston Brooks of South Carolina); the late 19th and early 20th century splits in Congress and the country between rural and urban and labor and industrial interests; the clashes over the prohibition of intoxicating liquors, which in 1919 was embedded as the 18th Amendment to the Constitution and then repealed in 1933 by the 21st Amendment; the struggle for civil rights in the 1960s that included the murders of national leaders, the assassination of President John F. Kennedy, and riots in city streets; the anti-Vietnam war movement of the 1970s, which included the shootings of Kent State (Ohio) students protesting the war; or today's strong public and partisan differences over immigration, foreign policy, and the role of government, for example.

Today, the disagreements between the parties are so wide and strong, a seemingly unbridgeable chasm on many issues (Obamacare would be a prime example), that stalemate and deadlock pervade Congress as well as relations between the legislative and executive branches. Public officials even suggest that legislative gridlock could threaten national security if Congress cannot act to address national and international emergencies, such as the threat of terrorist attacks on the homeland. Pollsters have found

---

[135] Kaiser, *An Act of Congress*, p. 381.

[136] Shankar Vedantan, "My Team vs. Your Team: The Political Arena Lives Up to Its Name," *The Washington Post*, September 29, 2008, p. A6. Political scientists, psychologists, and others have suggested that "our brains are hardwired for partisanship." They are engaged in trying to understand "what exactly makes us so vulnerable to partisanship." See Brian Resnick, "The Battle for Your Brain," *National Journal*, September 20, 2014, pp. 12–18. After reviewing the literature on the "political brain," a science journalist concluded: "A large body of political scientists and political psychologists now concur that liberals and conservatives disagree about politics in part because they are different people at the level of personality, psychology, and even traits like physiology and personality." David Sherman and Leaf Van Boven, "Why We Can't Just Get Along," *Los Angeles Times*, September 25, 2014, online edition.

[137] Ronald Brownstein, "Then and Now," *National Journal*, December 15, 2012, p. 8.

widespread pessimism in the country about the state of the Nation, provoked by a number of factors that include the perception that the Nation's governing institutions are in constant gridlock. The pessimism of the public occurs because citizens are "reacting, in part, to the breakdown of the political system, which leaves people quite rationally worried about American decline and the Nation's diminishing ability to weather [and deal with] crises." [138]

GEOGRAPHIC AND RESIDENTIAL SELF-SEGREGATING

Studies have shown that like-minded individuals and families prefer to live in or move to States ("red" or "blue," for example) and communities where people share similar lifestyles, values, interests, and political views.[139] More and more people are living in "landslide counties" that vote either Democratic or Republican. Living in homogeneous communities reinforces peoples' shared political beliefs and biases. As analysts have found, "the country may be more diverse than ever from coast to coast," but it is "filled with people who live alike, think alike, and vote alike." [140] Or as a political pollster stated, "If voters are seeking an explanation for hyperpartisanship and dysfunction, they ought to look down the street." [141] Polls even show that liberal and conservative voters "would be unhappy if their children married someone with a different political viewpoint. The result isn't just polarized politics, but an increasingly divided society." [142]

Tellingly, people who live in homogeneous neighborhoods are more engaged in political activities than those who reside in diverse neighborhoods.[143] "Political activism is much easier when you're surrounded by like-minded others," said a political scientist.[144] These are the individuals who often contribute to campaigns, vote in primaries, work on campaigns, and look askance at compromise. People in heterogeneous communities may steer clear

[138] Cited in Dana Milbank, "A Dying American Optimism," *The Washington Post*, August 13, 2014, p. A19.

[139] See Bill Bishop, *The Big Sort: Why the Clustering of Like-Minded Americans Is Tearing Us Apart* (New York: Mariner Books, 2009). One scholar found that in "1960, 5 percent of Republicans and 4 percent of Democrats said they would feel 'displeased' if their son or daughter married outside their political party. By 2010, those numbers had reached 49 percent and 33 percent." He concluded that "partyism is extending well beyond politics into people's behavior in daily life." See Cass R. Sunstein, "Partyism Now Trumps Racism," *BloombergView*, September 22, 2014, pp. 1, 3. This article can be found at http://bloombergview.com/articles. Another study found that Americans are "self-sorting, not only along racial lines but also along educational and income ones, particularly in our big cities." Important cultural consequences flow from this development. "People who live in ethnically diverse streets are less racially prejudiced than individuals living in highly segregated areas and their increased tolerance is due directly to the experience of a more integrated society." Charles M. Blow, "The Self-Sort," *The New York Times*, April 12, 2014, p. A19. Worth noting is that a free smartphone app (BuyPartisan) allows supermarket shoppers to purchase products that comport with their political beliefs by learning "the political leanings of the makers of supermarket items." The developer of the smartphone application said, "We're trying to make every day election day for people." See Rebecca Bratek, "Taking Politics Shopping," *Los Angeles Times*, August 25, 2014, online edition. In the view of an election analyst, "Politics hangs on culture and lifestyle more than policy." See Laura Meckler and Dante Chinni, "How Where We Live Deepens the Nation's Partisan Split," *Wall Street Journal*, March 21, 2014, p. A10.

[140] David Wasserman, "Parallel Universes," *National Journal*, December 15, 2012, p. 18.

[141] Sheryl Gay Stolbert, "You Want Compromise? Sure You Do," *The New York Times*, August 14, 2011, p. SR5.

[142] Nate Cohn, "Polarization: It's Everywhere," *The New York Times*, June 12, 2014, p. A3.

[143] Stolbert, "You Want Compromise? Sure You Do," p. SR5.

[144] Ibid.

of discussions of politics to avoid provoking anger and hard feelings with their friends and neighbors.

PARTISAN MEDIA

There are so many partisan and dueling 24/7 media outlets that individuals can tune in to liberal or conservative channels where contrary views are neither exposed nor considered and where compromise is disparaged, sometimes by shrill commentary. To attract a wide audience, these media outlets are in the business of amplifying party and policy disagreements. Typically, people select media programs that bolster and reinforce their views; they do not routinely sample a variety of news sources that expose them to contrary political perspectives. And "many of those drawn to the most partisan shows have an outsized impact on politics, talking to their friends and neighbors about public affairs and signing up for campaign work."[145]

INTEREST GROUPS AND "THINK TANKS"

There are numerous interest groups largely aligned with each party that monitor the work, ideological purity, and votes of Members. If Members deviate from the groups' programs and preferences, the lawmakers face the threat of a primary challenge from candidates more liberal or more conservative than they are. "In a partisan atmosphere," remarked a GOP Senator, "it's hard to help the other side without being accused [by well-financed ideological groups] of aiding and comforting the enemy."[146] On the other hand, advocacy groups can enable individual lawmakers to exercise outsized influence in Congress if these Members are able to energize and mobilize outside groups and grassroots supporters to back their legislative causes and strategies. As the leader of a conservative advocacy group said about two Senate Republicans: "They are recognizing [that] political power today doesn't lie in Washington, it lies around the country."[147]

As for think tanks, they are part of elaborate infrastructure of groups and organizations that support the agenda and goals of each party. On the liberal side, for instance, is the Center for American Progress; on the conservative side is The Heritage Foundation. An objective of these think tanks is to prepare scholarly reports that advocate for and support the partisan agenda of the Democratic or Republican Parties. As a founder of a partisan think tank said: "This is your [party's] objective. Now go do the analysis."[148] Little surprise that "facts" are often in strong dispute between the two parties, which compounds the difficulty of resolving policy differences.

[145] Michael Kranish, "The Role of Partisan Media," *The Boston Globe*, October 6, 2013, p. 8.
[146] Darren Samuelsohn, *Politico*, June 28, 2010, p. 10.
[147] Susan Ferrechio, "Political Power Isn't Just for Party Leaders Anymore," *WashingtonExaminer.Com*, September 30, 2013, p. 10.
[148] Bryan Bender, "Many D.C. Think Tanks Now Players in Partisan Wars," *The Boston Globe*, August 11, 2013, p. 5.

ELECTORAL VOLATILITY

Today's Senate is subject to rather frequent shifts of party control compared to the 26 years that Democrats held the Senate (1955–1981). For example, for the period from the 103d Congress (1993–1995) to the 113th Congress (2013–2015), Democrats have been the majority party six times and Republicans five times, often with rather slim majorities. The constant struggle to hold or win power means that there is little incentive for whichever party is in the minority to work with the majority party to enact consequential legislation. If major measures regularly pass with bipartisan majorities, that might indicate to many voters that "staying the course" is what's required at election time rather than "it's time for a change." According to one analyst, "Narrow majorities inherently encourage partisan conflict. When control is always within reach, the minority party loses the incentive to help mint legislative accomplishments that fortify the brittle majority." [149]

BENEFITS OF PARTY POLARIZATION

Some analysts suggest that the distinct and widely known views of the two parties enable voters to hold each of them accountable for their actions or inactions. Not too long ago, during the 1950s and 1960s, for example, people could say that there wasn't a dime's worth of difference between the two parties. That is not the case today. Voters have a real choice in choosing the party and the candidates that best represent their policy preferences and values. Then-Representative Richard Cheney (1979–1989) said as a minority Member: "Polarization often has very beneficial results. If everything is handled through compromise and conciliation, if there are no real issues dividing us from Democrats, why should the country change and make us the majority?" [150] Moreover, too many compromises can produce inadequate laws that reflect the lowest common denominator of legislating.

Polarization has other real and potential benefits. It can promote voter turnout. Partisan stalemates can prevent mistakes that could occur if bills were passed without adequate deliberation and amendment opportunities for each party. In short, legislative deadlock may be the best option absent consensus in Congress and the country over how to address consequential issues and problems.[151]

A compelling counterpoint is that in a "party-polarized chamber where the Senate minority party demonstrates the sort of disciplined opposition that one sees in parliamentary out parties, a Senate majority has extraordinary difficulty either recruiting bipartisan support or governing alone." [152] The extraordinary difficulty occurs in large measure because of the Senate's procedural rules. Every Senator is well positioned to stymie Senate decisionmaking. For example, the Senate has only one formal rule (Rule XXII) to end debate. It must invoke a procedure called cloture (closure of debate) to bring debate and voting to an eventual end. However, clo-

[149] Ronald Brownstein, "The Volatile Senate," *National Journal*, September 20, 2014, p. 4.
[150] Quoted in Fred Barnes, "Raging Representatives," *The New Republic*, June 3, 1985, p. 9.
[151] See W. Lee Rawls, *In Praise of Deadlock: How Partisan Struggle Makes Better Laws* (Baltimore: The Johns Hopkins University Press, 2009).
[152] Frances E. Lee, "Senate Deliberation and the Future of Congressional Power," *Political Science & Politics*, vol. 43, April 2010, p. 227.

ture requires 60 of 100 votes to invoke for most measures and matters, and it is a time-consuming process that can take several days. Generally, the Senate functions best when every Member agrees by unanimous consent to a procedural framework for considering measures and matters. Two words—"I object"—block that approach, however.

BEYOND IDEOLOGY: THE "REBOOT"

Important to note is that the struggle between the parties involves more than ideological differences, because not all issues arouse the ideological passions of Senators.[153] For example, the Senate in mid-March 2014 enacted legislation by a 96 to 2 vote to provide additional funds for pediatric medical research.[154] The pediatric measure was part of a deliberate bipartisan strategy (called the "reboot") by the bipartisan party leaders to end Senate gridlock, pass legislation, and demonstrate that the Senate can govern during a time when lawmakers regularly employ their procedural prerogatives to frustrate Senate action on legislation and nominations. The reboot meant that measures that "had bipartisan authorship, had already gone through committees, and had the support of the committees' chairmen and ranking Republicans" would be scheduled for floor action.[155]

The reboot was an attempt to return to the "regular order." This ambiguous and variable term generally means that measures are introduced and referred to the appropriate committee, voted out by a majority on the committee, and then brought to the floor under an open amendment and deliberative process that also ensures real minority party participation. The leaders of the reboot initiative wanted to demonstrate to newcomers how the Senate is expected to legislate, without being regularly embroiled in procedural gridlock and policy stalemate. As Senator Barbara Mikulski, the chair of the Appropriations Committee and a principal advocate of the reboot approach, stated: "This is one of the first times in a couple of years where we have had an open amendment process, and in some ways we're getting adjusted to how that actually works."[156] The bipartisan reboot initiative, however, lasted only a few weeks.

THE RETURN OF PARTISAN WARFARE

The two parties soon focused on their struggle either to hold power or to win it back. A consequence of this political reality is that numerous issues are left unresolved or unacted upon. If legislation is enacted into law, such as the Affordable Care Act, the opposition party may try to foil its effective implementation, work to repeal and replace the statute, or challenge it in the Federal judici-

[153] "Beyond Ideology" is the title of a book by Professor Frances E. Lee of the University of Maryland. Her study underscores that every vote in the Senate is not ideologically based. See Frances E. Lee, *Beyond Ideology: Politics, Principles, and Partisanship in the U.S. Senate* (Chicago: University of Chicago Press, 2009).

[154] *Congressional Record*, v. 160, March 13, 2014, p. S1617.

[155] Jonathan Weisman, "Process 'Reboot' Aims to End Senate Gridlock," *The New York Times*, March 3, 2014, p. A15. Also see Ed O'Keefe and Paul Kane, "From Unlikely Pair a Plan to Restore Tradition—and Bipartisanship," *The Washington Post*, March 11, 2014, p. A5.

[156] Quoted in a speech by Senator Charles Grassley, *Congressional Record*, March 13, 2014, p. S16745. Also see Tamar Hallerman, "Tapping Back in to Regular Order," *CQ Weekly*, April 7, 2014, pp. 538–545.

ary or the court of public opinion. According to a political strategist, the two parties are "more interested in pursuing partisan, short-term advantage than they are in building consensus and solving national problems that require immediate action." [157]

The partisan tactics available to each party are many, as pointed out by political scientist Frances E. Lee. "In seeking to advance their collective interests of winning elections and wielding power, legislative partisans stir up controversy. They impeach one another's motives and accuse one another of incompetence and corruption, not always on strong evidence. They exploit the floor agenda for public relations, touting their successes, embarrassing their opponents, and generally propagandizing for their own party's benefit. They actively seek out policy disagreements that can be politically useful in distinguishing themselves from their partisan opponents." [158] Perhaps no surprise, then, that this partisan behavior provokes procedural "hard ball" tactics. In effect, recent Senates have witnessed the emergence of a "new procedural normal."

THE EMERGENCE OF A "NEW PROCEDURAL NORMAL"

There is arguably a "new procedural normal" in the Senate, which coexists in uneasy tension with the regular order. This procedural duality is something akin to the "layering" of the landmark 1974 Budget Act atop the traditional authorization and appropriations processes.[159] It also emulates a "two track" scheduling system in the Senate: measures that enjoy broad support are taken up during a session day on one track (in the morning, for example) and measures subject to dilatory tactics are slated for consideration on the second track (in the afternoon, for instance).

The origins of the new procedural normal stem from the willingness of Members and the two parties to use their procedural prerogatives to the limit to advance their legislative and political goals. A gridlocked Senate might be the opposition's goal. The majority's failure to pass legislation is the minority's success. On the other hand, the majority leader's job is to win Senate action on the party's agenda. The party leader also wants to protect his electorally vulnerable Members from casting tough votes on campaign-inspired amendments that challengers can use in attack ads against incumbents.

Thus, the perception or reality of minority obstructionism provokes parliamentary maneuvers by the majority leader that typically restrict the minority's amendment and debate opportunities. These actions give rise to angry responses from the opposition. They charge that the majority party's tactics are destroying the

---

[157] Douglas E. Schoen, "A Country on the Wrong Track," *The Washington Times*, August 11, 2014, p. B1.

[158] Lee, *Beyond Ideology*, p. 4.

[159] House and Senate rules create a distinction between authorizations and appropriations. Authorizations establish, continue, or modify Federal programs and entities, and they allow them to be funded. Appropriations (spending bills) fund authorized Federal agencies and programs. For various reasons, such as an overly fragmented legislative budget process, Congress passed the 1974 Budget Act. Among other things, it created House and Senate Budget Committees that usually prepare an annual concurrent budget resolution that, if adopted, establishes Congress' framework for considering revenue, spending, and budget-related legislation. However, Congress did not institute this fiscal reorganization by abolishing the authorization and appropriations processes. Such an attempt would have pitted the most powerful committees and Members against one another and jeopardized any chance of realizing budgetary reform. Instead, Congress added another budget "layer" to those already in place in the House and Senate.

Senate. "Throughout its history, all senators have had two essential opportunities to participate: the right to offer amendments to legislation and the right to unlimited debate," explained a senior GOP Senator. "The current Senate majority has attacked both of these rights relentlessly."[160]

Three principal motivations trigger these back-and-forth partisan and procedural clashes. First, Democrats want to make laws by achieving favorable action on their own and President Obama's priorities. Republicans often want to stop Democratic-preferred priorities from becoming laws because they strongly disagree with them. Second, inaction also works to the GOP's electoral advantage as a campaign theme against the "do nothing" Democratic Senate. Moreover, the next election could make the minority the majority party. In that case, many of the former majority party's proposals would simply be ignored or rejected out of hand.

Third, the Senate has a long tradition of allowing extensive debate and permitting nonrelevant amendments. From the majority leader's perspective, opposition party Senators want an open amendment process to force political votes, embarrass the majority party, waste the Senate's time, and derail the legislation. The majority leader often states that he would agree to negotiate a reasonable number of relevant amendments to legislation. He says, however, that he does not get much help from the minority leadership in reaching agreements to process legislation because of strong disputes within that party.[161] Even if minority Members have the chance to offer a number of amendments to pending legislation, asserts the majority leader, many in the opposition still vote against the bill on final passage.

Senate Republicans view things differently. They see a dramatic erosion of the right of Senators to offer a reasonable number of amendments to legislation, including nonrelevant amendments. They dislike intensely the idea that the majority leader acts like a "one-person House Rules Committee," preclearing only certain GOP amendments for floor action. Republicans frequently remind the majority leader that the Senate was designed to act slowly and deliberately, practices that allow the views of the minority Members and the people they represent to be heard rather than ignored. GOP leaders also stress that no change in Senate rules is required to make the Senate work in a more collegial and productive fashion. "This does not require a change of rules," remarked Senator Lamar Alexander, echoing the sentiment of GOP leader Mitch McConnell. "This requires a change of behavior—some on our part on this side of the aisle, but a great deal of behavior" on the part of the majority leader, who sets the Senate's agenda.[162]

This clash of views reflects an age-old source of procedural tension in the Senate: how best to protect the traditional right of the minority (an individual, a small group, or the minority party) to debate and amend legislation while ensuring the right of the majority to decide and vote on measures and matters. In the view of Senator

---

[160] Orrin G. Hatch, "Destroying the Senate—and Our Liberties," *The Washington Times*, August 4, 2014, p. B1.

[161] Manu Raju and Burgess Everett, "Reid Defends Leadership of the Senate," *Politico*, March 6, 2014, p. 31.

[162] *Congressional Record*, v. 160, January 8, 2014, p. S113.

Charles Schumer, two things are required to get the Senate back to the art of legislating. "One, an ability to offer amendments. But second, an ability to vote on final passage, have an up-or-down vote on final passage once those amendments are disposed of one way or the other."[163] Minority party Members view matters differently. "Today, it is, shut up, sit down, don't offer amendments," stated Senator Dan Coats. The Senate has become the "world's least deliberative body, not the most deliberative body."[164] As another Senator exclaimed: "If a Senator cannot offer an amendment, why vote to cut off debate and go to final passage?"[165]

Senator Schumer's aspirations are hard to realize given acrimonious partisanship, divided government, and the exploitation of the Senate's permissive rules by each party. For the majority, this often means restricting the minority's ability to offer nonrelevant amendments. For the vote-short minority, it can mean using a panoply of procedures, such as threatening or using the filibuster, to impede or prevent decisionmaking. One consequence of this parliamentary dynamic is the emergence of a new procedural normal that has reshaped the upper House's governance in significant ways. Among its more prominent features, in no special order, are these six:[166]

Filling the amendment tree

By precedent, the majority leader has the right of first recognition if no Senator is holding the floor. The recognition prerogative enables the majority leader to offer amendment after amendment until all eligible amendments based on Senate precedent have been offered to a bill. At that point, the amendment process is "frozen." Filling the tree by the majority leader has surged in recent years to prevent the minority from offering political message amendments that could cause electoral grief for majority Members up for reelection. Genuine efforts to improve the substance of legislation through amendments are also foreclosed by this tactic.

Budgeting

In recent years, Congress has been unable to enact what was once routine: the 12 annual appropriations (spending) bills funding the government by the start of a new fiscal year. Delays are common because of conflicts over spending for various programs and priorities. The result: the Federal Government frequently operates on continuing resolutions, sometimes for only a few weeks at a time, that keep the government funded until individual spending bills or an omnibus appropriations measure is crafted that might be composed of several unacted-upon appropriations measures.

Conference committees

Once called the "third house of Congress," a conference panel—composed of House conferees and Senate conferees—was typically created ad hoc from members of the committees of jurisdiction to

[163] Ibid., January 14, 2014, p. S303.
[164] Ibid., May 14, 2014, p. S3008.
[165] *Congressional Record*, vol. 156, December 21, 2010, p. S10855. The Senator was Arlen Specter of Pennsylvania.
[166] For more detail on these procedures, see Walter J. Oleszek, *Congressional Procedures and the Policy Process*, 9th ed. (Washington, DC: Sage, 2014).

resolve bicameral differences on legislation when the House and Senate passed dissimilar versions of the same bill. Use of conference committees has declined over the years in large measure because their creation can be blocked in the Senate by extended debate. Moreover, when the production of laws is low, as in the 113th Congress (2013–2014), there is little need to create these panels.

Cloture votes

There has been a marked increase in the number of cloture votes. For instance, they surged from 61 in the 107th Congress (2001–2003) to 112 in the 110th Congress (2007–2008).[167] Part of the explanation for the increase is the coordinated and orchestrated use of partisan filibusters by the minority leadership rather than, as before, individual Senators engaged in prolonged debate. For his part, the majority leader often files cloture if there is an objection made when he offers a debatable motion to bring a measure to the floor. GOP Senators complain that cloture is filed even before debate has begun. Moreover, they object to the majority leader's requests to bring legislation to the floor under conditions that prevent Republicans from offering relevant and nonrelevant amendments of their choosing to legislation. To be sure, the majority leader strongly defends his management of the Senate and laments the unwillingness of the minority to engage in negotiations with him.[168]

The 60-vote Senate

Majority votes have traditionally been common in the Senate to pass measures or matters, except for those supermajority requirements specified in the Constitution, laws, or Senate rules. Today, there is a new normal: 60 votes are required for enacting virtually all types of measures. It has become an institutionalized norm, replacing the majoritarian standard. The usual practice is for the 60-vote requirement to be specified in unanimous consent agreements for the enactment of measures and amendments. The new voting standard serves the interests of both parties: the majority is assured a direct vote in its policy alternative and a unified minority with 41 or more votes can prevent adoption of proposals they dislike.

The "nuclear option"

On November 21, 2013, the Senate adopted a historic new Senate precedent that established majority cloture—rather than Rule XXII's requirement of 60 votes—to end filibusters on executive and judicial nominees, excepting only the Supreme Court.[169] In the Senate, a precedent can be established by majority vote when the

---

[167] According to Majority Leader Reid, Minority Leader McConnell has "orchestrated 442 filibusters since Obama took office." McConnell disputes that number citing Reid's erroneous methodology: counting the filing of cloture motions as equivalent to filibusters. See Jonathan Martin, "Kentucky Derby," *The New York Times Magazine*, August 31, 2014, p. 40.

[168] Manu Raju and Burgess Everett, "Reid Defends Leadership of the Senate," *Politico*, March 6, 2014, p. 1.

[169] On November 21, 2013, Majority Leader Reid raised a point of order that "the vote on cloture under rule XXII for all nominations other than for the Supreme Court of the United States is by majority vote." For the procedural details associated with the establishment of the new authoritative precedent, see *Congressional Record*, vol. 159, November 21, 2013, pp. S8416–S8418.

Senate overturns a ruling of the Presiding Officer. Once created, precedents trump formal Senate rules. In this instance, the nuclear option had the effect of "amending" the supermajority provision for cloture in Rule XXII without changing the text of that rule. Tellingly, a higher 67-vote requirement is imposed by Rule XXII to end filibusters on proposals to amend Senate rules. "Amending by precedent" bypasses that requirement entirely and accomplishes what amounts to rules changes by majority vote. Senator Reid employed the controversial so-called nuclear option because he was frustrated that Republicans were undermining the Senate's constitutional "advice and consent" responsibility by filibustering President Obama's executive and, particularly, judicial branch nominees. Party leaders have long known about the nuclear option, and sometimes employed it on comparatively less consequential matters, but only in the polarized Senate was it actually used by the majority party in a carefully orchestrated process. The effect of the nuclear option was twofold: it increased significantly Senate approval of the President's nominees, and it provoked procedural retribution by the GOP.[170]

To govern the contemporary Senate means that extraordinary procedures are often used by the majority party if legislation is to have a chance to become public law. In response, the minority party castigates the majority for its untoward actions and employs its formidable parliamentary resources to frustrate the majority's actions. When delay and stalemate result, both parties use the media to try to win the "blame game" in the court of public opinion. To be sure, each party accuses the other of blocking measures by abusing their parliamentary prerogatives.

Among the consequences of partisan procedural maneuvers and counterresponses are an emphasis on political messaging and campaigning by legislating; an inability to address serious national problems; popular opinion ratings for the legislative branch in the single digits or low teens; and a decline of trust among lawmakers. In the view of former Senate Majority Leader Tom Daschle (2001–2002), "Because we can't bond, we can't trust. Because we can't trust, we can't cooperate. Because we can't cooperate, we become dysfunctional." [171]

VII. Summary Observations

Three summary observations are useful to end with and each will be discussed in separate parts. The first reviews several of the concerns commonly made about the current era of sharper partisanship. The second focuses on the various types of internal and external changes that have been proposed to ameliorate the conditions that have given rise to the party polarization that affects gov-

[170] Burgess Everett, "How Going Nuclear Unclogged the Senate," *Politico*, August 22, 2014, p. 2. Worth mention is a procedure called "reconciliation"; it was adopted as part of the landmark 1974 Budget Act. Its purpose is to bring existing law into conformity with the current budget resolution. Procedurally, reconciliation is of especial importance in the Senate because reconciliation measures are treated differently than are other bills and amendments under terms outlined in the 1974 Budget Act. These measures, and amendments thereto, cannot be filibustered, amendments must be germane, and passage requires a majority. It is not surprising that proposals, such as various provisions of the Affordable Care Act, are sometimes attached to filibuster-proof reconciliation bills.

[171] David Rogers, "The Lost Senate," *Politico*, October 9, 2009, p. 14. Also see Norm Ornstein, "Trust Is Not Enough," *National Journal Daily*, October 1, 2014, pp. 9–10.

ernance. The third part suggests that given the Nation's constitutional system of separate institutions sharing and competing for power, and the features of the conditional party government model, it is almost inevitable that Congress will experience variable degrees of legislative gridlock and stalemate. After all, one job of Congress is to stop bad ideas from being law. Gridlock to one Member may be viewed as success to another.

CONSEQUENCES OF POLARIZATION

Congressional change reveals that regular order in lawmaking is a flexible construct. Today, it is common in both Chambers for lawmakers to harken back to the regular order of the "good old days," the so-called "textbook Congress": committee review of measures, adequate floor debate and amendments by both parties, and so on.[172] To be sure, the textbook or conventional model of lawmaking has been followed to varying degrees in each of the different House and Senate eras. But as Majority Leader Reid replied to a Member praising the virtues of the textbook approach, "[T]hat was then, this is now."[173]

And "now" in both Chambers means that legislating by committee is often minimized or bypassed, with the top party leaders in each Chamber taking the lead in crafting party-preferred priorities. Debate and amendments are commonly limited in both Chambers, often to protect vulnerable lawmakers from casting tough votes and to prevent the opposition from offering proposals that undermine the priorities of the majority party. Conference committees are seldom convened, in part because of bicameral stalemates on legislation. Governing often occurs by brinksmanship with Congress lurching from one crisis to another. Legislative action on major issues is often postponed. Any of the 12 appropriations bills to fund the government are seldom enacted by the start of the fiscal year (October 1). Forging compromise on many key bills is sometimes impossible to achieve when many Members view negotiations as a sellout and a violation of their principles and their promises to constituents.[174]

A consequence of all this is that other institutions—the Supreme Court, the Federal Reserve, the States, and Federal agencies—begin to make decisions that arguably should be made by Congress. In his 2014 State of the Union Address, President Obama said if Congress gridlocked on his agenda, he would simply bypass the legislative branch and use his executive powers to make policy. "America does not stand still—and neither will I," he said. "So wherever I can take steps without legislation to expand opportunity for more American families, that's what I'm going to do." The President said that he would use the "pen and phone" to ad-

---

[172] See Kenneth A. Shepsle, "The Changing Textbook Congress," in John E. Chubb and Paul E. Peterson, eds., *Can the Government Govern?* (Washington, DC: The Brookings Institution, 1989), pp. 238–266.

[173] *Congressional Record*, vol. 159, November 19, 2013, p. S8180.

[174] Former House GOP leader (1981–1994) Robert Michel of Illinois made this observation about principles and compromises: "[Y]ou just can't go around shouting your principles, you have to subject those principles to the test of open debate against those [who] don't share those principles." He added: "But true debate is not principled unless the 'Golden Rule' is applied, which simply means that you treat your fellow Members the same way you want to be treated." Ed O'Keefe and Philip Rucker, "Tom Foley Remembered, as His Colleagues Beg for Civility," *The Washington Post*, October 30, 2013, p. A3.

vance his agenda (Executive orders and signing statements, for example), and he has, much to the consternation of many lawmakers in both Chambers and parties. As policymaking authority moves away from its important place in Congress to other institutions, many of which comprise unelected officials who operate with little transparency and accountability, then representative government of the people, by the people, and for the people is eroded.

Unknown is how long the current extremely partisan House and Senate and the polarized, sorted electorate might remain in place. As a political scientist pointed out, "Voters have got better sorted by party; parties have got better sorted by ideology; and parties have got more ideological." [175] Another political scientist contends that, today, "partisanship, ideology, and issue preferences go together in a way that they did not in the mid-20th century. While issues and ideology used to crosscut the partisan distribution [for example, many supporters and opponents of civil rights in the 1960s were in the Democratic Party], today they reinforce it." [176] It is impossible to predict whether these polarizing conditions are temporary, semipermanent, or permanent. On the other hand, it is possible to predict with certainty that, as President John F. Kennedy stated in his 1962 State of the Union Message to Congress: "The one unchangeable certainty is that nothing is unchangeable or certain."

Congress and Change

If legislative change is inevitable, at some point a different congressional context or dynamic will surely emerge, perhaps driven by an electorate upset with the congressional status quo or the emergence of new social, technological, economic, and political conditions. Major legislative change is regularly triggered by developments in the larger political system. Given public and Member interest in change, there is no shortage of options to strengthen Congress' capacity to address the Nation's problems, often by minimizing the forces and processes that ostensibly contribute to gridlock. A few examples of external and internal options illustrate the nature of the suggestions. Important to note is that many of these reform ideas are unlikely to occur for various reasons—difficulty of achievement, uncertainty and skepticism about their effectiveness, or scant support in Congress and the country.

External Changes

One set of options involves expanding the composition of the electorate, for example, by increasing the incentives for people to vote in primary and general elections. A key reason: political professionals for both parties typically work to turn out their supporters and suppress those who would vote for the opposition. Partisan interest groups work "to keep independents, swing voters and occasional voters home ... . They would like nothing better than to have elections determined by whichever side can muster more of its

[175] Jill Lepore, "Long Division," *The New Yorker*, December 2, 2013, p. 76.
[176] Quote is from political scientist Morris Fiorina in Suzanne Weiss, "A Peak of Partisanship," *State Legislatures*, July/August 2014, p. 19.

true believers."[177] Changing the electorate might work to alleviate this partisan reality. One proposal is to follow the mandatory voting model of Australia: require registered voters to pay a fine if they do not vote or provide a reason for not doing so (illness, for example). After decades of experience, Australia has a "turnout rate of more than 95 percent," with about 3 percent opting to vote for "none of the above."[178] A related alternative to expand the electorate is to make voters eligible to win a cash lottery: "Vote and You Could Win Thousands!" The chair of the Ethics Commission of Los Angeles City has suggested this approach as a way to increase voter turnout.[179] On the other hand, encouraging people to vote by offering them a chance to win a lottery has downsides. For example, this proposal might lure to the polls the most uninformed and uninterested individuals.[180] Other ways to encourage more people to vote might be to make election day a Federal holiday, promote weekend voting, or encourage the States to consider innovative options for people to cast their votes.[181]

Another set of options removes the House redistricting process from State legislatures. The objective is to end partisan gerrymanders by State legislatures and, for example, assign that responsibility to an outside independent and bipartisan commission of private citizens. The purposes of the redistricting option are twofold: first, to increase the opportunity for centrists to win office and to minimize the election of Members who are too far left or too far right; second, to strive to make House districts more competitive electorally (as already mentioned, over 90 percent of House incumbents are regularly reelected). Scholars, however, suggest that redistricting may have limited impact on polarization of the House, noting that the Senate's extreme partisanship mirrors the House. Moreover, States with only one House Member are as sharply partisan as those represented by several Members.

A third set of options is to encourage the States to establish new forms of primaries in which more voters can participate. For example, everyone who is running, regardless of party, appears on the ballot. The top two vote-gatherers advance to the general election, even if that means a contest between two Democrats or two Republicans. A principal advocate of this approach, which is observed by California, Louisiana, and Washington State, suggests that it would "encourage more participation in primaries" and "remove the incentive that pushes our politicians to kowtow to the [extreme] factions of their party" that vote in the usually low turnout party

---

[177] Opinion, "5 Reasons the Midterms Matter," *USA Today*, September 2, 2014, p. 6A.

[178] Thomas E. Mann and Norman J. Ornstein, *It's Even Worse Than It Looks* (New York: Basic Books, 2012), p. 141. Chapters 4 through 7 of this book present an array of electoral, political, and institutional reforms.

[179] Interview with Nathan Hochman, the chair of the Los Angeles Ethics Commission, "Bucks for Ballots?" *Los Angeles Times*, August 27, 2014, online edition.

[180] George F. Will, "A Perfectly Awful Idea: Pay Voters," *The Washington Post*, September 21, 2014, p. A23.

[181] Katy Owens Hubler, "Voting: What's Next?" *State Legislatures*, July/August 2014, pp. 59–61.

primaries.[182] Scholars doubt "that changes in primary participation can explain the polarizing trends of the past three decades."[183]

INTERNAL CHANGES

Examples of internal changes that Congress might undertake include these three. First, one suggestion is to move the House and Senate away from their current "Tuesday to Thursday" weekly work pattern. Members arrive in Washington, DC, from their States or districts on Monday, concentrate their manifold responsibilities in 3 days, and depart on Thursday evening or Friday to go home to meet with constituents and engage in other representational activities, to travel elsewhere to fundraise, to campaign for others or their party, or to raise their national visibility.[184] A recommendation is for each Chamber to employ a coordinated Monday through Friday work schedule for 3 out of 4 weeks, with the 4th week set aside exclusively for constituency work back home or other congressional activities. One benefit of maximizing their time in Washington, say proponents of this approach, is that Members would have more opportunities to develop bipartisan collaborative relationships that might facilitate lawmaking and oversight (the review of executive branch performance). On the other hand, voters seem to want lawmakers to spend more time in their States or districts.[185] Technology might be able to accommodate the clash between what some lawmakers might prefer (more time in Washington) or the country might need versus what their constituents want (more time at home).

Second, time is perhaps the most valuable commodity of lawmakers: there is just too little of it for all their responsibilities. For example, new issues constantly make it to Congress' agenda, many quite complex. The time available to read, study, and reflect on emerging, let alone emergent, issues is all too brief. As former Senate Majority Leader George Mitchell (1989–1995), pointed out, "What we do not lack is the means by which to learn about issues.

---

[182] Charles E. Schumer, "End Partisan Primaries, Save America," *The New York Times*, July 22, 2014, p. A19. Also see Reid Wilson, "To Cure Rampant Partisanship, Empower Voters in the Middle," *The Washington Post*, October 19, 2013, p. A5.

[183] Michael Barber and Nolan McCarty, "Causes and Consequences of Polarization," in *Negotiating Agreement in Politics*, p. 29.

[184] Representative Dingell of Michigan explained why bipartisan collegiality is hard to come by in today's Congress: "We hit town on a Monday or Tuesday afternoon, we vote at 6:30, and one of the first things we're doing is checking to see about getting a plane back to the district. Families don't get to know each other, members don't get to know each other. The things that used to pull us together—the association of the families, the gym of the House—they don't do this anymore, and so the members don't [get] the closeness and we don't get trust." Ashley Parker, "From 'a Child of the House' to the Longest-Serving Member," *The New York Times*, June 6, 2013, p. A14. Today, Members' families do not usually move to the Washington, DC, area for various reasons: to avoid campaign charges that they've "gone Washington," the high cost of housing in the DC area, concerns about uprooting their children, or the fact that many women are now in the workforce and reluctant to leave their home-State jobs.

[185] The 3:1 schedule is difficult to implement for various reasons, but perhaps none more important than electoral. As a GOP House Member stated: "The more time members stay away from their districts, the worse it is for them politically. Few constituents expect to agree with their member on all or even most things, but they do get upset if the member does not listen or seems not to be listening to them." Added a Democratic lawmaker, a 5-day work schedule "leaves you vulnerable to a challenger who will be at home 'in touch with his constituents.'" The quotations are from Nathan L. Gonzales, "Why Democrats and Republicans Can't Be Friends," *Roll Call*, July 8, 2014, online edition. Also see Mark S. Mellman, "Socializing and Polarizing," *The Hill*, April 9, 2014, p. 19.

There is no shortage of information. There is a shortage of time."[186]

In brief, Congress might consider ways beyond scheduling changes to reconfigure what it does now to determine if more time could be made available to Members and the institution if certain activities occurred over a longer period, such as biennial rather than annual appropriations and budget resolutions. Some current work requirements might even be eliminated or assigned to other entities. With more time, lawmakers might have more opportunities to get to really know Members of the opposition party, to socialize together, and to develop the trust that allows for bipartisanship cooperation on a range of issues.[187]

Third, an approach that might be the easiest—or hardest—to accomplish is to persuade a critical mass of lawmakers in both Chambers that cooperation and compromise are necessary to resolving national problems, especially in the Nation's congressional-Presidential system of government. Absent a landslide electoral victory—or perhaps several in a row—that would allow one party to govern on its own, Members might be persuaded that neither party, nor a faction therein, can impose its agenda on the other. Persuasion is likely to come over time, as it has in the past, from a combination of internal legislative leadership and outside pressures from the citizenry. Acts of bipartisanship between and among Members might also slowly change the polarized culture of Congress. As James Madison noted, "It takes time to persuade men [and women] to do even what is for their own good."[188]

GRIDLOCK AND GOVERNANCE

When the six-decade veteran of the House, John Dingell, announced that he would not seek reelection to the 114th Congress (2015–2017), he expressed strong dismay because of its overly partisan culture and the unwillingness of Members to compromise their differences to achieve policy results. "I find serving in the House to be obnoxious," declared Dingell. "It's become very hard because of the acrimony and bitterness, both in Congress and in the streets."[189]

In contrast, when Henry Waxman of California, Dingell's four-decade Democratic colleague, announced his retirement from the House, his perspective on the institution was significantly different from Congress' longest serving lawmaker. "There are elements of Congress today that I do not like," remarked Waxman. "But I am not leaving out of frustration with Congress." Patience and persistence are essential to lawmaking, said Waxman, "[Y]ou outlast [the opposition]. You keep working. You keep looking for combinations." He added:

[186] *Congressional Record*, v. 135, October 20, 1989, p. 25359.
[187] Worth noting is neither polarization nor bipartisanship is any guarantee that effective legislation would pass Congress. Worthwhile measures could pass in either circumstance. However, since neither party has a monopoly on good ideas, bipartisanship might at least provide a broader range of views on how to resolve pressing national issues.
[188] Clinton W. Ensign, *Inscriptions of a Nation* (Washington, DC: Congressional Quarterly, Inc., 1994), p. 37.
[189] Karen Tumulty and Paul Kane, "Legislative Giant Leaving a Changed Congress," *The Washington Post*, February 25, 2014, p. A1.

> Even in today's environment, there are opportunities to make real progress. [In the 112th Congress], I worked with Democrats and Republicans in the House and Senate to pass legislation that will ease the nation's growing spectrum shortage, spur innovation in new "Super WiFi" technologies, and create a national broadband network for first responders. [In 2013], I worked on a bipartisan basis to enact legislation strengthening FDA's authority to stop dangerous drug compounding and to track pharmaceuticals through the supply chain.[190]

Who is right?[191] The short answer is, perhaps, both. Five considerations might help to explain the duality of Member perspectives.

First, the constitutional system, by design, makes lawmaking difficult whether the United States has a divided or unified government. Interbranch and bicameral cooperation and conflict are endemic to a system that requires the approval of the three elective branches before an idea becomes law. Considerable time might pass—years or decades at times—before Congress and the country, not to mention the White House, finally reach a policymaking consensus. There are occasions when Congress acts quickly to address national or international crises. Yet one task of representative government is to "refine and enlarge the public views," as Madison wrote in *The Federalist* (No. 10). However, if the electorate is conflicted on various issues (immigration reform, climate change), that reality will be reflected in Congress. In the view of a congressional scholar, "Gridlock does not reflect a failure of democratic representation—gridlock reflects effective representation of diverging constituencies."[192] In short, the Nation's constitutional system permits both gridlock and governance.

Second, given the conditional party government model in which the two parties each exhibit strong ideological unity but diverge widely on their policy objectives, Congress emulates at times a parliamentary or semiparliamentary system. The minority party opposes, while the majority party strives to govern. With different parties in charge of the House and Senate, each Chamber enacts legislation that remains unacted-upon by the other body.[193] The Chamber that passes many measures can argue that it is productive; the other Chamber might contend that it, too, is productive by blocking "message bills" that have no chance of becoming law. Governance in this environment becomes problematic because the minority party, especially in the Senate, has the procedural tools to stymie the majority party's agenda. How, when, or if the conditional party government model will change is unclear, but elections are a major part of the answer. As GOP Representative James A. Garfield of Ohio wrote in 1877, "the people are responsible for the character of their Congress."[194] (In 1881, Garfield became the 20th President of the United States.)

---

[190] Representative Henry Waxman, "Rep. Henry A. Waxman Announces Plans to Retire from Congress," press release, January 30, 2014, p. 5.

[191] See William F. Connelly, Jr., "Does James Madison Still Rule America?" *Extensions*, summer 2014, pp. 10–15. Professor Connelly posed the question, "Who is right?" in this article. *Extensions* is a publication of the Carl Albert Congressional Research and Studies Center at the University of Oklahoma.

[192] Abramowitz, "The Electoral Roots of America's Dysfunctional Government," p. 728.

[193] Philip Bump, "Legislative Inaction: So What Else Is New?" *The Washington Post*, August 10, 2014, p. A2. Also see Stephen Dinan, "Do-Something Congress Keeps on Going," *The Washington Times*, September 9, 2014, p. A1.

[194] James A. Garfield, "A Century of Congress," *The Atlantic Monthly*, vol. 40, July 1877, p. 63. In the view of Representative John Dingell, "there's only one group of people" that can change Congress and "that's the voters. If they want [Congress] to change, it will change." Tumulty and Kane, "Legislative Giant Leaving a Changed Congress," p. A4.

Third, Congress and the country have gone through many other contentious partisan eras. A noted historian called the years from 1830 to the 1900s "The Partisan Era." [195] For example, Cornell University history professor Joel Silbey found that in the 1840s, "partisan unity on policy was very high in both houses . . . . On tariff and banking bills and other economic legislation, on questions of territorial expansion, and on most new issues added to the mix, each party was able to mobilize the mass of its Members to vote the party line." [196] Today's partisan era pales in comparison to the years leading up to the Civil War (1861–1865).

Fast forward to the 20th century to remember the political divisions in Congress and the country between rural and urban interests and over the New Deal, the Vietnam war, and the struggle for civil rights for African Americans. Partisan clashes within and outside Congress, and the rivalry and gridlock they can promote, have been "a prime catalyst propelling the values, ideas, and policies through which American consensus has emerged . . . . Partisan competition has been at the center of our struggle to advance as a people and a nation. It has been our most important engine for adaptation and change—one that remains in full motion." [197] As a scholar and top-ranking 30-year staff member of the House wrote, Congress and the country "have endured much more partisan, raucous, and rancorous times [over its history], and both have emerged the better for it." [198]

Fourth, today's Congress confronts an array of complexities that make lawmaking more difficult than in previous periods. Take the environment, for example. It was once conceived as primarily a local or regional issue. To many, it is now a planetary challenge. Problems seem harder (terrorism, cybersecurity, entitlement reform) to resolve, many have global dimensions, and the politics are harder in a nation of over 300 million people, many represented by numerous interest groups. Add to these matters divided government; lack of trust among lawmakers; [199] technology (the Internet, social media, email, blogs) that is used, for instance, to frame issues to the advantage of partisan viewpoints; fiscal deficits; and the competing visions of the two parties as to what constitutes "good governance." Repealing laws or enacting laws sometimes

---

[195] Julian E. Zelizer, ed., *The American Congress* (Boston: Houghton Mifflin Co., 2004), p. 131.

[196] Joel H. Silbey, "Congress in a Partisan Political Era," in *The American Congress*, p. 145.

[197] John L. Hilley, *The Challenge of Legislation: Bipartisanship in a Partisan World* (Washington, DC: The Brookings Institution Press, 2008), p. 229.

[198] Donald R. Wolfensberger, *Congress & the People: Deliberative Democracy on Trial* (Washington, DC: The Woodrow Wilson Center Press, 2000), pp. 282–283. Worth noting is that, periodically, scholars, lawmakers, and journalists lament that Congress is not performing as well as it might. During the 1950s and 1960s, for example, these individuals argued for a more disciplined and responsible party system. The titles of their books said it all: *The Deadlock of Democracy* (1963), by James McGregor Burns; *Obstacle Course on Capitol Hill* (1964), by Robert Bendiner; *Congress: The Sapless Branch* (1964), by Senator Joseph S. Clark; or *House Out Of Order* (1965), by Representative Richard Bolling. Decades later with two polarized parties in Congress, a number of books have been written that express dismay at this development. Some titles include *The Broken Branch* (2006), by Thomas Mann and Norman Ornstein; *Fight Club Politics* (2006), by Juliet Eilperin; and *The Second Civil War* (2007), by Ronald Brownstein. See Rawls, *In Praise of Deadlock*, pp. 1–2.

[199] According to Democratic Senator Martin Heinrich of New Mexico, the problem on Capitol Hill is less about ideology and more about the reality that lawmakers "don't trust each other enough to work together. A lot of our predecessors were from very different ideological places, but they had a personal trust so that they could negotiate in good faith." He added that the lack of trust "is really caustic to the functionality of this place." Dana Milbank, "Building Trust, One Palm Frond at a Time," *The Washington Post*, September 21, 2014, p. A21.

seems to be in conflict as to which should take priority in the contemporary House and Senate.

Fifth, to a large extent, what shapes the broad policy and political context in Congress and the country is the perennial and ongoing debate about the role of the central government. This issue divided our Founding Fathers—Jefferson favored a limited role, and Hamilton an energetic role, for the national government. Today, Democrats generally favor an activist, problem-solving national government that expands individual opportunities; Republicans generally emphasize problem solving by the private sector and localities and the values of personal freedom and responsibility. Public controversy about the national government's size and role is never-ending. It is an unresolvable debate that has raged for over 200 years and contributes to the acrimonious partisanship dividing the two parties and their respective electoral coalitions.

To conclude: Congress is an institution constantly in flux. It remains, however, the world's most influential legislative assembly, able to check and balance a powerful executive, to initiate policies of its own, and to oversee executive branch performance. The policy and political struggles among the elective units are permanent features of the Nation's constitutional system that continue to shape the evolution and work of Congress. Change, in brief, is a permanent feature of democratic legislative assemblies. As Thomas Jefferson emphasized, "[A]s new discoveries are made, new truths discovered and manners and opinions change, with the change in circumstances, institutions must advance also to keep pace with the times." [200]

---

[200] Letter to Samuel Kercheval, July 12, 1816, *The Writings of Thomas Jefferson, Memorial Edition*, vol. 15 (Washington, DC: The Thomas Jefferson Memorial Association of the United States, 1904), p. 41.

Being a Member of Congress: Some Notable Changes During the Last Half Century

MICHAEL L. KOEMPEL

Senior Specialist in American National Government

Notable changes have occurred in Congress' evolution from the immediately past congressional era (generally, the 1960s, 1970s, and 1980s) to the Congress we know today. These changes have affected Members' experience of their congressional service. Over time, both Chambers developed strategies to reduce the quantity of time given over to legislative work in order to accommodate Members' other duties. Members have met the challenges of constituent relations with information technology, and must now deal with lobbying campaigns directed at their constituents. To accommodate their electoral goals, Members now typically spend a part of nearly every day they are in Washington, DC, raising campaign money. Many Members have chosen to reside in their States or districts to accommodate spouses with careers and to retain their network of social and financial support.

Introduction

This report describes some of the notable changes that have occurred in Congress' evolution from the immediately past congressional era (generally, the 1960s, 1970s, and 1980s) to the Congress we know today, and reflects upon the impact of these changes on Members of Congress and their service.

The changes and reflections are divided into four topics: legislative, representational, political, and personal. For each topic, the report discusses one, two, or three aspects of service in Congress. It provides an overview of each aspect in the earlier era, identifies some of the reasons for change or evolution, and briefly explains that aspect of service in today's Congress.

The report demonstrates that change of all sorts, internal and external, has affected Congress. Congress today reflects shifts in the United States and the world since the 1960s.

Congress is in a new era, for many reasons, and a new framework for understanding it should be considered. Proposals for change, reform, or new procedures must be appropriate to the new framework. This report is only an introduction to the changes Congress has undergone and is neither comprehensive nor exhaustive.

For an analysis of Congress' institutional evolution, see the companion CRS centennial report in this volume, *The Evolving Congress: Overview and Analysis of the Modern Era*, by Walter J. Oleszek.

Legislative Responsibilities

Today, Members of Congress spend less time in Washington, DC, and in session than they did in the previous era. Rather than meet 5 or even 4 full days a week, week after week, both Chambers tend to set initial votes for a given week to occur late on a Monday, allowing Members to travel from their States or districts that day. Final votes for weekly sessions frequently end Thursday afternoon, in time for Members to make late-afternoon and evening flights to the west coast, or by midday Friday. Friday sessions might also be held, but often without votes being scheduled. Votes drive attendance.

In addition, Congress has taken more frequent and longer recesses, also called district or State work periods, leaving Members additional time in their States or districts or to undertake other work, such as fundraising and campaign trips on their own behalf or on behalf of current or possible future colleagues.

A Member's legislative work in committee, on the floor, and with colleagues and Washington staff is packed into the Tuesday-to-Thursday timeframe in fewer weeks of session than in the previous era.

The process of compacting the time consumed by legislative workload did not begin recently. During the 1970s, the legislative workload left little time for Members' other duties, such as travel to home States and districts, and their personal wishes, such as family time. There were many votes, quorum calls, and committee hearings. Over time, both Chambers developed strategies to reduce the quantity of time given over to legislative work to allow more time for Members' other duties and personal wishes. There was a great desire on Members' part for more efficiency and predictability in scheduling and processing legislation.[1]

On the House and Senate Floors, a Drive for Efficiency

> The Senate in 1964 made history when, for the first time, it voted to end a filibuster on civil rights. The June 10 vote was 71–29, four more "yeas" than were necessary for cloture. The vote ended a 57-day filibuster and came 74 days after the House-passed bill was first brought before the Senate.[2]

It is difficult today to imagine a debate lasting so long or the Senate or the House being in session for so long without a several-day or weeklong recess. In the Senate in the preceding era, Senators' rights to debate and offer amendments to amendments and nongermane amendments prevailed.[3] In the House, few measures

[1] On a related subject, see the companion CRS centennial report in this volume, *Comparing Modern Congresses: Can Productivity Be Measured?*, by Jacob R. Straus.

[2] "Civil Rights Act of 1964," in *Congressional Quarterly Almanac, 1964*, vol. XX (Washington, DC: Congressional Quarterly Inc., 1965), p. 338. For an example of the conditions that may be needed for major legislation to be enacted, see the companion CRS centennial report in this volume, *The Dynamics of Congressional Policymaking: Tax Reform*, by Jane G. Gravelle.

[3] Another aspect of change in the Senate is explored in the companion CRS centennial report in this volume, *Collaborative Relationships and Lawmaking in the U.S. Senate: A Perspective Drawn from Firsthand Accounts*, by Mark J. Oleszek.

were considered under the suspension of the rules procedure. Most legislation was considered under an "open" special rule, under which all amendments not violating a House rule could be offered and then debated for as long as another Member sought 5 minutes of debate time.[4]

In both Chambers, it was common for specific bills to consume days (in the House) or more than a week (in the Senate) of floortime. Members spoke on the floor and voted often. These circumstances are not unknown in the contemporary House and Senate; they have simply become less common.

Beginning in the 1970s, both Chambers developed strategies to reduce the legislative workload on the floor and the time it consumed, which freed Members to pursue their many other duties and addressed their desire for added personal time. Gradually, Members gained the time they needed for other responsibilities, although apparently not personal time (see "Personal Impact of Congressional Service" below). In the House, changes that increased the Chamber's efficiency in managing its legislative workload included:

- making the motion to suspend the rules in order—originally on alternate Mondays, and then gradually expanding it to its status today, where it is in order on Mondays, Tuesdays, and Wednesdays;
- barring commemorative legislation;
- experimenting with special rules that were alternatives to open rules, such as preprinting rules, modified open rules, and modified closed rules,[5] eventually settling on structured rules as the most common form of special rule that is used;
- restricting to very few occasions the ability of a Member to make a point of order that a quorum is not present;
- permitting cluster voting and 5-minute and 2-minute voting;
- limiting the number of 1-minute speeches and the time available for special order speeches;
- allowing only full-text substitutes to annual concurrent resolutions on the budget; and

---

[4] See Walter Kravitz, *Congressional Quarterly's American Congressional Dictionary*, 3d ed. (Washington, DC: CQ Press, 2001), p. 223:

"Rule—(2) In the House, a privileged simple resolution proposed by the Rules Committee that provides methods and conditions for floor consideration of a measure or, rarely, several measures. The resolution is also called a special rule, special order, or order of business resolution. With few exceptions, major nonprivileged bills are taken up under the terms of such resolutions that the House has approved. Explicitly or implicitly, a special rule can temporarily waive any rule of the House or any statutory rule during consideration of a measure, but it may not set aside . . . a motion to recommit, or a constitutional requirement.

"The common terms for different types of rules usually reflect their treatment of amendments. An open rule puts no limit on the number of amendments that may be offered, providing the amendments do not violate a rule or practice of the House. A closed rule, sometimes called a gag rule, permits no amendments or only those offered by the reporting committee. A modified rule permits some amendments but not others. According to *Deschler-Brown Precedents*, a modified open rule permits any germane amendment except certain designated ones, while a modified closed rule prohibits the offering of amendments except those it designates. Some rules ban amendments to certain parts of a measure but not to other parts."

[5] Well into the 1970s, tax bills were routinely considered on the floor under a closed rule. In that instance, the reform or change that occurred was to consider them on the floor under what was termed a modified closed rule, which today would be referred to as a structured rule, under which only amendments listed in the rule or the accompanying Rules Committee report were in order. See, for example, "House Passes Wide-Ranging Tax Revision Bill," in *Congressional Quarterly Almanac, 1975*, vol. XXXI (Washington, DC: Congressional Quarterly Inc., 1976), pp. 151–152.

- eliminating the second annual (autumn) concurrent resolution on the budget required by the Congressional Budget Act of 1974 (P.L. 93–344).

In the Senate, changes and innovations that increased the Chamber's efficiency in managing its legislative workload included:

- cutting to three-fifths of the membership, from two-thirds voting, the number of Senators' votes required to invoke cloture;[6]
- restricting debate time and other elements of consideration after cloture has been invoked to prevent so-called postcloture filibusters;[7]
- creating the two-track system for consideration of one or more bills at the same time (e.g., one in the morning and one in the afternoon) so that a measure or amendment being debated extensively does not halt the Senate's consideration of other legislation;[8]
- expanding the use of unanimous consent agreements to structure the Senate's consideration of measures and other matters;
- permitting "side-by-side" consideration of amendments;
- using cluster voting;
- developing the "hotline" to allow routine legislation and nominations to be quickly approved; and
- adopting the Byrd rule to exclude extraneous matter from reconciliation bills and resolutions.[9]

Through these changes, Representatives and Senators gained a degree of efficiency and predictability in the workload on the Chambers' floors. In the House, a great deal of legislation is now considered under the suspension of the rules procedure. Its use of structured special rules means that most measures for which there is an amendment process can be completely considered in less than a day. In the Senate, noncontroversial legislation and nominations may be considered and agreed to by unanimous consent, taking just a few minutes of the Senate's time. Other legislation and nominations nonetheless require considerable floortime. When the Senate is able to reach unanimous consent on a comprehensive set of procedures or on consecutive iterative sets of procedures for considering legislation or nominations, it can move methodically through its workload.

Members, however, have given up perquisites and privileges over this long period. To be able to complete floor consideration of a major piece of legislation in a day or less, Representatives have fewer opportunities to offer first-degree amendments, and they have largely lost the ability to offer substitute and second-degree amendments. Fewer Representatives are able to speak because amendment debate is often limited to 10 minutes, putting more

---

[6] The Senate has also recently established a precedent allowing a majority vote to invoke cloture on executive and judicial nominations, except nominations to the Supreme Court. For an examination of this precedent and its operation in the 113th Congress, see CRS Report R43331, *Majority Cloture for Nominations: Implications and the "Nuclear" Proceedings*, by Valerie Heitshusen.

[7] See Walter J. Oleszek, *Congressional Procedures and the Policy Process*, 9th ed. (Thousand Oaks, CA: CQ Press, 2014), p. 315.

[8] The Senate has operated on more than two tracks. For instance, it has divided a day into three tracks, with a different bill on each track.

[9] After the late Senator Robert Byrd, who first offered the amendment disallowing extraneous matter. For an examination of the Byrd rule, see CRS Report RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule,"* by Bill Heniff, Jr.

pressure on the 1 hour allowed for debate on a special rule and the usual 1 hour of general debate allowed on a measure before the amendment process begins.

Senators, too, have fewer opportunities to offer amendments because leadership over the last decade or more has become increasingly reluctant to bring measures to the floor in the absence of a unanimous consent agreement on the amendment process.[10] Although Senators and leadership have many purposes in wanting to extend or curtail the amendment process, one concern they share is the time that will be consumed and the impact of an extended debate on the Senate's workload and individual Senators' other duties.[11]

In Committees, a Reduction of Time

> The ... [House Education and Labor] Committee marked up H.R. 2362 [the Elementary and Secondary Education Act of 1965, ESEA] in executive sessions between Feb. 25 and March 2. [The committee markups occurred Thursday, February 25; Friday, February 26; Saturday, February 27; and Tuesday, March 2.] On March 2 it ordered the bill reported with amendments on a 23–8 vote.[12]

Committees in the two Chambers serve both similar and dissimilar purposes. A committee is the forum in which Members develop expertise on specific policy issues, legislation, and laws. A committee is also the forum for Members closest to particular policy issues to serve as the Chambers' eyes and ears through hearings and other means and to determine how to address an issue—through hearings, an investigation, a staff study, a letter to the President or a Cabinet secretary, a site visit, legislation, or another mechanism. If legislation is needed, committees draft it or choose from the alternatives that have been introduced, and they mark up and report measures.

Committees also reflect the dissimilarities of their parent Chambers. In the majoritarian House, Members' opportunities to offer amendments on the floor are routinely limited. Even if a Member's amendment is made in order, it must usually attract a significant number of majority votes to win, whether the proponent is a majority- or minority-party Member. Members, therefore, seek to have their policy choices, large or small, included in committee-reported measures. Committee-reported legislation may be approved by the House without extensive amendments.

In the Senate, where rules and traditions favor the rights of individual Senators, any Senator may be an important player on the Senate floor on any piece of legislation or any nomination if he or she wishes to be. Committee-reported legislation may be approved by the Senate only after extensive amendments, including consider-

[10] "No Democratic members of the class of 2012 have ever received a vote on their amendments on the Senate floor." Burgess Everett, "Senate Democrats push back on gridlock," *Politico*, June 26, 2014, at http://www.politico.com/story/2014/06/washington-gridlock-108330.html.

[11] See the companion CRS centennial report in this volume, *The Evolving Congress: Overview and Analysis of the Modern Era*, by Walter J. Oleszek; the CRS Web site, for numerous products on House and Senate procedures, many of which are hyperlinked on a page called Congressional Operations, at http://www.crs.gov/Analysis/CongOps.aspx; and Walter J. Oleszek, *Congressional Procedures and the Policy Process*.

[12] "First General School Aid Bill Enacted," in *Congressional Quarterly Almanac, 1965*, vol. XXI (Washington, DC: Congressional Quarterly Inc., 1966), p. 275; and "House Committees," Daily Digest, *Congressional Record*, vol. 120, part 23 (February 25, 1965), pp. D72, D76, D80.

ation and possible adoption of nonrelevant or nongermane amendments.

The same issue of time consumed by the legislative workload on the floor of the two Chambers was also a concern within committees in the earlier era. This concern was magnified when the Chambers adopted reforms to open most committee and conference meetings to public and media attendance. The legislative workload took too much time, to the detriment of time available for Members' other duties and personal wishes. It was common for committee hearings to be held at the request of individual committee members to satisfy a political or constituency need, in addition to hearings preparatory for markup of the numerous new, annual, and biennial authorization bills that Congress regularly considered in the 1970s. Markups often took more than 1 day and, for the most important authorization bills, might consume a number of days over a month or more. The example of the ESEA markup was typical, not exceptional. These circumstances are not unknown in the contemporary House and Senate; they have simply become less common.

Over time, Members and committees developed a number of strategies to reduce the time consumed by their legislative workload in committee. These include procedural changes, such as

- In the House, rather than using an introduced measure as the markup vehicle, the majority might employ an amendment in the nature of a substitute on which the majority can quickly end the markup process and move to a vote to report if the minority seeks to extend consideration. Alternately, or in addition, committees might use an amendment roster, potentially limiting the amendments that may be considered.
- In the Senate, a committee might use negotiation before markup and unanimous consent at markup to agree quickly to committee members' amendments, deferring amendments that cannot be negotiated and agreed to by unanimous consent to the Senate floor, where they could potentially be offered if the sponsor chooses. Alternately, or in addition, committee members might agree to the concept or principle of one or more amendments, with drafting delegated to committee staff and legislative counsel.[13]

Changes have also occurred in practice, such as:

- Members declining to ask for hearings,
- staff receiving briefings from agency officials in lieu of hearings,
- staff briefing committee members in lieu of hearings,
- premarkup exchanges among staff to narrow the set of decisions for committee members,[14]
- a decline in the number of authorization bills,
- fewer subcommittee markups, and
- less legislation reported to the parent Chamber.

[13] See, for example, Robert G. Kaiser, "Even when it succeeds, Congress fails," *The Washington Post*, May 26, 2013, p. B4.

[14] Concerning the funding of House and Senate staffs, see the companion CRS centennial report in this volume, *Congressional Staffing: The Continuity of Change and Reform*, by Ida A. Brudnick.

Three other important changes have affected committees. First, committees' sizes have increased. More Members serve on each committee, and more Members have multiple committee assignments. Committees and their members are therefore affected by the difficulty of Members juggling conflicting hearings and meetings, by the loss of flexibility and spontaneity associated with having a greater number of members on a committee, and by committee members not knowing each other well. Members might also be discouraged from attending hearings by the amount of time it takes for each member of a committee to have time for questions or the opportunity to ask a new question late in a hearing. Members' time to make opening statements, ask additional questions at hearings, or offer or debate amendments at markup may be inhibited by the practicalities of completing the task at hand. Public attendance at committee meetings may also be affected, where committee daises have expanded into public seating areas to accommodate larger committee memberships.[15]

Second, committees' work products are less influential when the majority Chamber leadership wishes to consider legislation. In the House, the Rules Committee might be asked by leadership to bypass committees or to make in order for floor consideration a committee-reported measure that includes substantive changes or even leadership's own version of a measure. In the Senate, the majority leader might choose a legislative vehicle for floor consideration different from one reported by a committee. Alternatively, he might choose a measure that was placed on the Senate Calendar in lieu of committee consideration, or he might choose an amendment in the nature of a substitute, which he might offer by taking advantage of his priority of recognition.[16]

A third change affects Members who chair committees or serve as ranking minority members, although House Republican chairs and ranking minority members are much more dramatically affected than Senate Republican chairs and ranking minority members. That change is term limits. Under the House rule, a Member serving for 6 years as a chair, as a chair and ranking minority member, or as a ranking minority member must give up that chairmanship or ranking minority member slot.[17] Democrats kept this House rule for the 110th Congress but repealed it for the 111th Congress; Republicans reinstated the rule in the 112th Congress.[18]

---

[15] For additional information on committee sizes and ratios, see CRS Report R41501, *House Legislative Procedures and House Committee Organization: Options for Change in the 112th Congress*, by Judy Schneider and Michael L. Koempel. See also CRS Report RL34752, *Senate Committee Party Ratios: 98th–112th Congresses*, by Matthew E. Glassman; and CRS Report R40478, *House Committee Party Ratios: 98th–113th Congresses*, by Matthew E. Glassman.

[16] For an example of the ways in which the House and Senate may choose a legislative vehicle for floor consideration, see the companion CRS centennial report in this volume, *Shocks to the System: Congress and the Establishment of the Department of Homeland Security*, by William L. Painter. For an example of policymaking that occurred through the appropriations process rather than the authorization process, see the companion CRS centennial report in this volume, *Use of the Appropriations Process to Influence Census Bureau Policy: The Case of Adjustment*, by Jennifer D. Williams.

[17] House rules, under both Democratic and Republican control, have limited service on the Budget and Intelligence Committees. House rules also exempted the chair of the Rules Committee from a term limit.

[18] Committee service is also not necessarily the path to Chamber leadership that it once was. See, for example, Janet Hook, "Kevin McCarthy's Rise Shows New Path to Power in Congress," *Wall Street Journal*, June 16, 2014, at http://blogs.wsj.com/washwire/2014/06/16/kevin-mccarthys-rise-shows-new-path-to-power-in-congress/tab/print.

In the Senate, the term-limit rule is a Republican Conference rule only and allows a Republican Senator to serve 6 years as a chair and 6 years as a ranking minority member before he or she is precluded from one or both of the two top places on a committee. In addition to the distinction in tolling service separately for chairing and serving as ranking minority member, senior Senators can relatively easily assert their seniority to claim a chairmanship or ranking minority member position on the committee of their choice when they are the most senior on two or more committees.[19]

Another traditional responsibility of committee members is to serve as conferees on House-Senate conference committees, seeking to reconcile differences between House-passed and Senate-passed companion legislation. In the past era, it was common in the last months of each session of Congress for a dozen or more conference committees to be working more or less simultaneously. Conference committees have become much less common, with the House and Senate preferring the less time-consuming approach of agreeing to a measure as passed by the other Chamber or the alternative of exchanging amendments, a process called amendments between the Houses (or, popularly, "ping pong").[20]

Whether the process of amendments between the Houses or a formal conference committee is used, the practice has evolved that most of the work of reconciling differences is conducted by the chairs and majority staff of the committees of jurisdiction. The ranking minority members and minority staffs of the same committees might also participate. House and Senate party leaders are often key players in resolving bicameral differences on major legislation. Some conferees might also be appointed to provide the Members with visibility. If a conference has been convened, it might meet just once, to approve agreements, or twice, initially to make opening statements and later to approve agreements.

Again, these changes have afforded Members more time for their other duties and personal wishes. Committees have become quite efficient: there is less committee work, and what work remains is conducted in less time. Many hearings and markups still take place, and some hearings and markups cover multiple committee meetings, but committee work simply consumes less time in the contemporary Congress than it did in the previous era.

These changes have come at a cost to Members, however, who have lost some of what could be one of the most satisfying parts of being a Member of Congress. It is through committee work that Members have traditionally developed deep expertise in policy subjects, administrative feasibility, costs, federalism, and other aspects of drafting legislation. Committee sessions and work have also been forums for forming working relationships, both within one's own party and across the aisle. Committees have been a principal source of Congress' influence over and knowledge of the Executive's administration of laws. The work and relationships forged in committees have also traditionally been a bulwark against Congress

---

[19] For an examination of the committee assignment and chair selection processes in the two Chambers, see the companion CRS centennial report in this volume, *Committee Assignments and Party Leadership: An Analysis of Developments in the Modern Congress*, by Judy Schneider.

[20] For an explanation of how the House and Senate may come to agreement, see CRS Report 98–696, *Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses*, by Elizabeth Rybicki.

being misled by executive officials or lobbyists and an asset in effectively representing a Member's constituents. If expertise and relationships are a desirable goal of committee work, it is challenging to develop them with limited time in Washington and limited time for a committee's legislative workload.[21]

FOR OVERSIGHT, DELEGATION TO THE PUBLIC

[The Clean Air Act Amendments of 1970] authorized citizens or groups to bring suits in Federal courts against either the administrator, over failure to perform specified duties, or alleged violators, including government agencies.[22]

One of the most important roles and powers of committees is their authority to conduct oversight—to learn, with subpoena authority if necessary, about the conduct of the Executive and the conduct of private entities or citizens. Oversight is often conducted in anticipation of lawmaking. The Federal Government is vast, however, and the Nation complex, so that congressional committees, even working week after week, would be unable to keep up with this responsibility.[23]

Congress, consequently, has enabled the public and the media to assist it in fulfilling its oversight role. Over the last 50 years, Congress has created new entities and requirements, such as inspectors general and the Freedom of Information Act. These innovations supplemented older entities and requirements, such as the Government Accountability Office and publication in the *Federal Register*. Congress has also established new oversight mechanisms available to the public. These include requirements for public participation and for comment periods on proposed government decisionmaking. They also include the establishment of Federal causes of action, such as those included in the Clean Air Act Amendments of 1970, to take Federal agencies to court over their implementation of a law,[24] a traditional inquiry of congressional oversight.

---

[21] The House has held several "civility retreats," starting in the 1990s, in an attempt to help Members and their spouses get to know each other and decrease some of the acrimony present in debate and relationships. For the organizers' discussion of the first retreat, see Representative David Skaggs, "A Successful Bipartisan Retreat," special order speech, *Congressional Record*, vol. 143, part 3 (March 19, 1997), p. 4337.

[22] "Clean Air Bill Cleared with Auto Emission Deadline," in *Congressional Quarterly Almanac, 1970*, vol. XXVI (Washington, DC: Congressional Quarterly Inc., 1971), p. 475.

[23] There is some distinction between committees' oversight and investigations. *Congressional Quarterly's American Congressional Dictionary* defines oversight as:

"Congressional review of the way in which federal agencies implement laws—for instance, to ensure that they are carrying out the intent of Congress and to inquire into the efficiency of the implementation and the effectiveness of the law. The Legislative Reorganization Act of 1946 defined oversight as the function of exercising continuous watchfulness over the execution of the laws by the executive branch.

"The rules of both houses assign this responsibility to their standing committees and direct them to determine, on the basis of their reviews, whether laws within their respective jurisdictions should be changed or if additional laws are necessary. The function is also sometimes called legislative review."

Congressional Quarterly's American Congressional Dictionary defines investigative power as:

"The authority of Congress and its committees to pursue investigations. Congress's investigative power has been upheld by the Supreme Court but limited to matters 'related to, and in furtherance of, a legitimate task of the Congress.' Standing committees in both houses are authorized to investigate matters within their jurisdictions. Major investigations are sometimes conducted by temporary select, special, or joint committees established by resolutions for that purpose." *Congressional Quarterly's American Congressional Dictionary*, pp. 126; 170–171.

[24] "To sue in federal court, plaintiffs must have a 'cause of action.' The term has a special, particularized meaning in federal litigation . . . . In federal litigation . . . a party has a cause of action only if his or her legal rights have been violated and he or she has a recognized constitutional and/or statutory right to redress the violation by bringing an affirmative action in federal court." "Chapter 5: Causes of Action," in *Federal Practice Manual for Legal Aid Attorneys*, ed.

Continued

Congressional committees often conduct oversight that informs Congress and the public, influences governmental and private behavior, and can lead to the dismissal of Federal officials or the prosecution of entities and individuals for criminal violations of law. Oversight has also often led to the enactment of key Federal laws, such as the Federal Election Campaign Act Amendments of 1974 following the Watergate investigations or the Taxpayer Bill of Rights following investigations of Internal Revenue Service abuses. The Honest Leadership and Open Government Act followed investigations surrounding lobbyist Jack Abramoff. Individual Members also sometimes conduct effective and influential oversight through their personal offices.

It is challenging to undertake oversight when the time available is limited. Oversight is the hard work that precedes government reform, when that is the goal of a Member. It creates a base of information to identify duplication, outdatedness, lack of accountability, or unworkability and, from a different perspective, opportunities for improving, delegating to other levels of government, or repealing or reforming laws. Having conducted oversight, as well, proponents of change are ready with ideas when opportunities for legislative action arise. Oversight is also another means by which committee members build deep expertise, establish working relationships with their colleagues, and attract a national following for their issues and career paths.

Representational Responsibilities

A Senator faces many challenges in providing representation and services to a whole State. California, the largest State in population, is one notable example, where its Senators represent more than 38 million people. The Pacific Ocean States far from Washington, DC, are other noteworthy examples: Alaska has an enormous landmass and Hawaii is an archipelago, so travel from one part of either State to another part is likely to require air travel.

A Representative faces different challenges. The average population of a congressional district is nearly 711,000, based on the 2010 census, an increase of nearly 64,000 since the 2000 census. Responsiveness to that many constituents can be difficult for any Representative whose staff has been limited, since 1975, to 18. A State such as Montana presents a different challenge for its Representative. Montana's population is too small, relative to that of other States, for a second congressional district, leaving the one Representative with a district of just under 1 million inhabitants in the fourth-largest State in terms of geographic area.[25]

In 1970, the population of California was just under 20 million and the average congressional district population was 465,000.[26] The population changes between this earlier congressional era and 2010 dramatize the potential growth in the constituent workload.

Jeffrey S. Guttman (Chicago: Sargent Shriver Center on National Poverty Law, 2014), at http://federalpracticemanual.org/node/27.

[25] Kristin D. Burnett, 2010 Census Briefs, *Congressional Apportionment*, U.S. Census Bureau, C2010BR–08, Washington, DC, November 2011, p. 1, at http://www.census.gov/prod/cen2010/briefs/c2010br-08.pdf.

[26] *1970 Census of Population, Supplementary Report: 1970 Population of Congressional Districts for the 93rd Congress*, U.S. Census Bureau, Washington, DC, October 1972, p. 2.

At the same time that State and district populations were increasing, the number of a Member's constituents was outgrowing congressional offices' clerical capacity. Widespread automation of office equipment and the advent of information technology came to the rescue on Capitol Hill. Today, congressional offices and constituents can virtually converse through Web sites, email, and social media. The deregulation of airlines and advances in jetliner design and technology enabled Members of Congress first to become regular travelers to their States and districts and later to commute to Washington, DC, as many Members do today.[27]

USING TECHNOLOGY TO STEAL THE MARCH ON CONSTITUENTS

Then:

This is our Flexowriter. The paper tape is pasted together at the ends to make a continuous loop. The letter is on the tape, you just position a piece of letterhead under the roller. After you start a letter, the automatic typing will stop three times. The first time, you type in the inside address. The second time, you type in the appropriate salutation. The third time, the letter will be finished and you load a new piece of letterhead for the next letter. We have about 350 postcards from dairy farmers. Get to work.[28]

—*A first day on the job in a House office in 1969*

Now:

I have one ambition: to retire before it becomes essential to tweet.[29]

—*Then-Representative Barney Frank*

Today, it is difficult to imagine that, in 1970, 18 percent of the American workforce consisted of clerical workers—typists, stenographers, cashiers, and bookkeepers. These positions were required to keep up with the volume of paperwork in offices.[30] Congressional offices, including committee offices, were not different, with many House offices having a staff that was perhaps half professional and half secretarial. Many Senators' offices had an even larger proportion of clerical staff. In the American workforce, 79 percent of cler-

[27] A sitting Member of Congress, Representative Morris Udall, published a guide in 1970 for new Representatives. He said this about Representatives' travel allowance:

"Each member is entitled to compensation for one round trip to his district per month, plus one additional trip to cover costs of travel to and from Washington at the beginning and end of each session. Thus, if Congress is in session nine months during the year, the member is entitled to reimbursement for ten round trips between the Capitol and his district. The allowance for one of these is determined at the rate of twenty cents per mile via the most direct highway route. The allowance for the other round trips is twelve cents per mile or the price of commercial travel. No compensation is allowed for transportation of family or household goods."

Donald G. Tacheron and Morris K. Udall, *The Job of the Congressman: An introduction to service in the U.S. House of Representatives*, 2d ed. (Indianapolis, IN: The Bobbs-Merrill Co. Inc., 1970), pp. 58–59. At that time, expenditures for specific activities were tightly regulated in the House and Senate. The expectation for travel was that Members would live in Washington and travel home occasionally, as permitted by expenditure limitations. The extra trip, the 10th trip in the example, allowed Members who maintained residences in their home district to travel there at the end of one session and then return to Washington for the beginning of the next session. (Representative Udall was the father of Senator Mark Udall and the uncle of Senator Tom Udall.)

[28] For some background on Flexowriters, see Lawrence O'Kane, "Computer a Help to 'Friendly Doc,'" *The New York Times*, May 22, 1966, available online in ProQuest Historical Newspapers.

[29] Tweet quoted in: Patrick Johnson, "More politicians using social media including blogs, Facebook and Twitter to connect with constituents," *The (Springfield, MA) Republican*, March 19, 2010, at http://www.masslive.com/news/index.ssf/2010/03/more__politicians__using__social.html.

[30] Roslyn Feldberg and Evelyn Glenn, "Clerical Workers," in *Working Women: A Study of Women in Paid Jobs*, ed. Ann Seidman (Boulder, CO: Westview Press, 1979), p. 318.

ical workers were women.[31] Again, the situation was not different—and was perhaps even more exaggerated—on Capitol Hill.

At that time, congressional offices received mail only through the U.S. Postal Service, with Western Union's then-new Mailgram composing a relatively small portion of mail volume. Few constituents called Washington, DC, offices because of the cost of a long-distance phone call. Something new was beginning to happen, however. It was called "grassroots lobbying." Proponents or opponents of legislation or programs—those who wanted to "ban the can" (soda and beer cans), "defund the SST" (supersonic transport plane program), strengthen or loosen auto emission standards, and "end the war" (Vietnam war), for example—started sending large volumes of letters and postcards to congressional offices and making many phone calls to them. The representational environment now included larger State and district populations, increasingly motivated constituents, and contentious issues and problems not easily solved (such as the 1973 oil embargo and resulting petroleum shortages and price shocks). Constituent contact began to outrun the capacity of congressional offices' clerical operations.

Congressional offices responded first by acquiring automated office machines, like the Flexowriter,[32] and then began moving through various ever-improving mail management systems. The Republican majority in the House in 1995 coincided with new sophistication in information technology for the office environment and the advent of the World Wide Web (the Web). Building on the foundation laid by the House Administration Committee, the new majority on the renamed House Oversight Committee made widespread standardization, use, and management of information technology a priority and a reality.[33] Senators' offices had gotten an earlier start, with Senator Mark Hatfield having "automated information management systems in his offices on Capitol Hill and in Oregon" by the mid-1970s.[34]

Congress has come a long way since the House began electronic voting on January 23, 1973. The first cablecasts of floor proceedings on C–SPAN began March 19, 1979, for the House and June 2, 1986, for the Senate.[35] Gavel-to-gavel coverage brought Congress to American homes, directly and through debate excerpts incorporated into televised newscasts. The next great leap for the

---

[31] Ibid.

[32] Congressional offices were also adopters of autopens.

[33] For a chronicle of the use of automation and information technology in the House, see "Transparency and Technology Computerization" in U.S. Congress, House Committee on House Administration, *A History of the Committee on House Administration, 1947–2012*, committee print, 112th Cong., 2d sess., 2012, pp. 221–237; other sections of this committee history also address this topic.

[34] See U.S. Senate, Senate Historical Office, "The Senate's Need to Modernize: The Culver Commission, 1976," at http://www.senate.gov/artandhistory/history/idea_of_the_senate/1976CulverComm.htm. See also the recollection of Senator Edward Kennedy's former systems administrator on the launch of Senator Kennedy's Web site in 1994, the first of any Member of Congress: Chris Casey, "20 Years Ago Today—Sen Kennedy Announces 1st Congressional Website," at http://casey.com/blog/2014/06/02/20-years-ago-today-sen-kennedy-announces-1st-congressional-website.

[35] For a sense of Members' response to being televised, see Linda Greenhouse, "Congress; TV: The Senate Grins and Bravely Tries to Bear It," *The New York Times*, May 2, 1986, at http://www.nytimes.com/1986/05/02/us/congress-tv-the-senate-grins-and-bravely-tries-to-bear-it.html. For the interview of a former Representative who was part of a group that first recognized the potential power of C–SPAN, see PBS, "The Long March of Newt Gingrich," interview with Vin Weber, *Frontline*, 1995, at http://www.pbs.org/wgbh/pages/frontline/newt/newtintwshtml/weber.html.

public came in the form of the THOMAS Web site under the aegis of the Library of Congress, which went live on January 4, 1995. It allowed the public to research for itself what was happening in Congress. The increased use of information technology within Congress, such as for the publication of documents or webcasting, further enabled the public to keep abreast of congressional activity. The experience for Members and staff was to hear from constituents immediately about speeches, votes, and pending legislation on the floor and in committee.

The Web, the widespread use of information technology in the House and Senate, and the arrival of Members and staff who had firsthand familiarity as users of information technology completed a transformation. Congressional offices moved from trying to keep up with the volume of constituent contacts to actively engaging constituents.[36] Although the 20 million pieces of postal mail sent annually to Congress 20 years ago have become 300 million communications, mostly emails, sent annually to Congress today, information technology allows congressional offices to manage the load. The Congressional Management Foundation (CMF) has indicated that, with an appropriate mail management system, "85% of mail can be comfortably processed in 5 days or less, using pre-approved form letters." [37]

Congressional Web sites are now universal, although they vary in their quality and utility to constituents. Members at first also turned to blogs, and many now have a strong social media presence. Members' use of video on congressional Web sites and YouTube is widespread, and they employ other technology to conduct remote "townhalls" and meetings with constituents.[38]

Another CMF study found that Representatives rate "staying in touch with [their] constituents" as most critical to their job satisfaction.[39] As former Representative Lee Hamilton has noted, however, legislators enter these exchanges with one hand tied behind their backs:

> I do know—on the basis of several thousand public meetings over three decades—that the lack of public understanding about the institution is huge.
>
> That lack of understanding among ordinary Americans concerns me deeply because it increases the public's suspicions and cynicism about the Congress, weakens the relationship between voters and their representatives, makes it harder for public officials to govern, and prevents our representative democracy from working the way it should.[40]

---

[36] Members now receive smartphones and other electronic devices operating within the House and Senate firewalls during their early orientation. Staff are also issued electronic devices.

[37] "Mail Management," Congressional Management Foundation (CMF), at http://www.congressfoundation.org/component/content/article/107. For a better understanding of the impact of the constituent communications workload on a congressional office, see CMF, *Communicating with Congress: How Citizen Advocacy Is Changing Mail Operations on Capitol Hill*, Washington, DC, 2011.

[38] For an exploration of Members' use of information technology and social media in their constituent service, see the companion CRS centennial report in this volume, *Tweet Your Congressman: The Rise of Electronic Communications in Congress*, by Matthew E. Glassman.

[39] CMF, *Life in Congress: The Member Perspective*, Washington, DC, 2013, pp. 24–26. For a perspective on how the public views Congress, however, see the companion CRS centennial report in this volume, *Understanding Congressional Approval: Public Opinion from 1974 to 2014*, by Jessica C. Gerrity.

[40] Lee Hamilton, "What I Wish Political Scientists Would Teach about Congress," *PS: Political Science & Politics*, December 2000, p. 757.

KEEPING DANGER AT BAY: SECURITY FOR CONGRESS

[Tuesday, November 8, 1983] An explosion apparently caused by a bomb shook the Senate side of the Capitol Monday night, ripping out the mahogany doors leading to the office of the Senate minority leader and filling the corridors with smoke .... A group calling itself the Armed Resistance Unit claimed responsibility for the explosion in a telephone call to *The Washington Post* .... The motive was to protest the American-led invasion of Grenada ....

The explosion occurred three weeks after a tourist walked into the House gallery with a homemade bomb under his shirt. The police arrested the man .... [He] wanted to address Congress about world hunger ....

Monday night's explosion was not the first at the Capitol. In 1971, a dynamite bomb went off in an unmarked first-floor bathroom, also on the Senate side. It crumbled walls and shattered windows .... The Weather Underground, a radical group, later claimed responsibility ... and said it was a protest against "the Nixon involvement in Laos."[41]

By their status, public officials and public buildings are targets of people with malicious intent. The excerpt above lists three events, one in 1971 and two in 1983. Yet, examples of violence against Members of Congress and the Capitol complex go back further. One of the most notorious occurred March 1, 1954, when four Puerto Rican nationalists opened fire from the House gallery on Members on the floor. Five Representatives were wounded, one critically, but all survived.[42]

Despite that tragedy and succeeding events, an amazing trait of that period was how open the Capitol complex remained and how unobtrusive security was. The East Plaza was essentially a parking lot, which did not change until construction began for the Capitol Visitor Center. During the evening in that earlier time, a visitor could drive onto the East Plaza, park, and walk around the Capitol, taking in the view of the Mall and the city under the night sky. A visitor could also enter the Capitol at night to sit in the House or Senate gallery when these Chambers were in session or drive into the Russell Building courtyard, although a Capitol Police officer would probably ask the visitor to state his or her business. During the day, most areas of the Capitol itself were open to unaccompanied visitors. Congressional staff were issued an ID, which most kept in their desks as mementos of their time in a congressional office.

Security was unobtrusive. The Capitol Police comprised professional officers and part-time staff, one of whom was future Majority Leader Harry Reid. Then-private citizen Reid's experience as an officer in the 1960s was a common one among the Capitol Police officers of those decades. The Washington, DC, area law schools had both day and night programs. A number of the officers, like Senator Reid, were young men enrolled in law school, taking advantage of the day and night class offerings. They supported themselves and their families by working part time as Capitol Police officers. It was a common sight to walk around the Capitol complex,

[41] Robert Pear, "Bomb Explodes in Senate's Wing of Capitol; No Injuries Reported," *The New York Times*, November 8, 1983, at http://www.nytimes.com/1983/11/08/us/bomb-explodes-in-senate-s-wing-of-capitol-no-injuries-reported.html.

[42] U.S. House, Clerk of the House, History, Art & Archives, Historical Highlights, "Four Puerto Rican nationalists opened fire onto the House Floor," at http://history.house.gov/Historical-Highlights/1951-2000/Four-Puerto-Rican-nationalists-opened-fire-onto-the-House-Floor. An interesting footnote to this event is that two of the House pages who helped evacuate injured Members were Bill Emerson and Paul Kanjorski, future Representatives from Missouri and Pennsylvania, respectively. Ibid.

especially in the evenings, and see officers at desks reading their casebooks.[43]

Security began to increase in the 1980s. Three events seemed to be turning points in how Members' concerns changed and how contemporary security measures took root. The first occurred July 24, 1998, when Officer Jacob Chestnut and Detective John Gibson of the Capitol Police were killed in the line of duty seeking to protect people in the Capitol from a mentally disturbed gunman. The second momentous event was the terrorist attacks of September 11, 2001, and the crash of United Airlines Flight 93 near Shanksville, Pennsylvania. It is believed that the Capitol was the terrorists' target.[44]

The final event personalized the danger for every Member of Congress—the attempted assassination of Representative Gabrielle Giffords on January 8, 2011. Representative Giffords was left critically injured, 13 others were injured, and 6 were killed. Representative Giffords was conducting a constituent event in her district, outside a grocery store in suburban Tucson, Arizona. Representative Giffords called this kind of event "Congress on Your Corner," and it was the kind of event and kind of danger to which every Member of Congress could relate.[45]

Strengthening security for Members has become essential. The presence and watchfulness of the Capitol Police is manifest throughout the Capitol complex. The construction of the Capitol Visitor Center, street closings, and the diversion of trucks and buses from neighboring streets offer additional security. Security or security procedures have been extended to Members traveling as groups, to individual Members who have been threatened, to congressional leaders, and to State and district offices. Anyone but a Member entering a building in the Capitol complex must be screened. Visitors may enter the Capitol for public tours only through the Capitol Visitor Center or, if they have business in the Capitol, when escorted.[46] Members, staff, and visitors are safer.

Members' continuing concern seems to be less about their own safety than the openness of the Capitol complex to visitors. One Member summarized many Members' views: "It's always safest just to not let people in. And this is the people's House. You can't have that."[47] As the people's representatives, Members do not want to cut themselves off from the public or to exclude the public from the Capitol or congressional office buildings. Yet, security officials' concerns continue. A former Senate Sergeant at Arms, who was also the former chief of the Capitol Police, has said:

> The tough position law enforcement has with these iconic sites is how you balance making it very open yet defending against anything. The big difference is that the White House has a fence. That gives you a chance to respond. You can get right up to the edge of the Capitol. To me, it makes a lot more sense on [Capitol] Hill

[43] U.S. Senator Harry Reid, "About Senator Harry Reid," biographical statement, 2014, at http://www.reid.senate.gov/about.

[44] National Park Service, Sources and Detailed Information, "Flight 93 National Memorial, Pennsylvania," September 12, 2014, at http://www.nps.gov/flni/historyculture/sources-and-detailed-information.htm.

[45] "This Day in History—Jan 8, 2011: Congresswoman Gabrielle Giffords injured in shooting rampage," History, at http://www.history.com/this-day-in-history/congresswoman-gabrielle-giffords-injured-in-shooting-rampage.

[46] Certain regular visitors to the Capitol, such as reporters, are credentialed.

[47] Representative Jason Chaffetz, quoted in: Chad Pergram, "The Speaker's Lobby: Intruder Alert," *Fox News*, September 24, 2014.

to put a fence around the four corners. And then you have free access to the entire complex and not worry about a knife or a gun or a suicide bombing.[48]

Political Responsibilities

As a concept, politics encompasses more than running for office or trying to get majority support for a vote in the House or Senate. For most people today, "political system" might better describe the larger concept. Among the many changes within the political system between the eras under comparison, two aspects stand out because of the exponential growth of their size and impact.

Campaigns have expanded greatly in several ways. Candidates are almost never their own campaign managers. Campaign staffing no longer solely comprises volunteers, and advertising no longer consists largely of yard signs and newspaper endorsements. It is unlikely an individual running for Congress today would be able to compete for election if he or she made a decision or announcement to run just before Labor Day of election year, the long-ago traditional start of active campaigning.[49]

Although volunteers, perhaps numbering in the hundreds or thousands, are indeed vital to a modern campaign's success, a full-time, professional apparatus is also essential to a campaign today. This apparatus includes campaign managers, pollsters, media consultants (including a creative team and media buyers), social media specialists, webmasters, direct mail specialists, volunteer coordinators, fundraisers, treasurers, and others. A campaign must buy tv and radio advertising, and it must place advertising in numerous places—on billboards, in newspapers, on Web sites and in social media, and elsewhere. A candidate needs to travel around the State or district, perhaps by plane or campaign bus. Candidates may need to fly out of State to attend fundraisers and meet national party officials in Washington, DC. A campaign takes money—an increasing sum of money, it seems, in each successive primary and general election.

In the earlier era, once elected to Congress, a Member would be most visible in his or her legislative work and constituent service, for most of 2 years if serving as a Representative or at least 4 years if serving as a Senator, before facing the voters again. Congress in the 1970s often did not adjourn until mid- or late October before an election. Today, by contrast, incoming Members often hold fundraisers during Congress' early organization meetings.

The Daily Grind of Fundraising

[Then four-term U.S. Senator William] Proxmire spent $145.10 in breezing to re-election in 1982.[50]

In today's campaign argot, one would probably say that Senator Proxmire had a strong brand. He did. However, he initially ran in 1957.[51] He won his early elections when tv advertising for a con-

[48] Terrance Gainer, quoted in: ibid.

[49] Special circumstances, however, could affect the start of a campaign, such as the death or resignation of a candidate or a nominee's late decision not to run.

[50] The Associated Press, "Trying to Succeed Frugal Proxmire, Candidates Spend Freely," *The New York Times*, September 12, 1988, at http://www.nytimes.com/1988/09/12/us/trying-to-succeed-frugal-proxmire-candidates-spend-freely.html.

[51] Senator Proxmire was first elected in a special election for a vacancy caused by the death of Senator Joseph McCarthy.

gressional campaign was unheard-of. There were three networks and no cable, people were still acquiring their first-ever tv sets, newspapers dominated as people's source of information, and reporting was respectful of officeholders. It was relatively easy for a major-party candidate to become known. Senator Proxmire also found ways to stand out among his colleagues. For example:

> Even though he regularly wins re-election with more than 60 percent of the vote, Proxmire acts like a man constantly on the verge of electoral extinction. He is almost always perceived to be campaigning, whether he is shaking a thousand hands over a weekend in Wisconsin or pleading for dairy price supports on the Senate floor.[52]

By the time Senator Proxmire ran for reelection in 1982, he had already served in the Senate for 26 years. He had been chair of the Committee on Banking, Housing, and Urban Affairs and was known nationally for the Golden Fleece Award.[53] He also had a strong network of State supporters. Senator Proxmire had a solid brand in Wisconsin and, as a result, won reelection with nearly 65 percent of the vote after having spent just $145.10.[54]

Six years later, Senator Proxmire did not seek reelection. In the 1988 election cycle, the average winning Senate candidate spent $3,746,225. Senator Proxmire's campaign spending was an anomaly among Senate races in 1982; it was a historical event by 1988. In the 2012 election cycle, the average winning Senate candidate spent $10,351,556, and the average winning House candidate spent $1,596,953.[55]

In the earlier congressional era, incumbents, challengers, and candidates for open seats spent relatively little time on fundraising. Campaigning was largely grounded in a corps of volunteer supporters. It relied to a great extent on inexpensive advertising, like lawn signs, and on free media coverage of a campaign. Information sources were exponentially fewer than today, and it was easy for a potential voter to learn about candidates from those sources. Candidates, with free media coverage, faced little information clutter to break through. Retail politics (in those days, "shoe leather" politics) was ascendant, although parties and patronage still played important roles in some States and districts. Split-ticket voting was relatively common.[56]

Members of Congress and candidates for Congress face a much different campaign environment today. In the intervening years, network and cable television have become important to all congressional campaigns. In expensive, high-population media markets, a campaign will buy time even though the cost can be daunting. Yet, some portion of that advertising is perceived as being "wasted" on voters living in the same media market but in a different State or

[52] "Wisconsin—Senior Senator: William D. Proxmire," in *Politics in America, Members of Congress In Washington and At Home*, ed. Alan Ehrenhalt (Washington, DC: Congressional Quarterly Inc., 1983), p. 1636.

[53] An "award" the Senator handed out monthly to draw attention to an activity he considered to be wasting tax dollars.

[54] "Wisconsin—Senior Senator: William D. Proxmire," in *Politics in America, Members of Congress In Washington and At Home*, p. 1636.

[55] In 2014 constant dollars, the amount spent in 1988 was $7,533,617. For information on campaign finance and, over the last century, election campaigns for Congress, see the companion CRS centennial report in this volume, *The Unchanging Nature of Congressional Elections*, by Kevin J. Coleman and R. Sam Garrett.

[56] See, for example, Robert J. Dinkin, *Campaigning in America: A History of Election Practices* (New York: Greenwood Press, 1989), pp. 159–180.

district. These disadvantages drive campaigns to find additional channels to reach voters, for example, with tailored messages to targeted viewers of specific cable channels, and, now, through social media and the use of campaign software. The challenge for candidates today is to break through the information clutter and obtain attention from voters in their busy lives. Advertising, and specifically tv advertising, composes the largest budget item for most campaigns.[57]

The campaign season is also longer. A candidate, including a sitting Member running for reelection, now typically announces that he or she is running early in the election year or perhaps earlier than that. The candidate may also need to run two campaigns, a primary campaign and, if successful, a general election campaign. Over the last decades, many States have moved primaries earlier in the year, and few States still hold congressional primaries in September of the election year. Sitting Members running for reelection are therefore trying to keep up with legislative work and voting while running in a possibly contentious primary. An earlier primary also means campaigning must begin in the year prior to the election year. In addition, Senate campaigns have become so expensive that Senators have found it necessary to raise funds through all 6 years of their terms. Candidates for the Senate often make a decision to run around the time of the preceding election.

At least three other factors have pushed the start date of campaigns earlier. First, outside groups have begun advertising their views about candidates early in the election year, attempting to bolster or tear down a candidate. A candidate who waits to respond risks voters' impressions hardening. Second, some States begin early voting in September, and most States that have early voting begin in October. As a result, there is not a time in contemporary campaigning at which a candidate may make a closing argument to voters. He or she must make closing arguments prior to early voting and all through the last weeks of the campaign prior to election day. The candidate must also have a strategy for "turning out" early and absentee voters. Third, candidates receive advantageous advertising rates on television early in an election year and find it beneficial to reserve time for the autumn in advance.

Candidates, including candidates with a legislative record in Congress or a State legislature, face two other challenges: to be noticed by voters and to control the campaign narrative. The former might be accomplished by the quantity and quality of advertising, and the latter might be accomplished with deftness in responding to opponents' advertising. Party and independent groups advertising for and against the candidate offer an opportunity in their support and a threat in their opposition. To break through and control a campaign narrative, the candidate must be well funded.

In addition to fundraising for one's own campaign, incumbent Members are expected to raise money "for the team" by contributing substantially to the relevant party and Chamber campaign committees. Many Members also have their own leadership PAC

[57] See, for example, Joseph Mercurio, "Media Buying in Political Campaigns: Broadcast Television Remains King," *Campaigns & Elections*, February 28, 2011, at http://www.campaignsandelections.com/magazine/1910/media-buying-in-political-campaigns-broadcast-television-remains-king.

(political action committee), which is separate from their campaign account. Leadership PACs provide Members with another channel for assisting incumbent colleagues or their party's candidates. Fundraising can be a factor in a Member being selected for a Chamber or committee leadership position.

All of these factors, and others, require a Member of Congress or a candidate for Congress to raise a large amount of campaign funds.[58]

When in Washington, DC, Members of Congress spend time fundraising. A Member visits his or her political party's building near Capitol Hill to make fundraising phone calls, make fundraising contacts by an electronic medium, or attend fundraising receptions. Members make calls and contacts on their own behalf or on behalf of their party. Fundraising cannot be conducted in a Federal building, including using a telephone in a Federal building.

Receptions and other forms of fundraisers (e.g., at sporting or entertainment events) are scheduled nearly every day that Members are in Washington. They take place at locations throughout the city, in both the morning and evening. A Member might hold or be the beneficiary of a fundraiser, or he or she might sponsor or cosponsor a fundraiser for a colleague or party candidate. Contributors are attracted to contribute to a candidate and attend a reception when several Members of Congress will be in attendance, sometimes listed as sponsors of the reception. Members are expected to engage in this collegial activity, especially because they may want their colleagues' reciprocity.

Members must also spend time fundraising when they are in their home States or districts, seeking to ensure that a solid percentage of their campaign funds is raised within their home State and thereby demonstrating local support. As mentioned above, candidates for Congress might also travel to other States for fundraising meetings and events.

Interestingly, the Congressional Management Foundation (CMF) survey for its *Life in Congress* study found that 43 percent of Representatives believed "they spend too little time on political/campaign work." [59] Respondents to CMF's questionnaire also indicated that they spent 17 percent of their time in Washington, DC, and 18 percent of their time in their districts on political/campaign work.[60] Of course, "political/campaign work" includes more than fundraising. The number of respondents to CMF's survey was small, relative to the size of the House, but participation by Members in their first three terms was relatively significant.[61] In some news reports, Members have variously stated that they relish, endure, or dislike the activity of fundraising and the amount of time that it takes.[62]

Fundraising takes the time and personal attention of Members, which has consequences for the legislative process. For example, as

[58] See, for example, Kate Ackley, "Despite Trips, No Downtime for Donors," *Roll Call*, June 5, 2013, p. 14.
[59] CMF, *Life in Congress*, pp. 24–25.
[60] Ibid., p. 18.
[61] Median service in the House is three terms.
[62] See, for example, Tracy Jan, "For freshman in Congress, focus is on raising money," *The Boston Globe*, May 12, 2013, at http://www.bostonglobe.com/news/politics/2013/05/11/freshman-lawmakers-are-introduced-permanent-hunt-for-campaign-money/YQMMMoqCNxGKh2h0tOIF9H/story.html.

one group of former Members, current and former congressional staff, scholars, and other Congress-watchers observed:

> Schedules, processes and procedures within the Congress are designed to accommodate members in pursuit of their reelection goals, enabling them to devote maximum time to raising necessary campaign funds, mending fences and building political support back home.[63]

The schedules mentioned in this observation seem to refer to the time allowed in the congressional schedule for representational responsibilities and fundraising. The processes and procedures alluded to appear to refer to the types of legislation the majority brings to the House and Senate floors and to the types of amendments minority-party Members seek to offer or the procedural tactics they employ. Distinctions between the parties in their policy preferences, coherence within the parties, and strong party leadership generate voter interest and passion.[64]

In seeking to explain this development, one scholar noted the connection between Woodrow Wilson's famed book, *Congressional Government*, originally published in 1885, and Speaker Newt Gingrich's changes to the institutional management of the House:

> Wilson's book reads like a field manual for Gingrich's experiment in congressional party government ... . The Woodrow Wilson of *Congressional Government* and Speaker Newt Gingrich both admired the parliamentary ideal and tended to see Congress as central to our constitutional system, with presidents as mere administrators .... Both Wilson and Gingrich disliked standing committee dominance of the legislative process and sought to elevate the role of legislative parties.[65]

A Pew Research study released in June 2014 entitled *Political Polarization in the American Public* found that respondents who were most consistently liberal (12 percent of the public) and most consistently conservative (9 percent of the public) were—

> [on] measure after measure—whether primary voting, writing letters to officials, volunteering for or donating to a campaign ... more actively involved in politics, amplifying the voices that are least willing to see the parties meet each other halfway.[66]

A Member's experience in the legislative process, then, is likely to be part of a cycle of reinforcement between actions in the Member's Chamber and passion among those voters who are a party's most active and strongest supporters and who also are its most liberal or most conservative adherents.[67]

---

[63] Donald R. Wolfensberger, *Getting Back to Legislating*, Bipartisan Policy Center & The Woodrow Wilson Center, Washington, DC, November 27, 2012, pp. 1–2. See also Kate Ackley, "Who Has Time for Legislating Anyway?," *CQ Roll Call*, July 16, 2014, pp. 3, 11.

[64] See the companion CRS centennial report in this volume, *The Evolving Congress: Overview and Analysis of the Modern Era*, by Walter J. Oleszek.

[65] William F. Connolly, Jr., "Introduction," *Congressional Government: A Study in American Politics* (1885; Piscataway, NJ: Transaction Publishers, 2002). For an explanation and discussion of conditional party government and of earlier actions by the House Democratic Caucus that presaged changes made by Speaker Gingrich, see John H. Aldrich and David W. Rohde, "The Logic of Conditional Party Government: Revisiting the Electoral Connection," at http://themonkeycage.org/wp-content/uploads/2011/07/aldrich-and-rohde.pdf.

[66] Pew Research Center for the People & the Press, *Political Polarization in the American Public*, Washington, DC, June 12, 2014, at http://www.people-press.org/2014/06/12/political-polarization-in-the-american-public. In addition, *The New York Times* reported:

"For all the talk about how partisan polarization is overwhelming Washington, there is another powerful, overlapping force at play: Voters who are not deeply rooted [in a geographic place] increasingly view politics through a generic national lens."

Ashley Parker and Jonathan Martin, "Population Shifts Turning All Politics National," *The New York Times*, June 15, 2014, at http://www.nytimes.com/2014/06/16/us/population-shifts-turning-all-politics-national.html.

[67] For most Members of both parties, this cycle of reinforcement will appear politically well grounded. One analysis of the 2012 election showed there are only 26 congressional districts in

Yet, Members find many voters unhappy with this cycle of reinforcement. As the Pew study noted, 46 percent of Democrats and Democratic-leaners (Americans who "have attitudes and behaviors that are very similar to those of partisans") and 50 percent of Republicans and Republican-leaners prefer an outcome on policy issues between President Obama and congressional Republicans "to split the difference at exactly 50/50."[68] Political scientist Gary Jacobson explained the problem for Members and candidates and for all who watch Congress:

> [The political center] does not form a potentially coherent coalition around which some political entrepreneur might build a centrist party. People in it are more susceptible to short-term political tides (because they are less partisan and ideological) and thus help to swing elections.[69]

Getting It from All Sides: Lobbying Inside and Outside Washington, DC

> Some Congressmen reacted furiously when antiwar lobbyists recently published their non-record votes on key amendments offered by doves to a defense bill. [Prior to a House rules change in 1971, recorded votes were not taken in the Committee of the Whole; so-called gallery watchers attempted to record Representatives' positions as the Members filed past tellers (Members or clerks serving as vote counters) to be counted for and against amendments.]
>
> "I received your stupid letter in which you indicated that your snoopers who were sitting in the House gallery during debate on the military procurement bill recorded me as being absent on five different votes."[70]

Until the 1970s, lobbying was largely quiet, behind-the-scenes, and reactive. There were also relatively few practitioners. Members learned of the views of the AFL–CIO, the U.S. Chamber of Commerce, the Farmers Union, and other trade associations through hearings testimony and quotations in newspapers. Members and their spouses might be entertained at dinners, on weekend trips to hunting lodges, at golf clubs, and in other ways. Members could accept honoraria and travel expenses for speeches and appearances at meetings, conventions, and other gatherings of trade associations, and other groups.[71] A former Member, reflecting on changes to congressional ethical norms, mentioned some of the forums for Member-lobbyist interactions in that era:

---

which voters supported President Obama or Mitt Romney but elected a Representative of the opposite party (17 districts that Obama won and 9 districts that Romney won). Clark Bensen, *Presidential Results by Congressional Districts*, Politidata, Corinth, VT, April 4, 2013, p. 3. A *National Journal* study found there were only 2 Democratic Representatives in the 113th Congress who were more conservative than the most liberal Republicans and only 3 Republicans who were more liberal than the most conservative Democrats. There was no overlap among Senators. Josh Kraushaar, "The End of Moderation," *National Journal*, February 8, 2014, pp. 22–23. Census data and campaign software have also provided legislators and others planning redistricting with sensitive tools to seek, if desired, a partisan tilt in a State's districts.

[68] Pew Research Center for the People & the Press, *Political Polarization in the American Public*.

[69] Quoted in: Don Balz, "What's left of the political center?," *The Washington Post*, July 16, 2014, p. 2. This cycle of reinforcement might be part of the explanation for public approval of Congress, which is explored in the companion CRS centennial report in this volume, *Understanding Congressional Approval: Public Opinion from 1974 to 2014*, by Jessica C. Gerrity.

[70] Letter from unnamed Member to an antiwar lobbyist, quoted in: Norman C. Miller, "Some in House Seek To End Practice of Nonrecord Voting," *Wall Street Journal*, June 18, 1970, pp. 1, 3.

[71] For one Senator's perspective on lobbying and its history, see U.S. Congress, Senate, *The Senate, 1789–1989, Addresses on the History of the United States Senate*, by Senator Robert C. Byrd, 100th Cong., 1st sess., S. Doc. 100–20, vol. II (Washington: GPO, 1991), pp. 491–508. See also a Member's perspective in 1970 on home-State lobbyists and Washington lobbyists in Donald G. Tacheron and Morris K. Udall, *The Job of the Congressman*, pp. 85–89.

Golf outings, vacations in the islands with honoraria-attached speeches, dinners at Washington's best restaurants, and entertainment at the Kennedy Center are all part of the past now. Honoraria for speeches ended with the last large congressional pay raise for House members . . . . More recently, the House became totally spooked by adverse publicity regarding influence peddling and cut off accepting lunches and dinners.[72]

Lobbying was already beginning to change, however. New issues had arisen, with new ways of bringing congressional attention to them, and many new actors began lobbying. Two books helped initiate these changes: *The Other America: Poverty in the United States*, by Michael Harrington, published in 1962, and *Unsafe at Any Speed*, by Ralph Nader, published in 1965. The former contributed to President Lyndon Johnson's War on Poverty, and the latter contributed to a new law, the National Traffic and Motor Vehicle Safety Act of 1966. Both books helped stimulate the launch of "public interest" organizations and lobbying for laws and regulatory actions favorable to consumers, the environment, low-income people, women's rights, and other interests that had not previously been widely represented in Washington, DC. Public interest lobbying drew new people to Washington to work on behalf of many causes, with the so-called Nader's Raiders emblematic of the new actors.[73]

In response to the legislative activism of the 1970s, trade associations, businesses, and other groups drew on their long histories and on the strategies of the public interest groups to become proactive. More businesses opened their own lobbying offices, not relying solely on trade associations. Trade associations, businesses, and other groups formed coalitions around single issues.[74] They organized their own grassroots lobbying, including "fly-ins" for State or district residents, such as nurses, auto dealers, or independent bankers, to lobby their own Members of Congress in Washington on their specific set of policy concerns.[75]

The purpose of lobbying is straightforward—to persuade one or more Members of Congress to take a legal action, such as to obtain or prevent sponsorship of a bill or amendment or to vote for or against a proposition in committee or on the floor. Citizens and Members of Congress can lose track of the value of lobbying. Yet,

[72] G. William Whitehurst, "Lobbies and Political Action Committees; A Congressman's Perspective," in *Inside the House: Former Members Reveal How Congress Really Works*, ed. Lou Frey, Jr. and Michael T. Hayes (Lanham, MD: U.S. Association of Former Members of Congress and University Press of America, 2001), p. 211. The first ban on honoraria, alluded to in the text, took effect in 1991.

[73] In response to a damning "Nader's Raiders" report on the Federal Trade Commission, President Richard Nixon asked the American Bar Association to evaluate the commission's activities and make recommendations. For background on these events, see Arthur John Keefe, "Is the Federal Trade Commission Here To Stay?," *American Bar Association Journal*, February 1970, p. 188. One of the Raiders listed in the article was the future son-in-law of President Nixon and future chair of the Republican Party in New York; another was the great-grandson of President William Howard Taft and a future general counsel of the Department of Defense; and yet another was a future member of the Nuclear Regulatory Commission. For current examples of public interest lobbying, see, for example, Fawn Johnson, "Lessons of Lobbying," *National Journal*, January 7, 2012, p. 42.

[74] Representatives of foreign governments and businesses have long had a presence in Washington lobbying and are regulated under the Foreign Agents Registration Act (FARA) and other laws. A recent article explained a newer aspect of foreign agents' lobbying in their funding or contracting with U.S. think tanks. See Eric Lipton, Brooke Williams, and Nicholas Confessore, "Foreign Powers Buy Influence At Think Tanks," *The New York Times*, September 7, 2014, pp. 1, 22.

[75] See, for example, Byron Tau and Anna Palmer, "Boggs Helped Create the Modern World of Lobbying," *Politico*, September 16, 2014, pp. 1, 33; and Kate Ackley, "Special Interests Descend on the Hill," *CQ Roll Call*, April 2, 2012, at http://www.rollcall.com/issues/57__119/street-talk-special-interests-descend-on-capitol-hill-213586-1.html.

for lobbyists and the interests they represent, critical matters are at stake, such as a company's ability to make a profit, a labor union's advocacy for workers' rights, disabled citizens' access to transportation, a citizen group's desire for a sufficient water supply, a municipality's access to a Federal grant, a small business' ability to compete for a Federal contract, and so on.

Reactive lobbying has evolved today to become targeted media campaigns on specific issues, bills, nominations, and votes. From each lobbyist's perspective, irrespective of the business, public, or other interest represented, Members and their constituents must read and hear about their principal's concerns or perspectives both in Washington and in their home districts and States.[76]

When they are working in Washington, Members are recipients of direct lobbying, both by professional lobbyists and by home State members of national and State groups. The latter might be participating in a fly-in or in a national convention being held in Washington. Members in Washington also see the results of grassroots lobbying campaigns in their emails, letters, and social media exchanges.[77] As noted above (see "Using Technology to Steal the March on Constituents"), Members and their staffs must manage and respond to constituents' contact.

In the last two decades or more, however, Members have spent more time in their States and districts. Technology has also advanced, allowing lobbying campaigns to reach like-minded constituents and seek their action at just the right time. Organizations that lobby or assist in lobbying campaigns have also grown in sophistication. In combination, these changes have resulted in lobbying campaigns to influence Members being waged as much in States and districts as in Washington.

One of the earliest and best-known national campaigns of this sort was waged in opposition to President Bill Clinton's health care reform plan in 1993 and 1994 by the Health Insurance Association of America. In the series of "Harry and Louise" ads, which ran on television and were featured in radio and newspaper formats, the actors expressed their concerns over the President's proposal and urged viewers to express theirs.

These lobbying campaigns have also been localized and targeted at specific Members viewed as persuadable to support or oppose a proposition or as able to be pressured if enough constituents were persuaded by a media campaign to make their views known to the Member. These media campaigns occur year round as different issues come to the fore and have been financed by national and State political parties, interest and advocacy groups, and individuals or groups of individuals of all political stripes. Other groups employ an array of tools in their efforts to ensure orthodoxy and

[76] See, for example, Thomas B. Edsall, "The Unlobbyists," *The New York Times*, December 31, 2013, at http://www.nytimes.com/2014/01/01/opinion/edsall-the-unlobbyists.html?module=Search&mabReward=relbias%3Aw%2C{%221%22%3A%22RI%3A6%22}.

[77] See, for example, Holly Yeager, "The changing business of influence," *The Washington Post*, February 23, 2014, pp. G1, G5; and Thomas B. Edsall, "The Shadow Lobbyist," *The New York Times*, April 25, 2013, at http://opinionator.blogs.nytimes.com/2013/04/25/the-shadow-lobbyist/?module=Search& mabReward=relbias%3Aw%2C{%221%22%3A%22RI%3A6%22}.

consistency in Members' legislative actions, consistent with the political views of these Democratic or Republican groups.[78]

An example of a targeted media campaign occurred several years ago, when legislation was introduced in the Senate to repeal the Federal estate tax. Radio and television campaigns were waged in Maine, South Dakota, and Montana in an attempt to favorably influence public opinion and, through public opinion, the Senators from those States. As a Senate vote approached, a group opposed to repeal waged a media campaign in Arkansas, Montana, and Nebraska in an attempt to influence public opinion there, and, through it, the Senators from those States.

Lobbying campaigns are abetted by the variety of media operating today. The media comprise well-educated, aggressive reporters, editors, bloggers, social media trendsetters, radio and tv personalities, and other commentators, all of whom can define issues in ways critical to the success or failure of a lobbying campaign and quickly publicize upcoming votes, congressional favors to special interests, positions taken by Members of Congress, proponents' and opponents' views, and other information.

With the surge in social media's importance over the last few years, newer and less expensive channels exist to reach constituents. Lobbying campaigns ask constituents to contact a Member, attend a townhall meeting or "supermarket Saturday," or share their views with social media friends. Members take seriously the letters, postcards, faxes, emails, social media exchanges, phone calls, office visits, remarks at townhall meetings, signs at parades, plant visits, and other contacts they have with constituents.[79] Although specific individual communications or office visits might make a compelling case on a particular issue, Members take note of the volume of constituent calls and letters as part of their decisionmaking, even when a lobbyist's grassroots campaign stimulated the outpouring of constituent communication.[80]

Lobbyists have long sought to influence laws that Congress and the President have already enacted, looking to affect an existing law's implementation, possible amendment or repeal, and potential funding. The lobbyists might be acting on behalf of individuals, groups, municipalities, businesses, and others that have been directly affected by this exercise of Federal authority. In the 1960s and 1970s, a second principal purpose of lobbying emerged as lobbyists become more active in seeking to prompt Congress and the President to enact new laws. Inaction is also a decision, and individuals, groups, municipalities, businesses, and others may be affected by Congress not having enacted laws on certain subjects.

---

[78] See, for example, Josh Kraushaar, "Growth Industry," *National Journal*, September 17, 2011, pp. 28–33; Julianna Gruenwald, "What's Next in the SOPA Opera Melodrama," *National Journal Daily*, January 23, 2012, at http://www.nationaljournal.com/daily/what-s-next-in-the-sopa-opera-melodrama-20120122; and Kate Tummarello, "An Open Process for OPEN Measure," *Roll Call*, February 6, 2012, pp. 3, 5.

[79] See, for example, Andrew Joseph, "Transportation Lobbying Groups Follow Lawmakers Home," *National Journal*, February 24, 2012, at http://www.nationaljournal.com/blogs/influencealley/2012/02/transportation-lobbying-groups-follow-lawmakers-home-24.

[80] For additional discussion of lobbying and lobbying campaigns, see Judy Schneider and Michael L. Koempel, *Congressional Deskbook: The Practical and Comprehensive Guide to Congress*, 6th ed. (Alexandria, VA: TheCapitol.Net, 2012), pp. 73–83; and Michael L. Koempel and Judy Schneider, *Congressional Deskbook: The Practical and Comprehensive Guide to Congress*, 5th ed. (Alexandria, VA: TheCapitol.Net, 2007), pp. 83–92.

Personal Impact of Congressional Service

The CMF study of 2013, cited earlier, largely confirmed what was reported 15 years ago about the work schedule of Members of Congress in a study by the Pew Research Center for the People & the Press. In its survey, CMF found that Members of the House work about 70 hours a week when Congress is in session and about 59 hours a week when Congress is not in session. The Pew study in 1998 found that 70 percent of Senators and Representatives worked 70 or more hours a week.

The CMF study compared Members' work lives with a study of high-earning, private-sector employees across multiple industries that appeared in the *Harvard Business Review* in 2006. A subset of these employees was identified as having "extreme jobs" with 70-hour workweeks. Traits of those jobs that are shared by Members in their work included:

- unpredictable flow of work,
- fast-paced work under tight deadlines,
- work-related events outside regular work hours,
- availability to clients 24/7
- large amounts of travel, and
- physical presence at workplace at least 10 hours a day.[81]

In the CMF study, 86 percent of Members responded that they "feel they spend too little time with family and friends and too little time on other personal activities.[82]

Well into the 1990s, the vast majority of Members had residences in the Washington area, and their families lived there. Members with children sent them to local public and private schools. Members socialized with each other and had friendships in their neighborhoods and among people with whom they worked or attended religious services, whom they met through their children's school, who were from the same State, and so on. Air travel was not particularly easy, and Members were limited in the number of trips or the spending available for travel, even to their home States and districts. Perhaps the most distinctive difference from today's congressional environment was that Members largely had their weekends to themselves.

> [Now-Senator] Mike Lee and Josh Reid, then both 11-year-old sons of political fathers transplanted in Washington, quickly bonded. [Lee was the son of President Ronald Reagan's U.S. Solicitor General Rex Lee, and Reid was the son of then-Representative Harry Reid.]
>
> "I've always known since I was 11 years old, when I first met the man, that we were on opposite sides of the issues," Lee added. "It is weird to now be in the same body as him. I wouldn't blame him if he still saw me as an 11-year-old."[83]

This situation began to change in the 1990s as Members, wishing to maintain better contact with their constituents, began to travel home more frequently. As described earlier, constituents had become more politically active, which included wanting to see their Members of Congress face-to-face (see, above, "Using Technology to

---

[81] CMF, *Life in Congress*, pp. 10, 14.

[82] Ibid., p. 23.

[83] Philip Rucker, "Sen. Mike Lee: A political insider refashions himself as tea party revolutionary," *The Washington Post*, February 4, 2011, at http://www.washingtonpost.com/lifestyle/style/sen-mike-lee-a-political-insider-refashions-himself-as-tea-party-revolutionary/2011/02/04/ABzV3xQ__story.html.

Steal the March on Constituents"). Air travel became easier and congressional travel allowances more generous. By the mid-1990s, with the influx of new Members and the encouragement of some Members serving in congressional leadership, many Members, particularly in the House, began to keep their residences in their home States and districts and commute to Washington. First votes are now scheduled Monday evenings and last votes Thursday afternoons or Friday mornings to accommodate Members' travel.

Now, few Representatives live in the Washington, DC, area with their families.[84] They rent or share apartments; some even spend overnights on cots or sofas in their offices. Some Senators have also made the choice to live in their home States and commute to Washington. For all Members, some time is spent almost every week flying to and from Washington.

The dearth of personal time in Washington, small number of social settings involving families, multitude of social activities involving fundraising, reduced time spent in committees with relatively small memberships, demands of media for access, and other changes mean that there are fewer opportunities for Members to get to know each other well, especially across the aisle.[85] This situation concerns many who are studying Congress and seeking changes or ways that partisanship could be reduced or the decision-making process enhanced. They believe the fact that many Members do not know each other well contributes negatively to the contemporary congressional environment.[86]

Something else has changed besides Members' desire to be in their home State or district, and their constituency's demand for their presence. In proposing changes to the congressional schedule or Members' opportunities to get to know each other better, the effect on Members' families must be considered. For example, some have proposed a scheduled change of 3 weeks a month of work in Washington and 1 week a month back in a Member's home State or district. That model may not work for Members and their families.

In the 1970s, the spouses of Members, who were nearly all wives of Members, were often full-time homemakers. Most raised their children while their Member spouses attended the long daily sessions of committees and their Chamber on Capitol Hill. Many congressional wives had very active lives outside the home and were involved with volunteer activities, organizations such as the Congressional Club for congressional wives, and other interests.[87] With changing social characteristics and employment opportunities in

---

[84] For some Members, residing with their family in Washington, DC, is a necessity when travel to their home State or district is time consuming and their children are very young. See, for example, Fawn Johnson, "I Want More Hours in the Day," *National Journal*, July 12, 2012, at http://www.nationaljournal.com/magazine/mcmorris-rodgers-i-want-more-hours-in-the-day-20120712.

[85] For an analysis of what has changed in today's congressional milieu that affects lawmaking, and why, see the companion CRS centennial report in this volume, *Collaborative Relationships and Lawmaking in the U.S. Senate: A Perspective Drawn from Firsthand Accounts*, by Mark J. Oleszek.

[86] See, for example, Commission on Political Reform, *Governing in a Polarized America: A Bipartisan Blueprint to Strengthen Our Democracy*, Bipartisan Policy Center, Washington, DC, July 2014.

[87] Additional clubs exist for spouses, both nonpartisan and partisan. For background, see Nikki Schwab, "Sign of the Times: Husbands Happily Join Senate Spouses," *U.S. News & World Report*, September 22, 2014; and Emily Heil, "Cathy Boozman Seeks to Unite GOP Spouses," *Roll Call*, January 17, 2011, at http://www.rollcall.com/news/-202524-1.html.

the 1970s and 1980s, wives of long-serving or older Members began their own careers in the Washington area. Younger wives expected to have a job or a career as well as a family role.

Today, the option of living in Washington, DC, is not attractive to many congressional families. The area is extraordinarily expensive compared with most of the places from which Members are elected. Many spouses have their own careers in their home cities and towns, and a number are partners or owners of businesses. For many families today, finding childcare is a daunting task. Once a family has a good arrangement, it is loath to leave it. Families are also part of a local society—the spouses' families, friends, and colleagues from different areas of their lives. Spouses are active in local groups, such as churches, schools, charitable organizations, and so on. To move to Washington is to give up a large network that supports a family both financially and socially.

A Concluding Observation

The impending retirement of Representative John Dingell, dean of the House, is a clear signal that Congress has fully entered another new era in its 225-year evolution. The arc of Mr. Dingell's life to his retirement is an apt metaphor for making some concluding observations to this report, which has described some notable changes that have occurred in Congress over the past 50 years and their impact on congressional service.

Mr. Dingell grew up in Washington, DC, the son of a U.S. Representative. The senior Representative Dingell had won his seat in the House in the same election as Franklin Roosevelt won his first term as President. As an adolescent, John Dingell became a House page. He was present on the House floor on December 8, 1941, when President Roosevelt delivered his Infamy Speech seeking a congressional declaration of war against Japan. At the age of 18 in 1944, Mr. Dingell enlisted in the U.S. Army. His own House service began in 1955, when he won a special election as a Democrat after his father's death.

When Mr. Dingell entered the House, Representative Sam Rayburn, the Texas Democrat who had taken office in 1913, was Speaker. Representative Joseph Martin of Massachusetts, first elected in 1924 and a former Republican Speaker, was minority leader. Of the 19 standing House committees, 14 were chaired by Southern and Border State Democrats. Five were chaired by Northern Democrats, one of which was the Committee on Un-American Activities (HUAC). Senator Lyndon Johnson of Texas was Senate majority leader, and Senator William Knowland of California was Senate minority leader. Dwight Eisenhower was in the 3d year of his first term as President.

Longevity of service in the House and Senate was common in this earlier era.

In the 1970s and 1980s, Mr. Dingell epitomized a Congress that asserted itself as a coequal branch of the national government. He served first as chair of the Energy and Power Subcommittee of the Interstate and Foreign Commerce Committee. He became chair of the renamed Energy and Commerce Committee in 1981 and served concurrently as chair of its Oversight and Investigations Subcommittee. He aggressively and famously conducted oversight of

the executive branch on matters ranging from hazardous waste cleanup to pesticide residues in food to inferior prescription drugs to Pentagon spending to deceitful university billing for research grants.[88]

Mr. Dingell was recognized for his ability to assert his committee's jurisdiction and to steer legislation through the House and through conferences with the Senate as well as for his knowledge of legislative procedure. In testimony before the House Rules Committee, he once observed, "If you let me write procedure and I let you write substance, I'll screw you every time." [89] He was a committee baron in an era when committee chairs were the central figures of Congress, even as party leaders' influence and control were growing.

On February 11, 2009, Mr. Dingell became the longest serving Representative in history, and, on June 7, 2013, he became the longest serving Member of Congress in history.

Many aspects of Mr. Dingell's career are traits of the congressional era that is now rapidly passing. These traits include personal memory of World War II and the dawn of the cold war, Members and their families living year round in Washington, long congressional careers for Members and staff, weekly 5-day meetings of the House and Senate, decentralized power within Congress, and time for collegial and personal relationships and reflection.

Members sitting in the incoming 114th Congress will not likely match Mr. Dingell's longevity or his institutional or personal memories. Only 26 Members would have been old enough as children to remember World War II.[90] Only a few Members will have served during the first 33 years of Mr. Dingell's career. Assuming all senior Members running for reelection win their races for the 114th Congress, only 12 Members would have served in Congress during the congressional reform decade of the 1970s.[91] Only an additional 29 Members would have begun their service during the Ronald Reagan Presidency.[92]

The Congress that has evolved over the 1990s and 2000s is markedly different from the one of this immediately past congressional era. The shared memory of Members in the contemporary Congress is of wars without a decisive end,[93] the terrorist attacks of September 11, 2001, and the continuing threat of ethnic and religious fanaticism. The shared experience is of Members spending as little as 3 days a week at work in Washington, DC, of power converging in party leadership, and of long days working in congressional districts and home States. Large amounts of time spent fundraising, higher turnover in membership and staff, round-the-clock media relations and media engagement, and little personal time are other experiences common to contemporary Members.[94]

---

[88] From 1981 through 1986, Democrats controlled the House, Republicans controlled the Senate, and Republican Ronald Reagan was President.

[89] "Michigan—16th District: John D. Dingell," in *Politics in America: 1990, The 101st Congress*, ed. Phil Duncan (Washington, DC: Congressional Quarterly Inc., 1989), p. 769.

[90] Eleven Senators and 15 Representatives.

[91] Three Senators, 4 Senators who were then serving in the House, and 5 Representatives. Only Representative John Conyers' congressional service would have begun in the 1960s.

[92] Five Senators, 11 Senators who were then Representatives, and 13 Representatives.

[93] Wars beginning with the Korean war. See, for example, David Ignatius, "Hemmed in by a limited war," *The Washington Post*, October 10, 2014, p. A–21.

[94] For an examination of the sociodemographic characteristics of the 113th Congress, see the companion CRS centennial report in this volume, *The 113th Congress and the U.S. Population:*

In addition, changes in the House and Senate as legislative bodies have affected the experience of being a Member of Congress. Earlier, committee markups of important legislation might consume meetings of several or many days over the course of weeks. Today, for even the most important bills, markups are generally completed in a day or less. The House in the earlier era used open and modified open special rules to consider measures on the floor. The Senate innovated a two-track system to allow it to process one or more pieces of legislation in a relatively routine manner at the same time as it allowed extensive debate and amendment of controversial legislation or controversial amendments to a measure (see "On the House and Senate Floors, a Drive for Efficiency," above). In the last two decades, the House has turned more often to the use of the suspension of the rules procedure and of structured and closed rules to process measures on the House floor, whereas the Senate has seen an increase in the requirement for 60 votes on motions, including motions to amend, and in majority leaders filing cloture petitions and using their priority of recognition to "fill the amendment tree." [95] In sum, it has become more difficult for Members to engage in the legislative process with more than their votes.

The past era was one in which legislating was more visible to the public—recall C–SPAN coverage of Congress—than the election politics present in the legislative process. The current era is one in which election politics seems more visible in the legislative process than Congress' legislative accomplishments.[96] In the past era, a Member of Congress' life was centered in Washington and in the Member's work in committees and on the floor.[97] In the current era, a Member of Congress' life is centered in the Member's district or State, maintaining contact with its residents, interest groups, and politicians.[98] A significant amount of time at home and in

---

Discussion and Analysis of Selected Characteristics, by Jennifer D. Williams, Ida A. Brudnick, and Jennifer E. Manning.

[95] See *Congressional Quarterly's American Congressional Dictionary*, p. 8.

"Amendment Tree—A diagram showing the number and types of amendments that the rules and practices of a house permit to be offered to a measure before any of the amendments is voted on. It shows the relationship of one amendment to the others, and it may also indicate the degree of each amendment, whether it is a perfecting or substitute amendment, the order in which amendments may be offered, and the order in which they are put to a vote. The same type of diagram can be used to display an actual amendment situation."

When a majority leader fills the amendment tree, he uses his priority of recognition to be recognized after he offers one amendment to offer another, until the branches of the relevant amendment tree are filled with amendments, thereby blocking any other Senator from offering an amendment. The majority leader must also follow additional procedures to successfully implement this procedural strategy, as explained in CRS Report RS22854, *Filling the Amendment Tree in the Senate*, by Christopher M. Davis.

[96] For foundational studies of the relationship between election politics and political behavior, see Richard F. Fenno, *Home Style: House Members in Their Districts* (New York: HarperCollins, 1978); David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974); and David W. Rohde, *Parties and Leaders in the Post-Reform House* (Chicago: University of Chicago Press, 1991).

[97] In his book, *The Job of the Congressman*, Representative Udall included a study on the "congressional office work load," based on a survey conducted under the "auspices of the American Political Science Association." Part of the study estimated the time an "average Congressman" spent performing various roles in the course of a week. Of the 59.3 hour average workweek, a Representative could expect to spend 15.3 hours (25.8 percent of the Member's time) on the House floor and 7.1 hours (12.0 percent) in committee. Donald G. Tacheron and Morris K. Udall, *The Job of the Congressman*, p. 303.

[98] A Member may have many reasons for keeping contact with State legislators and other politicians, including the political support they might provide. With State legislators' terms limited in some States, in addition, there may be more potential candidates for Congress.

Washington is spent fundraising. Workweeks in Washington are relatively brief, and election politics imbues legislative work.[99]

The past era and the current era presumably manifest the political climate of the country at their respective times. In delivering the Pi Sigma Alpha lecture to an annual meeting of the American Political Science Association in 2000, former Representative Lee Hamilton explained the situation this way:

> Many Americans think that reasonable people agree on the solutions to major national problems, and they see no good reason for Congress not to implement such a consensus. Yet, the truth is there is far less consensus in the country than is often thought. Survey after survey shows that Americans don't even agree on what are the most important issues facing the country, let alone the best way to solve them. People misunderstand Congress' role if they demand that Congress be a model of efficiency and quick action. Congress can work quickly if a broad consensus exists in the country. But such a consensus is rare—especially on the tough issues at the forefront of public life today. Usually, Congress must build a consensus. It cannot simply impose one on the American people.
>
> The quest for consensus can be painfully slow, and even exasperating, but it is the only way to resolve disputes peacefully and produce policies that reflect the varied perspectives of our diverse citizenry.[100]

In the 1960s and 1970s, voters in election after election sent Democratic majorities to Congress that would pass large numbers of health, education, environmental, employment, civil rights, and other bills and fund an expanding Federal portfolio of responsibilities. The emphasis changed with the election of a Republican Senate and a Republican President in the 1980s—to enacting tax cuts and tax reform, implementing Social Security reform, increasing military spending, controlling domestic spending, and so on—but Congress acted on many bills. Under both President George H.W. Bush and President Bill Clinton, Congress was controlled by the other party, but Congress and the President enacted both major and routine legislation. Compromise was an essential element in putting together voting majorities in committees and in the House and Senate and in reaching agreement between Congress and the President.[101] Congress reflected the political climate of the times.[102]

In the contemporary era, voters are polarized and unable to consistently send majorities to Congress with any mandate to move government in a specific direction. According to the study of the

---

[99] See, for example, the analysis of "cultural changes" within Congress in Donald R. Wolfensberger, *Getting Back to Legislating: Reflections of a Congressional Working Group*, pp. 1–2.

[100] Lee Hamilton, "What I Wish Political Scientists Would Teach about Congress," p. 760. See also Nora Caplan-Bricker, "Party of One," *National Journal*, October 4, 2014, pp. 28–35.

[101] From 1969 through 1976, Democrats controlled Congress and Republicans occupied the White House. From 1977 through 1980, Democrats controlled both of the elected branches. From 1981 through 1986, Republicans controlled the Senate and the White House, and Democrats controlled the House. Democrats took back the Senate in the 1986 election, but President George H.W. Bush won the 1988 election to continue Republican control of the White House. Under each of these arrangements, significant legislation was enacted but accommodation between the parties and within the parties was essential to agreement. See the Congressional Quarterly Inc. series *Congress and the Nation*, vols. III–X (Washington, DC: CQ Press, 1973, 1977, 1981, 1985, 1989, 1993, 1997, and 2001).

[102] Various studies show the ideological and party overlap and distance between the parties. Congressional parties in the 1960s, 1970s, and beyond were "big tent" parties comprising liberals, moderates, and conservatives. See, for example, The Brookings Institution, "Historical House Ideology and Party Unity, 35th–112th Congress (1857–2012), an online interactive graphic, at http://www.brookings.edu/research/interactives/2013/historical-house-ideology-and-party-unity; and the annual Congressional Quarterly vote studies, which appear in CQ's annual almanacs (*Congressional Quarterly Almanac*, Washington, DC: Congressional Quarterly Inc.).

Pew Research Center for the People & the Press entitled *Political Polarization in the American Public*, released in June 2014:

- Democrats and Republicans are more ideologically divided than they were even 20 years ago, which means that the "ideological overlap between the two parties has diminished: Today, 92% of Republicans are to the right of the median Democrat, and 94% of Democrats are to the left of the median Republican."
- 27 percent of Democrats "see the Republican Party as a threat to the nation's well-being," and 36 percent of Republicans "see the Democratic Party as a threat to the nation's well-being."
- The 12 percent of the public that is most consistently liberal and the 9 percent of the public that is most consistently conservative, as noted earlier, on "measure after measure—whether primary voting, writing letters to officials, volunteering for or donating to a campaign . . . are more actively involved in politics, amplifying the voices that are least willing to see the parties meet each other halfway."
- 46 percent of Democrats and Democratic-leaners (Americans who "have attitudes and behaviors that are very similar to those of partisans") and 50 percent of Republicans and Republican-leaners prefer an outcome on policy issues between President Obama and congressional Republicans "to split the difference at exactly 50/50." Yet, "consistent liberals say Obama should get two-thirds of what he wants," and "consistent conservatives say . . . congressional Republicans should get 66% of what they want." [103]

The Congress of the contemporary era reflects voters' lack of consensus. President George W. Bush and, during his first 2 years in office, President Barack Obama, with Congresses under the control of their own party, passed both major and routine legislation. Party unity, however, increased during the first decade of the 21st century. Some of the major legislation passed during President Obama's first 2 years in office did so with exclusive or near-exclusive Democratic Members' votes. It became more difficult in the 112th Congress and the 113th Congress, with split party control of Congress and high party unity, to pass companion bills in the two Chambers. The visibility of electoral politics in the legislative process appears to respond to today's political climate.[104]

Congress seems to have fully entered another new era of its 225-year evolution, which began on April 1 and April 6, 1789, when a quorum of the House and a quorum of the Senate, respectively, were achieved and the First Congress convened. Speculation as to how long the current era will last or what the transition to and contours of the next congressional era will be is beyond the scope of this report.

---

[103] Pew Research Center for the People & the Press, *Political Polarization in the American Public*.

[104] For a perspective on how eras with consensus and lacking consensus are manifestations of the Founding Fathers' constitutional design, see William F. Connolly, Jr., "Does James Madison Still Rule America?," *Extensions, A Journal of the Carl Albert Congressional Research and Studies Center*, summer 2014, pp. 10–15.

II. THE MEMBERS OF CONGRESS

Tweet Your Congressman: The Rise of Electronic Communications in Congress

MATTHEW E. GLASSMAN

Analyst on the Congress

Constituent communications serve a vital role in legislative government. Although virtually all Members continue to use traditional modes of constituent communication, such as postal mail and face-to-face meetings, the use of new electronic communications technology is dramatically increasing. The rise of electronic communications has altered the traditional patterns of communication between Members and constituents. These changes have a variety of implications for the practice of legislative politics on Capitol Hill, ranging from the organization of Member office operations to the Members' perception of their constituency and understanding of their representational role.

Introduction

Constituent communications serve a vital role in representative government. If information about legislative activity cannot easily flow from Members to constituents, citizens will be less capable of drawing policy judgments regarding congressional actions, or electoral judgments of their Members. Likewise, if constituents cannot easily communicate their preferences to Members, congressional action is less likely to reflect popular opinion. It is not an exaggeration to say that Member-constituent communication is one of the basic building blocks of a representative democracy.

Throughout American history, concerns about these vital democratic connections underpinned the existence of the franking privilege, which for much of the 19th century allowed not only Members to send mail without personal cost, but also constituents to send mail to Congress free of charge. Technological changes during the 19th and early 20th centuries—most notably the rise of mass newspapers, the invention of the telephone, and advances in transportation that allowed Members to travel more easily—aided Members and constituents in exchanging information with each other. Until the late 20th century, most Member-constituent communications comprised these four forms of communication—postal mail, telephone calls, press releases, and face-to-face meetings.

Although virtually all Members continue to use these traditional modes of constituent communication, the use of new electronic communications technology is dramatically increasing. For example,

prior to 1995, there were virtually no email exchanges between Members and constituents. In 2011, over 243 million emails were received by the House of Representatives, more than 20 times the amount of postal mail received. Conversely, the amount of postal mail sent to Congress dropped by more than 50 percent during the same time period. Member official Web sites, blogs, YouTube channels, and Facebook pages—all nonexistent 20 years ago—also receive significant traffic. In less than 20 years, the entire nature of Member-constituent communication has been transformed, perhaps more than in any other period in American history.

The rise of such electronic communication has altered the traditional patterns of communication between Members and constituents. Electronic technology has reduced the marginal cost of constituent communications; unlike postal letters, Members can reach large numbers of constituents for a fixed cost, and constituents can reach Members at virtually zero cost. Likewise, the relay of information from Capitol Hill to the rest of the country (and vice versa) has been reduced, timewise, to basically zero. As soon as something happens in Congress, it is known everywhere in real time. Finally, Members can reach large numbers of citizens who are not their own constituents.

These changes have wide-ranging implications for the practice of legislative politics on Capitol Hill. They are altering how Members organize their personal offices. They are impacting how Members manage their legislative activities on and off the floor. And, perhaps most importantly, they are transforming the very nature of representation in the United States, as Members become less bound to their geographic constituencies and can more easily engage wider, nongeographic political and policy constituencies.

This report is divided into four parts. First, it discusses the role of constituent communications in a representative democracy and briefly reviews the historical development of constituent communications in the United States. Second, it reviews the rise of electronic communications in Congress since 1995. It then discusses how electronic communications differ from traditional constituent communications. Finally, it examines some of the institutional and representational implications of these changes.

Constituent Communications

Constituent communications serve a vital role in representative government. In early America, concerns about these vital democratic connections underpinned the existence of the franking privilege. The franking privilege has its roots in the 17th century. The British House of Commons instituted it in 1660, and free mail was available to many officials under the colonial postal system.[1] In 1775, the First Continental Congress passed legislation giving Members mailing privileges so they could communicate with their constituents as well as giving free mailing privileges to soldiers.[2] In 1782, under the Articles of Confederation, Congress granted Members of the Continental Congress, heads of various depart-

[1] Post Office Act, 12 Charles II (1660); and Carl H. Scheele, *A Short History of the Mail Service* (Washington, DC: Smithsonian Institution Press, 1970), pp. 47–55.
[2] *Journals of the Continental Congress, 1774–1789*, 34 vols., ed. Worthington C. Ford et al. (New York: Johnson Reprint Corp., 1968), vol. 3, p. 342 (November 8, 1775).

ments, and military officers the right to send and receive letters, packets, and dispatches under the frank.[3]

After the adoption of the Constitution, the First Congress passed legislation for the establishment of Federal post offices, which contained language continuing the franking privilege as enacted under the Articles of Confederation.[4] Under the Post Office Act of 1792, Members could send and receive under their frank all letters and packets up to 2 ounces in weight while Congress was in session.[5] Subsequent legislation extended Member use of the frank to a specific number of days before and after a session, first by 10 days in 1810, then by 30 days in 1816, and finally to 60 days in 1825.[6] The act of 1825 also provided for the unlimited franking of newspapers and documents printed by Congress, regardless of weight.

Scholarly work suggests that franked mail played an important role in national politics during the late 18th and early 19th centuries.[7] In 1782, James Madison described the postal system as the "principal channel" that provided citizens with information about public affairs.[8] Members mailed copies of acts, bills, government reports, and speeches, serving as a distributor for government information and a proxy for the then-nonexistent Washington press corps, providing local newspapers across the country with information on Washington politics.[9] Because franking statutes allowed Members to both send and receive franked mail during much of the 19th century, constituents could also mail letters to their Senators and Representatives for free.[10]

Historically, the franking privilege was seen as a right of the constituents, not of the Members.[11] When the franking statutes were first revised in 1792, a proponent argued that "the privilege of franking was granted to the Members ... as a benefit to their constituents."[12] More generally, President Andrew Jackson suggested that the Post Office Department itself was an important element of a democratic republic:

> This Department is chiefly important as a means of diffusing knowledge. It is to the body politic what the veins and arteries are to the natural—carrying, conveying, rapidly and regularly to the remotest parts of the system correct information of the operations of the Government, and bringing back to it the wishes and the feelings of the people.[13]

---

[3] *Journals of the Continental Congress, 1774–1789*, vol. 23, pp. 670–679 (October 18, 1782).

[4] Act of Congress, September 22, 1789, 1 Stat. 70. See also Act of Congress, August 4, 1790, 1 Stat. 178; and Act of Congress, March 3, 1791, 1 Stat. 218.

[5] Act of Congress, February 20, 1792, 1 Stat. 232, 237.

[6] Act of Congress, May 1, 1810, 2 Stat. 592, 600; Act of Congress, April 9, 1816, 3 Stat. 264, 265; and Act of Congress, March 3, 1825, 4 Stat. 102, 110.

[7] See Richard R. John, *Spreading the News: The American Postal Service From Franklin to Morse* (Cambridge, MA: Harvard University Press, 1995); Edward G. Daniel, "United States Postal Service and Postal Policy, 1789–1861" (Ph.D. diss., Harvard University, 1941); and Ross Allan McReynolds, "History of the United States Post Office, 1607–1931," (Ph.D. diss., University of Chicago, 1935).

[8] James Madison, "Notes on Debates," December 6, 1782, in William T. Hutchinson et al., eds., *Papers of James Madison* (Chicago: University of Chicago Press, 1962), vol. 5, p. 372.

[9] John, *Spreading the News: The American Postal Service From Franklin to Morse*, p. 57.

[10] In addition, the Post Office Department did not require prepayment for mail until January 1, 1856. See Act of Congress, March 3, 1855, 10 Stat. 642.

[11] Daniel, "United States Postal Service and Postal Policy," p. 446.

[12] House debate, *Annals of Congress*, vol. 3, December 16, 1792, pp. 252–253.

[13] U.S. Congress, Senate, *Message from the President of the United States, to the Two Houses of Congress, at the Commencement of the First Session of the Twenty-first Congress*, 21st Cong., 1st sess., S. Doc. 1 (Washington, DC: Duff Green, 1830), p. 18.

Even in the modern era, in addition to direct communications with constituents about matters of public concern, proponents of franking argue that free use of the mails allows Members to inform their constituents about upcoming townhall meetings, important developments in Congress, and other civic concerns. Without a method of directly reaching his or her constituents, proponents maintain that a Member would be forced to rely on intermediaries in the media or significant personal costs in order to publicize information the Member wished the constituents to receive.[14]

Technological changes during the late 19th and early 20th centuries—most notably the rise of mass newspapers, the invention of the telephone, and advances in transportation that allowed Members to travel more easily—aided Members and constituents in exchanging information with each other. Until the late 20th century, the vast majority of Member-constituent communications comprised these four forms of communication—postal mail, telephone calls, press releases, and face-to-face meetings.

Contemporary law and Chamber regulations continue to reflect the belief that these traditional forms of Member-constituent communication are vital to the functioning of our representative system. By law, Representatives and Senators are provided an annual allowance that may be used to frank letters, make long distance phone calls, travel to and from their districts for the purpose of interacting with constituents, buy office equipment that supports their constituent contact, and pay for other office expenses.

The Rise of Electronic Communications

Although all Members continue to use traditional modes of constituent communication, they have many more choices and options available to communicate with constituents than they did 20 years ago. In addition to traditional modes of communication such as townhall meetings, telephone calls, and postal mail, Members can now reach their constituents via email, Web sites, tele-townhalls, online videos, social networking sites, and other electronic-based communication applications. Likewise, constituents can take advantage of these new mediums as well.

There is overwhelming evidence that both Members and constituents are taking advantage of these new mediums; the use of new electronic communications technology is dramatically increasing.[15] On the constituent side, email has now become, far and away, the preferred form of communication with Congress. Prior to 1995, there were virtually no email exchanges between Members and constituents.[16] By 2011, over 243 million emails were received by the House of Representatives, more than 20 times the amount of

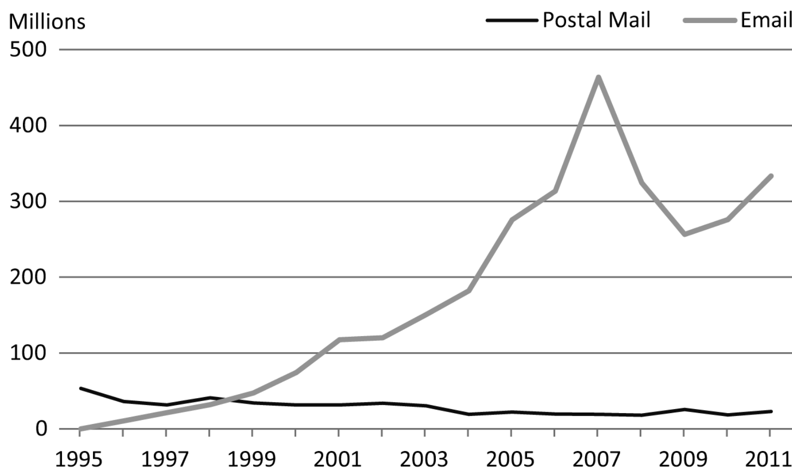
[14] Alfred A. Porro and Stuart A. Ascher, "The Case for the Congressional Franking Privilege," *University of Toledo Law Review*, vol. 5 (winter 1974), pp. 280–281.

[15] For journalistic accounts of the rise of electronic communications in Congress, see Elizabeth Brotherton, "A Different Kind of Revolution; Technology Redefines Constituent Outreach," *Roll Call*, September 10, 2007, p. 1; Amy Doolittle, "31 Days, 32 Million Messages," *Politico*, February 27, 2007, p. 1; Jonathan Kaplan, "2008 Candidates search Web for next new thing," *The Hill*, November 29, 2006, p. 6; David Haase, "Twitter: One More Medium, Much Shorter Messages," *Roll Call*, July 23, 2009, p. 4; and Daniel de Vise, "Tweeting Their Own Horns," *The Washington Post*, September 20, 2009, p. A13.

[16] Chris Casey, *The Hill on the Net: Congress Enters the Information Age* (Chestnut Hill, MA: Academic Press, Inc., 1996), pp. 29–35.

postal mail received.[17] Similar growth was seen in incoming Senate electronic mail, with over 90 million emails received in 2011.[18] Figure 1 shows the rapid growth of email from constituents to Congress.

FIGURE 1. EMAIL AND POSTAL MAIL TO CONGRESS, 1995–2011



Source: Data provided by the House CAO and Office of the Senate Sergeant-At-Arms.

Note: These data do not include internal emails sent from one congressional user to another.

In comparison, the amount of postal mail sent to Congress has dropped by more than 50 percent during the same time period, from almost 53 million pieces of mail in 1995 to less than 22 million pieces in 2011.[19] But it has been replaced by over 300 million emails. In fact, postal mail is now just 7 percent of all mail coming to Capitol Hill, and that 7 percent is equal to more than half of the mail received in Congress in 1994.

Communications from Congress have seen a similar transformation. Figure 2 reports the volume of quarterly mass postal mailings in the House from 1997 to 2008, and then the quarterly volume of all mass communications (which include postal mailing) from 2009 to 2013. Mass communications are defined by the House as “unsolicited communication of substantially identical content to 500 or more persons in a session of Congress,” which includes things like mass unsolicited emails, Web or print advertisements, radio spots, and newspaper inserts.

---

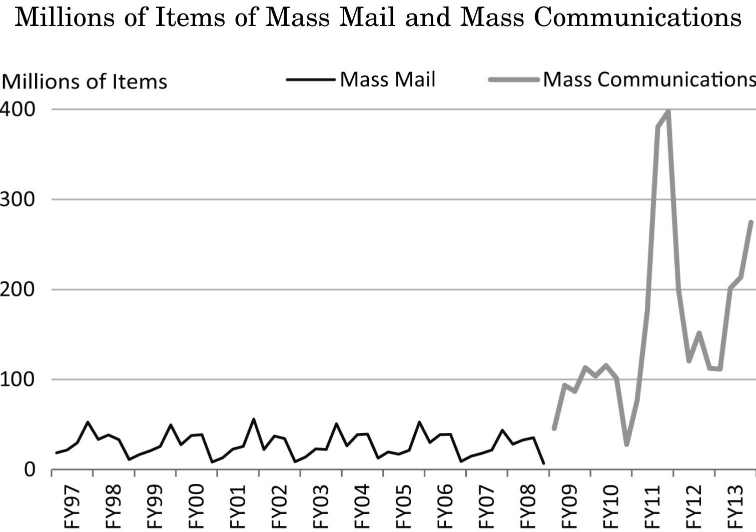
[17] Data provided by the Office of the Chief Administrative Officer, House of Representatives, for all external emails sent to House users. These data do not include internal emails sent from one House user to another. Data for 2012 and 2013 are not yet available.

[18] Data provided by the Office of the Sergeant-At-Arms, Senate, for all external emails sent to Senate users. These data do not include internal emails sent from one Senate user to another. Data for 2012 and 2013 are not yet available.

[19] Data provided by the Office of the Chief Administrative Officer of the House of Representatives and the Office of the Secretary of the Senate. See also Kathy Goldschmidt and Leslie Ochreiter, *Communicating with Congress: How the Internet Has Changed Citizen Identification*, Congressional Management Foundation (Washington, DC), at http://nposoapbox.s3.amazonaws.com/cmfweb/CWC__CitizenEngagement.pdf.

FIGURE 2. HOUSE MASS MAIL (FY97–FY09) AND MASS COMMUNICATIONS (FY09–FY13)

Millions of Items of Mass Mail and Mass Communications



Source: CRS analysis of CAO data.

As shown in the graph, mass postal mail volumes follow a familiar pattern of peaking in the last quarter of the first year of each Congress (from the December newsletters) and then again in the period preceding the general election. They then drop off in the Chamberwide prohibited period (late third quarter and early fourth quarter of election years) and the lame duck fourth quarter of a Congress, as well as the first quarter of a new Congress. In the first Congress in which mass communications were tracked—the 111th Congress, 2009–2011—a similar pattern was observed, albeit at a naturally greater scale (since mass communications are inclusive of mass mailings). But then in 2011, in the first session of the 112th Congress, mass communications exploded, to roughly 10 times the volume of mass communications sent in the first quarter of 2009.

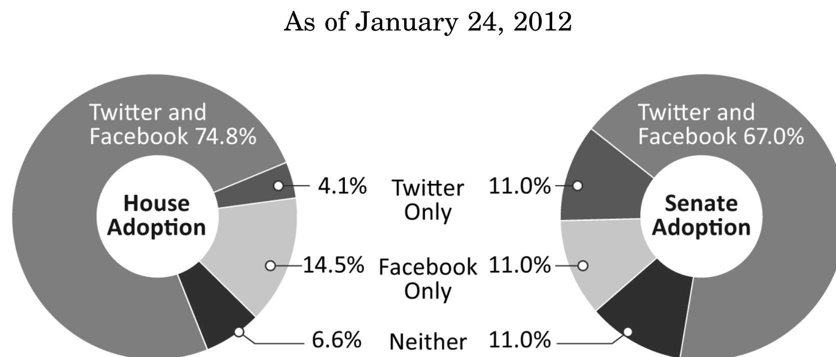
At the same time that Member use of email communications is increasing, the use of franked mail is at record lows. The total cost of franked mail coming out of Congress (adjusted for inflation) is at its lowest point since Congress began reimbursing the Post Office for congressional mail costs in FY1954. In nominal dollars, franked mail costs were down to $7.6 million in FY2013, from a high of over $113 million in FY1988.

This decline in expenditures on postal mail is largely due to reform efforts in the late 1980s, including public disclosure of mail costs for individual Members and direct charging of Members' budgets for the cost of mail they send. However, nominal mail costs have also declined over 60 percent in the past 10 years, from $19.3 million in FY2003 to $7.6 million in FY2013. Adjusted for inflation, this is over a two-thirds decrease in mail expenditures.

In addition to the rise of email, the official Web sites, blogs, YouTube channels, and Facebook pages of Members—all nonexistent 20 years ago—also receive significant traffic.[20] As of January 24, 2012, a total of 426 of 541 Members of Congress (78.7 percent) had an official congressional account registered with Twitter, and 472 Members (87.2 percent) had an official congressional account registered on Facebook. Figure 3 shows the proportion of Members in the House and Senate who had an official account with Twitter, Facebook, both, or neither, as of January 24, 2012, respectively. These numbers reflect an increase in adoption over the previous two years. As of September 2009, only 205 Members—39 Senators and 166 Representatives (a total of 38 percent)—had been registered with Twitter.[21]

FIGURE 3. TWITTER AND FACEBOOK: HOUSE AND SENATE ADOPTION PROPORTIONS

As of January 24, 2012



Source: LBJ School of Public Affairs and CRS data analysis.

The Nature of Electronic Communications

The rise of such electronic communication has altered the traditional patterns of communication between Members and constituents. Technology has reduced the marginal cost of constituent communications; unlike postal letters, Members can reach large numbers of constituents for a fixed cost, and constituents can reach Members at virtually zero cost.[22] Likewise, the relay of information from Capitol Hill to the rest of the country (and vice versa) has been reduced, timewise, to basically zero. As soon as something happens in Congress, it is known everywhere in real time. Finally, Members can reach large numbers of citizens who are not their own constituents.

[20] A survey of the YouTube Senate Hub homepage (http://www.YouTube.com/user/senatehub) finds a large range in the number of views each video has received. Some videos have only a few dozen views while others have received tens of thousands of views.

[21] For information on Member adoption of Twitter, see CRS Report R41066, *Social Networking and Constituent Communications: Member Use of Twitter During a Two-Month Period in the 111th Congress*, by Matthew E. Glassman, Jacob R. Straus, and Colleen J. Shogan.

[22] This substantially differentiates electronic mail from franked mail, which does incur a marginal cost. See CRS Report RL34188, *Congressional Official Mail Costs*, by Matthew E. Glassman.

Electronic Communications Are Inexpensive

The representational communication activities of both Members and constituents are constrained by cost. Representatives and Senators are given a fixed amount of money—known as the Members' Representational Allowance (MRA) in the House and the Senators' Official Personnel and Office Expense Account (SOPOEA) in the Senate—for the hiring of staff, travel expenses to and from their district or State, constituent communications, and other office expenses.[23] Prior to the rise of electronic communications, this budget was a significant constraint; postal mail and long distance phone calls have a stable marginal cost. Likewise, constituents were constrained by their own personal financial budget; the marginal value of a phone call or letter to Congress had to be weighed against the marginal value of any other use of the same money. In effect, both Members and constituents were constrained to communicate with each other only when the cost of communication was outweighed by the importance of the communication.

Electronic communications have virtually no direct marginal cost. Once a Member or constituent pays the startup and recurring costs of owning a computer, there is no further financial cost for each individual email communication between them. Almost all electronic communication media—be it email, social media, telephone townhalls, Web advertisements, and so forth—tend to have fixed capital or startup costs, but are then largely free on the margin. The result is that, for both Member and constituent, the only marginal cost to sending an additional communication is a time cost. Direct financial costs have been largely eliminated.

Electronic Communications Are Fast

Electronic communications are faster than traditional forms of Member-constituent communications. This is obvious, but it has several important implications for how congressional offices choose to use it and how it shapes their communications strategy. In the past, if Members wanted to send out time-sensitive communications on congressional action, the best outlet was probably a faxed press release to the media, perhaps to the local newspapers serving their district or State. There was no point in trying to send postal mail directly to constituents at that speed. Now, however, Members can update constituents on floor activity or other business instantly, using subscribed email lists or social media. Likewise, constituents can use email and social media to contact Members in real time.

This advantage changes not only how quickly information can be shared but also the types of information Members and constituents might provide each other. In the past, real time information about an upcoming amendment on the floor might not have been possible to communicate; the vote might have taken place before the Member could alert the constituents about it, or before constituents could communicate preferences to the Member. With the rise of

[23] For more information on the MRA and SOPOEA, see CRS Report RL30064, *Congressional Salaries and Allowances*, by Ida A. Brudnick.

electronic communications, constituents and Members can easily share information about such an amendment in real time.

ELECTRONIC COMMUNICATIONS INTERACT WITH A WIDER AUDIENCE

Perhaps the greatest difference between traditional constituent communications and electronic communications is the change in the constituents themselves. Traditionally, Members could only reach citizens who were actually their electoral constituents. Following a Federal court action (*Coalition to End the Permanent Government* v. *Marvin T. Runyon, et al.*, 979 F.2d 219 (D.C. Cir. 1992)), the rules of the House were amended to restrict Members from sending franked mail outside of their districts. Even if it was not cost-prohibitive, it would not be possible for a Member to reach a wider-than-district audience using postal mail.

Electronic communications, however, are not so limited. Members can build email subscriber lists—many offer such subscriptions immediately upon an individual entering their Web site—and the use of social media tools like Facebook, Twitter, and YouTube allows Members to broadcast and interact with a potential constituency far wider than their geographic district. This does, however, create some potential difficulties for Members who would prefer to only communicate with their electoral constituents; unlike a postal address, an email account or a Facebook account is not attached to a geographic location.

The Implications of Electronic Communications

The rise of electronic constituent communications has wide-ranging implications for the practice of legislative politics. It is altering how Members organize and manage their personal offices. It is impacting the ability of Members to gather support for political and policy goals. And, perhaps most important, it is transforming the very nature of representation in the United States. Each of these sets of changes will be discussed below.

CHANGING MEMBER OFFICE OPERATIONS

There are at least three important effects of the rise of electronic communications on Member office operations. First, as described above, the number of incoming emails to Congress in 2011 was more than 10 times as great as the number of pieces of postal mail in 1995. This, however, is almost certainly due to the elimination of a marginal cost for constituents to communicate their preferences to Members. There is virtually no marginal financial cost to sending an email, and email also has less time costs than sending traditional postal mail, particularly when the messages are produced and distributed by groups, and only forwarded on to Congress by individual citizens.

In effect, the intensity threshold at which a constituent will express a preference to a Member has been greatly reduced. Before electronic communications, Members could expect that any constituent willing to spend the time and money to write them had a pretty strong preference or opinion about the subject matter. Members can no longer count on the same level of intensity. In effect,

congressional offices receive more constituent opinion, but have less ability to determine the intensity of the opinion.

Second, this explosion of incoming email puts more pressure on congressional staff. Constituent or interest group service and communications is an important aspect of what goes on in Members' personal offices, but it is far from the only thing that goes on. To the degree that more staff time needs to be allocated to the collection, processing, and responding tasks associated with incoming communications, less time can be allocated to policy or other work, or staffers need to put in more hours. And while the number of staffers working in personal offices has increased modestly in the last generation (about a 6 percent increase in Members' offices since 1982), the prospects, in the near term, for a significant increase—namely the proposition of a substantial increase in Representatives' MRAs or Senators' SOPOEA—seem quite dim.

Third, the speed of electronic communication has changed expectations. The ability to reach constituents in real time has created, for some constituents, an expectation that Members will use electronic communications to rapidly respond to both inquiries and congressional action. Whereas in the past Members may have had days to consider how they would present issues or voting decisions to constituents, in many cases they are now expected to provide the same in a matter of hours. Similarly, the rise of social media—particularly Facebook and Twitter—has put pressure on Members to craft very short responses to issues that often are complicated. The pressure to craft succinct, social-media-ready communications means that Members are often left unable to explain nuances or complexities of issues to the degree that they might like.

Changing the Nature of Representation

The rise of electronic communications has radically increased the opportunities for surrogate representation. Political scientist Jane Mansbridge has defined surrogate representation as happening when Members represent constituents outside their district.[24] In the traditional formulation, this often happens around specific issues with dispersed national constituencies: for example, former Representative Dennis Kucinich representing antiwar advocates, former Representative Barney Frank representing gay rights advocates, or Representative Chris Smith representing prolife advocates.

Prior to the rise of electronic communications, few Members were engaged in such surrogate activities. They simply did not have the resource capacity. Representatives were (and still are) barred from sending franked postal mail outside of their districts. The only way to get a national audience was to get on television—which usually meant having at least the power of a committee chair, or doing something extraordinarily provocative. And it would have been unusual to suggest spending any significant portion of campaign money on outside-the-district or outside-the-State activities.

Electronic communications have rearranged this playing field. Even backbench Members can gather a national following with rel-

[24] Jane Mansbridge, "Rethinking Representation," *American Political Science Review*, vol. 97 (November 2003), pp. 515–528.

ative ease, and at virtually no cost. The zero marginal cost of the Internet, and in particular the social media applications like Twitter, YouTube, and Facebook, have opened up opportunities. Any Member can stake out an issue, make a concerted effort to become a national leader on the issue, and have some chance of success, all without expending almost any marginal resources.

For individual Members, there are clear benefits for this: national leadership on one or more issues means a higher political profile both inside and outside the House or Senate, more campaign fundraising opportunities, and greater opportunity to influence public policy. While there is little hard empirical evidence, it does seem as if Members are beginning to alter their representational strategies around these facts: connecting themselves to national movements, inserting themselves more often into national policy debates, and modifying their fundraising strategies to more optimistically look for out-of-district and out-of-State money. And the more that Members engage in surrogate representation, the less time they have to engage in traditional district and State representation. In effect, electronic communication may be having a nationalizing effect on representation.

Certain things, of course, have not changed. The most important is that only people in a district or State can vote for a Member of Congress. But there are other important things, too: district offices have to be in the district, franked mail still can only go to the district, and so forth. So the electoral connection, and most of the resources available to maintain it, are still tied squarely to a district or State. And this means that Members will always be tied, first and foremost, to a geographic district or State. The electoral constituency that the Member has—the geographic constituency in his or her district or State—still rules. But it may not be the largest constituency the Member sees anymore when he or she looks back home from Washington. The national constituency may now enter the Member's thinking—whether he or she wants it or not; whether he or she knows it or not—in a way that fundamentally rearranges the lens through which the Member sees the home district or State.

This potentially has implications. The most important thing that comes to mind is that the Member may now have greater incentives than ever to try and shape his or her district or State in a more national mold. This would be akin to Mansbridge's idea of "educating" the constituency under an anticipatory representation model.[25] But it might just be a Member choosing to frame issues in the district or State in a national way, or choosing to emphasize national over local issues when communicating to the district or State.

Finally, scholars of Congress and the Presidency have argued that the rise of mass media, particularly television, has given the President a comparative advantage over Congress.[26] While the

[25] Under an "anticipatory" theory of voting, voters (and thus candidates for office) concern themselves with how the candidates will respond to future issues or votes. Contrast this with a "retrospective" theory, in which voters reward or punish incumbent representatives for past behavior. Under an anticipatory theory, representatives have the opportunity to alter the views of the electorate by providing them information that may affect the next election.

[26] Samuel Kernell and Gary C. Jacobson, "Congress and the Presidency as News in the Nineteenth Century," *The Journal of Politics*, vol. 49, no. 4, November 1987, pp. 1016–1035. See also

Continued

President can employ the resources of the executive branch to promote his unitary message, individual Members of Congress lack the institutional resources to compete with the President, and Congress as a whole lacks a unity of message.[27] The rise of electronic communications have arguably allowed Congress, as a sum of its Members, to have a more influential voice in public political debates.

John Kingdon, *Agendas, Alternatives, and Public Policies* (Boston: Little, Brown, 1995), pp. 45–47.

[27] Kernell and Jacobson, "Congress and the Presidency," p. 1017.

Collaborative Relationships and Lawmaking in the U.S. Senate: A Perspective Drawn from Firsthand Accounts

MARK J. OLESZEK

Analyst on Congress and the Legislative Process

This report explores the nature of collaboration in the Senate using firsthand accounts drawn from 16 personal interviews the author conducted with current and former Senators and members of their senior staff. These 16 individuals provided useful perspective into the considerations Senators make when deciding whether or not to partner with a colleague, the incentives and pressures they experience when doing so, and how opportunities for collaborative relationships to develop have shifted over time in response to broader changes taking place in American politics. Most respondents consider the collaborations that Senators undertake with one another as central to Senate lawmaking, but the consensus view among them is that working collaboratively, especially across the aisle, is harder than ever in today's Senate. This comes despite the fact that, as one chief of staff put it: "In the Senate, there is no magical crank to make things happen. It's all about relationships."

Introduction

Political observers and even some Senators have characterized the contemporary U.S. Senate as broken, dysfunctional, angry, and ungovernable. "I think the problem is that we've lost the capacity to actually legislate," lamented Senator Olympia Snowe shortly before announcing her retirement from the Chamber.[1] In the view of her former colleague Evan Bayh, who also opted to retire rather than seek reelection to the 112th Congress (2011–2012):

> There are many causes for the dysfunction: strident partisanship, unyielding ideology, a corrosive system of campaign financing, gerrymandering of House districts, endless filibusters, holds on executive appointments in the Senate, dwindling social interaction between Senators of opposing parties and a caucus system that promotes party unity at the expense of bipartisan consensus.[2]

"It has gotten so bad now," observed Senate scholar Ross Baker, "that Republicans don't want to be seen publicly in the presence of Democrats or have a Democrat profess friendship for them or vice

[1] Jennifer Senior, "Mr. Woebegone Goes to Washington," *New York Times Magazine*, April 4, 2010.

[2] Evan Bayh, "Why I'm Leaving the Senate," *New York Times*, February 21, 2010, E–9.

versa."[3] "If Senators can't get along, how can they govern?," *Politico*'s David Rogers asked rhetorically.[4] Recent outbreaks of incivility, even hostility, between Senate colleagues reflect how norms of behavior that might have been common during an earlier era have shifted over time.

This report begins with a discussion of how social dynamics inside the Senate have changed in recent decades, while subsequent sections draw upon a set of 16 personal interviews the author conducted with current and former Senators and their senior-level staff aides on the topic of their own collaborative experiences. These 16 individuals provided useful perspective into the considerations Senators make when deciding whether or not to partner with a colleague, the incentives and pressures they experience when doing so, and how opportunities for collaborative relationships to develop have shifted over time in response to broader changes taking place in American politics.

THE INNER CLUB

During the 1950s, scholars described the Senate as a communal legislative environment that favored accommodation and compromise over conflict and division. Stylized views of the midcentury Senate depicted an inward-looking institution where Senators acted in accordance with an informal code of behavioral norms set forth by an "Inner Club" of mostly Southern Democrats who effectively ran the Chamber.[5] Senators who served at that time were said to exercise greater restraint in the use of their individual prerogatives in deference to their colleagues and in recognition of the Senate's need to process its workload. Senators were also expected to accommodate one another whenever possible, with an understanding that they would be repaid in kind at a later time. Junior Senators were to be "seen and not heard" until they accumulated enough policy expertise through committee work to make thoughtful contributions to policy debates. This apprenticeship period also provided them with a greater ability to specialize in the policy areas of greatest importance to the States they represented. Personal attacks were frowned upon, and Senators avoided involvement in political campaigns against their colleagues. They were "institutional patriots" first, who considered such actions beneath the dignity of the Senate and detrimental to the lawmaking process. This was an era, according to one political scientist, in which Senators displayed a "spirit of accommodation."[6]

Although the "go along, get along" style of the midcentury Senate has always been somewhat overstated, behavioral norms such as those described above can serve as an important counterweight to institutional rules and precedents that, if invoked, make it difficult

[3] David M. Herszenhorn, "In Senate Health Vote, a New Partisan Vitriol," *New York Times*, December 24, 2009, A–1.

[4] David Rogers, "The Lost Senate," *Politico*, October 9, 2009, p. 12.

[5] On midcentury Senate norms of behavior, see Donald R. Matthews, *U.S. Senators and Their World* (New York: Random House, 1960); and William S. White, *Citadel: The Story of the U.S. Senate* (New York: Harper and Brothers, 1956). For a critical assessment of these perspectives, see Eric Schickler, "The U.S. Senate in the Mid-20th Century," presented at the Robert C. Dole Conference on the Senate, University of Kansas, March 25–26, 2010.

[6] Ralph K. Huitt, "The Outsider in the Senate: An Alternative Role," *American Political Science Review*, vol. 55, no. 3 (September 1961), pp. 566–575. See footnote 5 for citations to works by Matthews and White.

for Senators to approve measures absent supermajority support to end a filibuster. As Robert Axelrod has observed, informal norms of cooperation can arise as a solution to behavior that is individually rational (such as a heavy reliance on parliamentary prerogatives for individual gain) but collectively irrational (such as legislative unresponsiveness brought about by an escalating procedural arms race).[7] Absent these folkways or other mechanisms of cohesion, Senate lawmaking becomes that much more difficult to accomplish.

EVOLUTION OF THE SENATE

Where camaraderie and accommodation might have carried the day during an earlier era, by the 1970s few remnants of the Inner Club remained. As Nelson W. Polsby observed at that time:

> We are in the midst of a profound change in the role of the Senate in the political system, from an intensely private and conservative body to a very public and progressive one; from one focused on the virtues of age and experience to one devoted to the young, the vigorous, and the ambitious.[8]

In contrast to the Inner Club era of the 1950s, since the 1970s Senators have become more inclined to employ the full range of their procedural prerogatives for personal or partisan gain. The proliferation of dilatory behavior in the modern Senate has been well documented, and scholars now characterize the institution as partisan and individualistic.[9] That the Senate at midcentury differs considerably from the contemporary body should come as no great surprise. In the interim, the United States has undergone a number of dramatic and transformative events, including a shocking Presidential assassination, a political scandal of epic proportions, the Vietnam war, a civil rights crusade, the women's movement, an explosion in interest group activity on Capitol Hill, an expansion in the size and reach of the Federal Government, a political realignment in the South from a Democratic stronghold to a largely GOP bastion, a revolution in information and communications technology, an expanded world market for U.S. goods and services, a domestic and international environment plagued by the threat of terrorism, and the near-collapse of the U.S. financial system.

Despite the changing times, as Senator Dick Durbin explained, "The reality of passing legislation on Capitol Hill deals a lot with people. If you don't understand the people and the power they have, you're not likely to succeed."[10] Three political scientists put it this way:

---

[7] Robert Axelrod, "An Evolutionary Approach to Norms," *American Political Science Review*, vol. 80, no. 4 (December 1986), pp. 1095–1111.

[8] Nelson W. Polsby, "Goodbye to the Inner Club," in Polsby, ed., *Congressional Behavior* (New York: Random House, 1971), p. 105.

[9] Scholars have devoted considerable attention to the upsurge in dilatory behavior in the contemporary Senate. See especially Barbara Sinclair, *The Transformation of the U.S. Senate* (Baltimore: Johns Hopkins University Press, 1989); Sarah Binder and Steven S. Smith, *Politics or Principle: Filibustering in the Senate* (Washington, DC: Brookings Institution, 1997); Eric Schickler and Gregory J. Wawro, *Filibuster: Obstruction and Lawmaking in the U.S. Senate* (Princeton, NJ: Princeton University Press, 2006); Barbara Sinclair, *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress*, 4th ed. (Washington, DC: CQ Press, 2011); and Steven S. Smith, *The Senate Syndrome: The Evolution of Procedural Warfare in the Modern U.S. Senate* (Norman, OK: University of Oklahoma Press, 2014).

[10] Ian Gaff and Mary Lynn Jones, "Lessons About Congress Not Taught in School," *The Hill*, August 7, 2002, p. 13.

The legislature is a highly interactive collectivity. Its institutional life gravitates around two poles: one the nexus of the representative and the represented and the other the networks of affect and respect among legislators themselves.[11]

The first nexus of legislative life—between lawmakers and constituents—was covered masterfully by Richard Fenno in a series of important works on the "home styles" of Representatives and Senators, including book-length studies of Senators Arlen Specter, Dan Quayle, John Glenn, and Pete Dominici.[12]

This report examines the second nexus of institutional life in the Senate, or what might be called the "collaborative dimension" of Senate lawmaking—the ways in which Senators have interacted with one another over time, and the importance of those interactions to the Senate's lawmaking process. In a Chamber that favors individual expression over leadership direction, attention must be paid to the interactions that occur among Senators themselves.[13]

There are good reasons to expect collaborative relationships to play an especially important role in the Senate as compared to the House. The Senate is smaller in size, usually more collegial in tone, and has parliamentary rules that encourage Senators to work together. With 6-year terms in office, Senators have more time and a greater opportunity to interact with colleagues in meaningful ways. Senators also enjoy significant influence in national policymaking regardless of their status in the majority, and even a single Senator can slow legislative action considerably using a wide range of dilatory motions and tactics.[14] As Senator Lindsay Graham put it, "In the Senate, you cannot be dealt out of the card game . . . The rules of the Senate allow people who are concerned and passionate to have their say."[15]

Collaborative relationships seem to serve as a basic ingredient of Senate lawmaking, but anecdotal evidence suggests a decline over time in the ability and willingness of Senators to work together. "Lost are the car pools, weekend parties and potluck dinners that brought Senators together," wrote *Politico*'s David Rogers, a longtime observer of the institution.[16] A consequence of this development was explained by former Majority Leader Tom Daschle: "Because we can't bond, we can't trust. Because we can't trust, we can't cooperate. Because we can't cooperate, we become dysfunctional."[17]

For all its challenges, Senate lawmaking continues to demand—barring any sudden rules changes—a high level of collaboration

---

[11] Gregory A. Caldeira, John Clark, and Samuel C. Patterson, "Political Respect in the Legislature," *Legislative Studies Quarterly*, vol. 18, no. 1 (February 1993), p. 3.

[12] See Richard Fenno, *Learning to Legislate: The Senate Education of Arlen Specter* (Washington, DC: CQ Press, 1991); Richard Fenno, *The Making of a Senator: Dan Quayle* (Washington, DC: CQ Press, 1989); Richard Fenno, *The Presidential Odyssey of John Glenn* (Washington, DC: CQ Press, 1990); and Richard Fenno, *The Emergence of a Senate Leader: Pete Domenici and the Reagan Budget* (Washington, DC: CQ Press, 1991).

[13] Reflecting this reality of senatorial life, Mike Mansfield often referred to himself as "first among equals" during his tenure as majority leader. Trent Lott compared his experience in that position to "herding cats," while Howard Baker described Senate leadership as "pushing a wet noodle."

[14] For more on the procedural prerogatives of individual Senators, see CRS Report RL30360, *Filibusters and Cloture in the Senate*, by Richard S. Beth and Valerie Heitshusen; CRS Report RL30850, *Minority Rights and Senate Procedures*, by Judy Schneider; and CRS Report R43563, *"Holds" in the Senate*, by Mark J. Oleszek.

[15] Emily Pierce, "Lindsey Graham: Pushing the Envelope," *Roll Call*, July 8, 2004, p. 18.

[16] David Rogers, "The Lost Senate," *Politico*, October 9, 2009, p. 13.

[17] Ibid.

among its membership for legislation of any substance to pass the Chamber. Accordingly, the interactions that occur and the relationships that develop between and among Senate colleagues can play an important role in shaping opportunities for collaboration and collective action to occur. After all, lawmaking is an inherently social activity, so the ability and willingness that Senators have to work together can inform our understanding of the Senate's unique legislative process. According to former Senator Joseph Biden:

> A personal relationship is what allows you to go after someone hammer and tongs on one issue and still find common ground on the next. It is the grease that lubricates this incredible system we have. It is what allows you to see the world from another person's perspective and allows them to take the time to see it from yours. [The Senate] has left me with the conviction that personal relationship is the one thing that unlocks the true potential of this place. Every good thing that I have seen happen here, every bold step taken in 36-plus years I have been here, came not from the application of pressure by interest groups but through the maturation of personal relationships.[18]

RESEARCH STRATEGY

This report seeks to assess the collaborative dimension of Senate lawmaking and how the opportunities that Senators have to work together have changed over time. To do so, the author has drawn upon a set of 16 personal interviews conducted in July and August 2009 with 9 current and former Senators and 7 current and former senior staff aides. Indepth interviews with those who possess a keen longitudinal perspective of the institution—and an understanding of the challenges Senators confront in the conduct of their official duties—allow for a useful discussion of the topic of collaboration. Each interview began with the following question designed to elicit the most desirable attributes Senators look for in a colleague:

> *Question 1: What attributes do you look for when deciding to partner with another Senator?*

Identifying these attributes can help explain differences in Senators' collaborative tendencies. Previous research in political science has suggested that factors such as trust, respect, and a reputation for dependability underlie patterns of political influence in the Chamber, and Senators tend to agree.[19] As Senator Robert Dole told *Politico*'s Rogers:

> I think success depends on developing relationships, keeping your word. If I gave my word to Ted Kennedy that tomorrow you can offer your amendment, and somebody rushes up to me, like Bill Frist, and says, "I've got that amendment—I want to offer that amendment"—if you go tell Kennedy, "I'm sorry, I made a mistake," you're finished. Not quite, but you're on the edge. Why should he trust you the next time? I think that's the key.[20]

Broader developments in American politics also are likely to shape the opportunities and incentives Senators have to work together. With growing ideological polarization in the Senate and less policy overlap between the two major parties, Senators might be expected to experience greater difficulties in building collaborative

---

[18] *Congressional Record*, daily edition, vol. 155 (January 15, 2009), p. S405.
[19] For more on how trust and respect underlie patterns of political influence in a legislature, see Harold D. Lasswell and Abraham Kaplan, *Power and Society* (New York: Free Press, 1950).
[20] David Rogers, "Dole: Success Depends on Keeping Your Word," *Politico*, October 9, 2009, p. 7.

relationships with their colleagues, especially with those from across the aisle. Questions 2 and 3 asked respondents to assess the ways in which the Senate has evolved in recent years and what consequences, if any, recent developments have had on prospects for meaningful collaboration to occur between and among Senators. Those questions read as follows:

> *Question 2: How would you characterize legislative life in the Senate today compared to when you arrived?*
>
> *Question 3: What changes, if any, have affected the ability of Senators to work together?*

It should be noted that the 16 Senators and senior staff aides who agreed to the interview request do not constitute a representative sample of viewpoints on this subject. Of the nine Senators interviewed, three served in the 113th Congress (2013–2014), including a Southern Republican, a mid-Atlantic Democrat, and a Midwestern Democrat. Also interviewed were three senior staff aides—two legislative directors and one chief of staff—who are or were employed by a Northeastern Republican, an Independent, and the Democratic leadership. To explore collaboration from both a longitudinal and cross-sectional perspective, former Senators and senior staff who remained active in political life were also contacted. Trolling the highest echelons of prominent lobbying firms and trade associations netted seven additional participants in close proximity to Capitol Hill. Three were former Senators, including a former majority leader. Two were top Democratic floor aides, one of whom served as party secretary. Another two respondents were longtime GOP chiefs of staff.

Three former Senators no longer active in public life also agreed to be interviewed. One traveled from Maryland for a meeting on Capitol Hill, while another welcomed the author into his home. Mobility issues constrained the third Senator from meeting in person so the interview was conducted over the telephone. These Senators were found in the telephone directory encompassing residents of Maryland, Virginia, and Washington, DC. In all, the sample contained nine current and former Senators, one current chief of staff, two former chiefs of staff, two legislative directors, and two former floor aides to the Democratic leadership. Of these 16 respondents, 4 were Republicans, 11 were Democrats, and 1 was an Independent. Interviews ranged from 30 minutes to 2 hours in length, with the average interview lasting 67 minutes. These were semistructured and confidential interviews conducted on the basis of the three questions listed above.

While not representative in the statistical sense, these 16 interviewees provided useful perspective into the incentives and pressures Senators experience when collaborating with colleagues, how prospects for collaboration might have shifted over time, and why that might be the case. Overall, this was a relatively veteran group with decades of Senate experience. Of the 16 respondents, 12 served in the Senate in excess of 10 years. Participating Senators served for an average of 16 years in the Chamber—two spent in excess of 30 years apiece in public life—while the average staff aide had 17 years of Senate experience. One respondent was elected to the Senate in the 1960s, seven began their Senate careers in the

1970s, three started in the 1980s, two in the 1990s, and three in the 2000s. The next section considers responses to question 1 on the attributes Senators desire in a colleague, and subsequent sections address questions 2 and 3 on the nature of senatorial life and how collaborative opportunities may have shifted over time.

What Underlies a Collaborative Relationship?

Of the many personal attributes that might encourage a working relationship to develop between Senators, trustworthiness, respect for opposing viewpoints, and a reputation for dependability were cited most frequently by respondents. "Trust and respect are vital to a sound working relationship," a former Senator explained. "Collaboration is conditional on trust and respect," said another. "You have to know each other." "Trust underpins collaboration in the Senate," reiterated a third respondent. A former chief of staff shared this view:

> Trust and respect are absolutely vital to the Senate. Guys like Ted Kennedy, Howard Baker, Thad Cochran, Mark Hatfield, and Orrin Hatch are sought out because they're honest, they're dependable.

One respondent illustrated the importance of trust in Senate lawmaking by recalling an exchange between Senate leaders Howard Baker and Robert Byrd that occurred in 1981 after Republicans gained control of the Chamber. "You know Senate rules better than I do," said Baker to Byrd, "so I'll make you a deal. I won't surprise you if you don't surprise me." With his encyclopedic knowledge of Senate rules, Byrd might have been predisposed to decline the deal, knowing that he might be able to outmaneuver the relatively inexperienced Baker during procedural negotiations between the two leaders. "Let me think about it," Senator Byrd replied.

Byrd caught up with Baker 2 hours later. "You've got a deal," he said. According to this respondent, "by honoring the agreement, Baker and Byrd established a great deal of trust and respect for one another." Subsequent interviews confirm a sound working relationship between the two former Senate leaders. One of Byrd's top floor aides described his boss' relationship with Baker as "very close." Of all the collaborations that occur in the Senate at any given time—between committee chairmen and ranking members; between Senators who share a policy interest; between Senators of the same party, the same State, or neighboring States; or between Senators of different parties—the most consequential might be the relationship that exists between the two Senate leaders. The vital role Senate leaders play in managing the agenda, protecting the interests of their conferences, and negotiating with their leadership counterparts across the aisle—tasks that often demand constant communication between them—provides each with a strong incentive to maintain a sound working relationship with the other.[21]

Trust, respect, and dependability (or some combination thereof) were identified by virtually all respondents as essential components to meaningful collaboration. Attributes such as a Senator's

[21] One respondent illustrated the importance of a sound working relationship between party leaders by recalling a 3-week period in 2000 in which then-Minority Whip Harry Reid managed the Senate on behalf of then-Majority Whip Mitch McConnell, his cross-party colleague in the leadership. "When Majority Whip McConnell had heart problems [in 2000], Reid effectively ran the floor. Would that happen today?" the respondent asked rhetorically.

reputation for thoroughness and diligence were also reported as basic to a successful partnership. “I seek out Senators who are thorough and hardworking and who follow through on commitments, like Carl Levin and Ted Kennedy,” explained a liberal Senator. “If Carl and I came to different conclusions on an issue, I would reconsider my position.”

One Midwesterner expressed a great deal of difficulty working with moderate colleagues because “they often feel cross-pressured and sometimes have trouble following through on a commitment.” Other respondents also commented on the inability of some moderates to follow through on previous agreements. “Moderates can be the hardest to work with because they are the ones who change their tune most often,” one said. A liberal Senator even said he preferred working with conservatives because, unlike moderates, “their political ideals won't be called into question.”

The degree to which a Senator is openminded and personally compatible with others is also thought to foster collaboration. Here, especially high marks go to Majority Leader Baker. “Baker didn't dismiss anyone's opinion,” one respondent explained. “He would at least listen to all his colleagues.” “I have enormous respect [for Baker],” one of his Democratic colleagues stated, who also mentioned that “his support of the Panama Canal cost him politically but was the right thing to do for the country.” To another Senator, “the compatibility between Baker and Muskie was instrumental to passage of the Clean Air Act [of 1970].”

If personal compatibility and openmindedness promote collaboration, then their absence can produce the opposite outcome. “Some people are off the table immediately,” reported a legislative director. “I've seen [the Senator] say, ‘I can't work with so and so’ and that was it.” Another respondent revealed that “[the Senator] just went on a codel [a congressional delegation traveling overseas] with a guy who was a total [expletive], so there's no way we're cosponsoring anything of his for awhile.”

Other respondents cited an inability to compromise as a key reason to avoid working with a colleague. “You have to be willing to jettison a little piece of your ideology to find compromise,” one respondent said. “Compromise is the hallmark of the American political system,” explained a former Senator. But in his view, “a new breed of Senators made compromise more difficult.” Especially harsh criticism was directed at so-called true-believers, identified by interviewees as those whose ideological beliefs are so rigid as to prevent compromise. According to one GOP chief of staff, “True believers are among the hardest to work with.” A Democratic respondent had this to say:

> There are more true believers today that can make collaboration and compromise difficult. If you're a true believer, then you're less likely to compromise with those of a different philosophy. True believers are not amenable to compromise.

Another respondent viewed Ted Kennedy as the gold standard when it came to his ability to compromise:

> If Ted was around today, the health care debate would be different. More than anyone else, Ted ha[d] the credibility to strike a compromise with Republicans without losing the support of Democratic allies.

The attributes Senators most desire in a colleague seem to appear today as they did 30 years ago. Ross Baker interviewed 25

Senators from 1977 to 1979 in conjunction with his book-length study of the Senate and made this observation:

> When Senators were asked what qualities they prized most highly in a colleague, certain adjectives occurred more frequently than others. These qualities were dependability and reliability, trustworthiness (sometimes expressed as "integrity" or "honesty"), and intelligence. Also mentioned prominently, but somewhat less frequently, were dedication, hard work, and courage. A premium was clearly placed by these Senators on traits that could redound to their own political benefit, or at least not cause them to be cast into jeopardy. The quality of being a person of one's word, of not going back on an agreement, of not making another Senator appear foolish, of not gulling a colleague or leading him on—these were the traits most valued.[22]

Of course, Senators do not interact with one another in a vacuum, so it stands to reason that broader shifts in American politics would impact the opportunities Senators have to work collaboratively. Political and environmental changes affecting collaboration that were cited most frequently in response to questions 2 and 3 are considered in the next section.

Factors Affecting Collaboration Over Time

As the political environment around it changes, so too does the Senate. "Everybody will agree that the Senate has changed," remarked a veteran chief of staff, "but we've changed too." Or, as one Senator explained, "the Senate becomes a reflection of what goes on outside its Chambers." Senators and senior staff aides attribute contemporary change in the Senate to a variety of factors; the most frequently cited are identified in Table 1. Respondents report that prospects for collaboration tend to vary on the basis of three interrelated sets of developments in the contemporary Senate: fewer opportunities for meaningful collegial interactions to occur, greater ideological polarization, and a more assertive Senate leadership operation brought about by a rise in dilatory behavior.

It should be noted that interconnections are likely to exist among these three developments. With increasing ideological polarization, for instance, Senators are likely to have a more difficult time finding common ground across party lines, giving them fewer occasions to work together. Plus, with less interaction and more polarization, Senate leaders, especially those on the majority side, might face added pressure to find new ways of doing business to get things done. An assertive leadership operation, however, has its own consequences—Senators take seriously their right to debate and offer amendments—so efforts by the leadership to force their hands are often met with howls of protest and dilatory tactics that can further exacerbate tensions between and among Senators. While interconnections exist among these three developments, the report discusses each separately as they relate to prospects for collaboration. Graphically, the impact of these developments on collaboration can be displayed in the following way:

$$\downarrow \text{Interaction} + \uparrow \text{Polarization} + \uparrow \text{Leadership} = \downarrow \text{Collaboration}$$

---

[22] Ross K. Baker, *Friend and Foe in the U.S. Senate* (Acton, MA: Copley Publishing, 1999), p. 62.

Table 1. Factors cited as most consequential to collaboration

	Factor identified	Number of citations (out of 16)
Less collegial interaction	Fewer families in DC	10
	Fundraising demands	6
	Congressional delegations	6
	Committee participation	3
	Orientation programs	2
More ideological polarization	More House Members	9
	Fewer Governors	3
	Interest groups	3
	Primary voters	3
	Redistricting	2
More assertive leaders	More dilatory behavior	7
	Amending strategies	6
	Leadership behavior	6

Fewer Collegial Interactions

To many respondents, withering senatorial interaction characterizes life on Capitol Hill. "Today there are fewer opportunities for personal relationships," said a longtime GOP Senator. A two-term Democrat explained, "There are far fewer genuine friendships today because Senators don't see each other socially anymore." One Senator revealed, "I don't know my colleagues today like I used to," while another considered the lack of interaction alarming. In his view, "Today, there is very little socialization. The lack of close friendships is a huge factor in degrading the institution."

SENATORS AND THEIR FAMILIES

During an earlier era, Senators were said to have more time and a greater inclination to have substantive exchanges with their colleagues. One reason for this, some respondents noted, is that it was more common then for Senators to bring their families with them to Washington, DC, and live within close proximity to one another. "Back when I served we all knew each other, and we knew each other's families. Our children went to school together," recalled one Senator, while another fondly remembered how Ted Kennedy would play host to Senators and their families. "During the summer he would invite us over and we'd go to the [National] Mall to enjoy music," said this respondent. One Senator explained that these interactions are why "it's important for the families of Senators to live in Washington."

Socializing before or after hours used to happen more often in the Senate than it does now, according to respondents. "In the evenings, Senators would hang around for a few pops," recalled one respondent. An especially popular gathering spot was the office of the secretary for the majority. The hospitable Stanley Kimmitt—secretary for the majority from 1977 to 1981—welcomed all comers in the late afternoon. "These informal gatherings [at Kimmitt's office] were never announced but everyone knew about them, and all Senators were welcome," remembered a veteran leadership floor aide.

To another respondent, these gatherings illustrate how "booze can help smooth the legislative process."

Senators who preferred different company could mingle at Minority Leader Everett Dirksen's Capitol office. Dirksen "would hold an open house each afternoon around 4 p.m. to talk about upcoming legislation and share war stories," one respondent said. "Birch Bayh, Ted Kennedy, and I came often and we bonded." Other respondents said that Senator Hank Brown hosted bridge games at his home each week; Senators Mike Mansfield and George Aiken met for breakfast nearly every morning; and Senators Ted Stevens and Ed Muskie carpooled to the Capitol Building each morning the Senate was in session. One respondent made this observation:

> A few decades ago it was common practice to disagree by day and share a drink or a meal by night, as embodied in the relationship between Tip O'Neill and Ronald Reagan, or between Tip O'Neill and Bob Michel.

Today's Senate, by comparison, "is less social and less personal," which "leads to problems," stated a chief of staff. One reason for this, according to some respondents, is that Senators spend less and less time in Washington. And the less they are there, the fewer occasions they have to interact with one another. One former Senator expressed this view bluntly:

> Collaboration is more difficult today for a whole host of reasons, beginning with the fact that Senators don't live in Washington to the same degree they once did. This is a full-time job that can't be accomplished with part-time attendance.

Another Senator explained the challenge this way:

> Senators have fewer opportunities these days to get to know one another because they come in on Monday and leave on Thursday. Many Senators don't bring their families to DC, which creates added pressures to get back to their home States. As a result, Senators and their families don't socialize like they once did, which makes it harder to find legislative support, especially bipartisan support.

A former majority leader expressed considerable difficulty scheduling votes because "the amount of time that Senators spend in [Washington] DC has declined." He continued by saying that "Wednesday is the best day to hold a vote because most everyone will be in town. Thursday is the second-best day. Monday is the worst and Friday is bad too."

FUNDRAISING

Some respondents attributed the paucity of social interaction today to the exorbitant amounts of time and effort they spend fundraising. As campaign costs have skyrocketed in recent decades—most noticeably in States containing or adjoining expensive media markets—an activity that was once relegated to the final 2 years of a Senator's 6-year term now begins right from the start. "Senators start the campaign as soon as they get reelected," explained a senior aide. "This wasn't always the case." One respondent reported that "more and more the focus is on fundraising and maintaining high visibility." Another Senator shared this view:

> Nowadays, Senators spend too much time raising money. When I began my career [in the 1970s], I would raise money only during the final 2 years of my term, but that is not feasible today. The notion of a 6-year term with the first 4 years devoid of campaigning is simply not the case anymore.

Senators generally viewed fundraising as unpleasant and distracting—or worse. "Perpetual campaigning undermines bonding," said one Senator. Another reported, "It's the money and the failure to create community that makes policymaking increasingly difficult." One Senator lamented that "we never stop running." To him, "raising money and constantly campaigning is poisonous to the political process." Another respondent pointed out that "Senators spend one-third of their time on fundraising. The flow of money into campaigns ruined everything."

COMMITTEE PARTICIPATION

Other respondents lamented a decline in committee participation as a barrier to meaningful interaction. This development represents a loss in the view of one respondent, because some of the most important collaborative relationships are borne in committee. As he explained, "Kennedy and Hatch, Kennedy and Enzi, Leahy and Specter, Frist and Kennedy, Grassley and Baucus, Kerry and Lugar—these relationships developed in committee." One former Senator lamented what he considered a lack of sustained and in-depth attention to committee work today:

> When I served [in the late 1960s], Senators were limited to two major committee assignments and two minor ones. Now you're on 4 major committees and up to 12 subcommittees. Back then everybody would have at least one good committee assignment where they could study the issues and specialize. Now committees have huge staffs to compensate for the numerous assignments of each Senator. It's too much to keep up with.

Another respondent, a former chief of staff to the Appropriations Committee, shared similar views:

> In the Appropriations Committee, we took great pride in the process. We would sit in conference [with the House], 3 Senators and 70 House Members, which was long and tedious but we did it. Now staff handles all the negotiations. It's Kabuki theater. Everyone sits at the conference table for a short period of time and then everyone adjourns to let staff handle the details. The disengagement by Members is deplorable in my view.

CONGRESSIONAL DELEGATIONS

Beyond interactions that occur in committee, some of the best opportunities Senators say they have to interact with colleagues occur on congressional delegation missions abroad (or "codels"). Some respondents described meeting colleagues on these trips they were previously unfamiliar with but who later became close allies. One former Senator had this to say about the benefits these missions provide:

> I'm a huge believer in the trips because they provided opportunities to bond. And bonding is essential to compromise. Close ties develop on these trips, which are essential to the process, because when you bond you're more likely to listen to the other side.

"Codels help us bond," reiterated another respondent. As another Senator reported, "The drop in codels means that there are fewer opportunities for meeting colleagues. Now only a few key events for meeting colleagues remain—the White House Christmas party, the summer barbeque, and dinner with the Supreme Court." A similar view was shared by another respondent:

> Codels provide one of the few remaining opportunities for Senators and their families to get to know one another. We need more codels. This is one of the few opportunities [Senators] have to talk to each other.

ORIENTATION PROGRAMS

Two respondents identified orientation programs for new Members of Congress as especially important venues for developing relationships and learning how to perform in a new position.[23] One Senator viewed his orientation experience this way:

> When I was elected to the House in 1982, I was invited to Harvard for an issues conference for new Members. Boxer, Reid, Richardson, Spratt, Durbin, McCain, Ridge, Casey, DeWine—we all attended the same conference. We stayed in the same hotel. We ate our meals together. We socialized together. We attended meetings together. The entire experience allowed for a great deal of bonding.

Many of these opportunities have now become a thing of the past. As one Senator explained, "When I got to the Senate, I asked Mark Pryor about orientation. He told me there's not much of one in the Senate." The Senator viewed this as problematic because "collaboration can't happen without some familiarity of one's colleagues." He then recounted an effort to compensate for this perceived deficiency:

> It was during a breakfast with David Broder, George Voinovich, Lamar Alexander, Bob Dole, and Tom Daschle that we talked about ways to bridge the partisan divide and decided to put together a "new Senators" school. The idea was for Senators and their families to live in close proximity for a period of time to allow them to get to know each other before starting work. We wanted them to all share the same bathroom, so to speak. The first year was 2006 and we had eight Republicans and two Democrats, including a fellow from Oklahoma named Coburn and a junior Senator from Illinois. And you know what happened? Coburn and Obama hit it off and remain close friends today.

MORE IDEOLOGICAL POLARIZATION

With fewer ideological moderates in the Senate and a widening chasm between the views of each party's conference, Senators and senior staff say they have a harder time finding colleagues with whom to work than they once did, especially those from the other party. Ideological polarization, in the view of one Senator, helps explain why "cross-party collaboration has decreased noticeably" during his 30 years in office. Another Senator explained, "Ideological polarization hurts the ability of Senators to collaborate because it makes it harder to find common ground." Of course, as noted earlier, others expressed difficulty in working with moderates because those Senators were said to "change their tune most often." Respondents attributed the rise of polarization inside the Senate to several key developments, including an influx of more ideological Members into the Senate from the House, a more combative and conflict-driven media, and a greater reliance by Senators on the interest group community for political and financial resources.

---

[23] During an orientation program for new Members in 2004, the wives of newly elected Senators Barack Obama and Tom Coburn formed a bond that materialized into a working relationship between their husbands. Senators Obama and Coburn, ideological opposites by almost any measure, collaborated on a range of issues and proposals, including the Federal Funding Accountability and Transparency Act, a bill that created a searchable database of Federal spending. That bill (S. 2590) was signed into law by President George W. Bush on September 26, 2006.

HOUSE MEMBERS

To be sure, the modern Senate has long been populated by former House Members, but many respondents viewed ideological polarity as a natural consequence of more Members of the House gaining election to the Senate and ascending the ranks of the party leadership. "House Members are educated in madrassas where the singular and dominant ideology is reelection," explained a former Republican Senator. "Then they bring that over here [to the Senate]." According to another Senator, when House Members from "boutique districts" arrive to the Senate, "their mindset remains the same." Redistricting, in his view, contributes to polarization by creating "a new kind of elected official who wins [comfortably] in the House and comes to the Senate to do battle." In the view of this Senator, ideological lines became more pronounced "during the mid-1990s, [when] there was a mass exodus of moderates from the Senate and they were all replaced by those at the ideological extremes." "This new breed of Senator," in the view of one chief of staff, "made compromise more difficult." Another Senator explained that "since 1994, a number of House Members have been elected to the Senate, but the Senate requires a different mentality than the House."

What William White once called the "Senate type"—"a man for whom the Senate as an institution is a career in itself, a life in itself and an end in itself"—seems less fitting today.[24] One respondent familiar with White's work made this point directly while others expressed a similar sentiment by contrasting Senators who formerly served in the House with those who were once Governors. Former House Members were said to pursue a more ideological agenda upon entering the Senate in comparison to former Governors because, according to a chief of staff, "Governors are used to governing and working with the other party." This respondent considered it a troubling development that "there are fewer former Governors in the Senate than there used to be." "Of all my friends in the Senate who also served as Governors, not a single one of them would rather be a Senator than a Governor," one respondent explained. In the experience of this former Governor turned Senator, life in the Senate became increasingly ideological and more difficult to endure over the course of his career. "I was much happier as a Governor than as a Senator," he said, "because as Governor I could play a more pragmatic role in public affairs." This view was shared by a veteran chief of staff who said that "Governors don't like it here."

MEDIA

Several respondents also highlighted changes in how the print and electronic media cover campaigns, elections, and the political process as a consequential hindrance to collaboration. On this point, the views of one former Senator were typical:

> Politics is much meaner today. Campaigning has devolved into what can be featured in 30-second negative advertisements, so Senators are continually concerned about their actions being used against them down the line. This harms the ability of Senators to achieve common ends.

[24] White, *Citadel*, p. 84.

Around-the-clock media coverage emphasizing conflict over compromise means that "Senators are watching their step constantly" and "focus a great deal on the possibility of attack ads," according to a former Senator who considers negative campaigning destructive to collegial interaction. He continued by saying that "as soon as they are sworn in, Senators assume defensive postures and work to cover their [expletive]," because "the nature of politics today is all about attack ads," which "negatively affect governing" and cause "the loss of bipartisanship" in the Senate.

"The press is after serial panic," explained a former GOP chief of staff who considers the media biased in favor of conflict and entertainment. As he sees it, "cable news gets two hedgehogs to square off, but we need more foxes like Walter Cronkite." During Cronkite's era, news broadcasts were just that: broadly cast to a wide audience. Nowadays broadcasting seems to have been replaced by "narrowcasting," whereby media outlets tailor their informational content to smaller and more homogeneous segments of the American public. The prevalence of narrowcasting on cable news, the radio, and the Internet led a former majority leader to remark that today's media "is driving the bitterness and the degradation of civility."

INTEREST GROUPS

Even more troubling to some respondents is the relationship that exists between Senators and interest groups, especially when it comes to campaign financing.[25] Lobbyists "make a living by keeping Members of Congress happy with campaign money," explained a former chief of staff. "The constant quest for campaign dollars is detrimental to the ability of the political system to reach compromise, [because] once the lobbyists come in, positions among Senators tend to stiffen." He also made this observation:

> There are way too many spokesmen for national groups. Interest groups and their spokesmen in the Senate harden their issue positions to prevent compromise, which undermines the work of the Senate. The key to the Senate is the ability to bargain.

One Senator reported that over the course of his 30-year career, "pressures on Senators intensified tremendously during my time in office as constituent groups and political money people began to dominate." Another expressed concern at dramatic increases in campaign costs, because, in his view, the exorbitant cost of campaigning for a Senate seat encourages close relationships to develop between elected officials and well-financed interest groups. "Normal citizens can't run for office. To run, you have to be financially wealthy or obligate yourself to special interests," he lamented. "As parties decline, interest groups take over," another Senator explained.

PRIMARY VOTERS

Other respondents correlate polarization in the Senate with the ideological intensity of voters in primary elections. In comparison to general election voters, primary voters are more active politically

[25] For more information on the proliferation of interest group activity on Capitol Hill in recent decades, see Allan J. Cigler and Burdett A. Loomis, *Interest Group Politics*, 7th ed. (Washington, DC: CQ Press, 2006).

and tend to hold more polarized ideological views.[26] To win primary elections, candidates must appeal to this set of voters or risk losing their seats to more ideologically suitable challengers. As one senior Republican explained, "We've empowered the ideologues, which drove Arlen Specter to make the choice he made." Rather than face Pennsylvania's GOP primary voters in a race against a more conservative challenger, Specter, a five-term Senator, shed his Republican affiliation and competed in the Democratic primary instead. Viewed as a moderate, polls showed Specter trailing by 15 points among Republican primary voters at the time he departed the party, a clear sign of trouble ahead.

Assertive Senate Leadership

Withering social interaction, heightened ideological polarization, or some combination of the two were cited by nearly all respondents as key influences that negatively affect collaborative opportunities, especially across the aisle. A third development respondents cited, also negative, involves the rise of obstructionism and the corresponding efforts Senate leaders have taken to exert some control over the Senate's agenda. While Senate leaders do not possess the impressive variety of parliamentary powers their counterparts in the House command, they now appear more willing to use the procedural advantages they have at their disposal to overcome dilatory behavior. Some respondents report that this kind of leadership behavior can inflame hostilities within the Chamber.

Contemporary Senate leaders have colorfully compared the challenge of Senate leadership to such metaphorical tasks as "pushing a wet noodle" (Howard Baker), "herding cats" (Trent Lott), or "loading frogs into a wheelbarrow" (Tom Daschle).[27] In Bob Dole's view, "there's a lot of free spirits in the Senate. About 100 of them."[28] To be sure, building coalitions around shared goals takes a great deal of time and energy, especially in an institution that favors individual expression over leadership direction. Senators who find themselves on the receiving end of an objectionable leadership directive usually have recourse to delay or reconsider action, a conundrum for the leadership.

DILATORY BEHAVIOR

As ideological lines have sharpened between the two Senate parties in recent years, dilatory behaviors have increased dramatically. "The filibuster [and its threat] is tremendously overused," explained a 30-year veteran of the Chamber. "Now the minority insists on 60 votes before anything is actually considered, which leaves no room for adjustment. But the majority won't give [the filibuster] up because it might find itself in the minority one day." The majority leader can counter dilatory actions with his own

[26] See, for instance, Pew Research Center for the People & the Press, "Political Polarization in the American Public: How Increasing Ideological Uniformity and Partisan Antipathy Affect Politics, Compromise and Everyday Life," Washington, DC, June 12, 2014.

[27] On the role Senate leaders play and the challenges they confront in managing the Chamber, see Steven S. Smith, *Party Influence in Congress* (New York: Cambridge University Press, 2007); and Brendan J. Doherty, "Meeting the Challenges of Senate Leadership," *PS: Political Science & Politics* (April 2007), pp. 422–424.

[28] Alan Ehrenhalt, "Senate Leader's Job: Curbing Individualism," *Congressional Quarterly Weekly Report*, April 7, 1984, p. 819.

"hardball" procedural maneuvers, such as "filling the amendment tree" to forestall amending opportunities during floor consideration.

As Senators have become more willing to use the full range of parliamentary tools they each possess, a corresponding effort has been made by Senate leaders to find new ways to move legislation and other matters through the Chamber. In the view of some respondents, heightened interparty competition over agenda control creates a strain on relationships that hinders collaborative efforts from taking place, especially across party lines. The emergence of a more confrontational Senate, they say, can be blamed on what they characterize as an overuse of Senate procedure for individual or partisan gain, an "abuse of procedural strategy" in the view of one former majority leader. Continuing conflict on issues of civil rights; the election of younger, more ideological, and more assertive Senators (many of whom ascended to leadership positions); and polarization between the two parties created what one respondent called a "procedural arms race" over control of the Senate agenda. A chief of staff to a recent majority leader contrasted this procedural environment with what his boss' predecessor, Lyndon Johnson, confronted:

> Johnson wouldn't bring anything to the floor without a time agreement, and Baker moved on unless amendments were offered in a timely manner. Today's environment is different. Non-germane amendments are important weapons of the minority party. The strategy now is: "You give us votes on our [non-germane] amendments, and we'll give you a time agreement."

AMENDING STRATEGIES

The Senate's amendment procedures allow Senators to propose any number of changes to a bill, including those that are unrelated (nongermane) to the matter at hand. As Senators move further apart from one another socially and ideologically, they appear more willing to use the Senate's permissive amending rules to force votes on controversial items that they think will give them an advantage over the opposition come election time. As a top aide to the Democratic leadership explained:

> Depending on majority status, floor strategies are driven by the need to avoid tough votes or force tough votes. Now we have "message amendments," which is a relatively new concept here. Those amendments are written with a 30-second campaign advertisement in mind.

Many so-called "message amendments"—nonrelevant amendments crafted for political messaging purposes—"are more geared toward superficial issues that divide Senators for political gain rather than policy improvement," according to one veteran Senator.[29] In his view, the amending activity that occurs today is motivated more by partisan considerations than a genuine desire to improve a bill. "Amendments used to be about the substance of the bill," he explained. "They used to be serious. It's an entirely different proposition now." He also made a distinction between "substantive" or "serious" amendments—amendments motivated by a desire to improve legislation—and "superficial" amendments de-

[29] For additional insight into the strategic considerations and procedural tactics congressional leaders employ to send political messages to voters, see C. Lawrence Evans, "Committees, Leaders, and Message Politics," in *Congress Reconsidered*, 7th ed., Lawrence C. Dodd and Bruce I. Oppenheimer, eds. (Washington, DC: CQ Press, 2001).

signed "just to hit political buttons." Another respondent, a two-term Democrat, expressed dismay that "a huge amount of time is spent crafting amendments to divide Senators for purposes of election." A former chief of staff to several Republican Senators offered more animated remarks. As he put it, "What kills you is a string of votes on a reconciliation bill designed to divide Senators every which way. Most of these amendments deal with social issues or the party message and not the underlying bill."

Unless Senators can agree to limitations on amending activity ahead of time, preserving the content of legislation from nongermane amendments can be a challenge for the leadership. A former chief of staff to Majority Leader Bill Frist illustrated this point by recalling a recent effort by Senate Democrats to force action on a number of amendments opposed by the leadership. "[Senator] Lugar brought out a nothing State Department authorization bill in 2003, and we let it go for a day or two," he reported. "Nongermane amendments came out from everywhere, so much so that we had to pull the bill down." Another chief of staff recalled a similar instance. "We put the bill up for 30 days and people were bringing amendments by constantly," he said. "It was a total mess."

LEADERSHIP BEHAVIOR

Reacting to the explosive growth of nongermane amending activity in recent decades, Senate leaders have sought new ways to exercise control over the agenda. Perhaps the most controversial way they do this is to block the consideration of objectionable (often nongermane) amendments by "filling the amendment tree" on pending legislation, using the majority leader's right to first recognition on the Senate floor. Several respondents suggested that Majority Leader Byrd first developed this procedural innovation in the 1980s, and the tactic caught on because, as one Senator noted, "When one side adopts a tactic, the other side adapts."

Another respondent, a former party secretary, explained how an increasingly partisan and assertive leadership operation emerged over the course of his 30-year career. "I could count on one hand the number of times that George Mitchell filled the tree," he stated. "Even then, it was done only in consultation with the minority leader and when the Senate faced a serious time constraint."

In previous years the Senate routinely considered amendments "side by side." Under this arrangement, floor amendments proposed by the majority and minority parties would be debated at the same time, allowing for some comparison to occur between the merits of various proposals before they were put to a vote. This provided all Senators with a greater voice, a chance to advance their own policy ideas, an opportunity to gain a "clean" vote (no second-degree amendments were permitted), and, arguably, more incentive to allow the debate to move forward. In the view of a former top aide to Majority Leader Frist, the procedural innovations made by recent Senate leaders to retain some control over amending activity and debate—for example, more cloture petitions, full amendment trees, omnibus bills, and use of reconciliation—are natural reactions to dramatic increases in dilatory behavior.

In addition to the procedural innovations they have made in recent years, Senate leaders appear more dedicated to the task of

maintaining a unified caucus across a wide range of policy fronts. "Leaders place enormous pressure on Senators regarding votes and the Senate schedule," a former majority leader explained. Another Senator characterized today's Senate parties as "cheerleading camps." One respondent expressed similar disdain for leadership efforts to keep Senators "on message." "We go to the message meetings to learn about the upcoming schedule and not to learn how to regurgitate the party message that week," he said.

Collaborative Relationships in Lawmaking

Most respondents (with one exception) consider the relationships Senators have with one another as central to Senate lawmaking, but the consensus view among them is that working collaboratively, especially across the aisle, is harder than ever in today's Senate. With fewer occasions for collegial interactions, greater ideological polarization between the two parties, and a more assertive leadership operation, the incentives and opportunities Senators have to work together appear limited. "It's a bad, bad situation out there," observed one Senator when asked about prospects for collaboration. "There is so much partisanship that it is hard to compromise." One respondent indicated that "a lot boils down to friendship [in the Senate], but opportunities have diminished over the years." In the view of one chief of staff:

> The fundamental exchange of views is defunct, which produces a chilling effect on collaboration. Shouting down colleagues has replaced efforts to listen to them. The lubricants of relationships don't exist today.

Some amount of cooperation is usually required for legislation of any real substance to pass the Senate. Respondents conveyed this point using a range of examples, three of which were especially revealing. The first illustrates how personal relationships can promote cooperation among colleagues during Senate deliberations, while the second and third examples demonstrate the important role collaborative relationships can play in Senate lawmaking.

During the 1970s, on mornings the Senate was in session, Senator Ed Muskie, a liberal from Maine, and Senator Ted Stevens, a conservative from Alaska, carpooled together to the U.S. Capitol. Despite their political differences, these rides allowed them to develop a close relationship and a willingness to help one another. In the car one morning, Stevens asked Muskie to call up an amendment on his behalf to protect Alaskan fisheries, a key source of economic activity in his State, during debate on an energy and water appropriations bill. A markup session scheduled in one of Stevens' committees would prevent him from offering his amendment ahead of the final vote scheduled later that day. "Of course," agreed Muskie.

After getting sidetracked during the day, Muskie simply forgot to introduce his colleague's amendment as he had agreed to do. By the time Stevens' committee adjourned, the final vote was already underway. Upon reaching the floor and realizing that his amendment was missing from the bill and time for its consideration had expired, the fiery Stevens went to Muskie and asked, "How could you forget to do this?" Stevens then unleashed a torrent of frustration using language that attracted notice. Hearing the exchange be-

tween an aggrieved Stevens and an apologetic Muskie, Majority Leader Mike Mansfield approached the two and admonished Stevens for his choice of language. “We don’t use profanity on the Senate floor,” the majority leader told Stevens. At that point Muskie intervened to accept responsibility and explained to the majority leader that it was his fault for failing to honor a commitment he made to his colleague.

“Well, in that case,” said Mansfield as he returned to his desk to try to remedy the problem. As Senators mingled about the well of the Chamber waiting to vote, Mansfield sought recognition from the Presiding Officer and made an unusual request for any Senator to make while a vote was already underway. What happened next was unprecedented. First, the majority leader suspended the vote. Then he asked his colleagues, most of whom were present on the floor, to accept a unanimous consent request adding the Stevens amendment as currently written to the appropriations bill without debate. Hearing no objection, the Stevens amendment was adopted by voice vote and folded into the bill. The majority leader then resumed the vote, and the energy and water appropriations bill passed.

To be sure, suspending a vote midstream to add an amendment without debate and resuming the vote on a now-amended bill is in violation of Senate rules. The lesson here, however, is that Senator Mansfield considered it an offense for Senator Muskie to have failed to protect the parliamentary rights of his colleague to amend legislation, as he had agreed to do. Mansfield’s decision to allow a junior Senator of the minority party to amend an appropriations bill at the very last minute—all because Muskie forgot to carry through on a prior commitment—illustrates how relationships within the Chamber can promote a spirit of cooperation among colleagues and a more inclusive deliberative process. Worth noting is that Senators Muskie and Stevens continued to carpool together after this episode.

Another respondent, a liberal member of the Judiciary Committee during the 1960s, also depicted a more accommodating and cooperative period in the Senate by recalling an instance in which he and other liberal members of the committee drafted legislation to do away with the “blue-ribbon” jury selection process that was common in many parts of the South. In their view, the blue-ribbon process conflicted with the civil rights of the accused, often African Americans, because those juries were hand picked by prominent citizens and governing elites. Since average citizens, including many African Americans, were not allowed to serve on these juries, liberals on the committee believed that blue-ribbon panels perpetuated racial discrimination.

Two prominent Senators stood in the way of this proposal: Roman Hruska, who served as ranking minority member of a key judiciary subcommittee, and committee member Strom Thurmond—neither of whom was especially sympathetic to civil rights. As the Senator explained, “We sent something up that would have done away with the blue ribbon jury selection system, but with Hruska and Thurmond on the committee, that bill was dead as a doornail. So I sat down with Hruska and we talked about holding hearings and working together on jury reform. And we did.” In this

instance, collaboration was possible only because "we [in committee] promised to work very hard not to embarrass each other." To minimize the expected political outcry from Senate conservatives, they agreed to a deal whereby the liberal proposal would be considered on a day when Hruska and his fellow conservatives were "out of town." The Senator explained that by working together in this way:

> We hashed out a jury reform bill that came out of subcommittee unanimously. It passed the full committee unanimously. And it enjoyed overwhelming support on the Senate floor. That's the way it worked, and that's the way it should work.

Important collaborations occur outside the Senate as well. According to one respondent, the close working relationship between Senators Sam Nunn and Richard Lugar was formed when they both attended a weeklong educational seminar held in Budapest, Hungary, in 1983. The purpose of the seminar, according to a former Senator who ran this session and many others like it, was to educate lawmakers on nuclear arms issues. "I wanted to change the situation that existed at the time where political leaders did not know preeminent experts across a wide range of issues," he said, while also acknowledging that his seminars "had the effect of bringing Members from different parties together around the same table for a healthy exchange of ideas." The 1983 seminar in Budapest, for instance, allowed Sam Nunn and Richard Lugar to develop the groundwork for what later became the Nunn-Lugar Cooperative Threat Reduction Program, a program enacted in 1992 to secure and dismantle nuclear weapons located in former Soviet states. "That [Nunn-Lugar] and many other major laws were inspired by collaboration among participants in the program," he reported.

These instances of Senate lawmaking reflect a more collaborative era in the Senate, a time when Senators had close relationships with each other and were more accommodating to one another than they seem to be today. The successful outcomes achieved through each of these legislative efforts—to protect fisheries in Alaska, to ensure fairness in jury selection, and to safeguard nuclear weapons following the collapse of the Soviet Union—were facilitated in part by relationships between Senators of different parties. These personal relationships were able to develop through some frequency of interaction, whether in the car on their daily commute to the Capitol, in the committee room, or on a congressional delegation to Budapest.

As fewer occasions exist today for these kinds of interactions to occur, which most respondents cited as being the case, Senators have a more difficult time working with and trusting their colleagues. The absence of collaborative relationships built on trust—and avenues to pursue that virtue—exacerbates polarization between the two parties and dampens prospects for collaboration to occur. To achieve some measure of cooperation in the face of these challenges, one former Senator suggested that "the solution has to involve inclusion." In his view, "What we need is more bipartisanship, not less. More collaboration, not less. More friendships, not less." Or, as one chief of staff put it: "In the Senate, there is no magical crank to make things happen. It's all about relationships."

For the past several decades, the spatial model of legislative behavior has been the main conceptual frame for understanding legislative outcomes. That model emphasizes legislators as free-floating and independent ideal points in policy space. What is missing from spatial theory is the essential social nature of legislative life. As Richard Fenno, Nelson W. Polsby, John Kingdon, Charles O. Jones, and other congressional scholars of their generation demonstrated, the interactions that occur between and among lawmakers are important and can create opportunities for collective action and legislative accomplishment that might not exist in the absence of collaborative relationships.

The 113th Congress and the U.S. Population: Discussion and Analysis of Selected Characteristics

JENNIFER D. WILLIAMS

Specialist in American National Government

and

IDA A. BRUDNICK

Specialist on the Congress

and

JENNIFER E. MANNING

Information Research Specialist

Sociodemographic comparisons between Members of the 113th Congress as of January 2013 and the U.S. population show that Members had a higher median age than the larger population and were more likely to be males; to be non-Hispanic whites; and to have higher educational attainment and occupational levels (for Members, their prior occupations). Members also were more likely to report religious affiliations, particularly Protestant, and to report having served in the military. The data on age, educational attainment, and occupational levels indicate that Members have the life experiences and qualifications to be expected of those chosen for some of the most demanding national offices. A look at Members over time shows that they have become more diverse in gender, race, ethnicity, and religion. What Members' sociodemographic characteristics mean for their political behavior and policy outcomes remains a matter for further scholarly investigation.

Introduction

This report compares certain sociodemographic characteristics of Members of the 113th Congress with those of the contemporary U.S. population, after citing the principal sources and limitations of the data used for the comparisons. The basic characteristics of age, sex, race, and ethnicity are discussed, along with education, occupation, religion, and military service. The report next examines Members' sociodemographic characteristics over time—considering, for example, their increasing racial and ethnic diversity as well as

the growing number of women in Congress. Finally, it notes that students of Congress have examined, but not determined, whether Members' sociodemographic characteristics influence their political behavior and legislative effectiveness.

Methodology, Data Sources, and Data Limitations [1]

The comparisons that follow between Members and the larger U.S. population reflect the composition of Congress when it was seated on January 3, 2013. The House has 435 seats for Representatives and 6 seats for Delegates and the Resident Commissioner of Puerto Rico. Computations relating to all House Members (including Delegates and the Resident Commissioner) are thus based on 441 seats; computations concerning Representatives only are based on 435 seats. Computations concerning the Senate are based on its 100 seats. Where noted, computations for the 113th Congress may be based on the number of House seats with or without Delegates, plus the 100 Senate seats.

The ultimate source of data about Members is the Members themselves. The U.S. Census Bureau's American Community Survey (ACS) [2] is a major source of data concerning the makeup of the general population. ACS respondents provide information about themselves and those living with them. Unlike the data for Members, however, the ACS data are sample-survey estimates and are subject to sampling error. Below are some other points to note about the data; several additional points are discussed as the data are presented.

Occupational data for Members refer to their occupations before they were seated in the 113th Congress. The occupational categories used by the Census Bureau do not correspond exactly to those reported by Members, nor does the way the ACS presents data on military service exactly match what is reported for Members.

Because the Census Bureau does not collect data on religion, the religious-affiliation data for the U.S. population are from the Pew Forum on Religion and Public Life.

Age

The median [3] age of the U.S. population in 2013 was 37.6 years,[4] compared with 57.5 years for Representatives and 61.7 years for Senators at the beginning of the 113th Congress.[5]

Several factors help explain why Representatives and Senators have higher median ages than the U.S. population.

---

[1] The sociodemographic comparisons of the 113th Congress with the U.S. population were written by Jennifer D. Williams. Data about Members of the 113th Congress were provided by Jennifer E. Manning.

[2] For a discussion of the ACS and ACS data, see CRS Report R41532, *The American Community Survey: Development, Implementation, and Issues for Congress*, by Jennifer D. Williams.

[3] The median is the midpoint of a distribution, such as an age distribution. Half the values lie above the median, and half below. Stated another way, the median is "the middle item of a set of numbers when the items are ranked in order of magnitude." Kenneth J. Meier and Jeffrey L. Brudney, *Applied Statistics for Public Administration* (Pacific Grove, CA: Brooks/Cole Publishing Co., 1987), p. 23.

[4] U.S. Bureau of the Census, "As the Nation Ages, Seven States Become Younger, Census Bureau Reports," press release CB14–118, June 26, 2014, at http://www.census.gov/newsroom/releases/archives/population/cb14-118.html.

[5] CRS Report R42365, *Representatives and Senators: Trends in Member Characteristics Since 1945*, coordinated by R. Eric Petersen, p. 3.

The Census Bureau computes median age based on the ages of the entire resident population—from newborn infants to the most aged elderly. Members of Congress, in contrast, are an age-restricted group. Article I, Section 2 of the Constitution stipulates that "No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States . . . ." In accordance with Article 1, Section 3, "No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States . . . ." These limits were established at a time of high mortality and low life expectancy. Despite the fact that many in the general population did not achieve longevity, those who held high office were expected to have been U.S. citizens for substantial lengths of time and to have acquired a degree of maturity and experience reflected in the minimum ages for congressional service.[6]

Moreover, the median age of the U.S. population is affected by fertility, but the median ages of Representatives and Senators are not. Populations with higher fertility rates tend to have younger age structures. The U.S. population is aging not only because people live longer than was historically the case, but also because fertility rates are relatively low, as compared with fertility rates in many developing countries today. Representatives and Senators may have higher median ages partly because of their length of congressional service—a median of 6.0 years for Representatives, 6.0 years for Senators, and the same for Congress overall[7]—their ages when first elected to Congress, or both, in addition to contemporary life expectancy.

Immigration also affects the age structure of the U.S. population, but not of Congress, in two ways. Immigrants, who are often young, add themselves to the population, and any children they have after settling in their adopted country are added as well. Without immigration, the median age of the U.S. population likely would be higher than it is, but the median ages of Representatives and Senators would be unaffected.

SEX

Although women constituted about one-half of the U.S. population in 2013 (50.8 percent female versus 49.2 percent male),[8] they were not quite one-fifth (18.3 percent) of Representatives and Senators in January 2013. Nevertheless, the new 113th Congress had a record-high number of women. The House of Representatives was 17.9 percent female, with 78 women (not including 3 female Delegates); 20 female Senators made up 20 percent of that Chamber. The female Delegates plus Representatives yielded a total of 81

[6] See, for example, comments by the legal scholar and U.S. Supreme Court Justice Joseph Story (1779–1845) regarding the minimum ages for Representatives and Senators, in Philip B. Kurland and Ralph Lerner, eds., *The Founders' Constitution*, Article I, Section 2, clause 2, vol. 2, document 10, § 616; and Article I, Section 3, clause 3, vol. 2, document 2, § 727 (Chicago, IL and Indianapolis, IN: University of Chicago and Liberty Fund), at http://press-pubs.uchicago.edu/founders/.

[7] Calculations are as of the commencement of the 113th Congress. Median service in the House, beginning on January 3, 2007, was 6.0 years, or three terms completed; in the Senate, beginning on January 3, 2007, 6.0 years, or one term completed; and in Congress, beginning on January 3, 2007, 6.0 years.

[8] U.S. Bureau of the Census, "USA QuickFacts," at http://quickfacts.census.gov/qfd/states/00000.html.

women in the House and 101 in Congress, so that women accounted for 18.4 percent of the House and 18.7 percent of Congress.[9]

RACE AND ETHNICITY

According to the Census Bureau's latest population estimates, Hispanics or Latinos (hereafter, Hispanics) were the largest minority group in the United States in 2013, making up 17.1 percent of the total population. The bureau, following the Office of Management and Budget's designations of race and ethnicity for Federal reporting purposes, considers Hispanics to be an ethnic group whose members may be of any race. Thus, all racial groups can include certain numbers of Hispanics.

Whites were the largest racial group in 2013, constituting 77.7 percent of the U.S. population. Blacks or African Americans accounted for 13.2 percent; Asians, 5.3 percent; Native Hawaiians and other Pacific Islanders, 0.2 percent (0.23 percent); and American Indians and Alaska Natives, 1.2 percent. People classified as belonging to two or more races were 2.4 percent of the total.[10]

Removing Hispanics from each of the racial categories (as examples, non-Hispanic whites and non-Hispanic blacks or African Americans) lowers these proportions. Without Hispanics, whites were 62.6 percent of the total U.S. population in 2013; blacks or African Americans, 12.4 percent; Asians, 5.1 percent; Native Hawaiians and other Pacific Islanders, nearly 0.2 percent (0.17 percent); American Indians and Alaska Natives, 0.7 percent; and people of two or more races, 2.0 percent.[11] The sum of these percentages, added to the 17.1 percent who were Hispanic, equaled the total population.

The following data for Congress are as of January 2013 and, except where noted, present racial categories separately from Hispanic ethnicity. The data indicate that the new Congress had a higher proportion of non-Hispanic whites than the U.S. population and lower proportions of most non-Hispanic racial minorities, as well as of Hispanics. Only the small non-Hispanic Native Hawaiian and other Pacific Islander category constituted about the same proportion of Representatives plus Senators (0.19 percent) as of the U.S. population (0.17 percent).

The 113th Congress was sworn in with 452 white Members, with 357, including 1 Delegate, in the House and 95 in the Senate. They constituted 81.0 percent of the House, 95.0 percent of the Senate, and 83.5 percent of Congress. Subtracting the Delegate left 356 white Representatives. They made up 81.8 percent of the House and, with the 95 Senators, 84.3 percent of Congress.

---

[9] CRS Report RL30261, *Women in the United States Congress, 1917–2014: Biographical and Committee Assignment Information, and Listings by State and Congress*, by Jennifer E. Manning and Ida A. Brudnick, p. 1. See also CRS Report R43244, *Women in the United States Congress: Historical Overview, Tables, and Discussion*, by Jennifer E. Manning, Colleen J. Shogan, and Ida A. Brudnick.

[10] U.S. Bureau of the Census, "Facts for Features," CB14–FF.17, June 26, 2014, at http://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb14-ff17.html; and American FactFinder, "2013 Population Estimates," PEP_ALL6N, at http://factfinder2.census.gov/rest/dnldController/deliver?_ts=425572753058.

[11] U.S. Bureau of the Census, "2013 Population Estimates," PEPSR6H, at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk.

The House had 41 black or African American Members, constituting 9.3 percent of the House; the Senate included one black or African American Member, who was 1.0 percent of the Senate; and Congress had 42, constituting 7.8 percent of Congress. Two of the 41 in the House were Delegates. The remaining 39 Representatives accounted for 9.0 percent of the House; they plus the Senator were 7.5 percent of Congress.[12]

Nine Asian Members, including eight Representatives and one Senator, made up 1.8 percent of the House, 1.0 percent of the Senate, and 1.7 percent of Congress.

Three Members belonged to the Native Hawaiian and other Pacific Islander racial category. All were in the House, and all were Pacific Islanders. Two were Delegates, one of whom also was Hispanic. The three made up 0.7 percent of the House and 0.6 percent of Congress. Not including Delegates, the House was 0.2 percent (0.23 percent) Pacific Islander, and this category constituted not quite 0.2 percent (0.19 percent) of Congress.

Two Representatives and no Senators belonged to the American Indian and Alaska Native racial category. Both were enrolled members of American Indian tribes. They accounted for 0.5 percent of the House and 0.4 percent of Congress.

One Representative and no Senators reported being of two races. This Member, who was black or African American and Asian, accounted for 0.2 percent of the House and just under 0.2 percent of Congress.

As of January 2013, the House had 30 Hispanics, and the Senate had 3. The House number included one Delegate, who also was a Pacific Islander in the Native Hawaiian and other Pacific Islander racial category, and the Puerto Rican Resident Commissioner. The 30 Hispanic Members constituted 6.8 percent of the House. Hispanics made up 3.0 percent of the Senate and 6.1 percent of Congress. Minus the single Delegate and the Resident Commissioner, 28 Hispanics accounted for 6.4 percent of the House; they plus the 3 Senators made up 5.8 percent of Congress.

Educational Attainment

Educational attainment data for the U.S. population aged 25 years and older (hereafter, the U.S. adult population) from the 2012 ACS[13] provide the most recent estimates available for comparison with Members' educational levels in January 2013.[14] The data show that Members generally had greater educational attainment than the U.S. adult population and, thus, could be expected to have achieved higher occupational levels.

In 2012, bachelor's degrees were the highest level of education attained by 18.2 percent of the U.S. adult population. Another 10.9 percent had gone on to earn graduate or professional degrees, for a total of 29.1 percent with at least bachelor's degrees. In contrast,

[12] For changes after January 2013, see CRS Report R42964, *Membership of the 113th Congress: A Profile*, by Jennifer E. Manning, p. 8.

[13] U.S. Bureau of the Census, American FactFinder, "2012 American Community Survey 1-Year Estimates, Educational Attainment," table S1501, at http://factfinder2.census.gov/rest/dnldController/deliver?_ts=426614212350.

[14] The educational and occupational data for Members are from CRS Report R42964, *Membership of the 113th Congress: A Profile*, by Jennifer E. Manning; and *CQ Roll Call Member Profiles*, on the CQ.com subscription database, at http://www.cq.com/members/home.do.

almost all Members of the newly seated 113th Congress (93.0 percent of those in the House and 99.0 percent of Senators) held bachelor's degrees; about two-thirds of House Members (296, or 67.1 percent) and almost three-fourths of Senators (74, or 74.0 percent) had graduate or professional educations beyond the bachelor's level.

- Master's degrees were the highest degrees earned by 85 House Members (19.3 percent of the House) and 14 Senators (14.0 percent of the Senate).
- Twenty of those in the House (4.5 percent), but no Senators, had doctoral degrees.
- Well over one-third of House Members (169, or 38.3 percent) and more than one-half of Senators (57, or 57.0 percent) had law degrees.
- The 113th Congress included 22 House Members (5.0 percent of the House) and 3 Senators (3.0 percent of the Senate) with medical degrees.

Associate's degrees were the highest degrees earned by 8.0 percent of the U.S. adult population, compared with seven House Members (1.6 percent of the House) and no Senators. In addition, one House Member (0.2 percent of the House) was licensed as a practical nurse.

Whereas 28.0 percent of the U.S. adult population had ended their formal educations with high school diplomas, 21 House Members (4.8 percent of the House) and 1 Senator (1.0 percent of the Senate) did not have postsecondary educations.

OCCUPATION

In 2012, according to estimates for that year from the ACS,[15] 40.2 percent of full-time, year-round U.S. civilian workers at least 16 years old (hereafter, U.S. workers) were in the broad occupational category of management, business, science, and arts, which encompasses generally higher level occupations than other categories; 14.1 percent were in service occupations; 23.4 percent did sales and office work; 9.4 percent were in natural resources, construction, and maintenance occupations; and 12.9 percent were in production, transportation, and material moving occupations.

These categories can be broken down to allow somewhat more specific, though limited, comparisons between the occupations of U.S. workers and those of Members before being seated in the 113th Congress. Whereas the ACS estimates refer to occupations as of 2012 and report only one occupation per worker, a given Member might have noted more than one prior occupation or an occupation that was not the most recent one preceding his or her service in the 113th Congress.[16] The numbers and percentages of Members in different occupations, therefore, should be read with the understanding that some multiple counting has occurred and that the data pertain to various past years.

[15] U.S. Bureau of the Census, American FactFinder, "2012 American Community Survey 1-Year Estimates," table S2402, at http://factfinder2.census.gov/rest/dnldController/deliver?__ts=426784298875.

[16] CRS Report R42964, *Membership of the 113th Congress: A Profile*, by Jennifer E. Manning, p. 3.

As was consistent with their educational attainment (see "Educational Attainment" above), Members of the incoming 113th Congress tended to have had higher level past occupations than U.S. workers generally had. With relatively few exceptions, the prior occupations that Members reported—and all four of their most frequently reported occupations, identified in the bulleted list below—correspond to subcategories under the largest ACS category of management, business, science, and arts occupations. Specifically:

- 226 Members, 184 House Members (41.7 percent of the House) and 42 Senators (42.0 percent of the Senate), reported occupations in public service or politics;
- 214 Members, 187 House Members (42.4 percent of the House) and 27 Senators (27.0 percent of the Senate), noted business occupations;
- 211 Members, 156 House Members (35.4 percent of the House) and 55 Senators (55.0 percent of the Senate), reported law; and
- 92 Members, 77 House Members (17.5 percent of the House) and 15 Senators (15.0 percent of the Senate), cited education.

The closest comparisons that can be made with U.S. workers in ACS occupational subcategories of management, business, science, and arts show 1.8 percent in community and social services occupations; 5.6 percent in business and financial operations occupations; 1.4 percent in legal occupations; and 5.1 percent in education, training, and library occupations—all lower than the proportions reported for Members in similar positions.

As for Members' occupations outside the management, business, science, and arts category:

- 31 Members, 26 House Members (5.9 percent of the House) and 5 Senators (5.0 percent of the Senate), reported agricultural occupations;
- 21 Members, 17 House Members (3.9 percent of the House) and 4 Senators (4.0 percent of the Senate), reported labor or blue collar occupations;
- 21 Members, 16 House Members (3.6 percent of the House) and 5 Senators (5.0 percent of the Senate), noted homemaker or domestic occupations;
- 15 Members, 14 House Members (3.2 percent of the House) and 1 Senator (1.0 percent of the Senate), reported secretarial or clerical work;
- 9 Members, 8 House Members (1.8 percent of the House) and 1 Senator (1.0 percent of the Senate), cited military occupations; and
- 5 Members, all in the House (1.1 percent of the House), reported law enforcement work.

Insofar as the data allow comparisons between Members and U.S. workers, they suggest that U.S. workers were more likely to have been in certain roughly similar occupations outside the management, business, science, and arts category and less likely to have been in certain others. In particular, U.S. workers were less concentrated in farming, fishing, and forestry occupations than Members were in agriculture. In one occupation, law enforcement, House Members and U.S. workers were similarly represented. Of U.S. workers:

- 0.6 percent had farming, fishing, and forestry occupations;
- 21.7 percent had construction and extraction occupations; installation, maintenance, and repair occupations; or production, transportation, and material moving occupations (the closest approximation to labor or blue collar work);
- 2.5 percent were in personal care and service occupations (a possible substitute for domestic work; the ACS estimates do not include homemaking because it is not paid employment);
- 13.5 percent held office and administrative support positions; and
- 1.3 percent were law enforcement workers, including supervisors.

The table from which the above percentages were computed does not include the military. Another ACS table, however, shows that, of civilians aged 18 years and older, 8.9 percent had served on active duty in the military at some past time [17] (see the discussion of "Military Service").

RELIGION

The Pew Forum on Religion and Public Life has observed that "changes in the religious makeup of Congress during the last half-century mirror broader changes in American society. Congress, like the nation as a whole, has become much less Protestant and more religiously diverse." [18] One notable difference between Congress and the U.S. adult population, however, is that almost every Member declares a religious affiliation. In 2012, 20.0 percent of U.S. adults reported being unaffiliated; the proportion for Members of the incoming 113th Congress was 0.2 percent.[19]

Below is a breakdown of U.S. adults in 2012 and Members in January 2013 by religious denomination. It indicates that just under one-half of U.S. adults, but a slight majority of Members, were Protestant. Members also were somewhat more likely to be Catholic, Jewish, or—in the Senate—Mormon. About 1.0 percent or fewer of U.S. adults and Members were Orthodox Christian, Buddhist, Muslim, Hindu, or Unitarian Universalist.

- Protestant: 48.0 percent of U.S. adults and 56.1 percent of Congress (57.0 percent of Representatives and 52.0 percent of Senators)
- Catholic: 22.0 percent and 30.6 percent (31.4 percent of Representatives and 27.0 percent of Senators)
- Jewish: 2.0 percent and 6.2 percent (5.1 percent of Representatives and 11.0 percent of Senators)

---

[17] U.S. Bureau of the Census, American FactFinder, "2012 American Community Survey 1-Year Estimates, Veteran Status," table S2101, at http://factfinder2.census.gov/rest/dnldController/deliver?_ts=427395255958.

[18] The Pew Research Center's Forum on Religion and Public Life, "Faith on the Hill: the Religious Composition of the 113th Congress," at http://www.pewforum.org/2012/11/16/faith-on-the-hill-the-religious-composition-of-the-113th-congress/, p. 9.

[19] Ibid., pp. 2–3. Data for the 113th Congress, reflecting the 533 Representatives and Senators sworn in on January 3, 2013, were collected by *CQ Roll Call* and the Pew Forum. Survey data on U.S. adults were collected from January to August 2012 by the Pew Research Center for the People & the Press.

- Mormon: 2.0 percent and 2.8 percent (1.8 percent of Representatives and 7.0 percent of Senators)
- Orthodox Christian: 1.0 percent and 0.9 percent (1.2 percent of Representatives and no Senators)
- Buddhist: 1.0 percent and 0.6 percent (0.5 percent of Representatives and 1.0 percent of Senators)
- Muslim: 1.0 percent and 0.4 percent (0.5 percent of Representatives and no Senators)
- Hindu: <1.0 percent and 0.2 percent (0.2 percent of Representatives and no Senators)
- Unitarian Universalist: <1.0 percent and 0.2 percent (0.2 percent of Representatives and no Senators)

Baptists, the largest Protestant group, accounted for 17.0 percent of U.S. adults in 2007[20] and 13.7 percent of Members in January 2013. Disaggregation by Chamber, however, shows that 14.8 percent of Representatives, but 9.0 percent of Senators, were Baptist; Senators, as indicated below, were more likely to be Presbyterian.

Other Protestant affiliations reported by more than 1.0 percent of U.S. adults and Members were:

- Methodist: 6.0 percent of U.S. adults and 8.6 percent of Members (8.8 percent of Representatives and 8.0 percent of Senators);
- Presbyterian: 3.0 percent and 8.1 percent (6.5 percent of Representatives and 15.0 percent of Senators);
- Anglican/Episcopal: 2.0 percent and 7.3 percent (8.1 percent of Representatives and 4.0 percent of Senators); and
- Lutheran: 5.0 percent and 4.3 percent (4.2 percent of Representatives and 5.0 percent of Senators).

Pentecostal Protestants accounted for 4.0 percent of U.S. adults—more than Presbyterians or Anglicans/Episcopalians—but only 0.2 percent of Members (0.2 percent of Representatives and no Senators).

MILITARY SERVICE

According to a previously cited 2012 ACS estimate, 8.9 percent of U.S. civilians aged 18 years and older were veterans; that is, they had served on active duty in the military but were no longer in this status when they filled out the survey.[21] The ACS definition of "veterans," besides excluding current active-duty service members, also excludes those who served in the National Guard or Reserves but were never on active duty. The ACS estimate of veterans, in other words, is not an estimate of all those in the U.S. population who have ever served in the military.

Veterans' periods of service included:

- World War II, for 7.5 percent of veterans;
- the Korean war era, 10.9 percent;

[20] The most recent available data on U.S. adults by groups within the Protestant denomination are from the Pew Forum's "U.S. Religious Landscape Survey," conducted in 2007. The survey report was published in 2008, at http://religions.pewforum.org/pdf/report-religious-landscape-study-full.pdf.

[21] U.S. Bureau of the Census, American FactFinder, "2012 American Community Survey 1-Year Estimates, Veteran Status," table S2101, at http://factfinder2.census.gov/rest/dnldController/deliver?__ts=427395255958.

- the Vietnam war era, 34.9 percent;
- the Gulf war period, August 1990 to August 2001, 17.1 percent; and
- the Gulf war period, September 2001 or later, 12.9 percent.

The Census Bureau pointed out that these categories "are not necessarily mutually exclusive. Veterans may have served in more than one period."[22]

When the 113th Congress was seated, 108 (20.0 percent) of its Members had been in the military.[23] Although this proportion is more than double the ACS-estimated percentage of veterans in the U.S. adult civilian population in 2012, the ACS estimate, as explained above, does not cover all those in that year who had past or ongoing military experience.

The House included 90 Members who had been, or still were, in the military (20.4 percent of the House), and the Senate had 18 (18.0 percent of the Senate). Some of them, like some veterans estimated by the ACS, served during more than one period.

The periods for House Members' military service spanned:

- World War II, for 2 Members (2.2 percent of House service members);
- the Korean war era, 2 (5.6 percent);
- the Vietnam war era, 41 (45.6 percent);
- the first Gulf war, 1990 to 1991, 22 (24.4 percent); and
- the second Gulf war, beginning after September 11, 2001, 29 (32.2 percent).

Senators' periods of military service included:

- World War II, for 1 Senator[24] (5.6 percent of Senate service members);
- the Korean war era, none;
- the Vietnam war era, 11 (61.1 percent);
- the first Gulf war, 1990–1991, 4 (22.2 percent); and
- the second Gulf war, beginning after September 11, 2001, 3 (16.7 percent).

Members' Sociodemographic Characteristics over Time[25]

In the following section, CRS Report R42365, *Representatives and Senators: Trends in Member Characteristics Since 1945*,[26] is the primary source for analysis. That report reflected the composition of the 113th Congress when it was seated on January 3, 2013. Four hundred thirty-three Representatives and 100 Senators were sworn in that day, and these numbers were used to calculate the sociodemographic characteristics appearing in *Representatives and Senators*.

The preceding section illustrates some differences between Members of Congress and the U.S. population overall. A look at earlier

[22] Ibid.

[23] The military service data for Members are from CRS Report R42964, *Membership of the 113th Congress: A Profile*, by Jennifer E. Manning; *CQ Roll Call*, "113th Congress: House Military Veterans," at http://www.cq.com/members/factfilereport.do?report=mff-house-veterans; and *CQ Roll Call*, "113th Congress: Senate Military Veterans," at http://www.cq.com/members/factfilereport.do?report=mff-senate-veterans.

[24] The Senator died on June 3, 2013.

[25] This section and the following two sections were written by Ida A. Brudnick.

[26] CRS Report R42365, *Representatives and Senators: Trends in Member Characteristics Since 1945*, coordinated by R. Eric Petersen.

Congresses demonstrates that this is not a new phenomenon. Furthermore, Congress has become more diverse over time across many demographic characteristics, especially in recent decades.

Until 1917, for example, no women served in Congress (and, of course, none could vote in Federal elections until 1920). The percentage of women in the House doubled from approximately 5 percent as late as the 99th Congress (1985–1987) to more than 10 percent in the 103d Congress (1993–1995) before reaching nearly 15 percent at the beginning of the 109th Congress (2005–2007) and 17.9 percent at the beginning of the 113th Congress.

Women did not hold 2 percent of the seats in the Senate until the 87th Congress, and they did not surpass this number until the beginning of the 103d Congress, when their percentage tripled to 6 percent. The number of female Senators has remained steady or grown ever since, and Senate membership in the 113th Congress is 20 percent female. The 113th Congress has the highest number of female Representatives and Senators ever to serve.[27]

Similarly, although the racial and ethnic makeup of Congress remains less diverse than that of the general public, recent Congresses have shown some changes. The House of Representatives was more than 95 percent white until the 93d Congress and more than 90 percent white until the 103d Congress. Whites make up 82.2 percent of the House in the 113th Congress,[28] a record low.

The second-largest group in the 113th Congress is African Americans. No African American served until the 41st Congress, and no African Americans served from the 57th through the 71st Congresses. After accounting for just under 0.5 percent of the House at the beginning of the 79th Congress, African American Members increased to a high of 9.7 percent at the outset of the 112th Congress, and then decreased slightly to 9.0 percent at the outset of the 113th Congress. No more than 1 percent of Senators at the beginning of any Congress identified as African American. Many of the African American individuals who have served in Congress have done so in the modern era; according to the Clerk of the House and the House Historian's offices, "Forty-four of the 140 African Americans who have served in Congress [31 percent] are current Members." [29]

The percentage of Representatives who have identified as Hispanic has grown from 0.2 percent at the beginning of the 79th Congress to a record high of 6.7 percent in the 113th Congress.[30] In the same period, the percentage of Senators identifying as Hispanic has ranged from a low of 0 percent (95th–108th Congresses) to a high of 3 percent at the outset of the 110th, 111th, and 113th Congresses. As with African Americans, many of the Hispanic Members have served more recently. According to one history, "Fifty-four of the 91 Hispanic Americans who served in Congress through

[27] In addition to CRS Report R42365, *Representatives and Senators: Trends in Member Characteristics Since 1945*, coordinated by R. Eric Petersen, see CRS Report R43244, *Women in the United States Congress: Historical Overview, Tables, and Discussion*, by Jennifer E. Manning, Colleen J. Shogan, and Ida A. Brudnick.

[28] This computation is based on a total of 433 Representatives sworn in on January 3, 2013.

[29] U.S. House of Representatives, "History, Art, & Archives," at http://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Data/Historical-Data—Nav.

[30] Includes a Senator of Portuguese heritage. As above, this computation is based on a total of 433 Representatives sworn in on January 3, 2013.

2012—nearly 60 percent—were seated after 1977."[31] This study also found more recent geographic diversity among this group, stating "in the 1970s, for the first time, Hispanic Members were elected from states outside the Southwest, including New York, New Jersey, and Illinois."[32]

Some historical differences described in this report are more persistent. For example, studies have found that Congress has always had many lawyers. One study found that of the 65 Representatives in the First Congress, 24 were lawyers.[33] Another found that:

> (d)uring the first decade of the 19th century, lawyers accounted for slightly more than 40% of the individuals entering House service. During the 1840s and 1850s, the comparable group exceeded 65 percent. The proportion of lawyers entering Congress decreased very gradually thereafter, with a noticeable dip occurring by the 1930s. By the 1950s the percentage of lawyers among those entering the House was only some 7 percentage points greater than the average found in the first three decades of the nation's history.[34]

At the beginning of the 113th Congress, 38.3 percent of the House and 57 percent of Senators had law degrees.[35]

Educational attainment has increased for the Nation over time, and the degrees attained by Members have also increased and continue to exceed those of the overall population. This difference is particularly prevalent in the number of Members holding graduate degrees.

Members' Sociodemographic Characteristics: Challenges in Compilation and Choosing the Right Comparison

As this report demonstrates, the sociodemographic characteristics of Members of Congress vary from those of the U.S. population in many ways. The scope of these differences, however, is difficult to measure due to methodological challenges, and the significance is difficult to assess for more theoretical reasons. Students of Congress have examined these differences, including whether they are a new or persistent phenomenon and what they mean for the representativeness of government.

As discussed in CRS Report R42365, *Representatives and Senators: Trends in Member Characteristics Since 1945*, numerous methodological challenges complicate any analysis of Members' sociodemographic characteristics. The disclosure, for example, of details of a Member's race, education, previous occupation, religion, or other characteristics has been voluntary, and no official, authoritative source has collected Member characteristics data in a consistent manner over time. Direct comparisons between Members and the population at large may also be difficult to make due to a lack of comparable data from the U.S. Census Bureau, as evident from the careful explanations given to comparisons in the pre-

---

[31] U.S. Congress, House Committee on House Administration, *Hispanic Americans in Congress*, prepared by the Office of the Historian and the Office of the Clerk, 113th Cong., 2d sess. (Washington, DC: GPO, 2014), p. 7

[32] Ibid.

[33] George B. Galloway, "Precedents Established in the First Congress," *The Western Political Quarterly*, vol. 11, no. 3 (September 1958), pp. 454–468.

[34] Allan G. Bogue, Jerome M. Clubb, Carroll R. McKibbin, and Santa A. Traugott, "Members of the House of Representatives and the Process of Modernization," *Journal of American History*, vol. 53 (September 1976), p. 285. See also Donald R. Matthews, "Legislative Recruitment and Legislative Careers," *Legislative Studies Quarterly*, vol. 9, no. 4 (November 1984), pp. 547–585.

[35] Members with law degrees may not have listed the practice of law as an occupation, which was analyzed above (see "Occupation").

ceding sections. For example, although a Member may be able to list multiple responses for a particular characteristic—like occupation—in an official biography, the Census Bureau may report only one for respondents to the agency's questionnaires.

Furthermore, Members are often compared with the entire population, but they are elected by a smaller group of voters. Because some researchers suggest that policy outcomes represent the preferences of the median voter, some argue that comparisons between the median Member of Congress and the median voter may be more useful than comparisons with the population overall.[36] Additionally, differences between Members and the general population may occur for logical or unavoidable reasons—for example, Members must reach the required age set forth in the Constitution, but the population at large contains Americans of all ages. Comparisons limited to voters, however, also present methodological challenges.

Assessing the Significance of Differences in Sociodemographic Characteristics Between Congress and the U.S. Population

Scholars of Congress have long taken an interest in the backgrounds of Members of Congress. Much of their research has attempted to measure the impact of gender, race, religion, and veteran status. Many of these studies contrast descriptive representation (i.e., numerical representation) and substantive representation (i.e., representation of interests)[37] and seek to determine whether descriptive representation increases or, by concentrating support, decreases substantive representation.[38] Students of Congress have also sought to determine any link between sociodemographic characteristics and political behavior and policy outcomes. For example, they have examined whether these characteristics influence:

- official actions like rollcall voting, the sponsorship of amendments, committee participation, bill introduction and cosponsorship, and speeches;[39]

---

[36] See, for example, Anthony Downs, "An Economic Theory of Political Action in a Democracy," *Journal of Political Economy*, vol. 65 (1957), pp. 135–150; and Keith Krehbiel, "Legislative Organization," *Journal of Economic Perspectives*, vol. 18 (2004), pp. 113–128.

[37] See, for example, Hanna Pitkin, *The Concept of Representation* (Berkeley, CA: University of California Press, 1967).

[38] See, for example, David Lublin, *The Paradox of Representation: Racial Gerrymandering and Minority Interests in Congress* (Princeton, NJ: Princeton University Press, 1997).

[39] See, for example, for women: Kathryn Pearson and Logan Dancey, "Elevating Women's Voices in Congress: Speech Participation in the House of Representatives," *Political Research Quarterly*, vol. 64 (December 2011), pp. 910–923; and Kathryn Pearson and Logan Dancey, "Speaking for the Underrepresented in the House of Representatives: Voicing Women's Interests in a Partisan Era," *Politics & Gender*, vol. 7 (December 2011), pp. 493–519.

See, for example, for African Americans: Charles Tien and Dena Levy, "The Influence of African Americans on Congress: A Content Analysis of the Civil Rights Debates," *Du Bois Review*, vol. 5, no. 1 (2008), pp. 115–135; and Katrina L. Gamble, "Black Political Representation: An Examination of Legislative Activity within U.S. House Committees," *Legislative Studies Quarterly*, vol. 32, no. 3 (August 2007), pp. 421–447.

See, for example, for social status and wealth: Nicholas Carnes, "Does the Numerical Underrepresentation of the Working Class in Congress Matter?" *Legislative Studies Quarterly*, vol. 37, issue 1 (February 2012), pp. 5–34.

- support for specific policies, such as whether veteran status influences views about when and how to use military force, or whether sociodemographic characteristics influence international as well as domestic policy;[40]
- effectiveness in achieving Members' legislative agenda, including the distribution of Federal funding or the passage of bills;[41]
- Members' understanding of their constituencies and whom they represent, and whether they represent only their geographic constituents or also see themselves as representatives of their demographic group;[42]
- relationships among Members, including how they build support for policy positions, relate to colleagues, build coalitions, and decide whether to join congressional caucuses;[43]
- attitudes of constituents regarding representation, constituency service expectations, approval of representative institutions, and turnout;[44]
- recruitment, including who runs for office and barriers to entry;[45] and
- career patterns, including tenure and decisions to run for reelection or seek committee assignments[46] and leadership roles.

Additional research in many of these areas is needed to assess more fully the impact of Members' sociodemographic characteristics

---

[40] See, for example, Allan G. Bogue, Jerome M. Clubb, Carroll R. McKibbin, and Santa A. Traugott, "Members of the House of Representatives and the Process of Modernization," *Journal of American History*, vol. 53 (September 1976), p. 285; William T. Bianco, "Last Post for 'The Greatest Generation': The Policy Implications of the Decline of Military Experience in the U.S. Congress," *Legislative Studies Quarterly*, vol. 30, no. 1 (February 2005), pp. 85–102; Christopher Gelpi and Peter D. Feaver, "Speak Softly and Carry a Big Stick? Veterans in the Political Elite and the American Use of Force," *American Political Science Review*, vol. 96 (2002), pp. 779–793; and Joseph Uscinski, Michael S. Rocca, Gabriel R. Sanchez, and Marina Brenden, "Congress and Foreign Policy: Congressional Action on the Darfur Genocide," *PS: Political Science & Politics*, vol. 42, no. 3 (July 2009), pp. 489–496.

[41] See, for example, Christian R. Grose, *Congress in Black and White: Race and Representation in Washington and At Home* (Cambridge, United Kingdom, and New York: Cambridge University Press, 2011).

[42] See, for example, Richard F. Fenno, Jr., *Going Home: Black Representatives and Their Constituencies* (Chicago: University of Chicago Press, 2003); James B. Johnson and Philip E. Secret, "Focus and Style Representational Roles of Congressional Black and Hispanic Caucus Members," *Journal of Black Studies*, vol. 26, no. 3 (January 1996), pp. 245–273; and Jessica C. Gerrity, Tracy Osborn, and Jeannette Morehouse Mendez, "Women and Representation: A Different View of the District?" *Politics & Gender*, vol. 3 (June 2007), pp. 179–200.

[43] See, for example, Jason P. Casellas, "Coalitions in the House? The Election of Minorities to State Legislatures and Congress," *Political Research Quarterly*, vol. 62, no. 1 (March 2009), pp. 120–131; Tracy L. Osborn, *How Women Represent Women: Political Parties, Gender, and Representation in the State Legislatures* (New York: Oxford University Press, 2012); and James M. McCormick and Neil J. Mitchell, "Commitments, Transnational Interests, and Congress: Who Joins the Congressional Human Rights Caucus?" *Political Research Quarterly*, vol. 60, no. 4 (December 2007), pp. 579–592.

[44] See, for example, John D. Griffin and Michael Keane, "Descriptive Representation and the Composition of African American Turnout," *American Journal of Political Science*, vol. 50, no. 4 (October 2006), pp. 998–1012; and Thomas L. Brunell, Christopher J. Anderson, and Rachel K. Cremona, "Descriptive Representation, District Demography, and Attitudes toward Congress among African Americans," *Legislative Studies Quarterly*, vol. 33, no. 2 (May 2008), pp. 223–244.

[45] See, for example, Samuel Kernell, "Toward Understanding 19th Century Congressional Careers: Ambition, Competition, and Rotation," *American Journal of Political Science*, vol. 21, no. 4 (November 1977), pp. 669–693; Robert G. Brookshire and Dean F. Duncan III, "Congressional Career Patterns and Party Systems," *Legislative Studies Quarterly*, vol. 8, no. 1 (February 1983), pp. 65–78; and Donald R. Matthews, "Legislative Recruitment and Legislative Careers," *Legislative Studies Quarterly*, vol. 9, no. 4 (November 1984), pp. 547–585.

[46] See, for example, Richard F. Fenno, Jr., *Congressmen in Committees* (Boston: Little, Brown, 1973); Scott A. Frisch and Sean Q. Kelly, *Committee Assignment Politics in the U.S. House of Representatives* (Norman, OK: University of Oklahoma Press, 2006); and Kerry Haynie, "African Americans and the new politics of inclusion: A representational dilemma?" in Lawrence C. Dodd

and their relationship to the representation of interests. Members may have multiple influences or goals for any particular action.[47] Additionally, with limited Members belonging to certain groups and the need to control for other factors, such as majority and seniority status or regional or district characteristics, isolating the importance of Members' sociodemographic characteristics remains a challenge.

Conclusion

The extent to which Members of the 113th Congress can be compared with the contemporary U.S. population is somewhat restricted by data limitations. Nevertheless, certain comparisons are possible.

These comparisons indicate that Members have a higher median age than the larger population and are more likely to be males; to be non-Hispanic whites; and to have higher educational attainment and occupational levels (which, for Members, refer to their prior occupations). Current Members also are more likely to report religious affiliations, particularly Protestant, and to report having served in the military. The data on age, educational attainment, and occupational levels indicate that Members have the life experiences and qualifications to be expected of those chosen for some of the most demanding national offices.

A look at Members over time shows that they have become more diverse in race, ethnicity, and religion. The 113th Congress also includes a record-high number of women.

What Members' sociodemographic characteristics mean for their political behavior and policy outcomes remains a matter for further scholarly investigation.

---

and Bruce I. Oppenheimer, eds., *Congress Reconsidered*, 8th ed. (Washington, DC: CQ Press, 2005), pp. 395–409.

[47] Richard F. Fenno, Jr., *Congressmen in Committees* (Boston: Little, Brown, 1973).

Congressional Staffing: The Continuity of Change and Reform

Ida A. Brudnick

Specialist on the Congress

Over the last century, the professional staff support available to assist Members, collectively or individually, in navigating their roles and responsibilities has transformed to respond to the changing world. The support structure for Congress has evolved alongside broader changes within Congress and the United States. Numerous scholars have examined congressional staffing and support, attempting to assess its impact on the legislative branch and the political process. While much of the seminal literature on congressional staffing is decades old, many of the principal questions remain the same. Reform efforts have had a substantial impact on the operation of offices and agencies established to support Members, while also highlighting enduring, intractable challenges related to staffing and information needs. The exploration of these previous research and reform efforts demonstrate continuity in concerns related to the operation and internal workings of Congress. They also demonstrate that efforts to "fix" the internal workings of Congress are not new. Rather, each reform effort is a continuation of the search for the optimal resources to ensure an independent, accountable, and effective legislative branch.

Introduction

Over the past century, the professional staff support available to assist Members, collectively or individually, in navigating their roles and responsibilities has been transformed to respond to the changing world. This assistance includes personal office staff, committees, and officers and support agencies that perform legislative, administrative, financial, historical, ceremonial, and security functions. Over time, Congress has worked to determine the amount and type of assistance necessary for a well-informed and well-administered Congress, as well as rules and laws for its regulation. Congress has also regularly expressed interest in developing its own independent sources of information to help combat the informational advantage of the executive branch.

The operation of the congressional support structure is particularly significant because individual Members of Congress are polit-

ical and electoral entrepreneurs. Each Member obtains his or her seat through election in a single-Member district, rather than through a list in a proportional representation, parliamentary-style system. The American electoral system allows each Member freedom to represent constituents in the manner he or she judges best. This representation often requires constituency services, while it also encourages Members to acquire expertise on a wide variety of issues. Work on bills, committees, and speeches may be made in conjunction with the party apparatus, but each Member is also an entrepreneur in the policy, constituency, and press arenas. Members may develop their own bills, amendments, questions for witnesses at hearings, floor speeches, and media operations. Since each Member must chart his or her own congressional career, access to information and support as well as an ability to use it effectively is a significant factor in shaping a Member's impact. Since staffing and other resources are not without limit, determinations made regarding the distribution of resources may affect the distribution of influence.

This report first places changes to congressional support in context with the changing national political and economic arena. It then introduces the academic literature on the influence of congressional staff and the role of policy analysis, presenting the major areas of inquiry. Finally, it provides an overview of previous reform efforts and illustrative examples of changes to congressional support and the role of policy analysis, as well as a brief discussion of recent data.

The exploration of previous research and of reform efforts demonstrates the continuity in concerns related to the operation and internal workings of Congress. It also demonstrates that efforts to "fix" the internal workings of Congress are not new. Rather, each reform effort is a continuation of the search for the optimal resources to ensure an independent, accountable, and effective legislative branch.

Support in a Changing National Political and Economic Arena

A continuous transformation in the breadth of issues to which Congress must respond, conditions in the Nation, and the sources of information have spurred changes to Congress' internal structure. Efforts to reform the internal workings of Congress have often coincided with or followed a crisis or major national event—for example, World War II or Watergate—or were intertwined with social and policy changes—for example, the civil rights movement. Other times, major changes have been made in response to perceived deficiencies or dysfunction in Congress or in an effort to challenge the executive branch. Members, for example, may search for ways to exert influence in a policy area or make their jobs easier, or they may wish to respond to public criticism or concern. Sometimes, targeted reforms have affected or expanded one type of support—for example, for Members or committees—and sometimes changes have been the result of broader or more comprehensive efforts.

One hundred years ago, the United States was still debating its place in the world, while today it is firmly established as a superpower. Questions related to international commitments, debated in

the era surrounding World War I, have given way to wars in Iraq and Afghanistan, multiple international treaties and organizations, and trade issues. Aviation was then in its infancy, and technology supporting computers and the Internet was decades away. Transportation advances have made it possible for Members to return to their States or districts each week, rather than only at long recesses or at the end of a session. This has changed expectations related to contact with constituents and altered calculations related to relocating a Member's family. Timely news can be obtained from across the Nation and abroad, and the instant dissemination of information made possible by the 24-hour news cycle and social media has also changed how Members receive their news and communicate with their constituents.

The Nation itself is far larger than it was only 100 years ago. According to the 1910 census, the Nation had 92 million residents. The 2010 census reported a national population of over 308 million, an increase of 235 percent. Congress, however, has not grown proportionally. The House, with its 435 voting Members, has maintained the same size as it did after the 1910 census.[1] The Senate, to accommodate new States entering the Union, has grown slightly, from 92 seats in 1910 (61st Congress) to 100 seats by 1959 (86th Congress).

The economy has grown far larger and more complex since the Great Depression. Since 1929, according to the Bureau of Economic Analysis, the Nation's real GDP has grown almost 1,400 percent. Since 1940, government receipts have grown more than 2,600 percent and outlays by more than 2,200 percent in constant dollars.

Congress must also oversee a much larger executive branch than it did in the pre-World War II period. According to the Office of Personnel Management (OPM), civilian executive branch employment grew from 443,000 to 1,374,000 from 1940 until 2012, an increase of 210 percent. In comparison, House and Senate staff grew from approximately 5,600 employees in 1954 to approximately 17,000.[2] In recent years, the legislative branch has employed approximately 30,000 employees, making it approximately 2 percent the size of the civilian executive branch.

While difficulties abound in attempting to assess congressional workload, by at least one measure—the number of rollcall votes—the job has changed dramatically. The number of rollcall votes in the first session of the 113th Congress was more than double the number in the first session of the 80th Congress (1947) in both the House and Senate.[3]

The support structure for Congress has evolved alongside these broader changes within Congress and the Nation.

---

[1] The size was established by P.L. 5, 37 Stat. 13, ch. 5, August 3, 1911, and the Permanent Apportionment Act, P.L. 13, 46 Stat. 21, ch. 28, June 18, 1929. For a discussion of the incorporation of Representatives following the admission of States, and a list of apportionment by State, see http://history.house.gov/Institution/Apportionment/Apportionment/.

[2] CRS Report R40056, *Legislative Branch Staffing, 1954–2007*, by R. Eric Petersen (archived; available from author).

[3] "Résumé of Congressional Activity," *Congressional Record*, vol. 94, part 14 (December 31, 1948), pp. D537–D538; and "Résumé of Congressional Activity," *Congressional Record*, daily edition, vol. 160, February 27, 2014, p. D195.

Assessing the Impact of Congressional Staff and Support: Areas of Research

Numerous scholars have examined congressional staffing and support, attempting to assess its impact on the legislative branch and the political process. While much of the seminal literature on congressional staffing is decades old, many of the principal questions remain the same.

Some studies have scrutinized staff influence on the legislative process, including their accountability, autonomy, influence, and partisanship.[4] This research, drawing on principal-agent theory, examines whether staff drive the political agenda or merely respond to the direction of the elected officials. This literature has examined the role of staff in a representative democracy—including whether too much power or decisionmaking has been delegated to staff. It has examined the desirability of partisan versus nonpartisan staff on congressional committees, as well as the role of professional, expert staff in a partisan environment.

Other studies have examined:

- job duties in a Member office, career trajectories, and turnover rates;[5]
- the diversity of congressional staff, including questions of descriptive versus substantive representation and whether the presence of women and minorities on congressional staffs affects policy outcomes;[6]

---

[4] See, for example, Michael J. Malbin, *Unelected Representatives: Congressional Staff and the Future of Representative Government* (New York: Basic Books Inc., 1980); Barbara S. Romzek, "Accountability of Congressional Staff," *Journal of Public Administration Research and Theory: J–PART*, vol. 10, no. 2 (April 2000), pp. 413–446; George K. Yin, "Legislative Gridlock and Nonpartisan Staff," *Notre Dame Law Review*, vol. 88 (2013), p. 2287; Christine DeGregorio, "Staff Utilization in the U.S. Congress: Committee Chairs and Senior Aides," *Polity*, vol. 28, no. 2 (winter 1995), pp. 261–275; James D. Cochrane, "Partisan Aspects of Congressional Committee Staffing," *The Western Political Quarterly*, vol. 17, no. 2 (June 1964), pp. 338–348; and David E. Price, "Professionals and 'Entrepreneurs': Staff Orientations and Policy Making on Three Senate Committees," *The Journal of Politics*, vol. 33, no. 2 (May 1971), pp. 316–336.

[5] See, for example, Barbara S. Romzek and Jennifer A. Utter, "Congressional Legislative Staff: Political Professionals or Clerks?" *American Journal of Political Science*, vol. 41, no. 4 (October 1997), pp. 1251–1279; Barbara S. Romzek and Jennifer A. Utter, "Career Dynamics of Congressional Legislative Staff: Preliminary Profile and Research Questions," *Journal of Public Administration Research and Theory: J–PART*, vol. 6, no. 3 (July 1996), pp. 415–442; David L. Leal and Frederick M. Hess, "Who Chooses Experience? Examining the Use of Veteran Staff by House Freshmen," *Polity*, vol. 36, no. 4 (July 2004), pp. 651–664; John R. Johannes, "Casework as a Technique of U.S. Congressional Oversight of the Executive," *Legislative Studies Quarterly*, vol. 4, no. 3 (August 1979), pp. 325–351; Christine DeGregorio, "Professionals in the U.S. Congress: An Analysis of Working Styles," *Legislative Studies Quarterly*, vol. 13, no. 4 (November 1988), pp. 459–476; and CRS Report RL34545, *Congressional Staff: Duties and Functions of Selected Positions*, by R. Eric Petersen.

[6] See, for example, Linda Cohen Bell and Cindy Simon Rosenthal, "From Passive to Active Representation: The Case of Women Congressional Staff," *Journal of Public Administration Research and Theory: J–PART*, vol. 13, no. 1 (January 2003), pp. 65–81; Sally Friedman and Robert T. Nakamura, "The Representation of Women on U.S. Senate Committee Staffs," *Legislative Studies Quarterly*, vol. 16, no. 3 (August 1991), pp. 407–427; Christian R. Grose, Maruice Mangum, and Christopher Martin, "Race, Political Empowerment, and Constituency Service: Descriptive Representation and the Hiring of African-American Congressional Staff," *Polity*, vol. 39, no. 4 (October 2007), pp. 449–478; John Johannes, "Women as Congressional Staffers: Does It Make a Difference?" *Women & Politics*, vol. 4, no. 2 (June 1984), pp. 69–81; David Canon, *Race, Redistricting, and Representation* (Chicago: University of Chicago Press, 1999); and Congressional Hispanic Staff Association, "Unrepresented: A Blueprint for Solving the Diversity Crisis on Capitol Hill," February 2010.

- the size and cost of congressional staffing; [7]
- the internal distribution of staff, including allocation among Member, committee, and leadership offices, or between Washington, DC, and the district or State offices; [8]
- the impact of the legislative branch having its own sources of information and analysis, including who provides this information and how political actors consume it; [9] and
- broad examinations of the significance of congressional staff.[10]

The goal of a well-informed and well-administered legislature has long been appreciated, even if the means of achieving it have not been agreed upon. One congressional observer, in 1941, stated:

> That the legislative branch of government should have "modern tools" and an "up-to-date organization" so that it may "go forward efficiently" is . . . essential. Over the years the work of Congress has become increasingly technical and burdensome. The annual statute book grows in size. Sessions are longer. More and more numerous become the administrative agencies which seek funds and require scrutiny. Naturally, therefore, the staff of Congress has grown larger. To its cost, numbers, duties and potentialities little attention has as yet been paid—even by Congress.[11]

Another early study, a decade later, echoed the sentiment:

> The point had been made repeatedly by critics within and outside the Congress that its standing committees must be equipped with first-rate professional staffs if they are to make intelligent legislative decisions on the increasingly complex and technical problems presented to the legislators for solution. Reliance upon executive branch research studies or upon the detail of executive agency technicians to the committees was held by many to be fraught with the danger of injecting special pleading and biases for the increasing number of administration-sponsored bills. For Congress to function as a coequal partner with the executive in the legislative process, these critics deemed it essential that Congress empower itself to obtain its own independent staff services and that it pay adequately for them.[12]

The move to better equip Congress, however, was not without its critics. Another major study, in 1962, articulated concerns that began to be raised about the then-increasing size and role of the support network:

---

[7] See, for example, Harrison W. Fox, Jr. and Susan Webb Hammond, "The Growth of Congressional Staffs," *Proceedings of the Academy of Political Science*, vol. 32, no. 1 (1975), pp. 112–124; Gladys M. Kammerer, "The Record of Congress in Committee Staffing," *American Political Science Review*, vol. 45, no. 4 (December, 1951), pp. 1126–1136; CRS Report R41366, *House of Representatives and Senate Staff Levels in Member, Committee, Leadership, and Other Offices, 1977–2010*, by R. Eric Petersen, Parker H. Reynolds, and Amber Hope Wilhelm; and CRS Report R43557, *Legislative Branch: FY2015 Appropriations*, by R. Eric Petersen and Ida A. Brudnick.

[8] Samuel C. Patterson, "The Professional Staffs of Congressional Committees," *Administrative Science Quarterly*, vol. 15, no. 1 (March 1970), pp. 22–37; and Steven H. Schiff and Steven S. Smith, "Generational Change and the Allocation of Staff in the U.S. Congress," *Legislative Studies Quarterly*, vol. 8, no. 3 (August 1983), pp. 457–467.

[9] Charles O. Jones, "Why Congress Can't Do Policy Analysis," *Policy Studies Review Annual* (1977), p. 224; Bruce Bimber, "Information as a Factor in Congressional Politics," *Legislative Studies Quarterly*, vol. 16, no. 4 (November 1991), pp. 585–605; and David Whiteman, "The Fate of Policy Analysis in Congressional Decision Making: Three Types of Use in Committees," *The Western Political Quarterly*, vol. 38, no. 2 (June 1985), pp. 294–311.

[10] Lindsay Rogers, "The Staffing of Congress," *Political Science Quarterly*, vol. 56, no. 1 (March 1941), pp. 1–22; Kenneth Kofmehl, *Professional Staffs of Congress* (West Lafayette, IN: Purdue University Press, 1962); Susan Webb Hammond, "Legislative Staffs," *Legislative Studies Quarterly*, vol. 9, no. 2 (May 1984), pp. 271–317; Susan Webb Hammond, "Recent Research on Legislative Staffs," *Legislative Studies Quarterly*, vol. 21, no. 4 (November 1996), pp. 543–576; Harrison W. Fox, Jr. and Susan Webb Hammond, *Congressional Staffs: The Invisible Force in American Lawmaking* (New York: Free Press, 1977); Michael J. Malbin, *Unelected Representatives: Congressional Staff and the Future of Representative Government* (New York: Basic Books Inc., 1980); and Steven S. Smith and Christopher J. Deering, *Committees in Congress*, 3d ed. (Washington, DC: CQ Press, 1997).

[11] Lindsay Rogers, "The Staffing of Congress," *Political Science Quarterly*, vol. 56, no. 1 (March 1941), p. 1.

[12] Gladys M. Kammerer, "The Record of Congress in Committee Staffing," *American Political Science Review*, vol. 45, no. 4 (December 1951), pp. 1126–1136.

> If a little staffing is good, it does not necessarily follow that a whole lot more is better. Too much staffing for the right purposes contains the threat of overinstitutionalizing the legislators and of impeding the operations of the whole staff. And any—much less a great deal of—staff for the wrong purposes not only interferes with the functioning of the part of the staff engaged in desirable work but also has adverse repercussions on the entire system of government. Similar considerations apply to the types of staff personnel Congress should or should not employ.[13]

What one paper from 1989 summarized as the "perennial congressional staff problem—how to get members of Congress the information they need, when they need it, and in a form they can use" remains salient today.[14]

Staffing Congress: Regular Reform Efforts, Persistent Challenges, and Recurring Themes

The first bills providing for regular dedicated committee staff, assigned to the Senate Finance Committee and the House Ways and Means Committee, date to the 1850s.[15] Senators were first provided with assistance in 1884, and Members of the House were first provided with an allowance for clerks in 1893.[16] Determining the appropriate staffing and informational support for Congress has consumed considerable debate ever since.

Calls for additional staff have generally cited the workload of Members, the ever-increasing scope of the issues confronting Congress and the Nation, and the need for adequate oversight of the executive. Over the years, concerns related to the adequacy of funds available for staffing, efforts to retain experienced staff, and salary ceilings have played out against concerns about limiting cost and objections that the use of staff might delegate too much power.

Reform efforts have had a substantial impact on the operation of offices and agencies established to support Members, while also highlighting enduring, intractable challenges related to staffing and information needs. What is the appropriate staffing level? How much does this support cost? What should be the split between Member, committee, and leadership offices as well as the majority and minority or the Washington, DC, and district or State offices? What are the appropriate roles and duties of staff, and how can they help to ensure an effective legislature? How should the conditions of employment, included in House and Senate Rules and statutes, be structured to provide maximum flexibility while ensuring accountability of staff and employing officials?

Many concerns currently cited by some contemporary observers—time pressures, votes held with little time for consideration or study by Members, an information imbalance with the executive branch, and overload of information—were the same as those cited by reformers in Congress nearly 50 years ago.[17] Similarly, reform

[13] Kenneth Kofmehl, *Professional Staffs of Congress* (West Lafayette, IN: Purdue University Press, 1962), p. 5.

[14] James M. Verdier, "Policy Analysis for Congress: Lengthening the Time Horizon," *Journal of Policy Analysis and Management*, vol. 8, no. 1 (1989), pp. 46–52.

[15] 11 Stat. 103, an act making appropriations for the legislative, executive, and judicial expenses of government for the year ending June 30, 1857. This act also provided funding for "clerks to committees" in the House and Senate, but separately specified a salary for clerks of the Finance and Ways and Means Committees as well as the House Committee on Claims.

[16] 23 Stat. 249 and 27 Stat. 757.

[17] U.S. Congress, Joint Committee on the Organization of Congress, *Organization of Congress*, hearings pursuant to S. Con. Res. 2, 89th Cong., 1st Sess. (Washington, DC: GPO, 1965), pp. 2308–2322.

efforts over the years often have cited, as one commission did in the 1970s, "the increasing breadth, depth, and complexity of the tasks of" Members at that time and the need for a "modern management structure" in response.[18]

Most, if not all, of the major overarching congressional reform efforts of the past century have had an administrative and staffing component. This remains true even where the main focus of legislation was other issues, like the committee system (including jurisdiction and seniority), procedure, or budget and appropriations. Whether advocating for increased support, decreased cost, more accountability, or altering the balance between minority and majority interests, reformers have all shown an appreciation for the central role of support in shaping the congressional environment and creating opportunities for majorities, minorities, committees, and individual Members to effect change. The repeated efforts—including illustrative examples described below—as well as their mixed record of legislative success, demonstrate the near-constant interest in internal practices as well as challenges to institutional change and recurring themes.

The conclusion of World War II provided an opportunity for Congress to examine and streamline its internal operations. H. Con. Res. 18 established the Joint Committee on the Organization of Congress (JCOC) in February 1945, with a mandate to "make a full and complete study of the organization and operation of the Congress of the United States and ... recommend improvements in such ... ." The JCOC then held numerous hearings, during which testimony was received about manpower and resource shortages affecting Congress during the war. The challenges were both acute and mundane. The Architect of the Capitol, for example, provided a full list of projects for completion as soon as war conditions would permit, including work to the roof of the House and Senate wings of the Capitol,[19] while the House Disbursing Officer testified, "When this war is over we ... will have to buy a large number of new typewriters."[20]

The JCOC also discussed the use of patronage to fill administrative positions, including its effect on efficiency, security, and operations. *Deschler's Precedents of the U.S. House of Representatives* notes that as early as 1911 an informal Patronage Committee, nominated by the Committee on Committees and elected by the majority caucus, divided patronage positions among the majority Members.[21] Similarly, according to Senate oral histories, "patronage dictated all Senate staff appointments in the years before the Second World War."[22] Patronage employees could be removed from their positions by the respective patronage committees for cause, or by the appointing Member at will. Although the patronage system

[18] U.S. Congress, Senate, *Toward a Modern Senate: Final Report of the Commission on the Operation of the Senate*, 94th Cong., 2d sess., S. Doc. 94–278 (Washington, DC: GPO, 1976), p. ix.

[19] U.S. Congress, Joint Committee on the Organization of Congress, *Organization of Congress*, hearings pursuant to H. Con. Res. 18, 79th Cong., 1st sess. (Washington, DC: GPO, 1945), p. 56.

[20] Ibid., p. 18.

[21] Lewis Deschler, *Deschler's Precedents of the U.S. House of Representatives* (Washington, DC: GPO, 1977), vol. 1, pp. 199 200.

[22] "Darrell St. Claire: Assistant Secretary of the Senate," Oral History Interviews, December 1976 to April 1978, Senate Historical Office, Washington, DC, at http://www.senate.gov/artandhistory/history/resources/pdf/StClaire__Preface.pdf.

persisted within many congressional support offices for decades thereafter,[23] the JCOC hearings presented some of the first inquiries into the desirability of moving toward a more professional staff support system.

The JCOC also examined support for individual Members. Remarks by the House Disbursing Officer during a 1945 hearing demonstrate the central role Members have always had in guiding staffing, retaining their discretion as independently elected representatives of their constituents. He stated:

> [Y]ou cannot lose track of the fact that a Member of Congress or Senator has the power to make personal selection of his own staff and he is the judge of the type of people he can or cannot have, and you cannot very well tie his hands.[24]

Efforts to examine staffing then, as has been necessary in the decades since, had to consider how to properly balance the independence of Members and chairs to choose their own staff and determine their roles and duties while establishing basic ground rules.

The report also included a recommendation that each Representative and Senator be

> authorized to employ a high-caliber administrative assistant at an annual salary of $8,000 to assume nonlegislative duties now interfering with the proper study and consideration of national legislation.[25]

The appropriate salary level for congressional aides, and competition with the executive branch and private sector for experienced staff, was discussed by Senators and Representatives during the JCOC hearings—a concern which continues to persist today.[26]

Although the JCOC eventually opted not to adjust the "clerk hire allowance," it did lay the groundwork for expansion.[27] Legislative Reference Service (LRS) Senior Specialist and JCOC staff director George Galloway later stated that "more and better staff aids for members and committees of Congress were a major objective of the Act, and much progress in the staffing of Congress has been achieved."[28]

---

[23] Secretary of the Senate, Senate History, at http://www.senate.gov/artandhistory/history/common/briefing/secretary_senate.htm; and Francis R. Valeo, Oral History Interviews, October 17, 1985, Senate Historical Office, Washington, DC, at http://www.senate.gov/artandhistory/history/resources/pdf/OralHistory_ValeoFrancisR.pdf.

[24] U.S. Congress, Joint Committee on the Organization of Congress, *Organization of Congress*, hearings pursuant to H. Con. Res. 18, 79th Cong., 1st sess. (Washington, DC: GPO, 1945), p. 18.

[25] U.S. Congress, House, Joint Committee on the Organization of Congress, *Organization of Congress*, 79th Cong., 2d sess., H. Rept. 1675 (Washington, DC: GPO, 1946), p. 15.

[26] The relative compensation of executive and legislative branch staff has been discussed, for example, during the FY2005 Senate hearing (U.S. Congress, Senate Committee on Appropriations, Subcommittee on Legislative Branch, *Legislative Branch Appropriations for FY2005*, hearings, 108th Cong., 2d sess. [Washington, DC: GPO, 2004], pp. 46, 102–103); the FY2010 House hearing (U.S. Congress, House Committee on Appropriations, Subcommittee on the Legislative Branch, *Legislative Branch Appropriations for 2010*, hearings, part 2, 111th Cong., 1st sess. [Washington, DC: GPO, 2009], pp. 462–463, 473); and the FY2015 House hearing (U.S. Congress, House Committee on Appropriations, Subcommittee on the Legislative Branch, Legislative Branch Appropriations for 2015, hearings, part 2, 113th Cong., 2d sess. [Washington, DC: GPO, 2008], p. 278); and has prompted various staff compensation studies conducted by both Chambers. These periodic compensation studies date to at least the early 1980s in both the House and Senate, with the most recent Senate study in 2006 and House study in 2010.

[27] P.L. 79–663, 60 Stat. 911, ch. 870 (August 8, 1946); P.L. 81–430, 63 Stat. 974, ch. 783 (October 28, 1949); and P.L. 81–121, sec. 4, 63 Stat. 265, ch. 238 (June 23, 1949). See also U.S. Congress, House Committee on House Administration, *A History of the Committee on House Administration, 1947–2012*, committee print, 112th Cong., 2d sess., May 23, 2013 (Washington, DC: GPO, 2013), p. 185.

[28] George B. Galloway, "The Operation of the Legislative Reorganization Act of 1946," *American Political Science Review*, vol. 45 (March 1951), p. 53.

The JCOC report did directly address committee staffs, however. It stated that the proposed reorganization bill would:

> [E]xpand the present meager staff facilities of our standing committees, which are the real workshops of Congress ... authorize the standing committees of both Houses to exercise the continuous surveillance of the execution of the laws by the administrative agencies within their jurisdiction ... and strengthen the legislative reference and legislative counsel services which are our own unbiased research and legal arms.[29]

While not addressing all questions raised during the JCOC hearings, the resulting Legislative Reorganization Act of 1946 devoted part of Title II to "statutory provisions relating to congressional personnel." It guaranteed staff for standing committees, provided statutory authority for the Legislative Reference Service (predecessor of the Congressional Research Service), and increased the authorization for the Legislative Counsel.[30] It also established the baseline for future reform efforts.

In the 1950s and 1960s, numerous bills were introduced to revise the 1946 act or otherwise alter congressional support.[31] A reestablished JCOC—which was authorized to, among other things, examine the "employment and remuneration of officers and employees of the respective Houses and officers and employees of the committees and members of Congress"—issued multiple reports in 1965 and 1966.[32]

The extensive hearings and reports examined the availability of independent information for congressional consumption as well as Congress' ability to manage and process it. One report, which also addressed various procedural, ethics-related, and lobby issues, included recommendations for improving office staff and allowances, strengthening the Legislative Reference Service, improving "Capitol housekeeping functions," and scheduling.

With respect to the allocation of resources within committees, it stated:

> It is fundamental to our legislative system that the opposition have adequate resources to prepare informed dissent or alternative courses of action. All sides of an issue need to be forcefully presented.[33]

The report also addressed support for individual Members, stating:

> The primary function of the legislator is to legislate. He cannot be effective unless he carefully analyzes issues being considered in committee and gives adequate consideration to floor matters prior to vote. This requires qualified staff assistance to condense and distill the voluminous quantity of information available to him.[34]

Concerns over the roles and duties of Members and, by inference, their staff were also addressed by the JCOC. With some Members

---

[29] U.S. Congress, Joint Committee on the Organization of Congress, *Legislative Reorganization Act of 1946*, committee print, 79th Cong., 2d sess., July 22, 1946 (Washington, DC: GPO, 1946), p. 4.

[30] P.L. 79–601, 60 Stat. 834, August 2, 1946.

[31] See, for example: H.R. 2066 (87th Cong.); and S. Con. Res. 1 and S. 177 (88th Cong.).

[32] S. Con. Res. 2, 89th Cong.; U.S. Congress, Joint Committee on the Organization of Congress, *Organization of Congress*, interim report pursuant to S. Con. Res. 2, 89th Cong., 1st sess., S. Rept. 89–426 (Washington, DC: GPO, 1965); and U.S. Congress, Joint Committee on the Organization of Congress, *Organization of Congress, Final Report*, report to accompany S. Con. Res. 2, S. Rept. 89–1414, 89th Cong., 2d sess. (Washington, DC: GPO, 1966).

[33] U.S. Congress, Joint Committee on the Organization of Congress, *Organization of Congress, Final Report*, report to accompany S. Con. Res. 2, S. Rept. 89–1414, 89th Cong., 2d sess. (Washington, DC: GPO, 1965), p. 22.

[34] Ibid., p. 37.

noting a perceived tension between the legislative and constituency service roles of a Member office and questions regarding the proportion of time Members and their staff can spend on each, the JCOC examined proposals for delegating casework to an administrative counsel or ombudsman. It concluded, however, "We believe that casework is a proper function of an individual Member of Congress and should not be delegated to an administrative body." [35]

Although no legislation was enacted that year, pressure for congressional reform only grew,[36] and numerous bills were introduced.[37] Other legislation considered during that time period included the House Employees Position Classification Act of 1964, which further regularized and standardized the support offices' staffing structure. A governmentwide antinepotism law enacted in 1967, partially in response to a series of articles chastising some Members for their employment practices, further spurred the institutionalization and professionalization of Congress.[38]

The interest both among Members and in the press on internal operations subsequently culminated in the Legislative Reorganization Act of 1970. As with the 1946 act, the 1970 act addressed numerous support issues. Title III, "Sources of Information," addressed ensuring that Congress had the appropriate tools for a well-functioning legislature. The House report stated:

> Among the multitude of responsibilities Congress explicitly or implicitly assigns to its committees, none is more vital than that of keeping watch over the administration of the laws. That responsibility encompasses not only the duty of determining whether existing programs are being administered in accordance with congressional intent but also of exploring the advisability of modifying or even of abolishing such programs.[39]

The report concluded, ". . . while the quality of the staffs is high, their numbers are insufficient to meet the increasing workload of the committees they serve." [40] It proposed an increase to the number of permanent professional and clerical staff for standing committees as well as for minority staffs and also provided for their training. It also recommended reconstituting the Legislative Reference Service as the Congressional Research Service, stipulating that House officers had authority over the employees in their offices and changing payroll practices to require a more transparent gross annual salary.

Concern about congressional support and accompanying reform efforts did not subside, however, with multiple additional examinations in the 1970s of the size and distribution of staff and recognition of this link to the distribution of influence. The Congressional Budget Act of 1974 established a new support agency—the Congressional Budget Office—as well as new Budget Committees in

[35] Ibid., p. 36.

[36] See, for example, Julian E. Zelizer, *On Capitol Hill: The Struggle to Reform Congress and its Consequences, 1948–2000* (Cambridge, United Kingdom: Cambridge University Press, 2004); and Christopher J. Deering and Steven S. Smith, *Committees in Congress*, 3d ed. (Washington, DC: CQ Press, 1997).

[37] See, for example: H.R. 2594, H.R. 2595, H.R. 17138, H.R. 17873, and S. 355 (89th Cong.); and H.R. 10748, H.R. 12570, and H.R. 15687 (90th Cong.).

[38] P.L. 88–652, 78 Stat. 1079 (October 13, 1964), 2 U.S.C. § 291; and the Postal Revenue and Federal Salary Act of 1967, P.L. 90–206, 81 Stat. 640 (December 16, 1967), 5 U.S.C. § 3110.

[39] U.S. Congress, House Committee on Rules, *Legislative Reorganization Act of 1970*, report to accompany H.R. 17654, 91st Cong., 2d sess., H. Rept. 91–1215 (Washington, DC: GPO, 1970), p. 17.

[40] Ibid., p. 15

the House and Senate to provide Congress with its own source of budgetary expertise. In the House, the Democratic Caucus' Subcommittee Bill of Rights of 1973 and proposals from examinations of the committee system, led by Representatives Richard Bolling of Missouri and Julia Butler Hansen of Washington, each had a resource component. The Subcommittee Bill of Rights and Representative Hansen's proposals, included as changes to the Democratic Caucus rules, addressed staffing for subcommittee chairs. H. Res. 1248, an alternate to proposals put forth by Representative Bolling, also looked at committee staffing and minority assistance.[41]

The report issued by Representative Bolling's Select Committee on Committees on March 21, 1974, stated that "no longer simply an asset, committee staffs have become essential," and proposed further increases in the number of professional and clerical staff, as well as ensuring staffing and resources to the minority.[42] Stating "the management of information, the utilization of available space, and the further development of administrative services are all critical to the operations of the House of Representatives,"[43] it also proposed a House Commission on Information and a House Commission on Administrative Services and Facilities. The subsequently created commission, the House Commission on Information and Facilities, issued a more-than-200-page report in December 1976.[44] It concluded that "the chief information need in the House . . . is not *more* information but *better* information, better in terms of organization, coordination, accessibility, delivery, and usability."[45]

Subsequently, the House Commission on Administrative Review (also known as the Obey Commission)[46] included in its final report an approximately 500-page section on administrative reorganization. This report, issued in 1977, touched upon all aspects of administration, financial management, support agencies, computers and printing, procurement, and facilities management. In introducing specific recommendations, the report stated:

> [T]he effectiveness and efficiency with which [the House's] various support units operate has a critical impact on the ability of Members and committees to do their jobs and, consequently, on the ability of the House to carry out its legislative and representative responsibilities under the Constitution.[47]

Shortly after, a new House Select Committee on Committees was established by H. Res. 118, agreed to on March 20, 1979. The minority views section of its 1980 report stated that "the means by which an institution carries on its work significantly influence the

---

[41] Christopher J. Deering and Steven S. Smith, *Committees in Congress*, 3d ed. (Washington, DC: CQ Press, 1997), chap. 2 ("Evolution and Change in Committees").

[42] U.S. Congress, House Select Committee on Committees, *Committee Reform Amendments of 1974*, report to accompany H. Res. 988, 93d Cong., 2d sess., H. Rept. 93–916 (Washington, DC: GPO, 1974).

[43] Ibid., p. 6.

[44] U.S. Congress, House Commission on Information and Facilities, *Final Report of the House Commission on Information and Facilities*, 95th Cong., 1st sess., H. Doc. 95–22 (Washington, DC: GPO, 1976).

[45] Ibid., p. 3.

[46] This commission was established by H. Res. 1368 (94th Cong.), agreed to July 1, 1976, and known by the name of its chair, Representative David Obey.

[47] U.S. Congress, Commission on Administrative Review, *Final Report of the Commission on Administrative Review*, 95th Cong., 1st sess., H. Doc. 95–272 (Washington, DC: GPO, 1977), p. 96.

quality of its product."[48] Although it focused largely on jurisdictional and procedural issues, the select committee also addressed numerous staffing concerns, including an examination of committee staffing, funding, and administration. It looked specifically at the increase in committee staff since 1946, proposals for a ceiling on the number of staff, and allocations for the minority.

The Senate considered similar reforms in a number of studies and proposals in the late 1970s and early 1980s. It authorized Senators to hire staff for the purpose of assisting with committee work, for example, although cost and space concerns scaled back some of the more ambitious proposals.[49] The Commission on the Operation of the Senate (also known as the Culver Commission) was authorized on July 29, 1975, with a mandate to examine the entirety of the internal support structure.[50] The commission's final report, entitled "Toward a Modern Senate," examined "the increasing breadth, depth, and complexity of the tasks of Senators today."[51] It then addressed "basic services ... the availability and use of space ... how to use modern technology more effectively to provide information to Members ... and how to improve the services provided by congressional support agencies."[52]

The recommendations of the parallel Temporary Select Committee to Study the Senate Committee System (also known as the Stevenson Committee), which was authorized on March 31, 1976, also commented on committee funding and staffing.[53] The Senate Rules and Administration Committee, which was examining major changes to the Senate's rules, examined some of these proposed reforms, as well as the division of staff between the majority and minority, during hearings on a major rules change package. Some of these recommendations, including those pertaining to the relative size of majority and minority staff, were included in S. Res. 4, considered for the 95th Congress and agreed to on February 4, 1977.

A few years later, the Study Group on Senate Practices and Procedures (the Pearson-Ribicoff Group) was established pursuant to S. Res. 392, agreed to May 11, 1982. As with some of the previous studies, it focused mainly on procedure, but still devoted a section to reforming staffing. It proposed prohibiting staffing for subcommittees, hoping that this would result in a reduction of workload by forcing most work to go through full committees.[54] A hear-

---

[48] U.S Congress, Select Committee on Committees, *Final Report of the Select Committee on Committees*, 96th Cong., 2d sess., H. Rept. 96–866 (Washington, DC: GPO, 1980), p. 6.

[49] U.S. Congress, Senate Committee on Rules and Administration, *Additional Senate Committee Employees*, report to accompany S. Res. 60, 94th Cong., 1st sess., S. Rept. 94–185 (Washington, DC: GPO, 1975); and FY1978 Legislative Branch Appropriations Act, P.L. 95–94, 91 Stat. 662 (August 5, 1977), 2 U.S.C. § 4332.

[50] S. Res. 227 (94th Cong.); the commission was known by the name of the Senator who sponsored the resolution establishing it, Senator John Culver.

[51] U.S. Congress, Senate, *Toward a Modern Senate: Final Report of the Commission on the Operation of the Senate*, 94th Cong., 2d sess., S. Doc. 94–278 (Washington, DC: GPO, 1976), p. ix.

[52] Ibid.

[53] S. Res. 109 (94th Cong.); U.S. Congress, Senate Temporary Select Committee to Study the Senate Committee System, *Operation of the Senate Committee System: Staffing, Scheduling, Communications, Procedures, and Special Functions*, 95th Cong., 1st sess., January 1, 1977 (Washington, DC: GPO, 1977); the committee was known by the name of its chair, Senator Adlai Stevenson III.

[54] U.S. Congress, Senate Committee on Rules and Administration, *Report of the Study Group on Senate Practices and Procedures to the Committee on Rules and Administration*, committee print, prepared by Study Group on Senate Practices and Procedures, 98th Cong., 2d sess., S. Prt. 98–242 (Washington, DC: GPO, 1984), p. 17; the study group was known by the names of its bipartisan leaders, Senators Abraham Ribicoff and James Pearson.

ing on the study group's recommendations was held on May 9, 1983, by the Committee on Rules and Administration, but no further action was taken at that time.

By the early 1990s, Congress again embarked on a joint effort to study congressional reform. The increasing technological complexity of House and Senate operations, as well as some scandals in the 1990s relating to management problems at the House Bank and the House Post Office that received widespread media attention, placed enhanced scrutiny on internal processes, bringing about further reforms to congressional administration.

The JCOC, which was reestablished with H. Con. Res. 192 (102d Congress), included an examination of staffing and administration policies. As the final report of the JCOC stated:

> [A]lthough the Joint Committee did not hold hearings specifically dedicated to the issue of congressional staff, witness after witness addressed the subject in conjunction with other reform concerns. Indeed, the hearing record is replete with references to congressional staff in the areas of reducing staff, allocating staff between majority and minority parties, and use of associate staff among other things.[55]

The JCOC called for staffing reductions in the legislative branch equal to those proposed for the executive branch, as well as periodic reauthorizations for congressional support agencies. S. 1824 and H.R. 3801, both entitled the Legislative Reorganization Act of 1994, were introduced in the Senate and House, respectively, and hearings were held in both Chambers.

The Senate reported its bill (S. Rept. 103–297), and the House held a markup of its bill, but neither piece of legislation became law. The JCOC bills came on the heels of additional measures, including H. Res. 419 (103d Congress), the Republican Reform Task Force Proposal, and a number of bills applying workplace laws to Congress introduced in the 102d and 103d Congresses.[56] Subsequently, the proposal for staff reductions was incorporated into the FY1994 Legislative Branch Appropriations Act, which mandated a 4 percent decrease in full-time equivalent employees.[57]

The mid-1990s saw continued efforts to ensure accountability of congressional support services. The September 27, 1994, "Contract with America" promised, for example, the reduction of committee staff by one-third. The House rules subsequently adopted for the 104th Congress (1995–1996) mandated the committee staff reduction; changed the administration of the House in creating a new elected officer, the House Chief Administrative Officer (CAO); abolished the positions of Doorkeeper and Director of Non-Legislative and Financial Services; reorganized functions assigned to existing House officers; and required an audit by the House Inspector General.[58]

---

[55] U.S. Congress, *Organization of the Congress, Final Report of the Joint Committee on the Organization of Congress*, 103d Cong., 1st sess., H. Rept. 103–413, vol. II, and S. Rept. 103–215, vol. II (Washington, DC: GPO, 1993), p. 72.

[56] In the 103d Congress, see, for example, H.R. 107, H.R. 137, H.R. 246, H.R. 349, H.R. 2729, H.R. 4822, H.R. 4892, S. 1439, and S. 2071. In the 102d Congress, see, for example, H.R. 3734 and H.R. 4894.

[57] P.L. 103–69, sec. 307, 107 Stat. 710 (August 11, 1993).

[58] H. Res. 6, agreed to January 5, 1995. See also U.S. Congress, Committee on House Oversight, *Report on the Activities of the Committee on House Oversight of the House of Representatives during the One Hundred Fourth Congress*, 104th Cong., 2d sess., H. Rept. 104–885 (Washington, DC: GPO, 1997), p. 2.

The House of Representatives Administrative Reform Technical Corrections Act of 1995 further altered internal House operations. Broader changes in the legislative branch, including the abolishment of one support agency—the Office of Technology Assessment—as well as the enactment of the Congressional Accountability Act further altered legislative branch employment and support generally.

By the end of the next decade, another effort to curb government spending led to calls for Congress to lead by example and cut its own staffing and budget. Many accounts were reduced, and further reductions were implemented with the March 1, 2013, sequestration.

By the Numbers: Attempts to Assess the Staffing Landscape and Challenges

Despite the near-constant attention, assessing change over time of the congressional support apparatus is challenging for many reasons. Official, consistent staffing data are generally not available. As an independent branch of government, the legislative branch often does not have the same reporting requirements as the executive branch.[59] Various sources may be consulted, although they sometimes offer conflicting historical data. In addition, changes in office and account structure may complicate comparisons over time.[60]

Additionally, the unit of comparison—for example, whether one looks at just Member, committee, and leadership offices, the House and Senate Chambers, or the entirety of the legislative branch—must be chosen, with benefits and drawbacks of each approach. A narrow focus on the level of support provided one type of office may obscure larger changes to the institution. On the other hand, a broad examination may not take into account the peculiarities of the congressional environment or technological or internal changes. Additionally, in an environment where offices enjoy a great degree of freedom in determining their needs, allocating their resources,

[59] No single official source of staff levels over time exists, either overall or by office type. For example, the Office of Personnel Management (OPM) maintains a quarterly "Employment & Trends, Table 9—Federal Civilian Employment and Payroll (in thousands of dollars) by Branch, Selected Agency, and Area" publication as well as tables on "Executive Branch Civilian Employment Since 1940" and "Total Government Employment Since 1962" (although the first contains an asterisk indicating "*Preliminary or Previous Quarter's Employment or Payroll Totals (or Portions Thereof) Were Used for Current Quarter" and the latter combines legislative and judicial branch data).

For early estimates of Member and committee staff, see Harrison W. Fox, Jr. and Susan Webb Hammond, *Congressional Staffs: The Invisible Force in American Lawmaking* (New York: Free Press, 1977), table 3, p. 171; and George B. Galloway, "The Operation of the Legislative Reorganization Act of 1946," *American Political Science Review*, vol. 45 (March 1951), p. 54. For more recent estimates using payroll or telephone entries, see Norman J. Ornstein, Thomas E. Mann, Michael J. Malbin, et al., *Vital Statistics on Congress*, A Joint Effort from The Brookings Institution and the American Enterprise Institute, Washington, DC, July 2013, chapter 5, at http://www.brookings.edu/research/reports/2013/07/vital-statistics-congress-mann-ornstein; and CRS Report R41366, *House of Representatives and Senate Staff Levels in Member, Committee, Leadership, and Other Offices, 1977–2010*, by R. Eric Petersen, Parker H. Reynolds, and Amber Hope Wilhelm.

[60] In the House, for example, the account structure for funding Member office staff changed with the establishment of the Members' representational allowance (CRS Report R40962, *Members' Representational Allowance: History and Usage*, by Ida A. Brudnick); committee staff changed with the elimination in the 104th Congress of the distinction between statutory and investigative staff; and some staff have been transferred from the payroll of the Clerk of the House to a leadership office (P.L. 104–53, 109 Stat. 519 [November 19, 1995]; and P.L. 107–68, 115 Stat. 572 [November 12, 2001], 2 U.S.C. § 5123 note).

and setting the terms and conditions of employment, funding and staffing data may present different pictures. Furthermore, in the congressional environment, duties and influence may be more nuanced than any quantitative picture may present. Available information, however, does present a mixed picture on the changes in congressional resources over time.

The statutory maximum full-time staffers authorized for individual Members of the House, which grew steadily between 1893 and the 1970s to reach 18 persons, has not been changed since.[61] This unchanged staff ceiling is notable given the vast changes in the size of the average congressional district during this period. According to the U.S. Census Bureau, over the past century, the "average size of a congressional district based on the 2010 Census apportionment population will be 710,767, more than triple the average district size of 210,328 based on the 1910 Census apportionment."[62] The average congressional district population size was 469,088 in 1970, as the House was setting the limit on Members' personal staff. From the 1970 census through the 2010 census, the average congressional district population increased by 52 percent.[63]

While the Senate provides an authorized dollar amount but not a maximum authorized staff level, according to figures included in the annual Senate Appropriations Committee reports, the number of staff in individual Senators' offices in 2014 is near the 1985 level.[64] Similarly sized staffs must respond to far more constituents in both Chambers.

Various estimates also indicate a smaller House and Senate staff than existed three decades ago. One study, for example, found that House committee staffs decreased nearly 28 percent from 1977 to 2009, while Senate committee staffs increased (nearly 15 percent), albeit at a much slower pace than other categories of Senate offices. Between 1977 and 2009, according to this study, however, the number of House staff grew approximately 11 percent. The number of Senate staff grew approximately 80 percent, although it still had nearly 40 percent fewer staff than the House. This trend is also evident in the executive branch, which, according to OPM data, has nearly 23 percent fewer staff than it did in 1977.

The appropriation for the House Members' representational allowance (MRA) in constant dollars varied little from FY1996 to FY2001, before increasing for about a decade. It then fell each year in constant dollars from FY2011 through FY2013, with the FY2013 level approximately equivalent to the FY1996 level in purchasing

---

[61] For a more extensive discussion, see U.S. Congress, House Committee on House Administration, *A History of the Committee on House Administration, 1947–2012*, committee print, 112th Cong., 2d sess., May 23, 2013 (Washington, DC: GPO, 2013).

[62] U.S. Census Bureau, "Congressional Apportionment," 2010 Census Briefs, issued November 2011, at http://www.census.gov/prod/cen2010/briefs/c2010br-08.pdf.

[63] U.S. Census Bureau, "Apportionment Data," at http://www.census.gov/2010census/data/apportionment-data.php.

[64] U.S. Congress, Senate Committee on Appropriations, *Legislative Branch Appropriations, 2015*, report to accompany H.R. 4487, 113th Cong., 2d sess., June 19, 2014, S. Rept. 113–196 (Washington, DC: GPO, 2014), p. 22; and "U.S. Senate Senator's staff as of September 30, 1985–94 and March 31, 1995," table in U.S. Congress, Senate Committee on Appropriations, *Legislative Branch Appropriations, 1996*, report to accompany H.R. 1854, 104th Cong., 1st sess., July 18, 1996, S. Rept. 104–114 (Washington, DC: GPO, 1996), pp. 25–26.

power.[65] The Senators' Official Personnel and Office Expense Account (SOPOEA) was similarly reduced each year from FY2010 through FY2013, with the FY2013 level approximately equivalent to the FY2006 level.[66]

Legislative branch appropriations overall decreased each year from FY2010 through FY2013, and related reductions were seen in the funding for many Member, committee, leadership, officer, and support agency accounts in the 112th and 113th Congresses (2011–2014).[67] Furthermore, in constant dollars, the FY2014 appropriation was smaller than the appropriation for FY2004.[68] Legislative branch resources can also be placed in context of the larger Federal budget, where, since at least 1976, it has composed approximately 0.4 percent of total discretionary budget authority.

Conclusion

A historical examination of the efforts to reform the congressional staff network demonstrates a continuity in the concerns related to the operation and internal functioning of Congress—time pressures; obtaining, organizing, and processing information; division of resources; and cost, oversight, and accountability—as well as to the proposed solutions. Whether as part of more comprehensive reviews of congressional support or in more targeted studies of individual offices or issues of concern, debates related to congressional reform have uniformly contained a discussion of staff and information needs. Many of the concerns identified, and the solutions proposed, however, have changed little since the early days of congressional staffing.

Although the examples of proposed reforms mentioned in this report met with varying legislative success, they demonstrate the continued congressional interest and struggles in Congress in examining its own practices, determining the appropriate level and type of support, and efficiently managing taxpayer resources.

Overall, Congress has attempted to ensure the independence of Members and chairs to choose their own staff and determine their roles and duties while establishing basic ground rules and remaining aware of cost and accountability considerations throughout the legislative branch. Congress has also worked to determine how to allocate limited resources among Members, committees, leaders, and support offices. As Congress looks ahead to the next century,

---

[65] See "Figure 1. Fiscal Year Appropriations for the Members' Representational Allowance" in CRS Report R40962, *Members' Representational Allowance: History and Usage*, by Ida A. Brudnick.

[66] See also language in P.L. 112–10, enacted on April 11, 2011, stating that "each Senator's official personnel and office expense allowance (including the allowance for administrative and clerical assistance, the salaries allowance for legislative assistance to Senators, as authorized by the Legislative Branch Appropriation Act, 1978 (P.L. 95–94), and the office expense allowance for each Senator's office for each State) in effect immediately before the date of enactment of this section shall be reduced by 5 percent." Similarly, each Member's MRA for 2012, for example, was "88.92% of the amount authorized in 2010 . . . in accordance with a 5% reduction to the 2010 authorization mandated in House Resolution 22, agreed to on January 6, 2011, and a 6.4% reduction to the 2011 authorization as reflected in H.R. 2055, the Consolidated Appropriations Act, 2012 (P.L. 112–74)." Individual MRAs for 2013 were further reduced by 8.2 percent. (U.S. Congress, House, *Statement of Disbursements of the House*, as compiled by the Chief Administrative Officer, from January 1, 2012, to March 31, 2012, part 3 of 3, 112th Cong., 2d sess., H. Doc. 112–106 (Washington, DC: GPO, 2012), p. 3225.)

[67] H. Res. 22 (112th Cong.); and P.L. 112–74, P.L. 112–74, P.L. 113–6, and P.L. 113–76.

[68] Table 3. Legislative Branch Appropriations, FY2004–FY2014 (budget authority in billions of dollars), in CRS Report R43557, *Legislative Branch: FY2015 Appropriations*, by R. Eric Petersen and Ida A. Brudnick.

the details of staffing concerns may vary as new challenges and technologies arise, but many of these fundamental questions will remain.

The Unchanging Nature of Congressional Elections

KEVIN J. COLEMAN

Analyst in Elections

and

R. SAM GARRETT

Specialist in American National Government

Major elements of congressional elections remain remarkably consistent despite profound changes to the social and political environment in the past century. The country's population is vastly different as the result of immigration and natural growth; the role of the political parties in elections is diminished—but still vital—as the candidates themselves have taken over their campaigns; and the campaign finance system has been significantly transformed, with vast amounts spent in each election cycle. And yet, congressional campaigns are relatively unchanged in important ways. The goal of campaigning continues to be an effort to persuade voters one by one. Even election outcomes are relatively consistent: the two parties continue to dominate elections; incumbents are routinely reelected; and voter participation is fairly stable. After a century of extraordinary change, congressional campaigns are different than in the past in certain respects, while they also retain key, unchanged characteristics that have simply been adapted to a modern era.

Introduction

The United States has experienced vast changes in the past century, so it would seem a foregone conclusion that the means of getting elected to Congress would have undergone vast changes as well. In some respects this is true. The average population of a congressional district was 280,675 in 1930, while it is more than 2½ times that number today at 710,767.[1] The two political parties once vetted the candidates and were deeply involved in congressional campaigns, particularly campaign messaging. Candidates today run independently of the parties. Changes in technology and especially fundraising have transformed the political landscape. Tele-

[1] The House size was set at 435 in 1911; U.S. Bureau of the Census, Apportionment Data, http://www.census.gov/2010census/data/apportionment-data-text.php.

vision and the Internet became widely available in the 1940s and 1990s, respectively, and were soon adapted to political use, greatly increasing a candidate's ability to connect with voters. In the closing months of a single 2014 Senate race, the Democratic Senatorial Campaign Committee (DSCC) announced plans to spend $9.1 million in broadcast ads. That amount was only slightly less than the estimated $9.8 million that campaigns spent nationwide on broadcast advertising in 1956.[2] Changes in election laws have also expanded the electorate to include women, younger voters, African Americans, and language minorities, and have made registration and voting increasingly easy.

Other changes that have affected congressional elections include the growth of the national population and its increased heterogeneity as the result of immigration and a decline in white birth rates. Internal shifts have also realigned population groups within the country, and the regional bases of the political parties have changed as well. Finally, election outcomes are different in some respects, particularly regarding turnover in House seats and a decline in the number of competitive House races.

And yet, congressional campaigns are relatively unchanged in important ways. The simplest rule of getting elected remains the same as ever: turn out more voters than one's opponent, preferably by making personal contact with as many of them as possible. This tenet was reflected in a recent observation by a member of the House leadership regarding the current cycle: "Just run your race, get out your vote, go door to door, everybody you meet will vote for you, by and large."[3] To use an analogy, if one could watch a professional baseball game from 1914, it might appear to be quite different from today's game—from the crowd and venue to the smaller size of the players, their equipment and uniforms, and so on—yet the game itself would be instantly recognizable.[4] The core elements are enduring. Congressional elections are a national pastime perhaps slightly less beloved, but with similar constancy.

Although new campaign techniques and technologies developed at a rapid pace beginning in the mid-20th century, they have been adopted slowly, at times, and have tended to supplement, rather than replace, traditional grassroots organizing.[5] An early assessment of the use of the Internet as a campaign tool noted that, while it would be useful in many aspects of campaigns, "[t]he Inter-

[2] Alexis Levinson, "Senate Democrats Launch $9.1 Million Ad Buy in North Carolina," *Roll Call*, August 13, 2014, at http://atr.rollcall.com/senate-democrats-launch-9-1-million-ad-buy-in-north-carolina/. As noted later in this report, the 1956 estimate should be treated with caution, although it is useful for historical comparison.

[3] Ed O'Keefe, "With 'Action Plan,' Democrats hope to grab voters' attention," *The Washington Post*, July 16, 2014, p. A6.

[4] Fenway Park in Boston opened in 1912 with a seating capacity of 11,000; Wrigley Field opened in Chicago in 1914 as Weeghman Park with a seating capacity of 14,000; today's ballparks vary in size from 31,042 (Tropicana Field) to 56,000 (Dodger Stadium). With respect to player size, SB Nation, an online sports network, found that the average height and weight of a major league player has increased about 7 percent and 14 percent, respectively, since the 1870s; at http://www.beyondtheboxscore.com/2011/4/19/2114631/the-changing-size-of-mlb-players-1870-2010.

[5] For example, the American Institute of Public Opinion, eventually known as the Gallup Organization, was founded in 1935, but the widespread use of polls in campaigns to shape messaging and tactics did not occur until the late 1960s and early 1970s. See http://www.gallup.com/corporate/21364/George-Gallup-19011984.aspx; and Sasha Issenberg, *The Victory Lab: The Secret Science of Winning Campaigns* (New York: Broadway Books, 2012), p. 108.

net will not produce the mobilization of voters long predicted."[6] Even election outcomes have been relatively consistent in certain respects. The two parties continue to completely dominate elections, for example. There are currently two Members of Congress who are Independents. The last time there were more than two Members who were not major party members was 1950, when there were three, but in most years there were none.[7] Recent incumbent reelection rates are consistently in the 80s and 90s in percentage terms (although Senate rates are more irregular), similar to what they were in the 1960s. Using a different measure, high-turnover elections were more common in the early decades of the 20th century than they have been since the 1950s. For example, Republicans gained control of the House for the first time since 1952 when they picked up 54 seats in the 1994 election. The 2010 election was similarly a high-turnover election when Republicans picked up 64 seats. The next highest number of seats gained since 1980 was 34 (for Republicans, which resulted in a 243–192 partisan lineup in favor of the Democrats). By way of comparison, between 1900 and 1950, there were 11 elections in which 1 party or the other gained at least 34 seats.

This report discusses some profound changes to the campaigns and elections environment, while it also discusses some of the ways that congressional campaigns have not changed, but have simply been adapted to a modern era. The following pages highlight four major themes: (1) the environment in which congressional campaigns are waged; (2) campaign finance; (3) electoral outcomes; and (4) voters. The report is not intended to be exhaustive. Rather, the discussion seeks to illustrate the evolution of congressional campaigns. In doing so, the report provides congressional readers with a resource for understanding how the contests that decide the membership of the House and Senate have evolved over the past century to include thousands of candidates, millions of voters, and billions of dollars.

The Campaign Environment

POPULATION CHANGES

Based on population, the America that existed in the late 19th century was an entirely different country from the one that entered the Great Depression in 1929, and not simply because there were more people. A massive surge in immigration during that period transformed the Nation in a way that would be difficult to overstate. About 25 million Europeans emigrated to the United States between 1880 and 1924,[8] most of whom arrived from countries other than the "old immigrant" nations of Great Britain, Germany, and Ireland. Over 1 million immigrants arrived in 1906 and again in 1907, for example, mostly from the central and southern European countries of Austria, Hungary, Russia, and Italy (over 700,000

[6] Bruce Bimber and Richard Davis, *Campaigning Online: The Internet in U.S. Elections* (New York: Oxford University Press, 2003), pp. 166–167.

[7] Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics, 2013–2014* (Thousand Oaks, CA: CQ Press, 2013), pp. 30–31.

[8] *Historical Statistics of the United States: Colonial Times to 1970*, Bicentennial Edition (Washington, DC: U.S. Department of Commerce, 1975), pp. 105–106.

in 1906 and over 800,000 in 1907). Fewer than 300,000 had departed for the United States in that 2-year period from Great Britain, Germany, and Ireland. That trend continued until the Immigration Restriction Act of 1921 and the Immigration Act of 1924 capped the number of immigrants from a country at 3 percent and 2 percent, respectively, of the number of persons from that country who were living in the United States in 1890.

The high water mark for the foreign-born population of the United States occurred in 1930, according to the Census Bureau, when 14 million out of the total population of 122 million were born outside the country.[9] The number of naturalized persons in 1930 was 7.9 million, meaning that a sizeable number were at least theoretically eligible to vote in elections. Furthermore, a number of Southern and Midwestern States permitted noncitizens to vote in the late 19th and early 20th centuries. In fact, the 19 States that allowed noncitizens to vote during that time had repealed earlier laws that banned noncitizen voting.[10] In the South, the intent was to recruit Democratic Party supporters and rebuild the labor base after the Civil War and, in the West and Midwest; to promote westward expansion by conferring voting rights before citizenship had been attained.

Internal population migrations also altered the social and political landscape, particularly the Great Migration of the early 20th century. Until the migration began around 1910, the black population of the country was almost entirely southern. A variety of factors stimulated black migration from the rural South to the cities of the Northeast and Midwest between 1910 and 1970, particularly the mechanization of harvesting cotton, racial segregation and violence, and the need for workers in the growing economies of industrial cities, first as immigration from Europe declined at the outset of World War I and again as the country prepared for World War II.

In 1900, over 7 million (7,126,617) blacks lived in the former Confederate States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. The number living in New England; the Middle Atlantic States of New York, New Jersey, and Pennsylvania; and the Midwestern (industrial) States of Ohio, Indiana, Illinois, Michigan, and Wisconsin was 642,862.[11] By 1970, the number of blacks in the aforementioned Southern States was 10,188,000, and in the Northern States it was 8,218,000.[12] Consequently, it was "one of the largest and most rapid mass internal movements of people in history—perhaps the greatest not caused by the immediate

[9] *Historical Statistics of the United States: Earliest Times to the Present*, ed. Susan B. Carter, Scott Sigmund Gartner, Michael R. Haines, Alan L. Olmstead, Prichard Sutch, Gavin Wright, Millennial Edition, vol. 1 (New York: Cambridge University Press, 2006), pp. 1–166.

[10] The States that repealed such voting laws between 1868 and 1926 were Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oregon, South Carolina, South Dakota, Texas, Wisconsin, and Wyoming; Jerrold G. Rusk, *A Statistical History of the American Electorate* (Washington, DC: CQ Press, 2001), pp. 16–17, 32.

[11] U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1939*, 61st ed. (Washington: Government Printing Office, 1940), pp. 14–15.

[12] U.S. Department of Commerce, Bureau of the Census, 101st ed. (Washington, DC: GPO, 1980), p. 36.

threat of execution or starvation." [13] The Great Migration reshaped American society and politics in the North and the South—and eventually other regions of the country—and it placed race relations at the center of leading national issues, rather than one that had been mostly confined to the South. Today there are 25 majority African American congressional districts in a cross section of States.[14] (There are also 55 districts across the country in which the combined minority group populations—African American, Hispanic, and Asian—constitute the majority within the district and whites are the minority).[15]

Another spike in immigration that began in the 1960s resulted in a burgeoning Hispanic and Asian American and Pacific Islander population. Changes in U.S. immigration laws as well as political and economic unrest in some Asian and Latin American countries brought millions of immigrants in the ensuing decades. In 1950, the Hispanic population was just over 3.2 million.[16] As of the 2010 Census, there were 50.5 million [17] people of Hispanic origin in the United States—or 16 percent of the total population—as the result of immigration and a high birth rate. Regarding the geographic distribution of Hispanics, 77 percent live in the West and South; there are 33 congressional districts in which they are the majority of the population, all but 4 of which are in Southern and Western States.[18]

Likewise, the Asian population of the United States has increased rapidly since 1960, when it was 877,934.[19] Today, Asians are the fastest growing segment of the U.S. population. While the total population grew by 9.7 percent between 2000 and 2010, the Asian population increased by 43 percent to 14.7 million.[20] There is one majority Asian congressional district, in Hawaii.

The 20th century transformation of the national population has profoundly shaped congressional elections, as the electorate has become more diverse and political issues have been shaped by changes in demographics. At least two trends from the previous 100 years—immigration and rapidly increasing minority populations—are likely to continue for some time in the present century.

THE ELECTORATE AND VOTING LAWS

The electorate has expanded significantly in the past century, following the removal of voting restrictions based on sex, race, and age. Women gained the right to vote in 1920, when the 19th

[13] Nicholas Lemann, *The Promised Land: The Great Black Migration and How It Changed America* (New York: Alfred A. Knopf, 1991), p. 6.

[14] The States in which there is a majority African American congressional district are Alabama, Florida, Georgia, Illinois, Louisiana, Maryland, Michigan, Mississippi, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia; see *Vital Statistics on American Politics, 2013–2014*, pp. 48–52.

[15] Ibid.

[16] *Historical Statistics of the United States*, pp. 1–177.

[17] U.S. Department of Commerce, U.S. Census Bureau, *The Hispanic Population: 2010*, May 2011, p. 2.

[18] There is one majority Hispanic district in Illinois, one in New Jersey, and two in New York; see *Vital Statistics on American Politics, 2013–2014*, pp.48–52.

[19] Herbert R. Barringer, Robert W. Gardner, and Michael J. Levin, *Asians and Pacific Islanders in the United States* (New York: Russell Sage Foundation, 1993), p. 39.

[20] U.S. Department of Commerce, U.S. Census Bureau, *The Asian Population: 2010*, March 2012, p. 3.

Amendment was ratified. The Voting Rights Act of 1965 (P.L. 89–110) secured voting rights for African Americans, nearly 100 years after the adoption of the 15th Amendment that stated "the right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude."[21] The Voting Rights Act Amendments of 1975 required that bilingual election materials be made available in certain jurisdictions if a language minority was 5 percent of the population and the illiteracy rate in English for the group exceeded the national rate. The 26th Amendment extended the vote to 18-year-olds in 1971; until then, most States set the voting age at 21.

In addition to laws and amendments that established universal suffrage, voting itself has generally become easier and more convenient. The National Voter Registration Act of 1993, the "motor-voter" law (P.L. 103–31), made voter registration available at motor vehicle agencies in every State.[22] A series of laws expanded voting opportunities for members of the uniformed services and overseas citizens, including the Soldier Voting Act of 1942 (P.L. 77–712), the Federal Voting Assistance Act of 1955 (P.L. 84–296), the Overseas Citizens Voting Act of 1975 (P.L. 94–203), and the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (P.L. 99–410).[23] Finally, State-enacted innovations that have increased voter convenience, such as "no excuse" absentee, permanent absentee, and early voting, have flourished since 2000, although some States have recently enacted changes to restrict voter registration and early voting or to require some type of identification for voting.

Congressional elections have also been affected by court rulings and Federal legislative action regarding the redistricting process.[24] Beginning with *Baker* v. *Carr*[25] in 1962 and followed by a series of subsequent cases, the U.S. Supreme Court has established rules or constraints for the States in drawing congressional district boundaries.[26] In addition, the Voting Rights Act, as amended in 1982, established the principle of preventing the dilution of minority voting power in elections.[27] The Supreme Court recognized the application of that principle to redistricting in *Thornburg* v. *Gingles*[28] in 1986. As a result of the various Supreme Court cases, what had previously been a largely political process administered by the States is subject to such considerations as creating equal district populations, avoiding minority vote dilution, compactness, and contiguousness. The characteristics of each congressional dis-

---

[21] For additional information, see CRS Report R43626, *The Voting Rights Act of 1965: Background and Overview*, by Kevin J. Coleman.

[22] For additional information, see CRS Report R40609, *The National Voter Registration Act of 1993: History, Implementation, and Effects*, by Royce Crocker.

[23] For additional information, see CRS Report RS20764, *The Uniformed and Overseas Citizens Absentee Voting Act: Overview and Issues*, by Kevin J. Coleman.

[24] For additional information, see CRS Report R42831, *Congressional Redistricting: An Overview*, by Royce Crocker.

[25] 369 U.S. 186 (1962).

[26] *Baker* v. *Carr* established that the redistricting process was justiciable and first applied to redistricting of U.S. House seats in *Wesberry* v. *Sanders*, 376 U.S. 1 (1964).

[27] For additional information, see CRS Report R42482, *Congressional Redistricting and the Voting Rights Act: A Legal Overview*, by L. Paige Whitaker; and CRS Report R43626, *The Voting Rights Act of 1965: Background and Overview*, by Kevin J. Coleman.

[28] 478 U.S. 30 (1986).

trict, in turn, have obvious practical implications for the candidates who contest elections within them.

Parties and Campaign Messaging

Until relatively recently, what were once party-dominated, largely nationalized contests have become what are commonly called "candidate-centered" campaigns. In the early 1900s, individual candidates might well have had little role in their own campaigns. In fact, individuality in congressional campaigns in general was scarce historically. As early as 1866, House Republicans formed a precursor to the National Republican Congressional Committee (NRCC) to balance Presidential influence over party campaign themes. Democrats followed suit shortly thereafter, solidifying an era of party-dominated campaigning.[29]

Especially in major cities in the industrial Midwest and along the east coast—such as Chicago, Cleveland, Kansas City, New York, and, most famously, Boston—campaigns were largely a product of entrenched machine politics. Machines were primarily a Democratic, urban phenomenon, although a few well-known Republican machines thrived elsewhere (such as in Nassau County, New York, and Orange County, California).[30] Parties maintained their grip on power through patronage. At the height of their power, machines constituted "informal government[s]," controlling up to 35,000 public-sector jobs in Chicago, for example, and far more votes secured through ethnic and neighborhood loyalties.[31] Office-holders and candidates were also expected to make payments that amounted to "an informal tax system to sustain parties."[32]

By the mid-20th century, Progressive Era reforms had weakened parties' roles in orchestrating individual campaigns. Increasingly, voters took their cues from radio, television, and civic organizations rather than from the comparatively insular world of ward-based politics. Parties also struggled to appeal to an increasingly diverse group of voters, influenced by developments such as changes in immigration, the Great Migration of southern blacks to northern cities, and the civil rights movement.

Campaign operations were changing, too. As party influence over individual campaigns waned, a new style of campaigning, known as "candidate-centered campaigning," emerged. At least two elements were central to the candidate-centered campaign: broadcast political advertising and political consulting. Both helped candidates adapt to changing environments.

New forms of campaigning required more complexity than in the past. "Old styles of campaigning—through rallies and other events—did not work."[33] New technologies, including computerized polling analysis, broadcasting, and specialized political professionals and detailed campaign plans became the norm. The shift

[29] Robin Kolodny, *Pursuing Majorities: Congressional Campaign Committees in American Politics* (Norman, OK: University of Oklahoma Press, 1998), p. 4.

[30] For an overview, see, for example, Marjorie Randon Hershey, *Party Politics in America*, 12th ed. (New York: Pearson, 2007), pp. 52–54.

[31] Ibid., p. 53.

[32] Mark Wahlgren Summers, "'To Make the Wheels Revolve We Must Have Grease': Barrel Politics in the Gilded Age," *The Journal of Policy History*, vol. 14, no. 1 (2002), p. 63.

[33] Robert J. Dinkin, *Campaigning in America: A History of Election Practices* (New York: Greenwood, 1989), p. 159.

from print advertising to radio and television required substantial spending. Nationwide, campaigns at all levels spent an estimated $9.8 million in 1956—an amount that more than tripled to $32 million within a decade.[34] Ever since, broadcast advertising generally has been the largest budget item in House and Senate campaigns.

As broadcast advertising became more important, a new class of political professionals emerged to help candidates and parties appeal to voters through new media. Political consulting emerged as a distinct profession as early as the 1930s, but grew steadily beginning in the 1960s, largely as a result of media consulting.[35] As consultant influence increased, tension sometimes emerged between party officials and these autonomous political professionals, who are typically affiliated with a party but often work for multiple clients simultaneously as independent contractors. For some, consultants represented a threat to parties as a repository of cohesive campaign strategy and organizational wisdom. As discussed below, particularly by the 1980s, many also believed that political action committees (PACs) undermined parties' financial influence in congressional elections.

The rise of broadcast advertising was just one of the major mid-century changes that many observers believed was upending established campaign practices. Even traditional political institutions were allegedly undermined by candidate-centered campaigning. Since at least the 1950s, some observers had warned that parties risked extinction as major players in congressional elections. Also, in the 1950s scholars feared that interest groups devoted to a narrow set of policy issues threatened party vitality. By the 1960s, sharp increases in the number of Americans who claimed to be politically "independent" were allegedly responsible for weakening parties, particularly because research suggested that those who declined to identify with a party were politically disengaged.[36] Not only did those calling themselves "strong partisans" fall steadily, but also more voters believed that they were rejecting party labels altogether by identifying as "independents." This trend was particularly pronounced between 1964 and 1974, when prominent social science polling showed a jump in "independent" voters from 23 percent to 38 percent respectively, possibly attributed to social unrest surrounding the Vietnam war and declining trust in government following Watergate.[37] Nonetheless, subsequent research re-

[34] These estimates are attributed to reports filed with the Clerk of the House, the Federal Communications Commission, and the Citizens' Research Foundation, and appear in *Statistical Abstract of the United States 1970* (U.S. Department of Commerce, Bureau of the Census, 1970), Table 526, p. 372. It is important to note that, although these data provide historical reference points, systematic and reliable campaign finance data did not become available until after Congress mandated reporting in the 1971 Federal Election Campaign Act (FECA) and, in particular, subsequent amendments. Effective September 2014, FECA is codified at 52 U.S.C. § 30101 *et seq.* (previously at 2 U.S.C. § 431 *et seq.*). When adjusted for inflation to 2014, the figures in the text would be approximately $86 million and $235 million respectively.

[35] For an overview of the development of political consulting, see, for example, David A. Dulio, *For Better or Worse? How Political Consultants are Changing Elections in the United States* (Albany, NY: State University of New York Press, 2004); Stephen K. Medvic, *Political Consultants in U.S. Congressional Elections* (Columbus, OH: The Ohio State University Press, 2001); and Larry J. Sabato, *The Rise of Political Consultants: New Ways of Winning Elections* (New York: Basic Books, 1981).

[36] Angus Campbell et al., *The American Voter: An Abridgement* (New York: Wiley, 1964), p. 83.

[37] The cited polling data are from Norman H. Nie, Sidney Verba, and John R. Petrocik, *The Changing American Voter* (Cambridge, MA: Harvard University Press, 1976), p. 49. Other parts of the book discuss public reaction to Vietnam and Watergate.

vealed that even those who viewed themselves as dedicated "independents" usually continued to hold solidly partisan policy positions that affected their voting behavior.[38] The number of independents has been roughly steady since the Watergate era.[39]

Over time, the two major parties adapted to developments in the congressional campaign environment. By the 1980s, the national party committees, in particular, adapted from their previous, hierarchical structures to focus more on providing specific services to individual campaigns.[40] This "party service" model included technical assistance such as polling, data analysis, and training. Parties also continued to play a central role in recruiting candidates. Despite some simmering tensions, most observers agreed by the 2000s that parties and consultants accommodated each other through an informal division of labor. As one parties scholar observed recently, "By the time their decay had become the central theme of books and articles about parties . . . there were clear signs of resurgence. The parties have grown into different types of organizations than they once were, but . . . they continue to be a vital part of the American political landscape."[41]

THE POLITICAL GEOGRAPHY OF THE PARTIES

The regional bases of the Democratic and Republican Parties have changed significantly since the 1960s. The most noteworthy shift in regional strength was the transformation of the South from Democratic to Republican domination. After the 1960 election, Democrats held 99 of 106 House seats and all 22 Senate seats in Southern States.[42] Following the 2012 election, Republicans held 98 House seats and Democrats held 40, and Republicans held 16 of 22 Senate seats.

The political transformation of the South occurred slowly in the early decades of the 20th century and gathered momentum in the 1948 Presidential election. The Democratic Governor of South Carolina, Strom Thurmond, ran an insurgent Presidential campaign largely in opposition to the emerging Truman administration position on civil rights as well as in support of "States' rights." As the Dixiecrat candidate,[43] Thurmond won all of the electoral votes in Alabama, Louisiana, Mississippi, and South Carolina as well as 1 electoral vote in Tennessee (39 in total).[44] The reversal in political dominance in the South accelerated as the civil rights movement gained momentum and the Democrats' grip on the Solid South in Presidential elections eroded in successive elections. With

[38] Bruce E. Keith et al., *The Myth of the Independent Voter* (Berkeley, CA: University of California Press, 1992).

[39] Michael S. Lewis-Beck et al., *The American Voter Revisited* (Ann Arbor, MI: University of Michigan Press, 2008), pp. 126–127.

[40] For an overview of this literature and period, see, for example, Paul S. Herrnson, *Party Campaigning in the 1980s* (Cambridge, MA: Harvard University Press, 1988).

[41] Marjorie Randon Hershey, *Party Politics in America*, 12th ed. (New York: Pearson, 2007), p. 303.

[42] The States discussed are the 11 former Confederate States, including Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. Republicans captured single seats in Florida, North Carolina, and Texas, and two seats in both Tennessee and Virginia.

[43] Governor Thurmond ran as a Democrat in Alabama, Louisiana, Mississippi, and South Carolina, and as the States' Rights Party candidate in other States in the South.

[44] *Guide to U.S. Elections*, ed. John L. Moore, 3d ed. (Washington, DC: Congressional Quarterly, 1994), pp. 320–322, 399.

Governor Ronald Reagan's election to the Presidency, the defection of the Reagan Democrats in the South (and elsewhere) heralded the end of a Democratic Party that had been anchored there for more than a century. Democrats became the party that was primarily bicoastal and urban, while the Republican Party drifted away from its northeastern and midwestern roots and became firmly planted in Southern and Western States.

Campaign Money

Taking stock of a recently concluded election, a prominent author concluded that money corrupted the political process. Voters were forced to choose between two similar parties and constant fundraising cheapened candidates and voters. "In our elections, which are the foundation of our whole governmental structure, we treat offices as things to be paid for," he lamented. Similar themes appear on editorial pages and in popular debate today, but they are not new. In fact, the author was economist and one-time New York mayoral candidate Henry George. His essay appeared not in 2014 or even after the Supreme Court's landmark *Buckley* v. *Valeo* decision in 1976, but in 1883.[45]

George wrote at the beginning of the Progressive Era, a period marked by major social and governmental changes that emphasized electoral reform and transparency. Most notably, making connections to campaign finance, politicians such as Theodore Roosevelt raised an alarm about the growing gap between the haves and have-nots in American society. Similar themes appeared in congressional debate over campaign finance bills in 1956, 1973, and 2014—just to name a few.[46]

Criticism of private money in politics has not been limited to Presidential campaigns. In 1922, the Senate settled an election contest between Henry Ford and Truman H. Newberry.[47] Campaign spending featured prominently in the case, rooted in the 1918 Michigan Senate race. After a long investigation, the Senate seated Newberry, but "condemn[ed]" the $195,000 spent on his primary campaign and determined that the amount was "contrary to sound public policy [and] harmful to the honor and dignity of the Senate."[48] Recapping the episode a decade later, Louise Overacker, one of the first scholars to study campaign finance, observed: "Current protests against the use of money in the United States leave

[45] Henry George, "Money in Elections," *The North American Review*, March 1883, p. 206. George's son, Henry George, Jr. was a U.S. Representative from New York (1911–1915). See *Biographical Directory of the United States Congress*, at http://bioguide.congress.gov/scripts/biodisplay.pl?index=G000126.

[46] In these cases, the debate concerned legislation proposing public financing of congressional campaigns, but campaign finance topics tend to include recurring themes. See R. Sam Garrett, "Back to the Future? The Quest for Public Financing of Congressional Campaigns," in *Public Financing in American Elections*, ed. Costas Panagopoulos (Philadelphia: Temple University Press, 2011), pp. 11–35. On campaign finance legislative history generally, see, for example, Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* (New York: Praeger, 1988); and Raymond J. La Raja, *Small Change: Money, Political Parties, and Campaign Finance Reform* (Ann Arbor, MI: University of Michigan Press, 2008).

[47] For a historical overview, see Paula Baker, *Curbing Campaign Cash: Henry Ford, Truman Newberry, and the Politics of Progressive Reform* (Lawrence, KS: University Press of Kansas, 2012); and Anne M. Butler and Wendy Wolff, *United States Senate Election, Expulsion and Censure Cases 1793–1990* (Washington, DC: GPO, 1995), pp. 302–305.

[48] "Michigan Senatorial Election," *Congressional Record*, vol. 62, part 2 (January 12, 1922), p. 1116.

one with the impression that we are facing an entirely new form of political corruption. Such is far from the case."[49]

Indeed it was.[50] Following kickback scandals during the Civil War and even earlier, Congress began to regulate Federal campaign finance in 1867 by protecting navy yard workers from required political contributions and from being fired for their political beliefs.[51] Campaign finance regulation became more engrained with the Pendleton Act in 1883.[52] The legislation is best known for establishing the civil service system, but, in a nod to campaign finance, also barred the making of political contributions in exchange for Federal jobs.

Congress first enacted major campaign finance limits in 1907, when the Tillman Act prohibited corporations and national banks from making contributions in Federal elections.[53] Congress extended the prohibition to unions in 1943 and 1947.[54] Through the 1947 act, Congress also prohibited corporations and unions from making expenditures to influence Federal elections.[55] Despite establishing initial reporting requirements and later—invalidated spending limits in the 1910s and 1920s, modern campaign finance law and regulation affecting congressional campaigns did not emerge until the 1970s.

First enacted in 1971 and substantially amended in 1974, 1976, and 1979, the Federal Election Campaign Act (FECA) remains the foundation of the Nation's campaign finance law. Most notably, FECA established modern contribution limits and reporting requirements. Individuals were permitted to contribute $1,000 per election to individual congressional and Presidential candidates.[56] Subsequent amendments to FECA played a major role in shaping campaign finance policy as it is understood today. After the 1974 amendments were enacted, the first in a series of prominent legal challenges came before the Supreme Court.[57] In its landmark *Buckley* v. *Valeo* (1976) ruling, the Court declared mandatory spending limits unconstitutional (except for publicly financed Presidential candidates) and invalidated the original appointment structure for the Federal Election Commission (FEC).[58]

Little in campaign finance policy or law changed for a generation thereafter. Congress did not substantially revisit campaign finance

[49] Louise Overacker, *Money in Elections* (New York: Macmillan, 1932), p. 4.

[50] Although the Progressive Era marked the first time in which Congress enacted major campaign finance legislation, some legislative proposals and oversight predated the period. See, for example, Robert E. Mutch, "The First Federal Campaign Finance Bills," *The Journal of Policy History*, vol. 14, no. 1 (2002), pp. 30–48. For additional historical discussion of the evolution of campaign finance law and policy, see Anthony Corrado et al., *The New Campaign Finance Sourcebook* (Washington, DC: Brookings Institution Press, 2005), pp. 7–47. See also, for example, Kurt Hohenstein, *Coining Corruption: The Making of the American Campaign Finance System* (DeKalb, IL: Northern Illinois University Press, 2007); Mutch, *Campaigns, Congress, and Courts*; and Raymond J. La Raja, *Small Change: Money, Political Parties, and Campaign Finance Reform* (Ann Arbor, MI: University of Michigan Press, 2008), pp. 43–80.

[51] 39th Cong., 2d Sess. (March 2, 1867), p. 492.

[52] 22 Stat. 403 (1883).

[53] 34 Stat. 864 (1907).

[54] 57 Stat. 167 (1943); 61 Stat. 136 (1947).

[55] This is the Taft-Hartley Act, also known as the Labor Management Relations Act. The relevant expenditure prohibition (61 Stat. 159 (1947)) amended the 1925 Federal Corrupt Practices Act (43 Stat. 1074 (1925)).

[56] Congress did not raise the individual limit until 2002 when it enacted the Bipartisan Campaign Reform Act (BCRA).

[57] For additional information, see CRS Report RL30669, *The Constitutionality of Campaign Finance Regulation:* Buckley v. Valeo *and Its Supreme Court Progeny*, by L. Paige Whitaker.

[58] 424 U.S. 1 (1976).

law until 2002, when it enacted the Bipartisan Campaign Reform Act (BCRA). The Supreme Court also largely maintained the status quo throughout the 1980s and 1990s, but began actively revisiting campaign finance law after Congress enacted BCRA. Still the Court did not significantly alter the legal environment facing congressional campaigns until 2010, when the *Citizens United* decision permitted corporations and unions to spend their treasury funds advocating for election or defeat of particular candidates.[59]

THE COST OF CONGRESSIONAL ELECTIONS OVER TIME

Perhaps no other area of congressional campaigns has changed more in recent decades than the amount of money required to run for office. Figure 1 below shows a conservative summary of House and Senate campaign expenditures between the 1974 and 2012 election cycles. The figure includes only candidate spending, only major-party candidates, and only those who advanced to the general election. Even with these caveats and when adjusting for inflation, the almost 40 years between 1974 and 2012 saw major increases in campaign spending. The increase for both House and Senate campaigns was almost 2,000 percent (about 350 percent when adjusted for inflation).[60]

Costs for individual campaigns also increased rapidly. As Table 1 below shows, the increase in expenditures for House and Senate campaigns has consistently outpaced inflation. Average (mean) winning House candidates in 2012 spent more than three times as did their predecessors in 1986.[61] Even when adjusted for inflation, average expenditures more than doubled. Spending in Senate races shows a similar trend.

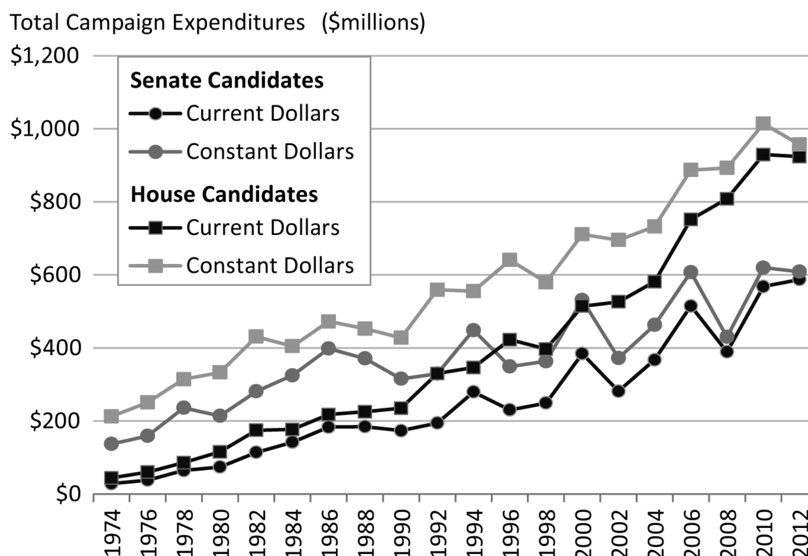
As high as candidate-campaign spending is, it is important to note that it represents only a relatively small component of total spending affecting House and Senate campaigns. The data in the table do not reflect spending by parties, political action committees, or "outside groups." Also important, although virtually all fundraising and spending surrounding congressional campaigns is controversial, it is not universally criticized. Particularly in the post-*Citizens United* environment, some observers argue that American politics needs more money, not less. Opponents strongly disagree. As the next section discusses, whatever one's position on "outside money" in congressional elections, this noncandidate activity has been some of the most consequential and controversial funding in American elections.

[59] 130 S.Ct. 876 (2010).

[60] Information in this section is based on CRS calculations using data in Norman J. Ornstein et al., *Vital Statistics on Congress* (2013), Table 3–5, at http://www.brookings.edu/research/reports/2013/07/vital-statistics-congress-campaign-finance-mann-ornstein. Inflation-adjustment calculations were made to May 2014 from data in U.S. Bureau of Labor Statistics, *CPI Detailed Report: Data for May 2014*, Washington, DC, May 2014, Table 24, at http://www.bls.gov/cpi/cpid1405.pdf.

[61] FEC data on spending by winning campaigns are generally only uniformly available since 1986, as shown in the table. A review of previous data suggests that the trend dates to at least the mid-1970s, when FECA first mandated systematic reporting.

FIGURE 1. TOTAL HOUSE AND SENATE CAMPAIGN EXPENDITURES, 1974–2012



Source: CRS calculations using data in Norman J. Ornstein et al., *Vital Statistics on Congress* (2013), Table 3–5, at http://www.brookings.edu/research/reports/2013/07/vital-statistics-congress-campaign-finance-mann-ornstein. Inflation-adjustment calculations were made to May 2014 from data in U.S. Bureau of Labor Statistics, *CPI Detailed Report: Data for May 2014*, Washington, DC, May 2014, Table 24, at http://www.bls.gov/cpi/cpid1405.pdf.

THE STRUGGLE TO REGULATE "OUTSIDE MONEY"

FECA supporters hoped that the new law would limit the amounts of money surrounding campaigns, including House and Senate races, and reduce the risk of potential corruption by more thoroughly documenting campaign transactions. Almost immediately, parts of the regulatory structure FECA established faced serious challenges. In particular, once the *Buckley* decision drew a distinction between contributions and expenditures, Congress' policy options for capping the amount spent in elections or who could participate were substantially limited. Specifically, the Court found that Congress could cap individual contributions because they presented a sufficient risk of corruption. Expenditures generally could not be limited, provided that they were independent from candidates, although corporations, unions, and national banks remained prohibited from using their treasury funds to advocate for or against candidates (a prohibition later overturned by *Citizens United*). So began a heated debate that continues today about whether independent spending in campaigns is protected political speech or distorts the democratic process. Even as that debate unfolded, it quickly became clear that *Buckley* opened the door to "outside" spending not envisioned when Congress enacted FECA. The kind of money now permitted had changed from the pre-*Buckley* days, but the debate the money fueled was not all that different from concerns first raised during the Progressive Era.

Table 1. Mean Expenditures for Winning House and Senate Campaigns, 1986–2012

Election cycle	House winners current dollars	House winners constant dollars	Senate winners current dollars	Senate winners constant dollars
1986	$359,577	$780,505.19	$3,067,559	$6,658,506.26
1988	400,386	805,171.85	3,746,225	7,533,617.31
1990	423,245	770,390.10	3,298,324	6,003,605.81
1992	556,475	943,588.04	3,353,115	5,685,716.74
1994	541,121	868,641.61	4,488,195	7,204,734.08
1996	686,198	1,040,449.36	3,921,653	5,946,215.73
1998	677,807	989,265.55	4,655,806	6,795,191.70
2000	845,907	1,168,648.73	7,198,423	9,944,859.36
2002	911,644	1,205,559.39	3,728,644	4,930,764.03
2004	1,038,391	1,307,745.88	7,183,825	9,047,284.11
2006	1,259,791	1,486,628.37	8,835,416	10,426,316.80
2008	1,362,239	1,505,212.15	7,500,052	8,287,215.33
2010	1,434,760	1,565,329.11	8,993,945	9,812,431.28
2012	1,596,953	1,654,725.81	10,351,556	10,726,043.24

Source: Norman J. Ornstein et al., *Vital Statistics on Congress* (2013), Table 3–1, at http://www.brookings.edu/research/reports/2013/07/vital-statistics-congress-campaign-finance-mann-ornstein. CRS adjusted current dollars to constant dollars (May 2014) using data from U.S. Bureau of Labor Statistics, *CPI Detailed Report: Data for May 2014*, Washington, DC, May 2014, Table 24, at http://www.bls.gov/cpi/cpid1405.pdf.

Notes: The data reflect only candidates who competed in the general election. The Senate mean for 2000 is unusually large because of heavy spending in the New Jersey and New York Senate races. Without these two outlier cases, the mean would be approximately $4.7 million in current dollars. See the cited source for additional notes.

Although "outside money" is a commonly used term in campaign finance circles, it is a term of art without specific meaning. Generally, it implies money spent by those other than candidate campaigns, and perhaps by political parties. Such spending can take many forms and can be regulated in different ways. This report does not intend to address them all.[62] Instead, it discusses selected developments that were and are particularly consequential for House and Senate campaigns. The next sections first explore PACs as a challenge to the campaign environment Congress sought to create with FECA. Discussions of major legal changes and subsequent spending from super PACs and other groups in the 2000s follow.

POLITICAL ACTION COMMITTEES

Political action committees (PACs) permitted corporations, unions, and other groups an indirect route for making campaign contributions and independent expenditures calling for election or defeat of particular candidates. Although PACs could not use their treasury funds to support most PAC operations, businesses, unions, or other groups could sponsor PACs—to which their employees or members could make voluntary contributions.

Many observers saw PACs as one of the first major threats to the effectiveness of individual contribution limits that Congress had enacted in FECA. Unions engaged in PAC-like activity as early as the 1950s, but the groups did not become an established part of the

[62] For additional discussion, see CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett, The State of Campaign Finance Policy: Recent Developments and Issues for Congress, by R. Sam Garrett; and CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker.

congressional elections landscape until later. PACs as they are known today (although not including super PACs) emerged in the mid-1970s after an FEC advisory opinion permitted the Sun Oil Corporation to establish a separate fund to make expenditures and contributions despite FECA's prohibition on spending corporate treasury funds in U.S. elections.[63] Congress codified the PAC model in the 1976 and 1979 FECA amendments.

Throughout the 1980s, PAC spending was controversial, as many believed the committees represented a loophole in the ban on corporate and union treasury spending, even though PAC funds must come from voluntary contributions rather than corporate or union treasury funds. PACs also were the major vehicle by which funds often derided as "special interest" money flowed into congressional elections following FECA's enactment. These developments launched a decades-long debate, which continues to this day, about whether PACs were the product of genuine "grassroots" advocacy or thinly veiled corporate and union attempts to influence elections. Those favoring and opposing PACs also argued over whether the groups distorted the policy process by pressuring lawmakers to support "special interests" or whether they filled gaps left by allegedly declining political parties and provided an outlet for diverse interests.[64]

Despite the controversy surrounding PACs, they quickly became a reality of congressional elections. PACs were particularly generous to incumbents. During the 1980s, House and Senate incumbents relied on PACs for one-quarter to one-half of their campaign contributions.[65] The number of registered PACs more than doubled between 1976 and 1984, from about 1,150 to more than 4,000.[66] Still, PACs did not grow exponentially. To use an analogy, once PACs took off, they leveled off. As Figure 2 below shows, the number of corporate and labor PACs has remained fairly stable from the beginning, and especially after 1984. A generation later, in 2010, the total number of PACs increased when super PACs emerged following the Supreme Court's ruling in *Citizens United* v. *Federal Election Commission* and the lower-court case *SpeechNow* (discussed below). The traditional PACs that developed in the 1970s and 1980s, however, remained stable. In this sense, there is no doubt that PACs changed congressional elections. But, once the change occurred, PACs became standard fare for those hoping to influence congressional elections, controversy notwithstanding. Other forms of outside money have similarly become accepted, if controversial, mainstays in congressional elections.

---

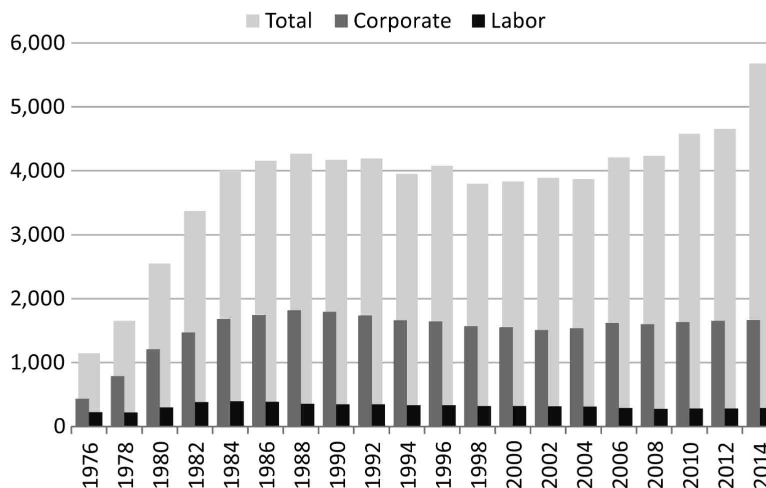
[63] The Sun Oil advisory opinion (AO) is 1975–23 (November 24, 1975). For additional discussion of PAC development, see, for example, David B. Magleby and Candice J. Nelson, *The Money Chase: Congressional Campaign Finance Reform* (Washington, DC: Brookings Institution Press, 1990); and Mutch, *Campaigns, Congress, and Courts*.

[64] See, for example, archived CRS Report 84–87 GOV, *Political Action Committees: Their Evolution, Growth, and Implications for the Political System*, by Joseph E. Cantor.

[65] David B. Magleby and Candice J. Nelson, *The Money Chase: Congressional Campaign Finance Reform* (Washington: Brookings Institution Press, 1990), pp. 82–83.

[66] Data in this section come from CRS analysis of data in Federal Election Commission, "PAC Count—1974 to Present," press release, July 2014, at http://www.fec.gov/press/summaries/2011/2011paccount.shtml.

FIGURE 2. NUMBER OF FEDERAL POLITICAL ACTION COMMITTEES, 1976–2014



Source: CRS figure based on analysis of data in Federal Election Commission, "PAC Count—1974 to Present," press release, July 2014, at http://www.fec.gov/press/summaries/2011/2011paccount.shtml.

Notes: The FEC data cited above include additional PAC types not shown in the figure, although they are reflected in the totals.

THE NEXT GENERATION OF INDEPENDENT SPENDING: THE 1990S AND BEYOND

By the 1990s, attention began to shift to other perceived loopholes in FECA. Two issues—soft money and issue advocacy (issue advertising)—were especially prominent.[67] "Soft money" is a term of art referring to funds generally perceived to influence elections but not regulated by campaign finance law. Although generally banned in Federal elections today (as a result of BCRA, discussed below), soft money came principally in the form of large contributions from otherwise prohibited sources, and went to party committees for "party-building" activities that indirectly supported elections. Party facilities, get-out-the-vote (GOTV) campaigns, and other efforts were all fueled by hundreds of millions of dollars in soft money during the 1980s and 1990s. Because these funds were allocated to State parties or non-Federal accounts of national parties, with consent from the FEC, they were largely unregulated for Federal purposes, even though they played an increasingly prominent role in the infrastructure that tacitly surrounded House and Senate campaigns. Parties typically found raising soft money easier than "hard money," which was subject to limits on sources and amounts.

[67] Parts of this section are adapted from material in CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett; and CRS Report R42042, *Super PACs in Federal Elections: Overview and Issues for Congress*, by R. Sam Garrett.

Parties also found ways to use soft money to indirectly bolster their candidates.[68] In particular, during the 1990s, parties found a new outlet for soft money: "issue advocacy." These advertisements, typically aired on radio and television, traditionally fell outside FECA regulation because they praised or criticized a Federal candidate—often by urging voters to contact the candidate—but did not explicitly call for election or defeat of the candidate. By 2002, the last election cycle in which soft money was permitted, Democratic and Republican Party committees raised almost $500 million in soft money. That amount was almost double what the two parties had raised just 4 years earlier.[69] In fact, Democrats—who typically enjoyed a soft-money advantage over Republicans—raised more soft money than hard.[70]

In response to these and other developments, Congress enacted major campaign finance legislation for the first time in a generation.[71] Among other provisions, BCRA, enacted in 2002, banned national parties, Federal candidates, and officeholders from raising soft money in Federal elections; increased most contribution limits; and placed additional restrictions on preelection issue advocacy.[72] Specifically, the act's electioneering communications provision prohibited corporations and unions from using their treasury funds to air broadcast ads referring to clearly identified Federal candidates within 60 days of a general election or 30 days of a primary election or caucus. As a consequence, if corporations or unions wanted to engage in communications that mentioned Federal candidates during preelection periods, they had to do so through PACs, which were subject to limits on contribution sources and amounts.

Opponents of the legislation, including Senator Mitch McConnell, immediately filed suit, arguing that BCRA's provisions inhibited political speech. They also raised concerns that BCRA would inhibit parties by tacitly encouraging money to flow away from the old channel of soft money and toward arguably less regulated sources, such as tax-exempt organizations. Surprising many observers, the Supreme Court upheld most of BCRA in *McConnell* v. *FEC* (2003).[73] Over time, though, the Court held aspects of BCRA unconstitutional as applied to specific circumstances. These included a 2008 ruling related to additional fundraising permitted for congressional candidates facing self-financed opponents and a 2007

---

[68] For an overview, particularly during the final election cycle in which soft money was permitted, see David B. Magleby and Nicole Carlisle Squires, "Party Money in the 2002 Congressional Elections," in *The Last Hurrah: Soft Money and Issue Advocacy in the 2002 Congressional Elections*, ed. David B. Magleby and J. Quin Monson (Washington: Brookings Institution Press), pp. 36–62.

[69] Federal Election Commission, "Party Committees Raise More Than $1 Billion in 2001–2002," press release, March 20, 2003, at http://fec.gov/press/press2003/20030320party/20030103party.html.

[70] Democratic Party committees raised $246.1 million in soft money compared with $217.2 million in hard money. See ibid.

[71] Congress approved limited public financing legislation in 1992, but President George H.W. Bush vetoed the measure. For additional discussion, see CRS Report RL33814, *Public Financing of Congressional Campaigns: Overview and Analysis*, by R. Sam Garrett.

[72] BCRA, also known as "McCain-Feingold" for its principal Senate sponsors, John McCain and Russell Feingold, is P.L. 107–155; 116 Stat. 81. BCRA (2002) amended FECA. Effective September 2014, FECA is codified at 52 U.S.C. § 30101 *et seq.* (previously at 2 U.S.C. § 431 *et seq.*).

[73] 540 U.S. 93 (2003). For additional discussion, see CRS Report RL32245, *Campaign Finance Law: A Legal Analysis of the Supreme Court Ruling in* McConnell v. FEC, by L. Paige Whitaker; and CRS Report RL30669, *The Constitutionality of Campaign Finance Regulation:* Buckley v. Valeo *and Its Supreme Court Progeny*, by L. Paige Whitaker.

ruling on the electioneering communication provision's restrictions on advertising by a 501(c)(4) advocacy organization.[74]

The most significant blow to BCRA, and a major change in Federal campaign finance law, occurred in 2010. In *Citizens United* v. *Federal Election Commission*, the Court lifted the bans on corporate and union treasury expenditures discussed above and enacted in 1947.[75] *Citizens United* also invalidated the hard-money requirement in BCRA's electioneering communication provision. Consequently, for the first time in modern history, corporations and unions were free to use their own funds to expressly call for election or defeat of Federal candidates. Another major change in the campaign finance landscape followed a few months after *Citizens United*. In *SpeechNow.org* v. *Federal Election Commission*, the U.S. Court of Appeals for the District of Columbia held that contributions to PACs that make only independent expenditures cannot be limited—a development that led to formation of "super PACs."[76] Coupled with increasing use of tax-exempt 501(c)(4) social welfare organizations and 501(c)(6) trade associations, regulated primarily under tax law rather than election law, individuals, unions, and corporations now had major new outlets to affect Federal elections. Reflecting concerns that had been present during the Progressive Era, much of the debate surrounding super PACs and 501(c) organizations has concerned unlimited contributions to the groups and, in some cases, limited donor disclosure.[77]

In general, few corporations and unions have chosen to make independent expenditures using their treasury funds. Super PACs, 501(c) organizations, and individuals, however, have chosen to spend freely on House and Senate contests. In the roughly 10 months in which super PAC independent spending was permitted during the 2010 election cycle, super PACs spent more than $90 million, most of which went toward advocating the election or defeat of House and Senate candidates. By 2012, super PACs spent almost $800 million. Although much of that spending went toward the Presidential race, super PACs spent as much as $15 million on individual Senate contests.[78] Altogether, parties, PACs, individuals, and other groups spent $1.25 billion on independent expenditures in all Federal races in 2012. House and Senate candidates, by comparison, spent not much more—about $1.8 billion.[79]

---

[74] For additional discussion, see CRS Report RS22920, *Campaign Finance Law and the Constitutionality of the "Millionaire's Amendment": An Analysis of* Davis v. Federal Election Commission, by L. Paige Whitaker; CRS Report RS22687, *The Constitutionality of Regulating Political Advertisements: An Analysis of* Federal Election Commission v. Wisconsin Right to Life, Inc., by L. Paige Whitaker; and CRS Report RL34324, *Campaign Finance: Legislative Developments and Policy Issues in the 110th Congress*, by R. Sam Garrett.

[75] *Citizens United* is 130 S. Ct. 876 (2010). For a legal analysis of the case, see CRS Report R41045, *The Constitutionality of Regulating Corporate Expenditures: A Brief Analysis of the Supreme Court Ruling in* Citizens United v. FEC, by L. Paige Whitaker.

[76] For additional discussion of *SpeechNow*, see CRS Report RS22895, *527 Groups and Campaign Activity: Analysis Under Campaign Finance and Tax Laws*, by L. Paige Whitaker and Erika K. Lunder. On super PACs, see CRS Report R42042, *Super PACs in Federal Elections: Overview and Issues for Congress*, by R. Sam Garrett.

[77] For additional discussion of donor disclosure and the relationships between super PACs and 501(c) organizations, see CRS Report R42042, *Super PACs in Federal Elections: Overview and Issues for Congress*, by R. Sam Garrett.

[78] This information appears in CRS Report R42042, *Super PACs in Federal Elections: Overview and Issues for Congress*, by R. Sam Garrett.

[79] These data come from FEC statistical summaries for the 2012 election cycle at http://fec.gov/press/campaign__finance__statistics.shtml.

CHANGE AND CONTINUITY IN CONGRESSIONAL CAMPAIGN FINANCE

The amounts of money raised and spent in congressional campaigns have changed dramatically. Fundamentally, though, campaign funds are used to buy the same thing they always have: efforts to win more votes than an opponent on Election Day. In a briefing ahead of the 2014 elections, for example, the national Republican Party committees and their State legislative and gubernatorial counterparts announced plans to spend hundreds of millions of dollars in the closing weeks of the election cycle. Like Democrats, the GOP planned to target its spending on voter-contact efforts powered by technological innovations such as smartphones and real-time data analysis.[80] The methods of voter contact, number of voters contacted, and costs might have been new, but the goals were not. Tens of thousands of precinct captains were key players in collecting and acting on the expensive, technical data—just as they had been for more than a century.

Then, as now, the media and other observers have nonetheless criticized fundraising practices and campaign finance policy positions among members of both parties. One of the most troubling consequences of outside money, for some observers, has been the loss of candidate control over the campaign environment. PACs in the 1970s, soft money and issue advocacy in the 1980s and 1990s, and express advocacy by 501(c)s and super PACs in the 2000s, all limited candidate influence over the campaign environment by introducing new and, sometimes overwhelming, money and political messages. Although the specifics differ from those of the 1950s, observers continue to worry about the future of political parties. As funding by nonparty and noncandidate forces increases, recent media accounts and political professionals suggest that candidates might become—or already are—periphery players in their own campaigns.[81]

As the preceding discussion shows, the rules surrounding campaign finance regulation have changed, and in some cases, so have the players. Nonetheless, the same major elements of the policy debate remain in campaign finance today as were in place a century ago. Who should be permitted to raise and spend money in House and Senate campaigns? Where should that money come from? How much information about donors should be disclosed and how often? Should spending be treated differently from contributions? Most of these questions are just as relevant today than they were during the early 1900s, if not before.

Campaign Outcomes

One way in which congressional elections today are different from the past can be seen in the recent tendency for the outcome to result in divided, rather than unified, government. One party or the other was more likely to control simultaneously the House, Senate, and White House in the years before 1950 than since. Between 1900 and 1950, both political branches were under one par-

[80] Jennifer Kerns, "Republicans Are Ready for the 2014 Midterms," *The Washington Times*, July 18, 2014, p. B3.

[81] See, for example, Ashley Parker, "Outside Money Drives a Deluge of Political Ads," *The New York Times*, July 27, 2014, p. A1, New York edition.

ty's control 80 percent of the time, compared to 41 percent since 1950.[82] The last time one party controlled both Chambers and the White House for an entire Presidential term was during the Carter administration, during the 95th and 96th Congresses.

Another difference is a decline in the number of congressional districts in which the parties are competitive. Redistricting trends in recent decades have meant that, when some States draw new congressional district boundaries after a decennial census, a cooperative effort to protect incumbents and maintain the status quo has meant that the number of truly competitive districts has declined.[83] For example:

> In 1992, there were 103 members of the House of Representatives elected from what might be called swing districts: those in which the margin in the presidential race was within five percentage points of the national result. But based on an analysis of this year's presidential returns, I estimate that there are only 35 such Congressional districts remaining, barely a third of the total 20 years ago.[84]

For the 2014 election, the *Cook Political Report* estimated that 365 House seats were "solid" for either Democrats or Republicans, while another 50 were "likely" wins for one party or the other because one party had an advantage in the district. As a result, the number of races that were rated competitive in the summer before the election was 20.[85]

The number of seats gained in the House by one party or the other has been generally lower in recent decades. As an approximate measure of political volatility, there was greater turnover in congressional seats in the first half of the 20th century than today, despite the widely held impression that political polarization is greater today than in the past.[86] Using the mid-century mark as an arbitrary dividing line, between 1950 and 2012 (62 years), there were 7 elections in which one party or the other gained at least 34 seats (Republicans gained 34 seats in the "Reagan Revolution" that began in 1980, which resulted in a 243–192 partisan lineup in favor of the Democrats). Table 2 (below) provides a list of 11 elections between 1900 and 1950 (50 years) in which one party gained at least 34 seats, as well as the 7 corresponding elections between 1952 and 2012.[87] The comparative number of seats gained was also higher before 1950: 43–93 in the earlier period and 34–64 between 1952 and 2012.

The reelection rate of incumbent Members of the House has remained fairly steady throughout the last five decades. In 1960, 94 percent of House incumbents and 97 percent of Senate incumbents were reelected. In 2012, 93 percent of House incumbents and 95 percent of Senate incumbents were reelected.[88] The House incumbent reelection rate has dropped below 90 percent three times since 1960, in 1964, 1974, and 2010. Senate incumbent reelection rates

---

[82] Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics, 2013–2014* (Thousand Oaks, CA: CQ Press, 2013), pp. 36–37.

[83] See CRS Report R42831, *Congressional Redistricting: An Overview*, by Royce Crocker.

[84] Nate Silver, "As Swing Districts Dwindle, Can a Divided House Stand?" *The New York Times*, December 27, 2012.

[85] "2014 House Race Ratings for August 8, 2014," *The Cook Political Report*, August 8, 2014.

[86] Some observers have argued that the deep partisan divide often referenced in the media is inaccurate; see, for example, Morris P. Fiorina, with Samuel J. Abrams, and Jeremy Pope, *Culture War? The Myth of a Polarized America* (New York, Pearson Longman, 2006).

[87] Stanley and Niemi, *Vital Statistics on American Politics*, pp. 27–31.

[88] Ibid., pp. 45–47.

have been more volatile, dropping at times to 64 percent (in 1976 and 1980), but in the 80 to 99 percent range in 20 of 27 elections since 1960.

Table 2. High-Turnover Elections in the U.S. House, 1900–1950 and 1952–2012

Year	Party	Seats gained
1900–1950		
1904	Republicans	43
1910	Democrats	56
1912	Democrats	62
1914	Republicans	66
1920	Republicans	63
1922	Democrats	75
1930	Democrats	53
1932	Democrats	93
1938	Republicans	80
1946	Republicans	56
1948	Democrats	75
1952–2012		
1958	Democrats	49
1964	Democrats	37
1966	Republicans	47
1974	Democrats	48
1980	Republicans	34
1994	Republicans	54
2010	Republicans	64

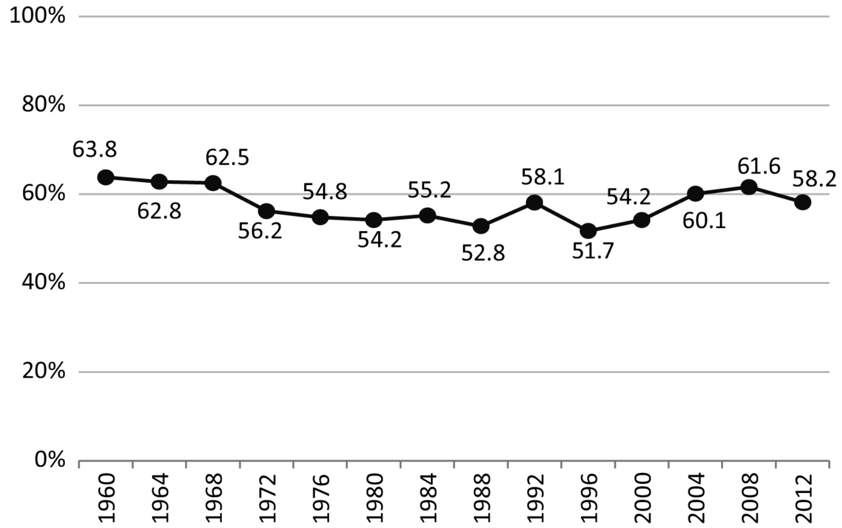
Source: Harold W. Stanley and Richard G. Niemi, Vital Statistics on American Politics, 2013–2014 (Thousand Oaks, CA: CQ Press, 2013), pp. 27–31.

Despite the ability to identify potential voters using sophisticated data collection and analysis, persuade them through focus group-tested campaign advertising and messaging, and drive them to the polls with get-out-the-vote plans that unfold with military precision, voter turnout has remained relatively constant in the modern campaign era. In the 1960 Presidential election, voter turnout was 63.8 percent of the voting-eligible population,[89] the highest level of participation in the modern era. Beginning in 1972—the 1st year in which 18- to 20-year-olds were eligible to participate—turnout declined to 56.2 percent and didn't exceed 60 percent again until 2004, when it was 60.1 percent. In the last 2 elections, it was 61.6 percent (the 4th highest in the 14 elections of the modern era) and 58.2 percent in 2012. (See Figure 3.)

Turnout in congressional elections, in somewhat similar fashion, began to decline and has recently increased again slightly. In 1966 it was 48.7 percent and exceeded 40 percent twice in the next five elections, when it was 47.3 percent in 1970 and 42.1 percent in 1982. In recent elections it was: 39.5 percent in 2002, 40.4 percent in 2006, and 41 percent in 2010. (See Figure 4.)

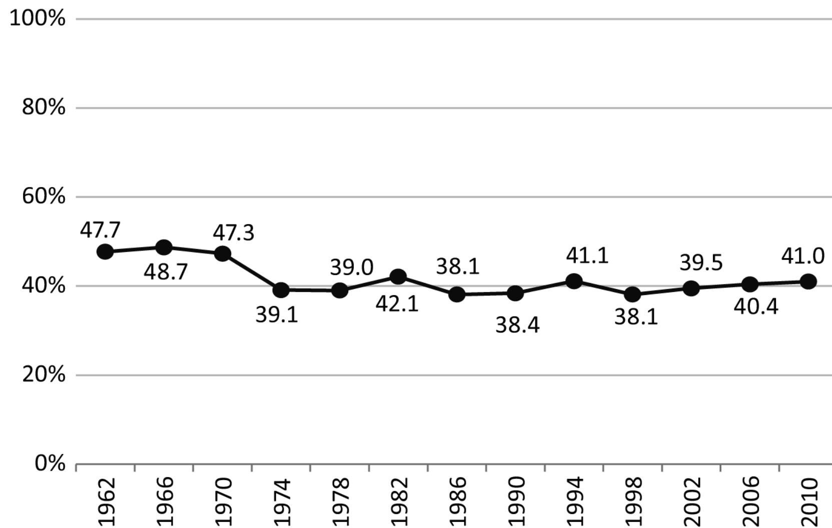
[89] Stanley and Niemi, *Vital Statistics on American Politics*, pp. 4–5.

FIGURE 3. VOTER TURNOUT IN PRESIDENTIAL ELECTIONS, 1960–2012



Source: CRS figure based on data appearing in Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics*, 2013–2014 (Thousand Oaks, CA: CQ Press, 2013), pp. 4–5.

FIGURE 4. VOTER TURNOUT IN CONGRESSIONAL ELECTIONS, 1962–2010



Source: CRS figure based on data appearing in Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics*, 2013–2014 (Thousand Oaks, CA: CQ Press, 2013), pp. 4–5.

Campaigns and Voters

There is a natural assumption that the present is modern and advanced and the past is outdated and obsolete. New concepts of communication, technology, and media replace old ways and the result is not just improved, but usually noticeably superior. In the realm of election campaigns, the term "modern" has been used for decades, as the "modern campaign" era arrived unofficially with the televised Nixon-Kennedy debates in the 1960 Presidential election. And yet, years before that contest, the hallmarks of the "modern" campaign were already present, at least in Texas, as described here:

> Scientific polling, techniques of organization and of media manipulation—of the use of advertising firms, public relations specialists, media experts from outside the political apparatus, of the use of electronic media . . . not only for speeches but for advertising to influence voters—the mature flowering of all these devices dates, in Texas and the Southwest, from Lyndon Johnson's 1948 [Senate] campaign.[90]

The seeming sophistication of the Johnson campaign, or at least the effectiveness of the technology employed in it, may have been overstated.[91] Even today, elections are not likely to be won on Twitter or Facebook, valuable as these and other social media might be for fundraising and reaching certain segments of the population via the Internet. New campaign tools and technologies tend to be developed over time alongside traditional methods, such as phone calls, door-to-door canvassing, and campaign literature and messaging. For example, the much-praised Obama reelection team "had more than 100 operatives working with their data to allow them to make more informed decisions. Still, by their own admission, they largely operated by the seat of their pants when it came to crunching, honing, and optimizing digital advertising."[92] Campaigns rely on a field operation to identify and turn out voters, much as they always have. As one campaign consultant who has worked for State and Federal candidates observed:

> What's fascinating is that while technology has changed since 1789, campaigns really haven't . . . . Turn out your base, target potential crossover votes with a compelling message, build coalitions, highlight your opponent's weaknesses.[93]

Making contact with voters is vital, whether by phone, door-to-door canvassing, or with literature, email, or new media. A recent book on campaigning noted:

> Everything we know from basically 15 years of field experiments shows that high-quality, face-to-face contacts for a volunteer living in the same community as the voter is the best way to turn somebody out . . . .[94]

Consequently, campaigns continue to invest in time-honored, low-tech methods of voter contact. As if to underscore the point, the gubernatorial campaign of Republican-turned-Democrat Charlie

[90] Robert A. Caro, *The Years of Lyndon Johnson: Means of Ascent* (New York: Alfred A. Knopf, 1990), p. xxxiii.

[91] See Bruce E. Altschuler, "Lyndon Johnson: Campaign Innovator?," *PS: Political Science & Politics*, vol. 24, no. 1 (March 1991), pp. 42–44, who suggested that the purported sophistication of the Johnson campaign was inaccurate.

[92] Brian Donahue, "The Software Upgrade Election," *Campaigns & Elections*, November/December 2013, p. 45.

[93] John Bicknell, "Over Lincoln's Shoulder: The five ex-presidents who badgered the man trying to save their country," *Roll Call*, June 17, 2014.

[94] Mara Liasson, *Democrats Count on the Fine Art of Field Operations*, National Public Radio, March 24, 2014.

Crist boasted to *The Washington Post* in August 2014 that "its volunteers have already knocked on 700,000 Florida doors—far surpassing the 200,000 that Romney's campaign had reached by this point in the 2012 election."[95] Despite ever-increasing sophistication in campaign techniques to target and persuade voters, elections are, as they have always been, somewhat unpredictable:

> The people who explain politics for a living—the politicians themselves, their advisers, the media who cover them—love to reach tidy conclusions . . . . Elections are decided by charismatic personalities, strategic maneuvers, the power of rhetoric, the zeitgeist of the political moment. The explainers cloak themselves in the loose-fitting theories because they offer a narrative comfort, unlike the more honest acknowledgement that elections hinge on the motivations of millions of individual beings and their messy, illogical, often unknowable psychologies.[96]

In an age when data collection is unrelenting and expanding, and campaign technologies and social media are changing with each election cycle, it may be useful to recall that the art of campaigning is, after all, simply an effort to persuade voters one by one.

Conclusion

This report has suggested that fundamental aspects of congressional elections remain largely unchanged from a century ago. Some notable changes must nonetheless be acknowledged. Even where there has been notable change, the roots of major elements of modern congressional elections rest firmly in entrenched political practices. The themes that have organized the discussion reveal both consistency and change. Overall, though, House and Senate campaigns remain much as they always were. Factors such as immigration, migration within the United States, and enactment of modern voting laws have substantially changed congressional campaigns. Despite changes in techniques and technology, however, campaigns remain about connecting with voters and asking for their support. Campaign finance represents one of the greatest areas of change in the past century. Some forms of independent spending that are now common were rare or nonexistent in previous decades. Amounts of money in campaigns overall are up significantly with no sign of decline. Despite these changes in the amounts and sources of money, however, major issues in campaign finance policy—such as who should be permitted to influence elections, how, and when—remain constant. Electoral outcomes generally are more stable today than they were before 1950. At the same time, incumbents are overwhelmingly reelected. With respect to voter interest in elections, turnout has remained relatively stable for decades.

To return to the analogy of watching a baseball game today compared with one in 1914, the equipment and environment have changed. Newly introduced instant replay provides more technical accuracy, just as computerized polling and data analysis permits microtargeting of individual communities or voters. Still, games are won and lost with balls, strikes, hits, and runs. Campaigning still depends on getting voters to the polls and convincing them to cast

[95] Karen Tumulty, "Charlie Crist, Rick Scott battle for every Florida vote," *The Washington Post*, August 25, 2014.
[96] Sasha Issenberg, *The Victory Lab: The Secret Science of Winning Campaigns* (New York: Broadway Books, 2012), p. 3.

ballots one way or another. No amount of money, from candidates, parties, or outside groups, can substitute for good campaign management and appealing candidates. Congressional elections might be less popular than the national pastime, but they are no less enduring.

Understanding Congressional Approval: Public Opinion from 1974 to 2014

JESSICA C. GERRITY

Section Research Manager

The aggregate findings in this report suggest that Congress, the institution, and the individuals who compose it, are far from popular. Yet, Congress may not be directly responsible for some of the factors that influence the public's assessment of the legislative branch. Regardless, to combat the negative effects of the public's low regard for Congress and government generally, whether a result of its own actions or exogenous factors like the economy or international and national events, Congress may wish to consider ways to encourage the public to learn more about the legislative branch and the legislative process, designate individuals to speak on behalf of the institution, and otherwise improve communications with the public.

Introduction

According to a September 8, 2014, Gallup Poll release, just 14 percent of the public approved of the job Congress was doing. This is up from the 9 percent mark set in November 2013. That Congress, designed to be the branch of government most responsive to public opinion, received such low marks from the public and routinely serves as discussion fodder for journalists and scholars, is not surprising, given Americans' propensity to skepticism about politics.[1] Yet, identifying exactly why the public's marks for Congress periodically reach such low points, such as is currently the case, let alone devising solutions to address potential problems, is a challenge. Congress is the branch of government directly responsible for lawmaking, and many Members of Congress are reelected in uncompetitive elections. Yet, more focused research suggests that Americans have a love/hate relationship with the processes that the Nation's Founders believed would protect democracy—compromise, debate, and bargaining.[2]

---

[1] John R. Hibbing and Elizabeth Theiss-Morse, "Introduction, Studying the American People's Attitudes Toward Government," in *What Is It About Government that Americans Dislike*, ed. John R. Hibbing and Elizabeth Theiss-Morse (Cambridge, United Kingdom: Cambridge University Press, 2001), pp. 1–7; also, see at http://www.publicpolling.com/main/2013/01/congress-less-popular-than-cockroaches-traffic-jams.html.

[2] See Mark D. Ramirez, "The Dynamics of Partisan Conflict on Congressional Approval," *The American Journal of Political Science*, vol. 53, no. 3 (July 2009), pp. 629, 681–694; on the concept and meanings of "compromise," see Alin Fumurescu, *Compromise, A Political and Philo-*

Continued

Low approval of Congress may or may not be here to stay. Aggregated polling data over the past 40 years suggests that approval could rebound from its current nadir. Regardless of how favorable or unfavorable the public's evaluation of the legislative branch is at a given time, Congress, unlike the President, is ill equipped to respond to the public's discontent. While a President may also suffer from poor marks from the public, the President typically enjoys a healthy favorable margin over the legislative branch. A June 12, 2014, Gallup Poll found that 52 percent of the public viewed President Obama unfavorably. While giving him a net favorable rating of −5 percent (47 percent have a favorable rating), his lowest to date, defenders of Congress would find this approval rating enviable.[3]

The President, armed with a press secretary, press office, and communications team, is arguably well positioned to respond to criticism, and in some cases to stave it off. Congress, on the other hand, has at least 535 press secretaries for individual Senators and Representatives, whose primary job is to articulate a message effectively on behalf of their individual bosses, sometimes at the expense of the institution. Indeed, many Members have found it effective to run against the institution in their electoral campaigns—*Send Candidate A to Washington, DC, and she'll keep those "bums" in line!* Rarely do campaign advertisements proclaim, *Send Candidate B to Congress to join his esteemed colleagues in important policymaking!*

What does low public job approval of Congress, which has ebbed and flowed a great deal since it was first measured by public opinion polling firms in a consistent manner in the mid-1970s, mean for Congress and the people who work for Congress?[4] Former Representative Lee Hamilton has argued, in *How Congress Works and Why You Should Care*: "In a representative democracy like ours, in which Congress must reflect the views and interests of the American people as it frames the basic laws of the land, it really does matter what people think about Congress."[5] Some scholars argue that distrust and disapproval of government has consequences for behaviors that are important to the viability of the political system, such as voting and other forms of political participation. Moreover, as some political scientists argue, dissatisfaction with Congress (and other government institutions) leads to decreased tendencies to comply with laws, run for elected office, or engage in the political process; there is, therefore, cause for Congress to be concerned with low approval of the institution.[6]

---

sophical History (Cambridge, United Kingdom: Cambridge University Press, 2013), pp. 1–6, passim.

[3] Jeffrey M. Jones, "Americans' Ratings of President Obama's Image at New Lows," *The Gallup Poll*, June 12, 2014, at http://www.gallup.com/poll/171473/americans-ratings-president-obama-image-new-lows.aspx.

[4] Prior to Gallup introducing the question in 1974, the exact question about job approval had not been used in a consistent manner, but there had been earlier attempts at measuring congressional performance.

[5] Lee H. Hamilton, *How Congress Works and Why You Should Care* (Bloomington, IN: Indiana University Press, 2004), pp. 75–76.

[6] John R. Hibbing and Elizabeth Theiss-Morse, *Stealth Democracy: Americans' Beliefs about How Government Should Work* (Cambridge, United Kingdom: Cambridge University Press, 2002), p. 210.

Report Overview

There are a number of reasons the public is dissatisfied with Congress and American political institutions. As two scholars of public opinion of Congress have explained, "while disgust with Congress is widespread, people differ in their actual level of support and in the reasons behind their evaluations of Congress."[7] First, the report draws on the results of over 1,000 public opinion polls from a number of sources—ABC, CBS, Gallup, Fox, etc.—all available on the subscription database, IPOLL, at the Roper Center, to display polling results on public attitudes about the job performance of Congress over the period 1974 to 2014.[8] Second, given this trend of disapproval in the evaluation of Congress, the report discusses the research on public evaluations of Congress. Third, the report examines some possible attitudinal correlates of the public's views of Congress, the institution, including economic attitudinal data from the Survey of Consumers, conducted by the University of Michigan.[9] In addition, other correlates are examined and discussed. Appendix A provides a discussion of the methodology used to calculate the annual averages for all measures shown in the report. It also discusses how the concept of correlation is used in the report. Appendix B displays the tables upon which the graphs are based.

Congressional Job Approval, 1974 to 2014

Over the past 40 years, many polling organizations have tracked congressional job performance by posing the question, *Do you approve or disapprove of the way Congress is handling its job?*, to national probability samples of Americans. Approval of the job that Congress is doing has ebbed and flowed, but, until recently, has not dropped lower than the high teens.

Figure 1 shows, over the period 1974 to 2014, the annual average percentage of respondents approving of the job Congress has been doing.[10] The data show that, over this period, Americans have not held Congress in especially high regard—on average, congressional job approval is 32 percent over the 40-year period. While approval has varied over the years, it appears to be in its worst decline since September 2001. Before examining the data, it is helpful to briefly provide some historical context to select high and low points.

---

[7] John. R. Hibbing and Elizabeth Theiss-Morse, *Congress as Public Enemy: Public Attitudes toward American Political Institutions* (Cambridge, United Kingdom: Cambridge University Press, 1995), p. 106.

[8] The Roper Center of Public Opinion Research is located at the University of Connecticut, Storrs, Connecticut. For a description of its holdings, see http://www.ropercenter.uconn.edu/about__roper.html. The Roper Center's IPOLL database contains the results of national surveys conducted as far back as 1935. The database itself consists of the results of over 600,000 questions. See http://www.ropercenter.uconn.edu/data__access/ipoll/ipoll.html.

[9] See Survey of Consumers, University of Michigan, at http://www.sca.isr.umich.edu/. The Survey of Consumers has been conducted by the Survey Research Center at the University of Michigan since 1946. Each month, questions about personal finances, business conditions, and future buying plans are posed to a national probability sample of 500 adults to measure consumer confidence. Also, see http://press.sca.isr.umich.edu/press/about__survey.

[10] See Appendix A for a discussion of how the annual percentages were calculated. Note that comprehensive and comparable data on job approval are available beginning in 1974, and, as a result, this is where discussion can begin. But as indicated in footnote 4 above, polling organizations had asked questions of the public about the Congress prior to this year. However, these questions tended to vary a good deal in content or wording.

An examination of Figure 1 and Table B–1 appears to indicate three periods of low levels of job approval and two periods of relatively high approval. The first low period appears to clump in the period 1974 to 1983, with the lowest point, 19 percent, occurring in 1979. The entire period was characterized by the resignation of a disgraced President, two oil crises, two economic recessions, the Iranian hostage situation, high unemployment, and high inflation. Any or all of these might have had an impact on the lowering levels of trust in government institutions, including Congress.

The second period characterized by lower levels of job approval was the period 1992 to 1994. With respect to Congress, this particular period was characterized by scandals, resulting in a large amount of negative media coverage and, ultimately, the convictions of several Members of Congress. The final low job approval period shown in the graph stretches from 2006 to the present, and covers the period which some have referred to as the "Great Recession" (2007–2009). In addition, due to partisan balance in the Congress, unusually high levels of partisanship, and what the media have often portrayed, rightly or wrongly, as a political stalemate in which Congress has been unable to get but a few major tasks done, this period has marked a low point in congressional job approval over the 40-year period for which we have measures.

On the other hand, there have been several high points in the 40 years that job approval has been measured. The first high period appears to have occurred during the mid- to late-1980s. Similarly, the public's approval of how the Congress was handling its job peaked during the period 1998 to 2002. In both cases, there was underlying positive economic growth occurring. In addition, these were periods where Congress was shown to be conducting its constitutionally specified job, investigating the actions of the President. Support for Congress (as well as for President George W. Bush) would, of course, show up in the polls after September 11, 2001, as the public saw the Congress and the President working together to deal with that crisis and its aftermath.

As noted, Figure 1 shows the annual average congressional job approval from 1974 to 2014. The annual average approval shown here is an average of all of the congressional approval/disapproval questions asked in a given year.[11] Some noteworthy points of interest in Figure 1 (also see Table B–1) include the following:

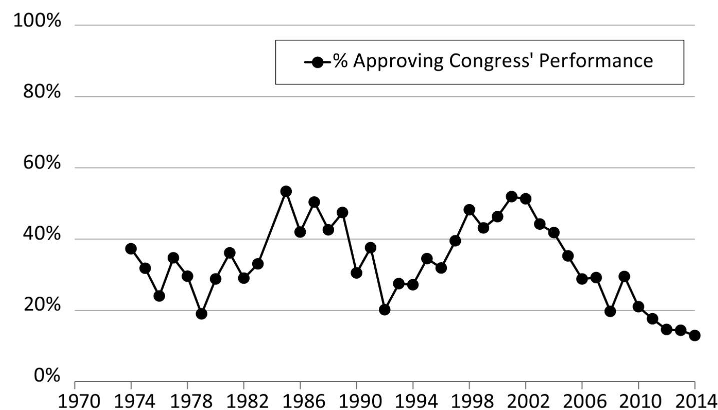
- The average job approval over the past 40 years was 32 percent.
- The highest approval seen over this time period was 53.4 percent in 1985. The lowest was 12.9 percent in 2014.
- Over the past 40 years, the average annual congressional job approval dropped below 20 percent seven times—instances where 20 percent or fewer Americans approved of the way Congress was handling its job. Four of the years in which approval crept below 20 percent occurred in the past 4 years, 2011–2014. In 1979, 1992, and 2008 congressional approval also was at or just under 20 percent.

[11] See Table B–1 for the specific percentages shown in Figure 1.

- In 2011, congressional approval dropped to 17.6 percent and has continued to decline, to 14.6 percent in 2012 and 14.4 percent in 2013; it dropped to 12.9 percent, a new historical low annual average, in 2014.
- Congressional approval has been greater than 50 percent only four times in the past 40 years—1985, 1987, 2001, and 2002.

FIGURE 1. ANNUAL AVERAGE PERCENTAGE APPROVING OF CONGRESSIONAL JOB PERFORMANCE

1974–2014



Source: Roper Center IPOLL Database with annual percentage estimates calculated by CRS. Also, see Table B–1 for the actual values.

The threshold boundaries, below 30 percent approval and above 45 percent, are useful “markers” for organizing this discussion of the information displayed in Figure 1, but different cutoff points could be selected for discussion and may yield different conclusions.

First, consider the earliest low-approval year, 1979. That year, only 19 percent of the public approved of Congress,[12] which was controlled in both Chambers by the Democrats. Democratic President Jimmy Carter, losing popularity himself, struggled, along with Congress, to deal with the Iran hostage crisis (November), the 1979 energy crisis, the 1979 economic recession, and the nuclear powerplant meltdown at Three Mile Island. These events are standouts in terms of the type of major political events impacting the American psyche. It is certainly plausible to conclude that the Nation endured a good deal of stress in 1979 that would have influenced the public’s support for governmental institutions. In the 1980 election, Ronald Reagan defeated Jimmy Carter. In addition, while Democrats retained their control of the House, Republicans gained a net of 35 seats, and Republicans gained control of the Senate.

Congressional approval also dropped to 20 percent in 1992 following a brief recession starting in 1990, with effects lingering into the early 1990s. At the same time, this period (1992–1994) marked

[12] There was only a single survey conducted in that year in which the congressional job approval question was posed.

the so-called "bank check-bouncing" scandal as well as the "Congressional Post Office" scandal. As would be expected for such newsworthy events, media coverage was extensive and placed the whole Congress in a negative light. Ultimately, some Members were indicted and convicted.

The final low job approval period shown on the graph stretches from 2006 to the present. This period clearly encompasses the disastrous economic period from 2007 to 2009, often referred to as the "Great Recession." However, what also has been noted by some has been the period after the recession, which has seen the most significant drop in the percentage of the public viewing the performance of Congress in a positive light. While media coverage has not been so intense or as negative as it was during earlier scandals, it has been relentless in pointing to lack of productivity by the Congress.[13] Given the partisan balance in Congress and the high levels of partisan discord, the media have often portrayed, rightly or wrongly, Congress as "do-nothing," accomplishing little, or in a state of stalemate.

Conversely, periods of high approval seem to have happened during times of economic growth—1985–1987 and 1998–2002. Previous research has found that the public is strongly influenced by the Nation's economic condition and not as much by their personal economic well-being.[14] Political scientists Virginia Chanley, Thomas Rudolph, and Wendy Rahn wrote, "When economic times are good and the public is less focused on problems within the nation, citizens express greater confidence in the people running the institutions of government."[15] This explanation seems, in part, to corroborate the approval trend in Figure 1.

On the other hand, during these same periods, Congress was involved in, and performing, its constitutionally mandated check on the executive branch. In the first period (1985–1987), Congress spent a good deal of time in media-covered hearings investigating the "Iran-Contra Affair." In the earlier years of the second period (1998–2002), Congress was involved in the impeachment and trial of a President. Media coverage was extensive, and showed Congress "doing its job." It appears that, in part, the trends noted in the graph may reflect this fact.

Yet, it is notable that as the economy has recovered since the 2008 recession, approval of congressional job performance has remained low and has not risen along with indicators of fiscal recovery. The 2008 recession was, by most standards, more severe than any recession since the 1930s Great Depression, making it plausible that the American public would be slow to recover from its economic weariness. On the other hand, the level of stalemate in

---

[13] Ezra Klein, Wonkblog, "14 Reasons why this is the worst Congress ever," *The Washington Post*, at http://www.washingtonpost.com/blogs/wonkblog/wp/2012/07/13/13-reasons-why-this-is-the-worst-congress-ever/. Also, see the companion CRS centennial report in this volume, *Comparing Modern Congresses: Can Productivity Be Measured?*, by Jacob R. Straus.

[14] See Hibbing and Theiss-Morse, *Stealth Democracy*, pp. 70–71; and Donald R. Kinder and D. Roderick Keiwiet, "Sociotropic Politics: The American Case," *British Journal of Political Science*, vol. 11, no. 2 (April 1981), pp. 129–161.

[15] Virginia A. Chanley, Thomas J. Rudolph, and Wendy M. Rahn, "Public Trust in the Government in the Reagan Years and Beyond," in *What Is It About Congress that Americans Dislike?*, ed. John R. Hibbing and Elizabeth Theiss-Morse (Cambridge, United Kingdom: Cambridge University Press, 2001), p. 77. For evidence that the public is more likely to rely on evaluations of their own pocketbook, see Thomas J. Rudolph, "The Economic Sources of Congressional Approval," *Legislative Studies Quarterly*, vol. 27, no. 4 (November 2002), pp. 577–599.

the legislative branch noted by the media since the 2010 congressional elections is equally likely to contribute to negative feelings about Congress.[16]

What Figure 1, centering on the ebbs and flows of the public's views of job approval of Congress, appears to suggest is that, on the one hand, the views of the public about government and about Congress in particular are, in part, connected with exogenous factors (the conditions of the economy, and international and national events) that set the tone or milieu for the times and for the public's views. At the same time, direct action by Congress, whether viewed as positive or as negative, often combined with media exposure, also may have an influence on how the public evaluates Congress. The next section attempts to provide a better understanding of how such an evaluation process occurs.

Explaining the Public's Evaluations of Congress

The discussion in this section of the report briefly reviews three broad theoretical frameworks used to explain why the public generally disapproves of the legislative branch. First, policy explanations posit that people match their expectations of what and how much they think Congress should be doing with what Congress is doing. Disapproval occurs when expectations do not match perception. Second, process explanations suggest that people are generally dissatisfied with the core tendencies of the democratic legislative process: deliberation, debate, compromise, and disagreement. To the extent that disagreement and discord in Congress increase, so too does the public's low regard for the institution. Third, exogenous factors explanations posit that outside factors such as the economy, international conflict, Presidential approval, and the general state of national affairs color individuals' perceptions and trust in government. When there is a perception that, both domestically and internationally, "things are going well," generally, the public will be more likely to display confidence in government.

POLICY EXPLANATIONS: IS LEGISLATIVE PRODUCTIVITY THE ISSUE?

Scholars of public opinion have traditionally turned to policy explanations to help understand why the public views the government the way it does.[17] Policy explanations for governmental support are grounded in the notion that elected officials produce policies in exchange for the public's support. When the public finds the policies their government is producing disagreeable, they reduce or withdraw their support, and the government in turn may respond by producing more favorable public policies.[18] Policy explanations for government dissatisfaction predict that citizens develop policy preferences on one or more policy issues and then seek out candidates and parties whose policy priorities most closely match those

---

[16] Drew DeSilver, "Congress ends least-productive year in recent history," *Fact Tank*, Pew Research Center, December 23, 2013, at http://www.pewresearch.org/fact-tank/2013/12/23/congress-ends-least-productive-year-in-recent-history.

[17] For two examples of this approach, see Anthony Downs, *An Economic Theory of Democracy* (New York: Harper and Row, 1957); and Benjamin I. Paige and Robert Y. Shapiro, *The Rational Public: Fifty Years of Trends in Americans' Policy Preferences* (Chicago: University of Chicago Press, 1992).

[18] For a general explanation, see Paige and Shapiro, *The Rational Public*, especially the introductory chapter.

preferences through their campaign promises, party platforms, and voting records. This may happen prospectively or retrospectively; that is, voters may attempt to identify a candidate who most closely adheres to their policy agenda or, alternately, voters may also decide that the incumbent no longer matches their preferences and cast their votes for someone new in the next election.[19]

General dissatisfaction with governmental institutions like Congress is thought by some to follow a similar path—people evaluate their own policy preferences and then compare them to the policy outputs generated by the current Congress. The presumption is that people will support an institution that produces the kinds of policies that they find most agreeable and oppose an institution that produces policies that do not resemble their own policy priorities. This expectation is theoretically attractive, but it hinges on the public's ability to draw distinctions and assign credit and blame to legislators, political parties, and institutions.

Given that so few bills introduced in Congress make it into law, and perhaps even fewer bills introduced in Congress receive attention by the media, it is a challenge for citizens to keep track of policy outputs. The legislative branch, by the Founders' intent, is designed to stymie more legislation than it passes, which makes it a challenge for even the most adept congressional observers to measure policy output at any given time.[20] Only about 6 percent of bills introduced in Congress get enacted into law. As a result, even though Members of Congress expend a lot of energy advancing their own and their colleagues' legislative goals, they spend more time blocking or being indifferent to other Members' legislative efforts, especially when those efforts conflict with their partisan and personal goals. This behavior may be seen by the public as negative and not productive in that the end result is not necessarily passing legislation.

Further complicating matters, it is less arduous for the media to cover legislative strategy—who said what and who countered with what—than it is to cover the substance of a policy proposal. Policy proposals constantly change. As a result, journalists covering Capitol Hill must expend a great deal of effort and resources to stay abreast of changes in policy proposals. On the other hand, staying on top of the players in the debate themselves and the interplay over an issue may be less burdensome and more newsworthy. To the extent that the public learns about Congress from the media, the capacity and the ability of the media to paint an accurate picture of policy productivity must be weighed. Finally, the effects of policy proposals are often not felt until years after Congress passes a law. This makes it even harder for citizens to assign credit and blame to particular Members of Congress, or to a political party,

[19] For example, three prominent political scientists discuss conceptualization of policy explanations. V.O. Key argues that citizens vote retrospectively, as they are concerned with real policy outcomes. See Valdimer Orlando Key, Jr., *The Responsible Electorate: Rationality in Presidential Voting, 1936–1960* (Cambridge, MA: Belknap Press, 1966). Anthony Downs makes the case that citizens only use the past to evaluate what a party will do in the future. See Downs, *Economic Theory*. Morris Fiorina develops an argument that retrospective voting is based on expectations about future well-being and evaluations of a party's past performance. See Morris Fiorina, *Retrospective Voting in American National Elections* (New Haven, CT: Yale University Press, 1981).

[20] See the companion CRS centennial report in this volume, *Comparing Modern Congresses: Can Productivity Be Measured?*, by Jacob R. Straus.

as power is transferred from one party to another. In addition, the composition of one Congress is usually not the same as Congresses following it. For an assessment as complex as an evaluation of the entire legislative branch, evidence suggests that other factors (see below, "Some Correlates of Congressional Job Approval at the Aggregate Level"), beyond policy considerations, play an equally important, if not more important role, in citizens' evaluations.[21]

PROCESS EXPLANATIONS: IS THE LEGISLATIVE PROCESS THE ISSUE?

In addition to policy explanations, several scholars have put forth process explanations. While the public certainly has expectations about how Members of Congress should behave in their role as representatives and conduct themselves in general, research also suggests that the public is especially disgruntled with the legislative process more generally. Focus group research reveals that some Americans loathe compromise, debate, and bargaining—fundamental characteristics of the democratic process and characteristics of the modern Congress.[22] Political scientists John R. Hibbing and Elizabeth Theiss-Morse wrote: "Thus, people's reactions to processes significantly affect their approval of Congress, the institution that the people believe most publicly displays those processes most reprehensible to them: bickering, compromise, inefficiency, selling out to special interests."[23]

What explains Americans' disdain for the democratic process? Somewhere along the way, discussion, deliberation, and compromise came to be perceived as haggling, bickering, and arguing and not the democratic process at work. Rather than focus on institutional outputs, it has been found that people are more likely to focus on the process that was used to generate policies. Moreover, the legislative process, as of late, has been characterized by increasingly partisan conflict as polarization in Congress has increased. Political scientist Mark Ramirez concluded in a paper published in 2009: "The results here show a link between partisan conflict among members of Congress, and public evaluations of the institution across time."[24] This research strongly suggested that the more conflict is observed or perceived in Congress, the less the public approves of Congress.

Another reason the public may focus on the process by which laws are produced may be that critiquing the process requires less information. The legislative process, while potentially complicated, does not fluctuate a great deal over time. The key players and their formal roles do not change quickly, unlike the substance and volume of policy proposals.

It may also be the case that the public and the media have come to rely more on process considerations than policy evaluations because the process has become more salient to the legislative branch itself. The national news media report a great deal on partisan disagreements in Congress. A viewer can miss the nuance of each party's and individual Member's positions on specific tax, trade, or

[21] David C. Kimball and Samuel C. Patterson, "Living Up to Expectations: Public Attitudes toward Congress," *The Journal of Politics*, vol. 59, no. 3 (August 1997), pp. 701–728.
[22] Hibbing and Theiss-Morse, *Congress as Public Enemy*, pp. 1–21.
[23] Hibbing and Theiss-Morse, *Stealth Democracy*, p. 82.
[24] Ramirez, "The Dynamics of Partisan Conflict," pp. 629, 681–694.

spending legislation but still understand that the parties are battling over these issues. Scholars also argue that an increased reliance over the past three decades on special rules in the House to achieve legislative goals rather than compromise and negotiation has become the norm, rather than the exception.[25] In sum, process considerations may be more readily available to citizens as the media devote more time to heated debates and partisan battles over Chamber rules.

EXOGENOUS FACTORS EXPLANATIONS: IS APPROVAL OUTSIDE CONGRESS' CONTROL?

While the policy and process explanations discussed above point to factors that are ostensibly within Congress' control, a good deal of political science research points to factors outside of Congress' control that appear to affect the way the public evaluates the legislative branch. Some research suggests that variables exogenous to Congress, such as Presidential approval, the presence of international conflict, and the performance of the economy, influence the public's opinion of the legislative branch.

Approval of congressional performance appears to decline when economic conditions are poor, or when there is antagonism between the President and Congress. Approval (both congressional and Presidential), however, tends to increase "as the public rallies to support the political system during international crisis."[26] This rally-around-the-flag phenomenon explains why, for example, approval for the legislative branch increased following the terrorist attacks on the United States on September 11, 2001. Citizens tend to support government when under attack, particularly in the early months of a conflict; or when the country is under duress as after natural disasters, they look to leaders to address crises and solve problems.

Presidential approval may have an effect on the way the public assesses the legislative branch as a decline in Presidential popularity tends to speak to an accumulation of policy discontent. In this case, the blame for the country's problems is spread across the branches of government. Some of the same variables that appear to influence the direction of Presidential approval appear to affect congressional approval. Some studies suggest that the strength of the economy, the occurrence of international conflict, and trust in government generally appear to influence both congressional and Presidential approval.[27]

Some Correlates of Congressional Job Approval at the Aggregate Level[28]

The factors potentially influencing congressional approval discussed above, while not explored in statistical models in this report, provide a context for congressional approval data presented below. Explaining the highs and lows of congressional approval is

[25] Barbara Sinclair, *Unorthodox Lawmaking*, 4th ed. (Thousand Oaks, CA: CQ Press, 2011), especially chapter 3.
[26] Glenn R. Parker, "Some Themes in Congressional Unpopularity," *American Journal of Political Science*, vol. 21, no. 1 (February 1977), pp. 93–109, 108.
[27] Ibid.
[28] For a discussion of how the term "correlation" is used in this report, see Appendix A.

not as simple as identifying one institution, policy output, or event. Rather, the public's approval of Congress is complicated and multifaceted.

THE ECONOMIC CORRELATES OF CONGRESSIONAL JOB APPROVAL

Eleven annual economic measures were created spanning the period 1970 to 2014. For each, to the extent possible, values were aggregated over months, quarters, and years. Two of the measures, real GNP and unemployment rates, were taken from the appropriate government agencies (Bureau of Economic Analysis and Bureau of Labor Statistics, respectively). The other nine measures were economic attitudinal measures contained in the Survey of Consumers conducted by the Survey Research Center at the University of Michigan. Each of these measures of economic activity or attitudes was correlated over the timespan 1974 to 2014 as part of the process of determining if there was a relationship between economic trends or the perception of economic trends and the percentage of congressional job approval for the time period.[29]

There was some correlation between congressional job approval and percentage change in real GNP (0.217) or unemployment (−0.457). The correlations for the various economic attitudinal measures and congressional job approval ranged from a low of −0.089 to a high of 0.741. Five of the eight economic attitudinal variables examined show correlations with congressional job approval in the range 0.652 to 0.741, thus reinforcing the view that, at least, the perception of "good economic times" has a strong positive effect on how one relates to the government. However, one of the five economic attitudinal variables is especially interesting as it combines economics with government and displays the highest correlation of all variables examined. The trend in that economic attitudinal variable, along with the trend in congressional job approval, is displayed in Figure 2, below.[30]

Figure 2 provides some visibility into the notion that Americans' evaluations of the job Congress is doing is closely tied to their evaluations of how well the government is doing on economic indicators. Figure 2 plots congressional approval against survey data from the University of Michigan's Survey of Consumers (1970–2014). Specifically the survey question reads:

> As to the economic policy of the government—I mean steps taken to fight inflation or unemployment—would you say the government is doing a good job, only fair, or a poor job?

Figure 2, which displays the annual percentage of persons saying the government is doing a "good job," shows how closely these two measures of the public's approval track one another. The correlation between these two is relatively high at 0.741.[31] The other notable observation from Figure 2 is that, since 2000, both congressional approval and the percentage of people saying the govern-

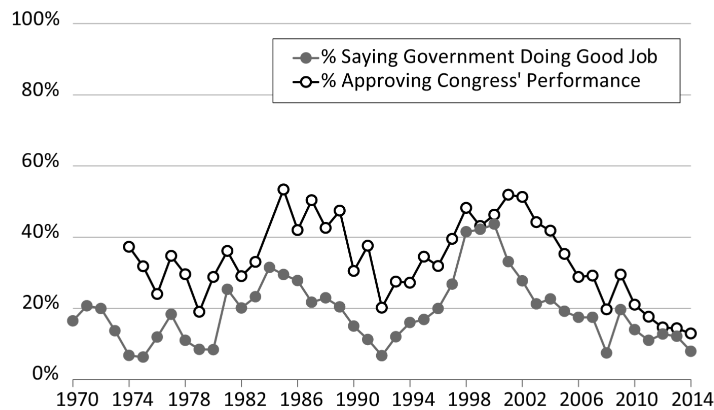
[29] Table B–7 in Appendix B. For a discussion of how the term "correlation" is used in this report, see Appendix A.
[30] See Table B–7. For a discussion of how the term "correlation" is used in this report, see Appendix A.
[31] See Table B–7. For a discussion of how the term "correlation" is used in this report, see Appendix A.

ment is doing a "good job" handling the economy has been consecutively lower over the past 4 years.[32]

In addition, while sometimes slight, the percentage of persons indicating that the government is doing a good job with the economy is always less than the percentage of the population approving of the job Congress is doing. This suggests that, as far as the public is concerned, what Congress does is not the only factor determining whether or not the government does a good job on economic policy. This, if true, is relatively sophisticated thinking.

FIGURE 2. ANNUAL AVERAGE PERCENTAGE CONGRESSIONAL APPROVAL VERSUS GOVERNMENT DOING "GOOD JOB" ON ECONOMY

1970–2014



Source: For congressional approval statistics, see Roper Center IPOLL database; annual estimates calculated by CRS; for "Government Doing A Good Job on Economic Policy," see Survey of Consumers, University of Michigan.

CONGRESSIONAL AND PRESIDENTIAL APPROVAL

Most researchers consider that, at least in the eyes of the public, the institution of the Presidency is different from that of Congress. However, both are aspects of the Federal Government, so it should come as little surprise that the approval of the job of one may be, in some fashion, related to the job approval of the other. Figure 3 plots the annual average Presidential job approval (1970–2014) and annual average congressional job approval (1974–2014). The first thing to note is that the President consistently enjoys a more robust approval rating than Congress over the time period examined.[33] The lowest that Presidential approval has dropped since 1970 was to 34 percent in 2007. The second year in which Presidential approval was nearly that low was 1974, the year Richard Nixon resigned the Presidency following the Watergate scandal of 1972–74 and was then pardoned by President Ford. The second notable observation in Figure 3 is that congressional approval and Presidential approval track each other closely. The two measures

[32] See Table B–2 for the specific values used in Figure 2.
[33] The Supreme Court, not pictured in Figure 3, typically comes out ahead of the President.

depicted on the graph are strongly correlated (0.665).[34] Figure 3 shows that, when the public is unhappy with Presidential performance, they appear to be unhappy with congressional performance as well.[35]

Are Presidential approval and congressional approval related, or do people tend to evaluate these institutions separately? Some research conducted by political scientists suggests that individuals' assessments of the President appear to play a role in explaining congressional approval. One theory suggests that citizens cognitively link their support for different institutions, and that citizens' approval or disapproval of the President is an important predictor of their support for Congress.[36] Other scholars posit that, while Presidential approval may not play a significant independent role in explaining congressional approval, the two institutions are linked by "a responsibility shared by each institution for the overall health of the economy."[37] Still, more recent research draws an even finer distinction and finds that individuals who are poorly informed about Congress are more likely to use their assessment of the President to also assess Congress, as Presidential approval is a more readily available evaluative factor.[38]

Why does the President consistently receive higher job approval marks than does Congress? One reason may be that the President is one person and is armed with a press secretary and a small army of communications staff working to push his preferred message on a given day, week, or month. Congress projects at least 535 separate voices, some unified and others quite distinct. For this simple reason, the President typically enjoys an advantage in agenda setting and issue framing, an observation borne out in Figure 3. Hence, while the public may view unfavorably the entire operation of the Federal Government, they appear to be consistently harsher on Congress than the President.

With this dynamic of shared responsibility in mind, it seems intuitive that the public's support for the President and for Congress under divided government might decrease support for the institutions.[39] Yet, research suggests that this is only the case for a small subset of citizens, those who are knowledgeable about politics and who strongly identify with one of the two major political parties. Rather, political scientist Jeffrey Bernstein observed, "Most citizens rate the two institutions while wearing a set of blinders, thinking the worst of the political system and the institutions that comprise it."[40] Partisan control of the branches of government does not ap-

---

[34] See Table B–7. For a discussion of how the term "correlation" is used in this report, see Appendix A.

[35] Table B–3 for the specific values used in Figure 3.

[36] See Parker, "Some Themes in Congressional Unpopularity," pp. 93–109.

[37] Robert H. Durr, John B. Gilmour, and Christina Wolbrecht, "Explaining Congressional Approval," *American Journal of Political Science*, vol. 41, no. 1 (January 1997), pp. 175–207, 195.

[38] Jeffrey J. Mondak, Edward G. Carmines, Robert Huckfeldt, Dona-Gene Mitchell, and Scot Schraufnagel, "Does Familiarity Breed Contempt? The Impact of Information on Mass Attitudes toward Congress," *American Journal of Political Science*, vol. 51, no. 1 (January 2007), pp. 34–48.

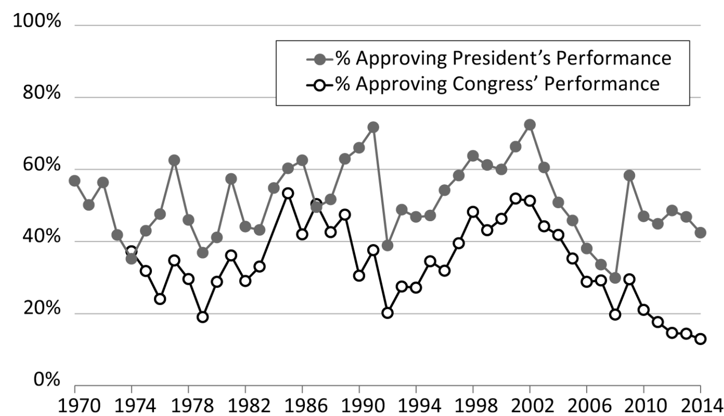
[39] United government is a condition in which one political party controls the White House and both Chambers of Congress. Divided government is when the White House and one or both Chambers of Congress are controlled by different parties.

[40] Jeffrey Bernstein, "Linking Presidential and Congressional Approval During Unified and Divided Governments," in *What is it About Government that Americans Dislike?*, ed. Hibbing and Theiss-Morse, pp. 98–117, 115.

pear to be a driving force, but partisan discord does appear to negatively affect the public's assessment of Congress. So, while most of the public may not pay close attention to who holds the majority, they do assign blame to the Congress for the bickering that may result when the branches of government are controlled by different parties.

FIGURE 3. ANNUAL AVERAGE PERCENTAGE JOB APPROVAL-CONGRESS VERSUS THE PRESIDENT

1970–2014



Source: Roper Center IPOLL Database with annual percentage estimates calculated by CRS; for Presidential approval, restricted to Gallup Polls.

ASSESSMENT OF INDIVIDUAL MEMBERS OF CONGRESS VERSUS CONGRESS

It has been observed that the relationship of the public to their own Representative is different from that of their relationship to the institution called Congress. In 1975, political scientist Richard Fenno identified an interesting phenomenon, later deemed "Fenno's Paradox": "We do, it appears, love our Congressmen. On the other hand, it seems equally clear that we do not love our Congress." [41] This phenomenon emerges in Figure 4, where it is clear that the public has held its own Member of Congress in much higher regard than it has held Congress as a whole. Incumbent Members of Congress generally enjoy high reelection rates, typically above 90 percent. This phenomenon often is chalked up to the inherent difficulty in assigning blame for dissatisfaction or credit for satisfaction to any single legislator. And until recently, the public was content to assign the majority of any blame onto the institution or "other Members."

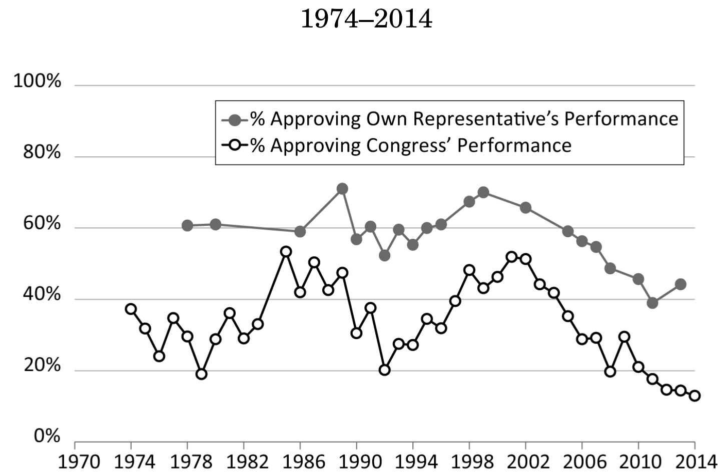
While this dynamic has held for the past 40 years, the tides appear to be turning. In 2014, for the first time in the history of reliable polling, we now see a majority of Americans disapproving of

[41] Richard. F. Fenno, Jr. "If, as Ralph Nader Says, Congress is 'the Broken Branch,' How Come We Love Our Congressmen So Much?" in *Congress in Change: Evolution and Reform*, ed. Norm Ornstein (New York, Praeger: 1975), pp. 275–287.

their own Member of Congress (not shown in Figure 4 or in Table B–4).[42] The consequence or inconsequence of this new downturn in public opinion will not be fully apparent until the conclusion of the 2014 midterm elections, but research suggests that a dramatic decrease in congressional approval generally may portend electoral upheaval as the public desires to "vote the incumbent out."[43]

FIGURE 4. ANNUAL AVERAGE PERCENTAGE JOB APPROVAL-CONGRESS VERSUS OWN REPRESENTATIVE

1974–2014



Source: Roper Center IPOLL Database with annual estimates calculated by CRS.

Figure 5 reinforces the view that a decrease in approval may portend an electoral upheaval. The graph shows support for reelecting one's own Member as compared to reelecting the whole Congress. Again, members of the public appear to hold their own Member of Congress in greater regard than they do Congress as a whole. However, since 2010, on average, a majority of respondents to these surveys have favored "electing someone else" when asked about their own Representatives. With the exception of a single survey in 1990, the surveys indicated that a majority of the public from 1992 to 2009, on average, consistently supported the reelection of their own Member.[44]

CONGRESSIONAL APPROVAL AND TRUST IN GOVERNMENT

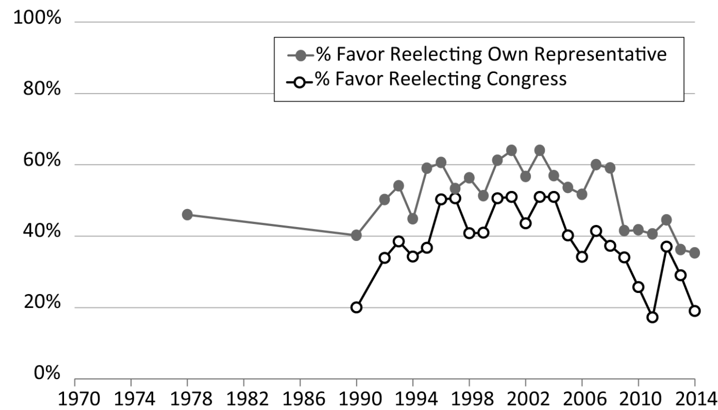
In 1958, the researchers at the University of Michigan conducting the 1958 American National Election Study included the first trust-in-government question on the survey, attempting to measure how often respondents felt they could trust the govern-

[42] Peyton M. Craighill and Scott Clement, "A Majority of People Don't Like Their Own Member of Congress. For the First Time Ever," *The Washington Post*, August 5, 2014, at http://www.washingtonpost.com/blogs/the-fix/wp/2014/08/05/a-majority-of-people-dont-like-their-own-congressman-for-the-first-time-ever/. This poll result was not included in Table B–4 or in Figure 4, as it was not available when the data were compiled.
[43] Jack Citrin and Samantha Luks, "Political Trust Revisited: Déjà Vu All Over Again," in *What is it About Government that Americans Dislike?*, ed. Hibbing and Theiss-Morse, pp. 9–27.
[44] See Table B–5 for the specific values used in Figure 5.

ment in Washington to do the right thing.[45] Figure 6 plots the annual percentages approving the job that Congress is doing and the annual percentages of the public who felt they could trust the government in Washington "always" or "most of the time" to do what was right. These two measures, while related to one another, are distinct.[46] Congressional approval measures the public's approval of the job that Congress is doing. Trust in government is more general, and measures a respondent's trust in the entire national government. The results in Figure 6 demonstrate that congressional approval and trust in government track very closely.[47]

FIGURE 5. ANNUAL AVERAGE PERCENTAGE FAVORING REELECTING OWN REPRESENTATIVE VERSUS REELECTING CONGRESS

1978–2014



Source: Roper Center IPOLL database with annual estimates calculated by CRS.

According to three scholars who study trust in governmental institutions, competence is "at the center of understanding public perceptions of trust in government." Furthermore, these same authors have written, "When economic times are good and the public is less focused on problems within the nation, citizens express greater confidence in the people running the institutions of government."[48]

Americans' level of trust in government has dropped substantially over the past 50 years. While almost 80 percent of Americans trusted the Federal Government in the late 1950s and early 1960s, by the 1990s that number had plummeted to a mere 20–30 percent.

[45] The question read: "How much of the time do you think you can trust the government in Washington to do what is right—just about always, most of the time or only some of the time?" For questions and results from 1958 to 2008, see http://www.electionstudies.org/nesguide/toptable/tab5a__1.htm.

[46] The correlation between the two sets of annual percentages is 0.707. See Table B–6. For a discussion of how the term "correlation" is used in this report, see Appendix A.

[47] See Table B–6 for the specific values used in Figure 6.

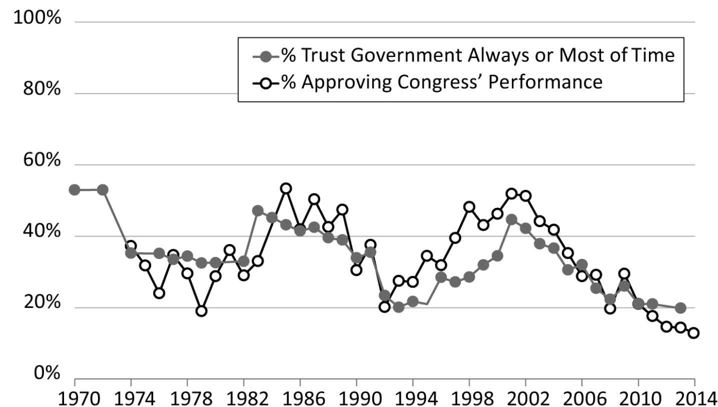
[48] Virginia A. Chanley, Thomas J. Rudolph, and Wendy M. Rahn, "Public Trust in Government in the Reagan Years and Beyond," in *What is it About Government that Americans Dislike?*, ed. Hibbing and Theiss-Morse, pp. 59–79.

And it continues to decline.[49] In statistical models, job approval of Congress turns out to be a robust predictor of trust in government. This appeared especially to be the case in the 1990s, likely due to heightened attention to conflict between the executive and legislative branches and the involvement of some prominent legislators in a variety of high-profile scandals.[50]

There are several implications for declining trust in government. First, political mistrust appears to be a catalyst for voting against the incumbent President or his party's candidate.[51] Hence, rising mistrust may account for electoral change and, as a result, more partisan discord in government. Second, trust is also important when policies, enacted by the government, require cooperation and sacrifice, as the public is more likely to voluntarily follow the law when they trust the laws and those making them.

FIGURE 6. ANNUAL AVERAGE PERCENTAGE CONGRESSIONAL JOB APPROVAL VERSUS TRUST IN GOVERNMENT

1970–2014



Source: Roper Center IPOLL Database with annual percentage estimates calculated by CRS.

Conclusion

Representative government thrives when the represented approve of and trust the institutions and Members therein who represent them. To the extent that support for the legislative branch is low, the United States runs the risk that citizens' disengagement from the institutions of government will result in a political system that produces policy outcomes that do not reflect citizen preferences. To the extent that citizens' unfavorable ratings of the legislative branch are based on a deep-seated dissatisfaction with democratic principles like debate and deliberation, as previous research has suggested, the remedy to congressional disapproval is essential but not entirely clear.

[49] Jack Citrin and Samantha Luks, "Political Trust Revisited," in *What is it About Government that Americans Dislike?*, ed. Hibbing and Theiss-Morse, pp. 9–27.
[50] Ibid.
[51] Ibid., p. 26.

Americans have a decidedly negative view of Congress—the data presented here show that the public does not hold the institution in high regard, even more so when compared to the other branches of the Federal Government. Over the 40-year time period examined, the public's negative feelings about Congress are strongly and positively correlated with a lack of trust in government and a lack of confidence in the Federal Government's ability to handle the economy. The public's low regard for the legislative branch, however, is today at a historic low, and, for the first time since reliable polling data have been available, a majority of the public does not have confidence in their own Member of Congress. And, perhaps more consequentially for the stability of the institution, since 2010, on average, a majority of survey respondents have favored "electing someone else" than their own Representatives.

What explains this lackluster support for the legislative branch and, more important, the consistent decline over the past 4 years? Political science research suggests that Americans do not understand the legislative process, either due to the complexity of the process; the media's role in emphasizing negative aspects of Congress' Members and work; or inadequate education of the public by Congress and others about what Congress does, how it does its job, and why it functions as it does. One finding that emerges consistently in research, however, is that Americans are not convinced that negotiating, debate, and the back and forth that is required of legislators on Capitol Hill is even necessary; they instead regard it as undesirable and symptomatic of institutional dysfunction. As Lee Hamilton explained, "One of the ironies about Congress is that while the legislative system put in place by the framers has served our nation well for more than two hundred years, many of its essential components are not all that popular with the general public. Americans like quick action rather than delay."[52]

Representation, of course, is a two-way street and requires the participation and voice of the represented and Representatives and Senators. As two political scientists concluded: "The real failure of the American people is not that they are unable to recall the name of the secretary of state, that they do not know how many senators represent each state...." Rather, "citizens' big failure is that they lack an appreciation for the ugliness of democracy."[53] The public has difficulty in tolerating the bickering and negotiation among Members of Congress—characteristics of the institution that only appear to be increasing with increasing polarization in Congress and the Nation as a whole—because they do not understand why it is a necessary component of the democratic legislative process. Both Congress and the public might consider ways to improve communication and understanding of the legislative branch.

That the public receives most of its information about Congress from the news media is potentially problematic if the information tends to be more negative and focused on scandal and partisan rancor. A recent well-known Capitol Hill political analyst, Stuart Rothenberg, lamented in an August 12, 2014, *Roll Call* article that

[52] Lee H. Hamilton, *How Congress Works and Why You Should Care*, p. 117.
[53] Hibbing and Theiss-Morse, *Stealth Democracy*, p. 157.

the news media are partly to blame for Americans' belief that Congress is unproductive and dysfunctional. Rothenberg wrote:

> Journalists and talking heads tell voters over and over that Congress is inept, even corrupt, and when we ask them what they think about Congress, they call Congress inept and even corrupt. And then we report back that Americans think Congress is inept and even corrupt. It's a never-ending feedback loop that reinforces the conventional wisdom.[54]

Congress has a communications challenge, both with regard to the public and the press. Unlike the Office of the President, Congress does not speak with one voice; it has more than 535 voices that are often at odds with one another. The public and the media must make sense of these many different voices. Moreover, congressional candidates often run against the institution as a way to garner campaign support and attention. One potential solution is for Congress to devote more time and resources to informing the public about core tenets of the legislative process and encourage informed, intelligent public participation.

The last eloquent defender of Congress as an institution, Senator Robert Byrd from West Virginia, used his floor speeches, committee work, and press relationships to educate the public, the media, and his colleagues about the Senate and Congress. Congress needs new advocates, individuals to explain what it does and why it does it—persons to make clear that, given the diverse interests of a large Nation, the only way to settle issues is through debate, rancor, and compromise. The process is neither neat nor elegant to most people, but the alternatives of top-down or secret authoritarian systems are not something that most people in this country would like to see. With all their other duties, sitting Members may not be able to take on this additional duty. But what about the many former Members? They know the institution, perhaps better than others.

---

[54] Stuart Rothenberg, "Self-Fulfilling Prophecy Might Be Why Americans Hate Congress," *Roll Call*, August 12, 2014, at http://blogs.rollcall.com/rothenblog/self-fulfilling-prophecy-might-be-why-americans-hate-congress/?dcz=.

Appendix A. Some Methodological Issues

The data used in this report are based on the results of many public opinion surveys conducted over the past 40 years, derived either from the IPOLL database at the Roper Center (Congressional Job Approval, Job Approval of Own Representative, Presidential Approval, Re-Elect Own Representative, Re-Elect Congress, and Trust in Government) or from the Survey of Consumers at the University of Michigan (Job Approval of Government in Conducting Economic Policy).

Calculating the Percentages

Data from the Survey of Consumers were available as the results from each individual monthly survey, combined into quarterly summaries or combined into yearly summaries. Data, in the form of percentage responses to the specific questions posed in a survey, from the IPOLL database were available only individually for each survey. Each question's result came from a separate survey with a starting date of interviewing and an ending date of interviewing, and with a specific sample size associated with it. For example, the earliest results posing the question about congressional job performance were from a Gallup survey conducted between April 12, 1974, and April 15, 1974, with a sample of size 1,621 respondents. The results of the survey shown in the IPOLL database indicated that 30 percent approved of the job Congress was doing, 47 percent disapproved of the job, and 23 percent responded that they did not know. Given these results, it was easy to estimate that the number of respondents who approved was 486, who disapproved was 762, and who did not know was 373.

This same calculation was performed on each of the results from each of the surveys asking the congressional job approval question over the period 1974 to 2014—well over 1,000 surveys.

Yearly percentage estimates were then calculated in the following way: Based on the survey interview ending-date year, the estimated number of respondents for each of the categories (Approve, Disapprove, and Did Not Know) was summed over all surveys conducted within each year. Based on these numbers for the entire year, the yearly percentages for each of the 40 years were easily calculated. Quarterly percentage estimates were calculated similarly, but for each of 160 quarters.

The annual percentages for each of the other questions (Job Approval of Own Representative, Presidential Approval, Re-Elect Own Representative, Re-Elect Congress, and Trust in Government) were calculated in exactly the same way.

Statistical Correlational Analysis Used in the Report

Correlation analysis is a statistical technique that can show whether and how strongly pairs of variables may be related. In surveying individual respondents, a correlational analysis can show whether or not respondents who hold a particular view on one subject also hold a particular view on other topics or have certain characteristics. In a longitudinal analysis with aggregate measures, the attempt is to see whether one measure of a phenomenon moves, over the time period, in the same way that another phenomenon

moves (positive correlation), in a completely opposite way (negative correlation), or that the two phenomena move in relative random ways (no correlation).

There are a variety of statistical measures that purport to measure association and correlation. However, in this analysis, the Pearson Product-Moment Correlation Coefficient statistic was chosen to examine the relationship among the variable examined. The Pearson ρ or r, as it is often referred to, measures the linear dependence of two variables. The value of the statistic ranges from 1 (perfect positive correlation) to -1 (perfect negative correlation), with a 0 value indicating no correlation.

While the statistic can be used to test a null hypothesis or to construct confidence intervals, it is used in this report in a purely descriptive way. The correlational analysis is meant to suggest that the correlates examined in the report are worth looking at empirically, even though there is a good deal of evidence at the microlevel that the factors examined are related, and relatively decent theoretical reasons for the choice of the variables.

While the interpretation of the statistic is somewhat arbitrary, for this analysis with this level of aggregation, "high" correlations would fall in the range 0.7 to 1.0 or -0.7 to -1.0, while "low" correlations would fall in the range 0.3 to -0.3 (see Table B–7).

There are some cautions with any correlational analysis that need to be highlighted:

- Correlation never is enough to prove causation. The fact that two variables have a correlation of 1 does not say anything about one variable causing another.
- Especially with respect to time-related or longitudinal analysis, the correlation of one variable with another can mean nothing. Many different phenomena increase or decrease over time. Without some legitimate theoretical reason to think that there is a relationship, such correlations may just be silly.[55]
- The Pearson Correlation Coefficient is a measure of linear dependence between two variables. This means that it is useful in measuring a straight-line relationship between two phenomena. As one goes up, the other goes up (or down) as well. If the relationship between two variables is, in fact, curvilinear, then the Pearson Correlation Coefficient is likely to suggest that there is no relationship. There is no linear relationship, but there is a curvilinear one.

The statistic as it is used in this analysis is not meant to suggest causality, but is based on empirical research and a reasonably solid theoretical foundation.

[55] For some rather funny correlations, see "Spurious Correlations," at http://www.tylervigen.com/.

Appendix B. Tables

Table B–1. Annual Average Percentage of Congressional Job Approval-Disapproval

1970–1974

Survey year	Percent approving Congress	Percent disapproving Congress	Percent don't know-no opinion	Sample size for surveys in year
1970	....	....	....	....
1971	....	....	....	....
1972	....	....	....	....
1973	....	....	....	....
1974	37.30	41.40	21.30	4,797
1975	31.80	51.50	16.70	6,248
1976	24.00	58.00	18.00	1,538
1977	34.70	44.40	20.90	10,685
1978	29.60	50.60	19.80	7,524
1979	19.00	61.00	20.00	1,511
1980	28.80	53.30	17.90	3,269
1981	36.10	33.70	30.20	2,934
1982	29.00	54.00	17.00	1,504
1983	33.00	43.00	24.00	1,517
1984	....	....	....	....
1985	53.40	35.90	10.70	3,495
1986	42.00	37.00	21.00	1,552
1987	50.40	43.60	6.00	2,518
1988	42.60	48.60	8.80	2,508
1989	47.40	46.40	6.20	8,867
1990	30.50	61.30	8.20	16,702
1991	37.60	52.20	10.20	13,189
1992	20.20	72.20	7.60	12,282
1993	27.50	62.10	10.40	23,776
1994	27.20	63.40	9.40	34,883
1995	34.50	53.60	11.80	47,253
1996	31.90	57.60	10.50	32,402
1997	39.50	49.40	11.10	37,889
1998	48.20	41.60	10.10	71,451
1999	43.10	47.00	9.90	48,667
2000	46.30	41.40	12.20	15,101
2001	51.90	35.20	12.90	34,866
2002	51.30	36.80	11.90	36,271
2003	44.20	45.00	10.90	25,374
2004	41.80	48.70	9.50	18,213
2005	35.30	55.20	9.50	47,372
2006	28.80	63.20	7.90	65,418
2007	29.20	61.40	9.40	65,164
2008	19.70	72.40	7.90	36,733
2009	29.50	61.70	8.80	41,873
2010	21.00	73.10	5.90	49,656
2011	17.60	76.50	5.90	44,333
2012	14.60	78.70	6.70	31,711
2013	14.40	80.50	5.10	43,530
2014	12.90	82.00	5.10	7,606

Source: Roper Center IPOLL Database, with all calculations performed by CRS.

Note: In general, the question posed was: ''Do you approve or disapprove of the way Congress is handling its job?''

Table B–2. Annual Average Percentage of Congressional Approval Versus Saying the Federal Government Is Doing a ''Good-Poor'' Job on Economic Policy

1970–2014

Survey year	Percent approving Congress	Percent disapproving Congress	Percent saying government doing good job	Percent saying government doing fair job	Percent saying government doing poor job	Sample sizes for congressional approval-disapproval data	Sample sizes opinions about the government economic policy data
1970	....	....	16.47	46.04	27.05	....	2,739
1971	....	....	20.73	47.16	24.51	....	3,889
1972	....	....	19.94	53.76	20.45	....	4,939
1973	....	....	13.71	45.75	35.05	....	5,587
1974	37.30	41.40	6.79	43.79	42.63	4,797	5,817
1975	31.80	51.50	6.28	50.67	38.74	6,248	5,575
1976	24.00	58.00	11.89	54.16	27.85	1,538	5,443
1977	34.70	44.40	18.28	56.82	18.02	10,685	5,067
1978	29.60	50.60	10.98	55.14	29.77	7,524	11,186
1979	19.00	61.00	8.49	48.58	39.24	1,511	12,960
1980	28.80	53.30	8.40	46.21	42.28	3,269	8,675
1981	36.10	33.70	25.35	45.80	24.22	2,934	8,273
1982	29.00	54.00	20.09	44.59	32.17	1,504	8,318
1983	33.00	43.00	23.22	49.52	25.17	1,517	8,356
1984	....	....	31.51	47.74	18.83	....	8,301
1985	53.40	35.90	29.52	49.76	18.53	3,495	7,836
1986	42.00	37.00	27.77	50.61	19.66	1,552	7,878
1987	50.40	43.60	21.73	51.97	24.03	2,518	7,377
1988	42.60	48.60	22.91	53.01	22.24	2,508	6,016
1989	47.40	46.40	20.40	56.18	20.82	8,867	6,024
1990	30.5	61.3	15	55.06	28.1	16,702	6,032
1991	37.6	52.2	11.23	54.17	32.4	13,189	6,053
1992	20.2	72.2	6.72	42.81	48.97	12,282	6,040
1993	27.5	62.1	12.02	50.4	34.05	23,776	6,058
1994	27.2	63.4	15.98	55.71	26.07	34,883	6,069
1995	34.5	53.6	16.82	54.93	26.18	47,253	6,024
1996	31.9	57.6	19.91	53.45	24.9	32,402	6,008
1997	39.5	49.4	26.82	53.85	17.24	37,889	6,002
1998	48.2	41.6	41.49	44.88	10.58	71,451	6,011
1999	43.1	47	42.17	45.15	10.68	48,667	5,995
2000	46.3	41.4	43.65	44.49	9.82	15,101	6,020
2001	51.9	35.2	33.1	48.23	14.05	34,866	6,013
2002	51.3	36.8	27.73	51.19	18.07	36,271	6,011
2003	44.2	45	21.23	48.07	28.9	25,374	6,014
2004	41.8	48.7	22.65	47.42	28.74	18,213	6,040
2005	35.3	55.2	19.16	48.3	31.63	47,372	6,029
2006	28.8	63.2	17.49	47.41	33.93	65,418	6,015
2007	29.2	61.4	17.44	48.57	32.64	65,164	6,045
2008	19.7	72.4	7.46	43.33	47.73	36,733	6,044
2009	29.5	61.7	19.59	45.54	32.97	41,873	6,054
2010	21	73.1	13.98	45.57	39.66	49,656	6,067
2011	17.6	76.5	10.99	41.59	46.32	44,333	6,013
2012	14.6	78.7	12.77	42.63	43.24	31,711	6,054
2013	14.4	80.5	12.14	41.17	45.58	43,530	6,036
2014	12.9	82	7.92	42.97	48.91	7,606	505

Source: For congressional approval-disapproval data, see Roper Center IPOLL database, with all calculations performed by CRS; for good-poor job on economic policy, see Survey of Consumer Reports, University of Michigan.

Notes: In general, the question about congressional approval-disapproval was: ''Do you approve or disapprove of the way Congress is handling its job?'' The question about economic policy was: ''As to the economic policy of the government—I mean steps taken to fight inflation or unemployment—would you say the government is doing a good job, only fair or a poor job?''

Table B–3. Annual Average Percentage Job Approval—Congress Versus President

1970–2014

Survey year	Percent approving Congress	Percent disapproving Congress	Percent approving President	Percent disapproving President	Sample sizes for congressional approval-disapproval data	Sample sizes for President approval-disapproval data
1970	....	....	56.8	29.3	....	27,549
1971	....	....	50.1	37.1	....	20,277
1972	....	....	56.4	33.2	....	15,146
1973	....	....	41.8	47.3	....	30,830
1974	37.3	41.4	35.2	49.5	4,797	36,851
1975	31.8	51.5	43	40.5	6,248	29,508
1976	24	58	47.6	39	1,538	13,952
1977	34.7	44.4	62.5	19.8	10,685	36,603
1978	29.6	50.6	46	38.3	7,524	45,778
1979	19	61	36.9	49.6	1,511	39,486
1980	28.8	53.3	41.1	47.7	3,269	26,897
1981	36.1	33.7	57.4	28.6	2,934	30,639
1982	29	54	44.1	45.7	1,504	29,617
1983	33	43	43.2	45.9	1,517	41,162
1984	....	....	54.8	36.1	....	30,422
1985	53.4	35.9	60.3	30.2	3,495	25,110
1986	42	37	62.5	28	1,552	17,585
1987	50.4	43.6	49.5	41.3	2,518	29,711
1988	42.6	48.6	51.7	38.5	2,508	15,815
1989	47.4	46.4	62.9	17.2	8,867	25,444
1990	30.5	61.3	66	22.5	16,702	52,418
1991	37.6	52.2	71.7	20.7	13,189	51,627
1992	20.2	72.2	38.9	53.1	12,282	40,527
1993	27.5	62.1	48.8	39.1	23,776	39,611
1994	27.2	63.4	46.8	44	34,883	39,628
1995	34.5	53.6	47.2	41.3	47,253	35,723
1996	31.9	57.6	54.2	36.1	32,402	36,659
1997	39.5	49.4	58.3	31.8	37,889	26,027
1998	48.2	41.6	63.8	31.7	71,451	41,868
1999	43.1	47	61.2	35	48,667	37,029
2000	46.3	41.4	60	36	15,101	29,782
2001	51.9	35.2	66.3	24.5	34,866	33,089
2002	51.3	36.8	72.4	22.2	36,271	44,439
2003	44.2	45	60.5	35.4	25,374	41,367
2004	41.8	48.7	50.8	46	18,213	39,580
2005	35.3	55.2	45.8	50.5	47,372	42,643
2006	28.8	63.2	38	57.7	65,418	28,631
2007	29.2	61.4	33.6	62.1	65,164	27,291
2008	19.7	72.4	29.9	65.3	36,733	36,137
2009	29.5	61.7	58.3	33.8	41,873	55,607
2010	21	73.1	47	47	49,656	44,805
2011	17.6	76.5	44.9	48.2	44,333	47,523
2012	14.6	78.7	48.6	45.6	31,711	62,590
2013	14.4	80.5	46.8	46.9	43,530	69,072
2014	12.9	82	42.4	52	7,606	9,725

Source: Roper Center IPOLL database, with all calculations performed by CRS.

Notes: In general, the question about Congress was: "Do you approve or disapprove of the way Congress is handling its job?" In general, the question about the President was: "Do you approve or disapprove of the way [name of President] is handling his job as President?"

Table B–4. Annual Average Job Approval—Congress Versus Own Representative

1974–2014

Survey Year	Percent approving Congress	Percent disapproving Congress	Percent approving own Representative	Percent disapproving own Representative	Sample sizes for congressional approval-disapproval data	Sample sizes for own Representative approval-disapproval data
1970	....	....	....	....	....	....
1971	....	....	....	....	....	....
1972	....	....	....	....	....	....
1973	....	....	....	....	....	....
1974	37.30	41.40	....	....	4,797	....
1975	31.80	51.50	....	....	6,248	....
1976	24.00	58.00	....	....	1,538	....
1977	34.70	44.40	....	....	10,685	....
1978	29.60	50.60	60.70	21.00	7,524	4,395
1979	19.00	61.00	....	....	1,511	....
1980	28.80	53.30	61.00	18.00	3,269	1,769
1981	36.10	33.70	....	....	2,934	....
1982	29.00	54.00	....	....	1,504	....
1983	33.00	43.00	....	....	1,517	....
1984	....	....	....	....	....	....
1985	53.40	35.90	....	....	3,495	....
1986	42.00	37.00	59.00	23.00	1,552	2,006
1987	50.40	43.60	....	....	2,518	....
1988	42.60	48.60	....	....	2,508	....
1989	47.40	46.40	71.00	18.00	8,867	1,513
1990	30.50	61.30	56.80	28.80	16,702	8,732
1991	37.60	52.20	60.40	27.00	13,189	5,839
1992	20.20	72.20	52.30	33.90	12,282	10,464
1993	27.50	62.10	59.50	26.20	23,776	2,844
1994	27.20	63.40	55.30	31.50	34,883	9,844
1995	34.50	53.60	60.00	22.00	47,253	1,190
1996	31.90	57.60	61.00	23.00	32,402	1,479
1997	39.50	49.40	....	....	37,889	....
1998	48.20	41.60	67.40	18.10	71,451	11,564
1999	43.10	47.00	70.00	21.00	48,667	1,505
2000	46.30	41.40	....	....	15,101	....
2001	51.90	35.20	....	....	34,866	....
2002	51.30	36.80	65.70	24.20	36,271	3,518
2003	44.20	45.00	....	....	25,374	....
2004	41.80	48.70	....	....	18,213	....
2005	35.30	55.20	59.10	27.50	47,372	6,262
2006	28.80	63.20	56.30	29.00	65,418	24,651
2007	29.20	61.40	54.70	24.00	65,164	5,350
2008	19.70	72.40	48.70	29.30	36,733	5,471
2009	29.50	61.70	....	....	41,873	....
2010	21.00	73.10	45.70	39.20	49,656	11,680
2011	17.60	76.50	39.00	33.00	44,333	1,000
2012	14.60	78.70	....	....	31,711	....
2013	14.40	80.50	44.20	37.90	43,530	4,295
2014	12.90	82.00	....	....	7,606	....

Source: Roper Center IPOLL database, with all calculations performed by CRS.

Notes: In general, the question about Congress was: ''Do you approve or disapprove of the way Congress is handling its job?'' In general, the question about one's own Representative was: ''Do you approve or disapprove of the way your own Representative is handling his or her job?''

Table B–5. Annual Average Percentage Favoring Reelecting Own Representative Versus Reelecting Congress

1978–2014

Survey year	Percent favor reelecting own Representative	Percent favor electing someone else	Percent favoring reelecting Congress	Percent opposing reelecting Congress	Sample sizes for reelecting own Representative data	Sample sizes for reelecting Congress data
1970	....	....	....	....	....	....
1971	....	....	....	....	....	....
1972	....	....	....	....	....	....
1973	....	....	....	....	....	....
1974	....	....	....	....	....	....
1975	....	....	....	....	....	....
1976	....	....	....	....	....	....
1977	....	....	....	....	....	....
1978	46.00	19.00	....	....	1,451	....
1979	....	....	....	....	....	....
1980	....	....	....	....	....	....
1981	....	....	....	....	....	....
1982	....	....	....	....	....	....
1983	....	....	....	....	....	....
1984	....	....	....	....	....	....
1985	....	....	....	....	....	....
1986	....	....	....	....	....	....
1987	....	....	....	....	....	....
1988	....	....	....	....	....	....
1989	....	....	....	....	....	....
1990	40.20	47.10	20.00	67.00	4,647	960
1991	....	....	....	....	....	....
1992	50.20	35.30	33.90	51.20	25,727	13,590
1993	54.10	29.90	38.50	46.50	5,147	2,025
1994	44.80	40.30	34.30	52.60	27,721	10,666
1995	59.00	29.30	36.70	50.00	3,203	3,203
1996	60.60	19.40	50.30	31.40	9,987	6,595
1997	53.30	31.20	50.60	32.20	4,415	2,889
1998	56.30	28.00	40.80	41.60	16,819	11,598
1999	51.30	37.10	41.00	47.00	2,051	846
2000	61.20	16.20	50.60	31.60	9,199	3,522
2001	64.00	20.00	51.00	31.00	814	814
2002	56.70	25.20	43.60	39.60	6,481	4,158
2003	64.00	22.00	51.00	35.00	1,004	1,004
2004	56.90	23.80	51.00	33.00	1,883	1,013
2005	53.60	32.60	40.20	46.20	3,192	2,190
2006	51.70	32.30	34.20	52.20	20,369	20,455
2007	60.00	31.80	41.40	51.00	1,521	1,521
2008	59.10	24.70	37.30	49.00	4,179	4,179
2009	41.50	39.60	34.00	53.00	8,547	1,516
2010	41.70	44.10	25.70	62.70	38,898	22,483
2011	40.60	47.40	17.20	73.00	12,230	9,183
2012	44.50	43.20	37.00	54.00	6,254	1,536
2013	36.20	54.30	29.00	65.40	4,992	3,423
2014	35.30	54.40	19.00	70.00	3,081	1,018

Source: Roper Center IPOLL database, with all calculations performed by CRS.

Notes: In general, the question about one's own Representative was: ''Right now, do you think your representative in Congress should be re-elected or do you think another candidate would do a better job?'' In general, the question about reelecting the Congress was: ''Regardless about how you feel about your own Representative, would you like to see most members of Congress re-elected in the next Congressional election, or not?''

Table B–6. Annual Average Congressional Job Approval Versus Trust in Government

1970–2014

Survey year	Percent approving Congress	Percent disapproving Congress	Percent trust government always or most of the time	Percent trust government some of the time or never	Sample sizes for congressional approval-disapproval data	Sample sizes for trust in government data
1970	....	....	52.97	44.02	....	1,497
1971	....	....	....	....	....	....
1972	....	....	53.01	45.02	....	2,279
1973	....	....	....	....	....	....
1974	37.30	41.40	35.26	63.11	4,797	3,988
1975	31.80	51.50	....	....	6,248	....
1976	24.00	58.00	35.15	61.71	1,538	8,999
1977	34.70	44.40	33.53	62.96	10,685	3,310
1978	29.60	50.60	34.43	63.76	7,524	7,053
1979	19.00	61.00	32.50	65.20	1,511	12,851
1980	28.80	53.30	32.58	64.68	3,269	7,554
1981	36.10	33.70	....	....	2,934	....
1982	29.00	54.00	32.98	65.03	1,504	1,401
1983	33.00	43.00	47.10	49.42	1,517	2,238
1984	....	....	45.23	52.75	....	3,270
1985	53.40	35.90	43.23	54.94	3,495	9,064
1986	42.00	37.00	41.50	56.61	1,552	4,856
1987	50.40	43.60	42.52	55.74	2,518	9,588
1988	42.60	48.60	39.56	59.29	2,508	5,912
1989	47.40	46.40	38.96	59.07	8,867	3,758
1990	30.50	61.30	33.92	64.03	16,702	20,826
1991	37.60	52.20	35.46	63.71	13,189	7,611
1992	20.20	72.20	23.39	75.15	12,282	11,866
1993	27.50	62.10	20.11	78.86	23,776	14,632
1994	27.20	63.40	21.74	77.95	34,883	18,179
1995	34.50	53.60	20.98	78.26	47,253	13,535
1996	31.90	57.60	28.48	69.84	32,402	8,140
1997	39.50	49.40	27.16	72.13	37,889	6,462
1998	48.20	41.60	28.60	69.91	71,451	16,442
1999	43.10	47.00	31.96	67.20	48,667	22,349
2000	46.30	41.40	34.47	64.50	15,101	10,911
2001	51.90	35.20	44.70	54.17	34,866	14,930
2002	51.30	36.80	42.19	56.32	36,271	18,921
2003	44.20	45.00	37.86	61.16	25,374	10,099
2004	41.80	48.70	36.65	61.63	18,213	7,323
2005	35.30	55.20	30.54	68.36	47,372	6,897
2006	28.80	63.20	32.04	67.01	65,418	9,189
2007	29.20	61.40	25.40	74.09	65,164	7,857
2008	19.70	72.40	22.31	75.61	36,733	5,396
2009	29.50	61.70	26.02	72.40	41,873	11,337
2010	21.00	73.10	21.03	77.95	49,656	22,256
2011	17.60	76.50	21.01	77.71	44,333	13,556
2012	14.60	78.70	....	....	31,711	....
2013	14.40	80.50	19.83	78.81	43,530	11,918
2014	12.90	82.00	....	....	7,606	....

Source: Roper Center IPOLL database, with all calculations performed by CRS.

Notes: In general, the question about Congress was: ''Do you approve or disapprove of the way Congress is handling its job?'' In general, the question about trust was: ''Generally speaking, how much of the time do you think you can trust the government in Washington to do what is right—just about always, most of the time, or only some of the time, or hardly ever?''

Table B–7. Correlates with Annual Percentage Congressional Job Approval

1974–2014

Political and economic variables	Pearson correlates with annual percentage congressional job approval
Annual percent trust government always or most of time	0.707
Annual percent Presidential job approval	0.665
Annual percent unemployment (BLS)	−0.457
Annual percent change in real GDP (BEA)	0.217
Annual percent change in unemployment (BLS)	−0.060
Annual Index of Consumer Sentiment*	0.652
Annual percent current financial situation better off than year ago	0.665
Annual percent expected change in financial situation better off than year ago.	0.738
Annual percent expected change in family income up in 1 or 2 years	0.696
Annual percent saying government doing a good job fighting inflation and unemployment.	0.741
Annual percent saying current business conditions better now than year ago	0.252
Annual percent expected change in prices same or down in next 12 months	0.145
Annual percent saying unemployment will be less in next 12 months	−0.089

*The Index of Consumer Sentiment is constructed using the results of five of the survey's questions: Present and Future Personal Financial Situation, Present and Future Business Conditions, and Good/Bad Time to Purchase Durable Goods. For a detailed description of the construction of the index, see ''Index Calculation,'' at Survey of Consumers Web site at http://www.sca.isr.umich.edu/survey-info.php.

Source: Unemployment and Percent Change in Unemployment from U.S. Bureau of Labor Statistics (BLS), Percent Change in Real GDP from U.S. Bureau of Economic Analysis (BEA), Trust in Government and Presidential Job Approval from Roper Center IPOLL database; CRS computed yearly percentage estimates. All economic attitudinal variables from Survey of Consumers, University of Michigan.

Comparing Modern Congresses: Can Productivity Be Measured?

JACOB R. STRAUS

Analyst on the Congress

Historically, scholars, the media, and even Members of Congress have attempted to compare the productivity of one Congress against another, often using a variety of methods. This report examines the three most common methods—legislation introduced, public laws enacted, and landmark legislation—which each demonstrate a different assessment of congressional activity over a 2-year period. The result of this analysis shows that the three metrics, when used alone, may fail to account for the complexity inherent in developing policy in the American system.

Introduction

In September 2012, Representative Steny Hoyer, the House minority whip, issued a press release calling the 112th Congress (2011–2013) the "Least Productive in a Generation." [1] To support his statement, he quoted a *New York Times* article on the subject, which stated:

> The 112th Congress is set to enter the Congressional record books as the least productive body in a generation, passing a mere 173 public laws as of last month. That was well below the 906 enacted from January 1947 through December 1948 by the body President Harry S. Truman referred to as the "do-nothing" Congress, and far fewer than even a single session of many prior Congresses.[2]

Representative Hoyer was not alone in his criticism of Congress. Speaker John Boehner, in an interview with CBS News reporter Bob Schieffer on *Face the Nation*, answered a question about whether the 112th Congress was the least productive in history.

> Schieffer: Any way you cut it, and whoever's fault it is, you have presided over what [is] perhaps the least productive and certainly one of the least popular Congresses in history.
>
> Boehner: Well, Bob, we should not be judged on how many new laws we create. We ought to be judged on how many laws that we repeal. We've got more laws than the administration could ever enforce. And so we don't do commemorative bills on the floor. We don't do all that nonsense. We deal with what the American people want us to deal with. Unpopular? Yes. Why? We're in a divided government. We're

---

[1] U.S. Congress, House, Office of the Democratic Whip, "Republican-Led 112th Congress Least Productive in a Generation," press release, 112th Cong., 2d sess., September 19, 2012, at http://www.democraticwhip.gov/print/15750.

[2] Ibid., quoting Jennifer Steinhauer, "Congress Nearing End of Session Where Partisan Input Impeded Output," *The New York Times*, September 18, 2012, at http://www.nytimes.com/2012/09/19/us/politics/congress-nears-end-of-least-productive-session.html__r=0.

fighting for what we believe in. Sometimes, you know, the American people don't like this mess.[3]

Both Representative Hoyer and Speaker Boehner highlighted the same themes, but arrived at the label of "unproductive" in different ways. Why did they disagree on the productivity of Congress? While politics plays a role in perceptions of Congress as a productive or unproductive institution, political viewpoints are not the only factor that have caused recent Congresses to be labeled as "do-nothing" Congresses.[4]

Labeling a particular Congress "do-nothing" is not a new idea. As Representative Hoyer alluded to, the label was first applied to the 80th Congress (1947–1949) by President Harry Truman. The 80th Congress was the first post-war and post-New Deal Congress. It was also the first Republican-controlled Congress since 1931. The policy orientation of the Republican majority, coupled with the goals of a new, previously unelected President, provided the basis for disagreements between the Truman White House and Congress. Throughout the 80th Congress, Republicans sought to roll back aspects of the New Deal, while, at the same time, President Truman wanted to expand its scope.[5] It was against this backdrop that Truman coined the term "do-nothing" Congress to describe what he perceived was a Congress mired in partisan opposition and incapable of making decisions or meeting for a long enough period of time to introduce, debate, and pass legislation.[6]

Since its first use by Truman, the term "do-nothing" has become part of popular political culture, as a catchy synonym for unproductive, and has been applied to succeeding Congresses with varying success as a synonym for political agreement or disagreement. Reality dictates, however, that all Congresses cannot be "do-nothing." If that were the case, important legislation enacted and other congressional actions occurring since the 80th Congress would not have taken place. Whether a specific Congress should be labeled as unproductive, however, is debatable.

The decision to apply a label of productivity to a given Congress can be based on attempts to quantify congressional activity. For example, in a 2012 *Roll Call* article, journalists Jonathan Strong and Humberto Sanchez wrote that the 112th Congress was "on track to be the least productive in modern history," and, as of September

---

[3] Speaker of the House of Representatives John Boehner, interview by Bob Schieffer, *Face the Nation*, CBS, transcript, July 21, 2013, at http://www.cbsnews.com/new/face-the-nation-transcripts-july-21-2013-boehner-and-snyder.

[4] For example, see Alan Silverleib, "Obama, Truman, and the 'Do-Nothing' Congress," *CNN.com*, December 27, 2011, at http://www.cnn.com/2011/12/27/politics/obama-do-nothing-congress; Allison Brennan and Halimah Abdullah, "Congress: Same Hours, Half the Work," *CNN.com*, June 19, 2012, at http://www.cnn.com/2012/06/19/politics/congress-productivity; Philip Bump, "Here's Yet Another Way of Looking at How Unproductive Congress Is," *washingtonpost.com*, May 17, 2014, at http://www.washingtonpost.com/blogs/the-fix/wp/2014/05/17/heres-yet-another-way-of-looking-at-how-unproductive-congress-is; Derek Willis, "A Do-Nothing Congress? Well, Pretty Close," *TheNewYorkTimes.com*, May 28, 2014, at http://nyti.ms/1mAeyBj; and Aaron Blake, "Gridlock in Congress? It's Probably Even Worse Than You Think," *washingtonpost.com*, May 29, 2014, at http://www.washingtonpost.com/blogs/the-fix/wp/2014/05/29/gridlock-in-congress-its-probably-even-worse-than-you-think.

[5] Barton J. Bernstein, "Introduction," in *Politics and Policies of the Truman Administration*, ed. Barton J. Bernstein (Chicago: Quadrangle Books, 1970), pp. 3–14

[6] Barton J. Bernstein, "The Ambiguous Legacy: The Truman Administration and Civil Rights," in *Politics and Policies of the Truman Administration*, p. 290; and David McCullough, *Truman* (New York: Touchstone Simon & Schuster, 1992).

13, 2012, they reported that it had produced only 90 laws on 636 House passed measures and 635 Senate passed measures.[7]

Senator Tom Coburn used the lens of public perception when he attempted to define productivity in the 2012 edition of his *Wastebook*, which highlighted examples of what the Senator believed were "wasteful and low-priority spending." [8] In his summary of the 112th Congress, Senator Coburn stated that "Congress is on pace to make history [for] the least productive year since 1947, with just 61 bills passed and made law in 2012 to date." Senator Coburn also observed that "[t]he inability of Congress to get things done has resulted in the lowest public approval in the nearly four decades the rating has been measured by Gallup. A stunning 83 percent disapprove of 'the way Congress is doing its job.'" [9] However, productivity—the subject of this paper—is defined, Senator Coburn understood that public perception of congressional activity is part of judging one Congress against another.

The desire to assess the productivity of Congress predates even the 80th Congress. The Founding Fathers believed that enacting legislation for many public policy issues would be a difficult and incremental task. In *Federalist 63*, James Madison described two purposes of the legislative branch of government:

> The objects of government may be divided into two general classes: the one depending on measures which have singly an immediate and sensible operation; the other depending on a succession of well-chosen and well-connected measures, which have a gradual and perhaps unobserved operation.[10]

Dealing with the first purpose is potentially easier, with universal support and little opposition to the enactment of new public policies. Proposing legislation that focuses on the second purpose takes public and private deliberation and compromise over time—potentially over multiple Congresses—to come to a workable policy solution. This latter purpose might be thought of as great objects or landmark legislation.

In many ways, the modern Congress operates with both purposes in mind. Many bills and resolutions pass the House and Senate with little or no opposition. Other matters, however, require the use of significant floor time and may not be accomplished in a single Congress. For example, proposals to create universal or near-universal access to health care started long before the Affordable Care Act was considered by the 111th Congress (2009–2011).[11]

Additionally, by many measures, the 111th Congress was considered successful, with the passage of the Affordable Care Act and

---

[7] Jonathan Strong and Humberto Sanchez, "Congress on Pace to Be Least Productive." *Roll Call*, September 13, 2012, at http://www.rollcall.com/features/Guide-to-Congress__2012/guide/Congress-On-Pace-to-Be-Least-Productive-217538-1.html.

[8] U.S. Congress, Senator Tom Coburn, "Coburn Releases Annual Wastebook Highlighting Most Egregious Spending of 2013," press release, December 17, 2013, at http://www.coburn.senate.gov/public/index.cfm/pressreleases?ContentRecord__id=e7359436-1572-414e-8acc-0222cad1c7d5.

[9] U.S. Congress, Senator Tom Coburn, *Wastebook 2012*, October 2012, at http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File__id=b7b23f66-2d60-4d5a-8bc5-8522c7e1a40e.

[10] James Madison, "Federalist No. 63, The Senate Continued," *The Federalist Papers*, at http://thomas.loc.gov/home/histdox/fed__63.html.

[11] Mark J. Oleszek and Walter J. Oleszek, "Legislative Sausage-Making: Health Care Reform in the 111th Congress," in *Party and Procedure in the United States Congress*, ed. Jacob R. Straus (Lanham, MD: Rowman & Littlefield, 2012), pp. 253–286.

other Obama administration priorities.[12] In the November 2010 election, however, the Republicans campaigned against many of these legislative actions and won control of the House and cut the Democratic majority in the Senate.[13] Examining only the 111th Congress, some might conclude that the Democrats were punished for being productive.[14] Others might suggest that having Democratic control of the House, Senate, and White House led to policies that were out of step with the American public. Still others might conclude that the very democratic nature of American political institutions inherently leads to the use of aggressive power to pass the majority party's agenda, regardless of which party is in the majority.[15]

The legislative branch lends itself to comparison precisely because its processes and outcomes can be quantified. Over time, the need to understand congressional productivity and the desire to compare one Congress against another appears to have increased. Regardless of where an individual might stand on the popularity or democratic proclivities of a given Congress, citizens seem to be more dissatisfied today.[16]

To better understand the metrics used to compare one Congress against another, this report asks the question: "What is productivity?" The report begins by defining congressional productivity. Next, the three most common comparative methods are discussed in detail, including advantages and disadvantages of these measures. Following this analysis, a brief discussion of other potential measures is provided. Finally, the report ends with an analysis of factors that could affect the comparison of congressional productivity over time.

How Has Productivity Been Measured?

According to the *Merriam-Webster Dictionary*, productivity is defined as "the rate at which goods are produced or work is completed." [17] In the business world, understanding productivity can be a relatively easy task. For example, if a marketing firm is able to drive new customers to a client's business, the firm is often considered to be a productive marketer.[18]

In the legislative context, defining productivity is more difficult. The legislative process is inherently about words and ideas advo-

[12] David A. Fahrenthold, Philip Rucker, and Felicia Sonmez, "Stormy 111th Congress Was Still the Most Productive in Decades," *The Washington Post*, December 23, 2010, p. A3, at http://www.washingtonpost.com/wp-dyn/content/article/2010/12/22/AR2010122205620__pf.html.

[13] Andrew E. Busch, "The 2010 Midterm Elections: An Overview," *The Forum*, vol. 8, no. 4 (January 2011), Article 2; and Matthew N. Green, "2010 Midterm Election," in *The Obama Presidency: A Preliminary Assessment*, ed. Robert P. Watson, Jack Covarrubias, Tom Lansford, and Douglas M. Brattebo (Albany, NY: State University of New York Press, 2012), pp. 129–142.

[14] Christopher F. Karpowitz, J. Quin Monson, Kelly D. Patterson, and Jeremy C. Pope, "Tea Time in America? The Impact of the Tea Party Movement on the 2010 Midterm Elections," *PS: Political Science & Politics*, vol. 44, no. 2 (April 2011), pp. 303–309.

[15] Barbara Sinclair, "Question: What's Wrong with Congress? Answer: It's a Democratic Legislature," *Boston University Law Review*, vol. 89, no. 2 (April 2009), p. 393.

[16] Gallup, "Congressional Job Approval Ratings Trend (1974–Present)," *Congress and the Public*, at http://www.gallup.com/poll/1600/congress-public.aspx. See also the companion CRS centennial report in this volume, *Understanding Congressional Approval: Public Opinion from 1974 to 2014*, by Jessica C. Gerrity.

[17] *Merriam-Webster Dictionary*, "Productivity," at http://www.merriam-webster.com/dictionary/productivity.

[18] Roland T. Rust, Tim Ambler, Gregory S. Carpenter, V. Kumar, and Rajendra K. Srivastava, "Measuring Marketing Productivity: Current Knowledge and Future Directions," *Journal of Marketing*, vol. 68, no. 4 (October 2004), pp. 79–86.

cated for by people, both Members of Congress and constituents. Congress is structured to make public policy from disparate inputs in a limited amount of time. Rather than negotiate and pass laws behind closed doors, Congress is instead asked to conduct its business in a responsible, deliberative, inclusive, and public manner.[19] Consequently, the desire to assess a particular Congress and its productivity has resulted in disagreement on the best and most effective metrics.

The disagreement extends to studies comparing Congresses, which can be divided into two groups: studies of individual Members of Congress, which are described briefly here, and studies of Congress as an institution, which concern the balance of this report.

ASSESSING INDIVIDUAL MEMBERS OF CONGRESS

Many studies have focused on individual legislators and either their success or productivity. It is important to note that productivity and success are not—and should not be—interchangeable terms. Whereas studies of legislative success primarily attempt to determine whether individual Members are able to implement a specific policy agenda, legislative productivity attempts to understand how individual Members of Congress compare across time.

MEMBER SUCCESS

Legislative success is a term that is generally used to describe the ability of an individual Member to promote measures that meet his or her stated political agenda. For Members, individual success can be difficult to quantify because what is successful to one legislator might be a failure to another.[20] Because of the personal nature of success, some studies have used reelection as a proxy for being a successful legislator.[21] Other studies have used the passage of bills sponsored by a legislator as the ultimate measure of success within the House or Senate.[22] Still others have examined whether "positive action" (e.g., bill movement through the legislative process) marks success.[23] Regardless of the definition of success, the focus of this field of study on the goals of an individual Member of Congress makes comparisons across Congresses impossible.

Studies of individual Members' productivity focus either on productivity as a factor in reelection or, more commonly, on trying to ignore reelection to understand Members' behavior. As an example of the former, political scientist Robert E. Hogan studied how elections reward or punish legislators on their policy activities while in office. He found that incumbent legislators often struggled to deter-

---

[19] Barbara Sinclair, "Question: What's Wrong with Congress? Answer: It's a Democratic Legislature," *Boston University Law Review*, p. 389.

[20] For example, see Barbara Sinclair, "An Effective Congress and Effective Members: What Does It Take?," *PS: Political Science & Politics*, vol. 29, no. 3 (1996), pp. 435–439.

[21] David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974).

[22] Mark C. Ellickson, "Pathways to Legislative Success: A Path Analytic Study of the Missouri House of Representatives," *Legislative Studies Quarterly*, vol. 17, no. 2 (May 1992), pp. 285–302.

[23] William Anderson, Janet M. Box-Steffensmeier, and Valeria N. Sinclair-Chapman, "The Keys to Legislative Success in the U.S. House of Representatives," *Legislative Studies Quarterly*, vol. 28, no. 3 (August 2003), pp. 357–386; and Michael Edmund O'Neill, "A Legislative Scorecard for the United States Senate: Evaluating Legislative Productivity," *Journal of Legislation*, vol. 36, no. 2 (2010), pp. 297–374.

mine constituents' policy preferences. As a result, a Member could be punished electorally for misunderstanding or ignoring the partisan base and attempting to connect with the average (median) voter in the district.[24]

Other studies have explicitly examined the productivity for individual Members without using reelection as the Member's underlying goal. Perhaps the most famous examination of a Member and his desire for good public policy over potential reelection was Richard Fenno's examination of Senator Claiborne Pell. Fenno described Pell as an individual who had "put together such a strong Senate record of legislative accomplishment . . . that he inoculated himself against the late-blooming, media-generated charge of ineffectiveness,"[25] and was consistently reelected.

MEMBER PRODUCTIVITY

Another study analyzed the behavior and productivity of older legislators. This study examined "whether old legislators were more or less productive than younger legislators in sponsoring legislation" by assessing "their relative effectiveness in seeing such legislation through to enactment." This study found that, while older legislators had an increase in absences and introduced fewer bills than their younger colleagues, they had a higher ratio of bills passed.[26] The study potentially suggests that, as Members age and their electoral concerns lessen, they look for opportunity to introduce legislation where they feel they can succeed instead of introducing bills on a variety of subjects. Taking the example of long-serving Members further, since they introduce fewer bills, they might be seen as less productive. On the other hand, since their success rate in enacting bills is higher, they might be seen as more productive. This illustrates the difficulty in determining whether one legislator is more productive than another.

ASSESSING THE INSTITUTION

Assessing the success or productivity of individual Members of Congress does not provide a clear way to compare the productivity of one Congress against another. The comparison of Congresses is the goal of many studies, however, but there is no agreement on what quantitative measures might be best for understanding the legislative process and evaluating congressional output over a 2-year period.

Some of the first examinations of legislative productivity focused on counting the number of significant pieces of legislation enacted during a Congress. The most famous of these studies was conducted by political scientist David Mayhew in his effort to understand divided government—when one political party controls the White House and one political party controls at least one Chamber of Congress. To gather his list of seminal laws, Mayhew consulted *The New York Times* and *The Washington Post* end-of-session and

---

[24] Robert E. Hogan, "Policy Responsiveness and Incumbent Reelection in State Legislatures," *American Journal of Political Science*, vol. 52, no. 4 (2008), pp. 910–925.

[25] Richard F. Fenno, Jr., *Senators on the Campaign Trail: The Politics of Representation* (Norman, OK: University of Oklahoma Press, 1996), pp. 239 and 254.

[26] Alfred P. Fengler, "Legislative Productivity of Elderly Legislators," *Polity*, vol. 18, no. 2 (1980), p. 328.

end-of-Congress wrap-up articles to determine the most important pieces of legislation enacted during a particular Congress.[27] Mayhew's lists, which are discussed below in more detail in "Landmark Legislation," resulted in other studies of significant legislation, which all remarked on the impact of divided government on the enactment of public policy and congressional productivity.[28]

Understanding significant or landmark legislation is only one way to quantify congressional activities. The legislative process lends itself to many potential comparative measures. As political scientists John Owens and Burdett Loomis highlighted: "The legislative process in Congress is deliberately cumbersome." Further, they noted that the legislative process contains many steps. These include:

> (1) bill introduction; (2) referral to committee(s) and subcommittee(s); (3) requests for reports from executive agencies; (4) hearings; (5) mark-ups (bill-writing); (6) reports to the House or Senate; (7) requests for a special procedural rule in the [H]ouse . . . or consideration in the Senate from the majority leader; (8) floor debate in both chambers . . .; (9) a House-Senate conference committee to resolve House-Senate differences; and (10) the presidential signature or veto, which if denied requires even more steps.[29]

Each step in this process provides an opportunity to collect data and compare one Congress against another. While each step in the legislative process can tell part of the story of congressional productivity, some measures potentially tell a more interesting story than others. Congressional literature has not come to a consensus on how to measure institutional productivity.

Measures of Productivity

Since President Truman first applied the "do-nothing" label to the 80th Congress, efforts have been made to measure the productivity of Congress. From a review of political science research, three main measures emerged as the most common to evaluate the productivity of Congress. These are:

- legislation introduced;
- public laws enacted; and
- landmark legislation.

Individually, each measure has potential advantages and disadvantages for assessing congressional productivity. Each measure most clearly represents one of the concepts referenced in the Introduction. These were Senator Coburn's concept of public perception in his *Wastebook* (legislation introduced); President Truman's "do-nothing" label and political agreement or disagreement (public laws); or James Madison's concept of great objects in his description of the legislative process (landmark legislation). While each concept is more clearly tied to one measure, each also has elements of the other measures present in its view of Congress.

---

[27] David R. Mayhew, *Divided We Govern: Party Control, Lawmaking, and Investigations 1946–1990* (New Haven, CT: Yale University Press, 1991), pp. 34–50.

[28] See, for example, Sean Q. Kelly, "Divided We Govern? A Reassessment," *Polity*, vol. 25, no. 3 (spring 1993), pp. 475–484; and William Howell, Scott Adler, Charles Cameron, and Charles Riemann, "Divided Government and the Legislative Productivity of Congress, 1945–94," *Legislative Studies Quarterly*, vol. 25, no. 2 (May 2000), pp. 285–312.

[29] John E. Owens and Burdett A. Loomis, "Qualified Exceptionalism: The US Congress in Comparative Perspective," *Journal of Legislative Studies*, vol. 12, no. 3/4 (2006), p. 268.

LEGISLATION INTRODUCED

Each Congress, thousands of bills and resolutions are introduced in the House and Senate. Members introduce legislation for a variety of purposes. Some Members introduce bills and resolutions to claim credit for a public policy idea[30] or to signal to constituents their position on an issue.[31] Other Members introduce legislation to further their public policy agendas.[32] Using legislative introduction could provide a way to examine the productivity of any given Congress. Using the number of bills and resolutions introduced could also provide a glimpse into how the public perceives congressional productivity. When more bills are introduced, Congress might be perceived as more productive.

Legislative introduction might be a proxy for congressional productivity. An examination of the number of measures introduced highlights the legislative activity of Congress and how often Members of Congress decide to initiate the legislative process. While few bills and resolutions will be debated and voted on, the mere process of introduction is one of the essential parts of a Member's responsibility. Without the introduction of legislation, the process of creating new laws cannot begin.

An examination of bill introduction as a measure of potential productivity reveals variation over in the number of bills and resolutions introduced between the 80th Congress and the 112th Congress. Using the "Résumé of Congressional Activity," published in the *Congressional Record* at the end of each session of Congress, data were collected on the number of bills and resolutions introduced in the House and Senate. Figure 1 shows the total number of measures introduced between the 80th and 112th Congresses.

As shown in Figure 1, the number of bills and resolutions introduced in the House and Senate ranged from 7,400 total measures in the 104th Congress (1995–1997) to 29,133 measures in the 90th Congress (1967–1969). In the House, the fewest measures were introduced in the 104th Congress (4,739) and the most in the 90th Congress (24,227). For the Senate the fewest measures were introduced in the 104th Congress (2,661) and the most (5,466) in the 91st Congress (1969–1971). Using only the number of measures introduced, a case could be made that the 104th Congress was the least productive and the 90th Congress was the most productive.

Several observations can be made from the introduction of bills and resolutions. First, combining the introduction of measures for both the House and Senate (i.e., using a total number of measures introduced) could miss nuances between legislative consideration in the House and Senate. Generally, while the basic reasons to introduce a measure are the same regardless of Chamber, House Mem-

---

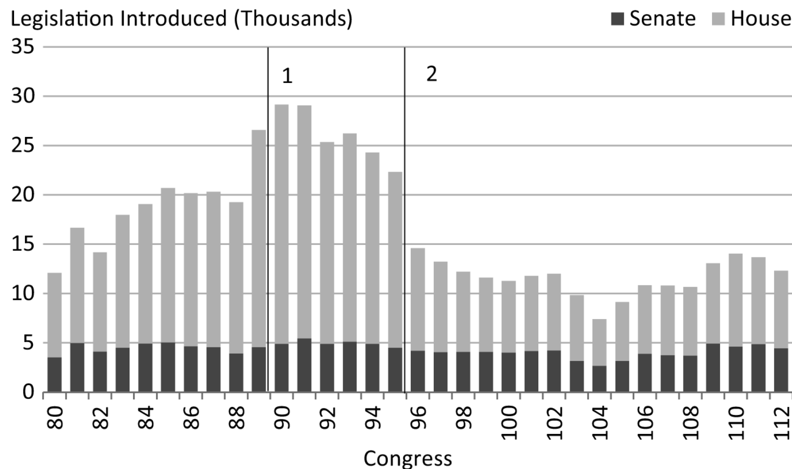
[30] Scott Thomas and Bernard Grofman, "The Effects of Congressional Rules About Bill Cosponsorship on Duplicate Bills: Changing Incentives for Credit Claiming," *Public Choice*, vol. 75, no. 1 (1993), pp. 93–98.

[31] Gary W. Cox and Mathew D. McCubbins, *Setting the Agenda: Responsible Party Government in the U.S. House of Representatives* (New York: Cambridge University Press, 2005); Stephen Jessee and Neil Malhotra, "Are Congressional Leaders Middlepersons or Extremists? Yes," *Legislative Studies Quarterly*, vol. 35, no. 3 (August 2010), pp. 361–392; and James M. McCormick and Neil J. Mitchell, "Commitments, Transnational Interests, and Congress: Who Joins the Congressional Human Rights Caucus?," *Political Research Quarterly*, vol. 60, no. 4 (2007), pp. 579–592.

[32] Richard F. Fenno, Jr., *Senators on the Campaign Trail*; and James L. Payne, "Show Horses and Work Horses in the U.S. House of Representatives," *Polity*, vol. 12, no. 3 (1980), p. 429.

bers have been found to be freer to introduce bills and resolutions—regardless of whether these measures have a chance to pass the Chamber—than Senators,[33] who are more constrained by institutional and political factors.[34]

FIGURE 1. BILLS AND RESOLUTIONS INTRODUCED IN THE HOUSE AND SENATE, 80TH TO 112TH CONGRESS



Source: U.S. Congress, Clerk of the House of Representatives, "Résumé of Congressional Activity," *Congressional Activity*, at http://library.clerk.house.gov/resume.aspx; and U.S. Congress, Secretary of the Senate, "Résumé of Congressional Activity," *Statistics & Lists*, at http://www.senate.gov/pagelayout/reference/two__column__table/Resumes.htm.

Second, historically, bills and resolutions were often introduced as part of responding to constituents and being visible in the district or State.[35] For example, former Representative Lou Frey, Jr. described his process for staking out positions on which he could introduce, and hopefully pass, legislation as a minority party member. He struck a balance between responding to constituent needs, regional concerns, lobbyists' demands, and broader national issues. Frey believed that a combination of these introduction strategies led to being an effective legislator.[36]

Third, in recent years, the number of private bills introduced has declined significantly. Private bills are legislation that "applies to one or more specified persons, corporations, institutions, or other entities, usually to grant relief when no other legal remedy is available to them. Many private bills deal with claims against the federal government, immigration and naturalization cases, and land

[33] Joseph Cooper and Cheryl D. Young, "Bill Introduction in the Nineteenth Century: A Study of Institutional Change," *Legislative Studies Quarterly*, vol. 14, no. 1 (February 1989), pp. 67–105.

[34] Wendy J. Schiller, "Senators and Political Entrepreneurs: Using Bill Sponsorship to Shape Legislative Agendas," *American Journal of Political Science*, vol. 39, no. 1 (February 1995), pp. 186–203.

[35] Bruce Cain, John Ferejohn, and Morris Fiorina, *The Personal Vote: Constituency Service and Electoral Independence* (Cambridge, MA: Harvard University Press, 1987), p. 27.

[36] Lou Frey, Jr., "Legislative Entrepreneurship: Different Strategies for Different Issues," in *Inside the House: Former Members Reveal How Congress Really Works*, ed. Lou Frey, Jr., and Michael T. Hayes (Lanham, MD: University Press of America, 2001), pp. 261–273.

titles."[37] Since the 80th Congress, the number of private bills enacted has ranged from zero in the 110th Congress (2007–2009) to 1,103 in the 81st Congress (1949–1951), with a median of 123 private laws and an average of 269.[38] A reduction in the number of private bills accounts for some of the decrease in total measures introduced. Since the 1940s, Congress has taken many steps to reduce the need to introduce and enact private bills through immigration reform, the empowerment of the executive branch to mitigate certain individual claims against the government, and a reform of congressional operations to deal with issues that historically required private laws.[39]

Fourth, determining productivity based on legislative introduction might ignore important changes to the rules of the House that influenced the introduction of legislation. The number of bills introduced each Congress changed with the 90th Congress.[40] At that time, House rules were amended to permit bill cosponsors, but limited the number to 25.[41] Consequently, if a measure had more than 25 cosponsors—including the original sponsor—additional, identical bills were introduced for each group of 24 cosponsors (in addition to the measure's sponsor).[42] As shown in Figure 1 at line 1, the number of measures introduced jumped at the time of the change in the cosponsorship rule between the 89th Congress (1965–1967) and the 90th Congress.

The House further amended cosponsorship rules late in the 95th Congress (1977–1979) to allow unlimited cosponsors on a single piece measure.[43] Subsequently, comparing Congresses by the number of measures introduced became problematic. As Figure 1 shows at line 2, the number of measures introduced declined following the 95th Congress, when the rule change became effective. Since the rules change, when a Member wants to cosponsor a bill or resolution after its introduction, his or her name is published in the *Congressional Record*.[44]

The reduction in the number of measures introduced since the 95th Congress does not necessarily indicate that Members of Congress have become less interested in introducing bills and resolu-

---

[37] Walter Kravitz, *Congressional Quarterly's American Congressional Dictionary*, 3d ed. (Washington, DC: CQ Press, 2001), p. 187.

[38] Norman J. Ornstein, Thomas E. Mann, Michael J. Malbin, and Andrew Rugg, *Vital Statistics on Congress* (Washington, DC: The Brookings Institution, 2013), chapter 6, table 4, at http://www.brookings.edu/vitalstats.

[39] Jeffrey S. Hill and Kenneth C. Williams, "The Decline of Private Bills: Resource Allocation, Credit Claiming, and the Decision to Delegate," *American Journal of Political Science*, vol. 37, no. 4 (November 1993), pp. 1012–1015.

[40] U.S. Congress, House, "Rule XII, clause 7," *Constitution, Jefferson's Manual and Rules of the House of Representatives of the United States One Hundred Twelfth Congress*, 111th Cong., 2d sess., H. Doc. 111–157 (Washington, DC: GPO, 2011), § 825, p. 620.

[41] H. Res. 42 (90th Cong.), agreed to April 25, 1967. For more information, see Representative William Colmer et al., "To Amend the Rules of the House of Representatives," *Congressional Record*, vol. 113, part 8 (April 25, 1967), pp. 10708–10712. Prior to agreeing to H. Res. 42, House rules did not permit cosponsorship or joint introduction of legislation. For more information, see U.S. Congress, House, *Cannon's Precedents of the House of Representatives of the United States*, vol. VII, prepared by Clarence Cannon (Washington, DC: GPO, 1935), § 1029, p. 160.

[42] U.S. Congress, House, *Deschler's Precedents of the United States House of Representatives*, vol. 4, prepared by Lewis Deschler, parliamentarian, 94th Cong., 2d sess., H. Doc. 94–661 (Washington, DC: GPO, 1976), ch. 16, § 2.2, pp. 207–208.

[43] H. Res. 86 (95th Congress), agreed to October 10, 1978. H. Res. 86 did not become effective until the beginning of the 96th Congress (1979–1981) in January 1979. For more information, see Representative Gillis Long, "Amending Rules Concerning Cosponsorship of Public Bills and Resolutions," *Congressional Record*, vol. 124, part 26 (October 10, 1978), pp. 34929–34930.

[44] For more information on bill cosponsorship, see CRS Report RS22477, *Sponsorship and Cosponsorship of House Bills*, by Mark J. Oleszek.

tions. Instead, it reflects, in part, that duplicative measures were no longer required to accept cosponsorships. Because of cosponsorship reform, comparing Congress by the number of measures introduced might not provide a clear picture of what any particular Congress accomplished.

More recent rules changes in the House have also served to reduce the introduction and consideration of date-specific commemorations. For example, in the 104th Congress, the House adopted a new rule to prohibit the introduction and consideration of date-specific commemorative legislation.[45] This rule has reduced the number of resolutions introduced and considered by the House to honor individuals, groups, and events. As a result, the number of bills and resolutions introduced to recognize commemorations has decreased and the number of such bills considered on the House floor has been reduced to almost zero. This could be another factor in the decline of measures introduced and public laws enacted.

In sum, examining the number of bills and resolutions introduced can be a useful tool for understanding individual Member engagement in the legislative process and the potential congressional workload. The greater the number of bills introduced in a given Congress, the greater the potential workload for that Congress and, potentially, the greater the set of ideas to draw on. While a particular Congress would not be able to address every bill introduced, and many of these bills are substantively similar, the House or Senate cannot take up a measure without it first being introduced, even if the committee process is eliminated or truncated. Bill and resolution introduction, therefore, may be a proxy for engagement in the legislative process.

PUBLIC LAWS

Laws passed by Congress are an attractive measure of productivity because they are the basis of policy creation, a potentially basic concept by which to judge a specific Congress. Public laws also could serve as a proxy for political agreement or disagreement. When more public laws are enacted, political actors (i.e., the House, Senate, and the President) agree on policy changes. When fewer public laws are signed by the President, at least one actor disagrees with the others.

A public law is created when both the House of Representatives and the Senate pass identical legislation in the same legislative vehicle and it is signed by the President.[46] Measuring the number of public laws in each Congress is an easy task as all public laws are published—in the order they were enacted—in the *United States Statutes at Large*. For example, Public Law (P.L.) 110–181, the "National Defense Authorization Act for Fiscal Year 2008," was the 181st law signed by President George W. Bush as passed by the 110th Congress.

Using the *Statutes at Large*, which have been published through 2008, supplemented by the Legislative Information System at the

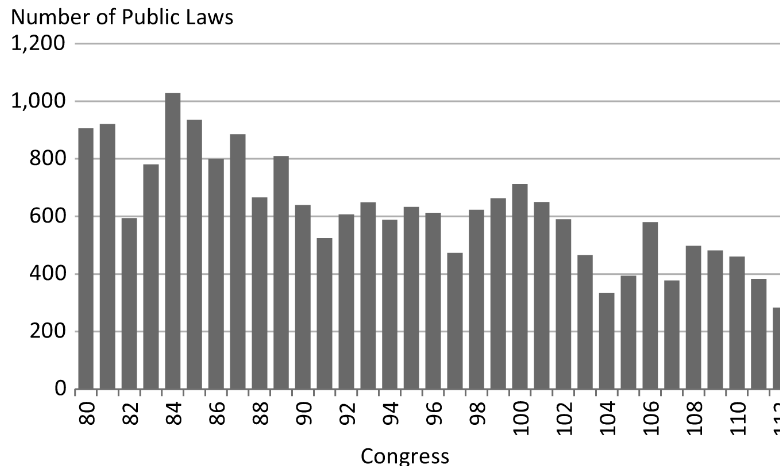
---

[45] House Rule XII, clause 5. For more information, see CRS Report R43539, *Commemorations in Congress: Options for Honoring Individuals, Groups, and Events*, coordinated by Jacob R. Straus.

[46] Walter J. Oleszek, *Congressional Procedures and the Policy Process*, 9th ed. (Washington, DC: CQ Press, 2014), pp. 25–26.

Library of Congress, a list of total public laws per Congress was produced. Figure 2 shows the number of public laws enacted between the 80th Congress and the 112th Congress. During this time period, the average number of public laws enacted each Congress was 622. The 84th Congress (1955–1957) had the most enacted laws (1,028), while the 112th Congress had the fewest (283).

FIGURE 2. PUBLIC LAWS ENACTED, 80TH TO 112TH CONGRESS



Source: *United States Statutes at Large* and the Legislative Information System (http://congress.gov).

If public laws are used to compare Congresses, the 84th Congress would be the most productive, while the 112th Congress the least. While this might be true, just examining public laws does not provide a complete picture of the internal workings of Congress during this time period or the political climate in Washington, DC. For example, during the 84th Congress, President Dwight D. Eisenhower was in the last 2 years of his first term, and the Democrats controlled both the House and Senate. Comparatively, the 112th Congress represented the last 2 years of President Barack Obama's first term, and the Republicans controlled the House and the Democrats controlled the Senate.

While it is possible that the 84th Congress was the most productive and the 112th Congress the least, many Congresses present interesting anomalies. For example, the 97th Congress (1981–1983) marked the beginning of President Reagan's first term in office; Republican control of the Senate; and the enactment of tax reform measures, spending cuts, industry deregulation, and additional defense spending.[47] Even with these enacted measures, the 97th Congress is ranked as the seventh least productive in Figure 2. Conversely, during the 106th Congress (1999–2001), the greatest number of public laws was enacted in the last 10 Congresses, but few of its measures were major endeavors. Instead, the focus of the

[47] U.S. Congress, House, Office of the Historian, "97th Congress (1981–1983)," *Congress Profiles*, at http://history.house.gov/Congressional-Overview/Profiles/97th/.

106th Congress was President Clinton's impeachment trial in the Senate and an overhaul of financial services laws.[48] That the passage of major legislation does not match the total number of public laws enacted will be addressed further in the "Landmark Legislation" section below.

Aside from the identification of which Congress produced the most or fewest public laws, Figure 2 shows a longer term decline in public laws enacted over the last 60 years. Several factors could have caused the overall decline in the number of public laws enacted. These include rules changes, the filibuster, Senate advice and consent, divided government, political polarization, omnibus legislation, and policy riders in appropriations legislation.

Since the 80th Congress, many aspects of congressional operations, administration, and procedures have changed. These changes were spurred in 1970 by the enactment of the Legislative Reorganization Act.[49] The Legislative Reorganization Act "made House and Senate processes more transparent by making all committee hearings (excluding national security meetings and appropriations) public, as well as by permitting televised broadcasts of many of these committee hearings."[50] These rules changes provided for new ways to consider legislation on the floor and provided new technology to record votes in the House.[51]

In response to the Legislative Reorganization Act, later changes, and exogenous developments, the House and Senate have altered the way legislation is considered. In the House, the use of structured special rules has increased.[52] The use of special rules to control the length of debate and the number of amendments in order has provided the House majority party with the ability to more tightly control the legislative agenda.[53] The number of special rules has also decreased, resulting in fewer measures considered by the House and therefore eligible for potential presentation to the President for his signature. Additionally, the scheduling of legislation under suspension of the rules—a procedure for noncontroversial measures that requires a two-thirds vote of the House for passage and does not allow floor amendments—has increased.[54]

---

[48] U.S. Congress, House, Office of the Historian, "106th Congress (1999–2001)," *Congress Profiles*, at http://history.house.gov/Congressional-Overview/Profiles/106th/.

[49] P.L. 91–510; 84 Stat. 1140 (October 26, 1970).

[50] U.S. Congress, House, Office of the Historian, "The Legislative Reorganization Act of 1970," *Historical Highlights*, at http://history.house.gov/Historical-Highlights/1951-2000/The-Legislative-Reorganization-Act-of-1970.

[51] For example, the adoption of electronic voting and rules changes in the House eventually sped up the voting process of 30 to 45 minutes per roll call to 15 minutes or less. As a result of the time savings, the House had the ability to record Members votes more often and potentially consider more bills than was possible before. For more information, see Jacob R. Straus, "Let's Vote: The Rise and Impact of Roll Call Votes in the Age of Electronic Voting," in *Party and Procedure in the United States Congress*, pp. 101–123; and CRS Report R41862, *Electronic Voting System in the House of Representatives: History and Usage*, by Jacob R. Straus.

[52] Barbara Sinclair, "House Special Rules and the Institutional Design Controversy," *Legislative Studies Quarterly*, vol. 19, no. 4 (November 1994), pp. 477–494; and Douglas Dion and John D. Huber, "Procedural Choice and the House Committee on Rules," *Journal of Politics*, vol. 58, no. 1 (February 1996), pp. 25–53.

[53] Joshua Huder and Marian Currinder, "The Hastert Rule Is Severely Limiting Speaker John Boehner's Ability to Negotiate a Compromise over the Shutdown," *London School of Economics American Politics and Policy Blog* (October 4, 2013), at http://blogs.lse.ac.uk/usappblog/2013/10/04/hastert-rule/.

[54] For example, see CRS Report R40829, *How Legislation Is Brought to the House Floor: A Snapshot of Recent Parliamentary Practice in the 111th Congress (2009–2010)*, by Christopher M. Davis; and CRS Report R43039, *How Legislation Is Brought to the House Floor: A Snapshot of Parliamentary Practice in the 112th Congress (2011–2012)*, by Christopher M. Davis.

In the Senate, threats of the filibuster and an increased use of cloture votes may have contributed to the decrease in the number of public laws enacted. In recent years, the majority leader has increasingly turned to the cloture rule—the process whereby Senators can end a filibuster, or threat of a filibuster, on legislation with a three-fifths (60 vote) majority.[55] Since this threshold can sometimes be difficult to obtain, and once invoked a maximum of 30 hours of debate begins, the Senate majority leader will often choose carefully which bills to bring to the floor. Consequently, the number of bills for which the majority leader wishes to try to achieve a 60 vote threshold and overcome the threat of a filibuster can dictate the potential number of bills that receive floor consideration and have the possibly of becoming law.

Further, counts of measures introduced, public laws enacted, and landmark legislation do not take into consideration one of the major constitutional duties of the Senate—confirming Presidential executive and judicial branch nominees.[56] The Senate spends a significant amount of time considering executive branch and judicial nominees, with each nominee potentially requiring floor time for a recorded vote. For example, in the second session of the 112th Congress, the Senate received 23,803 nominations and carried over 667 nominations from the first session. Of these 24,470 nominations pending, 24,296 (99 percent) were confirmed by the Senate.[57] While the Senate does not provide the number of nominees debated and voted on the Senate floor, it must still process tens of thousands of nominations and decide whether a unanimous consent agreement can be reached or if a vote is necessary. The latter process can detract from floor time available for the consideration of legislation.

Divided government—where one political party controls the White House and the other political party controls at least one Chamber of Congress—is a well-studied phenomenon.[58] The impact of divided government on the policy process, however, is undecided, with some believing it has a negative impact on governance[59] and others believing that it can help promote compromise.[60] Examining the impact of divided government on public laws shows no discernible trend in its impact on the enactment of laws. For example, numerous laws were enacted in the 84th–86th Congresses (1955–1961) when the Democrats were the majority party in the House and Senate and President Eisenhower, a Republican, was in the

[55] For more information on cloture and the filibuster, see CRS Report RL30360, *Filibusters and Cloture in the Senate*, by Richard S. Beth and Valerie Heitshusen.

[56] U.S. Constitution, Article II, section 2, clause 2.

[57] "Résumé of Congressional Activities, Second Session of the One Hundred Twelfth Congress," *Congressional Record*, daily digest, vol. 158, daily edition (January 3, 2013), p. D11.

[58] David R. Mayhew, *Divided We Govern: Party Control, Lawmaking, and Investigations 1946–1990*; Morris P. Fiorina, *Divided Government*, 2d ed. (New York: Longman Press, 2002); Gary W. Cox and Samuel Kernell, *The Politics of Divided Government* (Boulder, CO: Westview Press, 1991); and Jon R. Bond and Richard Fleisher, *The President in the Legislative Arena* (Chicago: University of Chicago Press, 1990).

[59] David Epstein and Sharyn O'Halloran, "Divided Government and the Design of Administrative Procedures: A Formal Model and Empirical Test," *Journal of Politics*, vol. 58, no. 2 (May 1996), pp. 373–397; and Susanne Lohmann and Sharyn O'Halloran, "Divided Government and U.S. Trade Policy: Theory and Evidence," *International Organization*, vol. 48, no. 4 (autumn 1994), pp. 595–632.

[60] Cynthia J. Bowling and Margaret R. Ferguson, "Divided Government, Interest Representation, and Policy Differences: Competing Explanations of Gridlock in the Fifty States," *Journal of Politics*, vol. 63, no. 1 (February 2001), pp. 182–206.

White House. Similarly, President Reagan never enjoyed a Republican majority in both the House and Senate, but still saw more than 600 public laws enacted in each of the last three Congresses of his administration (98th–100th Congresses; 1983–1989). An examination of the data in Figure 2 suggests that divided government is likely not a factor in the reduced number of public laws enacted over time.

Political polarization—the ideological "distance" between median members of both parties in Congress—is another possible reason for the variation in the number of public laws enacted.[61] Congress today is more ideologically polarized than it was in the 1950s, and the number of public laws has decreased. An increase in polarization could lead to less agreement on the substance of legislation and fewer bills being presented to the President for his signature. Political polarization, however, has always existed at some level. Whether or not the difference between Republicans and Democrats in the 112th Congress is greater or less than in previous Congresses, the decreased number of public laws enacted since the 80th Congress has presented fewer opportunities for the two parties to agree on legislation to present to the President and, therefore, possibly be signed into law.

"Omnibus" legislation—"a measure that combines the provision of several disparate subjects into a single and often lengthy bill"[62]—is yet another possible explanation for the decrease in the number of public laws. Using the number of public laws counts each law equally, regardless of the number of bills that might have been combined to create the measure. Because omnibus legislation contains multiple bills in one legislative vehicle, it is only counted once, when it might have been counted as more than one if each measure had been enacted individually. For example, P.L. 111–11, the Omnibus Public Land Management Act of 2009,[63] contained 160 individual legislative proposals,[64] which "protect more than 1,000 miles of river through the National Wild and Scenic River System, and designate thousands of miles of trails for the National Park System."[65] Instead of counting each of the 160 measures individually, they are instead counted as a single public law. Omnibus measures can be a powerful compromise tool which often requires Members of Congress to vote for measures that they might oppose individually.[66] Because omnibus measures are only counted once, when they are enacted, they can lower the total number of bills enacted and make a particular Congress appear less productive.

In recent years, Congress has more frequently used policy riders or limitation amendments—"provisions that negatively restrict the amount, purpose, or availability of appropriations funds without

[61] "An Update on Political Polarization through the 112th Congress," voteview blog, January 16, 2013, at http://voteview.com/blog/?p=726. Also, see Sarah A. Binder, *Stalemate: Causes and Consequences of Legislative Gridlock* (Washington, DC: The Brookings Institution Press, 2003).
[62] Walter Kravitz, *American Congressional Dictionary*, p. 162.
[63] P.L. 111–11; 123 Stat. 991 (March 30, 2009).
[64] "Obama Signs Sweeping Public Land Reform Legislation," *CNN.com*, March 30, 2009, at http://www.cnn.com/2009/POLITICS/03/30/obama.lands.bill/.
[65] U.S. President (Obama), "Statement on Signing the Omnibus Public Land Management Act of 2009," *Public Papers of the Presidents of the United States: Barack Obama, 2009*, Book 1—January 20 to June 30, 2009 (Washington: GPO, 2010), pp. 379–380.
[66] Glen S. Krutz, *Hitching a Ride: Omnibus Legislating in the U.S. Congress* (Columbus, OH: The Ohio State University Press, 2001), pp. 78 and 126.

changing existing law"[67]—to constrain or restrict executive action. The use of these riders allows Congress to clearly indicate its intent on how money should or should not be spent and can "hide" otherwise policy-related legislation within appropriations bills. Similar to the potential miscounting of policy initiatives with omnibus legislation, a straight count of public laws will not consider policy riders or limitation amendments that could alter administrative programs by their inclusion in appropriations legislation. Further, the subject of the riders is not necessarily limited in scope. For example, "Congress has used appropriations riders to deprive former slaves of the right to vote, to protect farm subsidies from executive scrutiny, to prevent the President from making recess appointments, to enter into the conduct of negotiations with foreign powers, and to remove suspected Communists from the federal payroll."[68]

In sum, numerous factors could contribute to the decline in public laws. When evaluating congressional productivity based on this metric, consideration of rules changes, the filibuster, Senate advice and consent, divided government, political polarization, omnibus legislation, and policy riders are important for context. By considering these factors, it is possible to understand that Congress does not operate in a vacuum and that multiple factors can influence whether a bill becomes law. For example, fewer public laws might be enacted because of increased partisanship or divided government. On the other hand, the rise in the use of omnibus legislation and policy riders—especially for measures that might have been enacted as stand-alone laws in past decades—has also contributed to the decline in public laws. Taken alone, none of these factors adequately describes a decline in productivity, but considered together more rigorous conclusions might be drawn.

LANDMARK LEGISLATION

At the conclusion of the 111th Congress, *The Washington Post* reported that Congress had just completed one of its most productive 2-year periods in decades and was "[a] Congress that . . . passed more landmark legislation than any since the era of Lyndon B. Johnson's 'Great Society.'"[69] By using landmark legislation as a comparative tool, *The Washington Post* adopted a strategy previously used by political scientists and historians in an effort to understand the enactment of major legislation over time. Landmark legislation also reflects Madison's concept of great objects or matters expressed in *Federalist 63*. Landmark laws are the difficult objects that can take multiple Congresses to enact.

Major pieces of legislation have been passed in almost all periods of American history. Perhaps the seminal effort to analyze these measures was undertaken by David Mayhew in *Divided We Gov-*

---

[67] Jessica Tollestrup, "The Appropriations Process and Limitation Amendments: A Case Study on Party Politics and the House Floor," in *Party and Procedure in the United States Congress*, ed. Jacob R. Straus (Lanham, MD: Rowman & Littlefield, 2012), p. 61.

[68] Jacques B. LeBoeuf, "Limitations on the Use of Appropriations Riders by Congress to Effectuate Substantive Policy Changes," *Hasting Constitutional Law Quarterly*, vol. 19, no. 2 (winter 1992), pp. 460–461.

[69] David A. Fahrenthold, Philip Rucker, and Felicia Sonmez, "Stormy 111th Congress Was Still the Most Productive in Decades."

ern.[70] Using *New York Times* and *Washington Post* articles to provide contemporary analysis of laws and the "long-term perspectives of policy specialists about what enactments have counted most in their area," Mayhew developed a list of 186 landmark laws passed by Congress between the 92d Congress and, in his work's second edition, the 107th Congress.[71]

Mayhew's 1991 landmark study has been the basis of many other examinations of how often important laws were enacted. One of the potential challenges for using Mayhew's analysis to determine productivity is identifying important legislation. For example, in 2000, a study determined that divided government (i.e., the President and at least one Chamber of Congress are from different political parties) "depress(es) the production of landmark legislation by about 30 percent, at least when productivity is measured on the basis of contemporaneous perceptions of important legislation."[72] This last point is important. Most measures of productivity, no matter how robust the analysis, are dependent on determining what is important at the time of passage, not several years or decades in the future. Using Mayhew's methodology, the 106th Congress had the fewest landmark laws with 6 and the 93d Congress (1973–1975) had the most with 22.

Former CRS specialist Stephen Stathis also compiled a list of all major legislation enacted between the 1st and 107th Congresses.[73] Stathis compiled his list by searching for legislation that had "withstood the test of history or so dramatically altered the perception of the role of government that they may be considered of enduring importance."[74] Overall, Stathis identified 327 landmark bills. Using Stathis' methodology, the 106th Congress had the fewest landmark laws with 12 and the 95th Congress had the most with 26.

In contrast to Mayhew and Stathis, Lawrence Dodd and Scot Schraufnagel drew on seven histories of Congress, the Presidency, or the United States and six encyclopedias to create a list of landmark legislation.[75] To qualify as a landmark, a law must have been mentioned in "four or more sources, at least one of which was in a Congress-specific publication."[76] Using Dodd and Schraufnagel's analysis, the 98th Congress (1983–1985) and the 102d Congress (1991–1993) were tied with the fewest landmark laws (2 each) and the 93d Congress had the most with 11. Figure 3 lists the number

[70] David R. Mayhew, *Divided We Govern: Party Control, Lawmaking, and Investigations 1946–1990*, p. 44. Also, see David R. Mayhew, "The Least Productive Congress in History?," *Politico.com*, December 23, 2013, at http://www.politico.com/magazine/story/2013/12/least-productive-congress-in-history-101476.html#.U7r01ig1NlE.

[71] David R. Mayhew, *Divided We Govern: Party Control, Lawmaking, and Investigations, 1946–2002*, 2d ed. (New Haven, CT: Yale University Press, 2005).

[72] William Howell, Scott Adler, Charles Cameron, and Charles Riemann, "Divided Government and the Legislative Productivity of Congress, 1945–1994." *Legislative Studies Quarterly*, vol. 25, no. 2 (May 2000), p. 302.

[73] Stephen W. Stathis, *Landmark Legislation, 1774–2002* (Washington, DC: CQ Press, 2003).

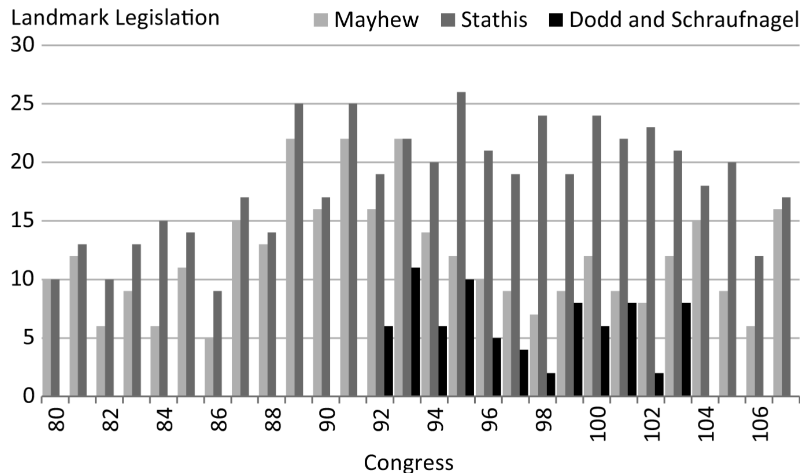
[74] To compile his list of landmark legislation, Stathis states that he examined the U.S. Congressional Serial Set, the *Annals of Congress*, *Register of Debates*, *Congressional Globe*, *Congressional Record*, committee hearing transcripts, committee prints, and a "broad range of biographies and specialized works on American history and politics . . . ." Stephen W. Stathis, *Landmark Legislation*, 1774–2002, pp. v–vi.

[75] Lawrence C. Dodd and Scot Schraufnagel, "Congress and the Policy Paradox: Party Polarization, Member Incivility, and Enactment of Landmark Legislation," *Congress & The Presidency*, vol. 39, no. 1 (2012), pp. 109–132.

[76] Ibid., p. 117.

of landmark laws per Congress identified by Mayhew, Stathis, and Dodd and Schraufnagel.

FIGURE 3. LANDMARK LEGISLATION, 80TH TO 107TH CONGRESS



Source: David R. Mayhew, *Divided We Govern: Party Control, Lawmaking, and Investigations 1946–1990* (New Haven, CT: Yale University Press, 1991); David R. Mayhew, *Divided We Govern: Party Control, Lawmaking, and Investigations, 1946–2002*, 2d ed. (New Haven, CT: Yale University Press, 2005); Stephen W. Stathis, *Landmark Legislation, 1774–2002* (Washington, DC: CQ Press, 2003); and Lawrence C. Dodd and Scot Schraufnagel, "Congress and the Polarity Paradox: Party Polarization, Member Incivility and Enactment of Landmark Legislation, 1891–1994." *Congress & the Presidency*, vol. 39, no. 1 (2012): 109–132.

Regardless of the methodology employed, evaluating legislative productivity based on landmark legislation is potentially problematic. As can be seen from the data, scholars cannot agree on the number of landmark laws in a given Congress. This attests to the subjectivity of counting landmark legislation and makes it an unclear measure of legislative productivity. While Mayhew and Stathis might agree that the 106th Congress passed the fewest landmark laws, Dodd and Schraufnagel identify the 98th and 102d as having the fewest. The same issue appears for identifying the most productive Congress. Mayhew and Dodd and Schraufnagel agree that the 93d Congress was the most productive, while Stathis identified the 95th Congress.

Evaluating congressional productivity using landmark legislation provides an opportunity to understand when major changes are made to public policy and law. American history is defined by the passage of many laws. For example, during the recent economic crisis, some observers suggested that Congress model a tax reform plan after the Tax Reform Act of 1986,[77] because "[Reagan] was the last president to preside over a significant tax reform, one that . . . lower[ed] tax rates and close[d] loopholes."[78] Regardless of the politics of 1986, the fondness with which the Tax Reform Act has been

[77] P.L. 99–514; 100 Stat. 2085 (October 22, 1986).

[78] Floyd Norris, "Tax Reform Might Start With a Look Back to '86," *TheNewYorkTimes.com*, November 22, 2012, at http://www.nytimes.com/2012/11/23/business/a-starting-point-for-tax-reform-what-reagan-did.html?pagewanted=all.

remembered illustrates the power that landmark legislation can have over the legislative process and debate.

Just because a Congress has few landmark laws does not necessarily mean it was not productive. For example, it is possible that a particular Congress not taking action in a policy area could constitute a landmark action. For example, between the mid-1960s and 2013, the Senate "has never failed to pass a National Defense Authorization Act (NDAA)."[79] If the Senate chose not to pass the NDAA in the future, Congress could be seen as maintaining the status quo on defense-related policy. Regardless of the short-term impact of such a decision, in the future scholars could look back on that decision and assert that Congress made a strategic shift by not doing something.

Understanding the long-term impact of public laws aids the analysis of whether a law is landmark. Political scientist Michael O'Neill summarized this point when he said that "the true effect of a legislative change may not be known or fully understood until years after the fact."[80] Subsequently, any new or reevaluation of a particular Congress may result in laws being added or dropped depending on the methodology employed.

OTHER POSSIBLE MEASURES OF PRODUCTIVITY

Legislation introduced, public laws enacted, and landmark legislation have been the three primary methods used to measure congressional productivity. In addition to these three, however, there are several other possible ways to measure congressional productivity. These include rollcall votes, committee meetings and hearings, *Congressional Record* pages, days in session, and pages in the *U.S. Statutes at Large*.

ROLLCALL VOTES

Rollcall votes are recorded votes—most often by electronic means in the House and always by calling the roll in the Senate—that allow individual Members to "go on the record" on a particular piece of legislation or question.[81] Historically, rollcall voting studies have focused on voting by individual groups of legislators and how gender, specific policy subjects, the White House, and constituents can influence Members' votes.[82] Additionally, many studies focus on political parties and how often Democrats and Republicans op-

[79] Colleen Shogan, "Defense Authorization: The Senate's Last Best Hope," in *Party and Procedure in the United States Congress*, ed. Jacob R. Straus (Lanham, MD: Rowman & Littlefield, 2012), p. 195.

[80] Michael Edmund O'Neill, "A Legislative Scorecard for the United States Senate: Evaluating Legislative Productivity." *Journal of Legislation*, vol. 36, no. 2 (2010), p. 310.

[81] Jacob R. Straus, "Let's Vote: The Rise and Impact of Roll Call Votes in the Age of Electronic Voting," in *Party and Procedure in the United States Congress*, pp. 101–123.

[82] See, for example, Brian Frederick, "Gender and Patterns of Roll Call Voting in the U.S. Senate," *Congress & the Presidency*, vol. 37, no. 2 (2010), pp. 103–124; Tao Xie, "Congressional Roll Call Voting on China Trade Policy," *American Politics Research*, vol. 34, no. 6 (November 2006), pp. 732–758; Richard S. Conley and Richard M. Yon, 2007, "The 'Hidden Hand' and White House Roll-Call Predictions: Legislative Liaison in the Eisenhower White House, 83d–84th Congresses," *Presidential Studies Quarterly*, vol. 37, no. 2 (June 2007), pp. 291–312; and Stephen Ansolabehere and Philip Edward Jones, "Constituents' Response to Congressional Roll-Call Voting," *American Journal of Political Science*, vol. 54, no. 3 (July 2010), pp. 583–597.

pose each other.[83] There are few rollcall studies that focus on the institution as a whole.[84] Using rollcall votes to measure congressional productivity could illustrate how often Members decide that a record of the vote is necessary. The decision to record a vote could be political, or it could signal the importance of the measure being considered.

Because the number of rollcall votes taken in a given Congress is a function of requests for recorded votes by individual Members of Congress, the number of votes taken in a particular Congress is not necessarily indicative of how much work is being conducted or its substance. Examining the number of rollcall votes helps explain the number of times a recorded vote was taken, but it does not provide information on the type of vote. Further, as part of the Legislative Reorganization Act of 1970,[85] House rules were amended to allow rollcall votes on amendments in the Committee of the Whole beginning in 1971. Allowing rollcall votes on amendments increased the potential number of rollcall votes per Congress by the number of amendments considered in the House.

Several questions about the nature of the vote are also relevant if rollcall votes are used as a measure of productivity. Was the vote procedural (e.g., previous question or to table) or was it for final passage or to agree to an amendment? Without context, understanding the importance of a rollcall vote is not possible. Additionally, multiple pieces of legislation pass or are defeated in the House or Senate by voice vote or unanimous consent. In these cases, legislative action has occurred, but no vote has been taken. Using rollcall votes alone as a measure of productivity would not capture those actions.

COMMITTEE ACTIVITIES

Outside of floor activities, much of Congress' work occurs in committee. Committee activity can be generally summarized into two categories: meetings—which include hearings and legislative markups—and committee publications.[86] Examining the productivity of committees could provide another metric for comparing overall congressional productivity.

Hearings serve many purposes,[87] including providing opportunities to gather information,[88] make policy,[89] and conduct oversight

---

[83] See, for example, Matthew J. Lebo, Adam J. McGlynn, and Gregory Koger, "Strategic Party Government: Party Influence in Congress, 1789–2000," *American Journal of Political Science*, vol. 51, no. 3 (July 2007), pp. 464–481; Edward B. Hasecke and Jason D. Mycoff, "Party Loyalty and Legislative Success: Are Loyal Majority Party Members More Successful in the U.S. House of Representatives?," *Political Research Quarterly*, vol. 60, no. 4 (December 2007), pp. 607–617; and David W. Rhode, *Parties and Leaders in the Postreform House* (Chicago: University of Chicago Press, 1991), p. 8.

[84] Jacob R. Straus, "Let's Vote: The Rise and Impact of Roll Call Votes in the Age of Electronic Voting," in *Party and Procedure in the United States Congress*, p. 110.

[85] P.L. 91–510; 84 Stat. 1140 (October 26, 1970).

[86] Roger H. Davidson, Walter J. Oleszek, Frances E. Lee, and Eric Schickler, *Congress and Its Members*, 14th ed. (Washington: CQ Press, 2013), pp. 163–165.

[87] John Baughman, *Common Ground: Committee Politics in the U.S. House of Representatives* (Stanford, CA: Stanford University Press, 2006).

[88] Daniel Diermeier and Timothy J. Feddersen, "Information and Congressional Hearings," *American Journal of Political Science*, vol. 44, no. 1 (2000), pp. 51–65.

[89] David E. Price, "Policy Making in Congressional Committees: The Impact of 'Environmental Factors,'" *American Political Science Review*, vol. 72, no. 2 (1978), pp. 548–574; and Kevin M. Leyden, "Interest Group Resources and Testimony at Congressional Hearings," *Legislative Studies Quarterly*, vol. 20, no. 3 (August 1995), pp. 431–439.

of the executive branch.[90] Examining the number of hearings in a given Congress could give insight into the number of issues that the House or Senate examined, including issues that might not receive floor attention. These could include oversight of various executive branch functions, examinations into relevant policy issues, and the consideration of legislation through hearings and markups. As congressional rules governing committee meetings have changed, however, the number of meetings may have also changed. For example, past practice prohibited committees from meeting concurrently with House floor activities without a special dispensation from the House. In the 105th Congress (1997–1999), H. Res. 5 amended the rules of the House to allow committees to meet without obtaining special leave.[91]

An alternative measure of committee activity is to examine the number of committee publications in each Congress or the number of pages published in committee reports, prints, and documents. Reports are "a committee document that accompanies a reported measure. It describes the measure, the committee's views on it, its costs, and the changes it proposed to make in existing law."[92] Committee prints are documents "printed either for the use of a committee or for other informational purposes."[93] Committee documents are miscellaneous items that are not necessarily committee reports or committee prints.

An examination of the number of committee publications or the number of pages contained in those publications could provide a metric for congressional productivity across both legislative and nonlegislative activities. Changes in the administrative rules of Congress, especially in the House, however, could make such an analysis difficult. For example, beginning in the 92d Congress (1971–1973), House rules were amended to require that all House committees submit a biennial report of its activities to the House.[94] That provision was further amended in the 112th Congress to require semi-annual reports,[95] and amended further in the 113th Congress to require annual reports.[96] Because of these changes, committees are to submit more activity reports to the House and the number of total reports may have increased. Even with an increase in the number of reports, however, the actual legislative and oversight work of the committees may or may not have increased. It should also be noted that there has been a decline in recent years in the number of some types of committee publications with committees using electronic formats as committee records in some instances.

---

[90] Mathew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms," *American Journal of Political Science*, vol. 28, no. 1 (February 1984), pp. 165–179; and Michael J. Scicchitano, "Congressional Oversight: The Case of the Clean Air Act," *Legislative Studies Quarterly*, vol. 11, no. 3 (1986), pp. 393–407.

[91] CRS Report RL33610, *A Retrospective of House Rules Changes Since the 104th Congress through the 109th Congress*, by Michael L. Koempel and Judy Schneider.

[92] Walter Kravitz, *American Congressional Dictionary*, p. 212.

[93] Walter Kravitz, *American Congressional Dictionary*, p. 51. For example, committee rules are generally published as a committee print.

[94] P.L. 91–510, § 118(b); 84 Stat. 1140 (October 26, 1970).

[95] H. Res. 5 (112th Congress), agreed to January 5, 2011. "Rules of the House," *Congressional Record*, daily edition, vol. 157 (January 5, 2011), p. H8.

[96] H. Res. 5 (113th Congress), agreed to January 3, 2013. "Rules of the House," *Congressional Record*, daily edition, vol. 159 (January 3, 2013), p. H6.

CONGRESSIONAL RECORD PAGES

To assess the productivity of the House or Senate in its entirety, one possible measure is to examine the number of pages printed in the *Congressional Record*. Since the *Congressional Record* is a "... substantially verbatim account of daily proceedings on the Senate [or House] floor," [97] the number of pages printed in the *Record* might provide a good approximation of the depth of debate in the House or Senate. The greater the number of pages that are devoted to debate on legislative matters, the more importance might be placed upon those subjects and the House or Senate's consideration.

The *Congressional Record*, however, is not just a record of debate. As political scientist Howard Mantel described it in the 1950s, it also:

> summarizes activities of Congressional committees; it is replete with editorial opinion gleaned from the great and the not-so-great newspapers of America; and it is dotted with such sundry items as poetry, both professional and homespun, high school essays on "what democracy means to me," the results of a particular congressman's public opinion polls, letters-to-the-editor and other miscellany, *ad infinitum*. The *Congressional Record* serves also as a local tabloid of events on Capitol Hill, recording, for example, the menu and agenda for the serving of the Second Senate Salad, an epicurean concoction combining the finest in back home specialties, to be offered in "the world's largest salad bowl ... 3 feet wide and 14 inches deep." [98]

Since many nonlegislative items are added to the *Record* on any given day, a straight count of the number of pages per Congress would not necessarily reflect on that Congress' productivity. Instead, a separate count, removing the miscellaneous material, would likely be necessary to get a true sense of the time spent on debate in the Chambers. Removing the potentially extraneous materials, however, would potentially edit out the context of the day and could, in the Senate, remove material that was provided on the floor during the pursuit of a filibuster. That material could be an important part of the debating tactics afforded individual Senators.

DAYS IN SESSION

Similar to counting the number of pages in the *Congressional Record*, another potential measure of congressional productivity is the number of days spent in session. The number of days spent in session has long been used as a measure of legislative professionalism in the States, with more days in session indicative of a professional legislature and fewer of an impermanent institution.[99] How the House and Senate choose to allocate their floor time could be a proxy for the amount of time spent on conducting their business.

Pursuant to Article I, section 5, clause 4 of the Constitution, neither Chamber may take a break of more than 3 days without the consent of the other.[100] Consequently, in the absence of a concur-

---

[97] U.S. Congress, Senate, Secretary of the Senate, "Congressional Record," *Senate Glossary*, at http://www.senate.gov/reference/glossary_term/congressional_record.htm.

[98] Howard N. Mantel, "The *Congressional Record*: Fact or Fiction of the Legislative Process," *Western Political Quarterly*, vol. 12, no. 4 (December 1959), p. 981.

[99] For example, see Peverill Squire, "Measuring State Legislative Professionalism: The Squire Index Revisited," *State Politics & Policy Quarterly*, vol. 7, no. 2 (June 2007), pp. 211–227.

[100] U.S. Constitution, Article I, section 5, clause 4.

rent resolution authorizing the recess of both the House and Senate, both Chambers will hold periodic *pro forma* sessions—a "brief meeting of the Senate [or House], . . . sometimes only a few minutes in duration" [101]—to ensure compliance with the Constitution. In recent years, in an effort to prevent the President from making recess appointments,[102] agreement on a concurrent resolution granting a recess has been rare, and the use of *pro forma* sessions has increased. Each *pro forma* session counts as a full legislative day. Thus, counting the number of days in session, when many *pro forma* sessions are held, could lead to an increase in the number of days in session, without a corresponding increase in the consideration of legislation.

Concluding Analysis

Measuring congressional productivity is much more complex than generally recognized and invariably fraught with interpretive challenges. As this discussion of individual measures has shown, each has advantages and disadvantages that make using them individually potentially problematic. While legislation introduced, public laws enacted, and landmark legislation all provide one piece of the overall picture of congressional productivity, none by itself may suffice to evaluate a particular Congress.

Regardless of whether one Congress should be judged against another, it is an activity in which many continue to engage. Overall, the measures examined in this report could be interpreted by some to reveal that contemporary Congresses appear to be less productive than historical Congresses. If it is true that contemporary Congresses are less productive, what factors might have caused this evolution?

In the Introduction, three possible explanations were offered on why assessing congressional productivity might be important. They were Senator Coburn's idea of public perception as expressed in his *Wastebook*, President Truman's concept of political agreement in labeling the 80th Congress the "do-nothing" Congress, and James Madison's dichotomy of "easy" and "great" objects of legislation written about in *Federalist 63*.

As discussed above, each of the three explanations most clearly represents one of the three measures discussed in this report: legislative introduction, public laws, and landmark legislation. While each concept has been more clearly tied to a particular measure, each also has elements of the other measures present in its view of Congress. Further, each change to the operation or ability of Congress to pass legislation is important. To best compare congressional productivity, these measures (and potentially others discussed above under "Other Possible Measures of Productivity") are best used in tandem. By combining measures of analysis, it might be possible to incorporate the political (dis)agreement (Truman), public perception (Coburn), and great objects (Madison) explanations of congressional productivity to make comparisons across time.

---

[101] U.S. Senate, Secretary of the Senate, "Pro forma session," *Senate Glossary*, at http://www.senate.gov/reference/glossary__term/pro__forma__session.htm.

[102] For more information, see CRS Report RS21308, *Recess Appointments: Frequently Asked Questions*, by Henry B. Hogue.

Several advantages could result from using these explanations together. First, Congress is a dynamic institution that was designed to change over time. As political scientist Lawrence Dodd stated: change, whether expected or unexpected, "can best be understood not as aberrations in our politics but as the natural, long-term outgrowth of three factors: the goals and strategies that politicians bring to congressional politics, the shifting societal contexts that they confront, and the changing ideas about politics that they experiment with as they pursue their goals and address societal problems." [103] Because Congress is constantly changing, understanding that the legislative process in 1948 is not the same as in 2014 is an important finding. Understanding the context of how Members of Congress come to agreement on measures with each other and with the President in each of these time periods bears on impressions of whether Congress is productive.

Second, Members of Congress respond to constituent demands, and as constituent demands change, so do the responses of Members of Congress. In a June 2014 survey, Gallup reported: "Seven percent of American say they have 'a great deal' or 'quite a lot' of confidence in Congress as an American institution, down from the previous low of 10% in 2013." [104] When public perception of Congress is juxtaposed against the decline in bills introduced, public laws enacted, and landmark legislation, some might conclude that public approval is linked with these measures. The decline of these measures could be in response to low approval ratings, with individual Members of Congress more concerned about their individual reelection than any specific policy initiative.[105] Conversely, public approval of Congress may have declined as the measures of congressional productivity have also declined. In other words, the public might be reacting to a perceived lack of productivity with lower public opinion ratings.

Public perception, however, is not just about polling numbers. It is also possible that congressional productivity mirrors public expectations for Congress. In 1982, journalist Albert Hunt wrote a piece for *Washingtonian* magazine entitled, "In Defense of a Messy Congress." In this article, he suggested that Congress should struggle through policy issues in order to get the policy right. "The simple fact is that Congress isn't *supposed* to operate neatly, efficiently, or expeditiously. Any system of checks and balances has built-in tensions and rough edges" [emphasis in original].[106]

If Hunt's analysis is correct, then the American public might want a Congress that requires significant time to pass public policy and looks unproductive at times. The public might want a robust minority that is able to prevent measures from becoming law without significant cooperation and compromise between the parties. If, in an effort to appear more productive and pass more laws, the House and Senate rewrote their rules to provide for additional ma-

[103] Lawrence C. Dodd, "Re-Envisioning Congress: Theoretical Perspectives on Congressional Change—2004," in *Congress Reconsidered*, 8th ed., ed. Lawrence C. Dodd and Bruce I. Oppenheimer (Washington, DC: CQ Press, 2005), pp. 411–412.

[104] Rebecca Riffkin, "Public Faith in Congress Falls Again, Hits Historic Low," *Gallup.com*, June 19, 2014, at http://www.gallup.com/poll/171710/public-faith-congress-falls-again-hits-historic-low.aspx.

[105] David Mayhew, *Congress: The Electoral Connection*.

[106] Albert R. Hunt, "In Defense of a Messy Congress," *Washingtonian* (September 1982), p. 182.

jority party control of the legislative agenda—in a manner more similar to the British parliamentary system—the majority would have carte blanche to enact whatever measures it wanted. Precisely because of a "messy" system, Congress is deliberate, and major policy changes can take years, or decades, to be enacted. If more laws were enacted, Congress might meet citizens' goals for a more active legislature or it could be imposing majoritarian rule, one of James Madison's fears espoused in *Federalist 10*.[107]

Third, passing major landmark legislation, or "great objects," is a long and tedious process and can be tied to public perception. As Senate staffer and political scientist James Wallner attested: "Public perceptions of Congress echo the popular critique that the Senate is beset by gridlock and thus is dysfunctional."[108] Further, dysfunction by its very nature prohibits passage or lengthens the amount of time required to pass landmark legislation. Increasing the amount of time required to pass landmark legislation, however, could be a feature of the deliberative process Americans are so often proud of when describing the government and reflects the desire for a "messy" system.

Finally, when considering political (dis)agreement, public perception, and great objects in tandem, one can observe that policy development and productivity exists within each Congress. Senator Edward Kennedy knew this to be true and wrote in his memoir that advancing health care reform would take time to craft the right policy. It was the length of time, however, that upon reflection surprised him.[109]

Time is a valuable commodity in government. Members of Congress may measure time not just in days, weeks, or months, but also in the time between elections. When policy develops slowly, claiming credit for incremental movement can be difficult. Instead, it is easier to say that a Congress did or did not do something within its 2-year window than it is to view the arc of policy development over time. Balancing political (dis)agreement, public perception, and great objects is not an easy proposition. But when understanding the development of public policy and the role of any given Congress, considering all three concepts—displayed through the introduction of legislation, enactment of public laws, and passing of landmark legislation—Congress may not look quite as unproductive as popular sentiment holds.

Some measures used to assess congressional productivity and compare Congresses may fail to account for the complexity inherent in developing policy in a representative democracy with separated powers. Judging congressional productivity, therefore, is inherently rife with judgment calls and is a value-laden and ideological effort. This is personified in the opposite views that Representative Hoyer and Speaker Boehner took in assessing the 112th Congress. Congress might be judged on how many laws it does pass or how many it repeals, but ultimately, an assessment of productivity is highly subjective.

---

[107] James Madison, "Federalist No. 10: The Same Subject Continued: The Union as a Safeguard Against Domestic Faction and Insurrection," *Federalist Papers*, at http://thomas.loc.gov/home/histdox/fed_10.html.

[108] James I. Wallner, *The Death of Deliberation: Partisanship and Polarization in the United States Senate* (Lanham, MD: Lexington Press, 2013), p. 4.

[109] Edward M. Kennedy, *True Compass* (New York: Twelve Books, 2009), pp. 299–300.

III. THE INSTITUTIONAL CONGRESS

Recent Innovations in Special Rules in the House of Representatives

MEGAN S. LYNCH

Analyst on Congress and the Legislative Process

and

MARK J. OLESZEK

Analyst on Congress and the Legislative Process

In the modern Congress, the Rules Committee is more than just a gatekeeper providing the means for allowing the House to consider legislation. The committee acts as an arm of the House majority leadership through which they can use the power of the majority to control myriad aspects of scheduling and consideration. This chapter covers recent innovations used by the Rules Committee to solve problems and further the procedural and political goals of the majority.

Special Rules as Problem-Solvers for the Majority Party

Thousands of legislative proposals are introduced in Congress each year, many of which are considered at length by one or more congressional committees. A relative few are brought to the floor of the U.S. House of Representatives for consideration by the entire body. The leadership of the House must therefore make choices regarding what proposals the House will consider, when it will do so, and what procedural restrictions will be imposed.

The role of the Rules Committee is to work with the House leadership to manage the efficient use of time spent by the House in the consideration of measures on the floor. In doing this, it is responsible for creating situations that benefit the majority party, both procedurally and politically, through the use of special rules.

Originally, the Rules Committee was not a standing committee but a select committee tasked with drafting the rules of the House at the beginning of a Congress. By the end of the 19th century, the Rules Committee had become a standing committee with the task of reporting resolutions providing the means for considering a measure not otherwise eligible for floor consideration.[1] In more re-

[1] U.S. Congress, House Committee on Rules, *A History of the Committee on Rules, 1st–97th Congress 1789–1981*, committee print, 97th Cong., 2d sess., 1983, 99–451. In *Managing Uncertainty in the House of Representatives: Adaption and Innovation in Special Rules* (Washington, DC: Brookings Institution, 1988), Stanley Bach and Steven Smith provide an account of the his-
Continued

cent decades, the Rules Committee has been more than just a gatekeeper providing the means for allowing the House to consider legislation. The committee acts as an arm of the leadership through which they can use the power of the majority to control myriad aspects of scheduling and consideration that allows for an efficient use of floor time.

What is a special rule?

A special rule, often referred to simply as a "rule," is a House resolution reported from the House Rules Committee. Once adopted by the House, a special rule has two key functions: (1) to enable the House to consider the measure specified, and (2) to set terms for considering it.

The kinds of provisions contained in special rules have changed over the years, largely in response to the composition and needs of House majorities at various points in time. Special rules have come to regulate a greater share of floor activity than they once did, including the legislative text that will be considered on the floor, how long it will be debated, and to what extent it may be amended. Special rules may also allow actions that would otherwise not be in order by providing a waiver of House rules so that Members may not raise points of order that they could otherwise make.

Special rules may include any number of provisions that will prevent or resolve problems for a majority party. As described below, these may relate to managing committee relations, structuring votes, enhancing transparency, or attempting to control interactions with the Senate. The committee has developed such provisions in order to assist lawmakers in managing an increasingly difficult lawmaking environment.

The close connection that exists between the House's majority leadership and the Rules Committee is maintained in two important ways. First, under party rules, the Speaker and the minority leader directly nominate their respective party members to the committee, subject to a vote of approval from the party caucus or conference. Second, on the Rules Committee, the majority party enjoys a fixed membership advantage of nine to four. This deliberate partisan imbalance reflects the vital role the Rules Committee plays in managing the House's floor agenda and defining the policy choices that come before the Chamber.

Special rules have included a number of innovations in recent years that have affected the work of the House. This report examines four that illustrate how provisions in special rules can produce consequences, procedural and political, that are favorable to the majority party.

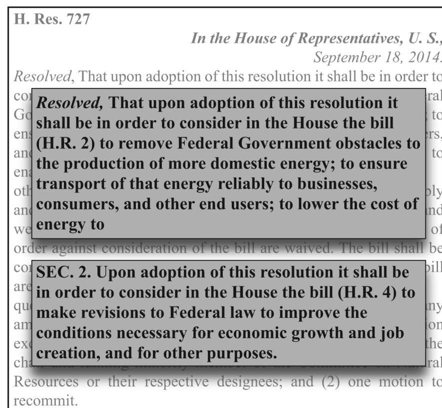
---

tory and development of special rules and the provisions they contain. See also Stanley Bach, "From Special Orders to Special Rules: Pictures of House Procedure in Transition," at http://www.stanistan.org/docs/1/4.pdf.

Provisions Providing for Consideration of Multiple Measures (Compound Rules)

Traditionally, provisions of a special rule have governed the consideration of a single measure or matter on the House floor. If the Rules Committee wanted to make additional items privileged for floor consideration, it would usually initiate a new round of committee deliberations and report a special rule for each additional measure. While this generally remains the case today, it has become increasingly common for the committee to provide for the separate consideration of two or more distinct measures in a single "compound" rule. If adopted, a compound rule sets the stage for legislative action to occur on multiple measures in much the same way as would a series of special rules individually tailored to each measure and adopted separately. Take, for instance, House Resolution 727, a compound rule adopted during the 113th Congress (2013–2014). A portion of that rule appears in Figure 1.

FIGURE 1. COMPOUND RULE


H. Res. 727

In the House of Representatives, U. S., September 18, 2014.

Resolved, That upon adoption of this resolution it shall be in order to

Resolved, That upon adoption of this resolution it shall be in order to consider in the House the bill (H.R. 2) to remove Federal Government obstacles to the production of more domestic energy; to ensure transport of that energy reliably to businesses, consumers, and other end users; to lower the cost of energy to

order against consideration of the bill are waived. The bill shall be

SEC. 2. Upon adoption of this resolution it shall be in order to consider in the House the bill (H.R. 4) to make revisions to Federal law to improve the conditions necessary for economic growth and job creation, and for other purposes.

Resources or their respective designees; and (2) one motion to recommit.

Source: H. Res. 727 (113th Congress).

Section 1 of H. Res. 727 sets forth legislative procedures for the consideration of H.R. 2, a bill "to remove federal government obstacles to the production of more domestic energy," and for other purposes, while section 2 creates floor procedures to handle H.R. 4, a bill making "revisions to federal law to improve the conditions necessary for economic growth and job creation, and for other purposes." When the House adopted H. Res. 727 by a 227 to 193 vote on September 18, 2014, both measures became eligible for consideration under the terms of the special rule. The House went on to pass both H.R. 2 and H.R. 4 later that day in accordance with the provisions of the special rule.

Compound rules are not new to the present Congress. Eight such rules were granted during the 104th Congress (1995–1996), but until the 111th Congress (2009–2010), the number of compound rules per Congress remained fairly steady with no clear trend evident over time. Since then, however, there has been a significant increase in their usage, both in terms of the total number of com-

pound rules per Congress and as a percentage of all special rules reported during each 2-year period. This upward trend is shown in Table 1.

Table 1. Compound Special Rules

1995–2013

Congress (years)	Total number of special rules	Number of compound special rules	Compound rules as a percentage of total special rules
104th (1995–1996)	230	8	3.5
105th (1997–1998)	207	9	4.3
106th (1999–2000)	267	7	2.6
107th (2001–2002)	191	3	1.6
108th (2003–2004)	192	8	4.2
109th (2005–2006)	193	6	3.1
110th (2007–2008)	220	7	3.2
111th (2009–2010)	165	12	7.3
112th (2011–2012)	129	33	25.6
113th Congress, 1st session (2013)	54	20	37.0

Source: Data in Table 1 were drawn primarily from Rules Committee activity reports. Those reports summarize the work of the committee during each Congress and are available for download from the committee's Web site at http://rules.house.gov/resources. Each compound rule identified in an activity report was cross-checked using the Legislative Information System of Congress (LIS), an online database of congressional activity that includes the text of each resolution the committee reported. Activity reports also list the total number of special rules the Rules Committee granted during each 2-year period.

Compound rules may offer several advantages to a majority party and Members generally. For one, compound rules can add predictability to the House schedule because they identify two (or more) measures eligible for possible floor consideration rather than a single measure. Knowing what comes next might make it easier for Members to prepare for debate and amendment on the House floor.

Compound rules can also expedite business by reducing the amount of floor time spent debating special rules. By setting aside the traditional "one rule for one bill" pattern, less time is spent debating special rules, and more time may be spent on other business. By combining these measures into a single special rule, the Rules Committee can reduce the number of opportunities for a minority party to address underlying procedural restrictions or the policy embodied in any single underlying measures. Simply put, there is less debate time on the floor when compound rules are used. In addition, compound rules result in fewer opportunities to vote on the previous question, a vote the minority party often characterizes (during debate on a rule) as a vote on a particular policy proposal.[2]

[2] After an hour of debate on a special rule, a Member from the majority party typically moves the previous question, a motion that proposes to end consideration of a matter and move to a final vote. If the previous question motion were to fail, the minority floor manager would control an hour of debate time and could offer amendments to the special rule. While the previous question is almost invariably agreed to, Members from the minority party will often urge colleagues to vote "no" on the previous question so that the special rule could be altered to allow a different legislative proposal to come to the floor. During debate on the rule, they may characterize the

Reducing the number of special rules reported may also provide advantages to the members of the Rules Committee by reducing the number of meetings or amount of time devoted to committee hearings and markups. Although service on the Rules Committee was historically an exclusive assignment for Members of both parties, preventing them from serving on other House committees, Members now routinely serve on other committees as well. These additional assignments may create new pressures, responsibilities and scheduling demands, so that compound rules may be seen as a solution to scheduling difficulties because they allow the committee in a single meeting to set legislative procedures governing the consideration of multiple measures.

Provisions Providing for the Single Engrossment of Multiple Measures (Engrossment Rules)

Once a bill or joint resolution has passed the House, an engrossed copy of the legislation is prepared and certified by the Clerk of the House before being sent to the Senate.[3] Occasionally, special rules will include provisions that instruct the Clerk to perform particular actions during this process—specifically, to combine the texts of multiple separately passed bills into a single measure for transmission to the Senate.[4]

Figure 2 displays language often used to this effect, which in this case was drawn from section 3 of H. Res. 245, an engrossment rule adopted during the 112th Congress (2011–2012). The language of H. Res. 245 directs the Clerk to combine the texts of two separate bills, H.R. 1229 and H.R. 1230, into a single measure and make the formatting adjustments necessary to render a single, seamless, and internally consistent piece of legislation. The combined product is not subject to an additional vote by the House. Engrossment rules typically also contain additional language that permanently and adversely disposes of those measures combined in this way (like H.R. 1230 in Figure 2) by laying them on the table. This ensures that no further action will be taken in relation to those tabled measures.

As shown in Table 2, the use of such provisions has been on an upward trajectory in recent years.

There are many possible reasons why a special rule that includes a provision providing for the engrossment of multiple measures might be used, one of which is clearly contemplated in the rules of the House. Specifically, Rule XXI, clause 10(b)(2)—referred to as the Cut-as-You-Go, or CutGo, rule—references such a special rule in providing guidance for its enforcement. The CutGo rule generally prohibits consideration of legislation in the House if it would have the net effect of increasing total direct spending over two

---

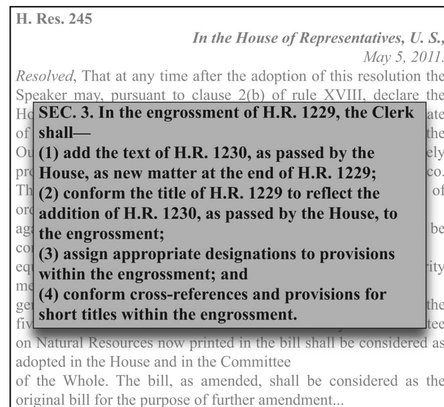
vote on the previous question as being a vote on the stated legislative proposal. The Rules Committee describes such a scenario on page 2 of the following: http://rules.house.gov/sites/republicans.rules.house.gov/files/112-BT-RulesComm-20110706.pdf. For more information on the previous question, see CRS Report R43424, *Considering Legislation on the House Floor: Common Practices in Brief*, by Elizabeth Rybicki.

[3] For more information on engrossment, see CRS Report 98–826, *Engrossment, Enrollment, and Presentation of Legislation*, by R. Eric Petersen.

[4] The Rules Committee formally refers to these as rules that include "provisions providing for the engrossment of multiple measures." Informally, however, these are often referred to by Members and staff as "MIRV" rules, MIRV being an acronym used in the military to describe a missile containing multiple independently targetable reentry vehicles.

specified periods.[5] The rule, however, also provides that a separately passed measure to be added during engrossment pursuant to a special rule can act as an offset to such an increase. In this way, it is possible to have one measure act as a budgetary offset for another measure, even though the measures are considered and passed separately by the House.

FIGURE 2. ENGROSSMENT RULE



H. Res. 245

In the House of Representatives, U. S.,
May 5, 2011.

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the ...

SEC. 3. In the engrossment of H.R. 1229, the Clerk shall—
(1) add the text of H.R. 1230, as passed by the House, as new matter at the end of H.R. 1229;
(2) conform the title of H.R. 1229 to reflect the addition of H.R. 1230, as passed by the House, to the engrossment;
(3) assign appropriate designations to provisions within the engrossment; and
(4) conform cross-references and provisions for short titles within the engrossment.

on Natural Resources now printed in the bill shall be considered as adopted in the House and in the Committee
of the Whole. The bill, as amended, shall be considered as the original bill for the purpose of further amendment...

Source: H. Res. 245 (112th Congress).

For example, in the 112th Congress, the special rule H. Res. 245 provided that during engrossment of H.R. 1229, a bill to amend the Outer Continental Shelf Lands Act, the Clerk was to add the text of H.R. 1230, a bill to require the Secretary of the Interior to conduct certain offshore oil and gas lease sales, and for other purposes. The Congressional Budget Office (CBO) estimated that H.R. 1229 as reported (which was the form passed by the House) would increase direct spending over one of the two relevant periods.[6] CBO estimated, however, that the other measure, H.R. 1230, would decrease mandatory spending by a greater amount over the same period.[7] This meant that, when combined, the bills were projected to have the net effect of reducing mandatory spending in the relevant periods and therefore would not violate the CutGo rule.[8]

Allowing the House to consider measures separately, both in committee and on the House floor, may also allow majority leadership to keep the question of germaneness more narrowly focused: The broader a measure is at the time of its consideration, the more likely an amendment can be germane to its text. This might enable

[5] The periods are (1) the current year, the budget year, and the 4 fiscal years following the budget year; and (2) the current year, the budget year, and the 9 fiscal years following that budget year.

[6] The period of the current year, the budget year, and 4 fiscal years following the budget year.

[7] The CBO cost estimate pertained to the bill as reported, which was the form as passed by the House.

[8] As stated in H. Rept. 112–73, the committee report accompanying H. Res. 245, when referring to the budgetary effects of H.R. 1229, "This budgetary violation will be cured when, pursuant to the resolution, H.R. 1230 is added as new matter at the end of H.R. 1229. In accordance with clause 10(b) of rule XXI, the provisions of H.R. 1230 will offset the breach in allocation of entitlement authority for a total net reduction in direct spending of $34 million over the 2011–2021 period."

the majority leadership to keep consideration of alternatives, including motions to recommit with instructions, restricted to more narrow questions and not affect the content of the measure as sent to the Senate.

Table 2. Engrossment Special Rules

1995–2013

Congress (years)	Total number of special rules	Number of engrossment special rules	Engrossment rules as a percentage of total special rules
104th (1995–1996)	230	1	0.4
105th (1997–1998)	207	2	0.9
106th (1999–2000)	267	3	1.1
107th (2001–2002)	191	0	0.0
108th (2003–2004)	192	4	2.1
109th (2005–2006)	193	4	2.1
110th (2007–2008)	220	6	2.7
111th (2009–2010)	165	9	5.5
112th (2011–2012)	129	5	3.9
113th Congress, 1st session (2013)	54	4	7.4

Source: Data in Table 2 were drawn primarily from Rules Committee activity reports. Those reports, which summarize the work of the committee during each 2-year period, identify various provisions in special rules including those that "provide for the engrossment of multiple measures." Each engrossment rule listed in an activity report was cross-checked using the Legislative Information System of Congress (LIS).

Engrossment rules may also be used to provide enhanced control over the number of House-passed measures that are available for Senate action. This is especially pertinent to revenue measures, because the U.S. Constitution requires those measures to originate in the House.[9] The Senate may not originate revenue bills, but it is free to amend such measures sent to it by the House. For example, it may be that the House wants to consider and vote on several revenue issues separately, both in committee and on the House floor. The engrossment of multiple measures, then, can be used as a way to allow this while simultaneously limiting the number of revenue bills available to the Senate.

By combining measures separately passed in the House, engrossment rules may also increase the likelihood of Senate action on a particular issue or expand the scope of matters to be negotiated in the resolution of bicameral differences. In this way, engrossment rules can create opportunities for compromise that might not otherwise exist.

Provisions Referring to Legislative Text Within a Committee Print (Committee Print Rules)

Whereas the two innovations described above concern the provisions in the special rule, this innovation concerns the form in which the Rules Committee prescribes the text for consideration by

[9] The "origination clause" of the U.S. Constitution is found in Article 1, section 7, clause 1. For more information on the effect of this clause on the consideration of revenue measures, see CRS Report RL31399, *The Origination Clause of the U.S. Constitution: Interpretation and Enforcement*, by James V. Saturno.

the House. In that sense, this innovation is a new method for performing what has been one of the committee's traditional tasks: establishing the legislative text for consideration.

When the Rules Committee crafts a special rule, it has a variety of ways it can specify the legislative text to be considered. The rule itself can specify the legislative language by referring to a specific measure as introduced, reported by committee, or as modified by other legislative language that appears elsewhere. Until recently, if this language was extensive, it would appear in the text of the committee report accompanying the special rule, providing the benefit of allowing the House to see the new legislative text prior to its consideration.

By establishing the legislative text eligible for floor consideration, the Rules Committee can address any number of policy or political challenges that require the House majority leadership, often with the support of relevant committee chairs, to facilitate their lawmaking goals. For example, the Rules Committee can make adjustments to committee-reported language in order to incorporate the recommendations of another committee that shares jurisdiction over the underlying measure or otherwise satisfy policy choices favored by the majority.

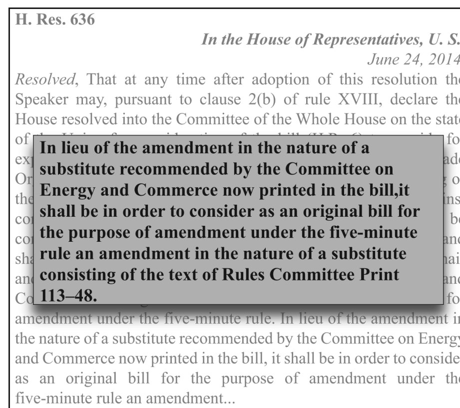
In the case that the legislative text set forth in the special rule combines several measures (or portions of measures) reported by committee, the special rule can provide several of the same advantages as a compound rule, as described above. By combining several measures into a single bill, the Rules Committee can decrease time spent on the floor and reduce the number of opportunities for the minority party to address the policy embodied in the underlying measures. For example, the minority is guaranteed a motion to recommit on each individual bill considered by the House. If fewer separate measures are considered on the House floor, the minority party will have fewer opportunities to get a vote on its policy preferences.[10] Also, similar to special rules that include engrossment provisions, described above, combining measures for floor consideration can allow measures to be considered separately in committee, allowing committee leadership to keep the question of germaneness more narrowly focused yet allow several bills to be combined postcommittee so that less time is used for floor consideration.

Recently, however, it has become common for the Rules Committee to provide the text to be considered in the form of a Rules Committee print. In many cases, a Rules Committee print contains language that is identical to a committee-reported bill. Rules Committee Print 113–48, for instance, mirrors exactly the text of H.R. 6, which was reported by the Committee on Energy and Commerce on June 19, 2014. Although the language of both measures is equivalent, selecting a Rules Committee print as the basis for de-

[10] The motion to recommit is typically offered after the previous question has been ordered on a measure but before the House votes on final passage. Preference in recognition for offering a motion to recommit is given to a member of the minority party who is opposed to the bill. A motion to recommit may have various procedural effects, including amending an underlying measure, sending it to one or more committees, providing additional time for its consideration, or potentially disposing of the legislation. The motion to recommit might also have political effects. For more information on the motion to recommit, see CRS Report RL34757, *The Motion to Recommit in the House of Representatives: Effects and Recent Trends*, by Megan S. Lynch.

bate and amendment offers several advantages to the majority leadership and Members generally. First, and perhaps most important, Rules Committee prints made in order under the terms of a special rule can be easily located and retrieved in portable document format (PDF) from the Rules Committee Web site for inspection by all Members, as well as the general public. Transparency in lawmaking can be enhanced when the Rules Committee acts as a legislative clearinghouse in this way. Second, Rules Committee staff can quickly post the text of a measure online in the form of a Rules Committee print. This can be especially beneficial to Members who intend to offer amendments because page and line numbers in a Rules Committee print are fixed at the outset, whereas additional time is occasionally needed for the Government Printing Office (GPO) to publish and distribute new or revised committee reports. In this way, use of the committee prints may be related to the pledge articulated by the majority party that the text of any measure considered on the House floor will be made available 3 days before consideration.[11]

FIGURE 3. COMMITTEE-PRINT RULE



H. Res. 636

In the House of Representatives, U. S.,
June 24, 2014.

Resolved, That at any time after adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of ... for ... ade ... of ... inst ... be ... and ... hair ... and ... for amendment under the five-minute rule. In lieu of the amendment in the nature of a substitute recommended by the Committee on Energy and Commerce now printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule an amendment...

In lieu of the amendment in the nature of a substitute recommended by the Committee on Energy and Commerce now printed in the bill,it shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule an amendment in the nature of a substitute consisting of the text of Rules Committee Print 113–48.

Source: H. Res. 636 (113th Congress).

Figures displayed in Table 3 illustrate the number and percentage of "Print Rule"—defined here as special rules that set a Rules Committee print as the text for floor consideration—in relation to the total number of special rules granted by the Rules Committee since the beginning of the 104th Congress (1995–1996). As indicated in Table 3, such committee print rules have become increasingly common.

---

[11] The majority party pledge includes the following language, "Read the Bill. We will ensure that bills are debated and discussed in the public square by publishing the text online for at least three days before coming up for a vote in the House of Representatives. No more hiding legislative language from the minority party, opponents, and the public. Legislation should be understood by all interested parties before it is voted on." from page 33 at the following http://www.gop.gov/resources/library/documents/pledge/a-pledge-to-america.pdf. Pursuant to this pledge, the legislative text is made available at http://docs.house.gov/.

Table 3. Committee Print Special Rules

1995–2013

Congress (years)	Total number of special rules	Number of committee print special rules	Print rules as a percentage of all special rules
104th (1995–1996)	230	0	0
105th (1997–1998)	207	0	0
106th (1999–2000)	267	1	0
107th (2001–2002)	191	0	0
108th (2003–2004)	192	1	1
109th (2005–2006)	193	3	2
110th (2007–2008)	220	0	0
111th (2009–2010)	165	0	0
112th (2011–2012)	129	27	21
113th Congress, 1st session (2013)	54	22	41

Source: Data displayed in Table 3 were drawn from the Legislative Information System (LIS) by searching the text of House resolutions for the phrase ''Rules Committee print'' without word variants. Figures on the total number of special rules granted during each 2-year period were drawn from Rules Committee activity reports for that Congress (or session of Congress).

New Provisions Restricting the Consideration of Amendments on Appropriations Bills

Another example of innovation in special rules occurred in the 113th Congress (2013–2014) when the Rules Committee reported special rules that establish a new way to regulate the amendment process on appropriations measures. It appears that this was done to accomplish multiple goals set out by the majority leadership: to allow an open amending process and to make more efficient use of floor time.

Customarily, when Members consider a measure for amendment under the terms of a special rule, it is done in one of two ways.

First, an "open" special rule would allow amendments to be considered under the "5-minute" rule, meaning that any Member may offer an amendment that is otherwise in order under the standing rules of the House. The Member offering the amendment is recognized for 5 minutes to speak in favor, after which an opponent can be recognized to speak against the amendment for 5 minutes. In this situation, other Members may also offer "pro forma" amendments, which allow them to secure an additional 5 minutes to speak on the amendment. Typically, there is no limit on the number of pro forma amendments that can be offered. Under an open rule, pending first degree amendments are also, prior to being voted on, subject to amendments in the second degree. Eleven of the 12 regular appropriations bills are traditionally considered under an open rule when brought to the floor for consideration.[12]

Alternatively, the Rules Committee can limit the amendments that are in order by reporting a "structured" special rule. In current practice, when they do this, they typically prohibit second degree amendments and restrict debate on an amendment to 10 min-

[12] The legislative branch appropriations bill is the exception: It is typically brought to the floor under a "structured" special rule, which specifies what amendments will be in order.

utes, divided equally between the proponent and an opponent of the amendment. The proponent and opponent "control" the time, meaning that they may reserve the balance of their time in order to alternate speaking and that other Members can speak on the amendment only if they have been yielded time by the proponent or opponent controlling time. No pro forma amendments are in order.

The recently reported provision of special rules on appropriations bills embodies a hybrid of these two typical amending scenarios.[13] While the rule allows for any Member to offer an amendment to the bill, it prohibits second degree amendments and significantly restricts debate on any amendment. As in a structured rule, such rules provide 10 minutes for debate equally divided and controlled by the proponent and an opponent of the amendment, but they prohibit pro forma amendments, meaning no Member can secure 5 additional minutes to speak as a matter of right so that any Members wishing to speak on an amendment must be yielded time from either the proponent or an opponent. These rules do provide an exception, however, and grant up to 10 pro forma amendments to each the chair and ranking minority member of the Appropriations Committee (or their respective designees) to use while addressing any amendments during consideration of the underlying bill.[14]

In a letter to the Rules Committee chairman, the Appropriations Committee chairman specifically requested such language in a special rule:

> In addition, in order to assure completion of the bill in a reasonable amount of time, I believe providing additional measures to help facilitate orderly and expedited debate would be useful . . . . The benefits of assuring each bill progresses through the amendment process in a timely manner will be the opportunities to consider additional appropriations bills on the floor and to allow members to have their input on those bills as well. It is my desire to bring all twelve appropriations bills to the floor, if possible, and I believe these additional measures will help make that possible.[15]

While it is unusual for a special rule to provide for such an amending scenario, such a situation has sometimes been agreed to under the terms of a unanimous consent agreement after a bill has been brought to the floor.[16] During the Rules Committee markup, a majority party Member stated, "While not our usual process, this procedure balances the need for any Member to offer any amendment to the bill with the need to complete our work." A Member from the minority party, however, expressed concern that while such restrictions had previously occasionally been

> done by unanimous consent, what you are doing with this appropriations bill now is you are instituting a 10-minute time limit on each amendment, five minutes on each side, you are eliminating pro forma amendments which will also limit debate severely, and to suggest that we are going to have a serious discussion on child nu-

[13] The Rules Committee has described these rules as "modified-open" rules, which presumably adds to the definition of modified-open rules presently encompassing rules that (1) place an overall time cap on the consideration of all amendments or (2) require amendments to be preprinted.

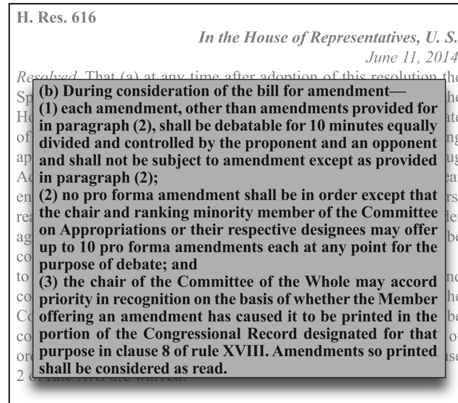
[14] H. Res. 616 (113th Congress), H. Res. 628 (113th Congress), H. Res. 641 (113th Congress), H. Res. 661 (113th Congress).

[15] Harold Rogers, chairman of the House Appropriations Committee, letter to the Honorable Pete Sessions, chairman of the House Rules Committee, June 9, 2014.

[16] Representative Frank Wolf, "Limiting Amendment Debate during Further Consideration of House Debate on H.R. 4660, Commerce, Justice, Science and Related Agencies Appropriations Act, 2015," House debate, *Congressional Record*, daily edition, vol. 160, May 29, 2014, p. H4955.

trition standards in schools with five minutes on each side, I think is absurd. This is an intentional attempt to limit debate on a very, very important bill.[17]

FIGURE 4. RULE WITH NEW PROVISION RESTRICTING THE AMENDMENT PROCESS


H. Res. 616

In the House of Representatives, U. S.,
June 11, 2014.

(b) During consideration of the bill for amendment—
(1) each amendment, other than amendments provided for in paragraph (2), shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent and shall not be subject to amendment except as provided in paragraph (2);
(2) no pro forma amendment shall be in order except that the chair and ranking minority member of the Committee on Appropriations or their respective designees may offer up to 10 pro forma amendments each at any point for the purpose of debate; and
(3) the chair of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII. Amendments so printed shall be considered as read.

Source: H. Res. 616 (113th Congress).

The Ever-Changing Special Rule

An examination of special rules over the past century reveals that their contents consistently evolve. The primary role of the Rules Committee is to create situations that benefit the majority party, both procedurally and politically, and to accomplish this, the Rules Committee continually develops innovative provisions to include in special rules. Likewise, once a provision ceases to be useful to the majority for any variety of reasons, the Rules Committee will likely abandon it.

Sometimes provisions are used only temporarily because they cease to be useful in achieving the goals of the majority or represent solutions to things that are no longer viewed as problems. Sometimes provisions are replaced by a provision that the majority party prefers instead. For example, beginning in the 1980s, the Rules Committee sometimes reported special rules that included a provision allowing the House to consider a series of several alternative amendments to the same text. The provision specified that if more than one amendment achieved a majority vote, it would be the last one adopted that would be considered as agreed to. These special rules, referred to as king-of-the-hill rules, became relatively popular until they were replaced in the mid-1990s by what were referred to as queen-of-the-hill rules. These rules included a similar provision that would allow the House to consider several alternative amendments to the same text, but the amendment to achieve the greatest number of votes (assuming it was at least a

[17] House Rules Committee markup on H. Res. 616 for H.R. 4800, June 17, 2014, at http://rules.house.gov/video/rules-committee-hearing-hr-4870-and-senate-amendment-hr-3230.

majority) would be considered as adopted. Queen-of-the-hill rules were used sparingly and ceased being used at all after 2002.[18]

While the Rules Committee discontinues the use of any provisions that it no longer finds useful, it may be that provisions cease to be included for another reason. If used routinely enough, provisions included in special rules may ultimately be folded into the House standing rules so that it is no longer necessary to include them in a special rule. For example, during the 104th, 105th, and 106th Congresses (1995–2000), special rules commonly included a provision providing the chairman of the Committee of the Whole the authority to postpone and cluster recorded votes.[19] In the 107th Congress (2001–2002), this authority was integrated into the standing rules of the House as House Rule XVIII, clause 6(g).

Because new provisions are regularly introduced and phased out as necessary to facilitate the work of the majority party, it is important to view any current trends of provisions in special rules with the understanding that, since their inception, special rules have continually evolved in substance and construction and will likely continue to do so.

---

[18] For a discussion of such rules, see James Saturno, "Toppling the King of the Hill: Understanding Innovation in House Practice," in Jacob Straus, *Party and Procedure in the United States Congress* (Lanham, MD: Rowman and Littlefield, 2002).

[19] For more information, see U.S. Congress, *Constitution, Jefferson's Manual, and Rules of the House of Representatives*, H. Doc. 112–161, § 984, 112th Cong., 2d sess. (Washington: GPO, 2013).

Changes in the Purposes and Frequency of Authorizations of Appropriations

JESSICA TOLLESTRUP

Analyst on Congress and the Legislative Process

The form and content of authorization laws and their role in budgetary decisionmaking has varied greatly over time. In the 19th century, authorizations were primarily used for the initial establishment of programs while control over the details of particular activities and amounts was achieved through the annual appropriations process. During the mid-20th century, however, the legislative committees began to include provisions that explicitly authorized appropriations in authorization acts as a means of influencing budgetary outcomes, both with respect to the action of the appropriators and for the agencies under their jurisdiction. In addition, these committees began to establish periodic schedules of review for certain agencies so that it became necessary to enact reauthorizations on an annual or multiyear basis. As these practices have continued to evolve in more recent years, the congressional reauthorization process has again shifted to being more policy focused, with less of an emphasis on funding levels or periodic reauthorization schedules. This chapter discusses general themes that underlie this evolution, and illustrates them with three case studies on the authorizations of appropriations for the National Science Foundation, the National Aeronautics and Space Administration, and the Peace Corps.

Introduction

A basic principle underlying the congressional budget process is the separation between money and policy decisions. One means through which this division of labor has been observed is through congressional rules and practices that distinguish between provisions that establish the activities of government and those that fund those activities—“authorizations” and “appropriations,” respectively.[1] An authorization generally provides legal authority for the government to act, usually by establishing, continuing, or restricting a Federal agency, program, policy, project, or activity. It may also, explicitly or implicitly, authorize subsequent congres-

[1] The current congressional practices and legal principles associated with authorizations and appropriations are summarized in CRS Report R42098, *Authorization of Appropriations: Procedural and Legal Issues*, by Jessica Tollestrup and Brian T. Yeh.

sional action to provide appropriations for those purposes. By itself, however, an authorization does not provide funding for government activities. An appropriation generally provides both the legal authority to obligate future payments from the Treasury, and the ability to make subsequent payments to satisfy those obligations. Since the adoption of a formal rule in the House in 1835, the distinction between authorizations and appropriations has been based on limiting the provisions of appropriations measures to funding those programs or activities previously established by law. The form in which those programs or activities are established, however, is not prescribed by House or Senate rules or practices, so the language and specificity of such provisions has varied greatly over time.[2]

During the 19th century, authorizations generally were used for the initial establishment of programs, while control over the details of particular activities and amounts was achieved through the annual appropriations process. Authorization laws were enacted on a permanent basis to provide broad grants of authority to government departments and agencies. In these laws, the authorization of subsequent congressional action to provide appropriations was implied and did not include specific amounts to be appropriated. That is, the general authorization in these laws included both the legal authority to act, as well as the authority under congressional rules to appropriate funds for such activities. Temporary authorizations were rare and were generally reserved for programs that were intended to be of a limited duration. In contrast, annually enacted appropriations laws contained the details as to what agencies were able to do and how much they would have to spend.[3]

Developments in the House and Senate committee systems that occurred during this same period also served to strengthen this authorization-appropriations distinction. From the earliest Congresses the "legislative committees" had jurisdiction over authorization measures while the House Ways and Means Committee and Senate Finance Committee were responsible for most appropriations bills. During the Civil War, however, when the workload of these committees and size of Federal expenditures increased considerably, both Chambers chose to create separate appropriations committees that would be responsible for the annual appropriations measures.[4]

As the size and scope of Federal Government activities increased during the 19th and early 20th centuries, the congressional practices related to authorizations and appropriations began to change. Authorization laws began to specify the details of broad classes of Federal Government programs and activities in consolidated legis-

[2] This report's summary of the general development of these congressional rules and practices is largely based on Alan Schick, *Legislation, Appropriations, and Budgets: The Development of Spending Decision-making in Congress*, Congressional Research Service, May 1984 (hereinafter, *Legislation, Appropriations, and Budgets*); and Louis Fisher, "Annual Authorizations: Durable Roadblocks to Biennial Budgeting," *Public Budgeting and Finance*, spring 1983 (hereinafter, "Annual Authorizations").

[3] *Legislation, Appropriations, and Budgets*, p. 8.

[4] The House Appropriations Committee was established in 1865; the Senate Appropriations Committee was established in 1867. The events leading to the establishment of these committees are discussed in Charles H. Stewart, III, *Budget Reform Politics: The Design of the Appropriations Process in the House of Representatives, 1885–1921* (New York, NY: Cambridge University Press, 1989), pp. 53–83; and U.S. Senate, Committee on Appropriations, *Committee on Appropriations: 1867–2008*, 110th Cong., 2d Sess., Doc. No. 14 (Washington, DC: GPO, 2008), pp. 4–6.

lation, instead of in multiple pieces of stand-alone legislation that addressed only some aspects of such programs and activities. At about the same time, appropriations, which used to be almost entirely comprised of specific line items, shifted to more general lump sums for purposes that were usually identified simply by referencing the statutory authorization. In other words, appropriations began to rely on the authorization statutes to specify and limit how the funds would be used. Although jurisdiction over some appropriations was dispersed during the late 19th century, Congress continued to keep appropriations separate and distinct from authorizations.[5] The reconsolidation of appropriations jurisdiction, and the reorganization of regular annual appropriations bills in the House in 1920 (and in the Senate in 1922), also reinforced this distinction.[6]

The choice to separate money and policy decisions and vest control over them in different congressional committees has meant longstanding tensions between the authorization and appropriations processes. In terms of both what the Federal Government should do and at what level its activities should be funded, these tensions have significantly influenced how the processes have evolved, as each attempts to exercise a greater role in congressional and agency funding decisions. In the early 20th century, as a consequence of the changes that were discussed in the previous paragraph, the legislative committees began to assert their role in fiscal decisionmaking through two particular mechanisms. First, the committees began to include provisions that explicitly authorized appropriations in authorization acts, such as language that "hereby authorized to be appropriated" for certain purposes. Second, associated with these provisions, the committees began to conduct reviews and enact revisions to authorization laws for certain agencies and departments on periodic schedules, instead of on an as-needed basis.[7]

This report discusses general principles in how the language concerning the purposes and frequency of authorizations of appropriations has changed over the past century. These general principles are illustrated through case studies on the authorizations of appropriations that were enacted during this period for three agencies: the National Science Foundation, the National Aeronautics and Space Administration, and the Peace Corps.

Evolution of Authorizations during the 20th Century

Coincident with the enactment of the Budget and Accounting Act of 1921, jurisdiction over general appropriations increased the role of the appropriations committees in congressional decisions about spending. In response, the legislative committees began to explore new legislative language that would influence budgetary outcomes, both with respect to the action of the appropriators, and also in their oversight of the agencies under their jurisdiction. This re-

[5] Stewart, pp. 89–132.

[6] Background on these changes is provided in U.S. House of Representatives, Committee on Appropriations, *A Concise History of the House of Representatives Committee on Appropriations*, 111th Cong., 2d Sess. (Washington, DC: GPO, 2010), pp. 7–11; U.S. Senate, Committee on Appropriations, *Committee on Appropriations: 1867–2008*, 110th Cong., 2d Sess., Doc. No 14 (Washington, DC: GPO, 2008), pp. 9–16.

[7] *Legislation, Appropriations, and Budgets*, pp. 28–31, 37–41.

sulted in significant changes in the content and timing of authorization laws over the next several decades.

EMERGENCE OF EXPLICIT AUTHORIZATIONS OF APPROPRIATIONS

The first significant change in the form of authorization laws occurred after the 1920s, when they began to include provisions that explicitly "authorized to be appropriated" future budgetary resources tied to certain purposes. By one estimate, this practice grew so rapidly that in 1937, there were more than 100 measures enacted into law with explicit authorizations of appropriations for definite amounts.[8] At a minimum, such provisions were a recommendation of the legislative committees as to the level of future appropriations. This practice, however, had broader implications for the role of the legislative committees in budgetary decisionmaking because existing House and Senate rules that prohibited appropriations not authorized by law had to be applied in new ways.[9] Although these prohibitions were longstanding, having been first adopted during the previous century, authorization provisions that established an entity, project, or activity were considered to be sufficient to implicitly authorize subsequent appropriations under the terms of these rules.[10] However, when the legislative committees started to include explicit provisions authorizing appropriations, this effectively enabled them to create procedural ceilings on subsequent appropriations, and thus exert greater influence over subsequent funding decisions.[11]

As language specifically authorizing appropriations was increasingly used, various practices started to emerge. First, the legislative committees began to authorize definite amounts to be appropriated for specific fiscal years. In their early use, such provisions were typically tied to minor or temporary programs. Second, because provisions that limited the amount or duration of future appropriations were considered to be inappropriate for permanent or large-scale government programs, provisions authorizing appropriations for "such sums as are necessary" were typically used for such programs. These provisions were also used to address multiple programs under the auspices of a single agency.[12]

PERIODIC REAUTHORIZATION

At the end of World War II, an estimated 5 percent of programs, excluding one-time projects, had explicit authorizations of appro-

[8] Ibid., pp. 28–29.

[9] These prohibitions are currently located in House Rule XXI(2)(a) and Senate Rule XVI(1). For further information on the operation of these rules, see CRS Report R42098, *Authorization of Appropriations: Procedural and Legal Issues*, by Jessica Tollestrup and Brian T. Yeh, pp. 4–8.

[10] The first formal rules that required a prior authorization by law for appropriations were adopted by the House in 1837. The Senate followed suit with the adoption of its first formal rules on the topic in 1850. *Legislation, Appropriations, and Budgets*, pp. 7, 9, 11, and 15–17.

[11] The legislative committees also employed other mechanisms during this period to influence fiscal decisionmaking, such as so-called "backdoor spending," which included borrowing authority, contract authority, mandatory entitlements, and permanent appropriations. For a further discussion of these and other such mechanisms, see Louis Fisher, "The Authorization-Appropriation Process in Congress: Formal Rules and Informal Practices," *Catholic University Law Review*, Vol. 29, 1979–1980, pp. 51–105.

[12] Ibid, pp. 28–32.

priations that applied to specific fiscal years.[13] Over the postwar period, however, as the legislative committees continued to increase their use of such provisions, they began to apply such provisions to programs of a larger scale or permanent nature.

The types of provisions periodically authorizing appropriations that were developed during this period have continued to be used through the present day. These provisions generally indicate two schedules of legislative review: "annual" and "multiyear." Annual authorizations of appropriations explicitly authorize appropriations for a single fiscal year. Multiyear authorizations of appropriations explicitly authorize appropriations for more than 1 fiscal year at a time (typically between 2 and 5).

ANNUAL AUTHORIZATIONS

As the legislative committees began to experiment with provisions authorizing appropriations for a single fiscal year, one motivation was to better oversee and influence agency spending decisions. Annual authorizations of appropriations were first applied to newly created agencies or programs, in part because these annual provisions were believed to encourage close review and oversight early in an agency's or program's development.[14] Later, in response to perceived issues with existing agencies or the congressional oversight of them, legislative committees sometimes added annual authorization provisions to the underlying statute governing these agencies, thereby converting them to an annual reauthorization schedule.[15] For example, annual authorizations were used in some instances for programs or agencies that were undergoing "rapidly changing conditions," giving the legislative committees the opportunity to weigh in on a frequent basis.[16] Programs that had a direct effect on States or districts, such as those that govern military construction or grants, also were candidates for annual authorizations. Legislative committees often sought close oversight of such programs because of the constituency issues involved and a desire to address any problems as they arose.[17] As a consequence of this frequent legislative attention, agencies subject to annual reauthorization tended to experience more incremental program changes in their authorizing laws when compared to those agencies on a longer reauthorization schedule.[18]

Another motivation for the legislative committees to choose annual authorization schedules during the post-World War II period was dissatisfaction with the funding levels or program structure as provided through the congressional appropriations process.[19] At this time, the authorization laws that were enacted on an as-needed basis tended to be focused primarily on policy issues and not budgetary decisionmaking. In addition, any authorized levels for

[13] U.S. Senate, Committee on Government Operations, Subcommittee on Budget, Management, and Expenditures, *Improving Congressional Control over the Budget*, Committee Print, 93d Cong., 1st Sess. (Washington, DC: GPO), 1973, p. 262 (hereinafter, *Improving Congressional Control over the Budget*).

[14] "Annual Authorizations," p. 34.

[15] Ibid., p. 37.

[16] Ibid., p. 31.

[17] Ibid., p. 30.

[18] *Legislation, Appropriations, and Budgets*, p. 40.

[19] Ibid., p. 39.

future fiscal years might have been considered to be less relevant when it came time to appropriate due to changing congressional priorities. Under an annual authorization approach, however, the congressional debate over the funding levels in the context of the authorization for that fiscal year would occur more immediately ahead of the consideration of appropriations for those programs. This sequence and timing of events—authorizations are to precede appropriations—was believed to provide the legislative committees with greater leverage to prevent their framework and authorized funding levels from being disregarded during subsequent appropriations decisionmaking.[20]

The proportion of agencies that were subject to annual reauthorizations expanded significantly during the mid-20th century. Prior to 1950, military construction and mutual security were the only annual authorizations, both constituting the conversion of a permanent authorization to a temporary one. A few programs were added to that list in the 1950s, but it was not until two decades later that a number of both small- and large-scale government programs, such as the remaining activities of the Department of Defense authorization, the Department of Justice, and the Department of State, were added to the group of government programs that received an annual authorization in response to developments such as the Vietnam war.[21] Also during this period, the number of annual authorizations that applied only to some programs within an agency was expanded to include additional programs or activities of a like character.[22]

MULTIYEAR AUTHORIZATIONS

During the same period that annual authorizations of appropriations were increasingly used, provisions authorizing appropriations on a multiyear basis to facilitate a longer term reauthorization schedule were also enacted. The length of these schedules varied, from as little as 2 fiscal years to 5 or more. The agency oversight motivations for the legislative committees to adopt such a schedule were similar to those for an annual reauthorization, with some exceptions.[23] For example, a legislative committee might choose a multiyear reauthorization schedule over an annual one if it believed that a program or agency required a comprehensive reevaluation of its activities and objectives on longer time intervals. Also, as a consequence of the greater time allotted by this schedule, multiyear reauthorizations tended to involve more widespread policy changes per reauthorization law when compared to annual reauthorizations.[24]

As was the case for annual authorizations, multiyear authorizations may have been motivated, in some instances, by dissatisfaction on the part of the legislative committees with the funding that was being provided in appropriations. In many cases, multiyear au-

[20] Ibid.
[21] "Annual Authorizations," pp. 26–27.
[22] For example, within the Department of Defense, the first temporary authorization was for military construction, and then the practice was expanded sequentially to military procurement, research and development, the Coast Guard and the Maritime Administration, and then finally to military operation and maintenance. "Annual Authorizations," p. 32.
[23] *Improving Congressional Control over the Budget*, p. 261.
[24] *Legislation, Appropriations, and Budgets*, p. 40.

thorizations assumed some degree of a funding increase over the period covered by the authorization, and so their enactment had the potential to build congressional support for such an increase. In many such cases, however, the difference between the amounts authorized and that ultimately appropriated increased in the latter years, perhaps because the congressional vote on authorization levels was neither recent, nor in the context of current funding constraints.[25]

SUMMARY OF MOST RECENT DEVELOPMENTS

Starting in the 1980s, some of the programs that had been subject to an annual or short-term authorization schedule were changed to longer term multiyear schedules.[26] Others had authorizations that expired for a number of fiscal years between reauthorizations, or were not renewed at all.[27] With the formation of new agencies, it has been most typical that only specific activities within them, as opposed to the entire agency, have been given explicit authorizations of appropriations.[28] For example, while some of the agencies and activities created or consolidated by the Homeland Security Act of 2002 (P.L. 107–296) were already subject to temporary authorizations of appropriations, there were few provisions explicitly authorizing appropriations for the new agencies and activities included in the act, and none that were effective on an annual basis. In general, the reauthorization process for many agencies and programs has become more focused on addressing policy concerns, with less of an emphasis on funding level or the legislative committee's role in budgetary decisionmaking.

Various reasons have been suggested for the shift to longer term reauthorization schedules and the gaps between reauthorization intervals. For example, some have argued that reauthorization legislation was effectively "crowded out" by new mechanisms for budgetary decisionmaking (such as the budget resolution and reconciliation) and were given less of a priority in the congressional calendar. Others began to express concern that annual authorizations led to a perception that they were merely duplicate votes for Members on funding levels for Federal Government activities.[29] In addition, continued delays in the enactment of reauthorization legislation, which affected Congress' ability to consider and enact appropriations measures in a timely manner, were also a likely factor.[30]

---

[25] *Improving Congressional Control over the Budget*, p. 268; *Legislation, Appropriations, and Budgets*, p. 41.

[26] For example, both the NSF and NASA were transitioned to multiyear schedules, as discussed in the sections below.

[27] One potential measure of the extent to which previously routine authorizations of appropriations for programs have expired is the enactment of appropriations for such programs. CBO is required to compile this information each year under section 202(e)(3) of the Congressional Budget Act. For FY1988, CBO identified a total of 45 laws with expired authorizations of appropriations (CBO, Report on Unauthorized Appropriations and Expiring Authorizations, January 15, 1988). That total grew to 270 such laws for FY2014 (CBO, Unauthorized Appropriations and Expiring Authorizations, February 21, 2014).

[28] See, for example, the data on James M. Cox, An Analysis of the Congressional Reauthorization Process (Westport, CT: Praeger, 2004), pp. 55–59.

[29] For a discussion of these and other reasons for this shift, see, for example, Alan Schick, *The Federal Budget: Politics, Policy, Process*, 3d Ed. (Washington, DC.: Brookings Institution Press, 2007), pp. 200–202; Lawrence J. Haas, "Unauthorized Action," *National Journal*, January 2, 1988, p. 17.

[30] This is illustrated by the NSF and NASA case studies below.

Changes to Authorizations of Appropriations in Practice: Selected Examples

The historical development of the form and timing of authorizations over the past century has been characterized by a number of themes:

- The legislative committee's adoption of an annual reauthorization schedule was due to a desire for increased involvement in both agency and congressional budgetary decisions. The motivation for increased agency involvement was typically because the agency was new or because annual authorizations were believed to strengthen Congress' oversight functions.
- Annual authorizations tended to be characterized by incremental program changes, whereas multiyear authorizations tended to involve widespread policy changes.
- The amounts authorized in annual measures tended to be more similar to the amount eventually appropriated when compared to multiyear authorizations. The out-years of multiyear authorizations tended to be characterized by a growing gap between the amount authorized and the amount appropriated.

To illustrate one or more of these general themes, the following subsections summarize aspects of the authorization histories of the National Science Foundation, the National Aeronautics and Space Administration, and the Peace Corps. These three agencies were selected because they have experienced variation in the purposes and frequency of their explicit authorizations of appropriations since their establishment. These case studies also discuss the reasons for the shifts to the new authorization schemes, such as the legislative committee's decisions to review and make policy changes to the program on a less frequent schedule, or difficulties enacting annual authorizations prior to appropriations. During this period, the form of the authorization laws governing these agencies changed in a number of other significant ways that affected the ability of the legislative committees to influence budgetary outcomes, which are not discussed in this report. This report only summarizes the general trends associated with the timing and purposes of these reauthorizations to provide a basis for further research and understanding.

NATIONAL SCIENCE FOUNDATION

The National Science Foundation (NSF) was established in 1950, but was not reauthorized on a periodic basis until 1968, when a requirement for specific authorization of appropriations each future fiscal year became law. Authorizations of appropriations were enacted annually covering a single fiscal year from FY1969 through FY1982, and intermittently through FY1988. Starting in FY1989, the agency has been reauthorized for periods of between 3 and 5 fiscal years, with some lapses in authorization between those multiyear laws. The most recent reauthorization was from FY2011 through FY2013.[31]

[31] For an overview of historical policy issues associated with the NSF and its authorization, see CRS Report R43585, *The National Science Foundation: Background and Selected Policy Issues*, by Heather B. Gonzalez.

ESTABLISHMENT AND TRANSITION TO A PERMANENT AUTHORIZATION OF APPROPRIATIONS

The NSF was established by the National Science Foundation Act on May 10, 1950 (S. 247; P.L. 81–507). During congressional consideration in the 81st Congress, both the Senate and House proposals (S. 287, H.R. 12, and H.R. 359, 81st Congress) contained provisions providing a permanent indefinite authorization of appropriations for the agency. During debate on the House floor, however, the bill was amended to provide a definite authorization of appropriations for FY1951, and a $15 million authorization for each fiscal year thereafter. The rationale for this approach was that it would promote increased agency fiscal accountability to Congress, because the agency would be required to justify to Congress a higher authorization level once its annual budgetary needs exceeded $15 million.[32] The House version of that provision was subsequently enacted into law.[33]

The first reauthorization was enacted 3 years later, on August 8, 1953 (S. 32; P.L. 83–223). This law replaced the $15 million authorization limit with an indefinite authorization of appropriations. The Senate Labor and Public Welfare Committee report accompanying S. 32 (83d Congress) explained that this indefinite authorization was to provide the NSF greater flexibility in both its annual budget request and fiscal planning for its operations. Because the committee believed that removing this limitation would not lead to an overall increase in government research expenditures, this change to the law was recommended.[34]

There were no further laws authorizing NSF appropriations for the next 15 years. During that period, the few laws that made any changes to the statutory programs and policies governing the NSF typically included only minor modifications to existing programs and policies.[35] The more significant changes to the NSF came through administration action, such as executive orders and the Government Reorganization Plan No. 2 of 1962.[36] Legislative committee oversight of the agency occurred on a more informal basis.

TRANSITION TO ANNUAL REAUTHORIZATION

Starting in 1965, the House Committee on Science and Astronautics began a 3-year review of the NSF to write a new charter for the agency. This review involved hearings, studies, and a sub-

---

[32] House debate, *Congressional Record*, vol. 96, part 2 (February 28, 1950), p. 2517. Although the form and frequency of reauthorization has shifted over the history of the NSF, the President's budget submission has typically played a significant role in budgetary decisionmaking. For further information, see CRS Report R43585, *The National Science Foundation: Background and Selected Policy Issues*, by Heather B. Gonzalez.

[33] P.L. 81–507, Sec. 16(a), "To enable the Foundation to carry out its powers and duties, there is hereby authorized to be appropriated to the Foundation, out of any money in the Treasury not otherwise appropriated, not to exceed $500,000 for the fiscal year ending June 30, 1951, and not to exceed $15,000,000 for each fiscal year thereafter."

[34] S. Rept. 83–396, pp. 1–2.

[35] See, for example, P.L. 85–510, which related to weather modification, and P.L. 85–864, which related to science information.

[36] See, for example, Executive Order 10521 (March 17, 1954), which broadened the NSF's role to encompass national scientific policymaking, and Executive Order 10807 (March 29, 1962) which refocused the Foundation's mission on original research. See also Reorganization Plan No. 2 of 1962, June 8, 1962 (27 *Federal Register* 5419), which transferred elements of governmentwide policymaking and program evaluation from the NSF to a new Office of Science and Technology. For background on reorganization plans, see CRS Report R42852, *Presidential Reorganization Authority: History, Recent Initiatives, and Options for Congress*, by Henry B. Hogue.

committee report that was to be the basis of the committee's eventual legislative proposal.[37] In 1967, the committee report accompanying H.R. 5404 (90th Congress) explained a variety of motivations for this review and the recommended changes to the agency:

> A significant change began to take place in the post-*Sputnik* era. From a technological point of view, public opinion crystallized around the concept that basic science was no longer an ancillary, but a primary, instrument needed to guard the public safety, health and economy ... . It becomes apparent, upon review of the hearings en bloc, that the most crucial point—in fact, what some would call the essence of the bill—was the issue of policy control [of the National Science Board]. [H. Rept. 90–34, pp. 2 and 13][38]

While the changes to the NSF proposed by the House did not involve any alterations to the current authorization of appropriations, the Senate Labor and Public Welfare Committee amended H.R. 5404 to include both a definite authorization of appropriations for FY1969 and a permanent requirement for a specific authorization of appropriations for every fiscal year thereafter:

> The committee is concerned that there has been no thorough review of the authorization for NSF since the passage in 1950 of the National Science Foundation Act. During this period, the appropriations have grown from $225,000 in 1951 to $495 million in 1968—a more than 2,000-fold increase. The committee believes that a change to annual authorization is desirable, and provides for this in section 13 of the bill. An authorization of $523 million is provided for fiscal year 1969. This committee will set authorizations for future years after appropriate hearings. [S. Rept. 90–1137, p. 19][39]

The ability for annual authorizations to influence subsequent funding decisions is affected by the extent to which they are enacted ahead of appropriations. After the NSF's requirement for an annual authorization was enacted (P.L. 90–407),[40] the 15 subsequent annual reauthorizations became law an average of almost 1 month after the beginning of the fiscal year, and only three times were they enacted before the beginning of the fiscal year (FY1978, FY1980, and FY1986).[41] The enactment of appropriations, however, usually waited until the annual authorization was completed, with only 3 of the 15 being enacted ahead of it (FY1972, FY1977, and FY1979).

In general, these annual authorizations were followed by appropriations that were at somewhat lower levels than the amount au-

---

[37] This process is discussed in U.S. House of Representatives, Committee on Science and Technology, *Toward the Endless Frontier: History of the Committee on Science and Technology, 1959–79*, Committee Print (Washington, DC: GPO, 1980), p. 143 (hereinafter, *House Science Committee History*).

[38] Congressional concern over policy control had been in existence almost since the establishment of the NSF. For background on these concerns, see *House Science Committee History*.

[39] For further background on the FY1969 annual authorization, see *House Science Committee History*, p. 146.

[40] P.L. 90–407, Sec. 14(a), "To enable the Foundation to carry out its powers and duties, there is hereby authorized to be appropriated to the foundation for the fiscal year ending June 30, 1969, the sum of $525,000,000; but for the fiscal year ending June 30, 1970, and each subsequent fiscal year, only such sums may be appropriated as the Congress may hereafter authorize by law." At the time that the requirement for an annual authorization was being debated by Congress, both the Johnson administration and the House Appropriations Committee expressed concerns that an annual schedule might delay the enactment of appropriations (S. Rept. 90–1137, p. 34 and floor debate (114 *Congressional Record* part 15, June 27, 1968, 90th Cong, 2d sess., p. 19068)).

[41] These laws were for each fiscal year from FY1970 to FY1982, FY1987, and FY1988. No reauthorization laws were enacted for the fiscal years from FY1983 to FY1986; the reason for this lapse in authorization does not appear to have been related to any disputes over the time interval.

thorized.[42] Of the 12 annual authorizations that were enacted prior to appropriations, all but one (FY1986; P.L. 99–383) subsequently received lower levels of appropriations.[43] In those 11 instances, the amount appropriated was an average of almost 7 percent lower than the amount authorized, ranging from about 1 percent lower in FY1980 to almost 24 percent lower in FY1969.[44]

TRANSITION TO MULTIYEAR REAUTHORIZATION

Starting in 1977, Congress began to actively debate transitioning the NSF to a multiyear authorization of appropriations. This change was advocated by the Carter administration and some Senators on the Committee on Human Resources because it was believed that a multiyear authorization would promote continuity for planning basic research and more time to assess the effectiveness of programs.[45] Many members of the House Science Committee argued, however, that an annual authorization would promote better congressional control and oversight of the foundation.[46] Although the conference report for the FY1978 reauthorization addressed the possibility of a 2-year authorization of appropriations, it concluded that it was not suitable at that time.[47] The following fiscal year, while the Senate committee proposed authorizations of appropriations for both FY1979 and FY1980 (S. 2549), authorization levels for only a single fiscal year were ultimately enacted into law (P.L. 96–44). Over the next 10 years, most legislative proposals covered only a single fiscal year, and all that were enacted were annual in nature.

In FY1989, both the House and Senate proposed multiyear authorizations, and the enacted law authorized appropriations through FY1993 (P.L. 100–570). One of the primary purposes of this reauthorization was to promote the "doubling" of the NSF budget over the next 5 fiscal years and to establish a program directed at academic facility modernization. The next reauthorization, for FY1998–FY2000, authorized modest increases for the agency—about 10 percent in FY1999 and growth slightly above projected inflation in FY2000 (P.L. 105–207).[48] The next reauthorization advocated more substantial increases in the agency budget—from about $5 billion in FY2003 to almost $10 billion in FY2007 (P.L. 107–368). The two most recent laws, for FY2008–FY2010 and FY2011–FY2013, were enacted as part of the America COMPETES Act and its reauthorization, which broadly sought to

[42] The amount appropriated each fiscal year upon which these and similar calculations in this report are based from National Science Foundation, Budget Internet Information System, "NSF Requests and Appropriations History," NSF.gov, (http://dellweb.bfa.nsf.gov/NSFRqstAppropHist/NSFRequestsandAppropriationsHistory.pdf), and additional data compiled in CRS Report R43585, *The National Science Foundation: Background and Selected Policy Issues*, by Heather B. Gonzalez.

[43] In FY1986, the amount of appropriations exceeded the authorized level by less than 1 percent.

[44] Despite the fact that the amounts annually appropriated tended to be less than the authorization, however, the amount of such annual appropriations doubled twice in the decades between FY1970 and FY1988.

[45] U.S. Senate, Committee on Human Resources, Subcommittee on Health and Scientific Research, "National Science Foundation Authorization Legislation, 1977," March 1 and 3, 1977 (Washington, DC: GPO, 1977), p. 112 and 117.

[46] *House Science Committee History*, pp. 537–538.

[47] H. Rept. 95–509, pp. 7–8.

[48] The authorizations of appropriations in P.L. 105–207 were effectively for 2 fiscal years because they were enacted over 9 months after the start of FY1998.

invest in innovation and improve U.S. competitiveness. It authorized funds for research and development in the physical sciences and engineering, as well as certain science, technology, engineering, and mathematics (STEM) education programs.[49] Both reauthorizations recommended appropriations at a rate to double agency funding over a 7-year period starting in FY2008, and an 11-year period starting in FY2011.

When compared to the period for which the NSF was authorized on an annual basis, NSF appropriations after FY1989 tended to be much lower than the amount authorized. Gaps between the authorization and subsequent appropriations also widened in the latter years of the authorization period, particularly when the authorization assumed significant budgetary increases over that multiyear period. For example, for FY1989–FY1993, the first attempt at doubling, the difference between the authorization and subsequent appropriations began as about 6 percent for FY1989 and increased to 22 percent by FY1993.[50] The more modest increases proposed by the FY1998 reauthorization resulted in a much smaller appropriations gap—almost 3 percent less than the authorized level for FY1999, and almost 1 percent more than authorized for FY2000. Even though the projected increases in the two most recent doubling proposals (FY2008–FY2010 and FY2011–FY2013) were over a longer time horizon, these also experienced increasing gaps in the outyears.[51]

National Aeronautics and Space Administration

The National Aeronautics and Space Administration (NASA) transitioned to an annual authorization schedule 3 years after it was established in 1958, and was reauthorized each fiscal year from FY1961 through FY1986. Starting in FY1982, however, the agency's annual authorization schedule began to experience increasing delays, culminating in a 6-year gap in reauthorization from FY1994 through FY1999. In recent years, the agency has been periodically reauthorized for between 1 and 3 fiscal years, with the most recent reauthorization covering FY2011–FY2013.[52]

ESTABLISHMENT AND TRANSITION TO ANNUAL REAUTHORIZATION

When the National Aeronautics and Space Act ("the Space Act," P.L. 85–568) established NASA in 1958, it explicitly authorized permanent, indefinite appropriations for agency operations. It also required specific authorization for capital expenditures.[53] At the

---

[49] P.L. 110–69 and P.L. 111–358. For information on the other agencies that were reauthorized as part of these laws, see CRS Report RL34328, *America COMPETES Act: Programs, Funding, and Selected Issues*, by Deborah D. Stine, and CRS Report R41819, *Reauthorization of the America COMPETES Act: Selected Policy Provisions, Funding, and Implementation Issues*, by Heather B. Gonzalez.

[50] Actual annual appropriations during this 5-year period experienced about a 70-percent increase, but fell short of the doubling goal.

[51] For FY2008, appropriations were 7.2 percent less than the authorization, but were 15 percent less 2 years later. The gap between the authorization and appropriation was about 8 percent in FY2011, and grew to about 17 percent in FY2013. The actual increase in appropriations between FY2008 and FY2013 was about 12 percent.

[52] For an overview of historical policy issues associated with NASA and its authorization, see CRS Report R43144, *NASA: Issues for Authorization, Appropriations, and Oversight in the 113th Congress*, by Daniel Morgan.

[53] P.L. 85–568, Sec. 307(a), "There are hereby authorized to be appropriated such sums as may be necessary to carry out this Act, except that nothing in this Act shall authorize the appropria-

beginning of the 85th Congress, a few months prior to the enactment of the Space Act, the House had established the Committee on Science and Astronautics (now Science, Space, and Technology) to oversee this new agency. The Senate also created the Committee on Aeronautical and Space Sciences for a similar purpose.[54] As these new committees were developing an understanding of NASA's programmatic capabilities and fiscal requirements, it was thought that frequent reauthorization was a process through which this understanding could be achieved more expeditiously.[55]

NASA's transition to an annual authorization of appropriations occurred in stages over the next few years. First, the FY1958 supplemental appropriations bill for NASA (P.L. 85–766) included a provision that required the enactment of a specific authorization of appropriations for each fiscal year through the end of FY1960. As initially drafted, this provision provided a permanent requirement for a specific authorization, under the rationale that such a requirement, which would presumably have been carried out through an annual reauthorization schedule, would provide accountability and oversight to the legislative committees of jurisdiction. The provision was revised prior to enactment to allow a 1-year trial run of the concept after criticism that it would place an unnecessary burden on NASA and lead to duplication in congressional efforts.[56] The first reauthorization of NASA, for FY1959 supplemental appropriations, did not address the general requirement for specific authorization, set to expire the following fiscal year (P.L. 86–12). In the process of considering reauthorization legislation for FY1960, however, both the House and Senate proposed extensions of the specific requirement for the purpose of imposing an annual authorization process. The House Science Committee, in H.R. 7007 (86th Congress), included an extension of the requirement through FY1965.[57] Subsequently, the Senate Science Committee removed the House's termination date for the provision:

> Because of the nature of the space program, rapid and substantial changes as to magnitude, direction, and detail can be expected to continue indefinitely. For this reason the committee deleted the terminal date of July 30, 1965, on the authorization requirement, thereby making the requirement of indefinite duration. [S. Rept. 86–332, p. 47]

The same arguments that had been made against the temporary requirement were made against making it permanent—in particular, that an annual reauthorization process for the agency would lead to delays in the completion of annual appropriations.[58] Nevertheless, the enacted law included the Senate's version, and

---

tion of any amount for (1) the acquisition or condemnation of any real property, or (2) any other item of a capital nature (such as plant or facility acquisition, construction, or expansion) which exceeds $250,000. Sums appropriated pursuant to this subsection for the construction of facilities, or for research and development activities, shall remain available until expended."

[54] Jurisdiction over NASA was transferred to the Commerce, Science, and Transportation Committee when the Senate Science Committee was dissolved in 1977.

[55] Thomas P. Jahnige, "The Congressional Committee System and the Oversight Process: Congress and NASA," *Western Political Quarterly*, Vol. 21, No. 2 (June 1968), pp. 222–239.

[56] The negotiations and various congressional perspectives on this requirement are discussed in *House Science Committee History*, p. 24.

[57] The House rationale for this provision is discussed in H. Rept. 86–321, p. 35.

[58] Ibid., p. 49–50.

this requirement has continued to apply to NASA appropriations to the present day.[59]

For FY1961 through FY1981, NASA was reauthorized on an annual basis, and the appropriations authorized by these annual laws almost always covered only a single fiscal year.[60] On average, the annual reauthorizations were enacted after the beginning of the fiscal year just over half of the time during this period. However, they were enacted ahead of appropriations each fiscal year except for FY1979 (P.L. 95–401), which was signed into law on the same day as the appropriations measure. On average, these reauthorizations were enacted about 2 months in advance of appropriations (67 days).

The consistent enactment of annual authorizations in advance of appropriations may have been a factor in minimizing the difference between the total amount authorized and the funding subsequently provided. The amount of appropriations was on average less than 1 percent below the authorized level for the agency.[61] The most that appropriations ever exceeded the authorized level was almost 6 percent in FY1980; the most they fell short of the authorization was also almost 6 percent in FY1968. In total, for 13 out of the 20 fiscal years during this period, the amount authorized was higher than the amount appropriated. In the remaining 7 fiscal years, the appropriations equaled or exceeded the authorized level.[62]

In general, NASA tended to receive program direction from Congress through authorization report language, as well as the appropriations process during this period. Substantive, nonadministrative policy changes to the agency or associated programs were only occasionally enacted through the annual reauthorizations. For example, the FY1976 law (P.L. 94–39) enacted a new program authorization for upper atmospheric research. Occasionally, changes to the agency or its associated programs would also occur as part of broader laws that covered multiple agencies, such as the Government Employees Salary Reform Act of 1964 (P.L. 88–426) and the Electric Vehicle Research, Development, and Demonstration Act (P.L. 94–413).

TRANSITION TO PERIODIC REAUTHORIZATION

During the 1980s, space-related public policy concerns rapidly expanded into new areas. Some significant events for NASA included the completion of the first Space Shuttle *Columbia* flight on April 12, 1984, and President Reagan's announcement of plans to build

[59] P.L. 86–45, Sec. 4, "Notwithstanding the provisions of any other law, no appropriation may be made to the National Aeronautics and Space Administration unless previously authorized by legislation hereafter enacted by the Congress."

[60] The one exception occurred in the FY1976 reauthorization (P.L. 94–39), which authorized appropriations for FY1976 and FY1977 for specific categories in both the research and development, and construction/facilities accounts.

[61] A list of authorization and appropriations laws was provided by the NASA Office of Legislative Reference and Analysis. The appropriated amounts used for the calculations in this section of the report are from *National Aeronautics and Space Report of the President*, 2008, Appendix D–1A, p. 146.

[62] During the early part of this period, until FY1970, the agency budget increased more than sevenfold. Although this budgetary growth slowed considerably during the next 10 fiscal years, the increase over that period was still about 63 percent.

a space station within the next decade.[63] Stand-alone authorization laws initiating new programs that involved NASA were also enacted. For example, the Commercial Space Launch Act (P.L. 98–575), which created a government entity to regulate private launch companies, was enacted in 1984. Other issues related to international cooperation became both more important and controversial.[64] NASA reauthorizations were increasingly used as a means to enact significant space policy changes or expansions of NASA. For example, the FY1985 reauthorization established the National Commission on Space (P.L. 98–361), an advisory body to develop a long-term national space strategy.

The increasing focus on space policy, as well as the fiscal constraints affecting Federal budgeting during this era, may have both been factors in the delays in completing NASA reauthorization laws after FY1981.[65] In general, reauthorizations after this time were enacted much closer to appropriations than in the first two decades of the agency—2 days ahead of the appropriation in FY1982, 15 days behind the appropriation in FY1983, 27 days ahead in FY1985, 2 days ahead in FY1985, and 10 days behind in FY1986. In FY1987, no reauthorization was enacted, because H.R. 5495 (99th Congress) was pocket vetoed by the President over the inclusion of provisions that would reestablish the National Aeronautics and Space Council.[66] The broader policy context for this dispute related to the Space Shuttle *Challenger* explosion, which had occurred 9 months before the start of the fiscal year, and congressional dissatisfaction with the administration's response to it.

In the latter part of the 1980s, reauthorization laws continued to address broad space policy issues. They also experienced further delays in enactment. While the FY1988 reauthorization was enacted 54 days ahead of appropriations, for all other fiscal years through FY1993, the reauthorization was enacted an average of about 42 days after appropriations. No reauthorization was enacted at all for FY1990, as the House and Senate failed to resolve their differences over their respective versions of the legislation (H.R. 1759 and S. 916, 101st Congress).

Perhaps related to these difficulties in enacting reauthorizations in a timely manner, the House Science Committee started in FY1989 to propose authorizations of appropriations for 3 fiscal year periods for many major activities, such as line items under the research and development and space flight accounts. These multiyear reauthorizations also typically included proposals for long-term program or policy initiatives. In contrast, the Senate Commerce Com-

---

[63] For further information, see Roger Launius, Colin Fries, and Abe Gibson, "Defining Events in NASA History, 1958–2006," National Aeronautics and Space Administration, updated January 2, 2012, available at http://www.hq.nasa.gov/office/pao/History/40thann/define.htm.

[64] For example, at the beginning of the Reagan Presidency, the administration decided to cancel the International Solar Polar Mission, which was to have involved the construction of two spacecraft by NASA and the European Space Agency. The conference report accompanying the FY1982 and FY1983 reauthorizations expressed disapproval of the ISPM cancellation (H. Rept. 97–351, p. 9; H. Rept. 97–897, p. 8).

[65] The effect of these fiscal constraints on the NASA authorization is discussed, for example, in H. Rept. 97–351, p. 8, and H. Rept. 99–379, p. 9.

[66] President Reagan explained this veto thus: "The establishment of a National Space Council in the Executive Office of the President would constitute unacceptable interference with my discretion and flexibility in organizing and managing the Executive Office as I consider appropriate." (President Ronald Reagan, "Memorandum of Disapproval of the National Aeronautics and Space Administration Funding Bill," November 14, 1986.) The congressional rationale for this council is discussed in H. Rept 99–829, p. 15.

mittee versions continued to recommend authorizations of appropriations for a single fiscal year only, and tended to include fewer long-term policy proposals.

While the authorizations continued to provide funding amounts for a single fiscal year,[67] the groundwork was laid for a longer term authorization schedule through other means. For example, the FY1989 reauthorization required NASA to compile a 5-year capital development plan and a 10-year strategic plan. The act also directed that, starting in FY1990, NASA submit a 3-year budget request. In FY1992, this directive appears to have been superseded by a new requirement for a 5-year budget submission for all programs that exceed $200 million (P.L. 102–195).

During the past 15 years, NASA reauthorizations have been enacted on a periodic basis, typically covering more than a single fiscal year, but not on any set schedule. These laws were often in response to policy developments instigated by the administration, such as the Vision for Space Exploration program in 2004.[68] For the FY2000–FY2002 reauthorization (P.L. 106–391), the multiyear interval for reauthorization appears to have been uncontroversial, as both the House (H.R. 1654) and Senate (S. 342) versions authorized appropriations for that 3-year period. The second reauthorization to be enacted during this period was for FY2007–FY2008 (P.L. 109–155).[69] While the House version (H.R. 3070) provided a 2-year authorization of appropriations, the Senate version (S. 1281) had authorizations on a longer time horizon, through FY2010. For the FY2009 reauthorization, both the House and Senate versions proposed funding amounts for only a single fiscal year (P.L. 110–422; H.R. 6063, 110th Congress). The most recent reauthorization law covered 3 fiscal years, FY2011–FY2013 (P.L. 111–267).

Along with the trend toward the periodic enactment of multiyear reauthorizations, there has been an increase in the difference between the amounts that were authorized and those that were subsequently appropriated. Appropriations for FY2001 and FY2002, enacted after the FY2000–FY2002 reauthorization, were slightly higher than the authorization. However, the gap between authorizations and appropriations became more pronounced during the FY2007–FY2008 period. The FY2009 reauthorization, enacted 15 days after the appropriations bill, was almost 14 percent higher than the actual funding level. And even though the FY2011–FY2013 reauthorization was enacted about 5 months ahead of appropriations for FY2011, appropriations subsequently enacted were about 3 percent lower than the authorization in FY2011, 9 percent lower than the authorization in FY2012, and over 12 percent lower than the authorization in FY2013.[70]

[67] An exception to this was in FY1989, when the Space Station was reauthorized for FY1989–FY1991 (P.L. 100–685).

[68] For further information, see CRS Report R43144, *NASA: Issues for Authorization, Appropriations, and Oversight in the 113th Congress*, by Daniel Morgan.

[69] For FY2003–FY2006, little congressional action occurred to reauthorize NASA, and no such laws were enacted. In the 107th Congress, no action occurred on attempts to reauthorize in the House or the Senate. In the 108th Congress, the Senate Commerce Committee reported S. 2541, to reauthorize appropriations for FY2005–FY2009, but no further action occurred.

[70] This calculation does not include the reduction in FY2013 appropriations due to the sequester ordered on March 1, 2013. In total, the appropriations increase between FY2001 and FY2013 was about 22 percent.

PEACE CORPS

Appropriations for the Peace Corps were annually authorized each fiscal year—from its establishment in 1961 through FY1981. Starting with the FY1982 reauthorization, which was for a 2 fiscal year period, the agency began to experience gaps in its enactment of reauthorization and it transitioned to a multiyear schedule. Since that time, reauthorizations of appropriations have been enacted intermittently, most recently for the FY2000–FY2003 time period, but not thereafter.[71]

ESTABLISHMENT AND EARLY ANNUAL REAUTHORIZATIONS

The Peace Corps was permanently established through the Peace Corps Act, which was enacted on September 22, 1961 (P.L. 87–293).[72] That act carried a provision that authorized a specific sum for FY1962 Peace Corps appropriations.[73] While this provision arguably indicated congressional intent to reauthorize the agency the following fiscal year, there appears to have been little discussion in the legislative history of the act of any potential annual schedule for reauthorization.[74] In the broader context of foreign affairs authorization laws that were enacted during this period, congressional review of those programs and any associated legislative action had tended to occur on an as-needed basis. In addition, until the enactment of P.L. 91–671, which imposed a general requirement for explicit authorizations of appropriations on foreign affairs spending, few explicit authorizations of appropriations had ever been enacted for ongoing programs.[75] Consequently, the motivation for an annual schedule, at least initially, appears to have been driven by the newness of the agency.

The following year, the first reauthorization law for the Peace Corps was enacted, consisting of a single sentence that provided a definite authorization of appropriations for FY1963 (P.L. 87–442). In the lengthy report accompanying H.R. 10700, the committee explained the purpose of this legislation:

> The situation confronting the committee and the Congress is that there appear to be no developments during the first year of operation which give rise to any question as to the soundness of the Peace Corps concept, or which indicate that its program is too ambitious. The record of the managers of the Peace Corps merits continued confidence.
>
> The basic problem is, therefore, whether or not the requested authorization of $63,750,000 is justified. The committee has considered the method by which the financial requirements for fiscal 1963 were calculated, the nature of the programs to

---

[71] For an overview of historical policy issues associated with the Peace Corps and its authorization, see CRS Report 98–215, *The Peace Corps: Background and Issues for Congress*, by Curt Tarnoff.

[72] The Peace Corps was first established on a temporary basis through Executive Order 10924 on March 1, 1961.

[73] P.L. 87–293, Sec. 3(b), "There is hereby authorized to be appropriated to the President for the fiscal year 1962 not to exceed $40,000,000 to carry out the purposes of this Act."

[74] For example, the reauthorization schedule was not discussed at any of the House Foreign Affairs Committee hearings on establishing the Peace Corps, nor was it addressed in the conference report for H.R. 7500. See U.S. House of Representatives, Committee on Foreign Affairs, *The Peace Corps*, House Hearings, August 11 and 15, 1961 (Washington, DC: GPO, 1961); H. Rept. 97–1237.

[75] P.L. 91–672, the Foreign Military Sales Act amendments contained the following provisions, codified at 22 U.S.C. 2412(a): "Notwithstanding any provision of law enacted before January 12, 1971, no money appropriated for foreign assistance (including foreign military sales) shall be available for obligation or expenditure—(1) unless the appropriation thereof has been previously authorized by law; or (2) in excess of an amount previously prescribed by law."

be financed and the foreign policy problems which confront the United States in the various countries involved. On the basis of this analysis, the planned rate of expansion appears to be realistic, the cost estimates reasonable, and the authorization requested to be justified. [H. Rept. 87–1470, p. 4]

The committee's report language also discussed the work of the Peace Corps the previous fiscal year, and potential developments for the upcoming fiscal year.

Over the next 15 years, FY1964–FY1979, the agency was reauthorized on an annual basis, almost always through a stand-alone authorization law.[76] About half the reauthorization laws during this period only updated the prior authorization of appropriations with regard to the fiscal year and amount, leaving the other parts of the law largely unchanged. In these instances, however, the House Foreign Affairs and Senate Foreign Relations Committees often used reauthorization as an opportunity to communicate to both Congress and the agency their assessment of a wide variety of other agency issues. For example, the Senate report language associated with the reauthorization for FY1969 addressed issues such as the current status of Peace Corps agency and volunteer operations, as well as ongoing committee concern related to the administrative costs associated with various programs.[77]

The annual reauthorization process was also used to implement changes in the underlying law, often in response to new developments within the agency. For example, in 1971 the Peace Corps was merged into a new volunteer service agency called ACTION.[78] Although the Peace Corps' underlying mission remained the same, the annual authorization process, both before and after 1971, was used to oversee and structure its merger with ACTION and to review other agency concerns. In the FY1970 reauthorization (P.L. 99–199), provisions were included to restrict the use of Peace Corps funds for other volunteer and training programs. And the FY1975 and FY1976 reauthorizations (P.L. 93–302 and P.L. 94–76) mandated statutory transfers of Peace Corps appropriations to finance increases in certain volunteer benefits.

Both the frequency of the reauthorization and its funding specificity were viewed by Congress as important tools of agency oversight. Late in this period, there was some dispute between Congress and the President with regard to both issues. In FY1977, the President's budget submission requested a 2-year authorization for the Peace Corps, with a definite amount for FY1977 and such sums as may be necessary for FY1978. The House Foreign Affairs Committee responded to the administration's request in the committee report accompanying H.R. 12226:

The Executive Branch requested a two-year authorization for the Peace Corps—$67,155,000 for fiscal 1977 and such sums as may be necessary for fiscal 1978. Because the Committee has believed that such open-ended authorizations are unwise and because it was not possible for the Peace Corps to come forward with a firm fiscal 1978 figure, the authorization was limited to a single year. [H. Rept. 94–874, p. 3]

---

[76] Only the FY1973 Peace Corps reauthorization was enacted as part of an omnibus reauthorization act, Title IV of the Foreign Relations Authorization Act of 1972 (P.L. 92–352).

[77] S. Rept. 90–1095.

[78] This reorganization was made effective by Executive Order 11603, which was issued pursuant to Reorganization Plan 1.

The Senate version provided a definite 1-year authorization of appropriations and did not comment on the administration's proposal.[79] The administration requested a "such sums" 2-year authorization of appropriations the following year, which was also rejected by the House and the Senate. The next year, when this 2-year proposal was suggested and rejected yet another time, the Senate noted, "Each year the Peace Corps has submitted a request for an open-ended authorization, and each year the Congress has rejected these requests on the basis that congressional oversight responsibilities are best exercised through the annual authorization and appropriations processes."[80]

TRANSITION TO INTERMITTENT REAUTHORIZATION

Starting in FY1980, a number of significant changes for the Peace Corps occurred, both in terms of its status as an agency as well as congressional practices associated with its reauthorization. After the Peace Corps was reestablished as an independent agency, provisions in the FY1981 reauthorization further facilitated this transition (P.L. 96–533), and subsequent reauthorizations became focused on new policy developments within the agency.[81] During this period, Congress also experimented with changes in the vehicle and timing of the reauthorization. The first such change occurred with the FY1980 and FY1981 reauthorizations (P.L. 96–53 and P.L. 96–533), where the Peace Corps was reauthorized as part of a larger omnibus foreign aid vehicle. The FY1981 reauthorization was notable for at least two other reasons. First, it was enacted after the start of the fiscal year, on December 16, 1980, which was much later than was typical. Second, it was enacted on the same day as FY1981 Peace Corps appropriations. The next reauthorization, also enacted on the same day as FY1982 appropriations, included further changes in practice, in authorizing appropriations for both FY1982 and FY1983 (P.L. 97–133). While there was no indication given at that time of a broader change in the authorization interval, the next authorization of appropriations was also for 2 fiscal years (FY1986 and FY1987), and was enacted after almost a 4-year lapse.[82] These authorized levels were updated a year later through a provision in the foreign relations reauthorization.[83]

There appear to be a number of factors that could account for these significant changes in practice. First, with the Peace Corps reorganization at the beginning of the decade, the focus of each reauthorization increasingly addressed agency policy concerns, and

[79] S. Rept. 94–757.

[80] S. Rept. 95–807, p. 8.

[81] The Peace Corps was reestablished as an independent agency by Executive Order 12137 on May 16, 1979.

[82] The Senate version, S. 960, carried an authorization of appropriations for FY1986 only, while the House version carried a 2-year authorization of appropriations. In the conference report, the committee explained, "The Senate bill contained authorizations for only fiscal year 1986, while the House amendment authorized funds for both fiscal year 1986 and 1987. The executive branch requested such sums as may be necessary for fiscal year 1987. The committee of conference agreed to extend the fiscal year 1986 authorization to fiscal year 1987, at the same levels. The Committees on Foreign Affairs of the House and Foreign Relations of the Senate will give full consideration to any additional recommendations by the executive branch for fiscal year 1987 [H. Rept. 99–237, p. 108]."

[83] This provision was added during the Senate Foreign Relations Committee markup of the foreign relations reauthorization (S. Rept. 99–304, p. 25) and was enacted into law unchanged (P.L. 99–399).

the practice of enacting laws that only authorized appropriations was generally discontinued. Second, the change in the vehicle to a multiagency foreign aid authorization may have also affected the frequency of the authorization, both because the foreign aid authorizations tended to authorize multiyear appropriations for other programs, and the potential for delays due to policy disputes unrelated to the Peace Corps. Finally, both the late enactment of the authorizations compared to appropriations, and the gaps in the authorization of appropriations, may have also further undermined the role of provisions explicitly authorizing appropriations in influencing budgetary decisionmaking.

Over the past 25 years, efforts to reauthorize the Peace Corps have occurred on an irregular basis. Moreover, these authorization measures have often been primarily directed at policy concerns with the agency, as opposed to reauthorizing appropriations. For FY1993, a stand-alone law (P.L. 102–565) was enacted that both reauthorized appropriations and established the Peace Corps foreign exchange fluctuations account. This law had been enacted about 1 month after the Peace Corps appropriations for that fiscal year; the amounts authorized and appropriated were identical. About 18 months later, provisions were carried in the FY1995/FY1996 Foreign Relations Authorization Act that provided a 2-year authorization of appropriations for the Peace Corps, along with minor technical changes to the program (P.L. 103–236). The most recent authorization of appropriations enacted for the Peace Corps covered 4 fiscal years, FY2000–FY2003 (P.L. 106–30), but the primary purpose of this law was to authorize the expansion of the Peace Corps beyond the goal of 10,000 volunteers and make technical updates. Since that time, legislation that would reauthorize appropriations for the Peace Corps has received little congressional action.[84] The most recent law to make major program changes to the Peace Corps, involving volunteer safety, included no provisions authorizing appropriations (P.L. 112–57).[85]

Conclusion

The evolution in the form of authorizations during the 20th century allowed the legislative committees to not only address policy questions but also to exercise a greater role in congressional and agency funding decisions. While these committees have a number of tools at their disposal with which to exercise this influence, one such tool that was chosen and developed during this period was the use of explicit authorizations of appropriations. As the needs of these committees and Congress have changed over time, the extent to which this tool has been used has also shifted.

The legislative committees' desire for increased involvement in both agency and congressional budgetary decisions was a significant factor in the adoption of periodic reauthorization schedules, and played a role in the authorizations for all three agencies in this study. The Peace Corps and NASA received annual authorization schedules soon after being created as a means to facilitate congres-

[84] See, for example, S. 12 (107th Cong.), S. 1426 (112th Cong.), and H.R. 2583 (112th Cong.).
[85] For a discussion of these issues, see CRS Report RS21168, *The Peace Corps: Current Issues*, by Curt Tarnoff.

sional oversight during this critical time in the agency's development. While the transition to an annual reauthorization for the NSF occurred many years after the agency's establishment, it too was motivated by oversight concerns that had developed in the interim. For all three agencies, annual authorizations also had the advantage of allowing the legislative committees to formally weigh in on the agency's budgetary needs each fiscal year through the legislative process.

During the period prior to the 1980s, the annual authorizations for the NSF, NASA, and Peace Corps were all characterized by relatively incremental program changes, with the more significant alterations generally being made outside the annual reauthorization process. As the NSF and NASA transitioned to a more long-term reauthorization schedule over the past 30 years, their reauthorization laws have become more policy-focused and contain more instances of significant program changes. This transition in the focus of reauthorizations was even more pronounced for the Peace Corps, with reauthorizations during the past few decades being enacted intermittently, and recent legislative proposals to make significant program changes containing no explicit authorizations of appropriations.

In general, the evolution of authorizations in recent years has moved away from annual reauthorizations to longer periods. This has allowed Congress to address some criticisms about the impact of lapsed authorizations and focus instead on policy issues. This evolution parallels larger institutional patterns of change and innovation and the development of institutional capacity. In general, the choice of certain institutional tools over others may be driven both by the requirements of a particular context, as well as a need to serve broader purposes.[86] The extent to which the separation between the authorization and appropriations processes continues to be a feature of congressional rules and practices, and the balance that results from the tension this separation creates will likely shift again and lead to further procedural adaptations.

[86] Eric Schickler, *Disjointed Pluralism* (Princeton, NJ: Princeton University Press, 2001), pp. 15–18.

Congress Evolving in the Face of Complexity: Legislative Efforts to Embed Transparency, Participation, and Representation in Agency Operations

CLINTON T. BRASS

Specialist in Government Organization and Management

and

WENDY GINSBERG

Analyst in American National Government

In the last 100 years, the evolving scope and increasing complexity of the Federal Government have prompted concerns about how Congress could continue to fulfill its constitutional duties. In response to real and perceived pressures, Congress passed measures that embedded values of transparency, participation, and representation into agencies' day-to-day activities. In combination with the advent of inexpensive communications technologies, the laws have changed how Congress, agencies, and non-Federal stakeholders may engage one another. This evolution has implications for the lawmaking, oversight, and representational work of Congress—ranging from workload pressures to power relationships with the President.

Introduction

On December 10, 1934, an Assistant Attorney General (AG) of the Department of Justice appeared before the Supreme Court. He was defending the constitutionality of several parts of the National Industrial Recovery Act (NIRA), a key component of President Franklin D. Roosevelt's New Deal.[1] On that day of oral argument, however, the Justices intensely questioned the Assistant AG on a matter outside of the case's constitutional core. They pressed him about a particular regulatory provision that was related to the implementation of NIRA. Unbeknownst to many inside and outside the government, the provision had been inadvertently omitted

[1] For discussion of the proceedings, see U.S. National Archives and Records Administration (hereinafter NARA), Office of the Federal Register, "A Brief History Commemorating the 70th Anniversary of the Publication of the First Issue of the *Federal Register*," 2006, p. 2, at http://www.archives.gov/federal-register/the-federal-register/history.pdf; and Lotte E. Feinberg, "Mr. Justice Brandeis and the Creation of the *Federal Register*," in *Transparency and Secrecy*, ed. Suzanne J. Piotrowski (Lanham, MD: Lexington Books, 2010), pp. 76–90.

when a revised version of the regulation was sent to the printer. Consequently, the government had been seeking to enforce a regulatory provision that did not exist. Justice Louis D. Brandeis pressed the Assistant AG, pointedly asking if there was any way for a person to find the contents of a regulation when it was issued. "I think it would be rather difficult," the Assistant AG said.[2]

The embarrassing incident demonstrated to many observers an increasing need for the public—and Federal agencies themselves—to have a formal system for tracking agency actions and rules.[3] It was a catalyst for the enactment of the Federal Register Act and the creation of the *Federal Register*, the "daily newspaper of the Federal government."[4] The publication provides information on and access to Federal agency regulations, proposed regulations and public notices, Executive orders, proclamations, and other documents. In combination with several statutory requirements, the *Federal Register* allows Congress and the public to track certain executive branch actions and policy choices and participate formally in the regulatory process.

The story of the Federal Register Act exemplifies a broader theme of how Congress has adapted agencies' structures and operations over time. As multiple examples show, Congress has passed many laws that embed values of transparency, participation, and representation into agency activities. Congress passed these measures as one strategy, among others, to help address the increasing size, scope, and complexity of the Federal Government. This strategy, particularly when combined with the advent of inexpensive communications and information technologies, has substantially changed how Congress, agencies, and non-Federal stakeholders (e.g., advocacy groups, businesses, State and local governments, and citizens) may engage one another during the course of agencies' day-to-day operations. In turn, these changes in interactions have implications for the lawmaking, oversight, and representational work of Members of Congress.

This report proceeds in three parts. First, the report provides historical context, including discussion of several strategies that Congress employed in the last century to adapt to the increasing complexity of government activities. Next, the report focuses in more depth on one of these strategies, under which Congress passed measures to embed transparency, participation, and representation into the day-to-day operations of agencies—albeit with some important constraints.[5] Through these laws, Congress also sought to enhance its capacity by enlisting public participation in oversight and policymaking processes. Finally, building on this foundation, the report highlights potential implications of increased engagement by non-Federal stakeholders. In this context, the report also identifies several tradeoffs that Members face in their representational, oversight, and lawmaking work.

---

[2] Lotte E. Feinberg, "Mr. Justice Brandeis and the Creation of the *Federal Register*," p. 77.
[3] Harold C. Relyea, "The *Federal Register*: Origins, Formulation, Realization, and Heritage," *Government Information Quarterly*, vol. 28, no. 3 (July 2011), pp. 295–302.
[4] 49 Stat. 500 (1935). For the quoted text, see NARA, "*Federal Register*: About the *Federal Register*," at http://www.archives.gov/federal-register/the-federal-register/about.html.
[5] For example, laws such as the Privacy Act and Budget and Accounting Act channel how information may be developed, used, shared, and withheld from release, as discussed later in the report.

Historical Context: Congress Adapts to Evolving Expectations and Demands

Beginning with the Constitution

By design, elections are not the only time when members of the public may interact formally with their elected representatives. Rather, the Framers of the Constitution perceived a need to protect the right of the American people to "petition the Government for a redress of grievances."[6] In other words, the Constitution foresees the involvement of non-Federal stakeholders in myriad policy deliberations, where they may attempt to influence decisionmaking in both the legislative and executive branches. Yet it has taken time and experience for Congress to evaluate how to put the Constitution into governing practice to facilitate involvement of these stakeholders in day-to-day policy deliberations, such as through the enactment of statutes and the pursuit of other congressional activities, including oversight.[7]

From the inception of the Federal Government, Congress has taken steps to require agencies to make certain information and records available to Congress and the public.[8] As the responsibilities of the Federal Government evolved over time, so have the perceived needs of Congress, agencies, and interested non-Federal stakeholders. It could be argued, however, that a turning point arrived gradually with the approach of the 20th century.

Increasing Challenges of Complexity

A century after the Constitution's ratification, the United States faced mounting challenges. The Nation's geographic reach had expanded across the North American continent. The United States also experienced rapid population growth, driven in part by extensive immigration.[9] Furthermore, numerous developments in the 19th and 20th centuries prompted the voting public and policymakers to support efforts—in fits and starts, and sometimes following considerable opposition—to expand the Federal Government's duties. These developments included, among other things, industrialization, urbanization, efforts to combat the Great Depression, two world wars, and the increasing complexity of domestic issues.[10] As a result, the scope of the Federal Government's activities increased substantially to confront these and other challenges.

The Federal Government's increasing duties and size presented challenges and opportunities for agencies, Congress, and the pub-

---

[6] U.S. Constitution, Amendment I.

[7] With regard to oversight, many tools, including hearings and investigative reports, may be employed with a significant public role in mind. See CRS Report RL30240, *Congressional Oversight Manual*, by Todd Garvey et al.

[8] For discussion of reporting requirements, including what may be the first reporting requirement passed in 1789 by the First Congress, see CRS Report R42490, *Reexamination of Agency Reporting Requirements: Annual Process Under the GPRA Modernization Act of 2010 (GPRAMA)*, by Clinton T. Brass.

[9] The population of the United States doubled between 1850 and 1880, from 23 million to 50 million people, and doubled again between 1880 and 1920, rising to 106 million. U.S. Department of Commerce, Bureau of the Census, "History: Fast Facts," at http://www.census.gov/history/www/through_the_decades/fast_facts/.

[10] For discussion, see Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877–1920* (Cambridge, United Kingdom: Cambridge University Press, 1982); and CRS Report RL30808, *Government at the Dawn of the 21st Century: A Status Report*, by Harold C. Relyea.

lic—including questions about how government as a whole could cope with increasing complexity. Congress responded to this challenge initially with efforts to build administrative capacity within the executive branch—such as creating new agencies, assigning additional responsibilities to existing agencies, or establishing agency procedures.[11] Over time, however, the increased size, complexity, and reliance upon capacity in the executive branch generated new challenges.[12] Among other things, these challenges raised questions about how Congress could inform itself and fulfill its multiple constitutional responsibilities—representing the people, conducting oversight, making laws, etc.—in a rapidly evolving environment. In one scholar's view:

> By 1946, Congress's traditional place in the constitutional separation of powers had been thoroughly upset by the vast growth in the size and power of the federal bureaucracy during the New Deal and World War II. Congress had become a delegator, vesting much of its legislative authority in administrative agencies, and a great deal of the initiative for policy making and budgeting had passed to the executive branch.[13]

Furthermore, some observers expressed concerns about the public's role in this new environment, including the public's ability to access information and inform policymaking processes.[14] On one hand, many observers perceived agencies and civil servants as needing flexibility and effective tools to address complex and changing policy problems. Yet many also worried about Congress and non-Federal stakeholders having adequate transparency into, and influence over, the activities and decisionmaking of agencies. Observers saw non-Federal stakeholders as having little recourse to affect policy and hold government accountable when agencies wielded considerable discretion under existing laws.

STRATEGIES IN RESPONSE

In the last 100 years, Congress responded to these concerns. Congress adapted to increasing size, scope, and complexity in the executive branch by passing laws that used at least three general strategies:

---

[11] For examples, see discussion in Skowronek, *Building a New American State*.

[12] For discussion, see ibid., pp. 290–292; Peri E. Arnold, *Making the Managerial Presidency: Comprehensive Reorganization Planning, 1905–1996*, 2d ed. (Lawrence, KS: University Press of Kansas, 1998), pp. 81–117; and David H. Rosenbloom, *Building a Legislative-Centered Public Administration: Congress and the Administrative State, 1946–1999* (Tuscaloosa, AL: University of Alabama Press, 2000).

[13] Rosenbloom, *Building a Legislative-Centered Public Administration*, p. 1.

[14] For an illustration of these concerns in the legislative history of the Administrative Procedure Act (60 Stat. 237 (1946)), see George B. Shepherd, "Fierce Compromise: The Administrative Procedure Act Emerges from New Deal Politics," *Northwestern University Law Review*, vol. 90, no. 4 (1996), pp. 1557–1683.

- shifting workload to the executive and judicial branches, while seeking to maintain stewardship of policy through the design of relevant statutes and institutions; [15]
- building capacity in the legislative branch, such as through hiring staff and establishing support agencies; [16] and
- embedding legislative values of transparency, participation, and representation into the day-to-day operations of Federal agencies.[17]

Employing these strategies, Congress established numerous statutory mechanisms to help address complexity in governance. These included laws that cover executive agencies broadly and bring some regularity to their operations.[18] Some of the laws drew on Congress' initial approach of building capacity in the executive branch. Many of the laws also employed one or more of the additional three strategies to help Congress grapple with challenges of an increasing workload, difficulty in accessing information, and maintaining control of agencies. In all of these efforts, Congress navigated through an environment of potential cooperation or competition with the President over policy outcomes.[19] These concerns continued through the balance of the 20th century and beyond, even after Federal revenues and spending stabilized as a proportion of the economy in the decades after 1950.[20]

In particular, the third strategy of passing laws to embed transparency, participation, and representation into agency operations—the primary focus of this report—has, in combination with technological developments, substantially changed how Congress, agencies, and non-Federal stakeholders engage one another. Under these laws, which were enacted over a period of decades, non-Federal stakeholders increasingly could inform themselves and seize opportunities to communicate with their government. Furthermore, Congress could rely to some extent on non-Federal stakeholders to

[15] For example, laws that shifted some workload to other branches include the Budget and Accounting Act (42 Stat. 20 (1921)), as discussed later in this report, and the Federal Tort Claims Act (60 Stat. 842 (1946), Title IV of the Legislative Reorganization Act of 1946). Until the Federal Tort Claims Act was enacted, a person who suffered personal injury or property damage as the result of a Federal employee's negligence or misconduct had no judicial remedy. Such a person's only remedy was to seek to have a private claim bill introduced in Congress. See CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al., section titled "Federal Tort Claims Act," by Henry Cohen. As Congress delegated authorities to agencies in the face of complexity, Congress also sought to structure many agencies to promote their independence from undesired influence. For example, see CRS Report R43391, *Independence of Federal Financial Regulators*, by Henry B. Hogue, Marc Labonte, and Baird Webel.

[16] For example, a key law that built capacity in the legislative branch was the Legislative Reorganization Act of 1946 (60 Stat. 812), which, among other things, for the first time authorized permanent professional and clerical staff for congressional committees. Congress also established the Legislative Reference Service in 1914 (later redesignated as the Congressional Research Service with an expanded policy analysis role), the General Accounting Office in 1921 (later given new responsibilities and eventually redesignated as the Government Accountability Office), and the Congressional Budget Office in 1974.

[17] For a book-length account of all three strategies, especially from the perspective of the Legislative Reorganization Act of 1946 and the Administrative Procedure Act, see Rosenbloom, *Building a Legislative-Centered Public Administration*.

[18] For a survey, see CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al. Most subsequently were amended, and some were later codified in the U.S. Code.

[19] For related discussion, see CRS Report RL32388, *General Management Laws: Major Themes and Management Policy Options*, by Clinton T. Brass.

[20] For a table that shows how Federal receipts and outlays have varied as a proportion of gross domestic product from 1930 to the present, see U.S. Executive Office of the President, Office of Management and Budget (hereinafter OMB), *Historical Tables—Budget of the U.S. Government, FY2015* (Washington, DC: GPO, 2014), pp. 26–27. Some observers view these proportions as proxy measures of the size of the Federal Government.

raise flags if government institutions misbehaved in exercising the discretion they were granted under law. These new points of access set up a dynamic where, in the views of two scholars, it was indeed possible that:

> the bureaucracy might not pursue Congress's goals. But citizens and interest groups can be counted on to sound an alarm in most cases in which the bureaucracy has arguably violated Congress's goals. Then Congress can intervene to rectify the violation. Congress has not necessarily relinquished legislative responsibility to anyone else. It has just found a more efficient way to legislate.[21]

In addition, as communication and information technologies transformed over time from the telegraph to email, technologies have also become less costly, more capable, and more pervasive.

It has become easier for non-Federal stakeholders to use the avenues provided by these laws to inform themselves, organize, and engage with agencies and Members of Congress. For example, stakeholders may scrutinize publicly available reports from agencies and comment on proposed regulations; non-Federal policy experts may serve on agencies' advisory committees; and anyone may request certain Federal records without justifying the need for the request. Large databases also have been placed on the Internet for perusal by organized interests and everyday citizens. The next section of this report highlights several laws that illustrate this trend.[22]

Examples of Laws That Embedded Transparency, Participation, and Representation

The laws described below illustrate how Congress sought to embed transparency, participation, and representation into the operations of executive agencies. This list draws on previous CRS research and is not exhaustive of all possible examples.[23]

BUDGET AND ACCOUNTING ACT OF 1921 [24]

An early milestone of Congress' efforts to embed transparency into agency operations arguably was enactment of the Budget and Accounting Act of 1921, which, among other things, centralized some aspects of budget formulation with the President. Notably, the law grew in part out of Progressive Era views that sought to place more trust and authority in administrative processes and institutions. In addition, the machinery of the Federal Government had been heavily strained during World War I (1914–1918), when Federal spending increased markedly.[25] At that time, Congress did

[21] Mathew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms," *American Journal of Political Science*, vol. 28, no. 1 (February 1984), p. 175.

[22] The discussions of the first two laws, below, are lengthier than the others, because they help illustrate how the strategy of embedding legislative values into agency operations could be pursued simultaneously with other strategies (e.g., the Budget and Accounting Act of 1921, which both shed congressional workload and established capacity in the legislative and executive branches) or pursued in response to previous lawmaking (e.g., the Federal Register Act, responding to previous delegations of rulemaking authority to agencies).

[23] Many of the laws also are discussed in Rosenbloom, *Building a Legislative-Centered Public Administration*.

[24] 42 Stat. 20, later amended and codified in Title 31, U.S. Code. This paragraph draws in part on CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al., section titled "Budget and Accounting Act of 1921," by James Saturno.

[25] Allen Schick, *The Federal Budget: Politics, Policy, Process*, 3d ed. (Washington, DC: The Brookings Institution, 2007), p. 14.

not have extensive staff resources and support agencies to help it cope with these heightened demands.

In response, Congress focused on building institutions and processes in the executive branch. Notably, Congress accompanied this approach with parallel efforts to shift some workload to the executive branch, build capacity in the legislative branch, and increase the transparency of government finances. Congressional proponents of the law argued in favor of a process where the President would receive, consider, and modify executive agency budget requests ("estimates"), and then submit a consolidated budget proposal to Congress.[26] Individual agencies would no longer be allowed to send budget requests directly to Congress unless the House or Senate asked for such a request. Proponents argued that "the estimates for appropriations will come to Congress after a more mature deliberation by an official who has the power to coordinate and consolidate governmental activities and to revise the estimates."[27] In the face of what today might be called information overload, proponents added that "[t]he proposed plan ... will unquestionably greatly reduce the drudgery of committees in making inquiry into [agencies' budget] estimates."[28] In response to criticisms that such a change would abdicate legislative prerogatives or shift power to the President, proponents asserted that "the proposed law does not change in the slightest degree the duty of Congress to make the minutest examination of the budget."[29] To support Congress in undertaking this duty, the law established numerous reporting requirements that provided budget transparency for a broader public audience. The law also established a new agency in the legislative branch—the General Accounting Office (GAO), now the Government Accountability Office—to assist Congress in focusing on accountability.[30]

Federal Register Act[31]

A notable accelerant to Congress' efforts to embed legislative values in agency operations arrived a decade later with the Franklin D. Roosevelt administration, as the administration and Congress responded to major crises of the time, including the Great Depres-

[26] The act established the Bureau of the Budget in the Treasury Department to assist the President with this work. The bureau later was transferred to the Executive Office of the President and eventually was designated the Office of Management and Budget. See CRS Report RS21665, *Office of Management and Budget (OMB): A Brief Overview*, by Clinton T. Brass.

[27] U.S. Congress, House Select Committee on the Budget, *National Budget System*, report to accompany H.R. 9783, 66th Cong., 1st sess., H. Rept. 362 (Washington, DC: GPO, October 8, 1919), p. 7.

[28] Ibid.

[29] Proponents also claimed: "The bill does not in the slightest degree give the Executive any greater power than he now has over the consideration of appropriations by Congress." Ibid. Nevertheless, most scholarship has concluded that the law gave the President more power over the appropriations process than before, in part through increased control of information coming from agencies. For example, see Kenneth R. Mayer and Thomas J. Weko, "The Institutionalization of Power," in Robert Y. Shapiro, Martha Joynt Kumar, and Lawrence R. Jacobs, eds., *Presidential Power: Forging the Presidency for the Twenty-First Century* (New York: Columbia University Press, 2000), pp. 193–198.

[30] Concerns about Congress' access to information from executive agencies eventually prompted Congress to increase its own capacity to scrutinize the President's proposals. See George B. Galloway, "The Operation of the Legislative Reorganization Act of 1946," *American Political Science Review*, vol. 45, no. 1 (March 1951), pp. 64–65.

[31] Originally enacted in 1935 (49 Stat. 500); codified at 44 U.S.C. Chapter 15. This section draws in part on CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by Maeve P. Carey.

sion.[32] The President's New Deal program responded energetically. Among other things, President Roosevelt's "legislative triumphs in the famous Hundred Days of 1933 laid the groundwork for an explosion of administrative law in addition to the tidal wave of such pronouncements he generated from the White House and the existing regulatory agencies." [33] These developments led to enactment of the Federal Register Act, which in 1935 became one in a succession of prominent laws that, in turn, shone a light on administrative bureaucracies and their activities.

The Federal Register Act established a uniform system for handling agency regulations by requiring (1) the filing of documents with the Office of the Federal Register; (2) the placement of documents for public inspection; (3) publication of the documents in a new government periodical, the *Federal Register*; and (4) after a 1937 amendment, permanent codification of regulations in the *Code of Federal Regulations* (CFR).[34] Publication of a regulation in the *Federal Register* provides official notice of its existence and contents. Other documents that are published in the *Federal Register* include presidential proclamations and Executive orders, notices, and any documents that the President or Congress requires to be published. The *Federal Register* is published each business day, and is available electronically.[35] In these ways, the publication provides a mechanism by which citizens, businesses, and other non-Federal stakeholders can track the activities of Federal agencies that may affect them. The regulatory process that plays out in the *Federal Register* provides Congress an opportunity to oversee implementation of the laws it enacts, and the *Federal Register* furthermore provides a common source of information that fosters interaction among agencies, Congress, and non-Federal stakeholders.

ADMINISTRATIVE PROCEDURE ACT (APA) [36]

The Administrative Procedure Act (APA) became law in 1946, after what one scholar called the "bitter compromise of [a] fierce political battle" over administrative reform in the wake of the New Deal.[37] The major contribution of the act was to establish for the first time minimum procedural requirements for certain types of agency decisionmaking. Its general purposes were to (1) require agencies to keep the public currently informed of agency organiza-

[32] After the First World War, expansion of the Federal Government slowed, and then increased again during the Great Depression to "combat the national economic emergency." See CRS Report RL30808, *Government at the Dawn of the 21st Century: A Status Report*, by Harold C. Relyea. In the Great Depression, real gross domestic product plunged by 30 percent, and unemployment reached 25 percent. See CRS Report R41332, *Economic Recovery: Sustaining U.S. Economic Growth in a Post-Crisis Economy*, by Craig K. Elwell.

[33] Relyea, "The *Federal Register*: Origins, Formulation, Realization, and Heritage," p. 297.

[34] For access to the CFR, see U.S. Government Printing Office (GPO), *Code of Federal Regulations (Annual Edition)*, at http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.

[35] GPO, *Federal Register*, at http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR.

[36] Originally enacted in 1946 (P.L. 79–404; 60 Stat. 237); codified at 5 U.S.C. § 551 et seq. This paragraph draws in part on CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al., section titled "Administrative Procedure Act," by Morton Rosenberg and T.J. Halstead.

[37] Shepherd, "Fierce Compromise: The Administrative Procedure Act Emerges from New Deal Politics," p. 1681. The scholar added that "[t]he APA was an important and clear example of an attempt to influence [policy] outcomes by means of procedural requirements."

tion, procedures, and rules; (2) provide for public participation in the rulemaking process; (3) prescribe uniform standards for the conduct of formal rulemaking and adjudicatory proceedings; and (4) restate the law of judicial review of agency action. A series of subsequent judicial decisions and statutes expanded both the obligations of agencies and the role of reviewing courts. The result has been the transformation of "informal" rulemaking—also known as "notice and comment" rulemaking—into an on-the-record proceeding that has fostered widespread public participation.[38] With some frequency, Congress has supplanted the APA's executive branch-wide requirements with more explicit directives for particular agencies and programs. This kind of legislation often has been aimed at formalizing procedural protections to promote public participation in certain agency policymaking.

FREEDOM OF INFORMATION ACT (FOIA)[39]

In 1966, Congress passed the Freedom of Information Act (FOIA). The legislation was considered in Congress in the face of considerable opposition by executive departments and agencies.[40] FOIA enables any person to request, without explanation or justification, access to existing, identifiable, and unpublished executive branch agency records. The law, which contains provisions that acknowledge legitimate reasons for government secrecy and information protection, specifies nine categories of information that may be exempted from the rule of disclosure. Disputes over the accessibility of requested records may be settled, according to the provisions of the act, in Federal court, or may be mediated in the Office of Government Information Services (OGIS).

FEDERAL ADVISORY COMMITTEE ACT (FACA)[41]

Congress passed the Federal Advisory Committee Act (FACA) in 1972, prompted by a concern by many citizens and Members of Congress that existing executive branch advisory bodies were duplicative, inefficient, and lacked adequate oversight; did not adequately represent the public interest; and too often held meetings that were closed to the public.[42] FACA provides a formal process by which non-Federal stakeholders or policy experts can provide advice and opinions to the Federal Government. FACA requires that an advisory committee's membership be "fairly balanced in terms of the points of view represented," and that the advice provided by committees be objective and accessible to the public. Addi-

[38] For discussion of the present-day rulemaking process, see CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by Maeve P. Carey. In a typical case of informal rulemaking, when an agency publishes a proposed rule, it also solicits comments from the public. The agency then considers the comments, develops a final rule, and publishes both the agency's response to the comments and the final rule in the *Federal Register*.

[39] Originally enacted in 1966 (P.L. 89–487; 80 Stat. 250); codified at 5 U.S.C. § 552. For more information about the law, see CRS Report R41933, *The Freedom of Information Act (FOIA): Background, Legislation, and Policy Issues*, by Wendy Ginsberg.

[40] For discussion of the impact of this opposition on the law's early implementation, see CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al., section titled "Freedom of Information Act," by Harold C. Relyea.

[41] Originally enacted in 1972 (P.L. 92–463; 86 Stat. 770); located at 5 U.S.C. Appendix.

[42] See, for example, U.S. Congress, Senate Committee on Government Operations, *The Federal Advisory Committee Act*, report to accompany S. 3529, 92d Cong., 2nd sess., S. Rept. 92–1098 (Washington, DC: GPO, 1972), pp. 5–6.

tionally, FACA requires that committee meetings be open to the public, unless the material discussed meets certain requirements.

PRIVACY ACT [43]

Legislated in 1974, the Privacy Act arose in the context of several contemporaneous events that prompted congressional interest in securing personal privacy. The law provides U.S. citizens or permanent resident aliens presumptive access to personally identifiable files on themselves held by Federal agencies—generally excepting law enforcement and intelligence entities. The statute specifies seven types of information that may be exempted from the rule of access. Where a file subject contends that a record contains inaccurate information about that individual, the act allows correction through a request to the agency that possesses the record. Disputes over the accessibility or accuracy of personally identifiable files may be pursued in Federal court.

GOVERNMENT IN THE SUNSHINE ACT [44]

Enacted in 1976, the government in the Sunshine Act was intended to open the policymaking deliberations of any agency headed by a "collegial body"—such as boards, commissions, or councils—to public scrutiny. One scholar characterized the law as "premised on the concept that the multi-headed regulatory agencies are very much legislative extensions, or subordinate arms of the Congress," citing the congressional debate when FACA was considered.[45] Pursuant to the statute, agencies are required to publish advance notice of impending meetings and make those meetings publicly accessible. The act includes 10 conditions under which agency meetings are to be exempted from the act. Disputes over proper public notice of such meetings or the propriety of closing a deliberation may be pursued in Federal court.

STATUTORY EXCEPTIONS TO THE BUDGET AND ACCOUNTING ACT OF 1921

As discussed earlier, the Budget and Accounting Act of 1921 took steps toward increasing transparency. The law also established a process that many observers later perceived as enabling the President in practice to control the nature of information that agencies release to Congress and the public.[46] In response, over a period of years, Congress passed multiple exceptions to the act. These statutory provisions authorized certain agencies to submit budget requests or other information directly to Congress, without modification by the President or the Office of Management and Budget

[43] Originally enacted in 1974 (P.L. 93–579; 88 Stat. 1896); codified at 5 U.S.C. § 552a.

[44] Originally enacted in 1976 (P.L. 94–409; 90 Stat. 1241); codified at 5 U.S.C. § 552b.

[45] Rosenbloom, *Building a Legislative-Centered Public Administration*, p. 51 (internal quotation marks omitted).

[46] For example, see the dialog between Senator Edmund S. Muskie and then-Office of Management and Budget (OMB) Director Roy L. Ash in U.S. Congress, Senate Committee on Government Operations, *Amending the Budget and Accounting Act of 1921*, hearing on S. 1214, 93d Cong., 1st sess., April 27, 1973 (Washington, DC: GPO, 1973), pp. 30–34, in which the Senator cited cases of OMB and agencies withholding certain budget-related information from congressional requesters and public view.

(OMB).[47] The statutory provisions vary considerably and cover agencies such as the Consumer Product Safety Commission, Federal Election Commission, and Social Security Administration. In some cases, the President statutorily is required to include the agency's request in the President's budget proposal without revision. Alternatively, an agency may be required to submit its budget request to Congress concurrently when it submits a request to the President or OMB.[48] In most of these cases, agencies effectively may bypass OMB and the President, communicating their views directly to Congress as well as to the broader public rather than only though the filter of the President's policy preferences, thereby, arguably, opening part of the budget formulation process to additional transparency.

GOVERNMENT PERFORMANCE AND RESULTS ACT OF 1993 (GPRA) AND GPRA MODERNIZATION ACT OF 2010 (GPRAMA)[49]

Enacted in 1993, the Government Performance and Results Act (GPRA) arrived in the wake of the "reinventing government" movement and other influences. The law was regarded as a watershed for the Federal Government. For the first time, most executive agencies were statutorily required to articulate mission statements, set goals, measure performance, and report the information to Congress and the public.[50] Agencies submitted this information in three major products: (1) multiyear strategic plans, which were required to be revised with a minimum frequency of every 3 years, (2) annual plans to accompany agency budget requests, and (3) retrospective annual reports. The law also required agencies to consult with Congress and non-Federal stakeholders when developing their strategic plans. Congress significantly revised the law with passage of the GPRA Modernization Act of 2010 (GPRAMA). Among other things, GPRAMA required OMB to create a public Web site to house performance information, which OMB established as Performance.gov. GPRAMA also included more specific requirements for agencies' consultations with Congress, but reduced the required frequency of certain agency consultations with non-Federal stakeholders.[51]

[47] OMB assembled a list of such agencies in 2001 along with relevant statutory citations. OMB's list includes agencies that submit budget requests directly to Congress, even without explicit statutory authorization. The document was released after a Freedom of Information Act court case. For the OMB list, see Public Citizen, "*Public Citizen, Inc.* v. *Office of Management and Budget (OMB)*," at http://www.citizen.org/litigation/forms/cases/getlinkforcase.cfm?cID=379.

[48] In that situation, the President may submit a separate request to Congress later, as part of the President's consolidated proposal.

[49] GPRA, P.L. 103–62, 107 Stat. 285 (1993); and GPRAMA, P.L. 111–352, 124 Stat. 3866 (2011). This section draws in part on CRS Report R42379, *Changes to the Government Performance and Results Act (GPRA): Overview of the New Framework of Products and Processes*, by Clinton T. Brass.

[50] GPRA stood in contrast with past efforts that Presidents pursued on their own initiative using available authority. These initiatives, however, were abandoned with changes in administration, or due to a perception of unrealistic ambitions or a lack of congressional buy-in.

[51] When an agency develops or makes adjustments to its strategic plan, the agency is required to consult with "entities potentially affected by or interested in such a plan." The reduction in required frequency occurred due to GPRAMA realigning the process of updating agency strategic plans to coincide with the first year of Presidential terms, once every 4 years, instead of the more staggered term of every 3 years under GPRA.

Federal Funding Accountability and Transparency Act (FFATA) and Digital Accountability and Transparency Act (DATA Act)[52]

Congress passed the Federal Funding Accountability and Transparency Act (FFATA) in 2006. According to the law's supporters, FFATA was an attempt to reduce "wasteful and unnecessary spending," including spending on funds earmarked for special projects.[53] The legislation required OMB to establish a publicly available, searchable Web site containing information about Federal grants, contracts, and other forms of assistance. OMB eventually established the Web site as USAspending.gov. Using this database, supporters asserted, a citizen or watchdog group would be able to determine how much money was given to which organizations, and for what purposes. The premise of the new law was that, by making the details of Federal spending available to the public, government officials would be less likely to fund projects that might be perceived as wasteful. In addition, supporters suggested that the new database would enable the public to become more involved in the discussion of Federal spending priorities. In 2014, Congress significantly amended FFATA with passage of the DATA Act. Among other things, FFATA as amended requires the Secretary of the Treasury and Director of OMB to establish governmentwide financial data standards. In addition, the amended law requires online reporting of extensive data on budget execution.

American Recovery and Reinvestment Act (ARRA)[54]

In the wake of a rapidly deteriorating economic picture and a recession that the Congressional Budget Office (CBO) called the most severe since World War II, Congress passed the American Recovery and Reinvestment Act (ARRA) in 2009. The law was intended in substantial part to function as a fiscal stimulus to the economy through discretionary spending, mandatory spending, and revenue provisions.[55] To mitigate the risk of such a large and sudden infusion of funding being managed imprudently, Congress included extensive oversight-related provisions in the legislation. After markup of a draft version of ARRA, the House Committee on Appropriations characterized the legislation as providing "unprecedented accountability," saying ARRA's "historic level of transparency, oversight and accountability will help guarantee taxpayer dollars are spent wisely and Americans can see results for their investment." As enacted, ARRA required, among other things, that a Web site

[52] FFATA was originally enacted in 2006 (P.L. 109–282, 120 Stat. 1186) and subsequently amended, including in 2014 by the DATA Act (P.L. 113–101, 128 Stat. 1146). This section draws in part on CRS Report RL33680, *The Federal Funding Accountability and Transparency Act: Background, Overview, and Implementation Issues*, by Garrett Hatch.

[53] Ibid.

[54] P.L. 111–5, 123 Stat. 115 (2009). This section draws on CRS Report R40572, *General Oversight Provisions in the American Recovery and Reinvestment Act of 2009 (ARRA): Requirements and Related Issues*, by Clinton T. Brass.

[55] CRS Report R40537, *American Recovery and Reinvestment Act of 2009 (P.L. 111–5): Summary and Legislative History*, by Clinton T. Brass et al. CBO later estimated that the law would increase budget deficits by about $830 billion over a 10-year period, thereby diminishing the effects of the recession on economic output and unemployment. See U.S. Congressional Budget Office (hereinafter CBO), *Estimated Impact of the American Recovery and Reinvestment Act on Employment and Economic Output from October 2012 Through December 2012*, February 2013, pp. 1 and 3, at http://www.cbo.gov/sites/default/files/cbofiles/attachments/43945-ARRA.pdf.

be established to serve as a focal point for many of the law's extensive reporting requirements. The Web site was established as Recovery.gov.

Potential Issues Relating to Increased Stakeholder Engagement

In response to the increasing complexity of governance, Congress has pursued multiple strategies in its efforts to fulfill its constitutional duties, as noted earlier in this report. These strategies have included (1) shifting certain work to other branches, under detailed statutory and institutional frameworks, (2) building capacity in the legislative branch, and (3) fostering more extensive engagement between agencies and non-Federal stakeholders by embedding legislative values into agency operations.[56] The third strategy—the primary emphasis of this report—may raise ongoing issues for Congress, as Congress addresses its own institutional needs and the perceived needs of diverse stakeholders.[57] At least three broad issues, discussed in the sections below, may arise from increased stakeholder engagement.[58]

Efforts to Promote Stakeholder Engagement May Contribute to Information Overload and Impose Costs

In the face of complexity in governance, Congress may pass legislation to build capacity in the executive branch and, at the same time, open up agency activities to public engagement. As a result, Federal law provides non-Federal stakeholders many opportunities to gain insight into detailed aspects of agency operations, formally express views, receive responses from the agencies, and bring outstanding concerns to Members of Congress. Members, in turn, may engage agencies and stakeholders when they undertake their legislative duties—including representation, oversight, and lawmaking. These interactions may bring benefits for Congress in terms of dealing with information overload, conducting oversight, and exercising influence over the ways in which agencies implement policy.

[56] In practice, the strategy of embedding transparency, participation, and representation in agency operations may be pursued in combination with one or both of the first two strategies. When several strategies are pursued, they may interact with each other. For example, efforts to build capacity in the executive branch might be accompanied by workload shedding (e.g., delegation of certain rulemaking authority to an agency that is somewhat insulated from Presidential influence), requirements for additional transparency or public participation, and new roles or responsibilities for institutions in the legislative branch, to facilitate Congress' work.

[57] Complexity in governance may affect agencies, Congress, and the President in their day-to-day duties. Complexity similarly may affect non-Federal stakeholders as well, as shown in the events that led to enactment of the Federal Register Act. Historically, Congress has been concerned at times with the needs of each of these actors when it considered legislation to make policy changes, establish institutions, and specify how institutions are required to operate. Establishment of the Consumer Financial Protection Bureau within the Federal Reserve System is a recent example of how Congress has built capacity to address a perception of the public's information needs. For discussion of the agency's statutory purpose and structure, see CRS Report R42572, *The Consumer Financial Protection Bureau (CFPB): A Legal Analysis*, by David H. Carpenter.

[58] As illustrated in the sections below, Congress and other stakeholders may experience any of several dynamics. These include facing "information overload," building capacity to produce and process information, and controlling the flow of information. One group of scholars described information overload as "[occurring] when the amount of input to a system exceeds its processing capacity. . . . Consequently, when information overload occurs, it is likely that a reduction in decision quality will occur." See Cheri Speier, Joseph S. Valacich, and Iris Vessey, "The Influence of Task Interruption on Individual Decision Making: An Information Overload Perspective," *Decision Sciences*, vol. 30, no. 2 (spring 1999), p. 338 (citations omitted from quoted text).

At the same time, however, the interactions may produce significant side effects, including a deluge of information and additional workload. With the advent of inexpensive and pervasive communications and information technologies, the nature of engagement has changed substantially over the last century. New technologies can assist in facilitating wide dissemination of information and rapid communication, potentially leaving Members of Congress in a maelstrom of information and viewpoints. On one hand, information from and engagement with stakeholders may assist Members in evaluating policy options in their legislative work. On the other hand, non-Federal stakeholder expectations for congressional engagement also may present complex issues and tradeoffs for Congress—especially when considering how Members can best use finite time and staffing resources. For example, with increased access to agency operations and data, members of the public may increase the frequency with which they petition their representatives. As Federal data sources proliferate in areas such as Medicare, Federal grants, and budget execution, Members and their staff may face corresponding increases in workload pressures.[59] Consequently, additional transparency and participation may bring "opportunity costs," where some observers may believe that time and staff should be used in other and perhaps more effective ways.

Still other tradeoffs may arise when the topic of costs is considered. Building capacity within agencies to facilitate the promotion of transparency, for example, may involve substantial costs for information technology systems.[60] In addition, requirements for additional transparency, participation, or representation may have non-financial costs. As noted in another CRS report:

> scrutiny that results from reporting may have side effects. If an agency's reporting omits major aspects of an agency's or program's mission, officials may face incentives to concentrate on reported tasks and not others that are integral to accomplishing the mission. Other potential consequences of scrutiny might include delays in the completion of tasks, increases in time that personnel spend responding to scrutiny rather than performing regular duties, and reduced creativity in addressing challenges.[61]

CREATING CAPACITY AND TRANSPARENCY MAY HAVE IMPLICATIONS FOR HOW INFORMATION IS CONTROLLED AND WHO CONTROLS IT

Congress has legislated in many ways to address its own perceived and evolving needs. Congress also has legislated to address its perception of the needs of agencies and the President to cope with increasing complexity in governance. In some cases, Congress initially established considerable capacity in the executive branch, such as with the Budget and Accounting Act of 1921 and additional laws during and after the New Deal. Over time, however, many observers argued that vesting more responsibilities in the executive

[59] For discussion of potential contemporary sources of this sort of workload, see CRS Report IN10012, *CMS Releases Medicare Physician Data: Proceed with Caution*, by Jim Hahn; and CRS Report IN10101, *Transparency in Grants Administration: Implementing Relevant Provisions of the DATA Act*, by Natalie Keegan.

[60] For example, CBO estimated that a proposed version of the DATA Act would cost $300 million over a 5-year period. See CBO, *S. 994, DATA Act, as Ordered Reported by the Senate Committee on Homeland Security and Governmental Affairs on November 6, 2013*, December 5, 2013, at http://www.cbo.gov/publication/44933.

[61] CRS Report R42490, *Reexamination of Agency Reporting Requirements: Annual Process Under the GPRA Modernization Act of 2010 (GPRAMA)*, by Clinton T. Brass (footnotes omitted from quoted text).

branch as a stand-alone strategy was not sufficient. Agencies and the President, for example, could operate within somewhat of a black box, with substantial control over the types and extent of information they released. When this lack of transparency became a concern, Congress responded with a variety of laws like those described earlier in this report.

Nevertheless, congressional efforts to increase transparency might facilitate simultaneous efforts to increase or centralize Presidential power—as experience with the Budget and Accounting Act (budget formulation) and the Administrative Procedure Act (rulemaking) arguably demonstrate.[62] In these two cases, transparency could be used by the institutional presidency (e.g., OMB) in attempts to control the actions of agencies and to promote the President's policy agenda.

Similar issues might arise in other contexts, as well. As noted earlier in this report with respect to the GPRA Modernization Act, for example, the new law realigned the process of updating agency strategic plans to coincide with the first year of Presidential terms, once every 4 years, instead of once every 3 years under previous law (irrespective of when a new President arrives).[63] As a result, GPRAMA's new timing framework reduces the required frequency of agencies' consultations with non-Federal stakeholders and, furthermore, appears to nest these consultations (and congressional consultations) within the 1st year of a President's term. During the first year of a Presidential term, Presidents traditionally are focused on influencing agencies to adopt the President's policy preferences. As a consequence, OMB's ability to influence or direct the choices of agencies and the information that they present may be enhanced in comparison with previous law.[64] The implications of GPRAMA's timing change remain to be seen, including regarding agencies' responsiveness to Congress and non-Federal stakeholders.

TRANSPARENCY, PARTICIPATION, AND REPRESENTATION, BUT FOR WHOM?

When a person speaks about transparency, participation, and representation, a key question may be asked: For whom? Recent developments in the executive branch help to illustrate how this question may raise issues for Congress in its multifaceted work. To some extent, the congressional strategy of embedding transparency, participation, and representation into the operations of government has been embraced by the executive branch. Recent government actions have adopted new technologies that offer a more proactive form of access to executive branch operations and policymaking. For example, in 2009, the Obama administration unveiled its Open

[62] For discussion of OMB's role on behalf of the President in rulemaking, see CRS Report RL32397, *Federal Rulemaking: The Role of the Office of Information and Regulatory Affairs*, coordinated by Maeve P. Carey.

[63] Continuing from previous law under GPRA, when an agency develops or makes adjustments to its strategic plan, GPRAMA requires the agency to consult with "entities potentially affected by or interested in such a plan."

[64] For discussion, see CRS Report R42379, *Changes to the Government Performance and Results Act (GPRA): Overview of the New Framework of Products and Processes*, by Clinton T. Brass.

Government Directive, which requires, among other things, that agencies release a variety of datasets to the public.[65]

With a multitude of newly released datasets and other information available to the public, the administration stated that it will be the duty of the public to keep agency performance in check.[66] This "crowdsourcing," or using the collective opinions of a mass, online audience, may improve the quality of data that is released to the public by allowing more people to search through datasets. Reliance upon crowdsourcing, however, may give those members of the public with more time and resources more opportunity to review and analyze Federal data, effectively privileging certain groups.

Access to these datasets also may prompt additional questions or concerns. Several might be highlighted.

- Releasing these datasets to the public assumes that the public and oversight bodies have the knowledge, capacity, and resources to evaluate the data, offer valid insights, and reach replicable results and verifiable conclusions.
- Inadvertent or purposeful manipulation of the datasets may allow certain groups or individuals to present unclear or skewed interpretations of government data.
- As agencies release hundreds or thousands of datasets, users may need specialized knowledge to identify appropriate datasets to meet their needs.
- Counterintuitively, this releasing of vast amounts of data may make public access and participation more difficult, adding to the aforementioned information overload. For example, public users and Members of Congress may have to sift through extensive information or thousands of datasets to find what they need to answer their policy questions.
- Federal and non-Federal stakeholders may not be familiar with the datasets held by each agency, or may not be aware of unique sensitivities of these data.
- There may be significant costs associated with adapting certain datasets and vernacular to more standardized and accessible formats.
- A related oversight issue may arise. Executive branch agencies may be releasing only certain information and datasets, while keeping others from public view for a variety of potential reasons that might or might not raise concerns.[67]

Over time, changing circumstances and technologies also may change the practical meanings of access and participation. As noted earlier, FACA allows members of the public to participate in the

[65] For discussion of the directive, see CRS Report R42817, *Government Transparency and Secrecy: An Examination of Meaning and Its Use in the Executive Branch*, by Wendy Ginsberg et al. The directive required agencies to place three "high value" datasets on the Data.gov Web site. The directive also discussed the use of other public venues for government data, including USAspending.gov and Recovery.gov.

[66] At a December 10, 2009, Senate Budget Committee Task Force on Government Performance hearing, both of the Obama administration's witnesses said that watchdog groups and members of the public would enforce agency accountability. U.S. Congress, Senate Committee on the Budget, Task Force on Government Performance, *Data-Driven Performance: Using Technology to Deliver Results*, 111th Cong., 1st sess., December 10, 2009, at http://www.budget.senate.gov/democratic/public/index.cfm/hearings?ID=7c1b89ca-d5cb-4c13-a3b3-f6f842a02d57.

[67] For discussion, see CRS Report R42817, *Government Transparency and Secrecy: An Examination of Meaning and Its Use in the Executive Branch*, by Wendy Ginsberg et al.

policymaking process. The law requires agencies to provide public access to meetings. If a member of the public is unable to attend the meeting, he or she can access meeting records. In many cases, Federal agencies are using new technology to make meetings and records more accessible. For example, some agencies place committee records online and make audio or video recordings of the meetings available online. Additionally, some departments or agencies, including the Department of Health and Human Services, webcast many meetings and permit online audience members to submit questions to committees in real time. These new methods of access and participation, however, may raise new considerations for Congress. For example, does providing public online access allow agencies to hold meetings in inconvenient or publicly inaccessible locations, thereby limiting in-person access? Does providing electronic access privilege those with online access or higher Internet bandwidth? Questions like these seem likely to continue to arise in many contexts.

Concluding Observations: Looking Back and Looking Ahead

The Federal Government has experienced considerable evolution in the last century. The last hundred years were a period when Congress took many steps to embed transparency, participation, and representation into the ways in which agencies operate—increasing the intensity with which agencies interact with non-Federal stakeholders. The pace of change facing the Federal Government and the Nation at large appears to continue unabated. Consequently, Congress may see an ongoing need to revisit the ways in which agencies operate.

Changes in political and social context—as well as leveraging of new technologies—have provided more opportunities for, and presented additional complexities to, public engagement with the government. For example, Congress has amended the Freedom of Information Act several times, including in one instance to expand the definition of "representative of the news media" to include activities associated with bloggers.[68] Yet just as transparency, participation, and representation have transformed many aspects of how the public may engage with agencies, increased public engagement simultaneously raises issues for Congress in its varied lawmaking, representational, and oversight work. As time passes, it appears likely that Congress will wrestle with many of the same issues and tradeoffs, but in new guises.

[68] P.L. 110–175, 121 Stat. 2524 (2007). Status as a representative of the news media reduces the fees affiliated with processing a request for records, compared to other types of requesters.

Committee Assignments and Party Leadership: An Analysis of Developments in the Modern Congress

JUDY SCHNEIDER

Specialist on the Congress

House and Senate rules, supplemented by party rules and practices, have changed many times since the First Congress. Changes have been made in management of the system, assignment decisions, and chair selection in a manner that allows committees to perform their work yet serves the evolving goals of party leaders and individual Members alike. However, it seems evident that, over the last 20 years or so party leaders have become frustrated with rank-and-file Members; rank-and-file Members have become frustrated with committee leaders; and committee leaders have become frustrated with party leaders. This frustration often leads to blaming the system, whether it is a system of strong committees or strong party leaders. How to lessen the frustration without destroying a system that seems to have worked for over 200 years is a continuing struggle.

Introduction

Numerous House and Senate rules address the committee system, including membership, leadership, jurisdiction, and referral. Party caucus and conference rules also govern the organization and structure of committees. In addition, many party rules supplement or even circumvent Chamber rules to reflect, for example, the size of the majority and the political and other needs of both the majority party and its individual members. Finally, the appointment of committee members and the selection of most committee chairs is essentially a party function rather than a Chamber or individual committee function.

Chamber and party rules and practices on organizing the committee system have changed many times over more than two centuries. Party leaders and party members have promoted or made changes in order to manage the committee system, assignments to committees, and chair selection in a manner that allows committees to perform their policy work while serving the goals of party leaders and individual Members alike.

Congress has two main centers of power: committees and parties. A key objective of this report is to assess their relationship.

The report is organized into eight discrete but generally interconnected sections. The first three sections provide a brief historical overview of the committee system. The first section discusses committee organization from the First Congress (1789) and ends prior to the adoption of the Legislative Reorganization Act (LRA) of 1946 in the 79th Congress. The second section examines changes to the committee system made by the 1946 LRA as well as those included in the LRA of 1970. The third section focuses on committee system reforms after 1970. Special emphasis on the process for assigning Representatives and Senators to committees is provided in these sections as well as throughout the report.

The fourth section deals with committee jurisdiction, the referral of legislation to committees, and their relationship to Members' committee assignments. A principal motivation for Members in seeking assignment to a specific committee is the committee's jurisdiction. Referrals of legislation are based on this jurisdiction.

The fifth section provides a detailed review of the committee assignment process for Members of the House and Senate. The sixth section takes up the selection of committee chairs. These two sections overlap. Members have goals in seeking committee assignments, and party leaders often have different goals in making those assignments. The process for assigning Members to committee and selecting committee chairs has undergone many changes in the modern era. For example, majority party members for many decades ascended to chairmanships by being the lawmaker with the most years of continuous service on a committee. That has changed in contemporary times.

The fifth and sixth sections (on committee assignments and committee chair selection, respectively) also explain the changes in the two processes and examine some of the potential tensions between individual Members' goals and party leaders' goals in both procedures.

The report concludes with two interrelated sections. The seventh section analyzes a number of structural issues (the assignment process, for example) inherent to the development of the committee system. The eighth ties together some of the overarching themes reflected in this report. The basic message is that the committee system keeps evolving to accommodate the work of Congress and the goals of individual Members and party leaders.

Committee Organization: 1st Congress to 79th Congress

Woodrow Wilson, in his seminal work *Congressional Government*, stated that the Congress sits not for serious discussion but to sanction the conclusions of its committees.[1] The organizational structure of the modern committees in the House of Representatives and Senate might have had its origins in the First Congress, but little remains from that period. Committees, then and now, vary in their structure, the scope of their activities, and the political environment in which they operate. Much of this variety accommodates the needs of a Member's party, the Member's party leadership, and the individual members of a committee.

[1] Woodrow Wilson, *Congressional Government* (1885; repr., Cleveland: Meridian Books, 1956), p. 69.

In the earliest Congresses, the House would resolve into a Committee of the Whole to decide the general principles of legislation and then create a temporary select committee to draft a final product. Several hundred select or special committees were created during the first several Congresses. The transition to standing committees, however, began almost immediately. The Committee on Elections was created in 1789; the Committee on Commerce and Manufacturers and the Committee on Revision of the Laws were created in 1795. The Ways and Means Committee was established 7 years later, although it existed as a select committee beginning in 1789, was dissolved soon thereafter, and was then again reestablished as a select committee in 1795. Judiciary was established in 1813 and Agriculture in 1820. By 1900, the House had 58 standing committees; 30 years later it had 67 standing committees. In 1927, the House abolished several panels by merging them into one committee.

The Senate's early history was similar. Hundreds of temporary, ad hoc panels were created to draft legislation, make policy recommendations, or both, but a transition to standing committees commenced early in the Senate's history. As in the House, a Committee on Elections was created in 1789. In 1816, the Senate created its first standing legislative committees: Foreign Relations, Finance, Commerce and Manufactures, Military Affairs, Militia, Naval Affairs, Public Lands, Claims, Judiciary, Post Office and Post Roads, Pensions, and District of Columbia.[2] By 1844 there were 27 standing committees, by 1898 there were 49 standing panels, and by 1920 there were 74. A Senate reorganization in 1921 abolished 41 committees, mainly those that had been moribund for years.

Each Chamber created an Appropriations Committee, in part to manage the debts incurred from the Civil War. The House created its panel in 1865 in order to alleviate the legislative burden on the Committee on Ways and Means, which already had responsibility for among the most complex and important legislation: taxes, tariffs, and spending. The Senate followed suit in 1867 in order to ease a similar burden on the Finance Committee.[3]

Standing committees arose early, as it became apparent that continuing to create a select committee for each legislative proposal was administratively difficult. It also meant that each Chamber had to consider an issue at least twice: first to create the select committee and then to debate the proposal itself. Standing committees, as permanent entities, provided continuity from one Congress to the next, and the incoming Members could develop expertise over time through service on permanent committees.

---

[2] There were four standing housekeeping committees established prior to 1816: Enrolled Bills was created in 1789, Engrossed Bills in 1806, Library in 1806, and Audit and Control of the Contingent Expenses of the Senate in 1807.

[3] The role of both Appropriations Committees has changed through time. For example, in 1885 in the House and in 1899 in the Senate, the panels had most appropriations measures removed from their jurisdiction. It was not until the Budget and Accounting Act of 1921 that the Appropriations Committees gained back authority over the appropriations process as it is recognized today. The 1921 act also created the Bureau of the Budget, the precursor of the Office of Management and Budget, and the General Accounting Office, now known as the Government Accountability Office. See also CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920 to 2013*, by Jessica Tollestrup.

Legislative Reorganization Acts of 1946 and 1970[4]

As World War II drew to a close, Members realized that the impact of the Depression of the 1930s and war in the 1940s necessitated a review of the Federal Government structure, which had seen an explosion in the number of departments, agencies, and programs during those years. Members also recognized the need to review Congress' own organization and structure and created a Joint Committee on the Organization of Congress to do an extensive examination of the organization and operation of Congress.[5]

The Legislative Reorganization Act of 1946 (P.L. 601) is the seminal law affecting the committee system in the House and Senate. Its immense scope was unprecedented. The objectives of the legislation included streamlining and simplifying the committee structure, eliminating the use of select committees, clarifying committee responsibilities, defining the jurisdiction for each panel, and reducing potential jurisdictional disputes. Never before had Congress made such broad changes in its organization, administration, procedures, resources, and workload management. Never before had Congress so radically restructured its committee system, and never before had the two Chambers worked so broadly in tandem.

The measure consolidated the 33 Senate standing committees to 15 and the 48 House standing committees to 19. The measure imposed limitations on the number of panels on which Members could serve, provided for professional committee staff,[6] and exhorted committees to increase oversight of the executive branch, among other things. In the two Congresses following passage of this expansive legislation, no challenges were levied to it, nor were changes made to it, even though one of the two Congresses was controlled by Democrats and the other by Republicans.

When the 80th Congress convened in January 1947, implementation of the act was foremost in each Chamber's and each party's mind. Republicans gained control of both Houses for the first time since 1931, making committee membership changes necessitated by the committee consolidation easier to accomplish. In the House, 102 Members of the 79th Congress did not return. In the Senate, 22 Senators whose terms were expiring did not return.

Prior to the legislation, House standing committees ranged in size from 2 to 42 members, with a committee having an average of 19 members. Under the act, 15 of the standing committees had an average of 25 members. Before the act, Senate standing committees ranged in size from 3 to 25 members, with an average of 15 members. Under the act, all the Senate standing committees had 13 members—except Appropriations, which had 21, compared to 25 prior to the act.

Before the act, each Senator was entitled to serve on five standing committees: three so-called major committees and two so-called

[4] See CRS Report RL31835, *Reorganization of the House of Representatives: Modern Reform Efforts*, by Judy Schneider, Betsy Palmer, and Christopher M. Davis; and CRS Report RL32112, *Reorganization of the Senate: Modern Reform Efforts*, by Judy Schneider et al.

[5] Congress 2 years later enacted legislation, signed by President Harry Truman, to similarly evaluate the executive branch. The legislation created the Commission on Organization of the Executive Branch of the Government, known as the Hoover Commission, after its chair, former President Herbert Hoover.

[6] See the companion CRS centennial report in this volume, *Congressional Staffing: The Continuity of Change and Reform*, by Ida A. Brudnick.

minor committees. Under the act, Senators were limited to service on no more than two standing committees, although some exemptions were allowed. House Members were limited to service on just one standing committee.

In the years following the implementation of the 1946 act, policy issues continued to grow in complexity and visibility, and some Members wanted to be involved in all aspects of an issue. Several panels created subcommittees in order to circumvent the literal jurisdictional terms included in the 1946 act, but committee chairs took over some of those chairmanships as well.

Congress again created a Joint Committee on the Organization of Congress, and the resulting Legislative Reorganization Act of 1970 (P.L. 91–510) was the second time in history that Congress adopted a measure to alter its organization and operations. Although not as extensive as the 1946 law with respect to the organization of committees, some changes were included.[7] Several changes to the committee system were important, nonetheless, including creation of a Senate Veterans' Affairs Committee with jurisdiction taken from other panels and responsibility for urban affairs policy given to the renamed Senate Committee on Banking, Housing, and Urban Affairs.

With civil rights legislation in the forefront and Southern Senators blocking legislation, the debate in the joint committee provided an outlet for those Members who supported civil rights legislation to limit the multiple roles of civil rights opponents. Senate committee sizes were reduced, and Senators were limited to service on two major committees and one minor one. A Senator could hold only one committee chairmanship and not more than one subcommittee chairmanship on any major committee. Four committees—eventually known as the "Super A" or "Big Four" committees—were singled out, and Senators could serve on only one such committee.[8]

Committee System Reforms After 1970

The House and Senate committee systems of the LRAs needed adaptation to the new policy issues of the 1970s and later. Moreover, there was an influx of younger Members who did not want to wait decades to hold a position of power on a committee. Efforts to reform the committee system in the House in 1974 and 1980, however, saw limited success. The House Democratic caucus made numerous changes affecting its committee assignment system, perhaps the most important being disallowing the chair of a major committee from serving on another committee. Nevertheless, some changes related to policy issues were made in the House before and after 1970: A new Committee on Science and Astronautics had been created in 1958, a Committee on Standards of Official Conduct (now Ethics) was created in 1967, and a Committee on the Budget was created in 1974. A new standing Committee on Home-

[7] Most of the changes related to the committee system affected committee rules, committee hearings and meetings, and committee reports. The requirement for committees to adopt rules was in part a means to curb the committee chairs' largely unfettered authority.

[8] The Super A committees for both parties were Appropriations, Armed Services, Finance, and Foreign Relations. Democrats removed the Foreign Relations Committee from this category in recent years. See "Assignment limitations" under Senate below.

land Security was created in 2005, after two Congresses in which a Select Committee on Homeland Security existed.[9]

Efforts to reform the Senate committee system in 1977 were more successful, with, among other changes, six panels abolished. As in the House, a Committee on the Budget was created in 1974. A 1984 Senate attempt to address changes to the Senate assignment process was less successful.[10] In 2004, the Senate modified the jurisdiction of its Committee on Governmental Affairs and renamed the committee as the Committee on Homeland Security and Governmental Affairs, effective in 2005.

A third Joint Committee on the Organization of Congress was created in 1992. House Members advocated limiting committee assignments and reducing the number of subcommittees. Senators also advocated reducing the number of subcommittees and limiting the number of committee and subcommittee assignments. Neither Chamber took action on the recommendations,[11] although, when the next Congress convened and Republicans took control of both Chambers, many of the recommendations were revisited and several were adopted.

One major change in the committee system during the post-1970 era was the growth of subcommittees. It could be argued that the power of committee chairs—most of whom were selected by some mechanism employed by party leadership—was curbed. However, because party leadership had a limited role in the selection of subcommittee leaders, subcommittee leaders acquired added power vis-à-vis committee chairs. That has changed, at least in the House, where party rules require that subcommittee leaders of some powerful committees be approved by a party's assignment entity and confirmed by a vote of the full caucus or conference.

Committees' and Members' policy workloads continued to increase, and Congress as a whole was seeking to assert congressional authority vis-à-vis the President. Members were stretched in their ability to keep up with their committee and subcommittee work. Newer Members wanted more opportunities to serve on committees, exercise influence over policy areas, and chair subcommittees, opportunities that were in part blocked by senior Members' multiple committee assignments and senior committee positions. Some Members, therefore, again pushed for limits on committee assignments.

The 1946 act, and succeeding revisions in the structure and rules of each Chamber, changed many things about Congress as an institution and about the committee system specifically. However, the foundation laid in the 1946 LRA is, in most respects, still intact.

[9] In the 107th Congress, a select committee comprising leaders from both parties was charged with drafting the organic legislation for the proposed Department of Homeland Security. In the 108th Congress, a new select committee provided oversight of the new department and was directed to make recommendations to the House on creating a standing Homeland Security Committee.

[10] Seventeen committee slots were eliminated. See CRS Report RL32112, *Reorganization of the Senate: Modern Reform Efforts*, by Judy Schneider et al.

[11] In the House, however, four select committees—service on which did not count against committee assignment limits—were abolished.

Jurisdiction and Referral

Perhaps no characteristic of the committee system is more critical than its jurisdictional structure—the way control over policy subjects is divided and distributed. Both House and Senate rules address the jurisdiction of each committee and how measures are referred to committee. Members often seek committee assignments based on the language of these rules. House Rule X and Senate Rule XXV designate the subject matter within the purview of each committee. However, House and Senate jurisdictional language is broad and reflects an era in which governmental activity was not so extensive and relations among policies were not so intertwined as now. As noted earlier, much of this language emanated from the 1946 LRA, with subsequent changes enacted without reference to a comprehensive perspective through time. Topic omissions and a lack of clarity, as well as overlapping jurisdiction among committees in some areas, exist. Precedent, therefore, also plays a role in determining a committee's jurisdiction over a particular issue.

Referral of measures is formally the responsibility of the Presiding Officer in each Chamber, although in practice the Chamber's Parliamentarian assumes this responsibility. In the House, a referral is made to the panel with "primary" responsibility, with an allowance for measures to be referred to other panels in a "sequential" manner. The Presiding Officer also has authority to impose time limits on panels receiving a referral.[12] In 2003, the Speaker of the House was also authorized to refer measures without the designation of a primary committee under "exceptional circumstances." It appears that this authority has been exercised only once.

Formal agreements among committees, referred to as memoranda of understanding, often supplement the language in Rule X to assist in determining a referral. Competition among committees occurs, especially related to measures that in the past had been jointly referred or issues of breadth and complexity.[13] For example, Medicare Part A is within the jurisdiction of one committee, and Medicare Part B is within the jurisdiction of a different committee. For a Member seeking assignment to a panel responsible for health care, to which panel would he or she seek assignment? Relatedly, if a comprehensive health care measure were introduced, which panel would be deemed primary, and which would receive a sequential referral?

In the Senate, a referral is made to the committee with "predominant" jurisdiction; referral to additional committees is rare. In fact, Senate leaders have authority (assuming unanimous consent cannot be attained) to refer a measure to more than one panel by motion. This procedure has never been invoked.[14] Many Senators, staff, and advocates understand that a desired legislative outcome can be influenced by creative drafting in order to have a measure referred to a friendly or unfriendly committee.

[12] Prior to 1995, measures could be referred simultaneously to two or more committees.

[13] See CRS Report 98–175, *House Committee Jurisdiction and Referral: Rules and Practice*, by Judy Schneider.

[14] See CRS Report 98–242, *Committee Jurisdiction and Referral in the Senate*, by Judy Schneider.

For example, is tobacco an agricultural commodity, an issue within the purview of a largely friendly Agriculture Committee? Or is tobacco a health risk, an issue within the predominant responsibility of a generally unfriendly Committee on Health, Education, Labor, and Pensions (HELP) Committee? Or is the issue one related to advertising, such as on a billboard near an elementary school, an issue generally considered by the Committee on Commerce, Science, and Transportation, a panel that has shown both sympathy and hostility on tobacco issues? Would a Senator who represents a tobacco State but is antismoking try to serve on the HELP Committee rather than the Agriculture Committee? Might that same Senator, if appointed to the Agriculture Committee, draft tobacco legislation in such a way as to have it referred to the HELP or Commerce Committee?

House Rule X and Senate Rule XXV contain broad terms and do not describe specific programs, as the examples of Medicare and tobacco demonstrate. When Members seek assignments, they do so based on their understanding and interpretation of their Chambers' jurisdictional rules. The referral systems in the two Chambers, however, give leadership discretion to refer legislation in a manner to influence a measure's fate. Leaders can use both referrals and assignments to enhance their influence over committees and the committees' work.

Committee Assignment Process

The importance of a Member's committee assignment relates to the Member's attitude toward his or her legislative role, the Member's perception of district or State needs, and the Member's own ambitions. A Member must balance realistic goals with political reality—the needs of the leadership and the issues that must be addressed versus those that are "hot," the latter of which are most visible to constituents, lobbyists, and the press. Further, committee jurisdictional alignment provides Members an incentive to obtain assignment to a panel in line with the subjects the Member wishes to pursue legislatively or to pursue other opportunities an assignment may provide.

Various factors govern assignment decisions. For the party entity or party leader deciding assignments, those factors might include party loyalty, regional considerations, personal preference, and leadership preference. (Additional factors are listed below under "Party Organizations Making Committee Assignments.") For the individual Member, additional factors include professional background, personal interest, the politics of other Members of a committee, and the ability to raise money for reelection.

At the beginning of a new Congress, resolutions containing committee rosters are adopted in each Chamber. The rosters reflect the party caucus or conference actions regarding both committee assignments and seniority on each committee. Although Members can change committees throughout their careers, most remain on one or more of the committees to which they were initially assigned, in part to gain seniority and eventually to try to get a leadership position on that committee (chair or ranking minority member). There are, nonetheless, examples of Members who seek assignment to a less desirable panel because the more senior members of these pan-

els are closer to retirement, meaning the opportunity for advancement might come sooner than on a committee with younger leaders and leaders-in-waiting.[15]

It was once true that only Members from the Far West and Rocky Mountain States were assigned to panels dealing with public lands, and only farmers and ranchers were placed on panels dealing with agriculture. The story of former Representative Shirley Chisholm speaks to a change in assignment requests and the appointment of Members that began in the late 1960s. Although she was from a very urban district in New York City, Representative Chisholm was assigned to the Committee on Agriculture because of its jurisdiction over food stamps and other food programs. She protested. Leadership responded to her protestations and reassigned her to the Veterans' Affairs Committee until the following Congress when she received assignment to the panel she had originally sought, Education and Labor.[16]

Similarly, the Armed Services Committees in both Chambers traditionally had more conservative Members assigned to it. That too began to change when more liberal Members were assigned to the panel as the Nation began to view the war in Vietnam more critically. The Judiciary Committee in each Chamber traditionally had only Members with law degrees appointed to it. That, too, has changed. Representative Sonny Bono, for example, argued that his understanding of copyright law was more practical than that of most lawyers; he was assigned to the Judiciary Committee. Senator Al Franken, also not an attorney, made a similar case for his assignment to the Judiciary Committee.[17]

As the examples of Senator Franken and Representative Bono attest, their desire to serve on particular committees caused the leadership to break tradition when confronted with the desires of Members who were well-known public figures. Other nonlawyers also sought assignment to the Chambers' Judiciary Committees but were not accommodated. Antiwar Members could be assigned to the House Armed Services Committee, but their small number could not outvote the majority of prodefense committee members. A Member attracting public attention, such as Representative Chisholm, was accommodated, but other Members who manage to attract public attention could irritate leadership sufficiently that they might be removed from the committee or committees to which they were originally assigned or be placed on less desirous committees with less influence over policy issues that matter to leadership. Leaders have other options, too, such as assigning an outspoken

[15] Three examples of senior House Members of a recent era changing committees after many years of service include Omar Burleson, who moved to the Ways and Means Committee after 22 years (and having held the chairmanship of the House Administration Committee); Edith Green, who moved to the Appropriations Committee after 19 years of House service; and Otis Pike, who moved to the Ways and Means Committee after 15 years of House service. In recent Congresses, in contrast, some freshmen Members have become subcommittee chairs or ranking minority members.

[16] Chisholm reportedly responded to her party leadership with the following retort: "Apparently all they know here in Washington about Brooklyn is that a tree grew there." Several years later, Chisholm was assigned to the Committee on Rules, an arm of the party leadership. See James Barron, "Shirley Chisholm, 'Unbossed' Pioneer in Congress, Is Dead at 80," *New York Times*, January 3, 2005.

[17] Senate Democratic rules generally prohibit Senators from the same State from serving on the same committee. This did not impede Senator Franken in being appointed to the Judiciary Committee, on which his senior State colleague already served.

Member to a committee that limits the Member's visibility, such as the Intelligence Committee.

SIZE AND RATIO

The Constitution is silent on committees. A House rule did exist that established the size of committees; however, that rule was removed with adoption of the Committee Reform Amendments of 1974, the so-called Bolling committee reforms.[18] Committee sizes are included in Senate rules, although they are often ignored. The standing rules of each Chamber are silent regarding party ratios on committees. Currently, soon after the biennial election, party leaders in each Chamber meet to negotiate individual committee sizes and party ratios. In recent years, actual negotiation has been conducted by Senate party leaders but infrequently by House party leaders.

Parties in both Chambers strive to draft tentative committee sizes and ratios prior to the organization meetings held in late November or early December. Sometimes, however, this process extends into the new Congress.

Committee sizes are largely static, with ratios tending to reflect party strength in a Chamber.[19] In the Senate, the ratio is generally uniform among committees. In the House, that is not the case. For example, the Committee on Rules has a ratio of two to one, plus one, and both the Appropriations and Energy and Commerce Committees have had, in recent Congresses, ratios that gave the majority party more seats than would reflect party strength. Both the Appropriations Committee and Energy and Commerce Committee have extensive jurisdictional portfolios, are perceived as important policy avenues for a leadership agenda, and are seen as useful assignments for access to the ability to raise campaign funds. In both Chambers, committee size and ratio have also been altered to accommodate the wishes of an individual Member or the needs of the respective party leaders.

Each Chamber has constitutional authority to make its own rules, which includes organizing the committee system. In 1981, House Republicans sought to change the ratios on four committees (Appropriations, Budget, Rules, and Ways and Means) by offering an amendment to the resolution adopting the rules of the House for that Congress. The amendment failed, with one Democrat supporting the Republican amendment. Republicans then filed a lawsuit against the Democratic leadership, claiming violations of the Constitution harming minority party Members and their constituents, who were denied proportional representation on committees. The U.S. District Court for the District of Columbia dismissed the case on October 8, 1981, holding committee organization was an internal matter under separation of powers; the dismissal was upheld on appeal.[20]

---

[18] H. Res. 988, agreed to October 8, 1974. Section 301 deleted the size rule. Representative Richard Bolling, coauthor with Representative David Martin of the resolution to create a select committee to study the committee system, served as chair of the select committee, and Representative Martin served as the ranking Republican.

[19] See CRS Report R40478, *House Committee Party Ratios: 98th–113th Congresses*, by Matthew E. Glassman; and CRS Report RL34752, *Senate Committee Party Ratios: 98th–112th Congresses*, by Matthew E. Glassman.

[20] *Vander Jagt* v. *O'Neill*, 699 F.2d 1166 (D.C. Cir. 1983).

Once sizes and ratios are determined, the committee assignment process begins in earnest. A combination of Chamber and party rules govern how many and what types of committees a Member may serve on.

EARLIER ASSIGNMENT PROCEDURES

In 1789, in the First Congress, members of so-called important House committees were elected by ballot, although the Speaker was charged with making assignments to panels with fewer than three members. Beginning in 1790, pursuant to House rule, all committee members, regardless of party, were appointed by the Speaker of the House, although allowance was made for the House majority to question the Speaker's selections. Despite several attempts to curb the Speaker's sole power to make committee assignments, his authority remained in place until the so-called "revolt of 1910" and the overthrow of Speaker Joseph Cannon's autocratic reign.[21]

Subsequently, Democrats and Republicans chose different methods for making committee assignments. Democrats on the House Ways and Means Committee acquired responsibility for making all Democratic committee assignments in the House from 1911 until 1975. (After the 1910 revolt, Speakers gradually gained influence in the appointment of majority party Members to the Rules Committee.) The Democratic Members of the Ways and Means Committee were selected by the entire Democratic caucus, and the party leader, by tradition, was chair of the committee.[22] Further, Ways and Means Committee members were not allowed to serve on other House committees, essentially the beginning of designating "exclusive" committees, as explained below ("Assignment Limitations").

House Republican committee assignments were made by the floor leader from 1911 to 1919 and then transferred in 1917 to a newly created Committee on Committees. This entity allowed a Republican Representative from each State delegation to serve, and each Member had as many votes as there were Republicans in the State's delegation.

The Republican Conference in 1917 dictated that no floor leader could also chair a legislative committee, in effect severing the connection with the chairmanship of the Committee on Ways and Means. Soon thereafter, the Democrats adopted similar rules.

In the early Congresses, assignment of Senators to panels was a haphazard affair. In fact, the majority party in the Senate did not necessarily control the majority of seats: Assignments were made by a vote of the entire Senate membership. In 1823, the Presiding

---

[21] The major complaints against Speaker Cannon included that he delayed making committee assignments, appointed only political allies to important panels, and violated seniority in making assignments and selecting committee chairs. See the companion CRS centennial report in this volume, *The Evolving Congress: Overview and Analysis of the Modern Era*, by Walter J. Oleszek.

[22] Many scholars do not agree with the importance of this change. Some contend that authority merely shifted to the majority leader from the Speaker of the House. See Kenneth A. Shepsle, *The Giant Jigsaw Puzzle* (Chicago: University of Chicago Press, 1978), pp. 25–28.

Officer was given the authority to appoint committee members.[23] This approach was not used in 1825 but was reinstated in 1826. In 1828, the assignment authority was granted to the President pro tempore. Beginning in 1833, however, Senate committee members were determined by ballot in each session of Congress, with the committee member who received the most votes during balloting named as committee chair.[24] This approach was not used between 1837 and 1845, when it was waived by unanimous consent, but was reinstated in 1845. In 1846, the Senate defeated an attempt to allow the Vice President to make committee assignments. The majority leader, with the agreement of the minority leader, then submitted a list of committee members ranked by committee seniority. The practice of submitting lists continues today.

PARTY ORGANIZATIONS MAKING COMMITTEE ASSIGNMENTS

Today, recommendations for assignment of party members to serve on committees are made by party entities:

- For the Senate Democrats, a Steering and Coordination Committee
- For the Senate Republicans, a Committee on Committees
- For the House Democrats, a Steering and Policy Committee
- For the House Republicans, a Steering Committee

Constituted prior to the early organization meetings traditionally held in November and December, members of these groups are appointed by the respective party leader within any constraint of party caucus or conference rules. Membership on these panels may vary each Congress, but the panels generally are structured to give the party leadership considerable influence.

The party committees recommend committee slates, generally by secret ballot, to the respective full caucus or conference, which typically ratifies them. House and Senate resolutions reflecting the recommendations are then presented by each party entity and adopted without debate or amendment by the respective Chamber.

In making recommendations to the full party caucus or conference, several factors influence assignment decisions, including the number of vacancies on each committee, the number of Members competing for those vacancies, and Chamber rules regarding limitations on each committee. Also taken into account are the Member's seniority, background, ideology, electoral margin, and leadership support and preference. Geographic balance is often considered as well. Additional factors were listed above ("Committee Assignment Process").

HOUSE

The Democratic Steering Committee was created in 1933 and existed until the end of the 1950s, although it was mostly dormant throughout this period. Congressional scholars have suggested that under a strong Speaker, such as Sam Rayburn of Texas, a personal

[23] That same year, the Senate rejected a proposal that would have allowed the full Senate to choose the chairs of the most important committees, and those chairs would then have had the power to make all other committee assignments.

[24] Lauros Grant McConachie, *Congressional Committees: A Study of the Origins and Development of Our National and Local Legislative Methods* (New York: Crowell, 1898), p. 323.

relationship was preferable to a formal structure. In 1962, at the request of party liberals, the Steering Committee was reestablished, although its responsibilities were unclear.[25] In 1973, it was reconstituted as the Democratic Steering and Policy Committee and, in 1974, was given authority to recommend committee assignments and committee and some subcommittee leaders. In 1994, with the Democrats now in the minority, the panel was divided into a Steering Committee and a distinct Policy Committee; in 2003, although Democrats were still in the minority, the panel was recombined into a Steering and Policy Committee.

Currently, the Democratic Steering and Policy Committee comprises regionally elected Members, top party and committee leaders, a representative of the freshmen class, and up to 16 Members appointed by the Democratic leader. Each member has one vote.

The precursor to the Republican Steering Committee was established in 1919 as a Committee on Committees, comprising Republicans representing each State that had elected at least one Republican to the House; each State delegation selected its representative on the Committee on Committees. Starting in 1953, a subcommittee of the Committee on Committees was created and given responsibility for making committee assignments. The Republican leader selected the subcommittee members. It comprised only Members from States with the largest Republican delegations: New York, Ohio, Pennsylvania, California, Illinois, Michigan, and New Jersey. The Republican leader did not have a vote, and the number of votes cast by each other member equaled the number of Republican Members in a State's delegation. In 1965, the Committee on Committees was restructured and reconstituted as an Executive Committee, retaining its responsibility for making committee assignments. Although membership on the Executive Committee changed, the Executive Committee structure remained unchanged until the 100th Congress (1987–1989).

In the 100th Congress, the Republican leader appointed a Task Force on Conference Rules and Procedures, which in turn created a Subcommittee on Committee Assignments to review and possibly reform the assignment process and the Executive Committee structure. The subcommittee recommended making the Republican leader a voting member of the Executive Committee, electing regional representatives based on compact State groupings, and providing representation for freshmen and women Members. In the following Congress, the Executive Committee was renamed the Committee on Committees. When Republicans gained control of the majority in 1995, the Committee on Committees was renamed the Steering Committee, and the party leadership influence over committee assignments was strengthened.

Currently, the Republican Steering Committee comprises regionally elected Members, top party and committee leaders, a representative of the sophomore class, and one or more representatives of the freshmen class. The Speaker has five votes, the majority leader has two votes, and other members have one vote each.

[25] Randall B. Ripley, *Party Leaders in the House of Representatives* (Washington, DC: Brookings Institution, 1967), p. 47.

ASSIGNMENT LIMITATIONS

Party rules, rather than Chamber rules, categorize committees. Both parties designate Appropriations, Energy and Commerce, Financial Services, Rules, and Ways and Means as exclusive committees. For the Democrats, however, Energy and Commerce is deemed exclusive only for Members named in and after the 104th Congress, and Financial Services is deemed exclusive only for Members named in and after the 109th Congress.

Under Chamber rules, and in some cases supplemented by party rules, Members may serve on two standing committees. Waivers are routinely granted by the Democratic Steering and Policy Committee and the Republican Steering Committee to allow Members to serve on three or, in some cases, four standing committees, but waivers are intended to be temporary for one or perhaps two Congresses. There are nonetheless exceptions. Both parties limit service to one exclusive committee, but waivers are also granted to Members assigned to an exclusive committee.

Service on the House Administration and Budget Committees are exempt from service limitations for Democrats, and Republicans are entitled to take a leave of absence and accrue seniority while serving on the Rules Committee. Both parties entitle their Members to serve on two nonexclusive committees.

Service on the Ethics Committee is exempted from assignment limits for both Democrats and Republicans, although service on the Ethics Committee is limited to three Congresses in the last five. Service on the Budget Committee is limited to no more than four Congresses in the last six, and service on the Permanent Select Committee on Intelligence has the same limitation. As with service on other panels, waivers are often granted.[26]

SENATE

As noted above, each party creates a panel to assist in the assignment process. Democratic Steering and Coordination Committee members are appointed by the Democratic leader, and each member has one vote. Republican Committee on Committees members are appointed by the Republican leader, and each member has one vote.

In 2004, Senate Republicans amended conference rules to allow the majority leader to fill half of the seats on the "Super A" committees as vacancies occurred. The remaining vacancies would be filled by seniority.[27] Super A committees are explained immediately below.

ASSIGNMENT LIMITATIONS

Senate rules categorize committees as "A," "B," and "C." Most standing committees are considered A committees. The B category also includes standing panels as well as one special and one joint committee. The B panels are not perceived as desirable as the A committees. The C committees are the remaining joint committees,

[26] See CRS Report 98–151, *House Committees: Categories and Rules for Committee Assignments*, by Judy Schneider.

[27] Veronica Olesksyn, "Loyalty and Political Needs Shape Makeup of Committees," *CQ Weekly*, April 11, 2005, pp. 894–896.

the Indian Affairs Committee, and the Select Ethics Committee. Each party designates several committees as "Super A." The panels designated as Super A have changed through time. For the Democrats, these panels are Appropriations, Armed Services, and Finance. (The Foreign Relations Committee lost Super A status in recent years.) For the Republicans, these panels are Appropriations, Armed Services, Finance, and Foreign Relations.[28]

Senators must serve on two A committees,[29] may serve on one B committee, and may serve on as many C committees as they want. Senators who serve on a Super A panel are not supposed to serve on a second Super A committee, pursuant to party rules. However, waivers are often granted to permit Senators to serve on additional panels within each category.

Republican Conference rules prohibit Senators from the same State from serving on the same committee, while Democratic practice, rather than rule, shows traditional adherence to the same principle. Again, waivers are often granted.

Committee Leadership Selection

Both parties in each Chamber have formal rules for selecting committee leaders. Just as a Member's assignment can affect the path of his or her career, the selection of a committee leader can influence the agenda that the committee follows and how the committee leadership interacts with the minority party, his or her own party leadership, and the individual members of the committee. Who the committee leader is can ultimately determine the fate of legislation within that panel's purview. There are Members who seek assignment to a panel because of who the committee leader is, and there are other Members who choose not to seek assignment to a particular panel for the same reason.

For much of the Nation's history, committee chairs were powerful figures. By the 1970s, however, that power was beginning to erode. The Steering Committees in each Chamber exercised more control over the selection of committee leaders, and the seniority system was not routinely followed. The balance of power changed from committee chairs to party leaders, especially in the House in 1995, when Speaker Newt Gingrich greatly de-emphasized seniority and the role of the Steering Committee and named committee chairs of his choosing. His successor, Dennis Hastert, employed the Steering Committee but had applicants for each chairmanship "audition" and respond to questions from the panel. It has been reported that the questions went beyond policy goals and addressed, for example, money raised for the campaign committees and loyalty to the party's policy agenda.

Perhaps nothing better exemplifies this era (and the relationship between committee jurisdiction, party leadership, and committee

---

[28] See CRS Report 98–183, *Senate Committees: Categories and Rules for Committee Assignments*, by Judy Schneider.

[29] The so-called Johnson rule, begun in 1953 under Majority Leader Lyndon Johnson, guaranteed that each Democratic freshmen Senator would serve on at least one major committee assignment. Republicans adopted their own version of the Johnson rule in 1965. A Republican addition provided that no Republican serving on a Super A committee may serve on a second Super A committee until all other Republicans were offered the opportunity to serve on the panel. The Republican rule was called the Javits rule after Senator Jacob Javits, who chaired the entity that drafted it, although the name is rarely used today.

assignment) than the selection of the chair of the Energy and Commerce Committee in the 107th Congress (2001–2003). Furthermore, when the House adopted its rules at the convening of the 107th Congress, the rules shifted the jurisdiction over insurance and securities from the Committee on Energy and Commerce to the Banking and Financial Services Committee, which was renamed the Committee on Financial Services.

Representative Billy Tauzin, formerly a Democrat who changed parties in 1995, had served in Congress for 11 terms and on the Energy and Commerce Committee for 10 terms—but for more than seven terms as a Democrat. Speaker Gingrich had notified Tauzin that his tenure on the committee would count toward his seniority when he changed parties, and Speaker Hastert upheld this understanding. Representative Michael Oxley had served 10 terms in the House and 9 on the Energy and Commerce Committee. Speaker Hastert and the Steering Committee selected Tauzin to chair the Energy and Commerce Committee and Oxley to chair the Financial Services Committee, in part justifying the selections based on the jurisdictional changes.[30]

Speaker John Boehner employs a Steering Committee—although with a modification from those of his predecessors. In the 112th Congress, Speaker Boehner had four votes in the steering panel (the majority leader had two and everyone else had one), whereas in the 113th Congress, Speaker Boehner had five votes. It should be noted that Speaker Boehner had served as a committee chair and wanted to curb the top-down approach of his predecessors as Speaker by empowering his chairs and committees. At the start of the 113th Congress, Speaker Boehner used his votes on the Steering Committee to deal with several Members in the Republican Conference disfavored by the leadership and to remove them from committees they served on during the previous Congress.

When the Democrats regained the House majority following the November 2006 elections, Speaker Nancy Pelosi retained a restructured Steering and Policy Committee but gave herself authority to appoint a specific number of members. When Representative Henry Waxman defeated the incumbent chair, John Dingell, for the Energy and Commerce Committee chairmanship in the 111th Congress (2009–2011), many attributed the defeat to the votes of members whom Speaker Pelosi had appointed to the Steering and Policy Committee.

Both Senate Democrats and Republicans generally follow seniority in the selection of committee chairs. There are few exceptions to seniority as a determinant. Perhaps one of the most notable examples of the importance of seniority occurred in 1987, when the Republican members of the Senate Foreign Relations Committee selected Senator Richard Lugar as their ranking minority member. The Senate Republican Conference overruled the selection and designated the more senior Senator Jesse Helms as the ranking member.

Senate Republican Conference rules delineate limitations on the number and type of chairmanships a Republican Senator may hold.

---

[30] In addition, there were two other candidates for chair of the Banking Committee: Representatives Richard Baker and Marge Roukema. Roukema was more senior to Baker on the Banking Committee.

For example, a chair or ranking minority member of an A committee may not serve as chair or ranking member of any other committee—but the chair/ranking member of the Finance Committee may also chair the Joint Committee on Taxation. A chair or ranking member of a B committee may not serve as the chair or ranking member of any other committee, except that the chair or ranking member of the Rules and Administration Committee may serve in that role on the Joint Printing or Joint Library Committees. Senate Democratic Conference rules are not publicly available, so it is not known if they address similar issues.

CHAIR AND RANKING MINORITY MEMBER TERM LIMITS

Both House and Senate Republicans impose term limitations on their committee leaders. In 1995, House Republicans adopted a House rule that limited committee and subcommittee chairs to three consecutive terms—in effect, 6 years. House Republican Conference rules apply term limitations to their Members if they served as ranking member when the party was in the minority. In 1999, House Republican leaders told their conference that chairs coming up against their term limits could audition to chair another panel, since the rule applied against chairing the same committee. When the Democrats regained the majority in 2007, they retained the rule but then repealed it 2 years later. When Republicans won the majority again, the rule was reinstated.[31] House Democrats do not impose term limits on their committee leaders.

In 1996, Senate Republicans adopted a 6-year term limit for committee chairs. After the Democrats took control of the Chamber in 2001, the Republicans modified their rule so that service as a ranking minority member did not count against the term limit as chair. The Senate Republican Conference also adopted a rule requiring election of a chair by secret ballot by both a committee's Republicans and by the full Republican Conference. Senate Democrats do not impose term limits on their committee leaders.

What It All Means and Questions Raised

Congressional scholar Richard Fenno posited over 40 years ago that Members have multiple motivations that shape their decisions regarding what committee assignments to seek. These include reelection requirements, public policy needs, and influence within their parties and Chambers. The "opportunity to achieve [these] goals varies widely among committees . . . . Members, therefore, match their individual patterns of aspiration to the diverse patterns of opportunity presented by [the] committees."[32] Although not specifically listed in a priority order at the time it was written, the motivations appear to reflect an appropriate order for that time.

Almost 30 years after Fenno addressed the reasons Members seek assignment to various committees, Richard E. Cohen, a correspondent for the *National Journal*, wrote a series of articles on the decline of the committee system. He concluded that it does not

[31] In 2005, the Committee on Rules was exempted from the limitation. Four years later, the exemption was repealed, but in 2011, it was restored.

[32] Richard Fenno, *Congressmen in Committees* (Boston: Little, Brown, 1973) pp. 1–2.

matter what committee a Member serves on, since the increased political competition between the parties, the Chambers, and the legislative and executive branches contributed to the loss of committee power and the increase in power delegated to the party leadership.[33]

Most observers of Congress—Members, former Members, congressional staff, lobbyists, journalists, and others—agree that both Fenno and Cohen are correct. Committees still matter, and assignment requests made by individual Members also matter. Party leaders matter also. Perhaps most important, leaders have power only if granted by individual Members, including committee leaders.

As one Congress draws to a conclusion and another will soon thereafter begin, this report examines some of the concerns about the current state of the congressional committee system that these same observers raised earlier.

Size, Ratio, and Assignments

As Members sought assignments to enable them to focus on their constituents, their own policy interests, their ability to influence policy, and the desires of their leadership, committee sizes have tended to grow in recent years in order to accommodate Members' goals. (At the request of some committee chairs, several House panels have shrunk in recent years. This, however, has caused the minority party to complain about their access to policymaking on those panels.)

Most observers believe that committees, especially in the House, are too large and the ratios too skewed toward the majority on the most desirable panels. Large committees can often make it difficult to aggregate committee members' ideas and points of view into a coherent legislative policy. Reducing the size of committees could increase opportunities among committee members for more meaningful discussion. However, reducing committee sizes might have an adverse effect on Members' opportunities to be involved in issues important to them, their constituents, and the Nation.[34] Limiting leaders' flexibility could create conflicts among party members interested in the same slot and might require additional bumping of committee members from panels to reflect party strength following an election.

The relationship between size and ratio is plain. Ratios reflect the understanding that the majority party should have the ability through its voting strength to have the dominant hand in policymaking. Minority members argue that they represent the same number of constituents as majority members and that not all policies are party driven. One of the most frequently mentioned solutions to the concern about equitable party ratios, especially in the House, is to make them fairly static on all committees and to alter them only in extraordinary circumstances. For example, the elec-

[33] Richard E. Cohen, "Crumbling Committees," *National Journal*, August 4, 1990; and Richard E. Cohen, "Crackup of the Committees," *National Journal*, July 31, 1999.

[34] Members' desire to participate in a broad array of committee policymaking is a motivation behind both committee structure and the expanding number of assignments for Members. See CRS Report RL32661, *House Committees: A Framework for Considering Jurisdictional Realignment*, by Michael L. Koempel.

tion of Members not affiliated with either Democrats or Republicans could allow those Members not to count in the ratio agreement. Another option is to have proportional ratios on all panels, although an additional majority seat could be added to the "Super A" committees in the Senate and to the exclusive committees in the House.

Changes in the numbers, types, and sizes of panels and limits on Members' assignments have been offered often but have been rejected or implemented with difficulty due in part to Members' interest in influencing policymaking through committee service. Changes might be easier to adopt if Members were not so attached to their committees—and for those who advocate rotation of committee membership, it is unclear (and untested) if that would have the desired effect without introducing additional problems. Any changes to the numbers and sizes of committees and assignment limitations would best be considered together so that decreases in some areas do not encourage increases in others.

House and Senate rules and party caucus and conference rules detail the number and category of committees a Member can serve on. Both parties in both Chambers routinely grant waivers for Members to serve in violation of Chamber and party rules. The process for granting such waivers is often cloaked in secrecy. Would waivers be as prevalent if the process granting them were known? How would a Member explain why he or she did not receive a waiver when another colleague did? If the party machinery recommended granting a waiver, should the entire caucus or conference vote to confirm it?

ROTATION OF COMMITTEE MEMBERSHIP

Rotation of committee membership has been raised as a possibility almost since the beginning of the committee system. As discussed below, the House Budget Committee currently rotates its membership, and until recently, the Senate Intelligence Committee did as well.[35] Term limits (how many years a Member could serve on each panel) could be listed in Chamber rules so all Members would know who was scheduled to leave a panel.

Supporters of rotation argue that oversight of the executive branch suffers when committee members who created a program are asked to question its value. Party leaders might have more flexibility in making committee assignments if they could anticipate which Members' terms would be up at what time. Supporters advocate rotation in order to allow new voices and fresh ideas to be brought up in committee. Relatedly, rotation would allow Members to have a more extensive understanding of a larger number of policy issues.

Opponents of rotation note that Member expertise would suffer. That loss of expertise could diminish the quality of debate, both in committee and on the floor. Opponents also link the loss of expertise to the possible increase in reliance on congressional staff, or lobbyists, or agency or department personnel.

[35] CRS Report RS21955, *S.Res. 445: Senate Committee Reorganization for Homeland Security and Intelligence Matters*, by Paul S. Rundquist and Christopher M. Davis.

HOUSE BUDGET COMMITTEE

The House Budget Committee presents a unique example of the possible issues related to committee assignments. House rules limit service to no more than four Congresses in a period of six Congresses. The restriction was changed in the 96th Congress to relax the limitation to three Congresses from two, in any period of five successive Congresses. As for an incumbent chair who had served on the panel for three Congresses and as chair for not more than one Congress, he would be eligible to serve as chair for an additional Congress. In the 104th Congress, the limitation was changed to four Congresses from three, in any period of six Congresses. This remains the current pattern today.

It is clear that the assignment limitation for Members has been changed in many Congresses to accommodate individual Members. Members continue to seek assignment to the Budget Committee, and changing limitation rules seemingly confirm the panel's popularity. Is it worth considering if the House should remove the assignment limitation and make the House Budget Committee a permanent assignment, bringing it in line with the Senate Budget Committee?

COMMITTEE LEADERS

Committee chairs and ranking minority members are perceived as being part of the official leadership structure in their Chamber. However, they must also be responsive to the needs of their committee members. Shaping the environment of committee leaders are the structure of the party hierarchy, the requirements of the agenda, majority status within their own Chamber and with the other Chamber and White House, and the calendar itself: For example, is it an election year for that member or chair, or is it a Presidential election year? Some committee leaders may exert leadership because the party leader asks them to, or, alternatively, the party leader may request that committee leaders not take up a certain matter, which means the panel might lose visibility, prestige, and/or influence over a substantive issue.

The process of selecting the committee leader surely affects his or her activity. Accordingly, the selection of committee leaders has always been a subject of discussion. Should the party leader unilaterally choose a committee leader, or should the party caucus or conference make that decision? Should the committee members select their leaders? Would the party caucus or conference or party leadership have any role in ratifying the selection? If not, should they? Should all panels be treated equally with the same selection approach? And, whichever way is selected, the key question remains: Would it make a difference? Would the policy outcome change? Would the committee's relationship with the party leadership differ?

The issue of term limits for Republicans in both Chambers has occasioned the majority of discussion among Congress watchers. Senior Members serve on numerous committees and therefore could conceivably chair three different panels in distinct Congresses for a total of 18 years. (After reaching their 6-year limits as leaders of committees in the 112th Congress, several senior Members used

their seniority on other panels to chair different committees in the 113th Congress. The effect was akin to a political game of "musical chairs.") Members who serve on only one committee, however, would be limited to only one opportunity to chair, especially if that Member served on an exclusive panel and did not seek a waiver from the Steering Committee to serve on an additional committee in what conference members would term a violation of the Republican Conference rule.) And if that Member served while in the minority in the House, he or she might get to chair a committee for only 2 years. Most agree that the responsibilities of a ranking member are quite different than those afforded a chair. For example, why are the Appropriations Committee and the Ways and Means Committee not subject to term limitations? Should those committee chairs be treated the same as the chair of the Small Business Committee, a panel with a comparatively smaller portfolio? What about the Agriculture Committee since, with term limitations, it is possible to control the agenda of two farm bills? Of course, prior to term limits it was possible to chair the Agriculture Committee, or any other panel, for decades.

In 2005, the House agreed to its first exception to term limits by allowing the chair of the Rules Committee to be exempt from the three-term limit.[36] Rather than grant the chair at that time a waiver, the House rules were amended to make the Rules Committee chair not subject to the limitation. In the previous Congress, the term limitation had been removed for the Speaker of the House. The term limit rule for the Speaker was instituted when Newt Gingrich became the leader of the 104th House (1995–1997).

The chairmanship and ranking minority member of the House Budget Committee also underwent changes to the term limit rule. In the 101st Congress, a minority member who had served for three terms was allowed to serve an additional term as ranking minority member. In the 102d Congress, the rule was amended to extend the waiver of the tenure restrictions for the ranking minority member. In the 103d Congress, the provision related to the ranking minority member was stricken as obsolete. In the 104th Congress, an exception was made for an individual Member who had served as chair or ranking minority member during a fourth Congress—the Member could serve in either capacity during a fifth Congress, so long as he or she would not exceed two consecutive terms as chair or ranking minority member. The tenure limitation was suspended during the 106th Congress. In the 108th Congress, the tenure limitation for the chair and ranking minority member was replaced with a provision subjecting only the chair to the overall tenure limitation applicable to all other standing committee chairs.

Party Leadership

"The influence of the party leadership on the legislative committees . . . is suggestive, not coercive, informal, not official, tactful, not

[36] In the 108th Congress, a waiver was granted to the chair of the Intelligence Committee to serve an additional term. House rules at that time prohibited a Member from chairing the Intelligence Committee for more than two Congresses or being a member of the committee for more than three Congresses.

dictatorial."[37] The strength and powers of party leaders have changed over time, usually related to shifts between committee government and party government, with a few periods of balance between committee and party government or, in some rare periods, shared power.

Party leaders' influence on the committee system is formally limited to determining committee sizes and ratios (generally within the purview of the majority party, although negotiation does occur between Senate leaders) and determining the makeup of the party entity (if not within the sole authority of the party leader) that assigns committee members and, in some cases, identifies the committee leader.

The party panels that recommend Members for assignments have limited opportunity to assign Members in accordance with upcoming policy issues and party needs. Instead, their emphasis is on accommodating Members' requests. This reality increases the possibilities that committees are unrepresentative of their parent Chambers and, by extension, the needs of their districts or States.

Over the past 30 years, more and more legislation is being drafted by majority party leaders or a small cadre of Members loyal to those leaders. Committee hearings can be staged to make political points, and markups can be perfunctory, with the outcome almost predetermined. Many longtime Congress watchers can recall markups that continued for several days as Members debated scores of amendments from both parties.

Final Thoughts

Many congressional scholars cite Woodrow Wilson's *Congressional Government* as the seminal work regarding the committee system. However, the text is often critical of the committee system, at times preferring a stronger party system and preferring party entities to committees to craft legislation. Wilson criticized committees as too beholden to lobbyists rather than their party leadership and, as such, often incapable of preparing legislation that advanced the majority party's agenda.

In the introduction to a recent edition of Wilson's book, a professor and former House Republican staffer drew a comparison between Wilson's advocacy of party rather than committee government and former Speaker Newt Gingrich's approach to leadership. "Wilson's book reads almost like a field manual for Gingrich's experiment in congressional party government."[38] Speaker Gingrich appointed leadership task forces to circumvent the standing committees. When the committees were involved, they comprised chairs selected by the Speaker and populated by Members of his choosing. The Contract with America legislation was considered in the House without having had committee consideration and without any amendments allowed. The strengthened leadership at the expense of committees was not limited to the Republicans. When the Democrats retook control of the House in 2007, Speaker Nancy Pelosi

[37] U.S. Congress, House Committee on House Administration, *History of the United States House of Representatives*, prepared by George B. Galloway, 89th Cong., 1st sess., 1965, H. Doc. 250 (Washington, DC: GPO, 1965), p. 105.

[38] William F. Connolly, Jr., Introduction to Woodrow Wilson, *Congressional Government: A Study in American Politics*, 15th ed. (New Brunswick, NJ: Transaction Publishers, 2002), p. ix.

brought the Democrats "First 100 Hours" agenda to the floor, bypassing committees and blocking amendments in the process.

Concerns over Senate committees have focused on majority leaders' strategies and decisions. Some measures have been considered whether they have had committee consideration or not, and amendments have not been allowed as often as they once were. If amendments are allowed, no special consideration is given to the committee that could have considered the measure initially. Majority leaders have used their priority of recognition to "fill the amendment tree," thereby denying Senators of both parties, as well as committee leaders, an opportunity to change legislation. For example, the majority leader's control over the agenda has enabled him to deny a vote to policies that might be difficult for vulnerable Senators up for reelection to vote for but are supported by the President.

This is not a new phenomenon. In the 107th Congress (2001–2003), for example, then-Majority Leader Tom Daschle brought an energy bill directly to the Senate floor, bypassing the Senate Energy and Natural Resources Committee, which contained a coalition of Republicans and conservative Democrats willing to approve oil development in the Arctic National Wildlife Refuge, something Daschle did not want to happen.

Minority Leader Mitch McConnell has stated that if the Republicans gain control of the Senate, they will return to regular order. Does that mean committee government rather than party government? Does that mean ratios reflecting party strength across all committees? Does that mean full and open floor debate with a promise to fill the amendment tree only in rare circumstances? Only time will tell if regular order is a promise that any majority leader can keep.

It seems evident over the last 20 years or so that party leaders have become frustrated with rank-and-file Members, that rank-and-file Members have become frustrated with committee leaders, and committee leaders have become frustrated with party leaders. It is clear that tension exists between the Chambers, especially when there is split party control—whether between the Chambers or between the legislative and executive branches. Such tension and frustration often leads to blaming "the system," whether that system reflects a strong committee system or strong party leadership. The issue is how to structure or use the committee system and how to devise a method of assigning Members to committees that addresses concerns about the committee system. An assignment system should arguably also preserve the benefits of long committee tenure, such as the issue expertise and institutional memory that Members accrue.

The Bipartisan Policy Center held a series of roundtables in 2011 to discuss the committee system. The discussion centered on the current political climate, which most participants and the public, according to most opinion polls, agree is toxic. Most roundtable participants agreed that the political climate could not and should not be addressed by structural or procedural changes. They agreed that it could be changed only by willingness among Members and party leaders to alter their behavior and by constituents demanding a change in behavior. However, it is worth considering whether

Members take on too much—introducing too many measures, seeking too many committee and subcommittee assignments, offering too many amendments, and holding too many hearings. All of this legislative activity increases workload. Perhaps the congressional system, whatever the type, can handle the workload, but the real question may be: Should it have to? The problem, assuming there truly is one, may not be systemic but rather one of self-discipline among Members. If that is indeed the case, any change might not lessen the burden on Members and Congress but just redirect or aggravate an already contentious lawmaking process.

IV. POLICYMAKING CASE STUDIES

Congress and Financial Crises

EDWARD V. MURPHY
Specialist in Financial Economics
and
N. ERIC WEISS
Specialist in Financial Economics

The four case studies of congressional response during financial crises described in this report (events from the 1840s and the 1890s, as well as the Great Depression and the 2008 financial crisis) illustrate key characteristics of the policymaking process. Most importantly, when financial crises happen, Congress' hands are neither tied nor forced by policies and institutions put in place by previous Congresses. In the 2008 example, Congress proves able to pass far-reaching legislation, even though significant automatic response mechanisms like the Federal Reserve were already in place. Many of the temporary programs and policies adopted in response to the mortgage crisis had analogous temporary measures during prior crises.

Introduction

In September 2008, the Secretary of the Treasury and the chairman of the Federal Reserve asked Congress for $700 billion to combat the financial crisis, asserting that the economy would collapse if Congress failed to act. Following the crisis, Congress passed legislation that granted powers to financial regulatory agencies intended to enable them to handle future crises without a similar request being made to Congress. The law included provisions designed to end market perceptions of too-big-to-fail (TBTF)—i.e., that because everyone knows that the negative repercussions of a firm's failure are not tolerable, the government must provide financial assistance to the firm if it gets in trouble.

This report analyzes Congress during a financial crisis, with special emphasis on whether the existing regulatory framework (passed by a previous Congress) either ties Congress' hands or forces congressional action. Case studies of four financial crises—with examples of both congressional action and inaction—illustrate congressional discretion to change the rules of the game during financial crises. Because people often want temporary suspensions of the rules of the game during a crisis, preexisting rules are unlikely

to be effective at either tying Congress' hands or forcing congressional action.

This is a report about economic crisis response, not crisis prevention. Crisis prevention is relevant only to the extent that it is an integral part of the rules that exist prior to the start of whatever crisis Congress finds itself in. During an economic crisis, policymakers consider temporarily suspending some laws and creating one-time assistance programs. But even if Congress does nothing in response, the existing laws and programs continue to govern the outcome—in contrast to some other issues in which Congress must take periodic action to preserve the status quo (budgets and program reauthorizations, for example).

People sometimes want one set of rules for standard conditions but a different set of rules for unusual conditions. For example, after Hurricanes Katrina and Rita wiped out communications and records in several States, some agencies temporarily suspended certain paperwork requirements related to refinancing mortgages.[1] A financial crisis often has calls for similar suspensions of existing rules and policies or pleas for temporary one-time assistance to targeted groups. This report will examine economic policies considered by Congress during the containment phase of financial crises.

At the time a financial crisis begins, most rules and agency authorities are a legacy of previous legislation. In constructing the economic rules of the game and authorizing agencies that administer economic policy, Congress and the President have typically consulted the leading economists of the day.[2] Furthermore, many of the economic agencies were created following earlier financial crises and staffed by professional economists and lawyers. Yet during a financial crisis, people may still see some of the features of the existing economic policy framework as a hindrance (perhaps temporarily) rather than a help.

It is no criticism of economists to point out that despite their input at the rule-setting stage and in the administration of existing rules, bad economic events still happen. This report is not about identifying the correct set of economic policies according to current experts, because those rules (whatever they are at any given point in time) will most likely be subject to calls for suspension, alteration, or fundamental change. This report examines what economic policy issues have regularly come before Congress during financial panics, recessions, and depressions. This report does not address whether Congress could in various instances have done better.

Congress and Economic Policy

Title I of the Constitution grants Congress a number of powers related to the economy:[3]

[1] U.S. Department of Housing and Urban Development, *Public and Indian Housing Hurricane Recovery Resources*, at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications/hurricane.

[2] For example, Congress established a National Monetary Commission following the panic of 1907. The commission was led by and staffed with prominent economists. The Federal Reserve Act followed many of the commission's recommendations. Congress created commissions to investigate the causes of the Great Depression and the 2007–2008 recession.

[3] The report will at times refer to congressional powers pursuant to Title I of the Constitution. Such powers depend upon actions by the executive and judicial branch as appropriate.

- To spend money, levy taxes, and borrow funds,
- To define currency and regulate its value,
- To regulate banks,
- To establish rules for bankruptcy, and
- To regulate interstate commerce.

The first two powers loosely correspond to macroeconomic policies (fiscal policy and monetary policy). The others are microeconomic policies that some believe can have macroeconomic effects (financial market intervention, debt restructuring, and industrial policy).

At any moment in time, the economy operates within a legal framework created by Congress, including rules and policies adopted by agencies to which Congress has delegated authority. For example, in the area of monetary policy, Congress has sometimes legislated the value of currency in terms of gold but has delegated to the Federal Reserve authority to affect the supply of obligations circulating as gold-backed currency. At other times, Congress has set the value of a dollar in terms of either gold or silver and has not delegated authority to regulate the supply of related obligations to any agency. Currently, there is no established value of the dollar, and Congress has delegated to the Federal Reserve authority to issue the notes circulating as dollars. In policy areas where Congress has delegated some of its authority, Congress oversees the actions of the agencies and can revise the delegated authority.

An economic emergency typically results in calls for changes in the existing economic policy framework. People may wish Congress to facilitate expansion of the money supply ("easy money"), to restore "sound money," or either to grant further discretion to the monetary authority or to clip its wings. People may call upon Congress to increase Federal spending and cut taxes, or Congress may be called upon to restore fiscal discipline and protect the creditworthiness of the United States. Congress may be asked to rescue banks, suspend banking operations, or facilitate the liquidation of distressed banks. Congress may be called upon to enact a mortgage moratorium, delay debt collection, or strengthen the ability of creditors to collect debts owed. Congress may be called upon to provide financial support to specific industries or to regulate some industries more stringently.

Even if Congress does not change the fundamental economic rules, it still oversees the effectiveness of existing programs to address the economy during a financial crisis. For example, in addition to general monetary policy, the Federal Reserve is empowered to provide emergency lending to eligible borrowers based upon good collateral. During the crisis of 2008, the Federal Reserve established temporary programs to provide loans using a wider variety of collateral and to a wider variety of potential borrowers than it allows during normal times. Congress held numerous hearings in 2008 in which the Federal Reserve and other agencies were required to report on their activities, including the Federal Reserve's temporary liquidity programs.

ECONOMIC HARDSHIP AND ECONOMIC CRISIS

It may be useful to distinguish recessions and depressions from financial crises. A common quip is that a recession is when someone else loses his or her job, but a depression is when I lose my own job. A recession occurs when a broad range of economic indicators contract.[4] A period of economic hardship may include more than one technical recession.[5] A second downturn may occur before a nascent recovery can return an economy to full capacity. The United States has experienced several periods of high unemployment that have spanned multiple recessions and recoveries. The Great Depression is commonly dated from 1929 to 1941, even though the period 1933–1937 was technically a recovery, not a recession. Similarly, both the depression of the 1890s and the hardship of the early 1980s included double-dip recessions before full employment could be restored.[6] The recession that began in December 2007 officially ended in June 2009, even though unemployment has remained above full employment for more than 5 years, leading to the moniker the Great Recession.[7]

A financial crisis is a widespread financial disruption characterized by falling asset prices, bankruptcies, insolvencies, and illiquidity. It may or may not precede or accompany a recession or depression. A financial crisis often includes sharp declines in asset prices (e.g., Dutch tulip bulbs in 1637), the sudden collapse of security prices (e.g., common stock), widespread suspensions of payments by key intermediaries (e.g., depository banks), or the failure of key providers of financial services. The uncertainty and chaos created during these sudden financial crises are called a panic. Some panics are followed by deep recessions (2008) or even depressions (1893, 1933). Others are not (1987, 1888).[8]

Periodic economic hardship has been common in U.S. history. There were extended periods of economic hardship in the late 1830s and early 1840s, the 1870s, and the 1890s. Since the establishment of the Federal Reserve in 1914, extended periods of economic weakness occurred in the 1930s, the late 1970s/early 1980s, and the 2000s. Notable market crashes, financial panics, or bank runs include those of 1837, 1839, 1857, 1873, 1893, 1907, 1929, 1931, 1933, 1987, and 2008.[9]

---

[4] The National Bureau of Economic Research (NBER) is considered the official arbiter of the dates of recessions and expansions. NBER tracks a variety of economic indicators and identifies peaks and troughs in business activity. Recessions last from a peak down to a trough. However, to the common person, the economic hardship associated with being near a trough may feel like a depression, even though it is technically not a recession. Dates and related information can be found at http://www.nber.org/cycles/cyclesmain.html.

[5] National Bureau of Economic Research, *U.S. Business Cycle Expansions and Contractions*, http://www.nber.org/cycles/cyclesmain.html.

[6] Douglas Steeples and David Whitten, *Democracy in Desperation: The Depression of 1893* (Westport, CT: Greenwood Press, 1998).

[7] See, e.g., Stanley Fischer, "The Great Recession: Moving Ahead," at http://www.federalreserve.gov/newsevents/speech/fischer20140811a.htm.

[8] Bradford J. DeLong and Lawrence H. Summers, "The Changing Cyclical Variability of Economic Activity in the United States," in *The American Business Cycle: Continuity and Change*, ed. R.J. Gordon (Chicago: University of Chicago Press, 1986), pp. 679–719.

[9] Michael D. Bordo et al., "Is the Crisis Problem Growing More Severe?" *Economic Policy*, vol. 16 (August 2001), pp. 51–82. The dates and number of banking panics in the United States are sensitive to the definition used. Contemporaries often called a financial disruption a panic. Various attempts to identify panic dates with objective measures of asset prices have generally confirmed crises in 1837, 1839, 1857, 1873, 1893, 1907, and 1930. Other dates often depend on the measure used. See Gary Gorton, "Banking Panics and Business Cycles," *Oxford Economic Papers*, vol. 40 (1988), pp. 751–781.

During a financial panic, no one can know for certain if it will be followed by a recession or depression or have no effect. The credibility of experts, such as prominent economists, is likely to be tarnished at the same time that the panic hits, in part because it is likely that many of these experts contributed to the feeling of confidence in existing tools prior to the crisis. For example, many economists at the International Monetary Fund, the Federal Reserve, academia, and elsewhere believed that macroeconomic advances had created a Great Moderation among developed economies, perhaps contributing to overconfidence following the liquidity crunch that began in August 2007.[10] Similar confidence in macroeconomic tools was expressed following Federal Reserve responses to recessions in the 1920s.[11] Following the stock market crash of 1929, Irving Fisher, one of the greatest American economists of his generation, famously proclaimed the economy sound, damaging his reputation and personal fortune in the process.[12] The point is not that economists are fallible like anyone else but that, in some cases, market prices are moving differently than experts predict or explain—which might be why there is a panic—which tends to diminish the credibility of these experts when they testify before or advise Congress.

The next section of this report connects congressional authorities to economic policies during financial crises. For each policy area, the section describes what it is in economic terms and briefly provides congressional context.

Congressional Policy Tools

MONETARY POLICY

Economists define money as relatively safe assets that people rely upon to make payments or to hold as a short-term investment, i.e., liquidity.[13] Monetary policy refers to actions taken to alter the money supply with the intent of influencing macroeconomic conditions, including real output, unemployment, and inflation.[14] Congress has affected the money supply by redefining money to include a broader or narrower array of commodities (or none at all), revising or abandoning the ratio of current commodities to the dollar, creating obligations that others can use as collateral for issuing moneylike instruments, and regulating the ability of banks to maintain moneylike deposit or similar accounts on behalf of customers or investors. Congress delegated much of day-to-day monetary policy to the Federal Reserve. Currently, paper money is issued by the Federal Reserve.

---

[10] For an example of a central bank official noting reduced macroeconomic volatility, see Ben S. Bernanke, "The Great Moderation," at http://www.federalreserve.gov/boarddocs/speeches/2004/20040220/.

[11] For an introduction to the role of expectations in the macroeconomy, see Sylvain Leduc, "Confidence and the Business Cycle," FRBSF Economic Letter, November 2010, at http://www.frbsf.org/economic-research/publications/economic-letter/2010/november/confidence-business-cycle/.

[12] Robert Loring Allen, *Irving Fisher: A Biography* (Cambridge, MA: Blackwell, 1993).

[13] Board of Governors of the Federal Reserve System, *What Is the Money Supply? Is It Important?* at http://www.federalreserve.gov/faqs/money_12845.htm.

[14] David Lindsey and Henry Wallich, *Money: New Palgrave Dictionary of Economics* (New York: Norton, 1987), pp. 229–243.

For some economists, monetary conditions are the heart of most financial crises. In their research on U.S. monetary history, Milton Friedman and Anna J. Schwartz noted that what distinguished depressions from recessions was the magnitude of the contraction of the money supply.[15] More recently, scholars have emphasized that during the Great Depression of the 1930s, economies remained depressed as long as they had tight money policies and adhered to the gold standard but that recovery generally accelerated when countries abandoned gold and "reflated." The United States devalued the dollar in terms of gold in 1933, and many economists believe that devaluation contributed to recovery.

Unanticipated deflation can increase the real burden of debts. Such burdens may not be fully offset by gains to creditors if there are widespread defaults. Increasing the money supply may alleviate deflation. But one should not assume that these economists believe that only the absolute quantity of money matters. Rather, as economist Michael Bordo put it, "it is not monetary contraction but the public's apprehension that the availability of the means of payment is in doubt. That is the essence of the monetarist position."[16] Furthermore, there may be conditions in which monetary policy becomes ineffective.

FISCAL POLICY

Fiscal policy is the government's actions to influence the macroeconomy by adjusting government spending and revenue.[17] In particular, when there is underutilized productive capacity, such as in a recession, government can stimulate the economy by increasing budget deficits through spending more or taxing less.[18] Fiscal policy has an automatic component because bad economic conditions reduce tax receipts and trigger increased spending on some programs even if Congress takes no action. For example, during the Great Depression, the largest contributor to Federal deficits was the automatic drop in revenue, not any action pursued by policymakers. In the view of modern economists, even the drop in revenues during the Great Depression was too small relative to the economy to have any meaningful effect.

Federalism affects American fiscal policy. During some parts of the 19th century, State borrowing for development projects was expansionary, but fiscal surpluses at the Federal level were contractionary. Now that balanced budget requirements are the norm for States, expansionary Federal fiscal policy may be offset by tight State policies.[19] Alternatively, Federal grants to States may help States avoid contractionary policies.

---

[15] Milton Friedman and Anna Jacobson Schwartz, *A Monetary History of the United States: 1867–1960* (Princeton, NJ: Princeton University Press, 1963).

[16] Michael D. Bordo, "Discussion: The Panic of 1873 and Financial Market Volatility and Panics before 1914," in *Crashes and Panics: Lessons from History*, ed. Eugene N. White (Homewood, IL: Irwin, 1990), p. 128.

[17] The most general constitutional provisions authorize Congress to tax, borrow, and spend (Article I, Section 8, Clauses 1 and 2, and Section 9, Clause 7).

[18] CRS Report RL33657, *Running Deficits: Positives and Pitfalls*, by D. Andrew Austin, and U.S. Congressional Budget Office, *The Long-Term Budget Outlook: July 2014*, http://www.cbo.gov/sites/default/files/cbofiles/attachments/45471-Long-TermBudgetOutlook.pdf.

[19] Leslie McGranahan and Jacob Berman, "Measuring Fiscal Impetus: The Great Recession," *Economic Perspectives* (Third Quarter 2014), pp. 67–79, at http://www.chicagofed.org/digital__assets/publications/economic__perspectives/2014/3Q2014__part1__mcgranahan__berman.pdf.

BANKRUPTCY LAW AND DEBT RESTRUCTURING

Financial crises and depressions typically include widespread debt defaults and declines in asset prices. Policymakers may wish to provide relief to people facing foreclosure and eviction. In addition to compassion for individuals, bankruptcy policy may have macroeconomic effects. Some economists believe that defaulting on debt can result in a balance sheet recession in which distressed households cut consumption, firms cut investment, and local governments cut spending in order to repair balance sheets damaged by declines in the price of assets.[20] As each sector tries to reduce its net debt (de-leverage), total economic spending declines, potentially magnifying the economic contraction.[21]

Bankruptcy laws may affect balance sheet recessions and the macroeconomy.[22] People who are in default are often cut off from further credit because they are considered riskier borrowers. If so, then monetary policies that lower interest rates may not stimulate their consumption or investment. People who hold bonds similar to those defaulting may find it difficult to use their bonds as collateral for additional funds even if the specific bonds they are holding are not currently in default. Bankruptcy law may affect the speed in which distressed debt is resolved. Bankruptcy law may affect whether debtors who have defaulted get a fresh start and may begin spending on new produced goods and services if they have earnings—or if they would be required to pay old debts instead.

BANKING REGULATION AND FINANCIAL MARKET INTERVENTION

Financial intervention refers to steps taken to stabilize the function of banks, which may include rescuing financial institutions from failure. Banks are the hubs of the payment system, meaning that many retail and commercial transactions are conducted by communications among deposit-taking financial institutions. The fractional reserve structure of depository institutions means that they also affect the money supply. When banks come under stress, they reduce their own lending, which reduces the money supply. Unfortunately, in the aggregate, this contraction in lending may come exactly when bank customers most need additional short-term financing.[23] Banking regulation and financial market intervention refer to steps taken to ensure the continued functioning of the payment system and lending systems during a financial crisis and depression.

Financial crises are challenging for banks and other financial intermediaries.[24] If debtors are defaulting, then their lenders have an interruption in cash flow. If the banks and other intermediaries that provided the loans hold assets that are difficult to liquidate or

---

[20] Marcus Miller and Joseph Stiglitz, "Leverage and Asset Bubbles: Averting Armageddon with Chapter 11?," *Economic Journal*, vol. 120, no. 544 (May 2005), pp. 500–518.

[21] Enrique G. Mendoza, "Lessons from the Debt-Deflation Theory of Sudden Stops," *American Economic Review*, vol. 96, no. 2, (May 2006), pp. 411–416.

[22] David Smith and Per Stromberg, "Maximizing the Value of Distressed Assets: Bankruptcy Law and the Efficient Reorganization of Firms," *Systemic Financial Crises*, ed. Patrick Honohan and Luc Laeven (Cambridge: Cambridge University Press, 2005).

[23] Douglas Diamond and Philip Dybvig, "Bank Runs, Deposit Insurance, and Liquidity," *Quarterly Review* (winter 2000), at http://www.minneapolisfed.org/research/qr/qr2411.pdf.

[24] Jean Tirole, *Illiquidity and All Its Friends*, Bank for International Settlements, Working Papers No. 303, March 2010, at http://www.bis.org/publ/work303.htm.

became difficult to sell because of the crisis, then they will have difficulty honoring their own obligations. Since deposit accounts are bank obligations, financial crises often put stress on the depository system. Similar stress can be put on other transaction services provided by nondepositories. If people lose confidence in banks, they may withdraw their funds, endangering the health of the banks and potentially reducing the money supply by a multiple of the withdrawn funds.

Congressional Policies During Selected Financial Crises

This section provides illustrative examples of challenges to the economic rules of the game during selected financial crises and depressions. A discussion of multiple policy areas is provided only for the Great Depression and the Great Recession. Selected cases are presented to illustrate the policy issues repeatedly brought before Congress during times of economic stress. Congress retains the ability to change the fundamental rules of the economic game and has been called to do so during financial crises. Whether Congress might have made a different decision in light of current economic thought is not the focus of this report.

The history is not provided to reveal a steady march toward economic enlightenment or a painstaking erection of macroeconomic safeguards; rather, the history demonstrates that Congress retains the authority to suspend or fundamentally change the economic rules of the game and will likely be called upon to do so in times of crisis, and its actions or inactions may ameliorate or prolong economic turmoil. Powers delegated to the Federal Reserve and other agencies can be expanded, amended, or rescinded. Similarly, whatever monetary standard Congress had established prior to the crisis can be strengthened, supplemented, or abandoned. If congressional deliberations create uncertainty and concern over future actions, the debate itself may contribute to temporary instability regardless of the ultimate vote.

The Depression of the 1840s

Economic and Institutional Context

Monetary policy, fiscal policy, the structure of the banking system, and bankruptcy law were all major issues during the 1840s, but this section will focus primarily on congressional influence over fiscal federalism. This case study illustrates continued congressional discretion in the face of TBTF. Congress faced an economic crisis in which State governments were defaulting on some of their debts. Congress considered intervening on behalf of State debt and established a commission to study the issue in great detail. Despite the commission's recommendation that State governments be assisted, Congress chose not to do so. Not only did Congress not pass financial assistance to the States, but it did pass legislation designed to prevent the executive branch from using the treaty process to assist foreign holders of State debt. The TBTF status of the States did not force Congress' hands.

After a boom and bust in canal and railroad building, there were financial panics in 1837 and 1839. Economic problems persisted

long after the panics.[25] Land and agricultural prices declined, making it difficult for farmers to repay their debts. The failure of the second Bank of the United States in 1838 disrupted the payment system because there was no central settlement and clearing system for the country as a whole. State governments experienced significant financial problems, because in many cases the States had issued bonds and created development banks to fund the failed canals and railroads.[26] By the 1840s, nine States had suspended payment on their debts. Some European creditors had greater doubts about the viability of Federal debt; others wanted the Federal Government to assume the State debts, as had been done with Revolutionary War-era debts.[27]

The early 1840s had an interesting political environment.[28] The congressional majority often opposed President John Tyler, even though both were nominally of the same party. Tyler was not originally a Whig but had been added to the party ticket to broaden support for General William Henry Harrison. When President Harrison died shortly after inauguration, some members of Tyler's old party considered him a turncoat, while some in his new party referred to him as "His Accidency." At one point, his entire Cabinet except one resigned, and the House of Representatives began impeachment proceedings because of his use of the veto power.

CONGRESSIONAL DELIBERATION, ACTION, AND OVERSIGHT

The depression of the 1840s illustrates the effect of federalism on fiscal policy. Debt defaults and suspensions by State governments were of concern to European investors, many of whom also funded Federal debt or were members of countries with other outstanding issues with the United States.[29] Congressional documents indicate that some policymakers were concerned that State defaults could hurt the credit standing of the national government.

Although verbatim records of congressional debates were not kept at this time, there is evidence that the debate was vigorous. One faction of Congress favored Federal assistance to State governments and pointed out that Alexander Hamilton had orchestrated the assumption of State debts by the Federal Government. They also argued that paying the debts was good foreign policy. Another faction of Congress did not want solvent States to have to help pay the debts of States that had overbuilt during the canal and railroad boom.

Congress authorized a major study of the State debt issue. The study, headed by Congressman William Cost-Johnson, was an in-depth investigation into the causes and implications of economic distress in the States. The Johnson report recommended that Congress provide $200 million in aid to the States, a large sum at the

[25] Peter Temin, *The Jacksonian Economy* (New York: Norton, 1969).

[26] John Joseph Wallis, *The Depression of 1839 to 1843: States, Debts, Banks*, University of Maryland, Working Paper, 2005.

[27] Jay Sexton, *Debtor Diplomacy: Finance and American Foreign Relations in the Civil War Era, 1837–1873* (Oxford: Clarendon, 2005).

[28] Frank Freidel and Hugh Sidey, *The Presidents of the United States of America*, White House Historical Association, 2006, summarized at http://www.whitehouse.gov/about/presidents/johntyler.

[29] William English, "Understanding the Cost of Sovereign Default: American State Debt in the 1840s," *American Economic Review* (March 1996), pp. 259–275.

time. Ultimately, Congress did not provide direct financial assistance to the States. With the Federal Government funded by tariffs, and State access to foreign credit markets impaired, fiscal policy was not used to address the depression of the 1840s.

Although Congress has the power of the purse, some were concerned that the President might use the treaty process to assist the States.[30] Many of the State debts were held by British creditors. Secretary of State Daniel Webster, the only Cabinet member not to resign, was negotiating with the British over a number of outstanding issues. British negotiator Ashburton was a financier with direct interest in State debts.[31] The Senate passed a resolution to require the Secretary of State to provide assurance that State debts would not be included in negotiations with the British. The resulting Webster-Ashburton Treaty did not commit the Federal Government to assume or support State borrowing.

Other policy issues also came before Congress during the crisis. Congress considered but rejected the proposal to charter a third Bank of the United States. Although some regional payment systems evolved, banknotes from different parts of the country could exchange at a discount. Congress enacted a national bankruptcy law in 1841 to coordinate resolution of private debts and provide a fresh start for eligible borrowers. The bankruptcy law was repealed in 1843, making it effectively a temporary measure to address the crisis.[32]

THE PANIC OF 1893 AND THE DEPRESSION OF THE 1890S

ECONOMIC AND INSTITUTIONAL CONTEXT

Although fiscal policy, banking regulation, and bankruptcy were issues in the 1890s, this section will focus on deliberations related to monetary policy. This case study illustrates Congress' continued discretion over monetary policy even when some might think commitment to the gold standard tied Congress' hands. Just as the case study for the 1840s showed that Congress considered changing fiscal policy but chose not to, the case study for the 1890s shows that Congress considered changing monetary policy but chose not to. Yet even though Congress did not change the monetary standard during the 1890s, the deliberations themselves may have had real effects.

Several of America's major trading partners entered recessions in the early 1890s, but the United States was not affected until after the panic of 1893, which initiated a period of economic slack that lasted until 1897.[33] Although exact unemployment statistics are not available, what can be said with some confidence is that unemployment was below 5 percent during 1890–1892, began rising in 1893, then remained above 10 percent between 1894 and 1898.[34]

---

[30] Sexton, *Debtor Diplomacy*.

[31] Ibid.

[32] The Federal Judicial Center maintains a brief history of the bankruptcy courts at http://www.fjc.gov/history/home.nsf/page/courts__special__bank.html.

[33] The NBER identifies two different recessions during the depression of the 1890s. National Bureau of Economic Research, *U.S. Business Cycle Expansions and Contractions*, at http://www.nber.org/cycles.html.

[34] Christina Romer, "Spurious Volatility in Historical Unemployment Data," *Journal of Political Economy*, vol. 94, no. 1 (February 1986), pp. 1–37.

Perhaps because the early stages of the recession were international in scope, international capital flows did not provide relief.

At the time, the United States was part of the international gold standard. Because the dollar was defined in terms of gold and the pound and other currencies were defined in terms of gold, the result was a system of fixed exchange rates for participating countries. In addition to tying the dollar to a fixed ratio of gold (and excluding silver and other metals), the United States also committed to converting dollars to gold for certain international transactions. Because of the economic stress during the financial crisis and depression, Treasury borrowed four times during 1893–1897 in order to maintain the monetary gold reserves required under the international gold standard.[35]

American participation in the gold standard (1873–1933) created rules for domestic and international monetary policy.[36] During the first part of the gold standard era (1873–1914), the notes of private banks circulated as money, and the private banks promised to convert the currency on demand. During the second part (1914–1933), the Federal Reserve took over the role of note issuer and assumed the associated obligations.

Joining the gold standard had required congressional action.[37] Various Mint Acts from 1792 onward defined the value of the dollar in terms of both gold and silver. At any moment in time, the proportion of circulating coins that were gold or silver depended on the relative price of the two metals. During times in which silver coins did not circulate, the de facto backing of the currency was effectively gold, even if the legal status of silver coins had not yet been altered. In 1873, during a time in which silver coins did not circulate, the Mint Act of that year did not provide for the coinage of silver. While this was a change in its legal status, it was not a change in its de facto status in 1873. Populists would later call the 1873 Mint Act the "Crime of '73."[38]

Some might argue that participation in the gold standard tied policymakers' hands. However, Congress had several avenues to change monetary policy. First, Congress could have amended the Mint Act to coin silver or other metals or to have fiat currency (unbacked). Second, Congress could have taken the extreme step of denying Treasury the ability to borrow to meet the commitments of the international gold standard. Third, Congress could have announced intentions to remain on the gold standard in the long run but suspended convertibility temporarily (as was sometimes done during wars). Fourth, Federal bank regulators in the Office of the Comptroller of the Currency (OCC) could have used their bank regulatory powers to affect bank-created money and employ their influence with the banks' clearinghouses to affect the liquidity banks needed for interbank transactions.

---

[35] David Whitten, "Depression of 1893," *EH Net Encyclopedia*, at http://eh.net/encyclopedia/the-depression-of-1893/.

[36] For a brief history of the rules of the gold standard, see Barry Eichengreen, "Globalizing Capital: A History of the International Monetary System," *Journal of Comparative Economics*, vol. 26, no. 3 (September 1998), pp. 589–591.

[37] For a legal history, see Edwin Vieira, Jr., "The Forgotten Role of the Constitution in Monetary Law," *Texas Review of Law and Politics*, vol. 77, no. 2 (1997–1998), pp.77–128, at http://www.fame.org/PDF/viera__Texas__law.pdf.

[38] Friedman and Schwartz, *Monetary History*, pp. 113–116.

Opponents of the gold standard organized a national movement that resulted in the Populist Party. The Populist movement's challenge to "sound money" policies made the U.S. commitment to gold anything but certain at the time, perhaps best exemplified by Congressman William Jennings Bryan's famous "Cross of Gold" speech. Bryan and the Populists argued that tight monetary policy exacerbated the depression, in part because deflation increased the real burden of debts. In the Populists' view, indebted farmers were being "crucified on a cross of gold" as real interest rates rose and commodity prices fell.

Populists and sympathizers in the Republican and Democratic Parties called upon Congress to expand the money supply in order to combat deflation and the depression.[39] Congress could affect the supply of money even under the gold standard. For example, government silver purchases could expand the money supply by exchanging a safe financial asset that could be used as loan collateral (the silver certificate) for a commodity (silver) that could not.[40] Opponents of monetizing silver, including Presidents Grover Cleveland and William McKinley, argued that the United States should not leave the gold standard unilaterally because it would destabilize the dollar in international financial transactions, among other concerns.[41] President Cleveland took it a step further and advocated repealing the Sherman Silver Purchase Act of 1890 to support the gold standard. In 1893, Congress concurred and repealed the act.

Whether good policy or bad policy, the debates surrounding the gold standard may themselves have been destabilizing. At the time, economist John B. Clark argued that uncertainty surrounding monetary discretion would contribute to debt binges and financial instability.[42] Some critics have argued that the monetary uncertainty accompanying the political debates and the prospects of a Bryan victory in the Presidential election of 1896 contributed to the economic downturn of that year. They point to the second recession, which occurred only in the United States. The depression had been international until then.[43]

Some modern economists are more sympathetic to Bryan's monetary positions. Economist Hugh Rockoff characterizes Bryan's ideas: "Bryan's monetary thought was surprisingly sophisticated and . . . on most issues his positions, in the light of modern monetary theory, compare favorably with those of his 'sound money' opponents."[44]

Congress considered changing the rules of the game. An example of congressional deliberations can be found in a December 16, 1897,

---

[39] Lawrence Goodwyn, *Democratic Promise: The Populist Movement in America* (New York: Oxford University Press, 1976).

[40] Richard C.K. Burdekin and Marc D. Weidenmier, "'Non-Traditional' Open Market Operations: Lessons from FDR's Silver Purchase Program," Claremont Institute for Economic Policy Studies, Working Paper Series 2005–08, 2005, at http://www.claremontmckenna.edu/rdschool/papers/2005-08.pdf.

[41] Friedman and Schwartz, *Monetary History*, p. 118.

[42] John B. Clark, "The After Effects of Free Coinage of Silver," *Political Science Quarterly*, vol. 11, no. 3 (September 1896), pp. 493–501.

[43] Whitten, "The Depression of 1893."

[44] Hugh Rockoff, "The Wizard of Oz as a Monetary Allegory," *Journal of Political Economy*, vol. 98, no. 4 (August 1990), pp. 739–760.

hearing before the House Committee on Banking and Currency.[45] The committee debated a bill to reform banking regulation and currency laws such that private banknotes would continue to circulate as currency but would have a guarantee from Treasury in the form of a national redemption fund. The bill would have also required Treasury to purchase silver as under the Silver Purchase Act of 1890. According to the congressional testimony of Treasury Secretary William Windom, the idea was to even more strongly commit to the gold standard but to do so in a way that did not reduce the national money supply.

Other congressional deliberations concerned more specific features of the financial system. For example, some Congressmen criticized Treasury borrowing to meet international obligations. The *Congressional Record* documents them complaining that the President was hiding profligate spending and attributing it to the requirement to maintain gold reserves. In modern terms, we might say they were pointing out that money is fungible.

In the end, the United States abided by the rules of the gold standard. However, doing so was by no means assured in the case of the monetary base, because returning to the pre-1873 Mint Act was a viable alternative. Furthermore, the need to borrow to meet international requirements of the gold standard required continued congressional consent during the crisis.

Although this section focused on monetary policy, the other three policy areas were also deliberated. Several State governments were again in danger of defaulting on their debts. Banking regulation was also an issue because obstacles to interstate banking had led to western mortgage debt being wrapped in securities called debentures and sold by trusts to eastern banks and investors. When western debt defaults rose during the 1890s, securities markets transmitted the distress to eastern banks and other financial institutions.[46] Congress responded to distressed businesses by passing another bankruptcy act. Unlike earlier temporary bankruptcy statutes in 1801 and 1841, this one was made permanent and is the foundation of the current bankruptcy code.

Following another panic in 1907, Congress created the National Monetary Commission to consider monetary reforms.[47] The result was the Federal Reserve Act of 1913, whose purpose was, in part, to foster monetary and banking stability by creating a more elastic currency. In deliberating the Federal Reserve Act, older Senators discussed the 1890s mortgage debentures problems, and the original Federal Reserve Act expressly included trusts in the definition of a bank and allowed trusts to be members of the system.[48]

---

[45] U.S. Congress, House Committee on Banking and Currency, *Hearings and Arguments on Proposed Changes in the Currency System of the United States, 55th Cong.*, 1897–1898 (Washington, DC: GPO, 1898).

[46] Andrew M. Davis, U.S. Congress, Senate National Monetary Commission, *The National Banking System*, 61st Cong., 2d sess., 582 (Washington: GPO, 1910–1911); and Kenneth A. Snowden, *The Anatomy of a Residential Mortgage Crisis: A Look Back to the 1930s*, National Bureau of Economic Research, July 2010, http://www.nber.org/papers/w16244.pdf.

[47] O.M.W. Sprague, U.S. Congress, Senate National Monetary Commission, *History of Crises under the National Banking System*, 61st Cong., 2d sess., Document 538 (Washington: GPO, 1910).

[48] U.S. Congress, Senate Committee on Banking and Currency, *Hearings*, H.R. 7837 (S. 2639), 63d Cong., 1st sess., September 2, 1913, Document 232 (Washington: GPO, 1913).

The Great Depression

ECONOMIC AND INSTITUTIONAL CONTEXT

The Great Depression was an extended period (1929–1941) of high unemployment and a variety of fluctuations including financial shocks and a short, modest recovery. There had been a boom period in the 1920s. The stock market crashed in 1929, borrowers defaulted, banks failed, and industrial firms laid off workers. Commodity prices collapsed, farm values declined, and many farms went into foreclosure. Nonbank financial institutions failed because they could not raise sufficient funds by liquidating the securities they held as collateral because of declines in financial markets. More than 12,000 banks failed.

In September and October 1929, the New York Stock Exchange started a decline that continued until July 1932, when it had fallen 89 percent from its high. It did not recover to the September 1929 level until November 1954. Although the 1929 stock market crash may have signaled the beginning of the Depression in the United States, economic contraction was actually a worldwide event that had begun earlier in other locations.

In 1933, the trough of the Great Depression, real gross domestic product (GDP)—production of final goods and services adjusted for inflation—was down 26.7 percent of its previous peak in 1929. By way of comparison, the trough in the recent recession was in 2009, when real GDP had declined by 3.1 percent from its peak. In the Great Depression, unemployment peaked at 24.9 percent in 1933.[49]

Prices as measured by the Consumer Price Index declined. Most economists consider deflation to be a greater problem than price level increases of a similar scale, because it can set in motion a vicious cycle of economic decline. Falling prices encourage consumers and businesses to postpone purchases because things will be cheaper to buy in the future. When prices are broadly declining, nominal wages and nominal business revenues tend to fall. This discourages consumer borrowing because it will be more difficult to pay back the loan out of lower incomes. Businesses are also discouraged from borrowing, because when their revenues decline, there is less need to borrow and repaying the loans will be more difficult. In 1929, there was no change in prices, but in 1931 the price level fell by 7 percent. Between 1929 and 1932, prices fell 16 percent. Until early 1933, prices continued to fall but then began a general (but not uniform) increase.

CONGRESSIONAL DELIBERATION, ACTION, AND OVERSIGHT

At the outset of the Great Depression, the country already had a financial regulatory framework designed for crisis response. The OCC had been created following the panic of 1857 with banking and currency related powers, and the Federal Reserve had been created following the panic of 1907 with monetary policy powers. The bankruptcy law enacted during the depression of the 1890s was still in effect. The case studies in this section illustrate contin-

[49] For an indepth analysis of unemployment in the Great Depression and the Great Recession, see CRS Report R40655, *The Labor Market During the Great Depression and the Current Recession*, by Linda Levine.

ued congressional discretion and examples of Congress choosing to change the rules (often temporarily), even if the rules of the game already encompass a response mechanism. Congress retained discretion and did take action to change the authorities and programs in place before the crisis.

Many comparisons have been made between the recent Great Recession and the Great Depression of the 1930s. Although there may be a common belief that Congress during the Hoover administration did nothing, historians are well aware that Congress took numerous steps during the deepest parts of the Depression (1930–1933). Because several policymakers during the 2007–2009 crisis consciously referenced lessons from the Great Depression in their own policy responses, this section and the section for the 2000s will treat each of the four policy areas separately. A comprehensive list of all congressional policies during the two periods would take many pages, so these sections merely provide illustrative examples.

Fiscal policy

With the end of World War I in 1918, the government's military expenditures declined, and the Federal Government began to run a budget surplus. Until the stock market crash of October 1929, the 1920s—sometimes called the "Roaring Twenties" [50] —were a time of general economic growth and prosperity in the United States and internationally. To balance the budget, Congress had cut taxes with the Revenue Act of 1921,[51] the Revenue Act of 1924,[52] the Revenue Act of 1926,[53] and the Revenue Act of 1928.[54] Treasury Secretary Andrew Mellon proposed further cuts in 1929, but Congress rejected them.[55] Some Members of Congress objected to these tax cuts. For example, Senator Robert La Follette argued against the tax cuts on the grounds that they favored corporations and high-income individuals because income taxes were levied only on high-income households at that time.[56]

Once the Great Depression began, the Federal Government's budgets were in deficit under both Hoover and Franklin D. Roosevelt. These deficits were primarily due to declining tax receipts as part of the automatic stabilizers. Federal spending, adjusted for deflation, increased. The budget deficits were too small relative to the economy for many modern economists to believe that they would have any meaningful expansionary effect.

As the Great Depression deepened, the Hoover administration called on Congress to increase taxes. For example, in 1932, Secretary Mellon testified that there would be a $200 million budget

---

[50] The phrase "Roaring Twenties" is something of a misnomer, because there were three recessions in the decade before the official start of the Great Depression in August 1929.

[51] 42 Stat. 227; *New York Times*, "Conferees Finish Work on Tax Bill," November 20, 1921, p. 14; and *New York Times*, "Democrats Assail Tax Bill Changes," October 6, 1921, p. 4.

[52] 43 Stat. 253; *New York Times*, "Tax Conferee Fight Fizzles in Senate: Democrats Abandon Fight for Majority of the Five Who Meet House Group Today," May 14, 1924, p. 21.

[53] 44 Stat. 9; W.M. Kiplinger, "Prosperous America Cuts Taxes Again: New Law Relieves 2,000,000 People of Levy on Their Incomes," *New York Times*, February 28, 1926, p. 25.

[54] 45 Stat. 791; *New York Times*, "Congress Voted $4,628,045,035: Largest Peace-Time Budget Exceeds Its Predecessor by $478,542,508," June 7, 1928, p. 4.

[55] *New York Times*, "Hoover and Mellon Agreed on Tax Cut: White House Denies Reports of a Conflict on Possible Reductions," July 4, 1929, p. 3.

[56] *New York Times*, "La Follette Scores Relief Compromise," February 11, 1931, p. 2.

deficit and that taxes should be increased to balance the budget.[57] Congress debated the dangers of running a deficit and passed the Revenue Act of 1932 (P.L. 72–154), which increased income taxes on high-income households, the only ones paying income taxes in those days. Even after these tax increases, tax revenues continued to fall.

However, to say that the Federal Government's budget was too small relative to the economy to have a meaningful effect is not the same as saying the government did not pursue any legislation that was technically expansionary (even if too small to matter in the aggregate). Although the real value (adjusted for inflation) of overall economic spending declined by nearly a third between 1929 and 1932, real Federal Government expenditures actually increased. However, this increase in Federal spending was partially offset by a decline in State and local government spending.[58]

A number of employment programs were passed and signed into law or created by Executive order. Within the Roosevelt administration, there were debates over the goals of the programs.[59] Some argued that their primary emphasis should be on employing those out of work, while others argued that the primary emphasis should be on building infrastructure at the least cost. In addition, Federal, State, and local governments provided direct relief to the unemployed. Legislation to create new infrastructure was controversial.[60] President Hoover vetoed the Emergency Relief and Construction Act of 1932 as originally sent to him but signed an amended version (P.L. 72–302). Other related bills never made it out of Congress.

Monetary policy

Through the Federal Reserve Act, Congress had delegated much of monetary policy to the independent agency. During the 1920s, the Federal Reserve had an active, countercyclical monetary policy that was credited with alleviating a recession in 1921, slowing overly rapid growth in early 1923, and prompting an expansion after the 1923–1924 recessions.[61] These seeming policy successes and the relatively brisk economic growth during the 1920s caused some to believe that the Fed could stabilize the economy.[62] In order to support Great Britain's attempt to resume convertibility to gold, the Federal Reserve eased monetary policy in the late 1920s. Some think that this may have contributed to an acceleration of asset prices in the United States.[63] The Federal Reserve appears to have grown more confident during the 1920s that monetary policy could be used to stabilize the economy. When the stock market boom ac-

[57] Roy G. Blakey and Gladys G. Blakey, *The Federal Income Tax* (New York: Longmas, Green and Company, 1940).

[58] Federal Reserve Bank of St. Louis, *Federal Reserve Economic Data*, at http://research.stlouisfed.org/fred2/series/FYFSD#. Converted to calendar years by CRS.

[59] See, for example, Lester V. Chandler, *America's Greatest Depression 1929–1941* (New York: Harper and Row, 1970), pp. 193–194.

[60] Chandler, "Chapter 11."

[61] Friedman and Schwartz, *Monetary History*, p. 296.

[62] Barry Eichengreen, *Golden Fetters: The Gold Standard and the Great Depression, 1919–1939* (Oxford: Oxford University Press, 1992).

[63] Alan H. Meltzer, *A History of the Federal Reserve, Volume 1: 1913–1951*, (Chicago: University of Chicago Press, 2004), p. 139.

celerated in the late 1920s, the Federal Reserve took actions to deflate the bubble.[64]

While the administration of monetary policy had been delegated to the Federal Reserve, Congress still determined the definition of the dollar in terms of gold. In addition, Congress retained the power to alter the authority of the Federal Reserve and the OCC. Congress retained the power to provide financial support to banks and facilitate the resolution of failed banks.

The collapse in growth of the money supply was caused by three distinct banking panics in 1930, 1931, and 1933. Bank suspensions and failures shrank the money supply directly by reducing checkable deposits. The Federal Reserve did not intervene aggressively to mitigate bank failures. Bank failures created practical obstacles for the extension of credit, such as the loss of borrower records, which reduced the potential effectiveness of monetary policies. This can be seen in the 33 percent drop in the money supply in the United States, compared to a 13 percent drop in Canada during 1929–1933, which did not suffer similar waves of bank failures.[65] Some economists believe that the Federal Reserve's decision to allow the money supply to drop contributed to the severity of the Depression in the United States, although the drop in economic activity was similar in both countries.[66]

As in the depression of the 1890s, the economic "rules of the game" purportedly limited the range of available policy actions. As in the 1890s, Congress retained the power to alter those rules. First, Congress could leave or suspend the gold standard and pursue expansionary monetary policies. Other countries did this. Second, Congress could alter the powers and authorities of the Federal Reserve and the OCC. Third, Congress could authorize direct assistance to banks or pass legislation facilitating orderly liquidation of banks.

Many modern economists consider Federal Reserve inaction even within the constraints of the gold standard to be a factor in the duration and intensity of the Depression. Although the Federal Reserve took a number of steps to lower interest rates and make occasional open market purchases, the Fed quickly ceased because of fears of inflation or an international run on the dollar. To many modern observers, these fears seem like strange concerns, especially given the deflation of the time, although there was eventually a run on the dollar after the election results of 1932.

The congressional role was largely one of oversight at the beginning of the Depression. Officials from the Fed and the OCC testified before Congress along with submission of their regular agency reports. Hearing transcripts reveal a variety of congressional concerns. For example, the international status of the dollar was regularly discussed. Other issues included the rules for membership of banks in the Federal Reserve System, the types of bank assets that

---

[64] James D. Hamilton, "Monetary Factors in the Great Depression" *Journal of Monetary Economics*, vol. 19, no. 2 (March 1987), pp. 145–169.

[65] Friedman and Schwartz, *Monetary History*, p. 352

[66] The quantity theory of money states that MV = PY, or that the money supply times the velocity of money equals the price level times the economy's production (usually measured as real net national product, or NNP). The contraction of the real NNP was comparable in the United States and Canada (−53 percent vs. −49 percent) because the bulk of the difference in MV = PY was borne by velocity (V, −29 percent vs. −41 percent), instead of Y (NNP).

could be used as collateral for loans from the Fed, and several structural issues that will be discussed in the banking section.

As the Depression deepened and dragged on, there was legislation related to temporarily increasing the money supply. Senators William Borah and Carter Glass wanted to increase the supply of circulating safe assets that could be used as collateral for private loans. Recall that in addition to coin-backed notes, transactions can be funded by loans against relatively safe collateral. In June 1932, the Senate Banking and Currency Committee reported out the Glass bill, which was designed to make Government bonds eligible to increase money in circulation in this manner. Although President Hoover opposed the approach as unnecessarily tying circulating medium to the existing supply of assets (unlike the Federal Reserve, which could adjust the money supply more elastically), the concept was enacted as part of the Federal Home Loan Bank bill (discussed more below) as the Glass-Borah rider.[67]

After the passage of the Glass-Borah rider, Congress broadened the authority of the Federal Reserve to expand the money supply. Glass had been a major figure in the 1914 creation of the Federal Reserve. At the time of the establishment of the Federal Reserve, Glass had believed that a central bank should loan to banks only on good collateral, which was defined at the time as self-liquidating collateralized commercial credit and other real bills, not Government bonds.[68] Under this real bills doctrine in 1914, the Federal Reserve could not use government debt for important monetary purposes, as it was thought that open market operations fueled "speculation," not productive investment. By 1932, Glass and many others had changed their minds about the real bills doctrine, and Congress passed and Hoover signed legislation expanding the range of collateral eligible for Fed discounting and broadened the range of eligible collateral to include government debt.

As in the 1890s, uncertainty about political outcomes could affect the credibility of the monetary standard. For example, at the time there was a 5-month gap between November elections and the inauguration of the President in March of the next year. Uncertainty about whether Roosevelt would remain on the gold standard caused international central banks to liquidate U.S. securities that they held in lieu of monetary gold. This was effectively a run on the dollar, and previous attempts to defend the dollar against such a run had contributed to monetary contraction. Domestically, bank depositors withdrew their funds, and several State banking systems collapsed. President Hoover asked President-elect Roosevelt to make an announcement that he would honor gold, but Roosevelt refused. In hindsight, the international central banks and domestic depositors who dumped dollars were correct in that President Roosevelt did devalue the dollar upon taking office.

Congress included legislation that devalued the dollar in terms of gold in the emergency actions that accompanied FDR's first hundred days. As discussed in the general description of monetary policy, economists have noted that several countries experienced recoveries after abandoning the gold standard. Recovery for the

---

[67] American Institute of Banking, "Anti-Depression Legislation: A Study of Acts, Corporations, and Trends Growing Out of the 'Battle with Depression,'" December 1933, p. 73.

[68] Meltzer, *History of the Federal Reserve*, pp. 138–139.

United States also began after devaluation. In devaluing the dollar, the 1933 acts also abrogated gold-based cost-of-living adjustments in private debt contracts and in Treasury bonds. The gold index clause provision is relevant because otherwise the monetary revaluation would have been offset by matching debt-burden adjustments in contracts that had the clauses. The value of railroad bonds, U.S. Liberty bonds, and many other securities remained in doubt until the Supreme Court ruled against restitution for bondholders in 1935.

Banking regulation and assistance [69]

Bank failures can exacerbate a recession in a number of ways. First, because deposits serve as money, and banks loan a fraction of their deposits, bank failures can shrink the money supply. Second, bank failures can impair the channels by which people desiring credit can access funds so that lower interest rates do not translate into more people taking out loans.[70]

Congress did not act immediately to address bank failures or the monetary contraction that those failures contributed to. However, as the Depression deepened, Congress took a number of actions to directly assist banks and other financial institutions while Hoover was President. In many cases, a coalition of progressive Republicans and Democrats helped to pass the legislation. During the Hoover administration, the chairman of Senate Banking and Currency, Republican Senator Peter Norbeck, had been active in creating direct government lending institutions and other financial assistance programs at the State level. He was part of the midwestern farm progressive wing of the party and did not have ideological opposition to government intervention per se, although he thought State governments should take the lead in some areas. Senator Norbeck hired Ferdinand Pecora to begin analyzing the role of banking in the Depression, resulting in the Pecora Commission.

Congress held hearings to try to diagnose the problems in banking. Congress may have had difficulty linking the bank failures of the early 1930s to problems with the macroeconomy because there had been many bank failures during the boom of the 1920s. For example, the head of the OCC testified to Congress in 1931 that the bank failures were due to the structure of the U.S. banking system rather than to monetary conditions. At the time, the United States still had thousands of small, undiversified regional banks, because most States prohibited branch banking. In the 1920s, before the Depression started, hundreds of banks failed each year. The head of the OCC testified before Congress that one solution to the banking problem would be to preempt State law and to allow branch banking. That is, he argued that the banks that were failing were inefficient and should be failing.

By 1932, both Congress and the President were willing to take direct action to assist the banking system. One major change was Glass-Steagall I, which responded to "toxic" assets held in the

[69] A detailed contemporary history of banking-related legislation was compiled by the American Institute of Banking in *Anti-Depression Legislation*.
[70] Ben S. Bernanke, "Nonmonetary Effects of the Financial Crisis in the Propagation of the Great Depression," *American Economic Review*, vol. 73, no. 3 (June 1983), pp. 257–276.

banking system. Problems in securities markets had made some of the securities held by banks unmarketable. The crisis in securities-based lending was alleviated by expanding the range of collateral eligible for the Federal Reserve.

Another measure that provided direct assistance to banks was the establishment of the Reconstruction Finance Corporation (RFC).[71] Congress passed and Hoover signed legislation creating an agency with authority to provide direct financial assistance to struggling banks and other financial firms. At first, the RFC loaned money to banks. When Roosevelt took office, RFC assistance to banks was transformed more often to capital injections. The RFC eventually became a creditor to many kinds of financial institutions and entities, not just banks—including the State of Arkansas, whose entire debt was purchased for 1 year by the RFC.

Congress also passed and Hoover signed another piece of legislation to give smaller financial institutions greater access to credit markets. The Federal Home Loan Bank (FHLB) system was designed to allow banks and mortgage lenders to form what were essentially mutual associations to borrow through securities markets as a single entity. These FHLBs are government-sponsored banks that lend to bankers, not to individual household or business borrowers. Initial funding for the FHLB system came from the newly created RFC.

Upon the election of Roosevelt and a new Congress, the United States took immediate new steps to address problems in the banking system. First, because the third wave of bank failures and the run on the dollar had occurred immediately prior to his inauguration, Roosevelt took a number of steps. He declared a banking holiday. The financial condition of all banks was reviewed, and only healthy banks were allowed to reopen. Roosevelt directed the RFC to switch from loans to capital injections, and he devalued the dollar in terms of gold internationally, which increased the real value of monetary reserves and stimulated net exports.[72]

Congress passed the Banking Act of 1935 (P.L. 73–66), which expanded the Federal Reserve's powers. It moved power from the regional banks to the Board of Governors and its chairman. The act also made the Fed independent of Treasury.

Bankruptcy and debt restructuring

As in the 1890s, rapid deflation increased the real burden of debts as wages and prices fell while the nominal value of debts were unchanged. There were widespread business failures, farm foreclosures, municipal defaults, and personal insolvencies. Farm mortgages were particularly problematic to resolve. On the one hand, the decline in property values reduced the ability of lenders to recover the value of the loan through foreclosure so they might have been willing to work things out. On the other hand, problems in financial institutions' access to credit described above made it

[71] A history of the RFC was written by its early official, Jesse Jones. Jones notes that during his 13-year tenure, each successive Congress broadened the powers of the RFC. See Jesse H. Jones, *Fifty Billion Dollars: My Years with the RFC, 1936–1945* (New York: Macmillan, 1951).

[72] The trade effect was likely minimal, because many countries enacted protective trade laws in response to the United States raising tariffs.

imperative to recover funds as quickly as possible. Similar tradeoffs existed for nonbank lenders as well.

As farm foreclosures increased, several State governments began responding to farmers' concerns. Several States enacted a mortgage foreclosure moratorium, preventing lenders from seizing property. In some places private citizens reportedly tried to intimidate potential bidders at foreclosure sales so people could buy their properties back.

Congressional action to address foreclosures was included in the Federal Home Loan Bank Act. The act included a temporary delay of foreclosure proceedings for certain banks. The newly created RFC could advance the funds to cover delayed payments to institutions that were joining the system.

Debt restructuring was also affected by the method used to go off the gold standard. The gold acts did not just permit flexible exchange rates; they also invalidated gold index clauses. A gold index clause was similar to a cost-of-living adjustment. If the gold index clauses had not been invalidated, then when Congress revalued gold from 16:1 to 35:1, the balance for debts with gold clauses would have risen by 60 percent. Congress invalidated not only gold clauses in its own bonds but also such clauses in private contracts.

Congress responded to the Great Depression with many other programs for specific economic sectors. Examples include the Agricultural Adjustment Act and the National Industrial Recovery Act, but this report is limited to the policy areas described in the introduction.

2000S AND THE GREAT RECESSION

ECONOMIC AND INSTITUTIONAL CONTEXT

Like the Great Depression, the country already had a financial regulatory framework designed for crisis response at the outset of the Great Recession. In addition to the OCC and the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC) was in place to prevent bank runs, and other agencies and legal frameworks were in place designed to facilitate confidence in financial markets and their continued functioning. Like the Great Depression section, the case studies in this section illustrate continued congressional discretion and examples of Congress choosing to change the rules of the game (often temporarily), even if the rules already encompass a response mechanism. Many congressional and agency actions taken to combat the Great Recession, including temporary measures, were analogous to similar actions during the Great Depression.

Even though the legal framework differed in significant ways, some of the economic issues of the Great Recession of 2007–2009 resemble those of prior depressions. A period of debt-funded expansion was followed by a financial crisis and a period of extended unemployment.[73] Once the recession began, investment lagged despite low interest rates. As in the 1840s, State financial problems were a drag on fiscal policy. As in the 1890s, defaults on mortgages

---

[73] National Commission on the Causes of the Financial and Economic Crisis in the United States, *The Financial Crisis Inquiry Report*, January 2011, http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.

wrapped in securities transmitted losses through the capital markets. As in the 1930s, when market transactions in the securities halted, it became difficult for financial institutions that held the securities to value them or to use them as collateral for loans. Like in the 1930s, there was a crash in the repurchase agreement market.[74]

By most measures, the Great Recession was milder than the Great Depression. Some of that difference may be due to differences in policy, but some of the difference may have been due to differences in the nature of the economic shocks that started the crises. Unemployment during the Great Recession peaked at less than half the peak of the Great Depression. Unlike the deflation of the Great Depression, the price level remained relatively stable during the Great Recession.

During the 2000s, more of congressional emergency authority had been delegated to independent agencies than in prior crises. The Federal Reserve was given broad emergency lending powers in section 13(3) of the Federal Reserve Act. Leaving the gold standard and eventually adopting floating exchange rates freed the Federal Reserve from some external constraints on monetary policy decisions.[75] The FDIC existed to dissuade depositors from running on banks, and the FDIC had the authority to temporarily increase its coverage. The Securities and Exchange Commission could limit trading on certain stock transactions. These delegations meant that some rules could be changed even if Congress took no action, although Congress still conducts oversight. Policymakers in the agencies had more options available to them in the 2000s without having to ask for additional congressional authority or to negotiate internationally.

Furthermore, key policymakers such as Federal Reserve chairman Ben Bernanke and Council of Economic Advisers chair Christina Romer had spent part of their academic careers studying the causes of the Great Depression. Bernanke and Romer both felt that tight monetary policy and Federal Reserve inaction had contributed to the Depression.[76] Furthermore, they both believed that sustained recovery did not occur until the gold standard had been abandoned, increasing money flows in the United States.

CONGRESSIONAL DELIBERATION, ACTION, AND OVERSIGHT

Fiscal policy

Federal fiscal policy was deliberately expansionary during the early stages of the mortgage crisis and the subsequent recession.[77] The Federal Government's deficit increased during both the Great Depression and the Great Recession, although nearly twice as

---

[74] Ibid.

[75] Domestic convertibility of gold was suspended in 1933. International convertibility was suspended in 1972.

[76] Ben S. Bernanke, "Remarks on Milton Friedman's Ninetieth Birthday," November 8, 2002, at http://www.federalreserve.gov/BOARDDOCS/SPEECHES/2002/20021108/.

[77] The formal macroeconomic theories of expansionary fiscal policy were not widely accepted until after the publication of John Maynard Keynes' *General Theory* in 1935. Although there were people who advocated deficit spending in recessions prior to 1935, they did not do so on Keynesian grounds. In contrast, policy discussions and congressional deliberations in the 2000s expressly considered the Keynesian framework for macroeconomic policy decisions.

much during the Great Recession in relation to GDP.[78] This expansionary set of policies at the Federal level was partially offset by tight conditions at the State level. As the economic malaise endured, Federal fiscal policies became less expansionary. This section of the report will focus on fiscal policies in three periods: (1) after mortgage turmoil began but before the financial panic in September 2008, (2) from the 2008 panic until the 2010 elections, and (3) after 2010.

Even before the beginning of a recession had been officially declared, policymakers took steps for expansionary fiscal policy. Turmoil in financial markets erupted during the summer of 2007, and policymakers began considering responses shortly thereafter. General economic conditions were flattening out, and a recession began in December. However, the formal dating of recessions is backward-looking, so in early 2008 no one knew that a recession had started. In order to reduce the risk of a recession, Congress enacted a tax cut in early 2008 designed to maintain consumer spending. Despite this action, economic conditions continued to worsen, perhaps because this tax cut was relatively small as a share of GDP.

Declines in State and local spending partially offset Federal fiscal actions throughout the period. Many States have balanced budget requirements in their State constitutions. State legislators are therefore unable to change their budget rules of the game merely through legislation. Many local governments rely on property taxes as a significant source of revenue, and these sources of funds were particularly hard hit when the housing bubble popped. As a result, many State and local governments were cutting spending and raising taxes when the Federal Government was increasing the size of its deficits. Furthermore, investor confidence in the creditworthiness of several State governments began to deteriorate, as measured by the spread between their borrowing costs and Federal borrowing costs and by the ratings agencies. California even temporarily issued its own monetary scrip in response to its budgetary woes.

After the financial panic in September 2008 and the election of a new President with majorities in both Chambers of Congress of his own party, Federal fiscal policy became even more expansionary. In part, this was due to automatic stabilizers that act countercyclically and thus tend to increase Federal spending and reduce Federal tax receipts during a recession. However, it was also due in part to legislation designed to be expansionary.

There were several fiscal policies designed to temporarily suspend rules. There was a temporary suspension of the collection of a portion of payroll taxes (P.L. 111–312). During the Great Recession, the American Recovery and Reinvestment Act (P.L. 111–5)[79] was characterized as the primary stimulus bill. In addition to public works funding, it included tax cuts, provided money for expanded unemployment assistance, and granted financial support to State and local governments. There was also a temporary program

[78] Bureau of Economic Analysis, U.S. Department of Commerce, *Net Federal Government Saving*, downloaded from St. Louis Federal Reserve Bank, http://research.stlouisfed.org/fred2/series/AFDEF. This is in current dollars.

[79] For more information, see CRS Report R40537, *American Recovery and Reinvestment Act of 2009 (P.L. 111–5): Summary and Legislative History*, by Clinton T. Brass et al.

for a special class of bonds to facilitate infrastructure spending (Build America bonds). Other programs, such as "cash for clunkers" and a first-time homebuyer tax credit, were targeted at specific economic sectors.

After the 2010 elections, which resulted in a Republican majority in the House and reintroduced divided government, fiscal policies became less expansionary.[80] Concerned that continued Federal budget deficits would be a long-term problem, the Republican House negotiated for spending cuts during debt ceiling talks, resulting in legislation that capped discretionary spending. With Congress unable to reach a consensus during the appropriations process, a series of continuing budget resolutions effectively froze Federal spending for a time. Disagreements between the Republican House and the Democratic Senate and President resulted in a shutdown of the Federal Government.

Monetary policy

The Federal Reserve under Bernanke deliberately rejected several policies of the 1930s in favor of more expansive programs.[81] The Fed uses different tools in its various roles. To implement monetary policy, the Federal Reserve buys and sells Government bonds (i.e., conducts open market operations). As lender of last resort (LOLR), the Federal Reserve can provide emergency lending to distressed banks. To counter illiquidity in the financial system, the Federal Reserve can expand the types of collateral that it will lend against. The Federal Reserve used its existing authorities to take more aggressive action than it had taken in the 1930s.

The Federal Reserve used its LOLR powers to facilitate the rescue or sale of some distressed financial institutions. Under normal conditions, the LOLR authority is limited to commercial banks that are members of the Federal Reserve System. During the mortgage crisis, the Fed extended access to its LOLR facilities to nonmembers. In March 2008, the Fed provided a loan to assist JPMorgan in acquiring failing broker-dealer Bear Stearns. The Fed and JPMorgan loaned to a newly created entity called Maiden Lane, which held a pool of Bear Stearns assets for which JPMorgan took first loss and the Federal Reserve received senior treatment. The Federal Reserve considered using the Maiden Lane structure to intervene on behalf of the broker-dealer Lehman Brothers in September 2008, but this did not happen. A financial panic occurred when the Lehman's bankruptcy was announced. The Federal Reserve used the Maiden Lane structure to intervene on behalf of the insurer AIG.

The Federal Reserve used its authority to lend against good collateral to set up a number of temporary liquidity programs designed to address illiquid assets. As discussed above, the ability of securities to act as good collateral in private transactions erodes

[80] Because some government spending and tax receipts respond to economic conditions, there is an automatic stabilizer effect for fiscal policy. Fiscal policy becomes expansionary during recessions because deficits naturally grow and contractionary during booms as tax receipts generally rise. Economists therefore use a measure, called the full employment budget, to account for this natural fluctuation in the budget over the business cycle. As measured against the full employment budget, Federal fiscal policies after 2010 were contractionary.

[81] Ben S. Bernanke, "Speech on Monetary Policy Since the Onset of the Crisis," August 31, 2012, at http://www.federalreserve.gov/newsevents/speech/bernanke20120831a.htm.

during a panic, including for nonbanks. If so, not only may aggregate credit decline, but specific lines of businesses that had relied on collateralized lending structures may be unable to roll over their debt to continue to finance existing operations. When trading in several classes of asset-backed securities (ABS) collapsed during the crisis, they could no longer be valued to be used as collateral for further loans. Although banks could use ABS as collateral, the Term Asset Loan Facility (TALF) enabled nonbanks that held ABS that had become toxic during the crisis to obtain short-term loans from the Fed. Like the expansion of LOLR powers, access to TALF was not limited to member banks of the Federal Reserve System.

Since the start of the 2007–2008 recession, the Federal Reserve has used open market operations to lower interest rates and stimulate lending. With short-term interest rates almost zero, the Federal Reserve has taken a number of unprecedented additional steps to stimulate the economy. It has characterized these actions, including quantitative easing (QE), as both extraordinary and temporary. Under QE, the Federal Reserve purchased securities to expand its balance sheet (and the money supply) by purchasing longer term Treasury debt and mortgage-related bonds and securities. The Federal Reserve also made swap arrangements with foreign central banks to make sure that dollars, which are the worldwide reserve currency, were available to the international finance system.

In its oversight role, Congress called Fed officials to testify before committees to diagnose the economic problem and explain Federal Reserve actions (or inactions) to address the crisis. At times, some Members of Congress were dissatisfied with the level of information provided, and Congress ultimately passed legislation that provided greater oversight powers of certain Fed programs, including expanding Government Accountability Office audit power for some Fed functions. Dissatisfied with the ad hoc nature of the response to the financial crisis and convinced by Fed officials that lack of authority prevented further action, some Members of Congress called for expanding the Federal Reserve's powers and mission. For example, the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111–203) granted the Fed greater regulatory authority over some nonbank financial institutions, transferred some of the Fed's mortgage-related and consumer protection regulatory powers to a new agency, and eliminated the ability of the Fed to use a Maiden Lane-type structure for individual institutions. Proposals to alter the Fed's monetary policy mission, such as inflation targeting, were discussed but not enacted. Some Members of Congress expressed doubts about the effectiveness and longrun implications of QE and growing Federal debt.

Banking regulation and financial institution intervention

As discussed above, the Federal Reserve used the Maiden Lane structure on an ad hoc basis to rescue some financial institutions. In some cases, these firms were performing money-creation services similar to banks, but they were not chartered commercial banks and did not have direct access to some Federal Reserve facilities. In one example, broker-dealers used repurchase agreements to fund credit for other financial transactions. Refusal to roll over re-

purchase agreements has been likened to a run by bank depositors. Monetary conditions, if defined broadly enough to include credit generated through repurchase agreements, were more stringent than traditional measures might indicate. Also, two government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac—which served as intermediaries between mortgage markets and securities markets—became distressed.

Congressional response took many forms, but in the interest of space, this report will focus on just a few. First, Congress enacted the Housing and Economic Recovery Act of 2008 (HERA; P.L. 110–289). This act gave the Secretary of the Treasury authority to give direct financial assistance to the GSEs. Using this authority, Treasury and the newly created Federal Housing Finance Agency placed the GSEs in conservatorship. The panic of September 15, 2008, began less than 2 weeks after Treasury exercised its HERA powers.

Congress also passed the Emergency Economic Stabilization Act of 2008 (EESA; P.L. 110–343). EESA was the primary tool for providing financial assistance to the banking system and related institutions. It was also used to assist automakers and some homeowners. EESA gave the Secretary of the Treasury temporary authority to acquire mortgage-related assets or any other asset that the Secretary believed could assist financial stability. Initially, EESA was used to inject capital into financial institutions by purchasing their preferred shares—the Capital Purchase Program—and became colloquially known as the bank bailout, although the return was positive for the government. The EESA Capital Purchase Program included a wide variety of financial firms, from firms that formerly had been the broker-dealers in the repurchase agreement market to some very small community banks. It is worth noting that the first vote on EESA failed, and financial markets fell further upon the news.

EESA also contained a provision related to money market mutual funds (MMFs). During the panic, one MMF "broke the buck," meaning that investors lost principal in this usually safe liquid investment product. Investors then began withdrawing funds from MMFs more generally. Treasury exercised authority left over from the gold standard to announce a temporary guarantee program for MMFs. EESA included a provision to prevent further use of the Exchange Stabilization Fund as a guarantor of MMFs.

Bankruptcy and debt restructuring

Congress confronted many issues related to the treatment of distressed debt, as might be expected in a crisis driven by mortgage defaults. Congress deliberated at least three areas of concern. First, as discussed in the Fed's LOLR role, policymakers were concerned about the resolution of nonbanks through the bankruptcy system. Second, the relatively large number of banks failing presented Congress with concerns over the financial soundness of the FDIC. Third, individual homeowners who were in default sought relief from lenders. Although mortgage foreclosure moratoriums were never enacted, delays of the foreclosure process were achieved through other means.

Initially, policymakers created voluntary programs to encourage mortgage modification rather than foreclosure. For example, when house prices first began falling, the administration created the Hope Now Program to encourage voluntary modifications by mortgage servicers that acted on behalf of the owners of mortgage-backed securities. Dissatisfied with the results, Congress passed legislation to insulate mortgage servicers from potential investor lawsuits if they offered modifications before a homeowner missed payments.

As bank failures increased, the FDIC inherited a portfolio of distressed mortgages owned by failed banks. In its role as receiver, the FDIC initiated a program of mortgage modifications for the loans it controlled. Called the IndyMac Program for one of the failed depository institutions, the FDIC program became a model for other Federal initiatives.

Mortgage servicers were compelled to delay foreclosures in some cases and encouraged to in others. For example, Congress passed legislation requiring banks that participated in EESA to offer mortgage modifications. Similarly, the conservatorship of the GSEs was used as a vehicle for mortgage modification programs such as Home Affordable Refinance Program and Home Affordable Modification Program. In addition, mortgage modification policies were achieved by a negotiated settlement to end some lawsuits against the banks that had the largest share of the mortgage servicer business.

Conclusion

Just as a glass may be described as half full or half empty, history may reveal continuity or change. The episodes described above contain some continuities. During financial crises, people have asked for temporary changes to the existing rules of the game. Furthermore, even though the institutional frameworks of 1840, 1893, 1930, and 2008 were vastly different, there are consistencies in the calling for Congress to adjust the budget and aid State governments, change the structure and mission of the central bank (or even to create one), provide financial assistance to distressed banks and financial firms, and change the laws for the treatment of bankrupt debtors. On the other hand, history also reveals change, as Congress has created agencies to which it has delegated authority. In times of crisis, Congress' initial reaction may be to exercise increased oversight, although Congress can and has changed the powers of agencies during financial crises.

Despite precautions, bad economic events are likely to happen again in the future. Congress can expect to be called to consider temporarily suspending, or even fundamentally changing, the economic rules of the game. So long as the Constitution grants Congress the authority to deal with fiscal policy, monetary policy, banking regulation, and bankruptcy, a financial crisis will most likely result in calls to revisit the normal rules of the game.

Historically, while Congress did not always make the same decisions in the financial crises discussed, Congress did deliberate similar issues. It is difficult to interpret congressional inaction for fiscal policy in the 1840s and monetary policy in the 1890s as inability to act, because Congress enacted other temporary measures (such

as bankruptcy laws) during the same crises. Similarly, it is difficult to interpret congressional action to assist financial institutions during the 1930s and the 2000s as Congress' hands being forced, because there were potential actions Congress declined during the same crises.

To the extent the past is a guide, one would expect people to petition Congress to use its powers to facilitate temporary changes to whatever rules are in place during the next economic crisis. Therefore, attempts by a current Congress to create a framework that would prevent a future Congress from having to deliberate on an unpopular financial rescue package during a future crisis is problematic. On the other hand, perceptions by market participants that Congress must act to save distressed firms may be frustrated, as illustrated by congressional defeat of the Johnson Plan during the 1840s, congressional defeat of the free silver movement during the 1890s, and congressional willingness to shut down the government in the 2000s. The express constitutional grant of authority to Congress over economic policy means that these issues are likely to be deliberated during a crisis no matter what the preexisting rules are, because people often want temporary changes to existing rules, but it does not commit Congress to either action or inaction during a crisis.

Shocks to the System: Congress and the Establishment of the Department of Homeland Security

WILLIAM L. PAINTER

Analyst in Emergency Management and Homeland Security Policy

After the 9/11 terrorist attacks, Congress passed a massive executive branch reorganization, creating the Department of Homeland Security. It pulled together parts of 22 Federal agencies with over 170,000 employees and a budget of roughly $30 billion. Despite the size and scope of the reorganization, the legislation to establish it moved quickly through Congress. It did so in a process galvanized by two major shocks: the attacks themselves, and a reversal of the White House position from opposing the establishment of a new department to proposing one. Some parts of Congress had already been working on this idea. After the shock of the 9/11 attacks, those efforts received greater attention. Once the administration endorsed creation of a new department, however, the work of the committees was largely set aside. A more thorough debate at the time could have developed a broader consensus over how to best address homeland security issues, and preemptively resolved some of the lingering questions that face Congress and the department today. When Congress again finds itself in the position of being pressed to act quickly on complex, long-term organizational issues, it may be worth considering the body's susceptibility to these kinds of outside shocks, which may leave unresolved issues and their avoidable consequences in its wake.

Introduction

In the wake of the terrorist attacks of September 11, 2001, Congress undertook a series of actions aimed at shoring up the Nation's ability to prevent and respond to terrorist attacks. Two supplemental appropriations were passed to fund response, recovery, and security efforts. Legislation to bail out the staggering airline industry was passed, as was legislation to establish the Transportation Security Administration. Congress enacted sweeping authorizations for the use of military force to bring the leaders of the organization that perpetrated the attacks to justice. The PATRIOT Act was signed into law, broadening the authority of the government to collect information.

One of the most significant moves was the massive reorganization of the executive branch that created the Department of Homeland Security (DHS). The legislation to create this department changed the face of government, pulling together parts of 22 Federal agencies with over 170,000 employees and a budget of roughly $30 billion. Despite the size and scope of the reorganization, the legislation to establish it—the Homeland Security Act of 2002[1]—moved incredibly quickly through Congress. It did so in a process galvanized by two major shocks: the attacks themselves, and a reversal of the White House position from opposing the establishment of a new department to proposing one.

This report uses the backdrop of those events to illustrate how various internal factors—such as the congressional committees, calendar, and leadership—establish the pace and process of the debate on complex legislation, and how in a time of crisis, external shocks can impact that same pace and the outcome of that process.

The Pre-9/11 Congress

In early September 2001, Congress was resuming debate on a number of issues, having just returned from an August break. A comprehensive energy policy bill, Social Security reform, the state of the economy, a shrinking budget surplus, and passage of appropriations legislation topped the agenda.

Discussions of the changing threat environment were going on, but were not a primary concern of Congress. Much of these discussions had centered on reports by the U.S. Congressional Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction[2]—also known as the Gilmore Commission—and the U.S. Commission on National Security/21st Century[3]—also known as the Hart-Rudman Commission.

In December 2000, the Gilmore Commission released its second annual report, "Toward a National Strategy for Combating Terrorism." The report called for the creation of a "National Office for Combating Terrorism," which would be headed by a Senate-confirmed director who would formulate strategy and use the budget process to help coordinate the estimated 40 parts of the Federal Government involved in counterterrorism activities. However, the director would not have operational control of the various elements.[4]

In January 2001, the Hart-Rudman Commission released its third report in a series on American security policy in the 21st century, entitled "Roadmap for Security: An Imperative for Change." The report called for a number of actions to shore up American security and economic competitiveness. A warning in the series about the likelihood of a terrorist attack on American soil drew some at-

[1] P.L. 107–296.

[2] Reports available at http://www.rand.org/nsrd/terrpanel.html.

[3] Reports available at http://govinfo.library.unt.edu/nssg/Reports/reports.htm.

[4] Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, "Second Annual Report to the President and the Congress of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction: Toward a National Strategy for Combating Terrorism," December 15, 2000, at http://www.rand.org/content/dam/rand/www/external/nsrd/terrpanel/terror2.pdf.

tention. In March and April 2001, House and Senate committees held hearings on the recommendations of the commissions.[5]

One of the Hart-Rudman recommendations was creation of "a new National Homeland Security Agency to consolidate and refine the missions of the nearly two dozen disparate departments and agencies that have a role in U.S. homeland security today." [6] As the constitutional authority to establish and organize agencies to carry out Federal laws lies with Congress,[7] implementing this recommendation would require legislative action. Representative Mac Thornberry introduced a bill in the 107th Congress—H.R. 1158—which would have established a National Homeland Security Agency, made up of the Federal Emergency Management Agency, the U.S. Customs Service, the Border Patrol, the U.S. Coast Guard, and parts of the Department of Commerce and Federal Bureau of Investigation.

Representative Thornberry's approach was not the only recommendation on how to move forward. Representative Ike Skelton introduced H.R. 1292 (107th Congress) shortly thereafter, which would have provided direction to the White House to take a coordinated strategic approach to homeland security led from the White House and develop a comprehensive strategy for homeland security—a position more similar to the recommendation of the Gilmore Commission.

Other thoughts of reorganization in what is now called homeland security had been percolating for much longer. One such concept concerned immigration and customs, where reorganization to present a single inspection at the border had been discussed. Multiple Federal agencies were then present at the border and lacked efficiency. One observer later noted that this idea had been discussed as far back as the Nixon administration.[8]

Then four planes were hijacked, and three struck their targets. One of the 2,977 victims killed in the attacks was New York City Fire Department Special Operations Chief Ray Downey, a member of the Gilmore Commission, who was lost in the collapse of the World Trade Center.[9]

Among the effects of these attacks was an initial shock to Congress, which shook it out of its traditional pattern of operations. This shock drove homeland security policy matters from discussion on a more methodical strategic time horizon through the committee process to the daily agenda of every Member, with these issues being debated across the media as the public demanded action.

---

[5] See, for example: U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings and Emergency Management, *Combating Terrorism: Options to Improve Federal Response*, 107th Cong., 1st sess., April 24, 2001, Serial No. 107–11 (Washington: GPO, 2002); and U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Technology, Terrorism, and Government Information, *Homeland Defense: Exploring the Hart-Rudman Report*, 107th Cong., 1st sess., April 3, 2001, S. Hrg. 107–239 (Washington: GPO, 2002).

[6] United States Commission on National Security/21st Century, "Road Map for National Security: Imperative for Change," January, 2001, p. iv.

[7] U.S. Constitution, Article I, Section 8, clause 18 (the "Necessary and Proper Clause") and Article II, Section 2, clause 2 (the "Appointments Clause").

[8] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *The Future of Homeland Security, The Evolution of the Homeland Security Department's Roles and Missions*, 112th Cong., 2d sess., July 12, 2012, S. Hrg. 112–612 (Washington: GPO, 2012), p. 63.

[9] U.S. Congress, Senate Committee on Governmental Affairs, *Responding to Homeland Threats: Is Our Government Organized for the Challenge?*, 107th Cong., 1st sess., September 21, 2001, S. Hrg. 107–207 (Washington: GPO, 2002), p. 12.

Congress Responds

In the hours and days after the attacks, much of the partisan rhetoric that can characterize congressional debate was shelved. The immediate priorities in the wake of the attacks were summed up by one senior House staff member: Restore the Pentagon and New York; assess the readiness of Federal agencies to deal with the threat; secure the Capitol Complex; and establish a plan for the continuity of government.[10]

By the end of the 7-day period after the attacks, Congress had moved a number of pieces of legislation addressing those priorities: expediting benefit payments to public safety officers injured or killed in the attacks and aftermath;[11] providing $40 billion in supplemental appropriations, at least half of which was to be for disaster recovery and assistance at the attack sites;[12] and an authorization for the use of military force in response to the attacks.[13] It took Congress and the White House just 2 days to enact legislation to provide support for the airline industry, which had faced significant business disruptions in the days following the attacks.

October 2001 saw Congress pass the USA PATRIOT Act,[14] which included a broad range of changes to national security law, including expanded surveillance authorities, and additional tools to combat international money laundering and financing of terrorist activities. In the wake of the anthrax letters sent to Capitol Hill, additional funding for homeland defense was proposed in both the House and Senate. A tax relief bill for victims and areas affected by the attacks ultimately became law in early 2002,[15] and unemployment assistance under the Stafford Act was extended in March 2002 by 13 weeks.[16]

In the middle of all this legislative activity, initial positions on how to improve Federal-level homeland security coordination and policymaking were being staked out in the executive branch and Congress. On September 20, 2001, President George W. Bush announced that he would sign an Executive order establishing an Office of Homeland Security, to be headed by an Assistant to the President for Homeland Security, and a Homeland Security Council.[17] The office's head was to be former Pennsylvania Governor Tom Ridge. On October 11, 2001, 3 days after the President signed the Executive order, Senators Joseph Lieberman and Arlen Specter introduced S. 1534, to establish a "Department of National Homeland Security," along the general lines of the Hart-Rudman Commission proposal.

Press reports and congressional statements paint a picture of Governor Ridge's office being in an awkward position at best. His role was to coordinate efforts from the White House, but Governor Ridge lacked the authority needed to overcome bureaucratic obsta-

---

[10] Interview with Jim Dyer, former House Appropriations Committee staff director, January 16, 2014.
[11] P.L. 107–37.
[12] P.L. 107–38.
[13] P.L. 107–40.
[14] P.L. 107–56.
[15] P.L. 107–134.
[16] P.L. 107–154.
[17] Executive Order 13228, "Establishing the Office of Homeland Security and the Homeland Security Council," 66 *Federal Register* 51812, October 8, 2001.

cles or change the way the incumbent executive branch structure was addressing homeland security issues.[18] The White House would not allow him to testify at hearings because his position was that of an advisor to the President, rather than the leader of a department established in law. A Governor Ridge-led attempt to restructure border-serving agencies was unsuccessful as agencies defended their institutional "turf." [19]

At a press briefing in March 2002, the administration publicly opposed the creation of a new department. Ari Fleischer, the President's spokesman, stated that the Office of Homeland Security was "working extraordinarily well." Fleischer added, "Creating a Cabinet post doesn't solve the problem" of the need for a coordinated approach to homeland security.[20]

White House support was viewed as a key missing element by Senate proponents of reorganization. At a hearing in April 2002, Senators expressed bipartisan support for a significant reorganization effort, but Senate Governmental Affairs Committee Ranking Minority Member Fred Thompson noted in his opening statement the critical role of the White House in advancing any type of reorganization, and pleaded for a measured approach to reorganization, saying:

> I think we need to face up to the fact that to have any changes, we are going to have to work together with the White House to get them done. To have any real results, we are going to have to do it under the President's leadership . . . .
>
> I believe that because the job is so important, is so complex . . . that we need to give the administration a fair shot at coming forth with how they feel it ought to be done and see how that flies, what it looks like, and, to the extent we can see how it is working before we launch off into anything that would be extremely specific in the reorganizing or the reshuffling of the boxes.[21]

At that same hearing, Office of Management and Budget Director Mitch Daniels was more circumspect in his testimony than Fleischer had been as he described the administration's position:

> As the President has said from the beginning and Governor Ridge has said, the current arrangement might remain the preference of the administration or it might change. The administration is very open to alternative arrangements and they are being looked at actively, as they have been from the outset. The national strategy that Governor Ridge's office is working on, we will speak to this and may well make recommendations to the President about an evolution of the initial organizational structure.[22]

Senator Bob Graham noted at the hearing that the White House had asked the Senate to "defer pursuing" Senate Governmental Affairs Committee Chairman Lieberman's legislation several months before to allow Governor Ridge time to assume his position and to deal with pressing issues in the wake of the attacks. However, Senators' discussion at the hearing reflected a strong desire to move ahead with some type of reorganization legislation even without the blessing of the White House. In his oral testimony, former Sen-

[18] For example, see U.S. Congress, Senate Committee on Governmental Affairs, *Legislation to Establish a Department of National Homeland Security and a White House Office to Combat Terrorism*, 107th Cong., 2d sess., April 11, 2002, S. Hrg. 107–472, p. 2 (Senator Lieberman's remarks), p. 25 (former Senator Warren Rudman's remarks), and p. 30 (Comptroller General David Walker's remarks).

[19] Susan B. Glasser and Michael Grunwald, "Department's Mission Was Undermined From Start," *The Washington Post*, December 22, 2005, p. A1, Final.

[20] CQ Newsmaker Transcripts, "White House Holds Regular News Briefing," March 19, 2002.

[21] S. Hrg. 107–472, pp. 4–5.

[22] S. Hrg. 107–472, p. 31.

ator Warren Rudman, cochair of the Hart-Rudman Commission, suggested consolidating a few Federal Government functions at first—what he termed "the non-strategic, non-intelligence, non-law enforcement operation consolidated," essentially Federal response efforts and border protection.[23]

At the beginning of May 2002, Senators Lieberman, Specter and Lindsey Graham introduced S. 2542, which built on the original Lieberman-Specter bill, to incorporate additional legislative ideas that had come to the fore as the debate continued. Representative Thornberry introduced a related bill in the House—H.R. 4660—with a bipartisan group of original cosponsors, including Representatives Jim Davis, Jim Gibbons, Jane Harman, Tim Roemer, Christopher Shays, and Ellen Tauscher. Despite this activity, congressional consensus on broad homeland security reorganization remained elusive.

Nonetheless, Congress continued to move legislation addressing homeland security functions. For example, in May, 2002, the Enhanced Border Security and Visa Entry Reform Act of 2002[24] was enacted, authorizing increases in Immigration and Naturalization Service investigators and authorizing information sharing and instituting reforms in several visa programs. In the course of House debate, Judiciary Committee Chairman James Sensenbrenner noted future plans for reorganization of immigration functions, saying: "[Later], we will be dealing with the restructuring and reorganization of the Immigration and Naturalization Service, which is the most dysfunctional agency in the Federal Government."[25] This particular sentiment was echoed by Senator Edward Kennedy, who noted that he and others had promoted previous efforts to restructure the Immigration and Naturalization Service (INS). Neither Representative Sensenbrenner's nor Senator Kennedy's remarks raised comprehensive reorganization legislation as the vehicle for change.[26]

Reorganization Accelerates

Unbeknownst to Congress, the administration had begun to develop its own plan for reorganization of executive branch agencies. A small group of administration staff met frequently with senior White House officials to determine what components of the Federal Government should be included in the new department. Secrecy was maintained to prevent development of bureaucratic opposition similar to that which had stifled border reorganization.[27]

On June 6, 2002, President Bush publicly reversed the administration's previous opposition to the establishment of a new department with the release of his draft proposal for "The Department of Homeland Security." The administration's vision of DHS was actually broader and more complex than original plans discussed by the Hart-Rudman Commission or embodied in congressional proposals. The administration's change of position fundamentally altered the

---

[23] S. Hrg. 107–472, pp. 24–25.
[24] P.L. 107–173.
[25] Representative James Sensenbrenner, "Enhanced Border Security and Visa Entry Reform Act of 2001," House debate, *Congressional Record*, December 19, 2001, H10475.
[26] Senator Edward Kennedy, "Enhanced Border Security and Visa Entry Reform Act of 2001," remarks in the Senate, *Congressional Record*, April 12, 2002, S2609.
[27] Glasser and Grunwald.

political landscape facing legislative proposals to reorganize government to deter and better prepare for potential future terrorist attacks. There was momentum for action beyond the administration's initial steps. That momentum had been offset by a desire in some to see if those initial steps would be adequate, and a reluctance in others in the midst of a time of crisis to resist an administration that was very popular, and in some cases with which they were politically aligned. With the administration staking out a position in favor of a more extensive reorganization than embodied in the leading congressional proposals, those offsetting forces largely dissipated. Those who had been pushing for change were suddenly no longer debating the need to change, but were left to debate the appropriate extent of those changes—a very different topic.

Days after the administration announced its proposal to establish a new department, House and Senate majority and minority leadership had established a framework plan for action. The House would introduce the President's proposed legislation and refer it to individual committees of jurisdiction. After a limited period of time, a final markup would be conducted by a House Select Committee on Homeland Security, headed by House Majority Leader Richard Armey. On June 13, 2002, Senator Majority Leader Tom Daschle outlined the Senate's strategy for passing the bill, which was based on considering an amendment to S. 2452 in July, then potentially conferencing legislation with the House in August, and voting on a final package in September. He emphasized, however, a desire "to move deliberately, carefully, taking into account all the ideas that will be offered by the committees and by members." [28] Even so, before a legislative draft had even been received, a suggested deadline of September 11, 2002, for completion of legislative action had been floated by House Minority Leader Richard Gephardt.

Representative Harman reflected on the perceived importance of White House support at a 2012 hearing looking back on the evolution of homeland security, noting that they were willing to accept a fundamentally different approach to reorganization simply to accomplish what they saw as a critical need to establish a Federal homeland security function:

> As you know, I joined the hardy little band of legislators who thought a homeland security function made sense in the aftermath of 9/11—something far less ambitious than the plan ultimately sketched out by then-White House chief of staff Andy Card. We envisioned a cross-agency "jointness" similar to the 2004 Intelligence Reform Act structure, which the three of us, and former Rep. Pete Hoekstra, negotiated. But I clearly recall our decision to embrace a much bigger concept—which the White House proposed—because that would ensure Presidential support.[29]

The House Moves

The rules of the House of Representatives allow a united majority to work its will rapidly. At the time, the House was controlled by the President's party.

On June 18, 2002, the President submitted the legislative draft for implementing his proposal, which was introduced on June 24 as H.R. 5005. The bill was referred to 12 committees, which had until

[28] CQ Congressional Transcripts, "Senate Majority Leader Daschle Holds News Conference," June 13, 2002, at http://www.cq.com/doc/congressionaltranscripts-452688?2.

[29] S. Hrg. 112–612, p. 154.

July 12 to mark up and report the bill with recommendations to a 13th committee—the House Select Committee on Homeland Security. Nine of the 12 did so. The House Select Committee on Homeland Security then conducted a final markup on July 19, reporting an amended bill on a party-line vote of five to four. The report was filed just before 2 a.m. on July 24, and the House took up the bill under a structured rule, which made 27 amendments in order on July 25. The bill passed the evening of July 26 by a vote of 295 to 132.

This entire process took place in the span of 21 legislative days.

The Senate Moves

As Majority Leader Daschle had signaled, the Senate moved at a more deliberate pace. On July 24, 2002, the Senate Governmental Affairs Committee marked up an amendment to S. 2452 drafted by Senator Lieberman. Although the Senate amendment was substantially similar to H.R. 5005 as introduced, differences remained on a number of issues, including which components would be included or excluded for the new department, whether DHS would have a coordinating role for homeland security policy or whether that responsibility would lie in a separate office, and policies on civil service protections and collective bargaining rights.

The Senate did not take up reorganization legislation before the August recess, as it considered other legislation such as terrorism risk insurance, several appropriations bills, and the defense authorization bill for the coming fiscal year. The Senate began consideration of the homeland security bill on September 3, 2002, bringing up the Senate legislation as an amendment to House-passed H.R. 5005.

Scores of amendments were offered as debate continued. On September 21, the President began to publicly pressure the Senate to complete its work on the bill through his weekly radio address:

> After less than a week of debate, the House of Representatives passed a good bill, a bill that gives me the flexibility to confront emerging threats quickly and effectively. Yet after 3 weeks of debate, the Senate has still not passed a bill I can sign. The legislation the Senate is debating is deeply flawed. The Senate bill would force the new Department to fight against terror threats with one hand tied behind its back. The Department of Homeland Security must be able to move people and resources quickly, to respond to threats immediately without being forced to comply with a thick book of bureaucratic rules.
>
> Yet the current Senate approach keeps in place a cumbersome process that can take 5 months to hire a needed employee and 18 months to fire someone who is not doing his job. In the war on terror, this is time we do not have.
>
> Even worse, the Senate bill would weaken my existing authority to prohibit collective bargaining when national security is at stake. Every President since Jimmy Carter has had this very narrow authority throughout the Government, and I need this authority in the war on terror.[30]

On September 23, in a public speech, the President charged that when he had sought to address problems at the border:

> The House responded, but the Senate is more interested in special interests in Washington and not interested in the security of the American people. I will not ac-

[30] U.S. President (G.W. Bush), "The President's Radio Address," *Weekly Compilation of Presidential Documents*, vol. 38 (September 30, 2002), p. 1594.

cept a Department of Homeland Security that does not allow this president and future presidents to better keep the American people secure.[31]

After several attempts to obtain cloture and bring debate in the Senate to a close, the Senate moved on to other business after October 1.

In his statements, the President distilled the debate to the discussion over civil service protections and collective bargaining rights for Federal employees—a smaller subset of issues than was under active consideration by the Senate. It can be argued that in the 2002 midterm congressional elections, the electorate in some cases saw Senate deliberations as a delay over a non-security-related issue rather than deliberate consideration of the broad range of issues before the Senate, or that the debate was less important than passage, and that this interpretation was a factor in some Republican victories in House and Senate races.

The Lame Duck

The 107th Congress returned for a lame duck session after the elections, with Republican majorities in both Chambers in the 108th Congress on the horizon. Another version of legislation to create the Department of Homeland Security—H.R. 5710—was introduced in the House on November 12, and, operating under a special rule that allowed no amendments, passed it the next day 299 to 121.

Majority Leader Armey described the product and process during the debate on the rule:

> Mr. Speaker, . . . we have waited upon the other body in terms of our hopes to have this work completed, and just last Friday the President again challenged Congress to work on this bill. During this period of time, from last Friday until today, we have had extensive consultation between Members of this body on the select committee, the committee[s] of jurisdiction, the President, Members of the other body, and all of the committees that have jurisdiction on this bill.
>
> In light of some of the concerns that we knew were fairly well known to us on the other side of the building, we were able to very quickly move through those issues that still remain, fully vet them with all interested parties, including the committees of jurisdiction in both bodies, and work out what we believe will be in the form of the bill before us right now a bill that can comfortably pass both bodies and be sent to the President for signature.
>
> I should mention, Mr. Speaker, that this bill is essentially the same bill that was passed by the House of Representatives last July. There have been a few modifications that have been made to the bill but nothing that has not been fully vetted with the committees of jurisdiction and little that Members of this body will find objectionable.[32]

Representative Thornberry, having helped lead reorganization efforts prior to and after 9/11, added this perspective:

> Mr. Speaker, having worked on this issue for close to 2 years, I have had many doubts that it would ever come to this point; but now I believe it will happen.
>
> This is not a perfect bill, and it is relatively easy for me and others to find fault, ways that we wish it would be different. But all of those individual differences we may have with provisions are no competition in my mind to the fact that time is slipping by. If we do not do it this week, we are at least 3 months further along, 3 months during which our enemies are plotting and planning against us, more time during which we are not as prepared as we could and should be, more months where we are not making preparations to protect ourselves.

---

[31] CQ Newsmaker Transcripts, "President Bush Delivers Remarks, Trenton, N.J." September 23, 2002, at http://www.cq.com/doc/newsmakertranscripts-509452?26.

[32] Representative Richard Armey, "Homeland Security Act of 2002," House debate, *Congressional Record*, November 13, 2002, H8699.

Time is a critical factor. Just yesterday we had another threat, and whether it is bin Laden's voice or not, it is clear it is someone who intends to kill more Americans. He is very explicit in the threat. We cannot sit by and have differences over this provision or that provision keep us from acting.[33]

Senator Thompson offered the text of House-passed H.R. 5710 as an amendment to the House-passed H.R. 5005, succeeded in getting cloture, defeated attempts to alter the amendment, and amended H.R. 5005 passed the Senate on November 19, 2002. On November 22, the House agreed by unanimous consent to the bill as it passed the Senate. President Bush signed the bill into law as the Homeland Security Act of 2002[34] on November 25.

After Enactment

On the day the bill was signed, White House press secretary Fleischer sought to lower expectations and noted that patience would be required, saying that it would take "a couple of years" to build the capacity of the new department, stating "It's unreasonable to expect that because a new department has been created, America will change overnight."[35]

With the enactment of the Homeland Security Act, a very ambitious schedule to stand up the department went into place, requiring the department to be established in 60 days and for the major operational components to be transferred by March 1, 2003. Transitions were to be completed by September 1, 2003.

Almost 10 years later, retired Coast Guard Commandant Admiral Thad Allen noted in testimony the complications this schedule posed for the new department:

The legislation was passed between sessions of Congress, so there was no ability for the Senate to be empaneled and confirm appointees, although Secretary Ridge was done I believe a day before he was required to become the Secretary. We moved people over that had already been confirmed because we could do that. And it took up to a year to get some of the other senior leaders confirmed.

We were in the middle of a fiscal year. There was no appropriation, so in addition to the money that was moved over from the legacy organizations from the Department where they were at, some of the new entities, we had to basically reprogram funds from across government. It was a fairly chaotic time to try and stand up the organic organization of the Department and put together a headquarters. Emblematic of that would be the location of the Department that still exists, the Nebraska Avenue complex, and the unfortunate situation where we are right now where we have been able to resolve the St. Elizabeths complex there.

Because of that, what happened was we had the migration of 22 agencies with legacy appropriations structures, legacy internal support structures, different shared services, and different mission support structures in the Departments where they came from. And because of that, a lot of the resources associated with how you actually run the components or need to run the Department rest in the components and still do today. And I am talking about things like human resource management, information technology (IT), property management, and so forth, the blocking and tackling of how you have to run an agency in government.[36]

Congress was coming to grips with its own "blocking and tackling" as it began to consider how to oversee the new department. This was not an unexpected challenge. The day the administration announced its plan for the new department, House Republican

[33] Representative William Thornberry, "Homeland Security Act of 2002," House debate, *Congressional Record*, November 13, 2002, H8700.
[34] P.L. 107–296.
[35] White House Press Secretary Ari Fleischer, from CQ Newsmaker Transcripts, "White House Holds Regular News Briefing," November 25, 2002.
[36] S. Hrg. 112–612, p. 48.

Conference Chairman J.C. Watts noted that Congress had, to that point, held 125 hearings on homeland security since 9/11.[37]

On November 14, 2002, the House Republican Conference passed a resolution supporting amendment of the House rules "to consolidate the authorization and appropriations processes" for homeland security in the House. On December 16, 2002, House Republican leaders began to meet to determine how to conduct oversight of the new department.

The 108th Congress and Beyond

While debates would continue on committee reorganization and jurisdiction, once the department stood up in 2003, congressional attention began shifting to conducting oversight of the new department rather than debating who should take the lead. The transition process created the administrative challenges noted in Admiral Allen's testimony above. Vacancies in management and support roles led to slow responses to congressional inquiries. Former DHS Inspector General Richard Skinner testified: "We brought over all of the operational aspects of 22 different agencies, but we did not bring the management support functions to support those operations." [38] Conceptual differences remained over the role of management: How strong should the secretary's office be, versus how autonomous should the operational components be? As the department stood up, shortfalls in needed operating funds for the Transportation Security Agency became clear and the FY2004 budget request—its first—came to Congress with no justification documents to speak of.[39] There was much for Congress to oversee.

Analysis of the Conditions that Affected Congressional Action

The story of the creation of DHS illuminates several factors that affect the flow of legislation and what can drive Congress to act in exceptional circumstances. The role of Congress in our system of government, and the functions of congressional committees, calendars, and leadership combine to form the underlying mechanism in which legislation proceeds or stalls.

This mechanism does not operate in a vacuum. Part of the congressional role is its oversight relationship with the executive branch, and the political space that it shares with the President, especially at times when the public looks to the Federal Government for action.

The legislative mechanism, in the case of the Homeland Security Act, was acted on by two significant external events: the 9/11 attacks, and the administration's announcement of its support or establishment of DHS. The impact of these forces accelerated the legislative process. Congress and the department have struggled with the legacy of this acceleration ever since.

[37] Geoff Earle and Mark Wegner, "Turf Battle is on in Congress Over New Homeland Defense Agency," *Government Executive*, June 7, 2002.
[38] S. Hrg. 112–612, p. 51.
[39] Dyer interview.

THE CONGRESSIONAL MECHANISM

As the legislative branch, Congress is charged with passing laws on the policy issues facing the United States. As a representative body, Congress is most driven to act on policy issues on which the U.S. citizenry focuses its attention. Prior to the 9/11 attacks, the issue of homeland security was just one of many topics of discussion, generally confined to the committees of central jurisdiction and not one on a fast track to legislative action. When the attacks shocked the U.S. citizenry, Congress was therefore cued to move legislation in response to it, although the complex policy issue of broad homeland security reorganization did not move as readily as the specific fixes for the airline industry, appropriations, and other elements.

COMMITTEES

Part of the reason the reorganization effort did not move through the process to floor consideration in the 8 months following 9/11 was the congressional committee structure. The Senate held numerous committee hearings on reorganization for homeland security in part because Lieberman was able to mark up his own bill—he chaired the committee that had predominant jurisdiction over its content. In the House, Representative Thornberry's bill went to the Committee on Government Reform.

One key difference between the way committee referrals are handled in the House and Senate ensured the bills that moved through the House were limited in scope. In the Senate, the concept of predominant jurisdiction means bills are usually referred to a single committee depending on their content. In the House, when a bill addresses multiple issues, referrals to multiple committees are more common. For example, Chairman Sensenbrenner had noted the jurisdictional hurdles facing broad reform legislation in the House during the debate on the Enhanced Border Security and Visa Entry Reform Act of 2002, explaining that jurisdictional issues prevented the bill from providing more personnel for the Customs Service, or requiring that manifests of vessels and airplanes arriving from and departing to international locales be filed with the immigration service.[40] These moves, while popular, simply could not be done by his committee's bill because they were under the jurisdiction of other committees.

CALENDARS

The congressional and electoral calendars provided relatively small windows of time to consider reorganization—if it was going to be done, it would have to be done quickly or wait until after the elections. As pressure built within Congress to go beyond what the White House had done already by mid-2002, only 6 months remained—June and July were traditionally dedicated to moving appropriations legislation in earnest and August is historically a month when Members are not at the Capitol. With very little floor time available and the partisan pressures of the election intruding,

[40] Representative James Sensenbrenner, "Enhanced Border Security and Visa Entry Reform Act of 2001," House debate, *Congressional Record*, December 19, 2001, p. H10472.

moving legislation would require significant pressure, which the White House announcement provided. Even with that impetus, the bill would not ultimately pass until after the election.

LEADERSHIP

The power of the leadership of Congress is the power to set the agenda. In the House during the initial debate over the appropriate response to 9/11, one could argue that the leadership was more willing to give a President from its own party time and authority to manage homeland security and potential reorganization as he saw fit, while at the same time, the Senate majority leadership was comfortable exploring alternative approaches without concern for how it might reflect on the administration.

Although the majority may decide what comes to the floor of the House or Senate when, and under what terms it will be debated or amended (if at all), the minority's decision to cooperate (or not) and its coordination of a message can be significant in shaping the outcome, even if their proposals are voted down. In the wake of the shock of 9/11, the leadership in both Houses initially set a bipartisan tone, and procedural cooperation was given, which allowed bills to move swiftly. When the Bush administration shocked the system again by announcing its support for establishing a Department of Homeland Security, the accelerated procedures for consideration of the bill initially received bipartisan support. House Minority Leader Dick Gephardt suggested passage of the bill by September 11 should be a goal—a proposal that was embraced by the leaders of the other party. However, this change in tone would not survive the process of moving the bill through the House.

As the accelerated process played out, the leadership of the House had significant control over the content of what would ultimately become the Homeland Security Act, and exercised that control to create a package that largely conformed to the President's wishes. The House majority leader introduced the President's legislation, and set the terms for expedited committee consideration. The majority party members of the ad hoc committee that ultimately produced the legislation were the House majority leader, the majority whip, the chairman and vice chairman of the Republican conference, and the chairman of the majority party's leadership meetings.[41] Those members were the five votes to report out a bill that largely rejected the changes proposed by the nine committees that had marked up their portions of the bill. The Rules Committee then produced a rule that ensured swift floor debate and largely protected the content of the legislation, making only selected amendments in order.

Senate leadership wound up with less of a role in determining the content of the Homeland Security Act for several reasons—primarily because of the different way leadership power is exercised in the Senate as opposed to the House. For example, there is no rules committee that can limit amendments or debate in the Senate—so the Senate majority leader had much less leverage with which to work to move legislation. As the Homeland Security Act

[41] The minority party was represented by the House minority whip, the chairman and vice chairman of the Democratic Caucus, and the assistant to the minority leader.

experience shows, the absence of minority support for cloture motions can stifle legislation. Where the House can push something through on a party-line vote, in the Senate, such plans are usually not realistic, given the power of an individual Senator to stall the process.

The plan for action laid out by Majority Leader Daschle in June had proven overly optimistic, given the crowded Senate agenda, and the limited amount of time available prior to the election. The Senate as a result responded to the work product of the House that was based on the White House proposal. The House-passed bill arrived in the Senate days before the August recess, and was only under consideration for roughly 2 weeks before the impending elections made compromise more difficult and the process stalled.

After the elections, the House and Senate leadership negotiated the final version of the bill—again, based on the House legislation—with the outgoing Senate majority in a significantly weakened position. That bill took 2 legislative days to pass the House, and 4 in the Senate. No attempts to amend the leadership-negotiated package were successful.

OUTSIDE CONGRESS

The existing executive branch structure laid the groundwork for the initial reorganization discussion—without homeland security functions being carried out across the government, there would have been no discussion of consolidation in the first place. The Gilmore Commission and Hart-Rudman Commission had pointed out to Congress the broad distribution of homeland security responsibility, and some in Congress were mulling solutions to that before 9/11. As noted above, dissatisfaction with border security agencies stretched back well before 9/11, and in the aftermath the INS was denounced on the House floor as being "absolutely incompetent." [42] Without congressional concern about structural inefficiencies to face the threat and dissatisfaction with the performance of some homeland security components, reorganization may not have so readily gained traction.

As often occurs in a time of national concern, the focus was on the White House for leadership. The "bully pulpit" of the White House at the time and the role of the President as a singular national executive—rather than a deliberative body—placed him in a unique position to effectively define the national discussion. The President's address before Congress on September 20, 2001, the establishment of Governor Ridge's office in the White House, and the request for Congress to hold off on departmental reorganization at first stalled the gradual momentum that had been building in Congress toward reorganization. In September 2002, the administration's framing of the debate as being over labor issues narrowed the public debate to partisan issues surrounding the department's workforce when much else remained to be discussed.

[42] Representative Tom Tancredo, "Campaign Finance Reform; Immigration Reform," Special Orders, *Congressional Record*, February 12, 2002, pp. H274–H279.

Conclusion

As the months unspooled and the 9/11 attacks began to move into the realm of historical rather than current events, even their powerful unifying effect could be seen to fade. By the midterm elections in 2002, congressional candidates faced negative ads that linked them to Osama bin Laden and Saddam Hussein because they held a different position on given security issues—an action that would have seemed unthinkable to most in the days after the attacks.[43] In 2004 and 2005, the power of congressional committees was evident in the decisions that were made on congressional organization and oversight of the new department. Internal debates on DHS oversight continue today.

As this report outlines, the existing congressional debate on how to best organize government to provide homeland security was accelerated by the 9/11 attacks and by the Bush administration reversing its opposition to the establishment of a new department. The power of congressional leadership to control debate (especially in the House), the leverage of the executive, and the pressures of the electoral calendar significantly contributed to the White House's ability to preserve much of the administration's original proposal throughout the legislative process.

However, it was argued by some at the time that this speedy process resulted in the establishment of a less capable department, and it has been argued by some since that the department we have today may not be the ideal structure to promote homeland security. A more thorough debate at the time, taking advantage of the in-house expertise of congressional committees, could have developed a broader consensus over the structure of the department and the role of departmental management. Lingering questions over basic issues such as how to house the headquarters of the department have some of their roots in the lack of resolution to questions of just how robust the management cadre of the department should be. The Homeland Security Act's wholesale transfer of components and unresolved congressional tensions over committee jurisdiction have complicated reauthorization efforts.

A more deliberate process, of course, could have stalled due to bureaucratic infighting, and no one can know how the last decade could have been different if DHS had been structured differently or not been stood up at all. The purpose of this kind of retrospective examination is not to determine what Congress should or should not have done—on the contrary, it is to understand how the Congress may act in crisis because of its structure and place in government. When Congress again finds itself in the position of being pressed to act with urgency on complex, long-term organizational issues, it may be worth considering the body's susceptibility to these outside shocks, which may speed an idea into law, but leave unresolved issues and their avoidable consequences in its wake.

[43] See Andy Barr, "Cleland Ad Causes Trouble For Chambliss," *Politico*, November 12, 2008, at http://www.politico.com/news/stories/1108/15561.html, and William M. Welch, "Republicans Using Iraq issue to Slam Election Opponents," *USA Today*, October 13, 2002, at http://usatoday30.usatoday.com/news/washington/2002-10-13-iraq-politics__x.htm.

Like Clockwork: Senate Consideration of the National Defense Authorization Act

COLLEEN J. SHOGAN

Deputy Director, CRS

For the past 53 years, the Senate has passed annually a National Defense Authorization Act (NDAA). At a time when legislative activity in Congress has diminished, the Senate continues to produce, without fail, a mammoth annual bill that sets policy and authorized spending levels for the U.S. military and the Pentagon. How does this happen? What role do the practices, procedures, and traditions of the Senate Armed Services Committee (SASC) play in this unbroken record? This report describes how the Senate Armed Services Committee debates, drafts, and amends the NDAA. Specific characteristics and practices unique to SASC are discussed. In Fiscal Year (FY) 2011, the Senate almost failed to pass the NDAA due, in part, to the controversial debate concerning the "Don't Ask, Don't Tell" (DADT) policy. A case study analyzes how SASC overcame the challenges associated with the DADT debate and relied upon its decades of fail-safe practices and traditions to achieve Senate passage. The purpose of this examination is to analyze the legislative procedures of the SASC and determine if the norms and operations of the committee could prove instructive to other legislative arenas in Congress.

Political scientists and congressional commentators have characterized the contemporary U.S. Senate as an institution crippled by gridlock, obstruction, and increased partisan battles.[1] Nonetheless, for the past 53 years, the Senate has never failed to pass a National Defense Authorization Act (NDAA). The Senate has found ways, often creatively, to avoid a legislative impasse on NDAA. The subject of national defense is not without controversy. Through Vietnam, the cold war, two wars in Iraq, the global war on terrorism, Iran Contra, Tailhook, and numerous defense acquisition scandals, the NDAA has persevered. How does the NDAA endure, despite what many would consider highly improbable odds?

---

[1] Gregory Koger, *Filibustering: A Political History of Obstruction in the House and Senate* (Chicago: University of Chicago Press, 2010); Barbara Sinclair, *Unorthodox Lawmaking: New Legislative Procedures in the U.S. Congress* (Washington: CQ Press, 2000) and Sarah Binder and Steven S. Smith, *Politics or Principle: Filibustering in the United States Senate* (Washington: The Brookings Institution, 1997).

This case study will examine a recent episode in which enactment of the NDAA was threatened.[2] The repeal of the U.S. military's "Don't Ask, Don't Tell" (DADT) policy precipitated a potential breaking point in which Senate passage of the FY2011 NDAA seemed unlikely.[3] However, despite the controversy concerning the legislation, the FY2011 NDAA became law. What legislative processes and practices enabled this to occur? How does the Senate Armed Services Committee (SASC) manage to produce a comprehensive authorization bill annually and facilitate its passage in the Senate, particularly in an era when "filibusters and the prospect of filibusters shape much of the way in which the Senate does its work on the floor"?[4]

FY2011 NDAA: Ending "Don't Ask, Don't Tell"

Pressure to end the military ban on openly gay service members intensified after the 2008 election. Presidential candidate Barack Obama promised publicly during the campaign that he would end the practice of "Don't Ask, Don't Tell" and support subsequent integration.[5] As President, Obama included a statement of support for repeal in his 2010 State of the Union Address.[6] Soon thereafter, the chairman of the Joint Chiefs of Staff, Admiral Mike Mullen, testified before the Senate Armed Services Committee. In his opening remarks, Mullen stated that DADT "forces young men and women to lie about who they are in order to defend their fellow citizens." He continued, "For me, personally, it comes down to integrity."[7] At the hearing, Mullen also revealed that a Pentagon report analyzing the potential effects of repealing the ban was scheduled for completion in December 2010.

---

[2] This case study is based on research originally published as a book chapter in an edited volume. See Colleen J. Shogan, "Defense Authorization: The Senate's Last Best Hope," *Party and Procedure in the United States Congress*, ed. Jacob Straus (Lanham, MD: Rowman & Littlefield Publishers, 2012), pp. 195–215. The essay drew on interviews with numerous congressional staffers who work or worked on defense issues with the Senate Armed Services Committee. The author also previously worked for a Senator who served on the Armed Services Committee.

[3] A more recent and analogous example is the legislative debate concerning sexual assault in the military. The Senate Armed Services Committee debated various reform proposals during consideration of the FY2014 NDAA. Several hearings, at both the full and subcommittee levels, were held on the issue from March through June 2013. SASC Personnel Subcommittee Chair Kirsten Gillibrand added language in subcommittee markup to remove the chain of command from prosecution of felony crimes. In full committee markup, Chair Carl Levin's amendment was adopted, which changed the Gillibrand provision but required a senior officer in the chain of command to review any decision not to prosecute. It also made retaliatory action against a sexual assault victim a crime. When the NDAA reached the floor, both Senator Gillibrand and Senator Claire McCaskill offered amendments. Senator McCaskill's amendment aimed at strengthening Senator Levin's provisions but did not remove the chain of command from decisions concerning prosecution. A failed cloture vote on the underlying NDAA prevented votes on both proposals when the Majority Leader filled the amendment tree, but compromise language concerning military sexual assault appeared in the final "pre-conferenced" version of the NDAA. The Senate voted 84 to 15 to concur with the negotiated defense authorization language (H.R. 3304) in late December. In March 2014, the Senate debated the Gillibrand and McCaskill proposals as standalone bills. The Gillibrand bill (S. 1752) did not receive the required 60 votes for cloture; Senator McCaskill's legislation (S. 1917) received cloture and subsequently passed the Senate.

[4] CRS Report RL30360, *Filibusters and Cloture in the Senate*, by Richard S. Beth and Valerie Heitshusen.

[5] "Obama: Repeal of 'don't ask, don't tell' possible." Associated Press, April 4, 2008, http://www.nbcnews.com/id/24046489/#.U0wnkYWW__Qo.

[6] "Remarks by the President in State of the Union Address." January 27, 2010, http://www.whitehouse.gov/the-press-office/remarks-president-state-union-address.

[7] U.S. Congress, Senate Committee on Armed Services, *To Receive Testimony Related to the 'Don't Ask, Don't Tell' Policy*, 111th Cong., 2d sess., February 2, 2010.

The House of Representatives moved quickly, including repeal language during floor consideration of the FY2011 NDAA. On May 28, the House voted on final passage (229–186).[8] On the same day, Senator Joseph Lieberman successfully offered an amendment in the closed full Senate Armed Services Committee markup of the FY2011 NDAA to add DADT repeal language to the bill. The amendment was adopted by a vote of 16 to 12; SASC later approved its marked-up version of the NDAA with a vote of 18 to 10.[9] For a bill that routinely garners unanimous or near-unanimous support moving out of committee, the split support in markup indicated that Senate floor adoption might prove challenging.

A cloture vote on the motion to proceed, requiring the support of 60 Senators, failed on September 21 by a tally of 56 to 43.[10] The prognosis for Senate passage of the FY2011 NDAA appeared unlikely. Since the bill had never proceeded to floor consideration, no Senators had benefited from the opportunity to offer amendments to the NDAA, as was routinely the case. With an extended recess planned before the November election, the only chance of NDAA passage was during the post-election "lame duck" session. The typical 2-week floor process for the NDAA, which had previously allowed all Senators to file amendments to the bill, seemed out of the question in an abbreviated session at the end of a Congress. Given the opposition to the repeal of DADT and the proposed restrictions on the number of amendments that would be considered, the legislation's prospects seemed dim.

However, the bill's prospects changed when the Pentagon released a survey of military service members on November 30, 2010.[11] Its release was followed by 2 days of hearings in the SASC on the report. While both proponents and opponents of the repeal cited findings that supported their arguments, the survey showed that more than two-thirds of service members did not oppose openly gay men and women serving in the military.[12] Those who supported the repeal of DADT believed that this finding would enable passage before adjournment. Nonetheless, when another cloture vote on the motion to proceed was taken, the tally fell 3 votes short of the required 60 needed to proceed to consideration of the NDAA on the floor.[13]

The strategic maneuvering enabled the repeal of DADT to pass the Senate on December 18, 2010, with a vote of 65 to 31.[14] Even though the controversy over DADT had been removed from consideration of the FY2011 NDAA, there was very little time left before the adjournment of the 111th Congress. The only realistic way for-

[8] House roll call vote no. 336, *Congressional Record*, May 28, 2010, p. H4199.

[9] U.S. Congress, Senate Committee on Armed Services, *National Defense Authorization Act for Fiscal Year 2011*, 111th Cong., 2d sess., June 4, 2010, S. Rept. 111–201 (Washington: GPO, 2010).

[10] Senate roll call vote no. 238, *Congressional Record*, September 21, 2010, p. S7246.

[11] The Honorable Jeh Charles Johnson and General Carter F. Ham, U.S. Army, *Report of the Comprehensive Review of the Issues Associated with a Repeal of "Don't Ask, Don't Tell,"* Department of Defense, Washington, DC, November 30, 2010, http://www.defense.gov/home/features/2010/0610__dadt/DADTReport__FINAL__20101130%28secure-hires%29.pdf.

[12] U.S. Congress, Senate Committee on Armed Services, *To receive testimony on the report of the Department of Defense Working Group that conducted a comprehensive review of the issues associated with a repeal of section 654 of title 10, United States Code, "Policy Concerning Homosexuality in the Armed Forces,"* 111th Cong., 2d sess., December 2, 2010.

[13] Senate roll call vote no. 270, *Congressional Record*, December 9, 2010, p. S8683.

[14] Senate roll call vote no. 281, *Congressional Record*, December 18, 2010, p. S10684.

ward was a final effort to pass the NDAA by unanimous consent on the Senate floor. The NDAA's final passage had never been secured previously by unanimous consent.

Senator Lieberman and Senator Susan Collins decided to file stand-alone repeal legislation, S. 4022. Besides the inclusion of the DADT repeal language, the FY2011 NDAA had been fraught with controversy concerning the process for considering amendments, and also contained a controversial provision concerning abortions in military hospitals. Senators Collins and Lieberman reportedly believed that if they could secure a vote before adjournment on the stand-alone repeal, they stood a better chance for passage. It was possible that a separate legislative vehicle for DADT repeal would give the NDAA a better chance to proceed to Senate floor consideration.

Realizing this might become the only option, SASC staff had begun to work with House Armed Services Committee staff weeks earlier to prepare an abbreviated "pre-conference" version of the NDAA. All controversial provisions, including the language that would have allowed privately funded abortions in military hospitals, were removed. The danger of moving the NDAA by unanimous consent on the Senate floor was that any Senator could object and prevent passage.[15] Working closely with the minority, SASC Chair Carl Levin moved toward crafting a bill that he believed would not raise an objection to a motion to pass the bill by unanimous consent. On December 22, the FY2011 NDAA passed the Senate by unanimous consent. The exchange on the floor between Chair Carl Levin and Ranking Member John McCain provides commentary concerning the unprecedented procedural scenario required for the bill's passage:

Mr. LEVIN. Mr. President, in legislative session and in morning business, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 717, H.R. 6523, the Department of Defense authorization bill, that a Levin-McCain amendment that is at the desk be agreed to, the bill, as amended, be read the third time and passed, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the bill be printed in the Record.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. MCCAIN. Reserving the right to object, and I will not object, a lot of people may not understand that unanimous consent request that was just made by the chairman of the Armed Services Committee.

Am I correct, I ask my friend from Michigan, that this is in order to pass the National Defense Authorization Act? We have gone, I believe, 48 years and passed one, and there are vital programs, policies, and pay raises for the men and women in the military and other policy matters that are vital to successfully carrying out the two wars we are in and providing the men and women who are serving with the best possible equipment and capabilities to win those conflicts. Am I correct in assuming that is what this agreement is about?

Mr. LEVIN. The Senator from Arizona is correct. It is the bill—slightly reduced to eliminate some of the controversial provisions, which would have prevented us from getting to this point, but this is the Defense authorization bill, and 90 to 95 percent of the bill is the bill we worked so hard on in committee on a bipartisan basis. I am very certain that our men and women in uniform, as this Christmas season comes upon us, will be very grateful indeed that we did this in the 49th year—and if the House will move swiftly today and pass this bill, as we have done

[15] For more information about unanimous consent agreements on the Senate floor, see CRS Report RS20594, *How Unanimous Consent Agreements Regulate Senate Floor Action*, by Richard S. Beth.

in the previous 48 years—passed an authorization bill—which is so essential to their success.

Mr. MCCAIN. I will not object.[16]

Although the Senate had to resort to unconventional mechanisms, the controversy generated by the repeal of "Don't Ask, Don't Tell" did not derail passage of the FY2011 NDAA. The factors that enabled passage of previous defense authorization bills played an important role. In particular, when it came down to the final days before adjournment and it was apparent that the FY2011 NDAA could only move through the Senate by unanimous consent, staff needed to rely upon trusted bipartisan relationships to make the negotiations work. Committee leadership also worked diligently to ensure final passage on a carefully negotiated, abbreviated bill.

In a time period in which enacting authorization bills has become more challenging, how has the Senate continued to pass a national defense bill annually?[17] The answer to this question is not a simple one. A complex mixture of committee traditions, processes, and a sense of a common mission concerning the overall purpose of the NDAA contribute to the outcome. These elements appear to work simultaneously. Thus, if one critical practice or process is altered, the outcome of future defense authorization bills could be affected. Subsequent sections provide a detailed description of Senate consideration of the NDAA and an analysis of several important factors that contribute to the consistent record of Senate NDAA passage.

Senate Armed Services and the NDAA

To understand why the defense authorization bill passes the Senate every year, it is important to comprehend SASC's routine processes for considering the legislation.[18]

The submission of the President's budget request is the initiating event. In early February, the President submits a budget request to Congress that includes the estimated cost of defense for the following fiscal year. At that time, SASC staffers receive the request and begin to analyze and evaluate the President's request for the allocation of defense dollars and resources. The Pentagon routinely sends briefers to Congress that week, who help both SASC and personal office military legislative assistants (known as MLAs) understand the broad, overarching budgetary message and some specifics, usually associated with major program changes or decisions. These meetings take place consistent with the bipartisan tradition of SASC; both majority and minority staff attend the same briefings and receive the same message from the executive branch, regardless of which party controls the Presidency or the Senate at the time.

---

[16] Senator Carl Levin and Senator John McCain, Senate debate, *Congressional Record*, December 22, 2010, p. S10936.

[17] See David Price, "The Advantages and Disadvantages of Partisanship," *The Boston Review*, May/June 2011.

[18] For a history describing the origins of the NDAA, see Raymond H. Dawson, "Congressional Innovation and Intervention in Defense Policy: Legislative Authorization of Weapons Systems," *American Political Science Review*, vol. 56, no. 1 (March 1962), pp. 42–57. For another depiction of defense committees at work in Congress, see Pat Towell, "Congress and Defense," in *Congress and the Politics of National Security*, ed. David P. Auerswald and Colton C. Campbell (New York: Cambridge University Press, 2011).

Soon after the budget submission, often only days after its receipt, SASC begins a series of hearings on the budget request and other major related issues. These hearings are an important part of the process. The first hearing features the Secretary of Defense and the chairman of the Joint Chiefs of Staff, who answer overall questions concerning the Nation's security posture, strategy, and budget challenges that may present themselves in the coming year. This hearing is followed by a number of more focused hearings with the combatant commanders (such as U.S. Special Operations Command and U.S. Central Command), the service chiefs (such as Commandant of the U.S. Marine Corps), and the civilian department secretaries (such as the Secretary of the U.S. Air Force) as the witnesses.

In each instance, issues concerning the geostrategic environment and the President's budget request are raised, as well as other concerns that might require legislative language in the upcoming fiscal year defense authorization bill. Other full committee hearings, often focused on intelligence or current U.S. military operations abroad, also take place in February and March. The full committee's hearing schedule is filled in the months of February, March, and April to guarantee that all components of the military have a chance to testify and that all Senators have a chance to ask questions about their policy and program recommendations. The pace is rapid, with at least one major hearing and often several hearings scheduled for each week.

Given the high level of substance and the expansive territory each hearing must cover, the amount of preparation is considerable, both for professional committee staff and the MLAs. Given the current size of the committee, one round of questioning is common, and if time runs out, Senators may submit additional questions to the witnesses as QFRs (questions for the record), generating a subsequent written response. The motivation behind the large number of hearings, conducted annually, is to build as comprehensive a public record as possible with respect to the policy or budgetary issues that may be addressed by the annual defense authorization bill. Staffers use the hearings to flag important issues and receive civilian and military leadership positions on those issues that will likely require considerable discussion and debate during consideration of the NDAA. As the bill is subsequently drafted during the spring months, the hearing record serves as a repository of information for Senators and staff.

In March, after the bulk of the full committee annual hearings are completed, the subcommittee hearing season begins. Subcommittees hold hearings concurrently with additional full committee hearings. As one might expect, the subcommittee hearings are more specialized, focused on their specific jurisdictional responsibilities, and allow further probing of issues raised at the full committee. Professional committee staff routinely provide the chair and ranking member of the subcommittee with a hearing schedule that combines both the particular interests of the Senators running the committee and the policy needs that require further scrutiny and debate. Most subcommittees conduct at least four hearings. Since the SASC uses the hearings as a way to build the record for the annual defense authorization bill, Senators who want to influence

the bill in numerous areas usually find a way to attend as many hearings as possible. The record is critical, as the SASC treats it as a blueprint for the legislation. Issues that are flagged in subcommittee and committee hearings routinely find their way into the authorizing bill. Hearings can bring certain problems to light, and the hearing record is important as a repository of information that can inform subsequent legislative drafting.

Hearings continue in the SASC throughout the year on a variety of topics relevant to the military and national security. The highest concentration of subcommittee and committee hearings concludes in mid-May. As the hearings end, intense preparation for the markup of the defense authorization bill begins.

During this time, all Senators have the opportunity to make requests to the chair or ranking member concerning the contents of the bill. Senators usually construct a list of requests to the committee for inclusion. Most requests ask for adjustments to programs that have already been recommended for funding in the President's budget. SASC staff evaluate these requests, relying heavily on the Pentagon and the unfunded requirements lists compiled by each of the service chiefs and occasionally by a combatant commander. The majority's recommendations with regard to these requests are not required to be revealed to the minority or Members until just before the draft bill (known as the chairman's mark) is presented to the full committee at the beginning of markup.

As the hearings are conducted in the spring, SASC staff work to produce a draft of the bill. Much of the work is done collaboratively, with both majority and minority committee staffers influencing the draft. Once the draft has been completed and receives the approval of the chair, a weeklong defense authorization markup is scheduled, usually near the end of spring or in early summer. Several days before the markup, committee staffers provide briefing binders, based on subcommittee jurisdiction, with draft language and funding tables with recommended authorization levels for appropriations, for Senators on the committee and their MLAs. Staffers from both sides of the aisle receive the briefing books at the same time. Previously, the briefing books were not allowed to leave the committee hearing room. MLAs who wanted to review the books in preparation for markup remained in the hearing room; no photocopying was allowed and electronic transmission was not permitted.[19]

In the days leading up to markup, MLAs work with committee staff to plan amendments their bosses intend to offer. If possible, compromises are often formulated prior to markup to ensure that fewer disagreements during the actual formal procedure require time and attention for debate and votes.

Markup of specific portions of defense authorization begins at the subcommittee level on a Tuesday. All six subcommittee markups are usually conducted on Tuesday or early Wednesday. On Wednesday afternoon, the full committee markup commences, and lasts until the committee has finished marking up the bill. Usually,

[19] For the FY2012 NDAA, a slight procedural change allowed MLAs to remove the briefing book from the Armed Services committee room and take it to the Senator's office for examination. A strict embargo of the information contained in the books still applied, and no electronic transmission of the books occurred.

markup finishes by Friday of the same week. During the full committee markup, issues are raised for debate, and, if necessary, votes are taken if such issues were not resolved at the subcommittee level. Often, controversial issues were identified through the hearings that occurred earlier in the year. If there is a disagreement about a provision in the bill, the chair may set the issue aside and instruct staff to work with Senators with differing perspectives to reach agreement. During closed markup, brief "adjournments" are common. Staff and Senators are given the appropriate time to construct an acceptable compromise. If such agreement cannot be reached, formal committee votes are taken to decide what will and will not be included in the full committee's bill and report. The goal is to produce a committee bill in which a considerable majority of Senators on the SASC can support to move the bill out of markup and onto the floor for full Senate consideration.

Historically, 2 weeks of floor time were reserved in the Senate for consideration of the defense authorization bill. During floor consideration, hundreds of amendments are often filed. Senators view the NDAA as a good opportunity to attach legislative language, sometimes unrelated to defense, to a bill likely to become law. Prior to cloture, Senate rules allow the consideration of nongermane amendments.

Committee staffers from both sides of the aisle work with Senators (who often do not serve on the SASC) to consider amendments for which agreement can be achieved and included in the bill by unanimous consent as part of what is called a "manager's package" of noncontroversial amendments. Compromising with Senators who wish to amend the bill on the floor is a time-tested stratagem; it gives Senators a stake in the bill, thereby helping secure their votes for cloture, if necessary, and final passage. A set of amendments from both sides of the aisle, which may require floor votes, is usually agreed to by unanimous consent prior to cloture. If cloture is invoked on the bill itself, amendments must be germane.[20] In typical practice, the manager's package or packages move forward through unanimous consent, occasionally even after cloture, and then a vote for final passage is scheduled.[21]

After both Houses of Congress have considered and passed the bill on the floor, conference begins. Issues on which the House and Senate disagreed are divided into subcommittee jurisdictions and assigned to professional committee staffers who take the lead in the staff negotiations, with the House and Senate each explaining their positions. The vast majority of differences are resolved at the professional staff level.

When committee staff cannot agree to a final position, the majority and minority staff directors try to reach a compromise. If they cannot agree, House Members and Senators discuss the issues at hand. Usually, there are only a small number of issues that require compromise. Signatures on the final conference report by a majority of conferees from the Senate and House are the final step in the

[20] CRS Report 98–780, *Cloture: Its Effect on Senate Proceedings*, by Walter J. Oleszek.

[21] In recent years, however, the routine processes of floor consideration of the NDAA described earlier have been disrupted due to attempts to attach controversial nondefense-related legislative language to the bill and the inability to reach unanimous consent on a manager's package.

process before sending the bill to the Chambers for final passage and then to the President for his signature.

Why Does It Work?

The previous section describes the process in which the Senate considers the NDAA each year. But it elicits the question: why does it work? The rules governing passage of the defense authorization are the same as those for any other bill considered in the Senate. However, there are particular practices and unique characteristics that increase the likelihood of NDAA passage on an annual basis. These variables influencing the outcome are distinct and often work in tandem with each other to yield the desired outcome. Four primary reasons explain the NDAA's repeated successes: bipartisanship, routine committee processes, staff interactions, and closed markups.[22]

BIPARTISANSHIP

Bipartisanship plays a key role in several ways. First, the subject matter itself is an issue that lends itself to bipartisanship. There is a deep sense among staff that they are working on a bill that improves the condition of those serving in the military, and without the bill, the lives of service members would be more difficult. There is a shared ethos of patriotism among those who work on the NDAA, both professional committee staff and MLAs. The inherent bipartisan belief in a shared mission is distinctive, and may have been even more influential in the past decade as the United States fought two wars.

Besides the fact that both parties consider national security a priority, defense policymaking often cuts across partisan lines. Defense-related constituencies do not routinely align on a partisan basis. Rather, there are often parochial interests, such as the continued production of a weapons system or the closing of a military base, that converge geographically or along shared industries. Coalitions routinely arise along axes other than partisanship.[23]

The bipartisan culture of the Senate Armed Services Committee developed incrementally over time. The chairs and ranking members of the committee historically set the precedent of a bipartisan approach and tone. Chairs served as an example in how they dealt with Senators from the minority party. Strong chairmen who believed that partisanship stopped at the water's edge contributed to the development and growth of the bipartisan SASC culture. Bipartisanship on the committee is easily detected during markup of the bill, when many issues are resolved amicably.

Bipartisanship has policy effects, as well. For amendments to be accepted during markup or on the floor, compromises must take place that may require the majority to incorporate the views of the minority. Majority staff and MLAs adopt the practice of compro-

[22] In the previously published version of this essay, the 4 reasons for the NDAA's continued passage in the Senate originated from over 20 interviews with current and former Senate Armed Services Committee staff members and MLAs.

[23] On the relationship between geography and defense generally, see Thomas Carsey and Barry Rundquist, "The Reciprocal Relationship between State Defense Interest and Committee Representation in Congress," *Public Choice*, vol. 99 (1999), pp. 455–463.

mising on amendments so that minority concerns are addressed. A "winner take all" approach is rare.

Finally, bipartisanship guides the "building-block" approach to the creation of the bill. When the professional staff work together to write the chairman's mark, they adopt a bipartisan approach, largely including provisions agreeable to both sides in the mark, and cautiously and infrequently including some that are not. Controversial language is debated during the full committee markup, and the most controversial provisions receive votes. However, some controversial issues in markup are deferred to floor consideration. At times, a Member may determine that a markup vote would be unsuccessful, so a strategic decision to file a floor amendment is made.

This practice can be contrasted to that of including a number of controversial issues in the chairman's mark. If that occurs, Senators must rely on the amending process in markup to attempt removal of such measures. This can force Senators to make an "up or down" decision on the mark, sometimes without being able to vote on all controversial provisions. That approach can prove efficient, but restricts the choices of Senators and does not reliably result in consensus. In contrast, the SASC's "building-block" methodology starts with the premise of bipartisanship and agreement and proceeds from that starting point to add provisions after debate.

Routine Committee Processes

Another distinctive feature of the NDAA is that the SASC uses a routine process each year in preparing the bill. Every year, the same hearings are held with the Secretary of Defense, the Joint Chiefs, the combatant commanders, and service civilian and military leaders. Markup always takes place in late spring or early summer and employs a similar schedule. There are no surprises in the process of producing the bill. Staff and Senators know what to expect. After new staff and Senators complete the process once or twice, they understand how to participate fully in future bills. While the issues change, the process does not.

Hearings are constructed as information-gathering exercises premised upon substantive inquiry. The panels in the SASC are used to create a public record in preparation for the drafting of the NDAA. The hearings illuminate the significant policy problems that must be addressed in the annual authorization bill. For example, in the FY2011 bill, the SASC held committee hearings on metrics for the Joint Strike Fighter, which resulted in bill language that created a matrix to evaluate the program's progress. Transcripts from the hearings assist in the production of the bill. Testimony can bring issues to light, such as low-performing schools for children in military families.

The hearings also serve a policy purpose for the bill; they set the stage for the drafting, identify key issues that must be included, and give signals to the public about what the committee plans to address in the upcoming NDAA. The entire committee is structured around the completion of one major task, the NDAA. The routine nature of the process and the focus of the committee on this task play a significant role in its completion.

STAFF INTERACTIONS

Distinct from other aspects of bipartisanship is the role of staff. The unique, collegial relationships that exist between Senate staff who work on defense authorization issues contribute considerably to the routine passage of the bill.

Why does this bipartisan collegiality exist? Part of the reason is that regardless of party affiliation, staff who work on the NDAA believe that their work is critically important to maintaining a strong national defense. They also agree that those who serve in the military deserve strong legislative support from Congress.

Besides having common goals, Senate Armed Services Committee staff also share office space. Party affiliation determines seating within the suite, but everyone has the same door key to a shared office space. This type of office structure facilitates a bipartisan working environment. This unusual arrangement developed over time, but in large part was due to Chairman Richard Russell. Years earlier, he decided that instead of moving Armed Services Committee staff to the newly constructed Senate Office Building across the street, the committee would remain in its original location, even if the space was smaller.[24] Since there was no room for separate partisan staffs in the office suite, the tradition of sitting together in a bipartisan fashion took root.

Partially due to the friendly relations between staff of different parties, the longevity of committee staff is considerable. Over time, working relationships based on mutual trust can develop, since turnover is minimal.[25] When a majority staffer tells his minority counterpart that he will include a particular provision in the chairman's mark of the bill, there is little doubt that the majority staffer will keep his word. If party control in the Senate flips the following year, reciprocal courtesy is standard operating procedure.

In addition to the seating arrangements, committee staffers conduct routine business in a bipartisan fashion. For example, staff travel together on trips abroad. This increases comity and lessens the likelihood of open disagreements. Furthermore, when the Pentagon provides briefings to committee staff, both the majority and minority often attend the same meeting. This enables both sides of the aisle to hear the same information and responses. The sheer amount of time spent with each other also enables a strong working relationship. A "team effort" approach is omnipresent.

Collegiality is similarly exercised by MLAs. In the past, a bipartisan group of MLAs met regularly after work to discuss issues of importance and plan trips together. MLAs also trusted committee staff from both parties to work with them in crafting the NDAA. The trusting relationships between MLAs and committee staff help to facilitate substantive hearings in the early part of the process, and even more importantly, a smooth and efficient committee markup later in the year. Often, committee staff cannot accept the amendments submitted by MLAs for markup as prepared, but commit to working with them to craft compromise language that can be included in the bill as it moves out of committee. That commit-

[24] The building in which SASC works was named for Senator Russell in 1972.

[25] See Towell, p. 87, on this point. For example, in 2008, almost 20 percent of the professional staff on SASC had worked on the committee for over 10 years.

ment to working with personal office staff routinely on a bipartisan basis helps prevent the bill from stalling and keeps it moving toward Senate floor consideration.

Armed Services staff and MLAs also operate within a focused and defined defense community. That interconnected community, which includes think tank scholars, select journalists, and industry representatives, is close-knit and typically collegial. The norms of bipartisanship extend beyond Capitol Hill, and provide a general professional arc of expectation concerning reasonable collaboration and reciprocity.

Closed Markup

A key difference in the operations of the Senate Armed Services Committee's markup process compared to that of the House is the practice of conducting a closed markup of the NDAA.[26] Only Senators and staff holding an appropriate security clearance attend the full committee markup. Decisions made in markup are not classified, but the discussions and the debate concerning such decisions can involve classified information.

During the closed markup process, the public, lobbyists, and journalists are prohibited from entering the committee room. Usually, the chair and the ranking member stress to Senators and staff at the beginning of the subcommittee (if closed) and full committee markups the importance of compliance with the embargo of the contents of the chairman's mark and confidentiality during the committee's deliberations.

The closed nature of the markup enables the committee to move from unclassified to classified deliberations quickly. If classified information or occasionally industry proprietary information is pertinent to a particular provision of the bill that is being considered during markup, the committee can discuss such details, since all participating staff possesses the necessary security clearances. The decisions made during the markup, however, are not classified, and are available to the public after completion, with the exception of the classified annex.

The benefits of a closed process include an efficient and candid policymaking process. Without reporters or lobbyists in the room, Senators are free to debate difficult decisions and to compromise. If a provision is discussed in markup, it usually means that the committee staffers were unable to resolve differences on that provision prior to the mark, or it could mean that the chair's preference on a provision differs from those of others on the committee. Consequently, it is then up to the Senators, with the assistance of the committee staff and MLAs, to come up with a compromise solution or a way forward. When dealing with weapons systems and military procurement, these decisions often have parochial consequences for Senators on the committee. The closed markup allows Senators with those concerns to craft a deal with others on the committee that might be difficult if lobbyists or reporters were

[26] According to Rule XXVI of the Standing Rules of the Senate, committee hearings shall be open to the public. There are several exceptions to this rule, including "secrets in the interests of national defense" and "information to the trade secrets of financial or commercial information." See http://www.rules.senate.gov/public/index.cfm?p=RulesOfSenateHome.

present. Compromise often requires some degree of anonymity, and the closed markup in the SASC is testimony to that reality.[27]

In the past few years, a handful of Senators on the SASC have tried to change the closed markup process for the NDAA. They argue that an open process would be beneficial, pointing to the fact that the House Armed Services Committee does not close its markup of the NDAA. Efforts to increase funding for particular programs would be disclosed publicly. Advocates for an open markup argue that parochialism might lessen during an open session, and accountability for defense authorization spending would increase.

Although full committee markup continues in closed session, each year the proponents of an open process gain more traction. In recent years, various advocacy groups have waged a public relations campaign to open the markup.[28] In the FY2014 full committee markup, 2 hours of debate on provisions related to sexual assault in the military occurred in open session. For the FY2015 bill, four of the six subcommittee markups transpired in open session. Although the markups were held in open session, the contents of the subcommittee markup books were still embargoed and were not released publicly until the bill and its accompanying report were sent to the full Senate.

The ramifications of moving to an open full committee markup are a point of contention. While the goal of an open markup is to increase transparency and accountability, others contend that it could have the opposite effect, leading to a reduction of vigorous debate and fewer compromises. An open markup could have other unintended consequences, such as pushing crucial decisions back to the proverbial smoke-filled room or facilitating greater influence on the part of interest groups and industry lobbyists.

Concluding Thoughts

When considering the operations of Congress as a bicameral institution, the larger question is whether the practices and norms adopted by the Senate Armed Services Committee in its production of writing an annual defense authorization bill can be applied to other committees or policy areas.

No particular committee or entity in Congress has a monopoly on bipartisanship. Within the Senate Armed Services Committee, bipartisanship is the norm among elected Senators, professional staff, and personal office legislative assistants. The bipartisanship is part of the committee's history and has persevered due to decades of a shared culture and philosophy. Bipartisanship is path-dependent in the SASC; past practices largely determine future behavior. However, other committees that may want to foster a similar culture could adopt several of the practices the SASC employs. Bipartisanship also starts at the top; the chair and ranking members can set the tone of a committee that could have lasting consequences on the operations and procedures of the panel. In the example of the FY2011 NDAA, in which final passage relied upon unanimous consent, bipartisanship and stripping out all controver-

---

[27] On the point about anonymity and compromise in Congress, see R. Douglas Arnold, *The Logic of Congressional Action* (New Haven, CT: Yale University Press, 1992).
[28] See "Open NDAA" at http://openndaa.org/.

sial provisions fostered the shared trust between the majority and minority that made such an agreement possible.

The SASC adopts a routine approach to the production of the NDAA each year. The predictability imposes certain constraints on those who work on the bill, but because the mechanics of production are kept relatively constant, the process is difficult to derail. The copious hearings conducted in the early part of the year help to identify the most critical issues facing the military. In FY2011, when a bill with fewer provisions had to move forward due to time constraints at the end of the Congress, committee staff were in a good position to prioritize the most critical issues that had generated a consensus agreement. Even though floor consideration in FY2011 was severely truncated at the end, the NDAA was able to survive because the process behind it had been comprehensive. Other committees may produce more than one major piece of legislation in a given year, but the consensual "building-block" approach utilized by the SASC could be adopted, in modified form, to meet the needs of other authorizing committees.

It is unlikely that the closed full committee markup in the SASC could be replicated in other committees. Rule XXVI of the Standing Rules of the Senate requires open committee meetings, except when a committee is scheduled to discuss matters of national security, law enforcement, finance, or governmental security.

An analogy may be instructive. The Department of Defense, due to its size and critical mission, can be compared to a snowball rolling down a hill; it may encounter obstacles in its path, but the sheer force of its momentum is formidable. The NDAA keeps the snowball moving, and the processes and procedures in place at the SASC prevent it from breaking apart. The NDAA builds upon a stable foundation due to the nature of defense policy and the institutional magnitude of the Pentagon, but the specific actions taken by the SASC are consequential.

It is important to note that when the NDAA has encountered recent difficulties in the Senate, those challenges occurred during floor consideration. A failure to reach a consensus on the floor concerning which amendments will receive time for debate, votes, or inclusion in a manager's package has complicated Senate passage of the bill.

The historical practices of the Senate Armed Services Committee in its annual production of the National Defense Authorization Act are worthy of attention. These norms and processes have not received considerable attention in the past from students of Congress or of defense policy. The unique success of this story warrants further consideration and study as representative and policymaking functions change over time. It also lends credence to the proposition that Congress is an evolving institution that can forge functional and creative solutions, rather than a fundamentally "broken branch" of government.

The SBA and Small Business Policymaking in Congress

ROBERT JAY DILGER

Senior Specialist in American National Government

and

SEAN LOWRY

Analyst in Public Finance

Prior to the 1960s, small business policymaking was relatively noncontroversial; the Small Business Administration's activities were relatively limited; and congressional deliberations typically followed regular order, featuring committee hearings, committee markups, open floor debate, and a conference committee to resolve any differences. Over time, the SBA's mission has expanded beyond its original, noncontroversial mandate of promoting competition in private markets. This expansion enhanced the agency's role in Federal economic policy, but also opened the door to additional conflict. Today, small business policymaking is increasingly characterized by partisan differences, with many congressional Democrats viewing the SBA as a vehicle to promote economic growth and job creation, and many congressional Republicans objecting to spending programs that increase the Federal deficit or add to the Federal debt. Also, committee leaders and others often seek alternative legislative means to achieve their goals, for example attaching small business provisions to bills considered "must pass" legislation, such as national defense authorization and appropriations bills. Thus, even in the most divided and partisan circumstances, Congress finds a way to pass small business legislation.

The SBA and Small Business Policymaking in Congress

From the depths of the Great Depression to today, assisting small business has emerged as a major issue for Congress, and a major point of contention. The growth of the Small Business Administration (SBA) from a nonpermanent agency with a relatively narrow, noncontroversial mandate to a permanent, Cabinet-level agency with a broad array of programs has created more opportunities for ideological and policy divisions around key issues of the day, such as the best means to promote economic recovery and growth while maintaining fiscal responsibility. The severity of

these divisions has had a significant effect on the legislative process and small business policymaking in Congress.

As will be discussed, in the past, especially under united government, small business policymaking often followed regular order, featuring committee hearings, followed by committee markups in both the House and Senate Small Business Committees, open floor debate in both Chambers, and a conference committee to resolve any differences on the legislation under consideration. Today, especially under divided government, it is less likely that small business policymaking will follow regular order. Instead, committee hearings and markups take place, but knowing that the other body is not likely to address the legislation there is less incentive to explore all sides of the issue—leading to an increased number of hearings that focus on the presentation of a particular viewpoint, rather than discussions of how to find a compromise solution. In addition, especially under divided government, committee leaders and others often seek alternative legislative means to achieve their goals, such as attaching small business legislation to other bills considered more likely to pass (e.g., national defense authorizations and appropriations bills). Thus, even in the most divided and partisan circumstances, Congress can still pass small business legislation. However, in the modern era, enacting major small business legislation is extremely difficult when Congress is divided, and partisan differences run deep.

The Great Depression and the Origins of Modern Small Business Policy

One of the earliest indications of congressional interest in assisting small businesses was the enactment of legislation (P.L. 72–2) during the Great Depression (on January 22, 1932), creating the Reconstruction Finance Corporation (RFC). The RFC was an independent Federal agency tasked with stabilizing financial markets and assisting businesses of all sizes to access capital through the provision of loans and the purchase of preferred stock, capital notes, and debentures. Although the RFC provided financial assistance to businesses of all sizes, President Herbert Hoover indicated in his signing statement that the RFC was:

> not created for the aid of big industries or big banks. Such institutions are amply able to take care of themselves. It is created for the support of the smaller banks and financial institutions, and through rendering their resources liquid to give renewed support to business, industry, and agriculture. It should give opportunity to mobilize the gigantic strength of our country for recovery.[1]

President Hoover's statement reflected a prevailing national consensus that continues today: that Federal assistance to small businesses is justified because such assistance promotes competition in the private marketplace and, in turn, helps to prevent the adverse economic consequences that result from the formation of economic oligarchies and monopolies.

Congress initially provided the RFC $500 million (over $80 billion in 2013 dollars), with 10 percent of that amount set aside for the Secretary of Agriculture to provide financial and disaster as-

[1] Herbert Hoover, "Statement About Signing the Reconstruction Finance Corporation Act," January 22, 1932. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, at http://www.presidency.ucsb.edu/ws/?pid=23210.

sistance to farmers. The law required the RFC to give preference when awarding loans and advances to farmers who had experienced a crop failure during the Dust Bowl of 1931. Thus, from its beginning, the RFC was directed to provide both business and disaster assistance.

Over time, Congress authorized an expansion of the RFC's activities. For example, immediately before and during World War II, the RFC, among other activities, financed plant conversions and new construction to enhance the nation's production of military and essential goods.[2] After the war, the RFC's activities were limited primarily to making loans to businesses and providing disaster assistance.

Another early indication of congressional interest in assisting small business was the creation of the Senate Special Committee to Study and Survey Problems of Small Business Enterprises on October 8, 1940, and the House Select Committee on Small Business on December 4, 1941.[3] These two committees, which were later provided permanent, standing committee status under new names, actively promoted small business interests in Congress by holding hearings and publishing reports designed to inform Congress on the problems faced by small businesses and their importance to the American economy.[4] For example, the House Select Committee on Small Business was charged with the responsibility to determine whether small businesses "are being adequately developed and utilized," what factors have hindered and are hindering small business development and utilization, whether adequate consideration is being given to small business needs, and to make recommendations to address "the post-war problems of small business."[5] Both committees focused attention on the role of small businesses in preventing the formation of economic oligarchies and

[2] James Butkiewicz, "The Reconstruction Finance Corporation," at http://eh.net/encyclopedia/reconstruction-finance-corporation/.

[3] Senator James Murray, "Survey of Problems of Small Business Enterprises, Senate Resolution 298, Calendar No. 2171," remarks in the Senate, *Congressional Record*, vol. 86, part 12 (October 8, 1940), pp. 13365–13372; and Representative Adolph Sabath, "Select Committee to Study Relationship of Defense Program to Small Business, House Resolution 294," House debate, *Congressional Record*, vol. 87, part 9 (December 4, 1941), pp. 9418–9428.

[4] The Senate Special Committee was replaced by the Select Committee on Small Business on February 20, 1950, and that committee was renamed the Senate Committee on Small Business and provided permanent, standing committee status on March 25, 1981. On June 29, 2001, the committee's name was changed to the Senate Committee on Small Business and Entrepreneurship. See Senator Kenneth Wherry, "Creation of Standing Committee on Small Business, consideration of S. Res. 58," remarks in the Senate, *Congressional Record*, daily edition, vol. 96, part 2 (February 20, 1950), pp. 1920–1944; Senator Lowell Weicker, "Senate Resolution 101—Changing Status of Committee on Small Business to That of a Standing Committee," remarks in the Senate, *Congressional Record*, vol. 127, part 4 (March 25, 1981), pp. 5130–5132; and Senator John Kerry, "Changing the Name of the Committee on Small Business to the Committee on Small Business and Entrepreneurship, S. Res. 123," remarks in the Senate, *Congressional Record*, vol. 147, part 9 (June 29, 2001), p. 12590. The House Select Committee on Small Business was made a permanent Select Committee on January 22, 1971, and provided permanent, standing committee status on October 8, 1974—effective January 1975. See Representative William Colmer, "Rules of the House, H. Res. 5," House debate, *Congressional Record*, vol. 117, part 1 (January 22, 1971), pp. 132–144; and U.S. Congress, House Select Committee on Committees, *Committee Reform Amendments of 1974: Explanation of H. Res. 988 as Adopted by the House of Representatives, October 8, 1974*, committee print, prepared by staff, 93d Cong., 2d sess., January 1, 1974, H. Prt. 93–962–8 (Washington: GPO, 1974), pp. 3, 5, 50–51.

[5] Representative Adolph Sabath, "Select Committee to Study Relationship of Defense Program to Small Business, House Resolution 294," House debate, *Congressional Record*, vol. 87, part 9 (December 4, 1941), p. 9418.

monopolies and "predatory practices which threaten ... the future of the free-enterprise system."[6]

Authorization of the Small Business Administration

In 1953, the Republican 83d Congress (1953–1955) decided to phase out the RFC, largely due to allegations of political favoritism in the granting of RFC loans and contracts.[7] Enacted on July 30, 1953, Title 1 of P.L. 83–163, the Reconstruction Finance Corporation Liquidation Act, provided a timeline to terminate the RFC's activities and to transfer its assets to other governmental agencies.

Concerned that small businesses might be harmed by the RFC's termination, especially given that the nation was experiencing a recession at the time (July 1953–May 1954), Title II of P.L. 83–163, the Small Business Act of 1953, authorized the creation of the Small Business Administration (SBA), initially on a temporary, 2-year basis.[8]

Limited Scope, Limited Controversy

The SBA's primary function, which is to enhance competition in the private marketplace by promoting the interests of small business, was, and remains, relatively noncontroversial. However, due to concerns about the political influence of larger businesses, small business advocates purposely limited the SBA's scope of operations, both to attract support for the agency's adoption and to minimize future partisan differences that could threaten the agency's survival. For example, statutory limits were placed on the amount of financial assistance the SBA could provide, and SBA loans could only be issued to borrowers who were unable to find credit on reasonable terms elsewhere.

Like the RFC, the SBA was made an independent agency because, as the House Select Committee on Small Business put it, "it is the feeling of this committee that such independence is absolutely essential and that the agency should be nonpartisan in nature, if small business is to receive proper recognition by the Government."[9]

At the time of the Small Business Act's enactment, most Members of Congress viewed the SBA's lending authority as the main way the agency would contribute to its mission. For example, in 1955, the Senate Select Committee on Small Business noted that:

> From the outset, the congressional sponsors of the legislation establishing the Small Business Administration were convinced that the agency's most important action program was in the field of financial assistance. Committee and floor discussion in both Houses indicated that the Members of the Senate and the House of Representatives felt that this organization was designed to take up at least part of the

---

[6] U.S. Congress, House Select Committee on Small Business, *Annual Report*, pursuant to H. Res. 18, 80th Cong., 2d sess., H. Rept. 80–2466 (Washington: GPO, 1948), p. 2.

[7] U.S. Congress, Senate Committee on Expenditures, Subcommittee on Investigations, *Influence in Government Procurement*, 82d Cong., 1st sess., September 13–15, 17, 19–21, 24–28, October 3–5, 1951 (Washington: GPO, 1951); and U.S. Congress, Senate Banking and Currency, *RFC Act Amendments of 1951*, hearing on bills to amend the Reconstruction Finance Corporation Act, 82d Cong., 1st sess., April 27, 30, May 1, 2, 22–23 (Washington: GPO, 1951).

[8] P.L. 85–536, to amend the Small Business Act of 1953, enacted on July 18, 1958, made Title II of P.L. 83–163 a separate act to be known as the Small Business Act, and provided the SBA permanent statutory status.

[9] U.S. Congress, House Select Committee on Small Business, *Final Report*, pursuant to H. Res. 22, 83d Cong., 2d sess., H. Rept. no. 2683 (Washington: GPO, 1954), p. 3.

gap which would be left when the Reconstruction Finance Corporation's authority came to an end. It was almost universally agreed that the legitimate credit needs of small businesses could not be met by private financial sources, and for that reason Congress authorized the SBA to make direct loans and to join banks in offering loans to those small concerns which were unable to find financing elsewhere.[10]

Although Congress authorized the SBA to provide access to capital to small businesses, it also indicated that the agency was not meant to supplant traditional lenders. Secretary of the Treasury George Humphrey testified before the Senate Committee on Banking and Currency that the Eisenhower administration supported the SBA's authorization. He further testified that the new agency should focus on the provision of guaranteed loans, as opposed to direct loans, to further ensure that it would supplement, and not compete with, private lenders.[11] This belief led to the statutory requirement that the SBA can only provide business loans to small businesses that cannot obtain credit elsewhere on reasonable terms.[12]

In addition to financial assistance, the SBA inherited two preexisting Federal functions: disaster assistance from the RFC; and Federal contracting assistance from the RFC and the Small Defense Plants Administration. The SBA was also authorized to provide small businesses with management and technical training assistance. Together, these authorizations (the provision of financial assistance, contracting assistance, management and technical training assistance, and disaster assistance) were viewed as both necessary and sufficient to enable the SBA to meet its primary goal of enhancing the viability of small businesses and competitive markets.

The SBA's Expanding Scope of Operations Leads to Increased Partisan Conflict

During the early 1950s, the SBA's relatively limited scope resulted in small business policymaking in Congress being relatively low key and nonpartisan. The partisan composition of Congress at that time had relatively little impact on small business policymaking as most debates concerning the SBA were largely limited to determining the amount of money necessary to fully capitalize the SBA's business and disaster lending programs to meet existing demand.

However, soon after its inception, policy debates over small business lending and the SBA's future began to shift from an almost exclusive focus on the relatively noncontroversial promotion of competitive markets to more partisan debates concerning the best way

[10] U.S. Congress, Senate Select Committee on Small Business, *Annual Report*, 84th Cong., 1st sess., S. Rept. 84–129 (Washington: GPO, 1955), p. 9.

[11] Ibid., pp. 547–548.

[12] As originally introduced by William Hill, chair of the House Select Committee To Conduct a Study and Investigate the Problems of Small Business, H.R. 5141, to create the Small Business Administration, would have provided the SBA permanent statutory authority and created a $500 million revolving fund to be used by the SBA for "prime contract operations and loans"; it did not specify any direct or guaranteed loan limit "with respect to any borrower." The bill, which, as amended, ultimately became the Small Business Act, restricted the SBA's authority to provide financial assistance to businesses that are deemed by the SBA to be small and unable to access credit elsewhere on reasonable terms. See U.S. Congress, House Committee on Banking and Currency, *Creation of Small Business Administration*, hearing on H.R. 4090 and H.R. 5141, 83d Cong., 1st sess., May 14, 1953 (Washington: GPO, 1953), p. 8. For a discussion and analysis of the SBA's size standards, see CRS Report R40860, *Small Business Size Standards: A Historical Analysis of Contemporary Issues*, by Robert Jay Dilger.

to create jobs and promote economic growth. This shift in focus was apparently triggered by two developments: a Federal Reserve Board report and Congress' reaction to a recession.[13] The Federal Reserve Board report noted that the SBA did not [but should] provide equity financing—money provided in exchange for a share of ownership in the business.[14]

In response to the Federal Reserve Board's report and concerned about the pace of the economic recovery from the recession, the Democratic 85th Congress (1957–1959), with broad support from both sides of the aisle, first provided the SBA permanent statutory authority (P.L. 85–536) and then approved P.L. 85–699, the Small Business Investment Act of 1958 (SBIA).[15] The act significantly expanded the SBA's scope of operations. Two key features of the SBA's expanded authority merit attention.

First, the SBIA authorized the SBA to create a venture capital investment program, later called the Small Business Investment Company (SBIC) program. The SBIC program was to "improve and stimulate the national economy in general and the small business segment thereof in particular" by stimulating and supplementing "the flow of private equity capital and long term loan funds which small business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply."[16]

Second, the SBIA authorized a new small business lending program, now called the 504/Certified Development Company loan guaranty (504/CDC) program. The 504/CDC program provides long-term fixed rate financing for major fixed assets, such as land, buildings, equipment, and machinery.[17] In return for the financing, borrowers have to create a specified minimum number of jobs based on the size of the loan.

Overall, the expansion of the SBA's scope in 1958 to include venture capital and long-term lending was viewed as a means to assist in the promotion of free markets, to address market failures, and to enhance economic growth generally, and job growth specifically.

The idea of expanding the SBA's scope to promote short-term job and economic growth, especially as a countercyclical policy tool during recessions, would later lead to heightened levels of partisan conflict over the coming decades. Most Democrats and advocates of demand side economics argue for the expansion of the SBA's pro-

---

[13] The recession lasted from August 1957 to April 1958.

[14] U.S. Congress, House Committee on Banking and Currency, *Small Business Investment Act of 1958*, report to accompany S. 3651, 85th Cong., 2d sess., June 30, 1958, H. Rept. 85–2060 (Washington: GPO, 1958), pp. 4–5.

[15] P.L. 85–536, to amend the Small Business Act of 1953, was enacted on July 18, 1958. It made Title II of P.L. 83–163 a separate act to be known as the Small Business Act. The House passed its version of the act (H.R. 7963) on June 25, 1958, by a vote of 393 to 2. The Senate passed the House bill, with amendments, on July 1, 1958, by voice vote. The conference agreement was passed by the House on July 10, 1958, by voice vote; and by the Senate on July 11, 1958, by voice vote. P.L. 85–699 was enacted on August 21, 1958. The Senate passed its version of the act (S. 3651) on June 9, 1958, by voice vote. The House passed the Senate bill, with amendments, on July 23, 1958, by a vote of 131 to 5. The conference agreement was passed by both the House and the Senate on August 7, 1958, by voice vote.

[16] 15 U.S.C. § 661. For further information and analysis concerning the SBA's SBIC program, see CRS Report R41456, *SBA Small Business Investment Company Program*, by Robert Jay Dilger.

[17] For further information and analysis concerning the SBA's 504/CDC program, see CRS Report R41184, *Small Business Administration 504/CDC Loan Guaranty Program*, by Robert Jay Dilger. Five for-profit CDCs that participated in predecessor CDC programs have been grandfathered into the current 504/CDC program.

grams as a vehicle to combat recessions.[18] In contrast, most Republicans and advocates of supply side economics argue against these efforts, preferring lower taxes, reduced regulatory burden on business, and fiscal restraint as the best means to combat recessions.[19] Also, as will be discussed, the relatively high subsidy costs associated with the SBA's direct lending program in the 1980s and 1990s and unprecedented losses in the SBIC's participating securities program during the early 2000s later led to increased partisan conflict over the extent of risk present in the SBA's loan and venture capital programs.

The SBA as a Tool to Address Discriminative Lending Practices

In 1964, at the height of the civil rights movement in the United States, the SBA temporarily established the "6 on 6" pilot lending program. It provided loans of up to $6,000 for up to 6 years "aimed specifically at disadvantaged potential entrepreneurs."[20] This initiative was one of the earliest attempts by the SBA to address what many view as special impediments faced by minority entrepreneurs in accessing capital. The Democratic 88th Congress (1963–1965) also approved legislation to combat poverty and racial discrimination. One of these acts (P.L. 88–452, the Economic Opportunity Act of 1964—Title IV, Employment and Investment Incentives) authorized the director of the Office of Economic Opportunity, through the SBA, to provide what were subsequently called Economic Opportunity Loans (EOL).

The EOL program became operational in January 1965, and continued through 1992 (the final EOL loan was disbursed in 1996).[21] Initially, the EOL program provided direct loans (of up to $25,000, with loan terms of up to 15 years) to assist small businesses and promote employment of the long-term unemployed. Starting in 1968, EOL loans increasingly were issued as guaranteed loans.[22] Although the EOL program evolved over time, it remained focused on providing loans to low-income, minority-owned, very small businesses. The EOL program also provided management and technical training assistance to disadvantaged entrepreneurs.[23]

---

[18] Demand-side economics is a school of macroeconomics that focuses on policies designed to stimulate aggregate demand, such as increased funding for infrastructure projects and spending programs targeted at lower income individuals who tend to spend the greatest portion of their income on consumer goods.

[19] Supply-side economics is a school of macroeconomics that focuses on policies designed to reduce barriers for people to produce (supply) goods and services as well as invest in capital, such as lower marginal Federal income tax rates and less business regulation.

[20] U.S. Congress, House Select Committee on Small Business, Subcommittee on Minority Small Business Enterprise, *Government Minority Small Business Programs*, hearing pursuant to H. Res. 5 and 19, 92d Cong., 1st sess., July 27, 1971 (Washington: GPO, 1972), p. 6.

[21] P.L. 93–386, the Small Business Amendments of 1974, formally transferred EOL program authority from the Office of Economic Opportunity to the SBA.

[22] The program's loan limits were increased by law from $25,000 to $50,000 in 1972 and to $100,000 in 1976.

[23] U.S. Congress, House Committee on Education and Labor, *Economic Opportunity Act Amendments of 1967*, hearing on H.R. 8311, 90th Cong., 1st sess., June 23, 1967 (Washington: GPO, 1967), pp. 1356–1362; U.S. Congress, House Committee on Appropriations, Subcommittee on Commerce, Justice, State, and Judiciary, *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1993*, 102d Cong., 2d sess., February 19, 1992 (Washington: GPO, 1992), pp. 503–504; and U.S. General Accounting [now Accountability] Office, *Most Borrowers of Economic Opportunity Loans Have Not Succeeded in Business*, CED–81–3, December 8, 1980, pp. 1–8, at http://www.gao.gov/assets/140/131190.pdf.

The EOL program and its successor, the Microloan program, broadened the SBA's scope of operations to include special efforts to address discriminative lending practices in the private sector.[24] Over the years, a partisan debate has developed over whether special programs to aid specific demographic groups are necessary, duplicative of other programs, effective, or divert resources from the SBA's core mission.[25]

The Divide Over Direct Loans and Increasing Costs to the Taxpayer

The SBA has authority to make direct loans, both for disaster relief and for business purposes. During its first 40 years, the SBA slowly redirected most of its business lending away from direct loans to guaranteed loans, primarily because the subsidy rate for direct loans was higher than the subsidy rate for guaranteed loans.[26] For example, in FY1980, the SBA had authority for $301 million in direct lending and $3.6 billion in guaranteed loans.[27] During the 1980s and 1990s, direct business loan subsidy costs became a highly partisan issue. Many congressional Republicans viewed the elimination of SBA direct loans as a means to achieve budgetary savings that could be used to reduce the Federal deficit. Rather than increased spending, they supported tax reduction, business regulatory relief, and fiscal restraint as the best means to assist small businesses.[28]

In 1985, the Reagan administration proposed a 25-percent reduction in the SBA's direct lending authority, as a means to reduce loan subsidy costs. With the Republican Senate's support, the 99th Congress (1985–1987) passed legislation restricting the eligibility for SBA direct business loans. However, in a compromise with the Democratic House, SBA direct loan eligibility was retained for a

---

[24] For further information and analysis concerning the SBA's Microloan program, see CRS Report R41057, *Small Business Administration Microloan Program*, by Robert Jay Dilger.

[25] For example, President George W. Bush proposed the elimination of all funding for the Microloan program in his FY2005, FY2006, and FY2007 budget requests to Congress, arguing that the 7(a) program was capable of serving the same clientele at a much lower cost. President Bush also proposed to terminate the Microloan program's marketing, management, and technical assistance grant program in his FY2008 and FY2009 budget requests to Congress. More recently, the House Committee on Small Business has recommended to the House Committee on the Budget that the SBA's various management and technical assistance training programs should be "folded into the mission of the SBDC program or their responsibilities should be taken over by other agencies" because they "overlap each other and duplicate the educational services provided by other agencies." See U.S. Office of Management and Budget, *Budget of the United States Government: Fiscal Year 2005*, p. 334, at http://www.gpoaccess.gov/usbudget/fy05/pdf/budget/sba.pdf; U.S. Office of Management and Budget, *Budget of the United States Government: Fiscal Year 2006*, p. 313, at http://www.gpoaccess.gov/usbudget/fy06/pdf/budget/sba.pdf; U.S. Office of Management and Budget, *Budget of the United States Government: Fiscal Year 2007*, p. 283, at http://www.gpoaccess.gov/usbudget/fy07/pdf/budget/sba.pdf; U.S. Office of Management and Budget, *Budget of the United States Government: Fiscal Year 2008*, pp. 139–140, at http://www.gpoaccess.gov/usbudget/fy08/pdf/budget/sba.pdf; U.S. Office of Management and Budget, *Budget of the United States Government: Fiscal Year 2009*, p. 130, at http://www.gpoaccess.gov/usbudget/fy09/pdf/budget/sba.pdf; and U.S. Congress, House Committee on Small Business, "Views and Estimates of the Committee on Small Business on Matters to be set forth in the Concurrent Resolution on the Budget for FY2014," communication to the chairman, House Committee on the Budget, 113th Cong., 1st sess., February 27, 2013, at http://smallbusiness.house.gov/uploadedfiles/revised__2014__views__and__estimates__document.pdf.

[26] The subsidy rate is primarily the difference between revenue generated from fees and net collateral liquidation and the costs of defaults.

[27] U.S. Congress, House Committee on Small Business, *Summary of Activities*, 96th Cong., 2d sess., December 29, 1980, H. Rept. 96–1542 (Washington: GPO, 1980), p. 9.

[28] U.S. Congress, Senate Committee on Small Business, *To Consider and Report to the Senate Budget Committee Recommendations for Small Business Administration Programs*, 97th Cong., 1st sess., March 13, 1981 (Washington: GPO, 1981), pp. 3–36.

few, specified types of small business owners.[29] The Microloan program also retained eligibility for direct loans to SBA-certified lending intermediaries, which issue microloans to qualified individuals.[30]

The Reagan administration also sought large reductions in the SBA's overall budget. On April 4, 1985, the Reagan White House announced that it had reached an agreement with Senate Republican Party leaders to freeze, reduce, or eliminate 47 domestic programs. The SBA was included on the list for elimination.[31] During subsequent budget negotiations with the Democratic House, the SBA was retained, but its funding was reduced from $1.25 billion in FY1985 to $714.4 million in FY1986.[32]

Nine years later, on October 1, 1994, the Democratic 103d Congress (1993–1995), at the urging of the Clinton administration, further limited SBA direct business loan eligibility to Microloan program lending intermediaries and to small businesses owned by the disabled. Facing large budget deficits, Congress approved the proposal, primarily because the subsidy rate for the SBA's direct loans was "10 to 15 times higher than [the subsidy rate for the SBA's] guaranty programs."[33] SBA Administrator Erskine Bowles testified before the House Committee on Small Business that eliminating most of the SBA's direct business lending was necessary to "generate the most bang for the taxpayer's bucks."[34] Funding to support direct business loans to the handicapped through the Handicapped Assistance (renamed the Disabled Assistance) Loan program ended in 1996.[35] Other than disaster relief, the SBA currently offers direct business loans only to Microloan program lending intermediaries.

Costly Lessons Learned from the Era of Participating Securities

In 1994, the SBA established the congressionally authorized SBIC Participating Securities Program to encourage equity invest-

---

[29] Small businesses owned by low-income individuals, Vietnam-era or disabled veterans, the handicapped or certain organizations employing them, or certified under the minority small business capital ownership development program or located in high-unemployment areas retained eligibility for direct loans.

[30] U.S. Congress, House Committee on Small Business, *Summary of Activities*, 103d Cong., 2d sess., January 2, 1995, H. Rept. 103–885 (Washington: GPO, 1995), p. 8; and U.S. Congress, Senate Committee on Small Business, *Hearing on the Proposed Fiscal Year 1995 Budget for the Small Business Administration*, 103d Cong., 2d sess., February 22, 1994, S. Hrg. 103–583 (Washington: GPO, 1994), p. 20.

[31] Dorothy Collin, "Reagan, GOP Cut Budget Deal," *Chicago Tribune*, April 5, 1985.

[32] The SBA's budget was further reduced to $613.7 million in FY1987, $428.3 million in FY1988, and $420.2 million in FY1989.

[33] U.S. Congress, Senate Committee on Small Business, *Hearing on the Proposed Fiscal Year 1995 Budget for the Small Business Administration*, 103d Cong., 2d sess., February 22, 1994, S. Hrg. 103–583 (Washington: GPO, 1994), p. 20.

[34] U.S. Congress, House Committee on Small Business, *SBA's Budget for Fiscal Year 1995*, 103d Cong., 2d sess., February 24, 1994, Serial No. 103–68 (Washington: GPO, 1994), p. 7. The SBA's 7(a) loan guaranty program ran out of budget authority in April 1993, causing a temporary shutdown of SBA 7(a) lending until a supplemental appropriation was enacted to restart the program. The 7(a) loan guaranty program's financing issues in 1993 most likely influenced congressional debate concerning the SBA's subsidy costs of direct lending. See U.S. Congress, Senate Committee on Small Business, *Hearing on the Small Business Administration's FY1994 Budget*, 103d Cong., 1st sess., July 22, 1993, S. Hrg. 103–297 (Washington: GPO, 1993), pp. 4–14.

[35] The last loan issued under the Disabled Assistance Loan program was in FY1998. See U.S. Congress, House Committee on Small Business, *Summary of Activities*, 105th Cong., 2d sess., January 2, 1999, H. Rept. 105–849 (Washington: GPO, 1999), p. 8.

ments in startup and early stage small businesses.[36] The program was designed to fill a perceived investment gap created by the SBIC program's focus on mid- and later-stage small businesses.

On October 1, 2004, President George W. Bush ordered the SBA to stop issuing new commitments for participation securities, beginning a process to end the program that is still underway.[37] The Bush administration issued the order because the program experienced a paper loss of $2.7 billion during the early 2000s as investments in technology startup and early stage small businesses lost much of their stock value at that time.[38] Congressional reaction to the Bush administration's decision reflected partisan differences.

Congressional Republicans, the majority party in both Houses during the 108th (2003–2005) and 109th Congresses (2005–2007), supported the Bush administration's decision to end the program. They initially proposed a replacement program featuring enhanced safeguards to reduce the risk of investment losses.[39] The Bush administration expressed little enthusiasm for the proposal, arguing that it did not go far enough to prevent future losses.[40] As a result, the proposal was dropped. Republicans on the House Committee on Small Business later proposed allowing the SBA to issue up to $300 million annually in participating securities, but that proposal was not supported by the Bush administration and it was not enacted.[41]

Congressional Democrats understood why the Bush administration ended the program, but they wanted it to be replaced. They advocated the creation of new venture capital programs targeting startups, early stage small businesses, and socially disadvantaged/minority small business owners; and the reinstatement of a revised participating securities program, with reforms designed to make it less likely to incur losses, but also with the recognition that appro-

[36] P.L. 102–366, the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Title IV, the Small Business Equity Enhancement Act of 1992) authorized the SBA to create the SBIC participating securities program. Participating securities are redeemable, preferred, equity-type securities issued by SBICs in the form of limited partnership interests, preferred stocks, or debentures with interest payable only to the extent of earnings.

[37] U.S. Congress, House Committee on Small Business, *Private Equity for Small Firms: The Importance of the Participating Securities Program*, 109th Cong., 1st sess., April 13, 2005, Serial No. 109–10 (Washington: GPO, 2005), pp. 5, 33; and U.S. Small Business Administration, "SBIC Program: FAQs 7. What is the status of the Participating Securities Program?" at http://www.sba.gov/content/faqs.

[38] U.S. Small Business Administration, "Offering Circular, Guaranteed 4.727% Participating Securities Participation Certificates, Series SBIC–PS 2009–10 A," February 19, 2009, at http://www.sba.gov/content/sbic-ps-2009-10-cusip-831641-ep6; U.S. Congress, Senate Committee on Small Business and Entrepreneurship, *The President's FY2006 Budget Request for the Small Business Administration*, 109th Cong., 1st sess., February 17, 2005, S. Hrg. 109–47 (Washington: GPO, 2005), pp. 6–14, 33–34, 118–119; and U.S. Congress, House Committee on Small Business, *Proposed Legislative Remedy for the Participating Securities Program*, 109th Cong., 1st sess., July 27, 2005, Serial No. 109–27 (Washington: GPO, 2005), pp. 1–5, 11–15.

[39] H.R. 3429, to amend the Small Business Investment Act of 1958 to establish a participating debenture program, and its companion bill in the Senate (S. 1923, the Small Business Investment and Growth Act of 2005) would have authorized the SBA to issue a deferred-interest debenture with accrued interest unconditionally payable by the SBIC 5 years after issuance and semi-annually thereafter. Additional payments would have been required if the SBIC has gross receipts, as defined by the statute. See U.S. Congress, House Committee on Small Business, *Proposed Legislative Remedy for the Participating Securities Program*, 109th Cong., 1st sess., July 27, 2005, Serial No. 109–27 (Washington: GPO, 2005), p. 4.

[40] U.S. Congress, House Committee on Small Business, *Proposed Legislative Remedy for the Participating Securities Program*, 109th Cong., 1st sess., July 27, 2005, Serial No. 109–27 (Washington: GPO, 2005), pp. 3–5.

[41] H.R. 5352, the Small Business Reauthorization Act of 2006, would have authorized the SBA to issue $300 million in participating securities in FY2007, FY2008, FY2009, and FY2010.

priations may be necessary to subsidize the program.[42] None of these proposals were enacted into law.

Today, the SBA's participating securities program's losses are often cited by congressional Republicans and others who argue that the SBA's scope of operations should be limited to protect taxpayers from being exposed to losses associated with its lending and venture capital programs.

Austerity Versus Expansion in the Aftermath of the Great Recession

Partisan differences concerning the SBA's future reached new heights during the 111th, 112th, and 113th Congresses. The magnitude of the economic difficulties resulting from the "Great Recession" (December 2007 to June 2009) led most congressional Democrats to support legislative efforts to increase Federal Government spending, including increased spending for the SBA. Most congressional Republicans opposed these efforts, especially given the relatively large increases in the annual Federal deficit and in the Nation's debt during this time period. The defeat, retirement, and resignation of many political moderates from Congress during these Congresses further intensified partisan differences, and reduced the likelihood of achieving legislative compromises.

These divisions also framed debates over small business policy, particularly in the realm of small business lending.[43] During and immediately following the Great Recession, the SBA's guaranteed business lending programs, which in good economic times typically generate sufficient revenue from fees and collateral liquidations to pay for loan defaults, experienced funding shortfalls due to higher than anticipated loan defaults and lower than anticipated revenue from collateral liquidations (primarily due to falling commercial real estate values). Congress provided the SBA $83.0 million in FY2010, $82.8 million in FY2011, $210.8 million in FY2012, $319.7 million in FY2013, and $111.6 million in FY2014 to cover these expenses.

Many congressional Republicans have advocated policies to limit the SBA's loan losses. They often call into question the efficacy and efficiency of the SBA's lending programs given continued weakness in small business job growth and the magnitude of the loan losses. Many congressional Democrats have argued that policies to limit SBA loan losses typically involve reducing the SBA's scope of operations. They argue that such actions might harm the economic recovery.

---

[42] See H.R. 4565, the Angels Nurture Growing Entrepreneurs into Long-term Successes (ANGELS) Act; and H.R. 3567, the Small Business Investment Expansion Act of 2007. Also see U.S. Congress, House Committee on Small Business, *Private Equity for Small Firms: The Importance of the Participating Securities Program*, 109th Cong., 1st sess., April 13, 2005 (Washington: GPO, 2005), pp. 3–5, 18–23, 30–32.

[43] For more analysis, see Rebel A. Cole, *How Did the Financial Crisis Affect Small Business Lending in the United States?*, U.S. Small Business Administration—Office of Advocacy, November 2012, at http://www.sba.gov/sites/default/files/files/rs399tot.pdf.

United Government in the 111th Congress: Priming the Pump for Small Business Lending

The Democratic 111th Congress convened on January 3, 2009, 2 years into the Great Recession. Some, including most congressional Democrats and President Barack Obama, argued that the SBA should be provided additional resources to assist small businesses in acquiring the capital necessary to start, continue, or expand their businesses and create jobs. The SBA's budget in FY2009 was $615.2 million. Most congressional Republicans disagreed. They advocated business tax reduction, financial credit market regulation reform, and Federal fiscal restraint as the best means to help small businesses further economic growth and job creation.[44]

With President Obama's support, Congress passed P.L. 111–5, the American Recovery and Reinvestment Act of 2009 (ARRA) and P.L. 111–240, the Small Business Jobs Act of 2010 (SBJA). Both measures passed the House and Senate with minimal GOP support. These acts made numerous changes to the SBA's programs in an effort to enhance small business access to capital. For example, ARRA provided the SBA an additional $730 million (more than doubling the agency's budget), including $375 million to temporarily subsidize SBA loan guaranty fees and increase the 7(a) loan guaranty program's maximum loan guaranty percentage to 90 percent.[45] The fee reductions were designed to increase the demand for SBA guaranteed loans by reducing borrower costs; and the higher loan guaranty percentage was designed to increase the supply of SBA guaranteed loans by reducing private lender's exposure to the risk of losses in case of a default. Congress subsequently provided another $265 million and authorized the SBA to reprogram another $40 million to extend the fee reductions and loan modifications through May 31, 2010.

Among other things, the SBJA authorized a $30 billion Small Business Lending Fund to encourage community banks to provide small business loans ($4 billion was subsequently issued) and a $1.5 billion State Small Business Credit Initiative to provide funding to participating States with small business capital access programs. The act also provided $510 million to continue the SBA's fee reductions and loan modifications through December 31, 2010, and made numerous changes to the SBA's loan guaranty and contracting programs to enable the SBA to expand its assistance to small businesses.[46]

---

[44] U.S. Small Business Administration, "Administration Announces New Small Business Commercial Real Estate and Working Capital Programs," February 5, 2010, at http://www.sba.gov/sites/default/files/sba__rcvry__factsheet__cre__refi.pdf; and Susan Eckerly, "NFIB Responds to President's Small Business Lending Initiatives," Washington, DC, October 21, 2009, at http://www.nfib.com/newsroom/newsroom-item/cmsid/50080/; and NFIB, "Government Spending," Washington, DC, at http://www.nfib.com/issues-elections/issues-elections-item/cmsid/49051/.

[45] ARRA affected many programs and agencies, and is expected to provide over $840 billion from FY2009 through FY2019, including $290.7 billion for tax relief; $261.2 billion for contracts, grants, and loans; and $264.4 billion for entitlements. See The Recovery Accountability and Transparency Board, "The American Recovery and Reinvestment Act of 2009," at http://www.recovery.gov/arra/Transparency/fundingoverview/Pages/fundingbreakdown.aspx. The SBA's 7(a) loan guaranty program provides an 85 percent guaranty for loans of $150,000 or less; and a 75 percent guaranty for loans greater than $150,000 to the statutory limit of $3.75 million (75 percent of $5 million).

[46] Among other things, the SBJA authorized higher SBA loan limits, created new size standards to enable more small businesses to qualify for assistance, and provided about $12 billion in small business tax relief. P.L. 111–322, the Continuing Appropriations and Surface Transportation Extensions Act, 2011, authorized the use of any funding remaining from the SBJA to ex-

Divided Government in the 112th and 113th Congresses: Impasse Inspires Ingenuity

Partisan disagreement concerning the best way to assist small businesses following the Great Recession continued during the 112th and 113th Congresses. Both of these Congresses had a Republican majority in the House and a Democratic majority in the Senate. During the 112th Congress (2011–2013), the economic recovery was relatively slow and uneven across the Nation, unemployment remained at relatively high levels, and business credit markets remained tight. Although the economy improved somewhat during the 113th Congress (2013–2015), unemployment remained relatively high during the first session of the Congress and began to improve during the second session.

The Nation's continuing economic difficulties led some, including most congressional Democrats and President Obama, to support another round of additional funding for the SBA as a means to spur economic growth and create jobs. However, as mentioned previously, the slow economic recovery also led to historically high default rates for the SBA's lending programs, making proposals to expand the SBA's scope of operations to foster economic growth and job creation more difficult for many congressional Republicans to accept.

The Republican Party's majority status in the House during the 112th and 113th Congresses changed the political dynamic. A political deadlock ensued as bills seeking to expand the SBA's scope of operations were, for the most part, blocked by the House Committee on Small Business; and bills seeking to reduce the SBA's scope of operations were, for the most part, blocked by the Senate Committee on Small Business and Entrepreneurship.

The close, longstanding personal relationship of Senator Mary Landrieu, then-chair of the Senate Committee on Small Business and Entrepreneurship, and Senator Olympia Snowe, then-ranking member on the committee, helped to diffuse partisan conflict in that committee, at least to some extent.[47] For example, during the 112th Congress, Senator Snowe cosponsored six bills introduced by Senator Landrieu, and Senator Landrieu cosponsored nine bills introduced by Senator Snowe. Nonetheless, during the 111th Congress, Senator Snowe strongly objected to portions of both ARRA and the SBJA (especially the Small Business Lending Fund), which were enacted despite the objections of many congressional Republicans.

The extent of the partisan division between the House and Senate Small Business Committees during the 112th Congress was highlighted by the inability of the two committees to agree on language to reauthorize the SBA. After agreeing to two short-term reauthorizations early in the 112th Congress, disagreement over the SBA's future led to a breakdown in talks between the two commit-

tend the SBA fee reductions and loan modifications through March 4, 2011, or until the available funding was exhausted, which occurred on January 3, 2011.

[47] Senator Snowe was widely regarded as a pragmatic, political moderate, willing to work with both Democrats and Republicans on legislation. Also, Senator Snowe served on the Senate Committee on Small Business and Entrepreneurship from 2000 to 2003, as the committee's chair from 2003 to 2007, and as ranking member from 2007 until her retirement from the Senate in 2013.

tees concerning the SBA's statutory authorization, which expired on July 31, 2011.[48] Since then, the two committees have not reopened discussions concerning the agency's statutory authorization. The SBA is able to continue operations through authority provided by appropriations acts.

Although partisan differences between the House and Senate Small Business Committees prevented legislation from reaching the other body through the normal lawmaking process, the leaders of the two committees sought other ways to enact small business legislation. For example, during the 112th Congress, several bills supported by Representative Sam Graves, chair of the House Committee on Small Business, were included by the House Committee on Armed Services in their markup of H.R. 4310, the National Defense Authorization Act for Fiscal Year 2013. The Department of Defense (DOD) is the Federal Government's largest contractor, providing the House and Senate Committees on Armed Services jurisdiction over issues related to government contracting, including small business contracting. The annual National Defense Authorization Act is generally regarded as "must-pass" legislation.

The small business provisions added to the National Defense Authorization Act for Fiscal Year 2013 affected Federal procurement center representatives; small business size standards; Federal agency contracting training requirements and acquisition planning; the Federal Government's procurement goals for contracts awarded to small businesses; the bundling of Federal contracts; the training and evaluation of senior executives; small business mentor-protégé programs; limitations on subcontracting, penalties, and subcontracting plans; notices of subcontracting opportunities; publication of certain documents; and contract bundling. The Senate Committee on Armed Services added a provision affecting the SBA's HUBZone program, which was sponsored by Senator Sherrod Brown, who was not a member of the Committee on Small Business and Entrepreneurship.[49] These provisions were generally considered to have little chance of passage because of the opposition of either the House or the Senate Small Business Committee. However, because these provisions were attached to a bill considered "must-pass" legislation, and that legislation was not subject to the review of the Small Business Committees, the added provisions were enacted into law (P.L. 112–239).

During the 113th Congress, two provisions sought by Senator Landrieu were included in the Consolidated Appropriations Act, 2014 (P.L. 113–76), providing additional examples of using "must-pass" legislation as a legislative vehicle to bypass the authorizing committees. One of the provisions increased the SBIC program's annual authorization to $4 billion from $3 billion, and the other

[48] P.L. 108–447, the Consolidated Appropriations Act, 2005, provided reauthorization for the SBA for FY2005 and FY2006. That was the last long-term reauthorization provided to the SBA. Congress subsequently passed, and the President signed, 15 short-term reauthorizations for the SBA, including 2 short-term reauthorizations early in the 112th Congress.

[49] The provision addressed the eligibility of BRAC base closure areas in the Historically Underutilized Business Zone Empowerment Contracting (HUBZone) program. The HUBZone program is a small business Federal contracting assistance program, administered by SBA, whose primary objective is creating jobs and increasing capital investment in distressed communities. It provides participating small businesses located in areas with low-income, high-poverty rates, or high-unemployment rates with contracting opportunities in the form of "set-asides," sole-source awards, and price-evaluation preferences. For more information, see CRS Report R41268, *Small Business Administration HUBZone Program*, by Robert Jay Dilger.

provided $8 million for the State Trade and Export Promotion (STEP) grant program for FY2015.[50]

Conclusion

Small business policymaking in Congress has evolved over time from a relatively bipartisan, noncontroversial policymaking environment to one that is increasingly characterized by partisan differences. Most Members agree that small businesses are important to the U.S. economy, but partisan differences emerge when considering the means to best help small businesses. These differences tend to become accentuated during economic downturns because many congressional Democrats view the SBA as a vehicle to promote economic growth and job creation, while many congressional Republicans object to spending programs that increase the Federal deficit or add to the Federal debt, preferring policies that reduce Federal taxes and business regulation. These partisan differences have become magnified in recent years given the magnitude of the Great Recession, increased attention to fiscal responsibility, and growth in overall Federal debt.

In the past, small business policymaking often followed regular order, featuring committee hearings, followed by committee markups in both the House and Senate Small Business Committees, open floor debate in both Chambers, and a conference committee to resolve any differences on the legislation under consideration. Today, especially under divided government and in the absence of political moderates willing to work within and between the Small Business Committees, it is less likely that small business policymaking will follow regular order. Instead, committee hearings and markups take place, but knowing that the other body is not likely to address the legislation there is generally less incentive to explore all sides of the issue—leading to an increased number of hearings that focus on the presentation of a particular viewpoint, rather than discussions of how to find a compromise solution.

In addition, committee leaders and others are now more likely to seek alternative legislative means to achieve their goals, such as attaching small business legislation to other bills considered "must-pass" legislation (e.g., national defense authorizations and appropriations bills). Thus, even in the most divided and partisan circumstances, Congress can still pass small business legislation. However, enacting major small business legislation on the scale of ARRA and the SBJA is extremely difficult when Congress is divided, and partisan differences run deep.

[50] For further information and analysis concerning the appropriations process, see CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, by Jessica Tollestrup and CRS Report R42098, *Authorization of Appropriations: Procedural and Legal Issues*, by Jessica Tollestrup and Brian T. Yeh. For further information and analysis concerning the STEP program, see CRS Report R43155, *Small Business Administration Trade and Export Promotion Programs*, by Sean Lowry.

Use of the Appropriations Process to Influence Census Bureau Policy: The Case of Adjustment

JENNIFER D. WILLIAMS

Specialist in American National Government

Persistent differential undercounts of minorities and less affluent U.S. residents in the decennial census—the greater tendency for the census to miss them than to miss whites and wealthier people—occasioned much past debate about using sample-survey estimates to "adjust" the census statistically. This report examines failed pro- and anti-adjustment bills in the 100th through 104th Congresses, then tracks H.R. 2267 (P.L. 105–119) from the 105th Congress, which funded the Census Bureau in FY1998. Section 209 of the bill, as reported by the House Appropriations Committee, then strengthened during House consideration of H.R. 2267 and in conference committee, provided for expedited judicial review of civil suits to block sampling. Accordingly, on January 25, 1999, the Supreme Court issued its decision in U.S. Department of Commerce v. U.S. House of Representatives *and* Clinton v. Glavin *(525 U.S. 316, 119 S. Ct. 765 (1999)) that Section 195 of Title 13 U.S.C. banned incorporating sample-survey results into the decennial census count for apportionment. The Court declined to decide whether the use of sampling prohibited under Section 195 would be unconstitutional as well.*

Background

The decennial census is a cornerstone of representative government in the United States. The Constitution[1] mandates a complete population count every 10 years so that the States can be assigned seats in the House of Representatives "according to their respective numbers . . . ." The first census, in 1790, was overseen by Secretary of State Thomas Jefferson and conducted by U.S. marshals and their assistants. They reported a total of almost 4 million residents.[2] From this beginning, the census has developed into a com-

---

[1] U.S. Constitution, Article I, Section 2, clause 3, as modified by Section 2 of the 14th Amendment.

[2] The Census Bureau's history site states that "As the nominal director of the 1790 census, Jefferson certified the combined local results reported by each marshal. He also shared President Washington's concern that the first census had significantly undercounted the population, perhaps by several hundred thousand residents." U.S. Bureau of the Census, "Directors 1790–1810," at http://www.census.gov/history/www/census__then__now/director__biographies/directors__1790__-__1810.html. According to another source, the "degree of responsibility" of the

Continued

plex, multibillion-dollar operation conducted by the Bureau of the Census in the U.S. Department of Commerce. Census data not only are the basis for House apportionment and within-State redistricting, but also are essential for documenting the growth, distribution, and characteristics of the population. Besides being widely used by businesses, researchers, and all levels of government, census data are incorporated into certain formulas that allocate more than $450 billion per year in Federal program funds to States and localities. States, localities, and all population groups—racial minorities, Hispanics or Latinos (hereafter, Hispanics), and majority whites—have a considerable stake in being included in each census. To the extent that they are undercounted, they can lose representation and Federal money.

Although the census has evolved during more than two centuries, broad congressional authority over it remains as stated in the Constitution: "The actual Enumeration ... shall be made ... in such Manner as they [Congress] shall by Law direct." From the act of March 1, 1790, which specified how the first census was to be conducted and what information was to be collected, to the present, Congress has played an important role in census operations. Census law now is codified in Title 13 of the *United States Code*, which, among other provisions, delegates responsibility for the decennial count to the Secretary of Commerce and the "Director of the Census," who "shall perform such duties as may be imposed upon him by law, regulations, or orders of the Secretary."[3] Congress at times proposes separate bills to alter aspects of the decennial census or other Census Bureau programs and holds oversight hearings to review the conduct of these programs. In addition, Congress affects the Bureau's operations through the appropriations process. As a former Bureau Director observed:

> The regular appearances before the House and Senate appropriations subcommittees are undoubtedly the most crucial of all the congressional contacts required of Census and [Commerce] Departmental staffs. The outcome of these hearings determines whether the bureau can undertake some or all of the new work that has been approved by the Department and the Office of Management and Budget. Ordinarily, adverse subcommittee actions are limited to the denial of some or all of the increases requested, and funds are usually granted to permit the continuation of all previously approved programs. In some cases, however, ... funds may be cut below the level of the preceding year ... . In view of the stakes involved, it is not surprising that agency preparations for the appropriation hearings extend over a number of weeks, with intensive briefing sessions and preparation of quite detailed backup material for dealing with unforeseen inquiries.[4]

Census Undercount and the Adjustment Debate in Congress

In one notable example from the 1990s, the appropriations process wielded influence well beyond funding; it forced an abrupt change in the Census Bureau's 2000 census strategy and, from then to the present, largely settled an issue that previous legislation and litigation had not resolved. The issue was whether sampling in connection with the decennial census should occur in order to estimate and attempt to correct census miscounts (undercounts and overcounts)—that is, to "adjust" the census results.

Secretary of State for the 1790 census "is not clear." A. Ross Eckler, *The Bureau of the Census* (New York: Praeger, 1972), p. 7.

[3] 13 U.S.C. § 21.

[4] A. Ross Eckler, *The Bureau of the Census* (New York: Praeger, 1972), pp. 146–147.

Of special concern were the persistent differential undercounts of minorities and less affluent members of society—the greater tendency for the census to miss them than to miss whites and wealthier people. Post-Enumeration Survey (PES) estimates of 1990 census coverage indicated a net percentage undercount of 0.7 percent for non-Hispanic whites, compared with 4.6 percent for blacks, 2.4 percent for Asians or Pacific Islanders,[5] 12.2 percent for American Indians on reservations, and 5.0 percent for Hispanics. The net percentage undercount of the total population was estimated at 1.6 percent.[6]

When Commerce Secretary Robert Mosbacher announced that the Census Bureau would not adjust the 1990 census numbers, a *New York Times* reporter responded as follows:

> The Commerce Department's decision not to adjust the 1990 census upward is a special blow to New York City, Newark and other fiscally struggling cities in the region where local officials said their large populations of minorities, immigrants and homeless people were severely undercounted.
>
> New York City, for example, would have gained nearly 230,000 people, increased its representation in the State Legislature and gained millions more dollars in Federal aid if the Census Bureau had adjusted its figure of about 7.3 million people. The city had estimated its population at 7.8 million to 8 million.
>
> Similarly, the 1990 census shows Newark with 275,221 residents, down from 329,248 in 1980 and thousands fewer than city officials believe.[7]

The view from Indiana when adjustment was still a possibility was quite different, however. The U.S. General Accounting Office (now Government Accountability Office) estimated that an adjusted 1990 census could mean a net loss to the State of $13.2 million per year in Federal Medicaid and social services block grant allocations.[8] According to the *Indianapolis Star*:

> Efforts to adjust the 1990 census figures after the count has been completed have Gov. Evan Bayh "screaming bloody murder."
>
> That was the governor's reaction Friday to a report by the federal General Accounting Office about a proposed adjustment to the figures. . . .
>
> Indiana's population would be increased very slightly by the adjustment. But the state's proportional share of population would decline, causing a drop-off of tax dollars from Washington.
>
> "It's an outrage what Washington is proposing to do to Indiana," Bayh said. . . .
>
> "The federal government, through some accounting chicanery, is proposing to take millions from Hoosier taxpayers . . . and is once again turning its back on Indiana."[9]

The undercount issue had been contentious for decades. Supporters of adjustment argued that it was necessary to make the census more equitable for apportionment, redistricting, and other purposes. Opponents maintained that the procedure was flawed,

---

[5] In 1997, the U.S. Office of Management and Budget revised the designations of race and Hispanic ethnicity for Federal reporting purposes. The category "Asians or Pacific Islanders" became "Asians" and "Native Hawaiians or other Pacific Islanders." U.S. Office of Management and Budget, "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," 62 *Federal Register* 58789, October 30, 1997.

[6] CRS Report R40551, *The 2010 Decennial Census: Background and Issues*, by Jennifer D. Williams. The 1990 census undercount estimates reported here reflect revisions that the Bureau made after July 1990.

[7] Felicia R. Lee, "No Census Adjustment Hits Big Cities Hard," *New York Times*, July 16, 1991, p. A16.

[8] U.S. General Accounting Office, *Formula Programs: Adjusted Census Data Would Redistribute Small Percentage of Funds to States*, GAO/GGD–92–12, November 1991, pp. 20–26. The $13.2 million net loss took into account an annual estimated gain of $11,000 in Federal highway aid to Indiana.

[9] Staff report, "Bayh irate over plan to adjust '90 census," *Indianapolis Star*, November 23, 1991.

subjective, or both and could leave the census vulnerable to political manipulation. The Commerce Department and the Census Bureau were sued, repeatedly but without success for the plaintiffs, over the 1980 and 1990 census undercounts.

A series of pro- and anti-adjustment measures, summarized below, failed in the 100th through 104th Congresses.[10] Unless otherwise noted, no action beyond committee and subcommittee referrals occurred on the proposals.

100TH CONGRESS

- H.R. 3511 (Dymally), to require adjustment to correct for any census undercounts and overcounts, was introduced and referred to the Committee on Post Office and Civil Service on October 20, 1987. The bill was referred to the Subcommittee on Census and Population on October 25, 1987.

  At a subcommittee hearing on the bill, Chairman Mervyn Dymally expressed his "strong feelings" about the "historical, substantial and disproportionate undercount of minorities and the poor in the decennial census . . . . [T]he need to guarantee equal representation under the Fourteenth Amendment, the need to insure compliance with the Voting Rights Act, and the need to properly allocate federal funds compel a satisfactory solution to the problem of a differential undercount."

  Robert Ortner, as the Reagan administration's Undersecretary of Commerce for Economic Affairs, testified in support of the Commerce Department's decision against planning to adjust the 1990 census: "There is no unique model or system that would produce a set of data which all statisticians would support. Different statisticians employ different methodologies and derive different estimates of undercount or overcount. These kinds of numbers are essentially judgmental and subjective. . . ." Dr. Ortner continued: "Remember, Mr. Chairman, this is a zero sum game. If I get more money or more representation, then you lose on both of those counts . . . based on population numbers created from sampling estimates[;] we can measure sampling errors, but . . . nonsampling errors . . . have not been dealt with."

  Also testifying was Barbara Bailar, formerly the Census Bureau's Associate Director for Statistical Standards and Methodology, who had resigned from the Bureau over the adjustment issue. In her assessment, "The 1990 methods of estimating the undercount, and hence for correcting the data, are far superior to what they were in 1980. They can be used to make our census counts much more accurate."[11]
- S. 1942 (Moynihan), a companion bill to H.R. 3511, was introduced and referred to the Committee on Governmental Affairs on December 11, 1987.

[10] See CRS Report 94–89, *Decennial Census Coverage: The Adjustment Issue*, by Jennifer D. Williams; CRS Report 97–137, *Census 2000: The Sampling Debate*, by Jennifer D. Williams; and CRS Report RL30182, *Census 2000: Sampling as an Appropriations Issue in the 105th and 106th Congresses*, by Jennifer D. Williams (archived reports, available from the author).

[11] U.S. Congress, House Committee on Post Office and Civil Service, Subcommittee on Census and Population, *The Decennial Census Improvement Act*, hearing on H.R. 3511, 100th Cong., 2d sess., March 3, 1988 (Washington, DC: GPO, 1988), pp. 1–2, 5, and 89.

101ST CONGRESS

- H.R. 526 (Dymally), like H.R. 3511 in the 100th Congress, would have required adjustment to correct any census undercounts or overcounts. The bill was introduced and referred to the Post Office and Civil Service Committee on January 19, 1989, and to the Census and Population Subcommittee on February 13, 1989. Unfavorable executive comment was received from the Commerce Department on June 6, 1989.
- H.R. 5741 (Sawyer) would have amended Title 13 of the *U.S. Code* to require the Commerce Secretary to determine whether the tabulations of State populations from the 1990 census and future censuses should be adjusted to correct any undercounts or overcounts. The bill was introduced and referred to the Post Office and Civil Service Committee on September 27, 1990.
- S. Res. 338 (Sasser) expressed the sense of the Senate that the Commerce Department should use "statistical correction methodology to achieve a fair and accurate 1990 census." The resolution was introduced and referred to the Governmental Affairs Committee on October 11, 1990.
- S. 264 (Moynihan), a companion bill to H.R. 526, was introduced and referred to the Governmental Affairs Committee on January 25, 1989.

102D CONGRESS

- H. Res. 214 (Payne) called for statistical adjustment of the 1990 census results to include people missed by the census. The resolution was introduced and referred to the Post Office and Civil Service Committee on August 2, 1991, and to the Census and Population Subcommittee on August 12, 1991.
- H.R. 90 (Sawyer), like H.R. 5741 in the 101st Congress, would have amended Title 13 of the *U.S. Code* to require the Commerce Secretary to determine whether the tabulations of State populations from the 1990 census and future censuses should be adjusted to correct any undercounts or overcounts. The bill was introduced and referred to the Post Office and Civil Service Committee on January 3, 1991, and to the Census and Population Subcommittee on January 31, 1991.
- H.R. 2316 (Coleman), to direct the Commerce Secretary to take measures ensuring that 1990 census undercounts were corrected, was introduced and referred to the Post Office and Civil Service Committee on May 14, 1991, and to the Census and Population Subcommittee on May 20, 1991.
- H.R. 2911 (Schumer) would have established a commission to "investigate and study" the enumeration methods used in 1990, including whether data obtained by these methods "should be subject to statistical adjustment and, if so, how such an adjustment should be made. . . ." The bill was introduced and referred to the Post Office and Civil Service Committee on July 16, 1991, and to the Census and Population Subcommittee on July 22, 1991.

- H.R. 5478 (Moran) would have stipulated that adjusted 1990 census data be used to administer any Federal benefits program requiring the use of the most recent census data. The bill was introduced and referred to the Post Office and Civil Service Committee on June 24, 1992, and to the Census and Population Subcommittee on June 30, 1992.
- H.R. 5865 (Moody) would have prohibited the Commerce Department and the Census Bureau from using appropriated funds to adjust the 1990 census or any intercensal estimates. The measure was introduced and referred to the Post Office and Civil Service Committee on August 12, 1992, and to the Census and Population Subcommittee on August 20, 1992.
- S.J. Res. 21 (Sasser), like S. Res. 338 in the 101st Congress, expressed the sense of Congress that the Commerce Department should use "statistical correction methodology to achieve a fair and accurate 1990 census." The resolution was introduced and referred to the Governmental Affairs Committee on January 14, 1991.
- S. 28 (Moynihan) would have amended Title 13 of the *U.S. Code* to require that the Commerce Secretary adjust census data, including 1990 census data, to correct any undercounts or overcounts. The bill was introduced and referred to the Governmental Affairs Committee on January 14, 1991.
- S. 1480 (Moynihan), a companion bill to H.R. 2911, was introduced and referred to the Governmental Affairs Committee on July 16, 1991.
- S. 3178 (Specter), a companion bill to H.R. 5865, was introduced and referred to the Governmental Affairs Committee on August 12, 1992.
- S. 3205 (Mack), a companion bill to H.R. 5478, was introduced and referred to the Governmental Affairs Committee on August 12, 1992.
- H.R. 2608 (Smith), FY1992 appropriations legislation for the Departments of Commerce, Justice, and State, the judiciary, and related agencies (CJS), passed the House on June 13, 1991, and the Senate on July 31, 1991. Each Chamber agreed to the conference report on H.R. 2608 (H. Rept. 102–233) on October 3, 1991, and the measure became law (P.L. 102–140) on October 28, 1991.

Although H.R. 2608 was enacted without any adjustment-related provision, the Senate, in its July 30, 1991, consideration of the bill, had approved three amendments on the topic. They are discussed below.

S. Amdt. 933 (Hollings) was introduced and agreed to by voice vote on July 30, 1991. S. Amdt. 934 (Hollings), amending S. Amdt. 933, also was introduced and agreed to by voice vote on this date. The text of the amendments (933 in roman and 934 in italics) was: "The decennial census of population of 1990 shall be adjusted to reflect the changes recommended on June 21, 1991, by the Post Enumeration Commission and the Director of the Census, *except that such adjustment shall not apply to political reapportionment*."

S. Amdt. 933, as amended by S. Amdt. 934, was then amended by S. Amdt. 935 (Kohl), which was adopted by voice vote on July 30, 1991. S. Amdt. 935 stated: "The Subcommittee on Government Information and Regulation, of the Committee on Governmental Affairs, shall report to the Senate on the use of the Post-Enumeration Survey of the 1990 Census for purposes other than political apportionment and shall recommend such changes as necessary. . . ."

The conferees on H.R. 2608 deleted this provision, calling it "an internal Senate matter." [12]

Nonetheless, the Senate Subcommittee on Government Information and Regulation did issue the February 1992 report called for by S. Amdt. 935. The report alluded briefly to S. Amdts. 934 and 935:

> Senator Hollings, the subcommittee [c]hair, offered an amendment that would require that adjusted census numbers would be used for all purposes other than apportionment.
>
> Senator Kohl, as chair of the Governmental Affairs Subcommittee on Government Information and Regulation, argued that the adoption of such an amendment was premature. It was clear that the adjusted numbers available at that time were, for most purposes, less accurate than the original count.[13]

The report noted as well:

> The Census Bureau has continued to examine data from the post-enumeration survey . . . . That research has shown the wisdom of waiting to implement a census adjustment. The July estimates were seriously flawed. Problems in matching caused the undercount to be overstated in some areas. Programing problems caused the total undercount to be overstated. The undercount, as measured by the PES in July, has been reduced by nearly 30 percent. . . .
>
> Yet, while some of the problems have been solved since July, many of the most serious problems still remain. The adjustment model remains sensitive and the results lack robustness. . . . Whether the numbers are to be used for apportionment, funds distribution, or redistricting, they lack the necessary face validity. If adjusted census numbers are used prematurely[,] there is the risk that the basic credibility of the census itself will be undermined.[14]

103D CONGRESS

- H.R. 787 (Moran), like H.R. 5478 in the 102d Congress, would have directed that adjusted 1990 census data be used to administer any Federal benefits program requiring the use of the most recent census data. The bill was introduced and referred to the Post Office and Civil Service Committee on February 3, 1993, and to the Census, Statistics, and Postal Personnel Subcommittee on February 19, 1993.

[12] "Conference Report on H.R. 2608," *Congressional Record*, vol. 137, part 17 (October 1, 1991), p. 24904.
[13] U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on Government Information and Regulation, *Dividing the Dollars: Issues in Adjusting Decennial Counts and Intercensal Estimates for Funds Distribution*, committee print, 102d Cong., 2d sess., February 1992, S. Prt. 102–83 (Washington, DC: GPO, 1992), p. 4.
[14] Ibid., pp. 12–13.

- S. 307 (Mack), a companion bill to H.R. 787, was introduced and referred to the Governmental Affairs Committee on February 3, 1993.

104TH CONGRESS

- H.R. 3598 (Petri), which would have amended Title 13 of the *U.S. Code* to prohibit the use of sampling or other statistical procedures to determine total State populations for House apportionment, was introduced and referred to the Government Reform and Oversight Committee on June 5, 1996.

Adjustment as an Appropriations Issue: Congressional Response to the *Plan for Census 2000*

As preparations for the 2000 census advanced during the Clinton administration, the Census Bureau announced, in the *Plan for Census 2000*, that it would conduct two new sample surveys intended to improve the enumeration.[15] The first one, for nonresponse followup, would have collected data from a sample of housing units whose occupants had not completed their census forms. The second survey, for "integrated coverage measurement" (ICM), attracted greater congressional attention because it would have been used to correct census miscounts. Not by accident did more of that attention come from the House. As indicated, for example, by the discussion of three sampling-related Senate amendments to H.R. 2608 in the 102d Congress, the Senate may show a definite interest in census matters, but the House's interest arguably may be keener and more direct, given that census results determine each State's number of House seats.

In response to the Census Bureau's announcement, the Government Reform and Oversight Committee, the Bureau's House oversight committee in the 104th Congress, stated its arguments for and against sampling in a report adopted on September 18, 1996. A majority of the committee found that the Bureau "should not use sampling methods to complete or adjust the actual enumeration" in 2000. They pointed to weaknesses in the sampling design, citing, for example, the concern of Kenneth Wachter, a professor of statistics and demography at the University of California-Berkeley, that heterogeneity would have been a problem if the 1990 census results had been adjusted and remained a problem for 2000.[16] The majority also questioned whether anything other than a strict headcount for apportionment would be legal and constitutional, and whether sampling would undermine the quality of small-area data and public confidence in the census. Another concern expressed was the operational feasibility of completing two complex sample surveys by

[15] U.S. Bureau of the Census, *Plan for Census 2000*, issued February 28, 1996.

[16] Dr. Wachter was a member of the Commerce Secretary's Special Advisory Panel on Census Adjustment from 1989 to 1991. For ICM, the sampling universe was to be divided into demographic subgroups, or "post-strata," with certain characteristics, such as black male renters ages 30 to 49. An undercount rate was to be estimated for each post-stratum, "then assumed to hold constant across relatively large geographical areas." *Heterogeneity* refers to the failure of "these assumptions of constancy . . . ." U.S. Congress, House Committee on Government Reform and Oversight, *Sampling and Statistical Adjustment in the Decennial Census: Fundamental Flaws*, 104th Cong., 2d sess., H. Rept. 104–821 (Washington, DC: GPO, 1996), p. 4.

the December 31, 2000, legal deadline for producing official census numbers.

In dissenting opinions, 18 committee members asserted that sampling was necessary to make the census more accurate, more equitable, and less expensive:

> Dr. Barbara Bryant, director of the Census Bureau under President [George H. W.] Bush, in testimony before the House Committee on Post Office and Civil Service, said that the census had reached the limits of what could be done with traditional methods.[17] Congress has called for a census that is less expensive and more accurate. Three separate panels of experts convened by the National Academy of Sciences[18] have recommended the use of sampling and statistical methods to achieve these goals.[19]

Two bills in the 105th Congress, both referred to the House Government Reform and Oversight Committee without further action, addressed the adjustment issue with opposing objectives.

- H.R. 1178 (Maloney), introduced on March 20, 1997, would have amended Title 13, Section 195, of the *U.S. Code* to clarify that sampling could be used to improve census accuracy. Section 195 provides that "Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as 'sampling' in carrying out the provisions of this title."
- H.R. 1220 (Petri), like H.R. 3589 in the 104th Congress, would have prohibited the use of sampling or other statistical procedures to determine total State populations for apportionment. The bill was introduced on March 21, 1997.

Because legislation to resolve the adjustment issue had failed consistently in earlier Congresses and continued to fail in the 105th Congress, and since adjustment of the 2000 census seemed imminent, the appropriations process in the 105th Congress became the main forum for the sampling debate.

Congress approved H.R. 1469, FY1997 supplemental appropriations for disaster relief, on June 5, 1997. President Clinton vetoed the bill on June 9, 1997, in part because it contained House language to ban the use of sampling in any census to determine the apportionment population. A second bill, H.R. 1871, stipulated only that, within 30 days of enactment, the Commerce Department give

---

[17] See testimony of Barbara Bryant, Director, U.S. Bureau of the Census, in U.S. Congress, House Committee on Post Office and Civil Service, *Oversight Hearing to Review Census Adjustment Decision*, 102d Cong., 1st sess., July 16, 1991 (Washington, DC: GPO, 1991), pp. 23 and 26. The press, too, reported Dr. Bryant's assessment that adjustment would have improved 1990 census accuracy, on average. Barbara Vobejda, "Census Bureau Chief Disagreed with Mosbacher on Adjustments," *Washington Post*, July 17, 1991, p. A21.

[18] See Barry Edmonston and Charles L. Schultz, eds., *Modernizing the U.S. Census*, Panel on Census Requirements in the Year 2000 and Beyond, Committee on National Statistics, National Research Council, National Academy of Sciences (Washington, DC: National Academy Press, 1995); and Duane L. Steffey and Norman M. Bradburn, eds., *Counting People in the Information Age*, Panel to Evaluate Alternative Census Methods, Committee on National Statistics, National Research Council, National Academy of Sciences (Washington, DC: National Academy Press, 1994). See also Andrew A. White and Keith F. Rust, eds., *Preparing for the 2000 Census*, Panel to Evaluate Alternative Census Methodologies, Committee on National Statistics, Commission on Behavioral and Social Sciences and Education, National Research Council, National Academy of Sciences (Washington, DC: National Academy Press, 1997). The panel's first interim report, *Sampling in the 2000 Census*, was issued in 1996.

[19] U.S. Congress, House Committee on Government Reform and Oversight, *Sampling and Statistical Adjustment in the Decennial Census: Fundamental Flaws*, 104th Cong., 2d sess., H. Rept. 104–821 (Washington, DC: GPO, 1996), p. 23.

Congress a detailed report on the proposed methods for conducting the 2000 census. The President signed this legislation on June 12, 1997 (P.L. 105–18).

On June 23 and July 24, 1997, Speaker Newt Gingrich entered into the *Congressional Record* two items from the *Washington Times* that expressed opposition to sampling for census adjustment. The first was an editorial that referenced President Clinton's favorable attitude toward adjustment in his remarks about the disaster relief legislation, then continued: "Why should a Republican Congress commit political suicide by relinquishing its authority over the census to a hyper-politicized administration?"[20] The second entry was a letter to the editor by Matthew J. Glavin, president of the Southeastern Legal Foundation, who shortly thereafter became a plaintiff in one of the anti-adjustment lawsuits filed under Section 209 of P.L. 105–119 (discussed below). Mr. Glavin characterized adjustment as follows: "Under this system, the Bureau would make its 'best guess' as to where the population count was imagined to be low, add a magical percentage to the head count for that area, and apply those statistical percentages to similar areas across the nation."[21]

What happened next was a notable instance of Congress exercising its authority over an executive branch agency that was under the purview of the opposite party.

On July 25, 1997, the House Appropriations Committee reported H.R. 2267, the FY1998 appropriations bill for the Departments of Commerce, Justice, and State, the judiciary, and related agencies.[22] The committee-approved bill withheld all but $100 million of the $381.8 million recommended for the 2000 census, pending agreement between Congress and the administration on census methods. Agreement was to consist of an act authorizing these methods. The bill further stipulated that none of the $100 million could be spent to plan, test, or use sampling in the census to determine the apportionment population.

The House passed H.R. 2267 on September 30, 1997, approving the full $381.8 million without the above Appropriations Committee limitations but with a new provision (Section 209) to counter the Bureau's sampling plans.

- Section 209 specified that "Any person aggrieved by the use of any statistical method in violation of the Constitution or any provision of law, [in connection with the decennial census to determine the population for apportionment or redistricting, might] . . . in a civil action obtain declaratory, injunctive, and any other appropriate relief against the use of such method."

[20] "Politics and Census Numbers," *Washington Times*, June 12, 1997, reprinted in *Congressional Record*, vol. 143, part 8 (June 23, 1997), p. 11885.

[21] Matthew J. Glavin, "Best-Guess U.S. Census?," letter to the editor, *Washington Times*, July 15, 1997, reprinted in *Congressional Record*, vol. 143, part 11 (July 24, 1997), p. 15767.

[22] U.S. Congress, House Committee on Appropriations, *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, Fiscal Year 1998*, report to accompany H.R. 2267, 105th Cong., 1st sess., H. Rept. 105–207 (Washington, DC: GPO, 1997), pp. 64–65.

- The civil action would be "heard and determined" by a three-judge U.S. district court, and any order issued by the court would be "reviewable by appeal directly to the Supreme Court of the United States."
- A test of the method, such as in the dress rehearsal [23] for the 2000 census, would be considered equivalent to its use in connection with the census.
- An aggrieved person could include "any resident of a State whose congressional representation or district could be changed as a result of the use of a statistical method . . ., any Representative or Senator in Congress . . ., [and] either House of Congress."

During House consideration of H.R. 2267, Representative Dennis Hastert had spoken in favor of the provision above, and Representative Alan Mollohan had spoken against it. He urged, instead, the adoption of the bipartisan Mollohan-Shays amendment, which contained the same adjustment-related language as in S. 1022, the Senate version of the FY1998 CJS appropriations legislation (discussed below). The Mollohan-Shays amendment would have prohibited the Census Bureau from making "irreversible" plans for sampling in the census to determine the apportionment population but would have permitted sampling methods to be tested. To support his position, Representative Mollohan cited legal arguments and endorsements of sampling by organizations including the National Research Council and the American Statistical Association. Hastert expressed the opinion that sampling and adjustment would be illegal and unconstitutional. He stated, for example, "If Congress had intended that sampling be used for reapportionment, they would have repealed Section 195 [of Title 13 of the *U.S. Code*] . . . . They did not." [24] The Mollohan-Shays amendment was rejected, largely, but not entirely, along party lines.

As reported by the Senate Appropriations Committee on July 16, 1997, and passed by the Senate on July 29, 1997, S. 1022 approved the administration's $354.8 million request for census 2000, with the proviso (Section 209) that the Bureau not make any "irreversible" census sampling plans.[25]

The conference committee recommended $389.9 million for the 2000 census in FY1998. Both Chambers agreed to the conference report [26] on November 13, 1997, and President Clinton signed the legislation on November 26, 1997 (P.L. 105–119). Section 209 of the conference report retained the House's provision for expedited judicial review of a civil suit brought by "Any person aggrieved by the use of any statistical method," connected with the decennial census for apportionment or redistricting.

---

[23] The dress rehearsal is a simulation of the census, conducted in test sites to see how well the process works and what modifications are needed. The 2000 census dress rehearsal took place in spring 1998. U.S. Bureau of the Census, press release, July 8, 1998.

[24] House debate on H.R. 2267, *Congressional Record*, vol. 143, part 14 (September 30, 1997), p. 20845. The debate spanned pp. 20838–20866.

[25] U.S. Congress, Senate Committee on Appropriations, *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Bill, 1998*, report to accompany S. 1022, 105th Cong., 1st sess., S. Rept. 105–48 (Washington, DC: GPO, 1997), p. 63.

[26] U.S. Congress, Conference Committee, 1997, *Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1998, and for Other Purposes*, conference report to accompany H.R. 2267, H. Rept. 105–405, 105th Cong., 1st sess. (Washington, DC: GPO, 1997), pp. 43–46.

- New language in the conference report stated that the Speaker of the House might initiate or join in the civil action on behalf of the House.
- New as well in the report was the statement that the Census Bureau's *Report to Congress: The Plan for Census 2000* (which was required by P.L. 105–18) and the Bureau's operational *Plan for Census 2000* "shall be deemed to constitute the final agency action regarding the use of statistical methods in the 2000 decennial census, thus making the question of their use in such census sufficiently concrete and final to now be reviewable in a judicial proceeding."
- The conference committee observed that apportionment is "the sole constitutional purpose of the decennial enumeration . . ."; that "article I, section 2, clause 3 of the Constitution clearly requires an 'actual Enumeration' of the population . . ."; and that "the use of statistical sampling or statistical adjustment in conjunction with an actual enumeration to carry out the census with respect to any segment of the population poses the risk of an inaccurate, invalid, and unconstitutional census . . . ."

Two civil suits brought under Section 209 received expedited judicial review. On January 25, 1999, the Supreme Court issued its decision in *U.S. Department of Commerce* v. *U.S. House of Representatives* and *Clinton* v. *Glavin*[27] that Section 195 of Title 13 of the *U.S. Code* banned incorporating sample-survey results into the decennial census count for apportionment. The Court declined to decide whether the use of sampling prohibited under Section 195 would be unconstitutional as well.

Response to the Court's Decision

In response to the Court's ruling, the Census Bureau canceled its sampling plans and revised its 2000 census strategy. The 106th Congress responded to the decision with two proposals. Representative Carolyn Maloney and Senator Daniel Patrick Moynihan introduced companion bills H.R. 548 and S. 355 on February 3, 1999. They would have amended Title 13 of the *U.S. Code* to strike "Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States," from Section 195. Neither bill advanced beyond the referral stage.

Representative Maloney introduced the same legislation in the 108th Congress as H.R. 1541 and in the 109th Congress as H.R. 564, also without success. No similar bills have been proposed since then.

Census Coverage and the Adjustment Issue Then and Now

Since 1990, the Bureau has shown progress in accurately counting the U.S. population, including minorities, despite the increasing size and diversity of the population. The differential undercount narrowed after 1990.

[27] 525 U.S. 316, 119 S. Ct. 765 (1999).

- Census 2000 Accuracy and Coverage Evaluation estimates indicated a net percentage overcount of 0.49 percent for the total population, 1.13 percent for non-Hispanic whites, 0.75 percent for non-Hispanic Asians, and 0.88 percent for American Indians on reservations. The net percentage undercount of non-Hispanic blacks was 1.84 percent; of native Hawaiians or other Pacific Islanders, 2.12 percent; of American Indians off reservations, 0.62 percent; and of Hispanics, 0.71 percent.[28]
- Census Coverage Measurement results indicated a 2010 census net percentage overcount of 0.01 percent for the total population, 0.84 percent for non-Hispanic whites, and 1.95 percent for American Indians off reservations. The net percentage undercount of non-Hispanic blacks was 2.07 percent; of non-Hispanic Asians, 0.08 percent; of native Hawaiians or other Pacific Islanders, 1.34 percent; of American Indians on reservations, 4.88 percent; and of Hispanics, 1.54 percent.[29]

Sampling for census adjustment reemerged briefly as an issue in the 2009 Senate hearings on Gary Locke's nomination to be Commerce Secretary and that of Robert M. Groves to be Census Bureau Director.[30] Each man assured the Senate committee considering his nomination that the Bureau would not conduct such an operation in connection with the 2010 census. Dr. Groves added that he had "no plans" to use sampling for 2020 census adjustment, either.[31] The Bureau likely will conduct a post-enumeration survey to assess 2020 census coverage, but without a sample size or design suitable for adjustment. There the matter stands, in accordance with the Supreme Court's January 25, 1999 ruling.

[28] U.S. Bureau of the Census, *A.C.E. Revision II, Summary of Estimated Net Coverage*, Memorandum Series PP–54, December 31, 2002, p. 3. As previously noted, the presentation of data by race and ethnicity changed somewhat between the 1990 and 2000 censuses. The revision made certain categories (for example, blacks in 1990 versus non-Hispanic blacks in 2000) not perfectly comparable.

[29] U.S. Bureau of the Census, "2010 Census Coverage Measurement Results," news conference background material, May 22, 2012, pp. 11 and 19.

[30] Gary Locke served as Commerce Secretary from 2009 to 2011, and Robert M. Groves was Census Bureau Director from 2009 to 2012. At this writing, Penny Pritzker is the Secretary of Commerce, and the Bureau is headed by John H. Thompson.

[31] U.S. Congress, Senate Committee on Commerce, Science, and Transportation, "Senator Hutchison Presses Commerce Nominee Locke to Ensure a Fair and Open Census Process," press release, March 18, 2009; and U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Nomination of Robert M. Groves to Be Director of the Census*, hearing, 111th Cong, 1st sess., May 15, 2009 (Washington, DC: 2009).

The Evolution of U.S. Disaster Relief Policy

BRUCE R. LINDSAY
Analyst in American National Government
and
FRANCIS X. MCCARTHY
Analyst in Emergency Management Policy

Congress is constantly adapting to change and redefining its role in response to developing conditions and circumstances. A prime example of this phenomenon is Congress' approach to disaster relief policy from the 1800s to the present. The development of disaster relief policy by the U.S. Congress has evolved over many decades, frequently spurred by different incidents. This evolution resulted in the broad and arguably more flexible structure of disaster assistance laws that exists today. There are three features underlying the development of disaster relief policy in the United States. First, the development of a disaster policy framework in the United States has been greatly influenced by particular disasters. Second, Congress has demonstrated the capacity to learn from disasters by initiating new policies. Third, at the beginning of the 19th century, Congress viewed response and recovery from incidents as the responsibility of the State and local charitable organizations. Beginning in the 1950s, Congress redefined the Federal role substantially, and today the Federal Government provides an increasing proportion of disaster relief to States and localities for emergencies and major disasters.

Introduction

Congress is constantly adapting to change and redefining its role in a myriad of policy contexts and environments. New laws and policies have come about in response to developing conditions and circumstances. A prime example of this phenomenon is Congress' approach to disaster relief policy over the last two centuries.

The development of disaster relief policy by the U.S. Congress has evolved over many decades, frequently spurred by different incidents. The executive actions in response to those incidents, along with congressional enactment of singular laws addressing specific disasters, eventually resulted in the broad and arguably more flexible structure of disaster assistance laws that exists today.

There are three salient features that underlie the development of disaster relief policy in the United States. First, the establishment and development of a disaster policy framework in the United States has been greatly influenced and characterized by particular disasters—reforms in disaster policy during periods of quietude and in the absence of disaster have been rare. Thus, significant changes in disaster policy in the United States have been episodic in nature rather than incremental.

Second, Congress has demonstrated the capacity to learn from disasters by initiating measures to address the consequences of catastrophic incidents including the problems, ineptitude, and disorganization associated with the response and recovery to those events. Some have lamented that the reforms usually occur after an incident. However, congressional changes in disaster policy are consistent with several policy process theories that postulate that reforms are most likely to occur when a "focusing event" causes citizens and policymakers to pay more attention to an issue or problem and seek solutions.

Third, the contemporary Congress' stance on providing disaster relief is strikingly different from its predecessors'. Over the last two centuries Congress has dramatically redefined its role with respect to providing disaster relief to States and localities. At the beginning of the 19th century, Congress viewed the Federal role in disaster relief as limited at best—response and recovery from disastrous incidents was the responsibility of State and local charitable organizations. By the 1950s, Congress had redefined the Federal role substantially, increasing the Federal proportion of disaster relief to States and localities for emergencies and major disasters.

Early Period: 1803–1948

Prior to 1948, there was no overarching legislative or policy framework in the United States governing the distribution of aid or assistance after a disaster had occurred. Instead, Congress responded to each individual incident by providing assistance to States and localities on an ad hoc and incident-by-incident basis. For example, between 1803—the 1st year Congress provided any kind of disaster relief—and 1947, Congress passed 128 disaster-specific bills to provide relief to States and localities.[1] In many other cases, however, the Federal Government did not provide assistance.[2] The Federal Government's refusal to provide relief and the ad hoc approach used by Congress prior to 1948 reflects the dominant thinking at the time concerning the Federal Government's role in providing disaster relief. Congress often did not see a role for the Federal Government in supplementing or supporting States and localities after a disaster. Rather, Congress viewed dis-

[1] David Butler, "Focusing Events in the Early Twentieth Century: A Hurricane, Two Earthquakes, and A Pandemic," ed. Claire B. Rubin (Fairfax, VA: Public Entity Risk Institute, 2007), p. 11. One example of Federal assistance is P.L. 59–16, which authorized the Secretary of War to purchase and distribute supplies to destitute people after the San Francisco earthquake and fire.

[2] For example, Federal assistance was not provided after the Johnstown, Pennsylvania, flood that killed 2,209 people on May 31, 1889.

aster relief as the responsibility of States or, more often, local governments, communities, neighbors, and charities.[3]

Between 1927 and 1948 the limited role of the Federal Government in disaster recovery slowly evolved, as a growing body of knowledge of disasters, as well as the needs of communities and disaster victims, began to emerge as States and localities recovered from a series of disasters. Policymakers also began to notice that large-scale disasters, in particular, often had regional and national economic implications.[4]

In 1948 Congress deviated from the custom of passing individual laws for disaster relief by passing the first ordered and continued means of Federal disaster assistance. The 1948 legislation entitled the Second Deficiency Appropriation Bill, 1948, enabled:

> . . . the President, through such agency or agencies as he may designate, and in such manner as he shall determine, to supplement the efforts and available resources of State and local governments or other agencies, whenever he finds that any flood, fire, hurricane, earthquake, or other catastrophe in any part of the United States is of sufficient severity and magnitude to warrant emergency assistance by the Federal Government in alleviating hardship, or suffering caused thereby, and if the governor of any State in which such catastrophe shall occur shall certify that such assistance is required, $500,000, to remain available until June 30, 1949 . . .[5]

According to the report accompanying the bill, the funds were appropriated to relieve distress caused by a flood in the Columbia River Valley. The legislative text of the bill, however, included a provision that permitted the funds to be used for "similar incidents occurring elsewhere."[6] Still, Congress retained its position with regard to the Federal Government's role in disasters. The report emphasized that, while sympathetic to pleas from States for Federal disaster assistance, recovery from disasters was primarily a local responsibility and that State and local resources should be used to "whatever extent available before the federal government is expected to step in and render assistance."[7] Accordingly, the bill provided funds for immediate and temporary needs and explicitly prohibited the use of the funds for permanent construction.

Permanent Federal Disaster Relief Authority: 1950 to 1960

The Federal Disaster Relief Act of 1950 (P.L. 81–875) marks the beginning of a half-century of Federal laws, policies, and programs intended to reduce human suffering as well as soften the financial impacts of natural disasters on the American people and their communities.[8] Interestingly, the Federal Disaster Relief Act of 1950 was not in response to a particular disaster. After World War II, concern over the possible use of atomic weapons and growing hostility between the United States and the Soviet Union gave rise to the cold war. As a consequence, disaster management in the United States was conceptualized and organized around two

---

[3] Rutherford H. Platt, *Disasters and Democracy: The Politics of Extreme Natural Events* (Washington, DC: Island Press, 1999), p. 2.

[4] Jonas Elmerraji, "Financial Effects Of Natural Disasters," *Forbes*, March 15, 2011, at http://www.forbes.com/sites/greatspeculations/2011/03/15/financial-effects-of-natural-disasters/.

[5] P.L. 80–785, 62 Stat. 1031.

[6] U.S. Congress, House Appropriations, *Second Deficiency Appropriation Bill, 1948*, To Accompany H.R. 6935, 80th Cong., 2d sess., June 15, 1948, 2348, p. 2.

[7] Ibid., p. 2.

[8] Rutherford H. Platt, *Disasters and Democracy: The Politics of Extreme Natural Events* (Washington, DC: Island Press, 1999), p. 10.

themes: (1) the threat of a nuclear war and (2) natural disasters. This duality was a foreshadowing of the split between homeland security and disaster recovery programs during the early years of this century.

Several landmark Federal disaster laws and policies originate from attempts by lawmakers during this era to prepare the civilian population for a potential atomic attack and provide aid after a natural disaster. The most influential of these laws were the Civil Defense Act of 1950 (P.L. 81–920, 64 Stat. 1245) and, in particular, the Federal Disaster Relief Act of 1950. These laws established a framework of Federal-to-State assistance to fund disaster and emergency activities.

The systemization of Federal disaster relief has its roots in the Federal Disaster Relief Act. The Federal Disaster Relief Act of 1950 established much of the framework through which disaster policy is carried out in the United States. The report accompanying the underlying bill of the act stated that the:

> purpose of the bill is to provide for an orderly and continuing method of rendering assistance to the states and local governments in alleviating suffering and damage resulting from a major peace time disaster and in restoring public facilities and in supplementing whatever aid the state or local governments can render themselves. Also it authorizes the President to coordinate the activities of all federal agencies in such an emergency. In the past, appropriations to the President have been made for relief from floods and snowstorms in particular areas without authorization, hence this bill is not novel legislation. The bill provides the framework for the federal government under which prompt action can be taken in meeting the needs of stricken areas, and it will establish a general government policy in respect to emergency relief in all future disasters, instead of meeting the problem after it occurs.[9]

The act put in place the standard process in which the Governors could ask the President for Federal disaster assistance for their respective States and provided an orderly, ongoing, and continuing means of Federal assistance to States and localities to alleviate suffering and damage that resulted from major disasters. Prior to the act, congressional action after each individual incident was needed to provide Federal aid. Once in place, the law authorized the President to make the decision to provide aid without the specific consent of Congress. This helped hasten aid to States and localities because Congress did not have to debate and vote on assistance after each incident.

Congress believed, however, that the Federal Government should not fund permanent projects after disasters unless there was a direct threat to lives and personal property. The same report stated that the:

> committee believes that restoration of local government facilities during a period in which there is no direct threat to lives and property is a responsibility of the local authorities.[10]

1960s–1970s: Modern Disaster Relief Management

Once a framework of Federal-to-State disaster assistance had been constructed with the passage of the 1950 statute, the process of administering disaster relief was greatly influenced by a series

[9] U.S. Congress, House Committee on Public Works, *Authorizing Federal Assistance to States and Local Governments in Major Disasters*, committee print, 81st Cong., 2d sess., No. 2727, p. 2.

[10] Ibid., p. 2.

of large incidents in the 1960s and early 1970s. The actual administration of the authority had been in the Executive Office under President Truman and President Eisenhower, who had melded together both civil defense and disaster relief functions.[11] In 1962, President Kennedy sent the civil defense function to the Department of Defense and focused disaster coordination responsibilities in the Office of Emergency Planning (OEP) within the Executive Office of the President.[12]

The disasters of the 1960s and early 1970s are often cited as the animating events that moved Congress toward enhancing and expanding disaster relief legislation. They include the Alaska earthquake of 1964; Hurricane Betsy's impact on New Orleans in 1965; the devastation caused by the Rapid City, South Dakota, flood of 1972; and the multistate damage triggered by Hurricane Agnes in 1972. These incidents received significant national attention and taken together contributed to an understanding of the vulnerability of States and communities, as well as the types of assistance that could be established in statute to effectuate a swifter and more comprehensive response.

The first example is the Alaska earthquake in March 1964; an event that originally registered 9.2 on the Richter scale, with multiple aftershocks over 6.0.[13] The devastation from the earthquake resulted in an Executive order[14] by President Johnson that established the framework for Federal coordination of the response and recovery mission that, it can be argued, became the outline for disaster legislation that would follow in the ensuing decade. As one observer explained in a monograph:

> Forty years ago, President Lyndon B. Johnson showed how the federal government could both respond rapidly and rationally to a major natural disaster and, critically, draw up sensible legislation based on expert analyses to get the affected area back on its feet.[15]

When Hurricane Betsy struck New Orleans the following year, President Johnson again demonstrated the executive response that would become a hallmark of major national disasters. After observing media coverage of the storm's power on the three major networks of the day, and conferring with members of the Louisiana congressional delegation, Johnson headed down to visit the impacted area.

> Approaching New Orleans, the 707 made a low pass over the city. On board, the delegation included Senator [Russell] Long and Representative Hale Boggs, who described the damage over the aircraft's public address system. After landing, with a 25 m.p.h. wind still blowing and no power for the loudspeakers that had been set up, Johnson was forced to shout his arrival statement. His words nonetheless bordered on the poetic: "I am here because I wanted to see with my own eyes what the unhappy alliance of wind and water have done to this land and its people."[16]

---

[11] President Dwight D. Eisenhower, "Message of the President, Reorganization Plan No. 1 of 1958," U.S. Code Home, at http://law.justia.com/codres/us/titles5a/5a__4__62__2.html.

[12] Executive Order 11051, "Prescribing Responsibilities of the Office of Emergency Planning in the Executive Office of the President," 27 *Federal Register* 9683, October 2, 1962.

[13] "The Great Alaska Earthquake of 1964," AEIC Alaska Earthquake Information Center, November 2002, at http://www.aeic.alaska.edu/quakes/Alaska__1964__earthquake.html.

[14] Executive Order 11150, "Establishing the Federal Reconstruction and Development Planning Commission for Alaska," 4789 *Federal Register* 4789, April 2, 1964.

[15] Kevin R. Kosar "Rebuilding Hurricane-Devastated Areas—Why Not Follow LBJ's Lead?" *George Mason History News Network*, January 25, 2006, at http://hnn.us/article/16383.

[16] Brian Williams, "LBJ's Political Hurricane," *New York Times*, September 24, 2005, at http://www.nytimes.com/2005/09/24/opinion/24williams.html?__r=0.

But in addition to his political instincts, Johnson also demonstrated his belief in the use of assertive Federal Government action and resources. While such an approach would be a formula for conflicts in other domestic policy areas, the realm of disaster response has long been an area of, if not comity, at least general agreement of a shared responsibility.

It was also during this timeframe that the Senate Environment and Public Works Committee gained jurisdiction of the disaster relief portfolio. The committee was a busy area of activity during this period that would culminate not only with comprehensive disaster relief legislation but also the Clean Air Act.[17]

The response to Hurricane Betsy again initiated assistance from across the Federal Government. The post-Betsy activities, coupled with the Alaska earthquake paradigm, captured the interest and imagination of Congress. With the Disaster Relief Act of 1966 (P.L. 89–796), Congress:

> made the most significant changes in policy in sixteen years. The statute authorized federal agencies to provide loans at below-market rates for as long as forty years, extended aid to unincorporated communities in rural areas, and created a new category of eligibility for public colleges and universities damaged by disasters. In addition, the 89th Congress took steps to improve administrative issues associated with federal disaster relief by linking civil defense warning systems with threats from natural disasters (a forerunner of the "dual use" or "all hazards" concepts developed later) and authorizing the president to coordinate federal assistance efforts.[18]

Within the same context of large disaster events, 2 years later Congress enacted the National Flood Insurance Program (NFIP). Through P.L. 90–448, the flood insurance program has been both an important companion piece to disaster relief legislation and also, fundamentally, the beginning of Congress' interest in supporting mitigation measures to lessen the impact of disaster events. While the NFIP is an insurance program, it is also a mitigation program that encourages local actions to prevent future loss of life and property. Based on the work of two separate task forces [19] that provided recommendations regarding the recurring threat of flood damage:

> Congress attended to the recommendations that (1) communities be required to follow all floodplain management guidelines established by the FIA before being allowed to enroll in the insurance program and (2) that the cost of insuring any new construction in floodplains be actuarially based on the losses predicted for the new structure's locations and elevation.[20]

The two pieces of legislation passed in the late 1960s were the pretext for the two seminal pieces that would follow in 1970: the Disaster Relief Act of 1969 (P.L. 91–79) and the Disaster Relief Act of 1974 (P.L. 93–288), which became the core authorizing legislation for disaster response and recovery.[21] P.L. 93–288 was enacted

---

[17] U.S. Senate Committee on Environment and Public Works, "History and Recent Membership of the Committee on Environment and Public Works," at http://www.epw.senate.gov/comresources/histmembership.htm.

[18] Keith Bea, in Claire B. Rubin, Editor, *Emergency Management: The American Experience 1900–2010* (CRC Press: Boca Raton, 2012).

[19] Robert E. Hinshaw, *Living with Nature's Extremes: The Life of Gilbert Fowler White* (Johnson Books: Boulder, 2006), p. 149.

[20] Ibid., p. 155.

[21] The Major Disaster Relief and Emergency Assistance Amendments of 1987 renamed the Disaster Relief Act of 1974 as the Robert T. Stafford Disaster Relief and Emergency Assistance Act. With the creation of DHS, that responsibility was moved to the Senate Committee on Homeland Security and Governmental Affairs.

The Stafford Act constitutes the statutory authority for most Federal disaster response and recovery activities especially as they pertain to FEMA and FEMA programs.

in the context of great disasters, such as Hurricane Agnes, that struck much of the east coast and posed significant problems that could not be addressed through existing authorities. Much of the legislation of the period in this area was enacted with bipartisan support. For example, legislation to liberalize forgiveness of SBA disaster loans and related disaster improvements passed the Senate on a vote of 76 to 2 and passed the House by a vote of 359 to 1.[22] Some of the tenor of the time was expressed by Senator George McGovern following the Rapid City flood in his home State of South Dakota. Through his contacts with his constituents, the Senator noted that their commentary:

> reveals frustration about buck-passing, about indifference, and it reveals a fear by many people that so very much has been lost that it will take 10 years, if not more, before the community gets back to normal. . . . The tools we have provided for disaster relief are woefully, tearfully, shamefully inadequate. We can afford to do better.[23]

This was also a period when the authority to coordinate the administration of disaster relief programs had changed under Reorganization Plan No. 2 of 1973. The plan transferred the OEP from the White House to the Federal Disaster Assistance Administration (FDAA), which, like the Flood Insurance program, was then a part of the Department of Housing and Urban Development (HUD).[24] The placement at HUD emphasized not only the provision of temporary emergency housing assistance but also suggested an interest in overall recovery for communities hit by disasters and authorities necessary to achieve those goals.

This also reflected a period of legislative activism to which disaster relief was not immune. As one observer noted:

> even under a conservative president in Nixon, the federal disaster relief program expanded both in federal resources and funding consistently during this period. Both Hurricane Camille (1969), and Hurricane Agnes (1972), served as significant catalysts for this, but also, the liberal political context of this period coming just after the implementation of the Great Society program by Lyndon Johnson, and Nixon's own ambitions to be seen as a proactive leader despite the ideological contentions it spawned throughout his presidency, played into the expansion of the federal disaster relief program as well.[25]

The 10-year period from 1964 to 1974 was a busy period for natural disaster incidents and Congress. During this timespan Congress appropriated significant amounts of funding and held hearings that contributed to an understanding of the form of legislation that could improve disaster relief activities. In that same period the executive branch was also challenged by the breadth and intensity of large disaster events. The imagination and elan that the Federal departments and agencies brought to this work also helped to inform the shape of the resulting legislation.

During that period of time Congress passed multiple laws that constructed the disaster response and recovery framework that still exists today. In the ensuing 40 years there have been several im-

---

[22] "Liberalized Disaster Relief Loans Approved by Congress," *CQ Almanac 1972*, 28th ed. (Washington, DC: Congressional Quarterly 1973), at http://library/cqpress.com/cqalmanac/cqal72-1250657.

[23] Ibid.

[24] General Records of the Department of Housing and Urban Development (Record Group 207), 1931–1987, at http://www.archives.gov/research/guide-fed-records-groups/207html.#207.7.9.

[25] Daniel Nault, "The Nixon Years: Examining the Evolution of Federal Disaster Relief Policy, 1969–1974" (Union College, 2013), at http://hdl.handle.net/11024/23889.

portant pieces of legislation that codified practices, expanded authorities, and improved accountability for the operations of disaster relief. But all of this work was building on the designs that were imprinted in the late 1960s and early 1970s when Congress determined that the response to disasters need not be episodic or transitory. Instead, Congress established the mechanisms, programs, and institutions that continue to supplement State and local governments, as well as the citizens in those communities who are challenged by disasters and their aftermath.

The Federal Emergency Management Agency

Another important development in this period was the birth of the Federal Emergency Management Agency (FEMA). Prior to FEMA, civil emergency management programs and activities were scattered among five principal Federal departments and agencies. Adopting proposals set forth by the National Governors Association (NGA), President Carter submitted Reorganization Plan No. 3 of 1978 to Congress for its approval. The NGA was especially interested in the creation of a focal point for Federal supplemental assistance. In the reorganization, the Federal Insurance Administrator (responsible for the National Flood Insurance Program), the National Fire Protection and Control Administration, the Federal Preparedness Agency of the General Services Administration, and HUD's Federal Disaster Assistance Administration were all absorbed into FEMA. The Department of Defense Civil Preparedness Agency and its civil responsibilities were also transferred to FEMA.[26]

1988–2013: Quarter-Century of Stafford Revision and the Birth of Homeland Security

The establishment of FEMA marked the beginning of a quiescent period in natural disaster policy activity. The years during President Reagan's administration were uneventful for natural disasters and, due to that dormant period and the Reagan administration's priorities, more emphasis and resources were placed, within FEMA, on nuclear war planning.

However, during the decade of the 1980s there was one piece of significant disaster relief legislation, the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (P.L. 100–707, 102 Stat. 4689, the Stafford Act),[27] that codified some existing practices, such as the 75 percent Federal share for disaster programs, infrastructure repair, and the 18-month limit for temporary housing assistance.

The law also included important disaster concepts that remain a part of the suite of programs currently deployed in response to many disasters. Foremost among the provisions was Section 404.[28]

[26] Richard Sylves, *Disaster Policy and Politics: Emergency Management and Homeland Security* (Washington, DC: CQ Press, 2008), p. 56.

[27] Vermont Senator Robert T. Stafford chaired the Senate Committee on Environment and Public Works (EPW) from 1981 to 1987. As a tribute to him, P.L. 100–707 named the amended P.L. 93–288 in his honor. At the time, the EPW was the Senate authorizing committee for disaster relief legislation.

[28] 42 U.S.C. 5170c. When enacted in P.L. 100–707 the cost share was 50 percent Federal and 50 percent State and local. This was amended during the Mississippi floods of 1993 to 75 percent Federal and 25 percent State and local.

Other disaster programs added by the statute included the Disaster Unemployment Assistance (DUA) Program and an expansion of the Crisis Counseling Program. The Stafford Act also included authorization of the small project grants that could be funded based on cost estimates, a forerunner of an approach that would be explored in ensuing disaster legislation for larger projects.

As previously noted, disaster relief policy has been marked by bipartisan accord both in substance and legislative process. The Stafford Act is striking in that regard since its chief sponsor was a House Member of the then-minority party—Representative Tom Ridge of Pennsylvania. Mr. Ridge would go on to be a two-term Governor of Pennsylvania and the first Secretary of the Department of Homeland Security, which now includes FEMA.

While there was some criticism of FEMA's performance in response to Hurricane Hugo in 1989 and Hurricane Andrew in 1992 in particular, the general perception of FEMA, both among Members of Congress and the public, changed during the Clinton administration. FEMA Director James Lee Witt was considered successful in reshaping the agency through an emphasis on a more timely response and improved partnership with the States. That assessment was held on both sides of the aisle in Congress: "I haven't spent a lot of time complimenting the President on his appointments, but I sure did on this one," said Senator James Inhofe, an Oklahoma Republican.[29]

FEMA's enhanced relationship with Congress was a result of its improved administration of the disaster response and recovery program. This change was expressed in the form of the Disaster Mitigation Act of 2000 (P.L. 106–390, 114 Stat. 1552, DMA2K). In line with FEMA's suggested direction, the law created incentives to lessening disaster risks:

> Witt urged the agency's officials to focus more on preventing the damage from disasters, through an intergovernmental and public-private effort. FEMA developed a "life-cycle" model of disaster management. Disasters—and their costs—were the product of planning and mitigation that needed to begin far in advance of disasters and continue long after to prevent their recurrence.[30]

Included in the legislation was a predisaster mitigation program that made funding available prior to, and not contingent on, a disaster event (now Section 203 of the Stafford Act). In addition, the law raised the amount of mitigation funds available in the Hazard Mitigation Grant Program (HMGP) for those States with improved mitigation plans. The act also established a cost-estimating formula for large infrastructure repair or restoration projects that would permit FEMA to pay costs based on estimates rather than through the reimbursable process already in place.

Interestingly some parts of DMA2K would be revisited in later legislation. For example, in order to meet "pay-go" provisions then in place,[31] the act capped FEMA home repair assistance at $5,000 per household to offset increases in mitigation expenditures.[32]

---

[29] Robert Block and Christopher Cooper, *Disasters: Hurricane Katrina and the Failure of Homeland Security* (New York: Henry Holt, 2006), p. 60.

[30] Ibid., p. 62.

[31] For information on pay-go during this period, see CRS Report R41901, *Statutory Budget Controls in Effect Between 1985 and 2002*, by Megan Suzanne Lynch.

[32] P.L. 106–390, Section 408(c)(2)(C), 114 Stat. 1568.

While this limit reduced disaster assistance expenditures, the destructive impact of Hurricane Katrina demonstrated that the cap was a detriment to rapid repairs to make homes habitable, especially for those homeowners who had difficulty qualifying for loans to finish their repairs. The scope of devastation across five States impacted by Hurricane Katrina and the government's anemic response prompted Congress to taken action by enacting in the Post-Katrina Emergency Management Reform Act (P.L. 109–295, 120 Stat. 1355, PKEMRA).

The response to Hurricane Katrina was the first great challenge to FEMA since it became a part of the Department of Homeland Security in 2003.[33] In fact, FEMA's role within DHS had been a matter of some debate. While some, such as the Hart-Rudman Commission,[34] thought FEMA was a natural fit within DHS, others were concerned that FEMA would lose its identity within the large, new institution. Certainly other parts of DHS (e.g., Secret Service and the Coast Guard) were subject to similar concerns of identity and function. FEMA, however, had a unique relationship with State and local governments that made the transition more of an open question. The post-Katrina reviews focused on this question. Just as FEMA was previously torn between civil defense and disaster relief, now the point of tension was between DHS' antiterrorism mission and FEMA's disaster response and recovery responsibilities. Some of the difficulties resulted from DHS' decision to take the lead on preparedness grants. This meant that, at the time of Katrina, FEMA was no longer directly involved in State preparedness efforts. As the Senate report on Hurricane Katrina explained:

> FEMA was no longer able to influence activities tied to funding the states, including training, planning and exercising, or providing evaluation of such activities. This limitation of FEMA's role has hindered FEMA's relationship with the states. DHS's decision to separate preparedness from response was a mistake that hampered the alignment between the way preparedness is designed and the way response should operate.[35]

Among the many important changes made by PKEMRA was the transfer of preparedness grants back to FEMA to help the agency reestablish its relationships with the States. PKEMRA also clarified operational field authority and lifted the $5,000 cap for future disasters.[36] In addition, the act reflected many of the hearings and fact-finding trips conducted by congressional committees after the Gulf storms.

The multiple titles within PKEMRA addressed issues that had been raised during the troubled response to Katrina, including personnel challenges, procurement questions, delineation of FEMA's authority within DHS, people with disabilities, and many other topics that had arisen during the recovery. One example of the

---

[33] The Department of Homeland Security was established by P.L. 107–296, the Homeland Security Act of 2002.

[34] U.S. Commission on National Security/21st Century, named after its chairs, former Senators Gary Hart and Warren Rudman. The commission recommended a new National Homeland Security Agency with FEMA as the key building block; *Road Map for National Security: Imperative for Change*, Phase III Report, p.15.

[35] *Hurricane Katrina: A Nation Still Unprepared, Special Report of the Committee on Homeland Security and Governmental Affairs*, U.S. Government Printing Office, Washington, DC: 2006, p. 222.

[36] P.L. 109–295, 120 Stat. 1448, amended Section 408(c) of the Stafford Act.

law's breadth and responsiveness to particular disaster situations was the establishment of case management services as an eligible State expense.

The trend of legislation prompted by large events has continued, most recently with the passage of the Hurricane Sandy Recovery and Improvement Act (P.L. 113–2, SRIA). While the actual provisions regarding disaster policy again reflected bipartisan agreement, the pace and size of additional funding for the Sandy recovery was not without partisan debate.

The law encompassed many parts of the recovery cycle. It encouraged incentives and pilot projects to speed up debris removal; included child care, for the first time, as an eligible expense under FEMA's Individual and Households (IHP) Program; and, perhaps most significantly, established in law the ability of Native American tribes to request help directly from the President rather than through State governments.[37]

SRIA returned to the notion of alternative procedures for public assistance,[38] including the use of estimates that had originally been provided to FEMA a dozen years earlier in DMA2K. This repeated underlining of such authority emphasized Congress' interest in streamlining the repairs to public infrastructure and its expectation that FEMA would implement such authorities.

Concluding Observations

Congress is not a static institution; rather it is a dynamic lawmaking body that changes with each election cycle but also in response to other pressures and influences.[39] Disaster relief policy, in particular, demonstrates that Congress is an institution in which the mechanics of legislating reflect the responsiveness, openness, and pragmatism that is characteristic of American policymaking. The substantial overhaul of disaster relief reforms that took place over the last half century was, in large part, a reaction to certain disasters—yet it is an indication of how Congress becomes aware of problems and seeks solutions.

It is also a reflection of the bipartisan nature of disaster relief policy. Current debates about disaster relief focus on actions, efficiency, the number of disaster declarations issued, and the size of subsequent Federal expenditures for disaster assistance. Congress does not often debate whether Federal assistance should be provided. Additionally, the impetus for disaster relief legislation inevitably leads back to the actual disaster events themselves. As disasters unfold in the future, Congress will likely continue to build on the existing framework established in the 1950s and apply the lessons learned to refine existing programs and create new ones.

[37] For a detailed discussion of many of the provisions of P.L. 113–2, see CRS Report R42991, *Analysis of the Sandy Recovery Improvement Act of 2013*, by Jared T. Brown, Edward C. Liu, and Francis X. McCarthy.

[38] Public assistance (PA) provides government-to-government (Federal-to-State or local) disaster relief to subsidize much of the cost of repairing, rebuilding, or replacing damaged government or utility infrastructure.

[39] Walter J. Oleszek, *Congressional Procedures and the Policy Process*, 3d ed. (Washington, DC: CQ Press, 1989), p. 283.

Congress' Role in the Evolution of Federal Block Grants as a Policy Instrument: From Community Development to Homeland Security

EUGENE BOYD

Analyst in Federalism and Economic Development Policy

and

NATALIE KEEGAN

Analyst in Federalism and Emergency Management Policy

Congressional passage of block grant legislation has met with both success and failure. Using the CDBG Program and proposals that would block grant State and local preparedness grants as case studies, the report identifies key elements that contribute to the successful enactment of block grant legislation and obstacles that may derail or delay passage. Successful enactment of block grant legislation ideally requires political urgency, congressional consensus, bipartisan collaboration, and executive branch and interest group support. Significant opposition from any of these entities, or factions therein, particularly the legislative branch, may delay or jeopardize passage of legislation. In addition, any block grant proposal faces double jeopardy in the absence of congressional leadership support or by way of a potential Presidential veto. Any successful block grant proposal considered by Congress must overcome concerns about grant transition and structure as well as the politics of the block grant label.

Introduction

Since 1966, with passage of the Comprehensive Health Services Act (P.L. 89–749) creating the Nation's first block grant, the Partnership in Health Program, Congress has used the block grant concept to provide assistance to State and local governments across a number of domestic policy areas (e.g., community development, income security, social services, education, transportation, juvenile justice, and job training). However, Congress' embrace of block grants as a policy implementation instrument has not been without controversies, contradictions, conflicts, or challenges. Block grants have been heralded by congressional supporters and others as a means of improving delivery of services through the consolidation of categorical programs and of effectuating the devolution of policy

implementation authority to States and local governments. The block grant concept has also been denounced by detractors as facilitating a reduced Federal role as reflected in less prescriptive regulations, greater grantee discretion, and lower Federal funding amounts. In addition, critics of block grants question their ability to target assistance to areas of greatest need and their utility as an instrument of national policy, and they contend that these programs are difficult to evaluate.

This report presents two case studies exploring Congress' role in the development, enactment, and continued support of the Community Development Block Grant (CDBG) Program, which has been in existence for 40 years; and in the proposed, but not yet enacted, block granting/consolidation of the Department of Homeland Security (DHS) State and local preparedness grants. The proposed block granting of the DHS preparedness grants is one of the most recent block grant initiatives to be considered by Congress. This comparison is used to illustrate how Congress as an institution has responded to block grant proposals and how that response has evolved over time.

Block Grants Defined

In the Federal grant-in-aid universe, block grants lie somewhere between highly targeted and prescriptive categorical project grants—which are often, but not exclusively, awarded on a competitive basis—and the highly flexible, formula allocated, no-strings-attached general revenue sharing model.

Block grants are distinguished from other Federal grant assistance by the following functional, structural, and managerial elements:

- Grants may be used to undertake a wide range of eligible activities within a broadly defined functional area (i.e., community development, social services).
- Grant recipients have discretion in the allocation of resources to address local problems in line with national objectives.
- Federal administrative requirements and oversight are kept to a minimum to promote maximum flexibility in the use of funds while intending to ensure that national objectives are met.
- Funds are generally awarded by formula (although some block grants allow Federal agencies to allocate a small percentage of the program's funds).
- Eligible grantees are typically States or local governments.

Like general revenue sharing, block grants are designed to promote recipient discretion and flexibility in the mix of activities that may be funded. However, block grants, unlike general revenue sharing, require that funded activities address national objectives while meeting local needs and Federal requirements.

Rationale Supporting Block Grants and Counterarguments

Block grant advocates argue that block grants improve program performance by reducing administrative fragmentation associated with multiple categorical grants operating within a related policy area and by devolving programmatic authority to State and local government officials who, in their view, are better able than Fed-

eral officials to discern the most efficient and effective means to serve their State and their local communities. They argue that block grants:

- provide communities with greater certainty about the level of Federal funding they should expect,
- distribute Federal funds to States or local governments based on a formula intended to measure relative need,
- encourage local decisionmaking and priority setting by allowing communities or State recipients broad discretion in choosing activities and projects funded under the program while minimizing Federal intrusion, and
- allow local officials to develop comprehensive long-term plans in line with national objectives.

Opponents argue that block grants:

- contain vague or unmeasurable goals;
- lack the specificity of single-purpose categorical grants;
- lead to possible funding reductions, particularly during times of budgetary constraint; and
- redistribute decisionmaking authority to State or local institutions.

A 2004 assessment of block grants made the following observations:

- Initial funding of block grants has not been consistently higher or lower than the programs they replaced. However, funding tends to decline over time.
- Block grants may be subject to creeping categorization if Congress enacts legislation with narrowly targeted programs with the same objective as a categorical grant or sets aside some portion of block grant for particular purposes.
- Implementation of new block grants has been smoothest when and where States were responsible for administering the programs they replaced.[1]

Scholars contend that the decentralized nature of congressional decisionmaking and electoral politics also play a role in determining whether Congress decides to use categorical or block grants. The U.S. Advisory Commission on Intergovernmental Relations noted that "the fragmentation of responsibility in Congress inclines it toward the creation of a large number of specialized [categorical] grants, which may provide duplicative or even conflicting services."[2] Another scholar has noted that Members of Congress have three primary objectives: achieving power, making "good" public policy, and getting reelected.[3] He argued that Congress tends to favor categorical grants over block grants because categorical grants provide more opportunities for Members of Congress to claim electoral credit for authoring or supporting specific programs.

Block grants minimize the role of a Member of Congress in claiming "particularized benefits" in securing funds for a congressional district. These benefits have two properties: They are usu-

[1] Kenneth Finegold, Laura Wherry, and Stephanie Schardin, *Block Grants: Historical Overview and Lessons Learned*, Urban Institute, April 2004, pp. 4–5.

[2] U.S. Advisory Commission on Intergovernmental Relations, *Categorical Grants: Their Role and Design*, A–52 (Washington, DC: GPO, 1978), pp. 55, 63–64.

[3] David Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974).

ally awarded to a specific individual group or geographic constituency, and they are usually distributed in a fashion so that the Member of Congress representing the benefited constituency can claim credit for the allocation. Congressional earmarks (or, more euphemistically, "congressionally directed spending") and project-based, categorical grants are classic examples. Formula-based block grants minimize the ability of an individual Member to claim credit for securing funds since funds are to be allocated by formula. Block grants also minimize the role of the administering Federal agency in the awarding of grant funds. The formula-based nature of a block grant typically results in a reduced role in the allocation of funds for the administering Federal agency and a heightened role for local officials in the distribution of funds.

Fear of the unknown is yet another reason for Members to favor categorical grants over block grants, particularly when block grants are used to facilitate the consolidation of activities funded under several categorical grant programs and do not include a hold harmless provision. Hold harmless provisions typically provide transition funding to assist State and local governments as the new program is implemented. Many of these issues and concerns came into play as Congress debated the enactment of the CDBG Program and, more recently, the creation of a homeland security preparedness block grant.

The Tale of Two Block Grants

Congress' bicameral structure makes coalition building, collaboration, cooperation, and compromise important elements for the enactment of legislation. Proposals that lack political urgency, consensus, or the backing of committee chairmen or House or Senate leadership have little opportunity to move through the legislative process. Moreover, any proposal that successfully maneuvers through the legislative process faces the possibility of a Presidential veto if the administration is not also a partner in the process. In addition, the influence of organized interest groups in support or opposition to a proposal must be a part of the legislative calculus. All three of these players—Congress, the administration, and interest groups—played important roles in the enactment of the CDBG Program and the continued debate surrounding the block granting/consolidation of homeland security preparedness grants.

By the early 1970s, there was near-universal agreement among Congress, the Nixon administration, and interest groups representing local governments that the then-current cadre of categorical grant programs addressing the social, demographic, economic, and physical development challenges facing the Nation's metropolitan communities were inadequate.[4] The fragmented nature of Fed-

[4] Congress' enactment of the CDBG Program was prompted by widespread dissatisfaction with the state of Federal grant assistance in general and community development policy in particular. Starting with the Housing Act of 1949 and the Urban Renewal Program, which authorized assistance to local governments for slum clearance and urban redevelopment, through the 1960s, which saw the enactment of the Model Cities Program and the creation of the Department of Housing and Urban Development, Federal community development assistance expanded in response to the problems facing the Nation's metropolitan communities. These included issues of physical decay, population and employment shifts, inadequate infrastructure, and the concentration and isolation of low-income and minority populations in central cities of metropolitan

eral grant assistance, which was well documented during congressional hearings conducted during the 89th Congress,[5] coupled with concerns about the proper role of the Federal Government in addressing problems facing the Nation's urban areas, prompted renewed interest in grant consolidation proposals as a means to improve management efficiency, coordinate Federal assistance, and promote comprehensive long-term planning and redevelopment efforts.

By comparison, the call for the consolidation of State and local preparedness grants was part of a larger response to terrorist activities in the United States and abroad, including attacks on the World Trade Center in New York City in 1993, the Alfred P. Murrah Federal Building in Oklahoma City in 1995, and the terrorist attacks of September 11, 2001.[6] In 2000, the House approved by voice vote H.R. 4210. The bill would have created a President's Council on Domestic Terrorism Preparedness to recommend ways to strengthen interagency planning and coordination and to "identify duplication, fragmentation, and overlap within federal terrorism preparedness programs and eliminate such duplication, fragmentation and overlap." The bill had strong bipartisan support and, like CDBG, was driven by the perceived need to address program fragmentation and create a more efficient and effective approach to preparedness:

> Implementation of this legislation will ultimately result in making the preparedness programs within the federal government more effective. The Committee anticipates that some programs will be eliminated or reworked according to the national plan. The outcome of this reorganization will result in the reduction of costs associated with providing duplicative or unnecessary training programs and response teams. Ultimately, the Committee believes this legislation will result in more efficient and effective federal effort to prepare the nation's emergency personnel against terrorist attacks.[7]

The legislation was not enacted. However, in the wake of the 9/11 terrorist attacks the following year, there was a renewed focus on Federal grant funding for domestic preparedness. Unlike CDBG, however, there was lack of consensus among affected interest groups concerning how State and local preparedness grants should be reformed.[8]

---

areas. To address these issues, Congress enacted a series of narrowly targeted, categorical or project-based programs intended to fund individual activities but generally lacking coordination among the programs.

[5] U.S. Congress, Senate Government Operations, Executive Reorganization, *The Federal Role in Urban Affairs: Part 3*, 89th Cong., 2d sess. (Washington, DC: GPO, 1966), p. 823 and various pages.

[6] While earlier terrorist events, both here and abroad, may have resulted in congressional discussion of funding for domestic preparedness, the first proposal for a homeland security block grant did not occur until after 9/11. Congressional activity after the 9/11 attacks also resulted in the creation of a new Cabinet department, U.S. Department of Homeland Security (DHS). Shortly after DHS was created, the agency was tasked with administering several State and local preparedness grants. For the purposes of this report, discussion of consolidation of State and local preparedness grant programs is limited to the State and local preparedness grant programs administered by DHS.

[7] U.S. Congress, House Committee on Transportation and Infrastructure, *Preparedness Against Terrorism Act of 2000*, H. Rept. 106–731, July 13, 2000, p. 11.

[8] Current discussions of the homeland security preparedness grants generally include the following grant programs administered by DHS: State Homeland Security, Urban Area Security Initiative, Non-Profit Urban Area Security Initiative, Port Security, Operation Stonegarden, Citizen Corps, Metropolitan Medical Response Systems, Targeted Infrastructure Protection Program, Law Enforcement Terrorism Prevention, Trucking Security, Intercity Bus Security, Rail Security, Buffer Zone Protection, Interoperable Communications, Regional Catastrophic Preparedness, REAL ID, and Emergency Operations Center.

THE ROAD TO ENACTMENT (CDBG)

In 1971, fresh from a landslide reelection victory, President Richard Nixon and his administration launched an aggressive domestic policy agenda and christened it the *New Federalism*. It promised a devolution of power to lower levels of government, and thus closer to the people, by reversing what the President, in a 1969 speech on domestic policy, characterized as “a third of a century of centralizing power and responsibility in Washington.” The President claimed that this centralization had resulted in a Federal “bureaucratic monstrosity, cumbersome, unresponsive, ineffective” and “a crisis of confidence in the capacity of government to do its job.”[9] Although President Nixon’s domestic policy agenda called for the devolution of authority to localities and States, it did not embrace a complete disengagement by the national government from important domestic policy issues facing the Nation, including what many viewed as an urban crisis. Instead, the President’s proposals were characterized as addressing the problems of a broken intergovernmental grant delivery system. Nowhere was that more evident than in the area of community development.

Although congressional leaders of both parties agreed that existing programs addressing metropolitan needs were inadequate, reaching agreement on a legislative solution spanned 3 years and two Congresses before passage of the Housing and Community Development Act of 1974 (P.L. 93–383). In the process, the administration’s legislative fortunes would ebb and flow as it pushed Congress to enact its policy agenda that called for the consolidation of 129 categorical grant programs into what the Nixon administration termed 6 special revenue sharing programs, including community development.[10]

The Nixon administration favored a no-strings attached, highly flexible grant format with minimal Federal restrictions and oversight it dubbed “urban development special revenue sharing.” The proposal, mentioned in President Nixon’s 1971 State of the Union Address,[11] was outlined in detail in a March 1971 Special Message to Congress.[12] The administration’s proposal initially called for the consolidation of four programs administered by HUD, including urban renewal, Model Cities, water and sewer grants, and rehabilitation loans. It was later expanded to include 12 programs.

For its part, Congress favored a “block grant” approach that provided local officials with a high degree of discretion and flexibility in the mix of activities to be undertaken, as proposed by the administration, but included sufficient administrative controls and requirements to ensure that funds would be used to meet national

[9] President Richard Nixon, “Address to the Nation on Domestic Programs,” August 8, 1969, at http://www.presidency.ucsb.edu/ws/?pid=2191.

[10] The 6 special revenue sharing programs were (1) education (33 programs), (2) transportation (26 programs), (3) urban community development (12 programs), (4) manpower training (17 programs), (5) rural community development (39 programs), and (6) law enforcement (2 programs). The administration’s proposal was a hybrid of the block grant concept that was first outlined as a recommendation of the Commission on Organization of the Executive Branch of the Government, *Commission Reports on Overseas Administration, Federal-State Relations, Federal Research*, Vol. II, March 1949, p. 36.

[11] President Richard Nixon, “Annual Message to the Congress on the State of the Union,” at http://www.presidency.ucsb.edu/ws/?pid=3110.

[12] President Richard Nixon, “Special Message to the Congress on Special Revenue Sharing for Urban Community Development,” March 5, 1971, at http://www.presidency.ucsb.edu/ws/?pid=3339.

objectives articulated in the act.[13] It was this fundamental difference in approach that prevented the administration's special revenue sharing proposal from being enacted.[14]

The Nixon administration's proposal faced a skeptical 92d Congress, which was controlled by the opposite party, but one willing to engage in bipartisan policy deliberations. Although both Chambers reported omnibus housing bills out of subcommittees and committees of jurisdiction, with overwhelming bipartisan support, the full House failed to consider legislation before adjournment of the 92d Congress due to the actions of the House Rules Committee. By a vote of 9 to 5,[15] the Rules Committee approved a motion to defer action on H.R. 16704, the omnibus housing bill that would have authorized the creation of the program. Scholars and other observers have cited a number of reasons for the Rules Committee action, including the size (314 pages) and complexity of the bill, the short time available to consider the bill before adjournment, the lukewarm endorsement of the bill by House Banking and Currency Committee Chairman Wright Patman, and objections by civil rights organizations to the public housing provisions of the bill.[16]

Two years later, committee leaders in the 93d Congress and the administration again attempted to move community development reform legislation forward. Much of the heavy legislative lifting and responsibility for moving legislation forward to enactment were done by the chairmen of the House and Senate subcommittees of jurisdiction. In order to fashion a bill acceptable to all parties, the subcommittee chairs took several actions. These actions included seeking input from organizations representing local governments and negotiating with the White House and executive branch officials. The subcommittee chairs initially negotiated directly with the White House's domestic policy office and subsequently with the Secretary of the Department of Housing and Urban Development—as the White House became increasingly consumed and buffeted by the unfolding Watergate scandal that would lead to the first resignation of a U.S. President—in an attempt to reach agreement on legislation. The negotiations were intended to address fragmentation (which everyone agreed was necessary) while at the same time including sufficient safeguards to ensure that national objectives would be met (required to gain Democratic support).

On February 27, 1974, Senator John Sparkman, chair of the Senate Committee on Banking, Housing and Urban Affairs, introduced S. 3066, a comprehensive bill affecting many aspects of Federal housing and community development policy. The bill served as the legislative vehicle for enactment of the CDBG Program.[17] The bill's

---

[13] For a review of CDBG funding history see CRS Report R43394, *Community Development Block Grants: Recent Funding History*, by Eugene Boyd.

[14] Despite Congress' embrace of block grants in the early 1970s, earlier block grant legislative proposals dating back to the 1950s failed to win congressional approval. U.S. Advisory Commission on Intergovernmental Relations, *Block Grants: A Comparative Analysis, The Intergovernmental Grant System: An Assessment of Proposed Policies*, October 1977, pp. 3–4, at http://library.unt.edu/gpo/acir/Reports/policy/A-60.pdf.

[15] The nine votes for the motion included five Democrats and four Republicans. Five Democrats favored moving the bill forward for floor consideration.

[16] "Rules Committee Kills Housing-Urban Development Act," *Congressional Quarterly Almanac* (1972), p. 628.

[17] During the first session of the 93d Congress, at least six bills were introduced supporting community development consolidation and reform efforts, including the Nixon administration's

Continued

community development provisions would have merged 10 urban community development categorical grants into a single block grant and provided that block grant a 2-year funding cycle to ensure that local communities would have an "assured and adequate level" of funding.[18] The bill's community development provisions were opposed by the administration, which preferred its special revenue sharing approach. The bill was reported by the Senate Committee on Banking, Housing and Urban Affairs on February 27, 1974, and was passed by the Senate on March 11 by a vote of 76 to 11. Three months later, on June 20, the House passed its version of S. 3066, inserting the language of H.R. 15361, into the bill. The House bill would have merged seven urban community development categorical grants into a single block grant. Importantly, the block grant's distribution formula was developed in collaboration with the Secretary of the Department of Housing and Urban Affairs, which was seen as an attempt to avoid a threatened Presidential veto. The House and Senate versions of S. 3066 included significant differences in approach to Federal housing policy, and the bills differed in how the CDBG Program would be structured and financed. These differences were resolved in the conference agreement on August 12, 1974.[19]

Final congressional approval of legislation creating the CDBG Program, which led to the termination of eight urban community development categorical grants, was achieved with passage of S. 3066, the Housing and Community Development Act of 1974.[20] The act was signed into law as P.L. 93–383, by President Gerald Ford, on August 22, 1974, 2 weeks after the resignation of President Nixon in the wake of the Watergate crisis.

In the lead up to the enactment of CDBG, there was universal consensus among all stakeholders—the administration, Congress, and interest groups—that reform was needed. It was the direction and design of reform that required compromise in order for reform to be enacted.

NOT YET ENACTED (HSBG)

Like CDBG, congressional leaders also agreed with the Bush administration's assessment that there was a need to improve the grant administration process for State and local preparedness grants. In his FY2002 budget request, President George W. Bush recommended grant consolidation in this issue area, noting that "this budget reflects the Administration's commitment to giving state and local governments increased flexibility . . . . The Administration's efforts to improve the grant administration process will in-

Better Communities Act proposal (H.R. 7277); the Community Development Assistance Act of 1973 (S. 1744), sponsored by Senator Sparkman; and the Housing and Urban Development Act (H.R. 10036), sponsored by Representative William Barrett, the chairman of the House Subcommittee on Housing. Each of the proposals affirmed previously established positions. None of the bills was reported out of committee.

[18] U.S. Congress, House Committee on Banking and Currency, *Housing and Community Development Act of 1974*, 93d Cong., 2d sess., H. Rept. 93–693 (Washington, DC: GPO, 1974), p. 2.

[19] U.S. Congress, House Committee of Conference, *Housing and Community Development Act of 1974*, 93d Cong., 2d sess., H. Rept. 93–1279 (Washington, DC: GPO, 1974), pp. 1–23.

[20] The categorical programs that were terminated and their activities included under the new block grant were (1) open space acquisition, (2) public facilities loans, (3) urban renewal, (4) water and sewer grants, (5) Model Cities, (6) Neighborhood Development Program grants, (7) neighborhood facilities grants, and (8) historic preservation grants.

clude efforts to consolidate grants that support programs with similar missions to create one flexible grant."[21]

On November 28, 2001, just weeks after the 9/11 attacks, Senator Hillary Rodham Clinton introduced a bill, cosponsored by seven Democratic Senators, to establish the Homeland Security Block Grant (HSBG) to be administered by the Attorney General.[22] According to the U.S. Conference of Mayors, the HSBG was modeled after the CDBG:

> Under this legislation, cities, counties, and towns across America will be able to access Federal funds to help them improve security and public safety locally. Modeled after the Community Development Block Grant program, the Homeland Security Block Grant Act provides $3 billion in funding to communities, with 70 percent going directly to more than 1,000 cities and counties across the United States. The remaining 30 percent will be sent to the states, which will serve as a pass-through for funds directed to smaller communities.[23]

The bill was not reported out of committee.[24] Senator Clinton reintroduced a revised version of the bill during the second session of the 107th Congress with nine Democratic cosponsors.[25] The proposed block grant would have provided funds for a fairly broad range of homeland security activities, as determined by States and compiled into a statement of homeland security objectives, and was to be allocated at the States' discretion to local governments.[26] Funds were to be allocated to the States based upon a formula that predominantly used population as the allocation criteria with the Federal Emergency Management Agency (FEMA) as the administering Federal agency. A companion bill was introduced the same day in the House of Representatives by Representative Michael McNulty with one Democratic cosponsor.[27] In his FY2003 budget request, President Bush also proposed "streamlining support of local law enforcement by consolidating duplicative programs" through the First Responder Initiative, but an administration bill was never introduced.[28] The bills were not reported out of committee despite support by congressional policymakers, the administration, and many stakeholders.[29] This may have been due, in part,

---

[21] U.S. Congress, House of Representatives, *Budget of the United States Government, Fiscal Year 2002*, 107th Cong., 1st sess., H. Doc. 107–3 (Washington, DC: GPO, 2003), p. 195. Notably, the FY2002 budget was submitted to Congress several months prior to the terrorist attacks on September 11, 2001.

[22] S. 1737 was introduced on November 28, 2001, and referred to the Senate Judiciary Committee.

[23] U.S. Conference of Mayors, "Homeland Security Block Grant Act," December 3, 2001, at http://www.usmayors.org/usmayornewspaper/documents/12__03__01/security__block__grant2.asp.

[24] S. 1737 was endorsed by the National Association of Police Organizations, the International Association of Fire Fighters, the International Association of Fire Chiefs, and the U.S. Conference of Mayors.

[25] The bill was reintroduced as S. 2038, the Homeland Security Block Grant Act of 2002, on March 20, 2002, and referred to the Senate Committee on Environment and Public Works.

[26] The bill proposed funding for these categories of activities: additional law enforcement, fire, and emergency sources; purchasing personal protective equipment for first responders; improving cyber and infrastructure security, local emergency planning, information sharing, and coordination; establishing notification systems; improving threat communications systems; and devising homeland security plans.

[27] H.R. 4059, the Homeland Security Block Grant Act of 2002, was introduced on March 20, 2002, and referred to the House Transportation and Infrastructure Committee, the House Judiciary Committee, and the House Energy and Commerce Committee.

[28] U.S. Congress, House of Representatives, *Budget of the United States Government, Fiscal Year 2003*, 107th Cong., 2d sess., H. Doc. 107–59 (Washington, DC: GPO, 2003), p. 203.

[29] Tim Craig, "More Money Needed for Terrorism Fight, O'Malley Tells Panel," *Baltimore Sun*, April 11, 2002.

to disagreements about whether the grant funds should be awarded directly to local governments or funneled through the States.[30]

In the absence of legislation authorizing a homeland security block grant, Congress continued to fund separate State and local preparedness grants through annual appropriations acts, and key stakeholders in the preparedness grants community continued to seek legislation to reduce program fragmentation in this policy area.[31] Instead, in 2007, Congress enacted legislation (P.L. 110–53) that provided authorization for two of the largest homeland security grant programs that had previously existed solely through annual appropriations legislation.[32] The authorizing legislation established an allocation formula for both programs that reinforced the States' dominant role in the administration of preparedness grants.[33] Local government stakeholders had long advocated reforming State and local preparedness grants to provide direct assistance to the local level rather than going through the States. As a result, local government stakeholders continued to seek legislative reforms for these grants, even after the new authorizing legislation was implemented.[34]

Unlike the deliberations that took place during consideration of the CDBG, the interest groups involved in the deliberations for a State and local preparedness block grant were divided, with State government officials advocating a continuation of their dominant role in the administration of the grants and local government officials advocating for more direct funding that bypassed States. This may help to explain why initial congressional interest in establishing a preparedness block grant gave way to a congressional focus on finding ways to achieve program efficiencies and stabilize funding levels rather than creating a traditional block grant.[35] Another contributing factor is that the most recent consolidation initiative, proposed by the Obama administration, lacked the level of specificity seen in the bills introduced to create a community development block grant regarding how DHS would award funds. Notably, the administration did not use the term "block grant" to describe the proposal, making it difficult for stakeholders to under-

[30] U.S. Senate, Committee on the Judiciary, *Homeland Security: Assessing the Needs of Local Law Enforcement*, hearing before the Subcommittee on Crime and Drugs, 107th Congress, 2d Sess., S. Hrg. 107–889, p. 10.

[31] During this time, the State and local preparedness grant programs were shifted several times throughout the components in DHS. For example, in 2006, the grants were administered by the Office of State and Local Government Coordination and Preparedness, then in 2007 the grants were moved to the Preparedness Directorate established by the FY2006 appropriations act, and in 2008, they were moved again to the Office of Grant Programs in FEMA.

[32] P.L. 110–53, *Implementing Recommendations of the 9/11 Commission Act of 2007*, authorized the Urban Area Security Initiative Grant Program and the State Homeland Security Grant Program.

[33] U.S. Congress, House of Representatives, *Implementing Recommendations of the 9/11 Commission Act of 2007*, conference report to accompany H.R. 1, Report 110–259, p. 288.

[34] U.S. Congress, Senate Committee on the Judiciary, 107th Congress, 2d Sess., hearing before the Subcommittee on Crime and Drugs, *Homeland Security: Assessing the Needs of Local Law Enforcement*, S. Hrg. 107–889, p. 10.

[35] For example, Senator Susan Collins introduced S. 1245, the Homeland Security Grant Enhancement Act of 2003, on June 12, 2003, to provide for homeland security grants coordination and simplification. The legislation did not create a block grant; rather, it sought to streamline the grant administration process. The legislation had strong bipartisan support and was reported by the Senate Committee on Governmental Affairs (of which Senator Collins was chairwoman) but was not enacted. Subsequent legislation dealing with the efficiency of the homeland security grants were successful in getting enacted, such as P.L. 111–271, the Redundancy Elimination and Enhanced Performance for Preparedness Grants Act, which sought to identify and eliminate redundant reporting requirements and establish performance metrics for homeland security preparedness grants.

stand how the proposal would work. This lack of specificity created confusion among stakeholders and Congress concerning how the administration's proposal would affect (1) the distribution of funds among jurisdictions, (2) funding for specific grant recipients, and (3) both current and future funding levels.

For example, President Obama asked for $1.54 billion in his FY2013 budget request to establish a National Preparedness Grant Program (NPGP). The NPGP's vision document, released in February 2012, indicated that the new grant would "consolidate [16] current grant programs ... [to] enable grantees to develop and sustain core capacities outlined in the National Preparedness Goal instead of requiring grantees to meet the mandates from multiple, individual, often disconnected, grant programs."[36] The vision document indicated that the grant would "elevate national preparedness capabilities by focusing on regionally and nationally deployable assets," build and sustain core capabilities, and base funding allocations "on prioritized core capacities as well as comprehensive threat/risk assessments and gap analyses."[37] The House Appropriations Committee provided the following reason for denying the administration's request.

> In fiscal year 2013, FEMA proposed a new grant program called the National Preparedness Grant Program under State and Local Programs. This proposal is denied due to the lack of Congressional authorization and the lack of the necessary details that are required for the initiation of a new program to include grant guidance and implementation plans. The Department should work with the appropriate committees of jurisdiction to obtain the necessary authorizing legislation and to clearly define the Federal role and reassess the most effective delivery of support and resources to sustain and improve homeland security capabilities prior to submitting a budget request for such a program. Additionally, the Committee met with and heard testimony from numerous stakeholders that expressed concern not just with the grant proposal but also with the lack of stakeholder outreach prior to the program's introduction. The Committee considers this lack of outreach concerning and it should be addressed.[38]

The Senate Appropriations Committee also did not endorse the proposal.

> The reform proposal in the budget leaves key questions unanswered, such as, how risk assessments will be used in determining the distribution of resources, and to whom Federal resources will be allocated. The Committee appreciates that the Department and FEMA are seeking stakeholder input to answer these key questions. However, until such questions can be answered, it is premature to approve the reform proposal.[39]

The Obama administration proposed the NPGP again in its FY2014 and FY2015 budget requests and received a similar response from Congress both times. The administration indicated that its FY2015 proposal included adjustments to respond to concerns raised by stakeholders. The administration stated that the consolidation was intended to address grant program administra-

[36] U.S. Department of Homeland Security, *FY2013 National Preparedness Grant Program Vision Document*, February 2012, at https://www.fema.gov/pdf/about/budget/fy13__national__preparedness__grant__program__overview.pdf.

[37] Ibid., p. 4.

[38] U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2013*, report to accompany H.R. 5855, 112th Cong., 2d sess., H. Rept. 112–492 (Washington, DC: GPO, 2012), p. 113.

[39] U.S. Congress, Senate Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2013*, report to accompany S. 3216, 112th Cong., 2d sess., S. Rept. 112–169 (Washington, DC: GPO, 2012), p. 113.

tion, efficiency, and effectiveness issues. According to DHS, the consolidation of the State and local grant programs would:

- increase collaboration,
- eliminate the redundancies and requirements placed on both the Federal Government and the grantees,
- provide greater certainty regarding the source and use of funds, and
- more closely align program implementation with other FEMA disaster grant programs.[40]

Stakeholders opposed the NPGP proposal primarily because they were worried that the consolidation could lead to reduced funding and because they believed that the existing grant program structure was "working well by funneling funds to local areas to develop and implement local and regional responses to terrorism and other potential catastrophes."[41]

Concluding Observations

The statute creating the CDBG Program was primarily the language and framework of the House Banking Committee's Subcommittee on Housing but included important elements of proposals approved by the Senate and put forth by the administration.[42] Several issues had to be addressed in an effort to secure passage of the legislation, including:

- reaching agreement on the categorical programs that would be terminated and activities folded into the new block grant,
- providing for the transition from the categorical programs to a block grant through the inclusion of hold harmless provision in the authorizing statute that allowed for the phasing in of previously unfunded jurisdictions and the phasing out of others,
- expanding the category of eligible entitlement communities in order to win the support of urban county officials and Members representing suburban congressional districts, and
- adopting a distribution formula that effectively measured community development need.

The CDBG Program won bipartisan congressional support facilitated by (1) the inclusion of metropolitan-based counties (urban counties) as entities eligible for direct, formula-based allocation and (2) the inclusion of a hold harmless provision intended to facilitate a 5-year transition from assistance previously received under the former categorical grants to the new block grant.

---

[40] U.S. Department of Homeland Security, *Federal Emergency Management Agency: State and Local Programs FY2015 Congressional Budget Justifications*, pp. 4–5.

[41] Neil Bomberg, "Funding Homeland Security Grants—The House, the Senate, and the Administration Take Different Approaches," National League of Cities, April 29, 2013, at http://www.nlc.org/media-center/news-search/funding-homeland-security-grants-%E2%80%93-the-house-the-senate-and-the-administration-take-different-approaches.

[42] For a detailed discussion of the CDBG Program's origins and legislative history see U.S. Advisory Commission on Intergovernmental Relations, *Community Development: The Workings of a Federal-Local Block Grant, The Intergovernmental Grant System: An Assessment and Proposed Policies* (Washington, DC: GPO, March 1977), pp. 3–33, at http://digital.library.unt.edu/ark:/67531/metadc1364/m1/1/.

The enactment of CDBG legislation in 1974 was a departure from the status quo of narrowly tailored and competitively awarded categorical grants and marked a fundamental change in the direction of Federal community development policy. The program's longevity—40 years and counting—and its popularity among Members of Congress can be attributable to several factors:

- The program's formula includes a minimum population-based eligibility threshold that widens the base of congressional support for the program.
- Since its passage, congressional support was strengthened by the inclusion of a second formula in 1977,[43] the direct administration of funds by States starting in 1982,[44] and the grandfathering of entitlement communities that no longer meet minimum population threshold for entitlement status.[45]
- The program has extraordinary utility as a legislative vehicle to respond to unanticipated events. Congress has used the program on an ad hoc basis to respond to natural disasters, terrorist attacks, and fiscal and financial crisis.[46]

The program has withstood periodic calls for its elimination and reform with strong bipartisan support, including the Bush administration's 2006 Strengthening America's Communities Initiative, the House Budget Committee's effort during the FY2011 budget battle to eliminate the program, and, most recently, the Obama administration's proposals included in its FY2014 and FY2015 budget requests to reform the program's formula and eligibility requirements.

By comparison, neither the proposed HSBG nor the NPGP consolidation initiative was enacted despite over 14 years of congressional debate. This could be, in part, because the proposals failed to address the key issues that traditionally arise in block grant debates:

---

[43] Three years after its enactment, Congress moved to significantly reform the program, introducing a second allocation formula intended to address a regional bias in the first formula that favored communities in the South and West experiencing population growth and high levels of poverty. The new formula—which included poverty, housing built before 1940, and population growth lag—had the effect of boosting the share of funds allocated to entitlement communities in the Northeast and Midwest. Congress also added economic development activities carried out by nonprofit and community-based entities as a CDBG-eligible activity and created a new program—the competitively awarded, project-based Urban Development Action Grants—under the same statute.

[44] In 1981, with the passage of the Omnibus Budget Reconciliation Act (P.L. 97–35), Congress shifted, at the option of each State, administrative responsibility for the small cities/nonentitlement component of the CDBG Program to States, including allowing States to establish the method for distributing funds within the State. Congress also increased the percentage of appropriated funds allocated to the State-administered program from 20 percent to 30 percent of the amount appropriated. This was a significant coup for State Governors who had complained that the program's then-current structure left them on the sidelines. Despite calls for changes in the distribution formula, Congress has made no additional changes to the allocation formula over the last 33 years of the program.

[45] The National Affordable Housing Act (P.L. 101–625) granted CDBG entitlement status to entitlement communities that no longer met the required population threshold if such communities had been so classified for at least 2 years. The net effect of this grandfathering provision—and the then-continued decline in funding for other community and regional development programs—was to increase reliance on the CDBG Program at a time when the number of entitlement communities was steadily increasing.

[46] Examples of assistance outside the regular program include Hurricane Katrina, the Midwest floods of 2008 and Hurricane Sandy, the Oklahoma City bombing in 1995 and the 9/11 terrorist attacks, the recession of 1982, and the subprime mortgage crisis of 2008.

- Congress and the administration never reached agreement regarding which grant programs to consolidate.
- Both the HSBG and the NPGP failed to include provisions, such as hold harmless provisions, to provide a transition from the existing grant structure to the new grant program.[47]
- Neither proposal expanded the pool of recipients or provided stability in funding that would have widened the stakeholder support for the proposal.
- The proposed allocation formulas lacked sufficient detail to determine how the program would impact stakeholders, thus making it impossible to determine winners and losers.

Although early proposals to establish a homeland security block grant failed, it could be argued that the authorization of the two largest State and local preparedness grants in 2007—the Urban Area Security Initiative Grant Program and the State Homeland Security Grant Program—essentially established two block grants, because:

- both programs allowed grant funds to be used for a wide range of eligible activities within the broadly defined functional area of preparedness,
- State grant recipients in both programs had discretion in the allocation of resources to the local level in ways that aligned with national objectives,
- efforts were made to streamline reporting requirements of the programs and allow for flexibility in the use of funds,
- both programs utilized a formula-based allocation method, and
- State and local governments were eligible recipients under both programs.

It is worth noting that neither program was referred to as a "block grant" despite meeting the traditional definition of a block grant. It is also noteworthy that since the programs were enacted in 2007, there have been no congressional initiatives to establish a homeland security block grant.

Concerns about program fragmentation played a role both in the enactment of CDBG and proposals to consolidate State and local preparedness grants. However, unlike the deliberations that led to the CDBG, there was a lack of consensus among homeland security stakeholders concerning how to proceed. Local government stakeholders wanted more direct funding, while State government stakeholders wanted to continue the States' dominant role in allocating Federal funds. This may help to explain why efforts to create a comprehensive State and local preparedness block grant were not successful. Even though the State and local preparedness grants faced similar fragmentation issues when compared to CDBG, the fragmentation was not a critical element in the debate regarding consolidation. Like CDBG, the concern with efficiency in the administration of the grant programs was, and continues to be, widely discussed and has been emphasized by Congress and the administration as justification for various consolidation initiatives. While

[47] A "hold harmless" provision allows existing grant recipients to be grandfathered into the new program either by maintaining past funding levels for a certain period of time or ensuring the recipient remain eligible under the new program regardless of eligibility provisions in the authorizing legislation for the new grant program.

there appeared to be consensus among Congress, the administration, and stakeholders that there needed to be homeland security grant reform to address the efficiency issues, there was lack of consensus on the details necessary to establish a new program and lack of collaboration among the three in working out any points of disagreement.

Fear of the unknown also played a role. Unlike CDBG, which featured detailed legislative proposals and introduced bills, the Obama administration's NPGP was presented more as a concept than as a bill. As a result, stakeholders worried about how they might be affected and, in the absence of specific provisions, were not willing to assume the risk inherent in allowing the administration to proceed with consolidation without specific authorizing legislation in place.

As has been shown, enacting block grants is difficult. As scholars have noted, block grants lack some of the electoral benefits that categorical grants can provide, and they introduce an element of uncertainty in the policymaking process, especially in the absence of hold harmless provisions, that makes it more difficult for all stakeholders to support change in the absence of consensus. Consensus concerning the need to act, extensive collaboration, cooperation, and compromise were integral parts of the tale of CDBG, and they will continue to be key elements in the ongoing story of State and local preparedness grants.

The Tax Extenders: How Congressional Rules and Outside Interests Shape Policy

MOLLY F. SHERLOCK [1]

Coordinator of Division Research and Specialist

Congress regularly acts to extend expired and expiring provisions, colloquially referred to as "tax extenders." The first tax extenders package was passed in the late 1980s. Extenders have regularly been addressed by Congress since that time. Several factors contributed to the enactment of temporary tax provisions, including increased visibility of tax expenditures in the Federal budget process, and budget rules intended to achieve fiscal discipline. The "opportunity for review" provided by sunsets is often given as a rationale for having temporary tax provisions, although review rarely occurs in practice. The number of tax extenders has increased over time, particularly in the 2000s. Tax extenders persist, in part, because short-term extensions appear less costly than long-term extensions. Individually, for certain groups, extender provisions are popular policy, with short-term extensions often perceived as better than expiration. Hence, many expect regular short-term extensions of expired and expiring provisions to continue, despite agreement among many in Congress that the practice is suboptimal.

Introduction

The U.S. tax code is rife with sunset provisions. Fifty-seven temporary tax provisions expired at the end of 2013. Many expect that nearly all of these provisions will be temporarily extended before the end of 2014. Expired and expiring provisions that are regularly temporarily extended by Congress are colloquially referred to as "tax extenders."

Many in Congress agree that the current and regular practice of extending expired tax provisions, often retroactively, is problematic. Senate Finance Committee Chairman Ron Wyden has noted that the "stop and go nature [of extenders] obviously contributes to the lack of certainty and predictability America needs." Chairman Wyden stated firmly that the April 3, 2014 markup was the last time the Finance Committee would take up tax extenders, so long

---

[1] The author would like to thank Jane G. Gravelle, Steve Maguire, Bob Dilger, John Haskell, Kevin Kosar, and Walter J. Oleszek for helpful comments. The author would also like to thank Jared Nagel and Jennifer Teefy, information research specialists at CRS, for their assistance with background research.

as he remains chairman.[2] Orrin Hatch, Finance Committee Ranking Member, has expressed “deep reservations about temporary tax policies.”[3] He also stated that Congress “should not continue doing business as usual when it comes to extenders.”[4]

The leadership of the House Committee on Ways and Means has also expressed frustration with the tax extenders practice. Chairman Dave Camp recently noted that tax extenders are one of the best examples of undesirable and unnecessary complexity in the tax code.[5] Ranking Member Sander Levin has echoed a point raised by many, that permanent tax policy is preferable to frequent short-term extensions.[6] Despite the view of many that temporarily extending expiring provisions is suboptimal tax policy, the practice is expected to continue.

This research explores the historical origins and development of the “tax extenders,” paying particular attention to the role that Congress as an institution has played in creating this package of temporary tax policies. As argued below, the tax extenders are a consequence of policymaking in a constrained environment. In this case, a primary constraint is the budget rules Congress has imposed on itself. While the intent of budget rules was broader fiscal discipline, the tax extenders practice, to some degree, might be considered a byproduct of fiscal discipline efforts. Budget rules were one among many reasons why various provisions were made temporary rather than permanent when initially enacted. Budget rules have played a role not only in creating, but also in sustaining, this regularly occurring lawmaking ritual.

Although budget rules were instrumental in shaping the tax extender practice in its current form, there are arguably other reasons that Congress continues to temporarily extend expiring tax provisions. While fiscal considerations remain important, recent experience has shown that Congress is not unwilling to enact deficit increasing, permanent, tax legislation. Does this suggest that the continuation of the tax extenders practice involves more than adherence to budgeting rules and conventions?

Since the 1990s, political commentators have observed that tax extenders could provide a lobbying opportunity.[7] Thus, temporary extenders are not only a convenient tool for reducing the apparent cost of tax breaks. With both internal and external forces that favor the tax extenders practice in its current form, despite acknowledgement of the extenders practice being problematic as tax policy, the practice may continue.

---

[2] U.S. Congress, Senate Committee on Finance, Open Executive Session to consider an original bill entitled “Expiring Provisions Improvement Reform and Efficiency (EXPIRE) Act,” 113th Cong., 2d sess., April 3, 2014, Opening Statement of Senator Ron Wyden, available at http://www.finance.senate.gov/imo/media/doc/04032014%20extenders%20markup%20statement.pdf.

[3] Orrin Hatch, “Small Business Jobs and Tax Relief Act—Motion to Proceed,” *Congressional Record*, July 11, 2012, p. S4838.

[4] Orrin Hatch, “Extension of Tax Extenders,” *Congressional Record*, March 14, 2012, p. S1660.

[5] Opening Statement of Chairman Dave Camp at Hearing on the Benefits of Permanent Tax Policy for America’s Job Creators, April 8, 2014, available at http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=377136.

[6] Opening Statement of Ranking Member Sander Levin at Full Committee Hearing on Business Tax Provisions in the Camp Tax Plan, April 8, 2014, available at http://democrats.waysandmeans.house.gov/press-release/opening-statement-ranking-member-sander-levin-full-committee-hearing-business-tax.

[7] “Washington Update—Asking for an Extension,” *National Journal*, March 30, 1996.

The following section explores the origins of tax extenders by looking at how certain tax expenditures became tax extenders. A history of tax extender legislation is then provided, which traces congressional action on tax extenders through periods of tight fiscal control and projected budget surpluses and exploring how tax extenders evolved into must-pass legislation that is often not paid for. A brief discussion of the external influence interest groups have on the extenders practice is followed by concluding remarks.

The Origins of "Tax Extenders"

The practice of extending a group of expired or expiring temporary tax provisions began in the late 1980s, after the Tax Reform Act of 1986 (TRA86; P.L. 99–514). The Technical and Miscellaneous Revenue Act of 1988 (TAMRA; P.L. 100–647) extended eight expiring tax provisions. These provisions were contained in a separate title, "Extensions and Modifications of Expiring Tax Provisions."[8] Although the relative merits of various temporary tax provisions were evaluated in the 100th Congress,[9] the expiring provisions were ultimately given a uniform 1-year extension in TAMRA. The temporary extensions given to expiring provisions were criticized by some, with one tax aide noting that "tax policy ha[d] become secondary to revenue."[10] Despite this criticism, subsequent legislation continued the practice of grouping together expired or expiring temporary tax provisions for a short-term extension as tax extenders.

The research tax credit, often cited as the longest standing tax extender, was one of the temporary tax provisions extended in TAMRA.[11] The credit first entered the code as a temporary provision as part of the Economic Recovery Tax Act of 1981 (P.L. 97–34).[12] The research tax credit included a sunset to allow Congress the "opportunity to evaluate the operation and efficacy of the new credit."[13] Although opportunity for evaluation was given as a policy rationale for the inclusion of a sunset for the research credit, other factors may have led to the enactment of other tax provisions on a temporary rather than permanent basis. The budget environment of the 1970s, and the circumstances surrounding the enactment of temporary tax expenditures during that decade, provides additional insight into the origins of the tax extenders practice.

From Tax Expenditures to Tax Extenders

The first "tax extenders" package was passed in 1988, but the roots of the tax extenders practice can be traced to the budget policy of the 1970s. The major budget legislation of the 1970s, the

[8] Although temporary tax provisions had previously been extended, leading some to contend that the "tax extender" practice began in the late 1970s, TAMRA was the first time such provisions were considered as a group in a separate title.

[9] U.S. Congress, Senate Committee on Finance, Subcommittee on Taxation and Debt Management, *Expiring Tax Provisions*, 110th Cong., 2d sess., March 28, 1988, S. Hrg. 100–1002.

[10] Pat Jones, "Tax Policy Considerations Triumphed in Technical Corrections Bill, Aides Say," *Tax Notes Today*, November 14, 1988.

[11] For a legislative history and more information, see CRS Report RL31181, *Research Tax Credit: Current Law and Policy Issues for the 113th Congress*, by Gary Guenther.

[12] TRA86 made significant changes to the research tax credit and extended the credit through 1988.

[13] U.S. Congress, Joint Committee on Taxation, *General Explanation of the Economic Recovery Act of 1981*, committee print, 97th Cong., December 29, 1981, JCS–71–81, p. 121.

Congressional Budget and Impoundment Control Act of 1974 (P.L. 93–344), reflected an effort by Congress to gain more control over budget priorities.[14] In the early 1970s, many in Congress objected to President Richard Nixon's refusal to spend certain appropriated funds.

Congress had become familiar with the concept of tax expenditures, and even made efforts to limit this form of tax policy, years earlier. The first tax expenditure estimates were voluntarily prepared by the Department of the Treasury in 1968.[15] Although the executive branch resisted regular publication of tax expenditure estimates, P.L. 93–344 required that tax expenditure estimates be included in the President's annual budget submission. With annual tax expenditure estimates available, and "spending through the tax code" more visible, questions soon arose as to whether tax expenditures should be subject to a more rigorous budget review process.[16] Shortly after enactment of the 1974 Budget Act, a push began in Congress to enact "sunset" legislation. This effort was sustained into the late 1970s.

Proposals in both the 94th and 95th Congresses (S. 2925 and S. 2, respectively), introduced by Senator Edmund Muskie, would have required 5-year termination dates for tax expenditures (in addition to periodic termination for authorized spending programs). The Sunset Act (S. 2) had 62 cosponsors, with support split across the 2 political parties. The poor fiscal climate and the public view of the government as bloated and inefficient contributed to the Carter administration's support of sunset laws.

Although the Carter administration backed sunset legislation, support was not universal within the Democratic Party, particularly when it came to tax expenditures. Senator Russell B. Long, chairman of the Finance Committee, strongly opposed sunsets for tax expenditures. In his view, sunset legislation that included tax expenditures would create a path for "backdoor" tax increases, without the policy change being reviewed by the Finance Committee.[17] Thus, tax expenditure sunsets could be seen as an encroachment on Finance Committee's jurisdiction. Senator Long also objected to sunset provisions because they would shift the burden of proof, reducing the power of the Finance Committee.[18] When tax expenditures are permanent, the burden of challenging tax expenditures falls on the opponents, who have to come out in favor of repeal. Having tax expenditures automatically expire would require a filibuster-proof majority in the Senate and Presidential support to ensure extension.

Chairman Long, with the support of other Finance Committee members, prevented the advancement of a tax expenditure sunset measure during consideration of the Revenue Act of 1978 (H.R. 13511). Senator Long's motion to table an amendment offered by Senator John Glenn, to require periodic re-approval of all tax ex-

[14] For additional discussion, see Allen Schick, *The Federal Budget: Politics, Policy, and Process* (Washington, DC: Brookings Institution Press, 2000), pp. 17–22.

[15] Tax expenditures are revenue losses resulting from tax provisions (e.g., credits, deductions, exclusions, reduced rates, deferrals) that provide special tax relief. Tax expenditures are often viewed as spending programs channeled through the tax code.

[16] "Tax Expenditure Budget: Pluses and Minuses," *Tax Notes*, February 10, 1975, p. 3.

[17] Stanley Surrey and Paul R. McDaniel, "The Tax Expenditure Concept: Current Developments and Emerging Issues," *Boston College Law Review*, vol. 20, no. 6 (January 1979), p. 332.

[18] Ibid., p. 333.

penditures, was agreed to 50 to 41. Finance Committee members voted 11 to 2 in support of Chairman Long's motion.

Although Chairman Long was successful at keeping tax expenditures out of the sunset bill (S. 2), and preventing across-the-board tax expenditure sunsets in other revenue measures, the idea of sunsets in the tax code had nonetheless been introduced.

In the late 1970s, several new tax expenditure measures were enacted with sunsets. Revenue considerations were one of several reasons a new tax expenditure measure may have included a sunset. The Revenue Act of 1978 (P.L. 95–600) introduced an income exclusion for employer-provided educational assistance. The Senate version of the bill proposed the exclusion as a permanent provision.[19] The House version of the 1978 tax cut act did not contain this particular provision, and the provision was made temporary as part of the conference agreement. The exclusion for employer-provided educational assistance was one of the many provisions scaled back in conference to reduce the overall budgetary cost of the bill. In this case, the provision was scaled back by including a sunset.

Other temporary tax measures that were part of TAMRA, but enacted in the 1970s, include the exclusion for group prepaid legal services and the energy credit for solar and geothermal property. The exclusion for group prepaid legal services was enacted as part of the Tax Reform Act of 1976 (P.L. 94–455).[20] In adopting this provision, Congress requested that the Departments of the Treasury and Labor study the provision, to evaluate the "desirability and feasibility of continuing the benefits provided by [the] provision."[21] Tax benefits designed to support emerging technologies, such as the energy credits for solar and geothermal property introduced as part of the Energy Tax Act of 1978 (P.L. 95–618), may have been enacted as temporary provisions, with the presumption that such incentives will be allowed to expire once the technology matures.[22]

Tax policy change in the early 1980s made it more difficult to enact tax cuts. In addition to providing tax cuts, the Economic Recovery Tax Act of 1981 (P.L. 97–34) indexed individual income tax parameters for inflation. Before indexation, inflation would cause individuals to "creep" into higher tax brackets over time. With bracket creep, increasing revenues provided a "fiscal dividend" that could be (and was) used to pay for tax cuts. Without inflation-induced income growth and the resulting bracket creep, revenues could not be expected to continually increase, making it harder to find revenue offsets for tax cuts (rate reductions or targeted preferences).[23]

---

[19] The Carter administration did not approve of the Senate Finance Committee's version of the 1978 tax act, objecting to certain provisions related to capital gains and the bill's overall revenue cost. See "Conferees OK College Tax Credit Plan of Up to $250," *Los Angeles Times*, September 29, 1978.

[20] The exclusion for group prepaid legal services expired June 30, 1992.

[21] U.S. Congress, Joint Committee on Taxation, *General Explanation of the Tax Reform Act of 1976*, committee print, 94th Cong., December 29, 1976, JCS–33–76, pp. 668–671.

[22] The energy credit for solar and geothermal was not allowed to expire. Instead, the credit was made permanent as part of the Energy Policy Act of 1992 (P.L. 102–486).

[23] For further discussion, see the companion CRS centennial report in this volume, *The Dynamics of Congressional Policymaking: Tax Reform*, by Jane G. Gravelle.

Tax Extender Legislation and Fiscal Controls

Chairman Long, in an effort to maintain the authority of the Finance Committee, was successful in preventing tax expenditure sunsets en masse. Nonetheless, for various reasons, sunsets crept into new tax expenditures enacted in the late 1970s and early 1980s. With the enactment of TAMRA in 1988, the practice of regularly extending a package of expired or expiring provisions began. And thus the "tax extenders" came into being.

Early tax extenders legislation was revenue neutral. The revenue cost of temporary tax extensions enacted in TAMRA was offset by various revenue-increasing provisions. Although TAMRA was enacted before the adoption of statutory pay-as-you-go (PAYGO) requirements, there was budget legislation in place to deter Congress from enacting deficit-increasing legislation. In response to the poor fiscal climate of the early 1980s, in 1985, Congress enacted the Balanced Budget and Emergency Deficit Control Act (P.L. 99–177), commonly known as the Gramm-Rudman-Hollings (GRH) Act.[24] GRH required annual reductions in budget deficits, with the ultimate goal of achieving a balanced budget. Under GRH, deficit limits were to be enforced by an automatic cancellation of budget resources, or a sequester order.[25]

Tax extenders were included in the Omnibus Budget Reconciliation Act of 1989 (OBRA89; P.L. 101–239). Initially, the Bush administration did not support the inclusion of tax extenders. In testimony before the Finance Committee, a Treasury official noted that the administration believed that the expiring tax provisions were economically inefficient tools for achieving underlying policy objectives.[26] OBRA89 as enacted, however, did include a 9-month extension of expiring tax provisions.[27] On the whole, the reconciliation bill reduced the deficit. Reacting to the final legislation, Senate Budget Committee Chairman Jim Sasser observed "it is superior to a full year of indiscriminate, mindless, across-the-board cuts."[28]

Although the threat of sequester may have influenced OBRA89 negotiations, GRH ultimately failed to achieve deficit reduction targets. A key reason for this failure was the requirement that projected deficits, rather than actual deficits, achieve target levels. In effect, deficit targets were achieved on paper but not in reality. Congress responded to rising deficits by enacting the Budget Enforcement Act of 1990 (BEA; P.L. 101–508). The BEA enacted statutory PAYGO rules, effectively requiring Congress to "pay for" changes in tax policy that would reduce Federal revenues, relative to current law. Like GRH, BEA constrained fiscal policy by impos-

---

[24] The main sponsors of the legislation were Phil Gramm, Warren Rudman, and Ernest Hollings. For background, see CRS Report R41901, *Statutory Budget Controls in Effect Between 1985 and 2002*, by Megan S. Lynch.

[25] The initial GRH sequestration process was invalidated by the Supreme Court in *Bowsher* v. *Synar*. A revision was passed in 1987 (P.L. 100–119).

[26] The Bush administration did, however, support making the research tax credit permanent. See "Let Expiring Provisions Die, Says Treasury," *Tax Notes*, March 20, 1989, p. 1410 and Testimony of Department of the Treasury Tax Legislative Counsel Dana Trier, in U.S. Congress, Senate Committee on Finance, *Revenue and Spending Proposals for Fiscal Year 1990*, hearings, 101st Cong., 1st sess., March 14–15, 1989, S. Hrg. 101–108 (Washington, DC: GPO, 1995).

[27] A 6-month extension had been proposed in the Senate version of the bill, and a 1-year extension proposed in the House.

[28] By "indiscriminate" Chairman Sasser was referring to sequestration. "Fini! Congress Passes $5.6 Billion Tax Bill," *Tax Notes*, November 27, 1989, p. 1039.

ing rules to confine Federal revenue policy decisionmaking. By enacting PAYGO, Congress effectively indicated that it believed it could not be trusted to maintain "revenue neutrality" when it came to tax legislation.[29] The BEA was included as part of the Omnibus Budget Reconciliation Act of 1990, which raised top income tax rates, extended expiring provisions for 1 year, and reduced expected budget deficits.

The Tax Extension Act of 1991 (P.L. 102–227) was devoted exclusively to tax extenders. Both Ways and Means Committee Chairman Dan Rostenkowski and Finance Committee Chairman Lloyd Bentsen supported temporary tax extensions, but were reluctant to suggest revenue offsets as required under PAYGO.[30] With limited offsets available, expiring tax provisions were extended for 6 months. Early in 1992, Chairman Rostenkowski called a series of hearings to evaluate tax extenders. As the chairman stated in his opening statement to one of the extenders hearings:

> The burden is now on this committee to decide which of these provisions are worthwhile to find a way to pay for their permanent extension and to let the others expire. Each of the expiring provisions has its supporters. However, not all of these provisions have survived on their own merits. Some have enjoyed free rides as stowaways on the annual extenders package. The free ride stops here.[31]

Chairman Rostenkowski indicated that the committee should take final action on extenders during the 102d Congress, ending the practice "once and for all."[32]

Ultimately, no additional action was taken in the 102d Congress. Extenders were allowed to lapse after June 30, 1992. President William Clinton's first budget, released in February 1993, proposed to make permanent a number of the expired tax provisions.[33] Later the Clinton administration put forward a detailed tax plan, which also proposed making extenders permanent. Extenders were a less discussed part of the administration's overall tax proposal, which sought to reduce the deficit by increasing taxes on higher income taxpayers and impose a new broad-based energy tax (the Btu tax, which was ultimately replaced with a smaller gas tax increase in the Senate).

The administration's proposal was introduced in the House as the Revenue Reconciliation Act of 1993 (H.R. 1960), sponsored by Chairman Rostenkowski. Although permanent extensions passed in the House, Finance Committee Democrats decided not to permanently extend most expired provisions,[34] thus reducing the overall cost of these measures.[35] Temporary extensions were included in

---

[29] Cheryl D. Block, "Pathologies at the Intersection of the Budget and Tax Legislative Process," *Boston College Law Review*, vol. 43, no. 4 (July 1, 2002), p. 884.

[30] "The $1.7 Billion Question: What About Expiring Provisions?" *Tax Notes*, October 14, 1991, p. 134.

[31] U.S. Congress, House Committee on Ways and Means, *Permanent Extension of Certain Expiring Tax Provisions*, Serial 102–83, 102d Cong., 2d sess., January 28, 29, and February 10, 1992.

[32] Ibid.

[33] Department of the Treasury, *Summary of the Administration's Revenue Proposals*, Washington, DC, February 1993, http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY1994.pdf.

[34] Several "extender" provisions were made permanent in the OBRA93, including the low-income housing tax credit.

[35] "Finance Committee Democrats Present Tax Plan," *Tax Notes Today*, June 18, 1993.

the Omnibus Budget Reconciliation Act of 1993 (OBRA93; P.L. 103–66).[36]

In 1995, it was expected that expired and expiring provisions would be rolled into reconciliation legislation. However, extenders were ultimately left out of the budget deal that emerged from the tense negotiations that occurred near the end of 1995 (a funding lapse resulted in two government shutdowns in late 1995, the second lasting into the beginning of 1996). During the mid-1990s, revenue considerations were the primary reason particular provisions were given temporary status.[37] With regard to the 1995 debate surrounding extenders in the Senate, one tax aide noted that extenders could be revised and their cost "dialed" to fit the revenue needs of an overall tax package.[38] In 1996, extenders were included as part of the Small Business and Job Protection Act (P.L. 104–188). The cost of the temporary tax extensions included in P.L. 104–188 were offset with other tax increases.

Temporary tax provisions were extended again in 1997 as part of the Taxpayer Relief Act (TRA97; P.L. 105–34). As a stand-alone package, the TRA97 decreased revenues. The costs of TRA97 were offset by spending reductions in another 1997 reconciliation bill, the Balanced Budget Act of 1997 (P.L. 105–33).

In 1998, extenders were again included in omnibus budget legislation (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 [P.L. 105–277]). Earlier in 1998, the House had passed extenders as a separate bill (H.R. 4738). The extenders bill had been introduced by Ways and Means Committee Chairman Bill Archer. It passed the House in a voice vote with no opposition during debate. Chairman Archer wanted extenders kept out of the omnibus package, preferring to address extenders as a separate measure. However, when it became evident that the Senate could not pass the House-passed extenders, it became clear that including extenders in the omnibus bill would ensure that the temporary provisions were extended. Expiring provisions were extended through June 30, 1999, and the cost of extension was offset.[39]

During the 1990s, the budget rules Congress had imposed on itself were working, at least in the sense that extensions of expiring tax provisions were part of legislative packages that did not add to the deficit (using conventional scorekeeping). Tax extenders had become an annual ritual. By the end of the 1990s, the regular sunsetting of tax expenditure provisions did not appear to be a practice designed to allow Congress to evaluate the efficacy of expiring tax provisions. Instead, the annual termination of tax extenders was used to adhere to self-imposed budgeting rules. The result was a set of complex, uncertain, and economically inefficient tax policies.

Although temporary extensions of expiring tax provisions was the norm during the 1990s, the number of provisions extended as tax extenders had not changed substantially. In 1988, nine provisions had been included in the section of TAMRA providing for "ex-

[36] The six provisions extended in OBRA93 were extended for varying lengths of time.

[37] "Expiring Provisions Never Die, They Just Become 'Extenders,'" *Tax Notes Today*, December 2, 1996.

[38] "Finance Republicans 'Finish' Tax Bill; Details Elusive," *Tax Notes Today*, October 16, 1995.

[39] "'Monster' Budget Bill Signed; Applause is Muted," *Tax Notes*, October 26, 1998, p. 399.

tensions and modifications of expiring tax provisions." In 1998, 6 provisions were included in the title of P.L. 105–277 providing for an "extension of expiring tax provisions," although that figure had increased to 11 when extenders were next addressed in 1999.[40]

FISCAL DISCIPLINE UNRAVELING

Through the late 1990s, the budgetary cost of temporarily extending expired or expiring provisions was generally offset. On multiple occasions, extenders were included in major deficit reduction packages or omnibus budget legislation. In other instances, extenders were paid for through other tax increases. This changed in 1999, as legislative maneuvering allowed for the effective exemption of tax extenders from PAYGO.

Budget surpluses in the late 1990s provided momentum for Republican-supported tax cuts. Ways and Means Committee Chairman Bill Archer and Finance Committee Chairman William Roth both proposed major tax reduction legislation, which became the Taxpayer Refund and Relief Act of 1999. This legislation was passed by both Chambers, but was vetoed by President Clinton. The Clinton administration objected to tax relief legislation that did not meet PAYGO requirements.[41] The Archer-Roth package had an estimated cost of $792 billion over 10 years.[42]

After President Clinton vetoed the Taxpayer Refund and Relief Act, legislative attention turned to tax extenders. At issue was whether the extenders package should be paid for. In the Senate, Chairman Roth had initially pushed for a 5-year tax extenders package, but shortened the extension in response to concerns over the cost. The extenders package that was marked up by the Finance Committee was revenue neutral, with part of the cost offset by repealing a provision allowing for deferral of gain on nondealer installment sales for accrual method taxpayers.[43] The extenders proposal that was marked up in the House did not include revenue offsets.[44] The extenders package that emerged from conference was not fully paid for, but did include the installment sale repeal provision as a partial offset (the Ticket to Work and Work Incentives Improvement Act of 1999 [P.L. 106–170]).[45] Treasury Secretary Lawrence H. Summers stated that although the administration "would ideally [have] liked to have seen the tax extenders legisla-

[40] This count excludes the reauthorization of the Generalized System of Preferences.

[41] Block, "Pathologies at the Intersection of the Budget and Tax Legislative Process," pp. 892–893.

[42] Joint Committee on Taxation, "Estimated Budget Effects of the Conference Agreement for H.R. 2488," JCX–61–99R, August 5, 1999, https://www.jct.gov/publications.html?func=startdown&id=2775.

[43] An installment sale is a sale of property for which at least one payment is scheduled to be received after the tax year in which the sale occurred. Certain taxpayers are allowed to prorate profits from installment sales over the tax years in which payments are received. For additional background, see U.S. Congress, Senate Committee on the Budget, *Tax Expenditures: Compendium of Background Material on Individual Provisions*, committee print, prepared by the Congressional Research Service, 112th Cong., December 2012, S. Prt. 112–45, pp. 759–771.

[44] Joint Committee on Taxation, "Estimated Revenue Effects of Expiring Provisions Scheduled for Markup by the Committee on Ways and Means on September 24, 1999," JCX–65–99, September 23, 1999, https://www.jct.gov/publications.html?func=startdown&id=2793.

[45] Block, "Pathologies at the Intersection of the Budget and Tax Legislative Process," pp. 893–894.

tion paid for in full," the circumstances surrounding tax extenders in 1999 led the administration to be willing to "accept the cost."[46]

Even the partial offset was short-lived. Chairman Archer urged the administration to provide relief from the installment sale repeal, and the administration conceded that the provision could have a negative impact on some small businesses. In 2000, Congress passed and President Clinton signed the Installment Tax Correction Act of 2000 (P.L. 106–573), which retroactively repealed the repeal (effectively reinstated), the installment sale method provision. Even though the Installment Tax Correction Act reduced receipts, Congress had already taken action to set PAYGO balances to zero for legislation enacted in FY2001.[47]

Budget rules did exert pressure on the tax extenders process in 1999, and may have prevented the longer term extension that was initially sought in the Senate. The actions taken by Congress in 2000, repealing the partial pay that was included in the 1999 tax extenders package, illustrates an inherent limitation in congressional rules. That is, budget rules and associated enforcement mechanisms are, as concluded by Block (2002), "only as good as the congressional will to abide by [them]."[48]

The 1999 and 2000 extenders process and related-legislative developments have been cited as an example of the shift in power away from individual Members of Congress to party leadership and executive officials.[49] In 1999, Treasury Secretary Lawrence H. Summers was a key player in the negotiations that culminated in the final version of the extenders package. It was at his direction that the installment sale repeal was included as an offset. The extenders process in 1999 was also an anomaly in that extenders were considered as a separate package. In several instances, extenders had simply been included in end-of-year tax legislation, not having been considered under "regular order." Without consideration at the committee level, or when buried in part of large-scale budget or tax legislation that is negotiated in conference, there is less opportunity for Members outside of leadership to evaluate the extenders as a package, or review the relative merits of specific extender provisions.

Tax Extenders in the 2000s

Tax policy in the early 2000s was dominated by the 2001/2003 tax cuts. Extenders were allowed to expire at the end of 2001 and were not included in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA; P.L. 107–16), the first of the two major tax cuts signed into law by President George W. Bush. Although EGTRRA did not include extenders, the legislation did include sunsets for many of the tax provisions. There were two key

[46] Heidi R. Glenn, "Extenders Bill Begins to Inspire Head-Scratching," *Tax Notes*, December 27, 1999, p. 1618.

[47] The Consolidated Appropriations Act of 2001 (P.L. 106–554) contained a "directed scorekeeping" measure that set PAYGO balances to zero for FY2001. With directed scorekeeping, Congress directs CBO (or OMB) on how to account for a various measure. Because PAYGO balances were set to zero in P.L. 106–554 for FY2001, the revenue cost of P.L. 106–573 was not required to be offset.

[48] Block, "Pathologies at the Intersection of the Budget and Tax Legislative Process," p. 933.

[49] Block, "Pathologies at the Intersection of the Budget and Tax Legislative Process," pp. 909–910.

reasons for including sunsets in EGTRRA: (1) to avoid having a reconciliation bill that would decrease revenues outside of the 10-year budget window, which would likely trigger a point of order under the Byrd rule in the Senate; and (2) to lower revenue losses in the bill.[50] Sunsets may have been crafted as a response to the legislative and budget process, instead of on the basis of sound tax policy. Without sunsets, there was not a plausible path forward for the tax cuts in EGTRRA.

Tax extenders were included in the Job Creation and Worker Assistance Act of 2002 (P.L. 107–147), which enacted bonus depreciation as a "temporary" stimulus measure,[51] provided additional temporary unemployment assistance, and extended tax relief to New York City in the wake of the 2001 terrorist attacks. There was substantial back-and-forth between leaders in both Chambers regarding the contents of the 2002 stimulus measure, but extenders were not a major part of the negotiation. During the 2002 stimulus negotiations, Finance Committee Chairman Charles Grassley observed that extenders were likely to be tacked on to any moving tax vehicle, stating, "There's no dispute about them going."[52] Congress designated the Job Creation and Worker Assistance Act of 2002 as an "emergency requirement," exempting the cost of the legislation from the PAYGO process.[53]

In 2003, the Bush administration proposed another major "Jobs and Growth" tax cut. In response to concerns from Senate moderates regarding the cost of the proposal, Finance Committee Chairman Grassley set a limit on the overall cost of the tax cuts that could be passed using reconciliation.[54] Once again, costs were constrained by using and adjusting sunsets. While Congress passed the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA; P.L. 108–27), there were a number of critics. Senator Olympia Snowe called the bill "a trillion-dollar tax cut masquerading as a $350 billion tax cut."[55] Even though tax extenders expired in 2003, they were not included in major 2003 tax legislation. The House passed a 1-year extension (H.R. 3521). On the Senate side, Chairman Grassley proposed a shorter extension that was fully offset (S. 1896). Finance Committee Ranking Member Max Baucus was an original cosponsor of S. 1896. Extenders

---

[50] For discussion on sunsets in EGTRRA, see Rebecca M. Kysar, "The Sun Also Rises: The Political Economy of Sunsets in the Tax Code," *Georgia Law Review*, vol. 40, no. 2 (winter, 2006), pp. 335–405. The Byrd rule, named after its principal sponsor, Senator Robert C. Byrd, prohibits the Senate from considering "extraneous matter" as part of a reconciliation bill. "Extraneous matter" includes, among other things, provisions that would increase the deficit outside of the budget window. For more on the Byrd Rule, see CRS Report RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule,"* by Bill Heniff, Jr.

[51] For background on bonus depreciation in the tax extenders, see CRS Report R43432, *Bonus Depreciation: Economic and Budgetary Issues*, by Jane G. Gravelle.

[52] Patti Mohr and Warren Rojas, "Senate Adds Small Business Expensing to Stimulus Package," *Tax Notes Today*, January 30, 2002.

[53] For more on emergency requirements in statutory PAYGO as in effect through 2002, see CRS Report R41005, *The Statutory PAYGO Process for Budget Enforcement: 1991–2002*, by Robert Keith. The BEA's statutory PAYGO requirement expired in 2002. A statutory PAYGO measure was enacted in 2010. Both Chambers have also created their own PAYGO rules. The Senate's PAYGO rules remain in effect, but the House removed PAYGO from its rulebook in 2011 (replacing it instead with a CUTGO rule).

[54] For discussion, see Kysar, "The Sun Also Rises: The Political Economy of Sunsets in the Tax Code," pp. 378–382.

[55] Ibid., p. 381.

were again taken up in 2004, and included as part of the Working Families Tax Relief Act of 2004 (P.L. 108–311).

EGTRRA and JGTRRA had introduced a number of sunsets that were beyond the scope of what typically had been considered tax extenders. By the mid-2000s, the extension of tax extenders began to occur within legislation extending the EGTRRA/JGTRRA sunsets (or preventing the automatic tax increase that would have occurred had these provisions been allowed to expire). The Working Families Tax Relief Act of 2004 extended EGTRRA/JGTRRA tax cuts, as well as extenders. There were no statutory PAYGO rules in place in 2004, and the Working Families Tax Relief Act of 2004 was enacted without offsets.

In the 109th Congress (2005–2007), efforts were made in the Senate to evaluate certain extender provisions.[56] Nevertheless, it was in the waning days of Congress that extenders were simply extended for 2 years, in a business-as-usual fashion. Some energy-related provisions that were previously part of the extenders package had been addressed earlier in the Energy Policy Act of 2005 (P.L. 109–58). The rest of the extenders were addressed at the end of 2006, in the lame duck session. The Tax Relief and Health Care Act of 2006 (P.L. 109–432) included extenders, as well as several health and trade-related items. Upon passage in the House, Ways and Means Chairman William M. Thomas said, "[t]his legislation reflects the must-do pieces of business we need to complete this year." While there was some debate regarding which nonextender measures might be included in the package, and how the tax provisions might be paid for, extenders were widely viewed as "must pass," even if they were not going to be paid for.[57]

In 2008, extenders were included in stimulus and financial rescue legislation (the Emergency Economic Stabilization Act of 2008 [EESA; P.L. 110–343]). Fiscally conservative House Democrats, including members of the so called "Blue Dog" Coalition, objected to passing extenders without offsets. As a result, extenders legislation that was passed in the House (H.R. 7060) was fully paid for. The Senate objected to some of the offsets included in the House-passed bill. The Senate adopted an extenders package that was partially offset, enough to allow extenders to be included in the economic rescue package.

With many of the tax cuts enacted in EGTRRA and JGTRRA set to expire at the end of 2010, and again at the end of 2012, addressing the sunsets associated with the tax extenders was a secondary focus. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111–312) extended the EGTRRA/JGTRRA tax relief for 2 years, through 2012. Extenders were included in this legislation. In 2012, when much of the tax relief that had first been provided in EGTRRA and JGTRRA was made permanent, tax extenders were once again granted a tem-

[56] On March 16, 2005, Senate Finance Committee Chairman Chuck Grassley held a hearing, "Expiring Tax Provisions: Live or Let Die." Hearing documents and testimony can be found at http://www.finance.senate.gov/hearings/hearing/?id=489b8874-f79a-3b8b-6f12-9bec1647d515.

[57] There was some discussion of limiting extenders to 1 year, as opposed to 2 years. Reporting on this strategy suggests that a 1-year package was sought to "make life difficult" for Democrats who intended to reinstate PAYGO rules upon taking control of the Senate in 2008. See Wesley Elmore, "Some GOP Lawmakers Aim to Limit Extenders to One Year, Aide Says," *Tax Notes Today*, November 20, 2006.

porary extension (see the American Taxpayer Relief Act of 2012 [ATRA; P.L. 112–240]). ATRA was estimated to reduce revenues by $3.6 trillion over the 10-year budget window, increasing the deficit by $4.0 trillion over the same period.[58] Much of this cost can be attributed to the permanent extension of tax cuts that were first enacted with sunsets in 2001 and 2003. Thus, in recent years, Congress had shown a willingness to forgo offsets to extend current tax policy, but not in the case of extenders.

The 2000s could also be dubbed the era of temporary tax provisions. It was under the shadow of EGTRRA and JGTRRA, and broader uncertainty about the structure of tax rates, that the number of temporary tax provisions included in the extenders substantially increased. As noted above, the 1999 tax extenders package included 11 extender provisions. In 2002, 14 provisions were included in the "extension of certain expiring provisions," Title III of the Job Creation and Worker Assistance Act.[59] By 2008, there were 32 individual and business provisions included as "tax extensions" in EESA. As noted earlier, 57 temporary provisions expired at the end of 2013 (including disaster-related provisions), and it is expected that nearly all of these expired provisions will be further extended.

In 2014, Congress is once again considering the issue of tax extenders. Unlike in recent years, the consideration of extenders has not been overshadowed by other major sunsets in the tax code. There is, however, disagreement as to whether extenders should be continued as temporary provisions or select provisions granted permanent status. There are also opposing views regarding whether the cost of permanent extensions should be offset. The Committee on Finance, under the leadership of Chairman Ron Wyden, reported legislation that would extend most expiring provisions for 2 years. The Ways and Means Committee, under the leadership of Chairman Dave Camp, has considered a series of proposals that would make permanent certain provisions that are currently part of the extenders package. Chairman Camp's desire to make certain provisions permanent is also motivated by budgeting restrictions. Making expiring provisions permanent would reduce the tax revenue baseline, making it easier to design a revenue-neutral tax reform plan.[60] While 2014 has brought more attention to extenders than has been given in recent years, it seems the practice may continue.

Tax Extenders: Here for the Long Haul?

Since the tax extenders practice began in the 1980s, numerous Members have vowed to end the uncertainty and stop the periodic, often retroactive, extensions of expiring provisions. One reason tax extenders have persisted is budgetary; short-term extensions appear less costly than long-term extensions. Thus, fiscal conserv-

---

[58] Congressional Budget Office, "Estimate of the Budgetary Effects of H.R. 8, the American Taxpayer Relief Act of 2012, as passed by the Senate on January 1, 2013," January 1, 2013, http://www.cbo.gov/sites/default/files/cbofiles/attachments/American%20Taxpayer%20Relief%20Act.pdf.

[59] This count excludes the repeal of the requirement that terminals selling diesel fuel and kerosene must sell both dyed and undyed fuel.

[60] Katy O'Donnell, "Extenders Are Part of the Long Game in Tax Overhaul," *Roll Call*, July 16, 2014, http://www.rollcall.com/news/-234880-1.html?pg=1&dczone=policy.

atives from either party often have the power to block Congress from approving longer term or permanent extensions. A second reason tax extenders persist is also related to money. Tax extenders represent a lobbying opportunity.[61] By the mid-1990s, as extenders had become tax policy "business as usual," critics began to highlight the fundraising opportunities provided by the extenders process.[62]

Industry groups that benefit from particular tax extender provisions hire lobbyists to ensure their targeted tax benefits are renewed. With extenders regularly scheduled to sunset, by the time one extension is passed, it is time to start pushing for the next round. Tax law professor Victor Fleischer recently wrote that "lobbying over tax extenders is today's Gucci Gulch. The practice can be viewed as an innovative method for legislators to extract campaign contributions from interest groups and exert influence at a time when committee power is generally weak."[63]

Concluding Remarks

Congress' requiring of annual tax expenditure estimates brought attention to "spending through the tax code" in the form of tax breaks. The increased visibility of tax expenditures put pressure on Congress to limit their use, or, at the very least, limit their cost. Although late 1970s efforts to enact legislation that would sunset all tax expenditures was ultimately unsuccessful, for various reasons, sunsets began to find their way into newly enacted tax expenditures. With multiple provisions expiring at the same time, Congress enacted what might be considered the first "tax extenders" package in 1988, temporarily extending a group of expiring tax provisions.

The "opportunity for review" provided by sunsets is often given as a rationale for having temporary tax provisions. While this may have been the case when certain tax expenditures were first adopted, the budget rules Congress imposed on itself ultimately contributed to what is now a regular "tax extenders" ritual. In the wake of the surpluses of the late 1990s, budget rules were relaxed and fiscal discipline became less stringent. It was during the 2000s, in the tax-policy era following the 2001/2003 tax cuts, the number of temporary tax provisions included in the code substantially increased.

In recent years, tax extenders have regularly been extended without being paid for. The willingness for Congress to enact deficit-increasing tax cuts in recent years, however, does not mean that the extenders are likely to be made permanent. While recently there have been renewed efforts in the House to make certain extenders permanent, this effort is being driven by policy principals as well as budgetary rules.

---

[61] Legal scholar Rebecca M. Kysar has explored political-economy concerns related to sunsets in the tax code, particularly as related to lobbying and rent-seeking activities. See Kysar, "The Sun Also Rises: The Political Economy of Sunset Provisions in the Tax Code," pp. 335–405 and Rebecca M. Kysar, "Lasting Legislation," *University of Pennsylvania Law Review*, vol. 159 (2011), pp. 1007–1068.

[62] "Lobbyists See New Daylight for Extenders," *Tax Notes Today*, March 19, 1995. Jill Barshay, "Temporary Tax Breaks Usually a Permanent Reality," *CQ Weekly*, November 15, 2003, p. 2831.

[63] Victor Fleischer, *Tax Extenders*, San Diego Legal Studies, Paper No. 14–159, April 24, 2014.

Policymaking in practice is more than simply thinking about "good policy." Policy is made in a complex political environment. In the case of tax extenders, budget rules and procedures played an important role in the development of the practice. External forces have a vested interest in maintaining the status quo. Thus, in the case of tax extenders, tax policy principals are not the only factors driving congressional tax policymaking.

Appendix. List of "Tax Extenders" Legislation

There is no formal definition of "tax extenders" legislation. Over time, "tax extenders" legislation has come to be considered legislation that temporarily extends a group of expired or expiring provisions. Using this characterization, below is a list of what could be considered "tax extenders" legislation. Using this list, tax extenders have been addressed 15 times. The package of provisions that are included in the tax extenders has changed over time, as Congress has added new temporary provisions to the code, and as certain provisions are either permanently extended or given temporary extension on other tax legislation.

- American Taxpayer Relief Act of 2012 (P.L. 112–240)
- Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111–312)
- Emergency Economic Stabilization Act of 2008 (P.L. 110–343)
- Tax Relief and Health Care Act of 2006 (P.L. 109–432)
- Working Families Tax Relief Act of 2004 (P.L. 108–311)
- Job Creation and Worker Assistance Act of 2002 (P.L. 107–147)
- Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106–170)
- Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (P.L. 105–277)
- Taxpayer Relief Act of 1997 (P.L. 105–34)
- Small Business and Job Protection Act of 1996 (P.L. 104–188)
- Omnibus Budget Reconciliation Act of 1993 (P.L. 103–66)
- Tax Extension Act of 1991 (P.L. 102–227)
- Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508)
- Omnibus Budget Reconciliation Act of 1989 (P.L. 101–239)
- Technical and Miscellaneous Revenue Act of 1988 (P.L. 100–647)

The Dynamics of Congressional Policymaking: Tax Reform

JANE G. GRAVELLE
Senior Specialist in Economic Policy

It is often suggested that an overhaul of the tax code is badly needed and that a reform similar to that achieved in 1986 is needed. But what is often overlooked is how rare comprehensive tax reform is and, especially, what conditions are associated with it. Normally major changes are implemented by Congress only after crises, such as war or economic upheaval. At the very least, preconditions for reform include Presidential leadership, insulation from political pressures, strong congressional leadership, and effective messaging—as pertained in 1986. Currently these factors are largely absent, and, along with more limited options for broadening the base, make the prospects for reform much dimmer than many have asserted.

Introduction

The current drive for income tax reform might be dated from the formation of the President's Bipartisan Fiscal Commission (informally known as the Simpson-Bowles Commission [1]) in February 2010.[2] Although the fundamental purpose of the commission was to deal with the deficit, it also had tax reform objectives. The commission's proposal in December 2010,[3] however, included only a few specific income tax base-broadening provisions, with a general reference to eliminating tax expenditures. It is possible, also, to look further back for the roots of the current tax reform movement. President Bush established a commission on tax reform in January 2005. The detailed report was issued at the end of 2005.[4] Beginning in 2005, Senator Ron Wyden introduced a series of detailed

[1] The cochairmen of the commission were former Senator Alan Simpson and Erskine Bowles, former Chief of Staff in the Clinton administration.

[2] Many legislative proposals use the term tax reform. In this analysis, following political scientist John Witte, tax reform is identified as a proposal where the legislative changes in tax expenditures that raise revenue exceed those that reduce revenue. See John F. Witte, "The Tax Reform Act of 1986: A New Era in Tax Politics?," *American Politics Research*, vol. 19, no. 4 (October, 1991), pp. 438–457.

[3] National Fiscal Commission on Fiscal Responsibility and Reform, *The Moment of Truth*, The White House, December 2010, http://www.fiscalcommission.gov/sites/fiscalcommission.gov/files/documents/TheMomentofTruth12_1_2010.pdf.

[4] The President's Advisory Commission on Tax Reform, *Simple, Fair, and Pro-Growth: Proposals to Fix America's Tax System*, 2005, http://govinfo.library.unt.edu/taxreformpanel/final-report/index.html.

tax reform proposals that would have broadened the revenue base.[5] Whether the tax reform effort is 9 years old or 4, the latest significant development is the introduction, in February 2014, of Ways and Means Committee Chairman Dave Camp's proposed draft legislation, the Tax Reform Act of 2014.[6]

The Tax Reform Act of 1986 (TRA86; P.L. 99–514), now almost 30 years old, has often been proposed as a roadmap for tax reform. To understand the lessons of TRA86 for the challenges of policymaking today, it is useful to consider current tax reform activity through the prism of history. A historical review provides a reference point for comparing the scope of change under consideration and the types of events that surrounded major changes in taxes in the past. Virtually all scholars who have studied the history of tax policy in the United States have concluded, to some degree at least, that tax changes tend to be limited and incremental during normal economic and social times.[7]

That view tends to portray TRA86 as an anomaly that required a convergence of a number of conditions that do not appear to exist in the current tax reform effort.[8] Among those conditions that have been identified as facilitating tax reform in 1986 are strong Presidential leadership, development of a plan without taking political pressures into account, beginning with a broad plan reflecting basic reform principles, and sheer luck. Moreover, in 1986 many more potential base-broadening provisions existed than is the case today. Especially with respect to the corporate tax, the 1986 revision could be said to have picked the low hanging fruit, making base broadening more difficult.

This brief examination of the history of taxation and the lessons it holds for today begins with the birth of the Nation and the financial crisis the young country's central government faced. It continues through upheavals such as war and depression. Before examining TRA86 and its implications for the current tax reform effort, the next section is a review of the relatively stable and peaceful environment that persisted from the end of World War II through the adoption of TRA86. After discussing post-1986 tax changes, the report compares conditions surrounding the current tax reform effort with those in 1986.

---

[5] These bills include, from the 109th Congress through the 112th, S. 1927. S. 1111, S. 3018, and S. 727.

[6] U.S. Congress, House Committee on Ways and Means, "Camp Releases Tax Reform Plan to Strengthen the Economy and Make the Tax Code Simpler, Fairer and Flatter," press release, February 26, 2014, http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=370987.

[7] The discussion of the early years of tax policy is based on a number of studies of the development of Federal taxes and the Federal income tax in particular. It includes Roy G. Blakey and Gladys C. Blakey, *The Federal Income Tax* (New York: Longmans, Green and Co., 1940); Randolph Paul, *Taxation for Prosperity* (Indianapolis: Bobbs-Merrill Company, 1947); Sidney Ratner, *Taxation and Democracy in America* (New York: Octagon Press, 1967); John F. Witte, *The Politics and Development of the Federal Income Tax* (Madison, Wisconsin: University of Wisconsin Press, 1967); Sheldon D. Pollack, *The Failure of U.S. Tax Policy* (University Park, PA: Pennsylvania State University Press, 1996); and W. Elliot Brownlee, *Federal Taxation in America*, 2d ed. (New York: Cambridge University Press, 2004).

[8] This view suggests that tax reform would be unlikely even if political polarization of Congress had not increased since 1986. For measures of increased polarization see Norman J. Ornstein et al., *Vital Statistics on Congress: Data on the U.S. Congress—A Joint Effort from Brookings and the American Enterprise Institute*, July 2013, http://www.brookings.edu/research/reports/2013/07/vital-statistics-congress-mann-ornstein. See also Drew DeSilver, *Partisan Polarization, in Congress and Among Public, Is Greater Than Ever*, Pew Research Center, July 17, 2013, http://www.pewresearch.org/fact-tank/2013/07/17/partisan-polarization-in-congress-and-among-public-is-greater-than-ever/.

Tax Regimes Through World War II

Historian Elliot Brownlee identifies only five major tax regime changes, each associated with an external financial crisis.[9] These crises include the constitutional crisis of the 1780s, the three great wars (the Civil War, World War I, and World War II), and the Great Depression.

A Taxing Power for the Central Government

The problems of a central government without the power to tax (and pay debts) became evident during the Revolutionary War and under the Articles of Confederation. It led to the formation of the first major tax regime. The Constitution provided the Federal Government authority to levy indirect taxes, such as tariffs and excise taxes. Through most of the early history of the Nation, the major source of tax revenue was tariffs. Internal taxes were unpopular with Western and Southern States, and an early excise tax on whiskey resulted in the "whiskey rebellion" of 1794 by farmers in the West and South. Taxes on distilled spirits, as well as most other excise taxes enacted by the Federalists, were repealed after Thomas Jefferson was elected President in 1800 (although they were temporarily reinstated during the War of 1812).

The Constitution limited the taxing powers of the central government by allowing direct taxes (the poll and property taxes levied by the States) only if apportioned by the census.[10] Whether that restriction was intended to apply to income taxes (which were not used at the time) is not clear. From time to time, the Federal Government used taxes apportioned by State population, including during the undeclared naval war with France (1798–1800), the War of 1812, and the Civil War.

The Civil War

The second major regime involved the need to finance the Civil War, which led to the adoption of the first income tax. Despite subsequent uncertainties about the constitutionality of the income tax, it was adopted in 1863 in the wake of rising war debt and declining tariff revenues. It remained in place until 1872. The Confederacy also adopted an income tax, although, according to Ratner, delays and failures in administration limited its effectiveness.[11]

The inclusion of the income tax was, according to Blakey and Blakey, forced on Thaddeus Stevens, chairman of the Ways and Means Committee, who "considered himself the ruler of the House."[12] Stevens had proposed a tax on land (apportioned by the census) and an increase in tariffs, both of which were seen by west-

[9] Brownlee, *Federal Taxation in America*.

[10] According to Brownlee (p. 20), there were fears that the central government could single out a particular industry or property to tax. Slaveholders were concerned about a tax on slaves, farmers about a tax based on acreage, and urban dwellers about a tax based on value. Ratner (p. 19) indicated that at the time direct taxes tended to be land and poll taxes, and the restriction was intended to prevent the wealthy industrial Northeast from putting the tax burden on sparsely populated agricultural States.

[11] See Ratner (pp. 100–110) for an analysis of finance in the Confederacy. War finance in the Confederacy is discussed in Gustavo A. Flores-Macias and Sarah Kreps, "Political Parties at War: A Study of American War Finance," *American Political Science Review*, vol. 107, no. 4 (November 2013), pp. 833–848.

[12] Blakey and Blakey, *The Federal Income Tax*, p. 4.

ern farmers as unfairly falling on them. The income tax partially offset the need for land tax revenues.

THE MODERN INCOME TAX AND WORLD WAR I

Brownlee does not consider the introduction of the income tax (the corporate tax in 1909 and the individual tax in 1913) as a major regime change; in his view, it was a small, almost token, tax at the time. Brownlee states that World War I provoked a new tax regime (see below). Others attach more significance to the birth of the modern income tax. It came about in a surprising fashion, with the first corporate tax enacted during Republican control of the government. These scholars attach considerable importance to the growing populist sentiment for an income tax.

In 1894 an income tax had been adopted in the wake of the depression following the 1893 panic, but it was found unconstitutional by the Supreme Court in 1895.[13] For years, southern and western Senators and Representatives introduced income tax proposals as many viewed the 1895 Supreme Court decision overturning the 1894 income tax to be in error. In 1909 a group of insurgent Republicans joined with Democrats to increase pressure for an income tax. While they did not prevail in the House under the iron rule of Speaker Joseph Cannon, they appeared likely to win a vote for an income tax in the Senate. Nelson Aldrich, chairman of the Senate Finance Committee, appealed to President Howard Taft. The positive response by President Taft contributed to the eventual compromise that led to the adoption in 1909 of the first corporate income tax. The corporate tax was introduced by Representative Sereno Payne (majority leader and chairman of the Ways and Means Committee) and Senator Aldrich in the Payne-Aldrich Tariff Act.[14] The corporate tax and a proposed constitutional amendment to allow income taxes were advanced—with the support of President Taft and conservative Republicans—to deflect the growing pressure to enact a general income tax.[15] The proposed constitutional amendment was viewed by many who supported it as a "harmless gesture"; they believed that the amendment would not be ratified.[16]

Upon ratification of the Sixteenth Amendment in 1913, an income tax was enacted that year during the Wilson administration. It affected only high-income families. (The exemption for married couples was $538,000 in 2005 dollars.[17]) Rates ranged from 1 percent to 7 percent. The 1909 corporate tax had a significant exemption, but the 1913 tax had no exemption, with a rate of 1 percent in both cases.

According to Brownlee, the third crisis that produced a tax regime change was the fiscal demands of World War I. The war

[13] *Pollock* v. *Farmers' Loan and Trust Company*, 157 U.S. 429 (1895).

[14] Aldrich stated, "I shall vote for a corporation tax as a means to defeat the income tax." See Bennett D. Baack and Edward John Ray, "Special Interests and the Adoption of the Income Tax in the United States," *Journal of Economic History*, vol. 45, no. 3 (September 1985), p. 624.

[15] An account of the 1909 congressional deliberations that led to the corporate income tax is presented in considerable detail in Ratner, *Taxation and Democracy in America*, pp. 265–297, and in Blakey and Blakey, *The Federal Income Tax*, pp. 22–59.

[16] Paul, *Taxation for Prosperity*, p. 19.

[17] Jane Gravelle and Jennifer Gravelle, "Taxing Poor Families: The Evolution of Treatment under the Federal Income Tax," *Connecticut Public Interest Law Journal*, vol. 7 (2008), p. 37.

transformed a small, insignificant income tax into an important one. Consider changes in the Revenue Act of 1916. That act, adopted during the Wilson administration, increased tax rates on high-income Americans and corporations, including an excess profits tax on munitions makers. The excess profits tax was subsequently expanded and extended to all businesses, and the top rate of the individual tax, which began at 7 percent in 1913, rose to 67 percent by 1917. The excess profits tax financed two-thirds of the cost of the war.[18]

There is some dispute among scholars as to whether the demands to break corporate privilege and "soak the rich" also played a role in the taxes on the wealthy and corporations. Brownlee supports that view. With respect to the corporate tax, he states that "the question became one of whether the modern corporation was the central engine of productivity, which tax policy should reinforce, or whether it was an economic predator, which tax policy could and should tame."[19] Views of the corporate tax that echo these issues are part of the current tax reform debate, especially with respect to multinational corporations.

Professor John Witte disagrees with the view that a "soak the rich" ideology, as opposed to revenue needs, played a role; he cites the financing demands of World War I and finds little evidence for a redistributional motive.[20]

After the war, Republicans came to power and began the Mellon tax cuts of the 1920s (guided by Secretary of the Treasury Andrew Mellon). The excess profits tax, strongly opposed by business, was repealed, and top individual tax rates were cut (eventually from 73 percent to 24 percent). The ordinary corporate tax rate was retained. Yet the income tax was now an important revenue source, surpassing the previously dominant customs collections. The income tax was firmly ensconced in the Federal revenue system.

THE GREAT DEPRESSION

The Great Depression, according to Brownlee, was the fourth crisis that led to significant increases in income tax rates. As revenues dropped due to the reduction in economic activity and deficits increased, additional revenue was sought. (Note that current economic theory would counsel against such a tax increase in a depression, but at this time, the opposite view was dominant.) Individual income tax rates that had ranged from 1 percent to 25 percent were increased to 4 percent to 63 percent. Corporate rates were increased modestly, but exemptions (which had reappeared) were eliminated. An attempt to adopt a sales tax, proposed by Mellon and supported by President Hoover, was characterized by Ratner as a conflict between the "soak the rich" and sales tax advocates. It was soundly defeated in the House.[21] Instead, income taxes under President Hoover were increased in the Revenue Act of 1932. A number of tax increases were enacted during the De-

[18] Brownlee, *Federal Taxation in America*, pp. 64–65.
[19] Ibid., p. 61.
[20] Witte, *The Politics and Development of the Federal Income Tax*, pp. 81–82. Brownlee (p. 60) describes influence of a group of Democratic insurgents (led by Representative Claude Kitchens of North Carolina, chairman of the House Ways and Means Committee) to focus wartime finance on income taxes for the wealthy and corporations.
[21] Ratner, *Taxation and Democracy in America*, p. 446.

pression, including higher corporate and individual income taxes, additional excise taxes, and payroll taxes to finance Social Security.

WORLD WAR II

World War II transformed the landscape of taxation, converting the individual income tax from one confined largely to higher income taxpayers to a mass tax via several tax increases. Perhaps the most important tax increase was enacted in 1942. The number of taxable individuals rose from 3.6 million in 1939 to 42.6 million in 1945 and the revenues from $2.2 billion to $35.1 billion.[22] Legislation also substantially increased the corporate tax rate from a top rate of 19 percent to 40 percent. The changes in taxes, unlike those in World War I, were barely drawn back after the end of the war. By 1946, singles and small families below the poverty level paid income taxes. Individual income tax rates ranged from 19 percent to 86 percent.[23]

Post-World War II to the 1986 Tax Reform Act

Brownlee views the World War II changes as the last of the five major tax regimes.[24] (Legislation since that time he categorizes as falling within a widely imposed income tax regime.) The period since World War II, as suggested by Witte as well, has also been characterized largely by incremental changes, including a long period when additional revenues from inflation and bracket creep were offset with tax reductions or the expansion of tax preferences. Witte argues that "the legislative process seems effectively to filter out most proposals for radical changes in structure."[25]

Compared to the drama of the first half of the 20th century, the tax revisions of the next 40 years were modest. The corporate rate was increased after World War II and then hovered at around 50 percent during most of this period until 1986. Very high top individual rates (reaching 91 percent in the late 1950s and early 1960s) were in place. As inflation accumulated and accelerated, bracket creep from the graduated income tax yielded a fiscal dividend that was used for rate reduction (as in 1964 when individual tax rates of 20 percent to 91 percent were reduced to 14 percent to 70 percent). Responses to the fiscal dividend often resulted in bestowing tax benefits of various types to serve private interests.

Between World War II and 1986, individual income taxes were about 8 percent of gross domestic product (GDP), and that is where they stand currently. Bracket creep was offset by tax cuts. Professor Sheldon Pollock characterized this process of adjusting to bracket creep as "pluralistic incrementalism." Because lawmakers act in multiple roles (representing constituents, party, and national policy) they can, in this view, undermine the stability and coher-

[22] Brownlee, *Federal Taxation in America*, p. 115.

[23] See Gravelle and Gravelle, "Taxing Poor Families," p. 43 for exemptions and poverty levels by family size.

[24] Other historical analyses accept a broader scope for events and external forces that caused disruptions in the "normal" environment. They cite the adoption of property taxes (and consideration of an income tax) during the undeclared naval war with France and the War of 1812. (The Mexican War was fought during an era of robust growth and, thus, robust tariff revenues.) The Nation also adopted an income tax in 1894, during the depression in the aftermath of the panic of 1893, but it was almost immediately found unconstitutional by the Supreme Court.

[25] Witte, *The Politics and Development of the Federal Income Tax*, p. 246.

ence of the tax system.[26] The outcome, he argues, is a growth in tax preferences or the equivalent of spending through the tax system, currently referred to as tax expenditures.

One example of the presumably unintended consequences of this uncoordinated and incremental policymaking is that the cumulative effects of bracket creep, along with long periods with basic personal exemptions and standard deductions remaining unchanged, led to a tax eventually being imposed on those below the poverty level.[27]

Another consequence was the decline in the importance of the corporate tax. Bracket creep did not affect corporate revenues where income is largely taxed at a flat rate. Nevertheless, corporations were recipients of tax preferences from the fiscal dividend as well, notably the investment credit enacted in the 1960s.[28] At the end of World War II, the corporate tax ranged from 4 percent to 6 percent of GDP, eventually declining to around 2 percent (where it stands today).

Witte argues that before the 1980s only one act—the Tax Reform Act of 1969 (P.L. 91–172)—could be considered tax reform. He considers the 1982 and 1984 acts as tax reform, although many of their provisions rolled back items that were adopted in 1981 (legislation he refers to as anti-tax reform). All of these, in his view, are dwarfed by TRA86.[29]

Many view TRA86 as the tax legislation that stands out in the post-World War II era. Also important to note is the Economic Recovery Tax Act of 1981 (ERTA; P.L. 97–34), which dramatically altered the policymaking process. It largely ended bracket creep due to inflation by indexing the rate structure.[30] This action terminated, by and large, the era of easy finance and continual tax cuts. Income taxes could still rise relative to GDP with real growth and could rise or fall with income redistribution. However, the effects of inflation on bracket creep, which were significant in the late 1960s and 1970s, no longer played a major role in influencing tax policy.

The most significant changes since the end of World War II, according to Brownlee, occurred during the Reagan administration and culminated with TRA86 (in President Reagan's second term).[31] In particular, Brownlee asserts that for the first time since World War II, TRA86 picked losers as well as winners. He does not perceive the act as a major taxation regime change, but he does recognize its importance as a consequential tax law.

The Tax Reform Act of 1986

The supporters of tax reform sometimes refer to TRA86 as an example of how reform might be accomplished. This reform was not triggered by external crises. Significant budget problems had arisen as a result of tax cuts and increased spending in the early

[26] Pollock, *The Failure of U.S. Tax Policy*, p. 267.
[27] Gravelle and Gravelle, "Taxing Poor Families."
[28] The investment credit was first enacted as a permanent provision, then a temporary one, and then a permanent one again.
[29] Witte, "The Tax Reform Act of 1986," p. 443.
[30] The personal exemption was not indexed, although that revision occurred in TRA86.
[31] History demonstrates that many Presidents find it difficult to enact consequential legislation in their second terms. TRA86 was an exception.

1980s, but TRA86 was not aimed at raising revenue; it was revenue neutral (at least in the budget horizon).[32] It was also not focused on redistribution; it was largely distributionally neutral.

TRA86 is well known as an achievement of tax reform because it was so unusual. The introduction by Albert Hunt to the book chronicling the passage of the act, *Showdown at Gucci Gulch*, stated: "The saga was all the more dramatic because it was unlikely."[33] The authors of the book, Jeffrey Birnbaum and Alan Murray, state in the epilogue: "How did it happen? What created this legislative miracle that defied all the lessons of policy science, logic and history?"[34] Pollack writes that TRA86 "has been widely hailed as . . . the most significant tax reform legislation in the history of the federal income tax."[35]

What did TRA86 do that was so remarkable? In understanding its achievement, it is important to remind ourselves of the lessons of history as presented, for example, by Brownlee. There was no fiscal crisis, no war, no depression to spur the legislation on, and it raised no revenue. By virtue of doing so, it had to pick losers to finance the gains of others. There was some public support for tax reform amid stories of corporations paying no tax and high-income individuals on expense accounts and investing in tax shelters. Tax reform never became, according to Birnbaum and Murray, an important issue with the public. It did, however, face hordes of special interests and lobbyists seeking to preserve their preferences. TRA86 was an anomaly. It was the first time in the then 75-year history of the modern income tax that external causes did not prompt major tax reform, and it has not been repeated for another 28 years.

TRA86's revisions for the individual income tax included lowering the top marginal tax rate from 50 percent to 28 percent (although there was a 33 percent bubble due to phaseouts) and flattening the rate structure to two statutory rates.[36] It also removed those below the poverty line from the tax (except for singles), indexed elements of the earned income credit that had been initially adopted in 1975, and mitigated the tax burden for lower income families just above the poverty line by increasing the personal exemption and standard deduction.[37]

These cuts were paid for by base-broadening provisions that included eliminating the itemized deductions for consumer credit and State and local sales taxes, capping the mortgage interest deduction, converting certain small deductions to itemized deductions, and adding floors to some itemized deductions. It eliminated indi-

---

[32] A number of provisions in the bill had largely transitory revenue gains, and these provisions were associated with higher incomes and businesses. Thus TRA86 was not revenue neutral or distributionally neutral in the long run, although it was nearly so. See Jane G. Gravelle, "Equity Effects of the Tax Reform Act of 1986," *Journal of Economic Perspectives*, vol. 6, no. 1 (winter 1992), pp. 27–44 for a discussion. This issue was not discussed during consideration of the act.

[33] Albert Hunt, introduction in Jeffrey H. Birnbaum and Alan S. Murray, *Showdown at Gucci Gulch: Lawyers, Lobbyists, and the Unlikely Triumph of Tax Reform* (New York: Random House, 1987).

[34] Birnbaum and Murray, *Showdown at Gucci Gulch*, epilogue.

[35] Pollack, *The Failure of U.S. Tax Policy*, p. 100.

[36] A bubble occurs with tax benefits, such as exemptions or lower rates, that are phased out. The loss of benefits as income rises is the same as a tax rate increase during the phaseout period.

[37] C. Eugene Steuerle, *The Tax Decade* (Washington, DC: Urban Institute Press, 1992), pp. 122–126; Gravelle and Gravelle, "Taxing Poor Families."

vidual retirement accounts (adopted in 1981) for higher income individuals with employer pensions. The flatter rate structure also led to eliminating income averaging and the second-earner deduction. It restricted tax-exempt State and local private activity bonds to limited uses and reined in tax shelters by adding limits on deductions of passive losses. These restrictions on passive losses, along with taxing capital gains at ordinary rates, were the major provisions offsetting rate reductions for high-income individuals.

The changes in corporate (and business) taxes were, in some ways, more significant. ERTA included more rapid depreciation methods,[38] which, combined with investment credits, produced negative tax rates for investment in equipment. The 1982 act reversed some of these provisions, but nevertheless, effective tax rates on equipment were 8 percent prior to TRA86, even though the statutory tax rate was 46 percent. Structures were effectively taxed at 34 percent and inventories at 54 percent. Repealing the investment credit and slowing depreciation slightly, combined with cutting the corporate tax rate to 34 percent, brought these tax rates much closer together (30 percent, 32 percent, and 41 percent).[39]

Witte summarizes the evaluation of the act by tax scholars, noting that many of them were as enthusiastic as politicians and reporters. Some, however, feel the historic importance of the act is overstated. Witte suggests that this view results largely from comparing the act to what theoretically could be accomplished, which is an unrealistic standard to judge a single piece of legislation against.

As Witte describes,[40] most scholars see TRA86 as an anomaly or an epiphenomenon in which political and economic factors intersected to create a unique environment that permitted tax reform.[41] One economic factor was revenue neutrality. As a result of the fiscal deficit and the indexing of rate brackets, tax reform could not reduce taxes across the board, as had been the case in prior legislation. These factors, it is argued, repressed the temptations to add on tax breaks to a reform bill.[42]

---

[38] Depreciation allows the costs of assets that wear out to be deducted over time; when depreciation is allowed at a faster rate than the actual loss in value of the asset, a subsidy results that lowers effective tax rates.

[39] See estimated tax rates in Jane G. Gravelle, *The Economic Effects of Taxing Capital Income* (Cambridge, MA: MIT Press, 1994), p. 54. These rates are effective tax rates on new investment measuring the estimated share of the rate of return that is paid in taxes as a function of statutory tax rates, depreciation provisions, and investment subsidies.

[40] This discussion is based on Witte, although Witte cites other scholars. See discussion in Witte, "The Tax Reform Act of 1986."

[41] Witte describes some alternative ways to view TRA86. One is a pendulum swing theory: the notion that tax reform was a reaction to policy moving too far in the other direction, beginning in the late 1970s and followed by ERTA. This view would predict a revival of pressures to expand tax expenditures. The other view is of TRA as a policy watershed where the country would embark on a continued path of tax reform. The brief review of post-1986 history in the next section suggests that neither of these hypotheses appear to be the case. Some backpedaling occurred, but it was small and did not affect corporate and business reforms or tax shelters, nor did the country embark on further tax reform.

[42] Two other factors were (1) the agreement that marginal rates be cut substantially and (2) the desire to reduce taxes for the majority of individuals, which could be achieved only by increasing taxes on corporations and base broadening for high-income taxpayers. The dramatic reductions of corporate tax in ERTA, along with instances of large firms paying little or no taxes, made an increase in corporate taxes seem appropriate. (Corporate taxes had already fallen from 5 percent of income in the postwar era to 2 percent; after ERTA, they were 1.5 percent.) Similarly, ERTA and the growth of tax shelters had made individual tax expenditures less defensible.

As for political factors, there is virtually unanimous agreement that leadership and support by a powerful and popular President, Ronald Reagan, was crucial.[43] While there were earlier congressional proposals (Senator Bill Bradley and Representative Dick Gephardt produced a proposal in 1982), these proposals did not gain traction for tax reform until the President supported these efforts. Hunt, in his introduction to *Showdown at Gucci Gulch*, identifies Bradley (as well as Reagan) as a pivotal figure: "At every critical juncture Bradley stepped in to provide an important push; rarely has a legislator with no formal leadership role or committee chairmanship played such an instrumental role in a major piece of legislation."[44] The 1984 report President Reagan commissioned from Treasury became the basis of negotiations between Congress and the White House. (In fact, Treasury produced two reports: Treasury I proposed an outright repeal of 38 of 105 tax expenditures. It was never sent to Congress. Treasury II was a milder version of Treasury I.) The President continued to support the basic principles in Treasury I throughout congressional deliberations.[45]

His support led to a response from Democratic leaders (Speaker Tip O'Neill and Ways and Means Chairman Dan Rostenkowski), who were not willing to concede the tax reform issue to the White House but embraced it. President Reagan reportedly also helped persuade 54 House Republicans to change their votes, permitting the bill to be adopted. The views described by Witte about the importance of the President were held by not only Witte and other scholars of the day—including Birnbaum and Murray—but also present-day tax historians. Historian Joseph Thorndike, for example, states that "tax reform is the sort of heavy political lift that really does depend on presidential leadership. White House support is necessary, even if it's not sufficient."[46]

Witte also cites the political approach at the Treasury Department of aiming for a comprehensive plan rather than a listing of loopholes. He also notes that many observers point to leadership in the White House, Treasury, and Congress, including the tax experts at Treasury and the chairmen of the tax writing committees, Representative Rostenkowski and Senator Bob Packwood. In particular, observers cite Packwood's support for tax reform when his committee was moving the other way.

At the conclusion of his article, Witte identifies three particularly important factors that facilitate tax reform. The first is the support of the President, preferably a popular one, which he considers essential for success. The second is the development of tax reform in a way that is relatively insulated from the political process. (The 1984 process was a more closed and controlled one than had been the case in the past.) The third is beginning the process with a

---

[43] This view is held by Witte and the tax scholars he references.

[44] Hunt, introduction in *Showdown at Gucci Gulch*, p. xiv.

[45] The commissioning of the report was originally motivated by a concern that the Democrats would appropriate tax reform as an issue in the Presidential campaign. See Pollack, *The Failure of U.S. Tax Policy*, p. 99. Pollack suggests that most Members did not take this initiative seriously. Some Democratic Members even laughed during the President's 1984 State of the Union speech when he mentioned tax reform. But after that, tax reform took on a life of its own.

[46] See Joseph Thorndike, "The Last Time Everyone Gave Up on Tax Reform, It Actually Happened," *Forbes*, March 13, 2014, http://www.forbes.com/sites/taxanalysts/2014/03/13/the-last-time-everyone-gave-up-on-tax-reform-it-actually-happened/.

broad-based comprehensive package that changes the landscape from "politics as usual." The package, says Witte, must be broad enough that blocking the reforms and proposing antireform changes can be deflected by an appeal to collective sacrifice.

Despite these conditions that permitted the Tax Reform Act of 1986 to succeed, luck appeared to play a role as well. Birnbaum and Murray chronicle the many points where tax reform could have been derailed. President Reagan might not have proposed the tax reform study if he (and his strategist James Baker) had not feared in 1984 that the Walter Mondale Presidential campaign would appropriate the issue.[47] The reaction by special interests to Treasury I could have persuaded the President to let the plan die. Tax reform almost stalled in the Ways and Means Committee when an amendment to restore a banking tax benefit was adopted. The process eventually continued with a withdrawal of that amendment but also an agreement to retain the itemized deduction for State and local taxes to gain further support in the committee. Senator Packwood was ready to abandon tax reform after the Senate Finance Committee began voting to restore preferences; he reportedly changed his mind after the famous "two pitcher" lunch at the Irish Times restaurant.[48]

In sum, tax reform appeared to rest not only on the right economic and political conditions but also on chance.

Policies Since the 1986 Tax Reform Act

Some backpedaling on TRA86 occurred in the next 28 years, but it was small and hardly touched the corporate and business reforms or tax shelters.[49] Nor has the country embarked on a continuation of tax reform. Rather, most of the period since TRA86 has seemed to focus on incremental tax changes but without the continual revenue gains from inflationary bracket creep that turned most tax changes into tax cuts.

In the George H.W. Bush administration, interest focused on rolling back the higher taxes on capital gains. This focus was based on arguments not central at the time of TRA86: that the taxes on additional realizations of gain induced by lower capital gains tax rates would offset or more than offset the revenue loss.[50] Some of the initial empirical estimates by economists of these realizations responses were very large. However, as analytical techniques were refined, the estimates tend to become smaller. Treasury argued that a capital gains tax cut to 20 percent would raise, not lose, revenue. The Joint Committee on Taxation began to use large behavioral estimates in its revenue estimates, although they were not

---

[47] In 1982, a proposal for a broad-based, low-rate tax reform had been introduced by Senator Bradley and Representative Gephardt, which was a ready-made plan the Democrats could endorse.

[48] At that lunch, Senator Packwood and his aide decided to propose a bold proposal with two rates and a low top rate.

[49] In 1993 the depreciation period for nonresidential buildings was increased to pay for exempting realtors from the passive loss restriction. Also, as noted, the 34 percent corporate tax rate was increased to 35 percent.

[50] ERTA had been partly fueled by supply-side arguments that claimed that induced economic growth would offset much of the tax cut. This realizations argument was a more narrow type of supply-side argument that could be more easily justified.

large enough to raise revenue but only not to lose much.[51] In 1990, in a bill that raised revenue, the 33 percent bubble introduced in TRA86 was eliminated and the 15 percent, 33 percent, 28 percent marginal rate structure was replaced by a 15 percent, 28 percent, 31 percent structure. Capital gains, however, were capped at 28 percent.

In 1993, during the Clinton administration, continued concerns about the deficit resulted in legislation that increased tax revenues. These revenues were obtained largely through rate increases. Two tax rates of 36 percent and 39.6 percent were added, and the corporate rate was raised to 35 percent.

Some reversals happened in 1997, but they were delayed and small and did not touch TRA86's corporate and business reforms or tax shelters. The 1997 changes resulted in part from a promise by the President to cut taxes but also because Republicans controlled Congress, and they advocated tax cuts. A rapidly growing economy that pushed up income tax revenues facilitated a tax cut that was the largest since 1981 (although it was much smaller: only 0.3 percent of GDP). The 1997 legislation cut the capital gains tax to 20 percent, increased the income limits on individual retirement accounts, and introduced the child credit and tuition tax credits.

Robust economic growth and shifts in the income distribution led to higher income tax revenues. (Individual income tax receipts rose to 9.9 percent of GDP in 2000.) This growth in revenues resulted in another round of tax cuts, this time in 2001 under the George W. Bush administration. Cuts were largely in the form of rate reductions at the top. The top income tax rate was reduced to 35 percent, and the next three highest tax rates were cut by 3 percentage points. The tax cut (which was about 1.5 percent of GDP, compared to ERTA, which was about 4 percent of GDP)[52] was phased in and was to sunset after 10 years to avoid the Byrd rule in the Senate. This budget rule, named after Senator Robert C. Byrd of West Virginia, allowed a point of order against any legislation that increased the deficit outside the 10-year budget window. Another tax cut, reducing tax rates on capital gains and dividends, was enacted in 2003. The individual income tax slipped to 6.7 percent of GDP by 2004, although it recovered, standing at 7.8 percent in 2007.[53]

In 2007, a developing financial crisis and subsequent recession led to the enactment of a series of largely temporary tax cuts to combat the recession, including one under the Bush administration in 2008 and one under the Obama administration in 2009. Tax reform as an issue did not become a significant part of the legislative agenda until 2010. It remained an important topic of debate along with issues surrounding the slow recovery, the expiring tax cuts, and concerns about the deficit and future growth of the debt.

---

[51] See CRS Report R41364, *Capital Gains Tax Options: Behavioral Responses and Revenues*, by Jane G. Gravelle, for a discussion of current empirical evidence.

[52] C. Eugene Steuerle, "The 2001 Tax Legislation from a Long Term Perspective," *National Tax Journal*, vol. 44 (September 2001), pp. 427–432.

[53] President Bush also commissioned a study of tax reform, which was released in 2005. It contained a detailed blueprint, but no further action was taken. See the President's Advisory Commission on Tax Reform, *Simple, Fair, and Pro-Growth: Proposals to Fix America's Tax System*, 2005, http://govinfo.library.unt.edu/taxreformpanel/final-report/index.html.

Tax Reform Developments, 2009–2014

THE 111TH CONGRESS (2009–2010)

During the first 2 years of the Obama administration, Democrats controlled Congress. There was no action on tax reform as Congress and the administration focused on enacting the President's health overhaul plan and antirecession stimulus proposals and dealing with the 2010 expiration of the Bush tax cuts (ultimately resolved with a 2-year extension). The President, however, included specific revenue-raising provisions in his first and successive budget outlines. Those provisions largely concerned corporations, mainly focusing on provisions to increase the taxation of foreign source income and income from fossil fuel production. He has also proposed some individual provisions, including limiting the value of itemized deductions for high-income taxpayers and taxing certain earnings of investment fund managers ("carried interest") as ordinary income rather than as capital gains.[54]

The President also commissioned a report on tax options relating to simplification, compliance, and corporate taxation in March 2009, originally to be issued in December 2009. This report was delayed and eventually issued in August 2010. This report was also prepared by a commission, not Treasury, and was not a tax reform proposal but a review of options.[55] It received relatively little attention.

The Fiscal Commission, established by Executive Order 13531 in February 2010, was a bipartisan commission composed of 18 members, mostly from Congress but also private individuals, including the cochairmen.[56] Its objective was to deal with the deficit. At the end of 2010, its report was issued, although without enough of a majority to recommend its proposals. The report was not a detailed tax reform proposal (as was Treasury I). It included a few specific tax changes as illustrations with a general proposal to eliminate tax expenditures and lower rates (but with rates raised as tax expenditures were retained). It proposed to raise revenues. This lack of specifics has been characteristic of much of the current tax reform drive.

THE 112TH CONGRESS (2011–2012)

Republicans took control of the House in the aftermath of the 2010 elections. Tax policy was still largely focused on policies to help the economy recover from the recession and resolution of the Bush tax cuts, slated to expire at the end of 2012.

President Obama called for an overhaul of the tax code for both individuals and corporations in his 2011 State of the Union Address, but he provided no specifics. The House-passed budget resolution under Budget Committee Chairman Paul Ryan proposed a

---

[54] The Treasury "Green Books" that outline tax proposals in the Presidents' budgets are at http://www.treasury.gov/resource-center/tax-policy/Pages/general_explanation.aspx.

[55] The President's Economic Recovery Advisory Board, *The Report on Tax Reform Options: Simplification, Compliance, and Corporate Taxation*, August 2010, http://www.whitehouse.gov/sites/default/files/microsites/PERAB_Tax_Reform_Report.pdf.

[56] See http://www.fiscalcommission.gov/ for information on membership. See National Fiscal Commission on Fiscal Responsibility and Reform, *The Moment of Truth*, The White House, December 2010, http://www.fiscalcommission.gov/sites/fiscalcommission.gov/files/documents/TheMomentofTruth12_1_2010.pdf.

revenue-neutral tax reform with the top corporate and individual tax rates set at 25 percent;[57] these proposals, which included no specific base-broadening provisions, continued to be included in subsequent House-passed budget resolutions. Both Ways and Means Chairman Dave Camp and Senate Finance Committee Chairman Max Baucus held hearings on a number of tax reform topics.

In October 2011, Chairman Camp released a proposal for a 25 percent corporate tax rate. His release also included a detailed draft proposal to establish a territorial corporate tax system—that is, to exclude active income of foreign subsidiaries from U.S. taxes.[58] Much of the detail of the plan was to craft options to limit artificial profit shifting (i.e., moving profits abroad that should be reported as U.S. income). The plan and the options were specific and in draft legislative language. The draft included no corporate base-broadening proposals.

In 2012, the President released a report outlining a framework for corporate tax reform.[59] Although this report was not a fully detailed proposal, it contained a number of specific base-broadening provisions that had generally appeared in the President's annual budget submissions to Congress. The President's report also proposed other corporate reforms in general terms, such as less generous depreciation and restrictions on interest deductions. In the international area, it proposed a minimum tax on each foreign subsidiary, although it did not specify at what level the tax was to be set. It proposed to lower the corporate tax to 28 percent and to 25 percent for manufacturing.

The Republican majority in the House was concerned with the deficit, which had grown significantly during the recession. At the end of 2011, Congress set up a "super committee" to deal with budget gridlock. The committee did not deal with tax reform.

The House budget resolution in 2012 continued to call for revenue-neutral tax reform with top rates of 25 percent. It added more details: only two rates, a repeal of the alternative minimum tax, and a territorial tax system for corporations.[60]

Most 2012 tax policy was preoccupied with the expiration of a number of tax and spending provisions, including the Bush tax cuts and some antirecession stimulus provisions. President Obama supported making the Bush tax cuts permanent except for incomes over $250,000. The cuts were eventually made permanent but with retention of the higher top rates on very high-income individuals (married couples with taxable income of $450,000 or more). There were also tax reform proposals by the Presidential candidates, including the Republican nominee, Mitt Romney. His plan, like many other proposals, did not indicate specific base-broadening provi-

[57] U.S. Congress, House Committee on the Budget, *The Path to Prosperity: Fiscal Year 2012 Budget Resolution*, http://budget.house.gov/uploadedfiles/pathtoprosperityfy2012.pdf.

[58] U.S. Congress, House Committee on Ways and Means, "Camp Releases International Tax Reform Discussion Draft," press release, October 26, 2011, http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=266168. Current law taxes income of foreign subsidiaries of U.S. firms, but the tax is deferred until the income is paid to the parent as a dividend. A territorial tax exempts this income.

[59] *The President's Framework for Business Tax Reform: A Joint Report by The White House and the Department of the Treasury*, February 2010, http://www.treasury.gov/resource-center/tax-policy/Documents/The-Presidents-Framework-for-Business-Tax-Reform-02-22-2012.pdf.

[60] U.S. Congress, House Committee on the Budget, *The Path to Prosperity: Fiscal Year 2013 Budget Resolution*, http://budget.house.gov/uploadedfiles/pathtoprosperity2013.pdf.

sions. Other than continued hearings, no further congressional developments in tax reform occurred.

THE 113TH CONGRESS (2013–2014)

Much more activity on tax reform began in 2013. Early in 2013, Ways and Means Committee Chairman Camp issued two more discussion drafts on financial products and small business. He also announced the formation of 11 bipartisan working groups to address different aspects of tax reform.[61] The Senate Finance Committee also set up working groups. Chairman Baucus and Ranking Member Orrin Hatch released a number of option papers. Subsequently, Baucus released staff discussion drafts on international taxation, tax administration, cost recovery and tax accounting, and energy taxation in November and December.[62] All but tax administration related to the corporate (or business) tax. The international taxation provisions proposed a current tax on foreign source income at a lower rate, similar to the proposals suggested in the Obama plan and likely to raise revenue from foreign source income. The intention of Chairman Baucus was to release additional discussion drafts.

The House-passed budget resolution continued to support revenue-neutral tax reform and a maximum corporate rate of 25 percent. The budget resolution no longer specified an individual top tax rate but suggested 25 percent as a target. The Senate-passed budget resolution for FY2014 specified revenue increases from taxes.

Camp had indicated plans to mark up a bill in 2013 but ultimately did not.[63] In February 2014, Camp released a draft of the bill. It appears unlikely that further action on tax reform will occur this year. For the individual tax, the proposal includes a number of provisions that tax reform analysts have advocated, such as eliminating personal exemptions, increasing the standard deduction and child credits, consolidating education benefits, and simplifying the capital gains and dividends tax preference. Camp's draft also reduces the earned income credit, increasing taxes on low income taxpayers in some cases. His proposal would also significantly reduce the number of itemizers by increasing the standard deduction, eliminating the deduction for State and local taxes, and curtailing or eliminating other itemized deductions. Chairman Camp's proposal also eliminates alternative minimum taxes, at a considerable revenue cost. The draft bill creates three rates: two regular rates of 10 percent and 25 percent and a surtax of 10 percentage points on modified income, leading to a top overall rate of 35 percent. The plan has a dramatic change in the corporate tax, eliminating the majority of tax expenditures while moving to a terri-

[61] See a list of actions taken by the Ways and Means Committee at http://waysandmeans.house.gov/taxreform/.

[62] See http://www.finance.senate.gov/newsroom/chairman/release/?id=4f681789-343a-401c-a752-516028838040.

[63] There was speculation about the cause of the delay, with various people blaming the inability to garner support in the committee, loss of time due to the government shutdown, and lack of a go-ahead from the leadership. See Lindsey McPherson, "Camp Hints at Tax Reform Delay as Baucus Weighs Options," *Tax Notes*, November 18, 2013, pp. 699–700.

torial system (with antiabuse provisions) and lowering the tax rate to 25 percent.

Senator Baucus, having announced in April 2013 that he would not run for reelection, was nominated to be Ambassador to China in November 2013 and resigned from the Senate on February 6, 2014. The new chairman, Senator Ron Wyden, has a history of interest in tax reform. He has reportedly wondered whether some of the ideas in his tax reform proposal, introduced as S. 727 in the previous Congress, could serve as the basis of tax reform efforts.[64] S. 727 was cosponsored with Senators Dan Coats and Mark Begich and has some similarities and some differences with the Camp proposal. Wyden's bill had a top individual rate of 35 percent and a top rate of 24 percent for corporations. Like the Camp proposal, S. 727 was designed to be revenue and distributionally neutral.[65] It also would have increased the standard deductions, but its major revenue raisers are from exclusions rather than itemized deductions. For the corporate tax, some revenue raisers are the same (such as slowing depreciation). The bill also would have disallowed deductions for the portion of interest reflecting inflation. A major difference with the Camp proposal is the ending of deferral so that income earned in foreign subsidiaries of U.S. firms would be taxed. This change, which is a major revenue-raising provision, stands in the opposite direction of Camp's territorial tax.

No further action on tax reform has occurred in this Congress. Instead, the tax writing committees focused on the tax extenders, a large group of tax provisions that regularly expire. In addition, on June 11, 2014, the Senate considered S. 2432, sponsored by Senator Elizabeth Warren, which called for a minimum tax on incomes of $1 million or more. This minimum tax, with a rate of 30 percent, would apply to a broader base. The bill failed on a procedural vote (56 to 38).

Beginning in the spring of 2014, Congress' attention turned to inversions, a growing tax avoidance practice employed by various businesses. The announcement by a number of U.S. firms of attempts or intentions to invert (i.e., move their headquarters abroad) by acquiring smaller foreign firms led to calls for legislation. While some argued that legislation tailored to this inversion problem was needed, others indicated that corporate reform to make the United States a more attractive location should be considered. The inversion problem increased Member and public interest in tax reform, or at least in corporate tax reform.

The future of tax reform will be affected by changes in the leadership of each Chamber. Camp, who is term-limited in his chairmanship, has announced he will not run for the 114th Congress. His replacement as chairman is uncertain. There is speculation that Ryan, now chairman of the Budget Committee and a consistent supporter of tax reform, might become chairman if the Re-

---

[64] Lindsey McPherson, "Wyden Previews Finance Committee's Tax Reform Plan," *Tax Notes*, April 7, 2014, p. 31.

[65] The revenue estimates for the proposal were prepared in 2010 for the previous year's version. At that time the Bush tax cuts were still temporary, and it lost revenue compared to the official baseline (which assumed expiration) but raised revenue compared to a current policy baseline assuming tax provisions would be made permanent. It appears roughly revenue neutral. The estimates are on Senator Wyden's Web page at http://www.wyden.senate.gov/download/?id=1ba9073f-9ee8-4f8b-a2e3-2b70ebc96d35&download=1.

publicans retain the majority in the House.[66] Similarly, Senator Wyden's tenure as chairman of the Senate Finance Committee will depend on the outcome of the 2014 Senate elections.

Comparison of the Current Tax Reform Terrain to 1986

Numerous political factors are considered to influence the success or failure of tax reform proposals. Professor Witte stressed three: (1) Presidential leadership, (2) some degree of insulation from political pressures, and (3) starting the tax reform debate with a comprehensive plan. In addition, congressional leadership and messaging are also critical to the fate of tax reform. As the following discussion suggests, these and other factors were present in 1986 but currently are not. In addition, the possibilities for base broadening are more limited today than they were in 1986, making the achievement of targeted lower tax rates virtually impossible.

PRESIDENTIAL SUPPORT

Many observers agree that the most important factor in the success of TRA86 was the active leadership of President Reagan. While President Obama has supported tax reform in principle, he has not proposed a plan for individual income tax reform. However, he appears to support using tax increases on high-income individuals for additional revenue. For business tax reform, he has some specific proposals, but many base-broadening provisions have not been spelled out, and cost estimates have not been provided. President Obama does not appear to consider tax reform a priority, and this factor alone would suggest to many tax historians that the prospects for tax reform in the 114th Congress seem murky at best.

DEVELOPMENT OF A PROPOSAL INSULATED FROM POLITICAL PRESSURE

The initial development of a comprehensive proposal relatively insulated from political pressure may contribute to eventual enactment of tax reform in some form. Noteworthy is that the path to tax reform has always occurred in Congress without Presidential involvement. In the House, Camp's 2014 proposal appeared to have considerable political input from hearings, invited comments on the territorial tax draft, and contacts with the working groups. At the same time, it is not clear how much these factors influenced legislation, although members of the working groups cite a number of provisions in Camp's bill influenced by them, such as keeping the tax preferences for oil and gas.[67] Senate Finance Chairman Baucus did not produce a draft bill. Instead, his staff prepared a limited number of discussion drafts, also a process that invites political input. In short, the process in 2014 was different from that which produced the first draft of TRA86, which was prepared by technical experts away from pressure of lobbyists.

---

[66] Brian Faler, "Paul Ryan Wants House Tax-Writing Gavel in 2015," *Politico*, December 17, 2013, http://www.politico.com/story/2013/12/paul-ryan-ways-and-means-committee-2014-101256.html. Ryan is currently the third-ranking member on the committee.

[67] Lindsey McPherson, "Ways and Means Working Groups Influenced Portions of Camp Tax Reform Draft," *Tax Notes Today*, March 18, 2014.

INITIATION OF A BROAD TAX PROPOSAL

A factor that contributed to TRA86's success was beginning the process with a comprehensive proposal that changed politics as usual (by suggesting collective sacrifice). The Camp draft is broad, although it is much narrower than President Reagan's Treasury I. It is not clear whether the guiding principle of the Camp draft was to improve the tax code or find revenue-raising provisions to permit predetermined conditions set in the House-passed budget resolution. Experts suggest that the budget resolution's provisions—revenue neutrality, a top tax rate of 25 percent, repeal of the alternative minimum tax, and a territorial tax—are almost impossible to comply with.[68]

LEADERSHIP IN CONGRESS

There is little doubt that leadership in Congress is critical to the fate of major tax reform measures. Recall the key roles in 1986 of Members such as Dan Rostenkowski, Bob Packwood, and Bill Bradley. It seems clear that Camp was a dedicated tax reformer who made the issue a top priority. He began working on tax reform in his 1st year as chairman by tackling the complex process of designing a territorial tax. Ultimately, he produced, with the aid of tax experts at the Joint Committee on Taxation and his own people, what was seen as impressive and detailed draft legislation. Yet he did not succeed in getting it to or through his committee. His counterpart in the Senate, Chairman Baucus, got a later start, with work beginning in 2013, but he had already announced in April that he would not run for reelection. Senator Baucus' early departure from the Senate as he was nominated for Ambassador to China basically ended his tax reform effort. However, his staff discussion papers offer some insight into what corporate revisions the Democrats might be willing to accept. The new Finance Committee chairman, Senator Wyden, expressed support for tax reform as he focused on an immediate issue when he became chair: the expiring tax provisions (or "extenders").

As a term-limited chairman, Camp has drawn the admiration of many observers for providing Members with a tax reform blueprint. Term limits mean that chairmen do not have the power they once had. One reporter writes: "There was a time when any proposal by the Ways and Means Committee chairman would be viewed as a blueprint for legislation that would most likely become law. In those days, chairmen sometimes seemed to serve forever . . . . Next year, under the rules of the House Republican Caucus, he [Camp] will have to step down after four years as chairman."[69]

A key difference from 1986 is that party leaders in today's House and Senate confront an array of difficulties that may limit their ability to back major tax reform. Compared to 1986, today the two parties are sharply divided in each Chamber. It is simply more difficult today compared to 1986 for House and Senate leaders to mobilize winning coalitions on consequential legislation.

---

[68] See subsequent discussion of limitations on base-broadening provisions.

[69] Floyd Norris, "Republican's Tax Plan Awkwardly Aims at Rich," *New York Times*, March 6, 2014, at http://www.nytimes.com/2014/03/07/business/economy/from-an-unexpected-source-a-tax-proposal-that-targets-the-rich.html.

In 1986, many Members in both parties and Chambers supported tax reform. House Speaker Tip O'Neill was one of Rostenkowski's strongest supporters.[70] Senate Majority Leader Robert Dole sat on the Finance Committee (and was a former chairman). As with many Finance members, he was skeptical of the prospects for tax reform. But he was involved in the process and embraced Packwood's new two-rate plan.[71]

In assessing today's prospects for tax reform, one reporter writes, "The Camp proposal seems unlikely to go anywhere, in no small part because the House Republican leadership has gone out of its way to distance itself from the proposal, praising Mr. Camp for his diligence and calling it worthy of consideration but not getting close to an endorsement." [72] Another writes that "when Baucus and Hatch released a Dear Colleague letter noting their plans to take a 'clean slate' approach to rewriting the tax code and soliciting ideas, [Senate Majority Leader Harry] Reid said he didn't even read the letter." [73]

MESSAGING

Ronald Reagan's statement in his 1984 State of the Union Message proposing a tax reform plan spoke generally of fairness, simplicity, and incentives to growth. Messages associated with the contemporary efforts do not have such broad appeal. The Fiscal Commission, which proposed to use part of the base-broadening provisions to offset the deficit, was not primarily focused on tax reform and did not specify provisions. The first message on tax reform by the newly elected (in 2010) House Republicans—the only group to have actually achieved a tax reform plan (excluding Senator Wyden's independent efforts in years past)—was in the FY2012 budget resolution, titled "Pro-Growth Tax Reform." It went on to reference simplicity and fairness as goals for tax reform while setting the top rates of the individual and corporate tax to 25 percent. The FY2013 budget resolution recommended two rates, 10 percent and 25 percent, and added repeal of the alternative minimum tax (a benefit for high-income families), and a territorial tax (a benefit for multinational firms). A tax reform plan that focuses on lower tax rates for high-income individuals and corporations, particularly multinational corporations, may send a message to the public with narrow appeal.

These messages are different from the broad proposal of President Reagan, which outlined general principles. The contrast in messages was pointed out by Mark Weinberg, a tax expert with experience in the executive branch and on Capitol Hill. He stated that the tax reform effort in 1986 "was driven in large part as simplification, and it was driven in large part by trying to get more fairness into the system." He was also reported to say that today tax reform is driven by companies concerned about global competi-

---

[70] Birnbaum and Murray, *Showdown at Gucci Gulch*, p. 109.
[71] Ibid., pp. 5, 222–223.
[72] Norris, "Republican's Tax Plan Awkwardly Aims at Rich."
[73] Lindsey McPherson, "What Wyden Can Learn from Baucus's Tenure," *Tax Notes*, March 3, 2014, p. 915.

tiveness and by politicians who want to raise more revenue to help reduce the Nation's debt.[74]

There is certainly evidence that corporate tax concerns have taken priority over individual ones. President Obama has focused on corporate reform. A driving force for reform was the multinational corporations (especially in the pharmaceutical, high-tech, and financial industries). They have large amounts of income earned abroad and in tax haven jurisdictions abroad that they cannot return (or repatriate) without paying a 35 percent U.S. tax. They first lobbied for a repatriation holiday with low taxes, but as evidence accrued that an earlier holiday had not led to additional investment, a stand-alone holiday became increasingly unlikely. Then efforts turned to a corporate tax reform that would lower rates, introduce a territorial tax so this issue would not occur in the future, and couple both with a lower tax rate on existing accumulated earnings.[75] These are all features of the Camp draft.

Views on taxation of corporations differ, especially for multinational corporations. As noted during the passage of the Revenue Act of 1916, many asked: Are corporations engines of growth or predators? Currently, some argue that corporations need lower tax rates to attract foreign capital or to be competitive abroad. Others are concerned about firms that pay little or no tax because they have shifted profits abroad into tax havens. Firms such as Pfizer and Walgreens considering shifting their headquarters abroad (inversion) to avoid U.S. tax was seen, by some, as a reason to pursue more generous corporate tax rules and by others to adopt targeted legislation to prevent these activities.

More Limited Potential Base-Broadening Provisions

In addition to political factors that differ from 1986, the current tax reform effort also faces a much more difficult environment in a technical sense than was the case in 1986. One could argue that 1986 already picked the "low hanging fruit," especially with respect to corporate tax reform. The elimination of the investment credit and a small change in depreciation in TRA86 were enough to finance most of the 12 percentage point reduction in the corporate rate (from 46 percent to 34 percent). By contrast, eliminating accelerated depreciation for the corporate sector would permit a permanent reduction of 2 to 3 percentage points in the long run. Eliminating every tax expenditure (except deferral of foreign source income) would permit roughly a 5 percentage point reduction in a long-run revenue-neutral change.[76]

On the individual side, two major provisions that offset the revenue loss from rate cuts for high-income individuals are not available: hikes in capital gains tax rates and restrictions on tax shelters. Although capital gains tax rates are currently lower than ordinary rates, scoring conventions that assume a tax increase will lead to a large contraction in the sales of assets and resulting gains

[74] Amy S. Elliott, "Mundaca Casts Doubt on Quick Passage of Corporate Tax Reform," *Tax Notes*, October 17, 2011, p 272.

[75] See CRS Report R40178, *Tax Cuts on Repatriation Earnings as Economic Stimulus: An Economic Analysis*, by Donald J. Marples and Jane G. Gravelle and CRS Report RL34229, *Corporate Tax Reform: Issues for Congress*, by Jane G. Gravelle, for a discussion of these events.

[76] These calculations are in CRS Report RL34229, *Corporate Tax Reform: Issues for Congress*, by Jane G. Gravelle.

mean that relatively little revenue would be projected to be raised from increasing capital gains tax rates. Many supporters of tax reform are unlikely to be interested in increasing tax rates on the return to savings and investment (such as capital gains and dividends), which constitute about one-third of tax expenditures. Many other provisions are problematic as base-broadening provisions on a variety of grounds but largely because they are popular with a broad swath of the middle class.[77]

The Camp plan—the only fully specified tax reform proposal of the 113th Congress—reflects the struggle to find a revenue-neutral plan that allows lowering the top tax rates for individuals and corporations to 25 percent (along with other restrictions that eventually appeared in the budget resolution, such as eliminating the alternative minimum tax and moving to a territorial tax). Certain aspects of the proposal illustrate the difficulty in achieving revenue neutrality with these goals: non-income tax revenue-raising provisions, the phase-in of revenue-losing provisions over time, revenue gains from transitory provisions, bubbles and surtaxes that raise marginal effective rates (for example, a 10 percentage point surtax on high-income taxpayers that raises the top rate from 25 percent to 35 percent), and the presence of revenue raisers that would probably not pass the test of good policy.[78] There are many other provisions that may not survive the political process, such as the repeal of the itemized deduction for State and local taxes, a centerpiece of the individual reform plan. Estimates suggest that the plan loses revenue beyond the budget horizon (in the steady state): around 4.5 percent for the corporate income tax and more than 4 percent for the individual income tax.[79]

---

[77] See CRS Report R42435, *The Challenge of Individual Income Tax Reform: An Economic Analysis of Tax Base Broadening*, by Jane G. Gravelle and Thomas L. Hungerford for a review of individual income tax expenditures. See also Michael J. Graetz, "The Tax Reform Road Not Taken," *National Tax Journal*, vol. 67, no. 2 (June 2014), pp. 419–440, which discusses the inability of possible base-broadening provisions to allow significant rate reductions.

[78] These issues are discussed in a variety of sources: Leonard Burman, "Hidden Taxes in the Camp Proposal," February 27, 2014, http://taxvox.taxpolicycenter.org/2014/02/27/hidden-taxes-in-the-camp-proposal/; Robert S. McIntyre, "Camp Is Hiding the True Effects of His Tax Plan," *Tax Notes*, April 27, 2014, pp. 91–93, who calculates the effects for the second decade of the Camp plan, finding an average of $170 billion in losses per year (which would be roughly at 2028 levels of income); Joseph Rosenberg, "How Does Dave Camp Pay for Individual Tax Cuts? By Raising Revenue from Corporations," Urban-Brookings Tax Policy Center, February 27, 2014, http://taxvox.taxpolicycenter.org/2014/02/27/how-does-dave-camp-pay-for-individual-tax-cuts-by-raising-revenue-from-corporations/; Chye-Ching Huang, "Camp Tax Reform Plan Likely Means Bigger Deficits After First Decade," Citizens for Budget Policies and Priorities, February 26, 2014, http://www.offthechartsblog.org/camp-tax-reform-plan-likely-means-bigger-deficits-after-first-decade/; Committee for a Responsible Federal Budget, "Revenue Impacts of Camp's Tax Reform Proposal," February 26, 2014, http://crfb.org/blogs/revenue-impacts-camps-tax-reform-proposal; statement of John S. Buckley in U.S. Congress, Senate Committee on the Budget, *Supporting Broad-Based Economic Growth and Fiscal Responsibility Through a Fairer Tax Code*, April 8, 2014, http://www.budget.senate.gov/democratic/public/index.cfm/hearings?ID=d7254a33-dbd4-44c1-9fcc-7ea85f803f5e, which discusses the transitory effects of a number of business provisions. Examples of provisions that do not appear to pass the test for good policy are disallowing deductions of catastrophic medical expenses or personal casualty losses.

[79] The steady state occurs when all the transitional effects of changes have been completed and revenue relative to GDP has become constant. The revenue estimates for the Camp draft do not report corporate and noncorporate revenues separately. The estimate for the long-run steady-state losses relies on fully phased-in provisions and adjusts them for transitory effects. Noncorporate and corporate allocations and transitory effects were determined by comparing the revenue estimates with the tax expenditure estimates, which provide separate data and a steady-state estimate. Provisions that produce transitory effects include accelerated depreciation, capitalizing research and experimentation and advertising expenses, transitioning away from "last in, first out," a one-time tax on existing accumulated foreign earnings, and requiring Roth IRAs and elective deferrals rather than traditional plans. Data on historical collections can be found in Congressional Budget Office, *An Update to the Budget and Economic Outlook: 2014*

Continued

Tax Reform Going Forward

Tax reform is extremely difficult. Historically, major tax revision requires some external financial crisis or, some would say, a powerful social movement such as the Progressive movement at the turn of the 20th century. Otherwise, major tax reform is unlikely to occur. Rather, tax changes typically occur incrementally. The exception to that rule—TRA86—is widely viewed as an anomaly arising from an unusual combination of conditions.

These conditions do not appear to be present in the current tax reform drive, making tax reform unlikely. Some of the barriers to tax reform are due to unrealistic expectations about how much corporate and individual tax rates could be reduced; some are due to the absence of Presidential support and strong endorsement by bipartisan congressional leadership; some are a consequence of a lack of a broad popular appeal.

There is always the possibility that new chairmen of the tax writing committees and party leadership could come together to produce a tax reform plan or that the President or his successor could make tax reform a priority. The possibilities, however, were described by tax economist Martin Sullivan:

> What magic beans could be planted by a President Romney or a President Cruz/Paul/Jindal that would change the prospects for reform? After three years of good-faith effort by a well-liked, hardworking chair, with all the technical expertise of the Ways and Means Committee and Joint Committee on Taxation staffs at his disposal, the best he could come up with was a plan that has antagonized almost every major business group inside the Beltway. And after being promised a top rate of 25 percent, we get a thinly veiled top rate of 35 percent packaged as a 25 percent rate with a 10 percentage point surtax . . . .
>
> There is a chance that the Camp draft, like the plan released by Treasury in 1984, will serve as a first draft that determined lawmakers will revise and rework until they succeed in passing major legislation. But the political situation and the substance of law make tax reform far more difficult now than back then. It is much more likely that the next chair of the Ways and Means Committee—most likely Paul Ryan of Wisconsin—will see Camp's valiant attempt at reform as clear evidence that tax reform is a thankless and impossible task.[80]

It is possible that corporate tax reform could be considered separately to address the multiple concerns both parties have with the corporate tax in a global economy. President Obama has indicated interest in this area, and there may be some common ground for both Chambers and parties to reach consensus. But until expectations about rates meet with reality, broad tax reform seems impossible not just as a political matter but as a technical matter.

○

to 2024, August 2014 release, at http://www.cbo.gov/publication/45249. Data on future collections is from Congressional Budget Office, *The Economic and Budget Outlook, February 2014*, at http://www.cbo.gov/publication/45010. Data on the revenue estimates of the Camp proposal and tax expenditures are from the Joint Committee on Taxation, "Estimated Revenue Effects of the 'Tax Reform Act of 2014,'" February 26, 2014, JCX–20–14 and "Estimates of Federal Tax Expenditures for Fiscal Years 2012–2017," JCS–1–13, February 1, 2013. JCT documents can be found at www.jct.gov. The 4.2 percent calculation is understated because it treats timing effects associated with retirement accounts as having no effect when in fact they should lose revenue in the future. At 2023 income levels, these losses amount to $22 billion for corporations and at least $122 billion for individuals.

[80] Martin Sullivan, "The Beginning of the End of Tax Reform," *Forbes*, http://www.forbes.com/sites/taxanalysts/2014/02/28/the-beginning-of-the-end-of-tax-reform/2/.