

REPRESENTATION AND GOVERNANCE:
THE GREAT LEGISLATIVE TRADEOFF*

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Summary

What is it that makes the U.S. Congress unique and distinctive among the world's legislatures? What, in other words, has prevented our national legislature from being dominated or swallowed up by the executive as so often has happened elsewhere? The answer I provide gives prominence to the division- and specialization-of-labor of the congressional committee system. Strong committees with proprietary rights to policy jurisdictions; a membership which can pursue political careers inside the legislature relatively independent of the whims or wishes of others (for example, Speakers or Presidents); and a committee system that embodies the functional differentiation of legislative activity (authorization, appropriation, revenue-raising, budgeting, and procedural matters) all serve to insulate the legislature from political predators in general, and the executive branch in particular. A stunning by-product of these arrangements is that the legislature is able to attract and retain competent, ambitious politicians to pursue political careers there.

The second part of this paper examines the spate of reforms in the House of the 1970s - what I term a "representational revolt." I am specifically interested in the degree to which these reforms have altered the operation of the committee system and the political incentives which that system provides. I suggest that reforms which seek to

enhance the legislature's representative character (as I believe is true of many recent reforms) risk attenuating the division-of-labor that has served the legislature so well during this century. In short, in thinking about reform I suggest there is a "great legislative tradeoff" – between representativeness and the maintainence of an independent capacity to contribute to governing.

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After so turbulent a decade in American politics as the 1960s, the 1970s were something of a letdown. But popular turbulence often has institutional repercussions, and these were surely felt in the 1970s. Public support of and affection for its political institutions had been on a downward trajectory for some time, reaching its nadir during this period. This disaffection spawned, in presidential politics, a number of serious anti-Washington, anti-status quo candidacies, three of which resulted in the capture of a major party nomination (McGovern, 1972; Carter, 1976; Reagan, 1980) and one only barely missed (Reagan, 1976). Of course, it also produced two presidents and, into the 1980s, a further proliferation of unconventional candidacies.¹

The United States Congress was hardly immune to these larger social forces. As Rieselbach (1986) describes in considerable detail, reform fever struck the House and (to a lesser extent) the Senate beginning with the Legislative Reorganization Act of 1970. By the time Carter had been inaugurated, significant changes in our national legislature had only just been concluded, having crested during the Watergate affair and its aftermath. It left an unmistakable mark on the structure of Congress and the way it presently goes about its business.

The range of procedural changes and the amount of activity they generated during the early 1970s were immense. The attached Display conveys only the broadest of outlines, but does suggest both a heightened attention to matters of procedure and a political commitment to "democratization."

**Display goes
about here**

After nearly a decade of experience with these reforms, scholars and other interested observers are beginning to assess their effects.³ Did the reforms accomplish their intended purposes? Did adaptive responses to the reforms have unintended consequences? Have the effects, intended and unintended, on balance improved the legislative branch— is it more responsive, responsible, accountable, capable of governing? The jury of informed opinion is still out on many of these matters.

Nor shall I render any final verdict in this paper. Instead I want to consider this procedural activity in the context of an essential constitutional feature of our political system—the capacity of the national legislature to function as a consequential political force in our structure of government. I want to assess, in a general sort of way, the effects of reform on this capacity. I shall be less interested in what the legislature does with this capacity, in whether it is a force for good or for evil. Views on this latter question are inevitably

Display: Summary of Procedural
Changes in Congress During the 1970s

Categories of Change

Actual Reforms

Reduction of disparities
among committees

Redistribution of committee power;
realignment of committee
jurisdictions.

Enlargement and wider
distribution of member
resources

Committee assignments; staff;
office perquisites.

Taming of former power
centers

Ways and Means and Rules
Committees.

"Sunshine" reforms

Open committee meetings; recorded
votes; televised proceedings over
the C-SPAN network; disclosure of
campaign finances; stricter ethics
codes.

Reassertion of Legislative
Branch powers

War Powers Resolution; Budget and
Impoundment Control Act; creation
of Office of Technology Assessment
and Congressional Budget Office;
enhanced capability of Congress-
ional Research Service and Govern-
ment Accounting Office; expanded
use of the legislative veto.²

Centralization of
legislative parties

Rise of the Democratic Caucus in
the House; enhanced powers of the
Speaker over committee assignments
and scheduling; enlarged whip
system.

Curbing of minority
obstruction

Easing of rules governing quorum
calls and reading of House
Journal; expedited roll calls.

disputatious, depend on whose ox is being gored, and elicit abstract, philosophical responses. I want to be more practical-minded.

I begin with the observation, offered in detail by Polsby (1975), that the U.S. Congress is a very unusual legislative animal. Most of the world's legislatures are mere "arenas" (Polsby's term) for debate, deliberation, and possibly oversight of the executive. Even those based on the Westminster model, including the Mother of Parliaments herself, are little more than deliberative forums offering only limited checks on the executive.⁴ The U.S. Congress, for better or worse, is decidedly, even uniquely, different. It is "transformative" (Polsby, again) in its effects on policy and politics. In a separation-of-powers arrangement it is, in Richard Neustadt's (1960) memorable phrase, a "separated institution sharing powers." Why? How has it remained separated? How has it maintained a share of power? In short, is it possible to isolate the foundations of its capacity to participate in governance, and then to determine the effect of recent procedural changes on these foundations?

In the remainder of this paper I advanced a partial answer to these questions. In a nutshell my answer is that the U.S. Congress remains an active governing agent, and has not been swallowed up by the executive as has so frequently happened elsewhere, because it has fashioned and refined an effective division- and specialization-of-labor institution

capable of attracting and retaining talented and ambitious politicians. This, I claim, is the stunning achievement of the U.S. Congress and is the foundation of its capacity to share powers with the executive. It is against this standard that recent reform may be compared.

Having now "cleared my throat," so to speak, let me first set the discussion in an historical context, suggesting how a division-of-labor has evolved in Congress. I then turn to a characterization of the contemporary system of standing committees, arguing that it possesses many desirable properties of a division-of-labor but also entails some downside risks. This discussion is followed by a brief recounting of the 1970s reforms—I term them a "representational revolt"—and I conclude with an assessment in terms of the tradeoff between representation and legislative capacity for governance.

One last comment before beginning. My remarks are almost exclusively about the House of Representatives. While some of my arguments will apply to the Senate as well, others may not. The Senate is an unusual legislative body, even by the lights of "American exceptionalism." I frankly do not understand it well, so I leave the development of a parallel argument as an exercise for the reader.

Background: The Development of the
Congressional Committee System

The Congress today is an immense and complicated institution, consisting of a vast array of enterprises: member offices, standing committees, select committees, joint committees, ad hoc committees, subcommittees, party committees, whip organizations, task forces, caucuses. Organizational bean-counters put the number of congressional enterprises (those that had some staff complement) at nearly one thousand in the late 1970s (Salisbury and Shepsle, 1979), a number still reasonably accurate today. Such complexity defies comprehensive description, much less understanding (though an admirable effort is that of Jones, 1982). Students of the institution are relegated to the same plight as the proverbial blind men attempting to describe an elephant. Nevertheless, there is a consensus of sorts about the Congress. As Fiorina (1980: 44) concisely put it, "Through a complex mixture of accident and intention we have constructed for ourselves a system that articulates interests superbly but aggregates them poorly." From the broadest of the broad to the narrowest of the narrow, interests are organized and represented in the Congress; they command member attention, energy, and resources; and they have access, if not a proprietary right, to forums for their advocates. But the process of passing a bill, much less formulating a coherent policy, is complicated, drawn-out, filled with distractions, and subjected to the whims of

veto groups at multiple points. In short, it is often claimed that the organizational superstructure of Congress is a greater load than its political and constitutional foundations can bear. "Twas not always thus, and it warrants a brief historical detour tracing how we got there.⁵

The Founding Fathers gave the legislature lawmaking powers and considerable freedom to organize itself as it saw fit. Aside from the formal specification of a presiding officer for each chamber⁶, the Constitution allowed Congress to organize itself according to the wishes of its members. Then as now, members were torn between the objective of effective lawmaking and the suspicion of concentrated power. For the most part, despite the unhappy and only recently concluded experience with the Articles of Confederation, suspicion won out. The farmers, state legislators, and other local politicians who constituted the membership of the early Congresses were unwilling to delegate power either to presiding officers or to small groups of members.

In the House, most business was conducted in the Committee of the Whole. There, policy was articulated and debated, even in fine-grained detail. After agreement was reached on general principles and many details, a select committee was appointed to translate the "will of the House" into a formal bill. This committee, normally chaired by the person introducing the measure and composed of the bill's supporters⁷, had a limited charge and a limited life. It

was to refine the consensus, make suggestions for changes, and report back. It was a committee in the modern sense in only a very limited way, possessing little in the form of agenda power or veto power that we have come to associate with modern committees. Aside from a standing committee on elections⁸, most of the business of the House was conducted in this committee-of-the-whole/select committee format.

Political leaders in late eighteenth century America were children of the Scottish Enlightenment. If the division- and specialization-of-labor enhanced the productivity of Adam Smith's famous pin factory, then surely it would serve political organizations to advantage as well. This lesson was probably appreciated by legislative leaders, but it did little to allay their suspicion of concentrations of power; so the early Congress remained unspecialized. This lesson was also appreciated in the executive branch which, with the consent and participation of Congress, instituted specialized organization in the form of cabinet departments. The resulting disparity between the specialized executive and the unspecialized legislature was most apparent in financial affairs, and was impressively exploited by a Secretary of the Treasury named Hamilton. By 1795, on matters of debt, finance, currency, and expenditures, the Congress was out-maneuvered at every turn by Alexander Hamilton's operation at Treasury. In that year, the House established a standing committee on Ways and Means so that Congress could counter the expertise and

experience that, until that time, had been monopolized by the executive branch. In the next two decades, nine more standing committees were created (Galloway, 1961).

Standing committees differed from select committees in important ways: they were permanent institutional fixtures; they had defined jurisdictions; their membership lasted beyond any particular bill; they could effectively originate legislation; they were not required to report legislation. In effect, they possessed both agenda and veto power. Mind you, these powers were severely truncated in comparison to their modern counterparts. For one thing, committee memberships lasted only for one session of each Congress and, with no tradition of seniority or committee membership as a "property right," committee compositions were not at all stable. For another, the select committee procedure of the early Congresses remained a significant part of legislative operations, and so the legislature remained only partially specialized. In the Tenth Congress (1807-1809), for example, 53% of all bills were still referred to select committees (Shepsle and Humes, 1984). This was to change during the years of Henry Clay's speakership, a story I shall now relate in some detail.

During the early nineteenth century the nation was growing. Its boundaries were being extended by exploration, conquest, purchase, and settlement. New states were admitted to the Union. And the Congress was growing. In November of 1810, the constituents of Lexington, Kentucky

sent to Washington a freshman representative named Henry Clay. The Twelfth Congress convened on November 4, 1811, and promptly selected this frontier legislator as its Speaker, a position he was never to relinquish while sitting in the House. Except for three years that Clay was out of Congress, he served the House as its Speaker from 1811 to 1825. No man until Rayburn served longer in that position.

Clay was the principal spokesman for the frontier around whom other like-minded legislators unified. In early nineteenth century America, the frontier stretched from New Hampshire and western New York in the north, along the western periphery, down to Georgia in the south. In late 1811 what linked these legislators together was the common fate--the economic and physical well-being--of their constituents at the hands of the Indians and the British. They clamored for war with Great Britain, and Henry Clay became the leading voice of the War Hawk cause. During his first term--the so-called "War Congress"--Clay, emboldened by a large, consensual coalition of supporters, manipulated the system of select committees and a rather weak President in the cause of war. In his first two months as Speaker, he hand-picked "fire breathing nationalists" (Josephy, 1975) for various select committees, descended to the well of the House on numerous occasions to participate in debate, and saw to it that war legislation was put on a fast track. By the Spring of 1812 he had managed to entrepreneur legislation through the House which rearmed the army and

navy and allowed for calling up reserves. He was masterful in silencing critics (the most vocal of whom was John Randolph of Virginia), in rewarding his supporters (Peter Porter of New York and John Calhoun and Langdon Cheves of South Carolina chaired important select committees) and, as a coup de grace, in egging and cajoling a cautious, reluctant President Madison into submitting a declaration of war.

During the War Congress and the first session of the succeeding Congress, the nation was at war and Clay was at his peak of power, popularity, and policy success. After the first session of the Thirteenth Congress, the war ended and Clay resigned from the House to accept a presidential appointment to the Peace Commission at Ghent. After returning to the United States and Lexington, Kentucky, he was reelected to the Fourteenth Congress and to the speakership.

And now I can tell the reader why I have dwelled on this Speaker and this period, for what makes Clay an especially interesting subject for our scrutiny is not only his brilliant leadership in the Twelfth and Thirteenth Congresses, but his relative lack of comparable policy success in subsequent Congresses. The war with Great Britain was the great distinguishing issue of the Twelfth and Thirteenth Congresses. It defined Clay's coalition and it directed his political energies. With war's end Clay's once homogeneous and single-minded coalition separated into

factions. Clay, the ambitious politician (he probably had his eye on the presidency), could not lead as he once had because no single issue could serve as a nucleus around which to reassemble his coalition. He certainly cast about for substitute issues—internal improvements, the National Bank, diplomatic recognition and support for Greece, Turkey, and the Latin American republics—but none seemed to do the trick.

In a world of heterogeneous preferences, legislative leadership, animated as it is by a desire to retain office and position or to advance, must seek out instruments other than policy initiatives. And this Clay did. During the Clay years the House was transformed from an institution that principally did its business in the Committee of the Whole and by select committee to one in which government by standing committee became the norm. As noted above, before Clay came to the House there were ten standing committees which were responsible for less than half of the bills. During the Thirteenth and Fourteenth Congresses, Clay created ten more standing committees; an additional seven were created during his remaining years as Speaker. In 1825, Clay's last in the House, fully 93% of all bills were referred to twenty-seven standing committees. Clay was returned to the speakership time after time by large majorities not because he led the House toward particular policy objectives (as he had in the Twelfth Congress), but rather because he "gave away the store." He decentralized

the operation of the House, established the division- and specialization-of-labor that has come to characterize the contemporary Congress, and gave individual legislators separate stakes in policy jurisdictions in place of a grand platform of issues.⁹

During the thirty-five years between the end of the Clay speakership and the Civil War, the nation and the Congress were preoccupied with the slavery issue and everything it touched. Since standing committees now dominated the House, and the Speaker appointed its members, speakership elections became highly charged affairs. In 1839, 1849, 1855, and 1859, elections took many ballots and many months. In 1855, for example, Speaker Banks was elected on the 133rd ballot. In 1859, a freshman, William Pennington of New Jersey, was elected on the 44th ballot, principally because he was a freshman and not known to be strongly committed on the slavery issue. Because standing committees were so important (especially the Committees on Territories and the District of Columbia which dealt directly with slavery), the success or failure of issues and policies depended on who appointed their members.

During the War and the "gilded age" of the Grant and Hayes administrations that followed, Republicans in the House dominated the standing committees, led by Radical Republican Thaddeus Stevens from the chairmanship of a newly created Appropriations Committee. Indeed, a whole slew of new standing committees were created during and after the

War. By this time the division- and specialization-of-labor were virtually complete. There were more than forty standing committees with finely-partitioned jurisdictions. But, perhaps more importantly, authorizing, appropriating, and revenue-raising were now wholly separate.¹⁰ Only under pervasive, across-the-board, landslide conditions, and with long coattails. could a new administration, by sweeping in its supporters to cover all the power bases, hope to dominate the many functions of Congress. This was becoming more difficult even with close party competition and party-line voting (in which narrow vote swings could produce large seat swings). In short, its division-of-labor was insulating the Congress from the Executive.

The growing reliance on the notion of a "property right" to committee positions¹¹ and a seniority criterion for chairmanships¹² began to insulate the Congress not only from the executive, but more generally from popular control through elections. A sitting committee chairman, or any other committee member for that matter, could be removed effectively only by his own constituents. Landslide or not at the presidential level, a district could nevertheless preserve a committee chairman's tenure (and its own political leverage) by returning him to office.¹³ Failing to gain favor with a committee chairman and committee majority, a policy coalition—whether led by the executive, "gentlemen of the lobby," or whomever—could hope to get their way only by inducing the Speaker not to observe

seniority or the property rights norm. In the late nineteenth and early twentieth century, violations of seniority or property rights were infrequent but certainly not unprecedented (Chiu, 1928; Polsby, Gallaher and Rundquist, 1968; Abram and Cooper, 1968). The overzealousness with which Speaker Cannon (1903-1911) used his committee assignment powers sowed the seeds of revolt, resulting in a vast reduction in the Speaker's control of committees. For the next half century, seniority and the property-rights norm became fixtures in the House.

Properties of the Mature Standing Committee System

By 1911 if not earlier, the system of standing committees, instituted by Clay and perfected over the remaining years of the nineteenth century, had become a mature division-of-labor arrangement.¹⁴ The separation of policy jurisdictions; functional division into authorizing, appropriating, revenue-raising (and later budgeting); the seniority rule for chairmen; the property-right norm for committee membership; and the attenuation of linked electoral fates for executive and legislators all provided insulation for standing committees—insulation from the President, the Speaker, even chamber and popular electoral majorities.¹⁵ In effect, the committee system constituted an "institutional bargain" in which each individual legislator secured disproportionate benefits in the

institutional subunits of which he was a part in exchange for limiting his activity and intrusiveness in those subunits of which he was not a part. His political career, though obviously dependent upon the partisan coloration of the chamber, depended (aside from that) mostly on what went on inside those "little legislatures" (Goodwin, 1970).

The properties of this institutional arrangement entailed both advantages and risks, and I shall discuss them shortly. One thing, however, is clear: it possessed durability, surviving essentially intact from the accession to the speakership of Champ Clark in 1911 until the post-World War II Legislative Reorganization Act of 1946. Even after the adjustment and streamlining of committees and jurisdictions required by this act, the institutional bargain did not change much until the 1970s. Indeed, it would not be an abuse of terms to refer to the committee system of the House for most of this century as an institution in equilibrium.

With rare exception the arrangement was insulated, so that congressional committees possessed genuine independence. An occasional electoral landslide tied congressional committees closely to a presidential agenda (the 73rd Congress and Roosevelt's New Deal; the 89th Congress and Johnson's Great Society), but even this did not persist for long. On the whole congressional committees were forces to be reckoned with. They were forces to be reckoned with not only by Presidents, but by Speakers as

well. From Champ Clark to John McCormack, Speakers of the House were, among their committee chairmen, often no more than primus inter pares. And while Speakers of an earlier era—Thomas Reed and Joseph Cannon—could emphasize "primus," contemporary Speakers had to concede that they were located more toward the "inter pares" end of the spectrum. Even Sam Rayburn, one of the most respected and honored Speakers in the history of the House, dealt successfully with committee barons less from a position of institutional strength than from a reservoir of personal loyalty and bargaining skill. And he, too, found the insulation of the committee system impenetrable at times.

The larger claim of this paper is that this independence, this insulation, this force-to-be-reckoned-with quality of committees is precisely what allows the Congress to be Neustadt's "separated institution sharing powers." Divided partisan government is not the legislature's only protection against an overreaching executive.

There are other concomitants of this arrangement as well. On the plus side (depending, I suppose, on where you sit), the division-of-labor encourages specialized expertise. Albert Rains of Alabama was known as Mr. Housing in the 1950s House, Paul Rogers of Florida as Mr. Health in the 1960s House, and George Mahon of Texas as Mr. Defense Procurement in the 1970s House because each labored long and hard in a specific policy vineyard, acquired policy