



Congress: Retrospect and Prospect

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*Congress:
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RALPH K. HUITT

NINETEEN SEVENTY-SIX is the bicentennial of the Nation; whether it also celebrates 200 years of the Congress of the United States depends upon a point of view. Is the Continental Congress, which was more or less the government of the revolutionary coalition, a part of the history of Congress? Or was it a prologue? If it were the latter, it was a necessary and productive one. Because the experience of that revolutionary body provided the negatives which were necessary to make effectiveness possible for its successor. A numerous body can *not* govern without an executive. A legislature can *not* solve problems without adequate powers. A representative assembly can *not* work unless factions are reasonably controlled and some semblance of consensus is obtained. A political appendage can *not* succeed until it is incorporated into some centralized structure.

The Continental Congress, with its own President who could only preside, turned to what would be its successor Congress's chosen instrument—the committee.¹ But there were to be too many of them—so many that members could not legislate for attending committee meetings. John Adams, for example, sat in committees from four in the morning until ten at night. He was a member of 90 recorded committees. Moreover, the committees were not

¹ A good summary is found in Louis Fisher, *President and Congress* (New York: Praeger Publishers, 1972), 1-16.

peopled with members known to have abilities suited to their assignments. There were no merchants on Foreign Affairs, no military men on the War Board. Inevitably, competent chairmen came to do all the work. The tireless Franklin handled a multitude of jobs. The need for executive direction led to the creation of what were to become departments of the executive under the Constitution—Foreign Affairs, Finance, War, Marine, Attorney General. By the time of the Constitutional Convention, the need for separated branches of government, with overlapping jurisdictions, seemed plain to most who were participants in it.

Two fundamental concepts, built into the Constitution (with qualifications), have had most to do with the evolution of the modern Congress. They are federalism and the separation of powers.

Federalism, as almost everyone knows, is the distribution of powers between centralized and state (or provincial) governments in a constitutional system in which the allocation cannot formally be changed without the participation of both levels. In the American system, powers are relegated to the national level, the remaining powers going to the states or the people. But while powers have been reallocated formally only infrequently, changes by actions of the branches of government are constantly occurring in a dynamic society. This makes a federal system most difficult to make work. The “line of federalism” constantly must be drawn and re-drawn. Public education, for example, was firmly in the possession of the states until the middle of the 20th century. But federal aid to returning veterans of World War II who wanted to go to college, support of research to meet the challenge of Sputnik, money to build facilities for the student boom in higher education in the 1960’s—all brought the federal government into direct intervention so massive that it is impossible now to draw the line between what is appropriate to state and federal levels. Again, a presidential candidate campaigned recently on the issue of “law and order.” But what most citizens think of when that phrase is evoked is safety—safe streets, parks, and neighborhoods. A president has little control over such safety—though that, too, can change.

Why then did the Constitution-makers choose a system so difficult to work? History shows that federalism was about as much centralism as the people would stand. The power and the glory then belonged to the states. Before the Declaration, individual states en-

gaged in their own separate resistances to the King were reluctant to proceed together. They were, in many cases, slow to join the new Union, which began its life on March 3, 1789, with only 11 member states. For many years more, the states' prestige far exceeded that of the national government. Many Americans had never seen a federal employee besides the postman. High office-holders in the Nation sometimes resigned to take similar positions in a state. The location of the national capital in the artificially created Washington, D. C., which had little to attract citizens to visit it, added to the disparity in the pride and affection they showed for their respective governments.²

Federalism, translated into the life of the practicing politician, is localism. Throughout much of the history of Congress, the member spent only part of his time in the capital—about half a year for the “long” session, and four months for the “short,” or lame-duck” session. The remainder of his time he lived in his state (and district, for representatives) where he made a living, like other men. He was, therefore, a “representative” in the psychological, as well as the political, meaning of the term. He was “like his folks.” He understood them, shared their hopes and expectations, their biases and strengths. Congress mirrored in its personnel the diversities of the Nation.

Now, even with the “professionalization” of a Congress which has come to require almost full-time service of its members, localism persists, enhanced by the decline of the parties. Local organizations seldom impose barriers between members and their constituents.

So the congressman has come to be almost entirely a self-selected leader with his life-line to the constituency. It is he (or she) who decides that he is a statesman, needed by the public, and sets out to convince the public. While the constituency supports the member, blessed security is assured. But when the constituents suspect that his heart may be elsewhere, his political life is in hazard; who lives by the sword, dies by the sword. The examples are many: Scott Lucas and Ernest McFarland, Senate Democratic Majority Leaders; Fred Harris, Wayne Morse, J. William Fulbright. Careers, both successful and still promising, come to an end far from

² James Sterling Young, *The Washington Community, 1800-1828* (New York: Harcourt, Brace and World, Inc., Harbinger Books, 1966), Ch. 1.

the Nation's capital. And there is no way they can be recouped—no “safe districts,” as in England, to which they can repair.

So members of Congress concentrate on constituencies—successfully it seems, as average tenure lengthens steadily and turnover decreases. This is crucial to the nature and operations of Congress: a member secure in his home base need fear no other political threat. And that security is a basic element of the independence of Congress.

The historic liberal concept of separation of powers is the second fundamental which has had much to do with shaping the American system.

Its pedigree is impressive. John Locke believed that separation had preserved England from the tyranny which generally oppressed the nations of the continent. Montesquieu, the French philosopher who wrote the celebrated *The Spirit of the Laws*, accepted Locke's thesis (although his famous statement on separation is a small part of a very large book). Blackstone, the English lawyer who was read by so many Americans, took it as received doctrine.

But the Americans were not doctrinaire, even in the application of their doctrines. They were used to a governor appointed by the king, an upper house similarly chosen, and a lower house elected by the people. A cabinet government was an idea far in the future, but the colonial government had some of its seeds. Their governor was an executive who also had a strong legislative hand. The upper house counseled the governor, sat as a judicial court, and was part of the legislature. The lower house, usually estranged from the king's men, were legislators only. But the powers were not confused; they were exercised separately. The Founding Fathers separated the institutions, but in providing “checks and balances” they commingled the exercise of the distinct kinds of powers among the institutions. They apparently accepted Madison's dictum that all Montesquieu meant was “that where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution are subverted.”³

So the legislative power rests not just with Congress, but with a president who espouses a wide array of programs and is judged by his legislative “box score,” and also with a judiciary whose decisions may be more important legislation than Congress's (e.g., the School

³ Fisher, *President*, 23.

Desegregation Cases in 1954 and *Baker v. Carr*, “one-man, one-vote” ruling in 1962). The executive power is shared by a Congress which must acquiesce if a president is even to reorganize the executive department. The courts take on administrative tasks of breath-taking scope but are confined in jurisdiction by congressional and presidential legislation.

But the people, the institutions, are separated. No officer may serve in more than one branch simultaneously. This has had profound effect on Congress since the beginning. A parliamentary body may take its information and directions from the executive because the ministry is also the leadership of the principal legislative body. No so with a Congress to whom the executive branch must be “they.” So each house established committees early on to test information and recommendation. Special committees gave way to standing, and standing committees gained specialized jurisdiction. In time the committees gained virtual control over subjects in their jurisdiction. In 1884, Woodrow Wilson said, “Congress in session is Congress on public exhibition, whilst Congress in its committee rooms is Congress at work.”⁴

The two concepts together insure the freedom of Congress from control by the executive. The local base of the individual member frees him from domination by *any* party leader, in his body or in the White House. His principal work is performed on one or more committees, the chairmen of which ascend to the preeminent positions through seniority. Whether one likes it or not, a seniority chairman, answerable only to his own constituency, cannot be coerced by party leaders in his body nor in the presidential establishment. He is, to use an old east Texas phrase, “as independent as a hog on ice.”

Specialized jurisdictions make the committee system a system of power. The full powers of the parent body are parceled out among the committee chairmen, who must further parcel them out among subcommittee chairmen. A power-minded chairman may try to thwart his lieutenants in the exercise of their rightful power, but he is seldom successful. A feudal system is a tempting analogy and helpful within limits.

Paradoxically, the committee system also gives a member a chance to slip the bonds of localism. He can build subject-matter

⁴ *Congressional Government*, 15th printing (New York: Meridian Books, 1958), 69.

competence as he gains seniority and so come to have a nation-wide constituency among those who are concerned by that subject matter, who court the member more assiduously than his home constituents do. One thinks of John Fogarty and Lister Hill in health; Wayne Morse, Carl Perkins and Edith Green in education; Mendel Rivers in armed services, and a host of others.

We begin then with a Congress which, more from political necessity than design, has achieved a large measure of independence from the other branches of the government and is the partner the Constitution intended it to be. That has its strengths and weaknesses, which can best be considered after an examination of the party leadership within Congress and the leadership of the President of the United States.

PARTY LEADERSHIP OF THE TWO HOUSES

The principal leader of the House of Representatives is the Speaker. He has no counterpart in the Senate, where the most important leadership position is that of the Majority Leader.

The Speakership is historically rooted in the Speaker of the House of Commons in England, but our office has taken significant departures from its model. Like the English, our Speaker is the "House's man"; his principal glory is that he is wed to his House. A Speaker of the British House once told King Charles I, in answer to a royal question, "I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here. . . ," and disked imprisonment and perhaps his head thereby.⁵

The British Speaker today is primarily a fair presiding officer. He is a member of Commons, elected by and "representing" a district, which usually returns him without challenge; but upon election he forswears partisanship, even ceasing to frequent places where he is likely to meet politicians. The rulings from the chair of the principal officer of the House of Commons must not be tainted by politics.

The American Speaker likewise is supposed to be, in the main, a fair presiding officer. But Speaker Cannon once remarked, "I am as fair as I can be, given the exigencies of American politics." So

⁵ Arthur Irwin Dasent, *The Speakers of the House of Commons* (London: John Lane the Bodley Head, 1916), 193.

the ambiguity of contradictory roles complicates the American Speaker's job. The partisan dimension was introduced by Henry Clay and the Speaker today is recognized primarily by his success in advancing his party's interests. Sam Rayburn demonstrated the primacy of this role in 1941 when, on the eve of war, he declared a vote at an end when a bill to extend the services of draftees was one vote ahead. Perfect fairness was deemed not as important.

The American Speaker has yet another role: he is elected in and represents a congressional district. Often the Speaker has little to worry about, but automatic reelection is no part of our custom. Mr. Rayburn again illustrates the point: he successfully carried the burden of the New Deal and Fair Deal—and always had opposition in his conservative northeast Texas district.

The Speaker is the chief officer of the House of Representatives itself; he is elected by the whole body to an office established in the rules. Not so the Majority Leader of the Senate, who is strictly a party officer. The office of "leader," majority and minority, was created by the Democrats in 1920, and by the Republicans in 1925, but the function was recognized before that. Aldrich dominated the Senate in the T. Roosevelt-Taft era and Kern was Wilson's highly successful leader.

What shall we say about these offices? What kind of person holds them and what does he do?

If one were to look to the incumbent Speaker, Carl Albert, one would say that the office is, on the whole, rather passive, with the Speaker occasionally making a strong speech on national policy and reputedly exercising influence on critical issues. With his demonstrated knowledge of the House and its ways, he doubtless does much more, but he is not a public performer.

But this does not tell us much about what the office has been in other times and circumstances, and might be again. The magnetic Henry Clay was the first to use the full powers of the office. He was elected Speaker his first term. He resigned his House seat twice and was promptly re-elected on his return. He represented the new nationalism, resenting England and proposing an invasion of Canada. He appointed "war hawks" chairmen of the committees. In a word, he put the stamp of his personality and passions on a willing House.

At the end of the century, "Czar" Reed and "Uncle Joe" Cannon were virtual dictators of the House. A confluence of propitious

rules and iron wills made this possible. Cannon appointed committees and their chairmen, was chairman of the Rules Committee, controlled the timing, content and character of the debate of bills, and had unlimited power over the recognition of speakers ("For what purpose does the gentlemen rise?"). No bill could reach the floor without a rule. The Rules Committee members were three Republicans, two Democrats. The latter were ignored and quit attending meetings. The Republicans' three were controlled by a "majority." As Cannon put it, "Me and one other."

This arrangement offered responsible party government by a dictator. But the dictator was not responsible to the tides that ran in the country or in the Republican majority. Inevitable revolution, by a bipartisan coalition, trimmed the office to size.

Sam Rayburn held the office longest and is considered by many the greatest of the Speakers. Unmarried most of his life, Rayburn's bride was the House of Representatives. He knew its moods and its habits. His great principle was accommodation ("You have to go along to get along.") but he would put his carefully nourished prestige and influence on the line in order to preserve it. For example, he won a very close vote to enlarge the membership of the Rules Committee to end the dominance of the conservative chairman, "Judge" Howard Smith. His chief strength was his personification of the House of Representatives.

The same variability in role and performance can be found in the leadership in the Senate. If the present Majority Leader, Mike Mansfield, were the norm, we could say the Leader is a kind of chairman, seeking to help the Democrats achieve what they want, personally and collectively. He seeks no power, even claiming that "I have less power than any other Senator." He has said that "Johnson was the greatest leader the Senate ever had," but he has no desire to be like Johnson. He does not attempt to round up votes. He believes that "Senators are grown men and can make up their own minds." Although he has held his leadership post longer than any other senator, he keeps in close touch with the needs and opinions of his Montana constituents and will put them ahead of almost any other business.⁶

Leaders, whatever their personalities, often are products of the

⁶ Andrew J. Glass, "Mike Mansfield, Majority Leader," in Norman J. Ornstein, ed., *Congress in Change* (New York: Praeger Publishers, 1975), 142-154.

situation in which they find themselves.⁷ Examples are found in two very dissimilar men who found themselves in quite similar circumstances—John Worth Kern and Joseph T. Robinson, leaders for Woodrow Wilson's New Freedom and Franklin D. Roosevelt's New Deal, respectively. Kern, a freshman senator, was a sweet man, persuasive, patient, conciliatory, quick to turn away wrath. Employing a daily caucus to rally the Senate Democrats, Kern obtained a majority on every bill Wilson wanted but one. His situation was special. The Democrats had been in the minority for many years and welcomed leadership. Moreover, the dammed-up desires of a large majority in the country, Democrats, Republicans, and Progressives, demanded legislative action. Much the same situation spelled opportunity for Robinson in 1933. But what a different man! Robinson was a two-fisted boss who loved a fight. He used a bulldozer, not a wand. He stepped on toes willingly, perhaps gladly. No ideologist, he followed the Democratic party line wherever it took him.

Lyndon Johnson, too, had a special situation—a Republican president and a shattered party in the Senate.⁸ He carefully put the party back together and used it—and always some Republicans—to achieve a remarkable mastery of the Senate. He said “the only power available to a leader is the power of persuasion,” but in his hands persuasion was a many-edged tool. He used his superiority in information, control of communications, rewards and punishments, to line up the votes. He usually had the compromises and the majority before he went to the floor. Mansfield has correctly stated that he and Johnson were “different personalities,” with wholly different conceptions of the office.

So the party leadership positions have been many things at different times. The roles chosen by committee chairmen have varied as widely (though the job remains the same; the differences seem to be personal *rather* than situational) but they do not represent national party concerns, as the leaders do—or may. It is significant at this juncture of history that party leadership seems to concern itself almost wholly with what happens to bills after they come out of committee. On the substance of the laws, the feudal barons prevail.

⁷ Ralph K. Huit, “The Internal Distribution of Influence: The Senate,” in David B. Truman, ed., *The Congress and America's Future* (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1965), 77-101.

⁸ *Ibid.*, “Democratic Party Leadership in the Senate,” *The American Political Science Review*, LV. (June, 1961), 331-344.

PRESIDENT AND CONGRESS: THE HISTORY

To write about Congress alone is to separate the inseparable. The partnership of President and Congress, the rivalry of President and Congress, have provided much of the drama and tension of the national story. Authors and editors today have a habit of pitching their analyses in terms of Congress *against* the President, and in this putative continuous conflict conventional wisdom has the President winning hands down, with Congress becoming a kind of vestigial figment of the founders' grand scheme.

The analysis properly begins with Jefferson, with the surfacing of parties and the relinquishing of the fiction that a president could lead the whole Congress and "factions" could be avoided.⁹ Jefferson was an extreme Whig; he could and did speak of the "Supreme legislative power." He could well afford to do so; he was himself a supreme legislative leader, guiding Congress through lieutenants who could exercise persuasion for him. He made good use of the party caucus, and had yeoman service from Albert Gallatin, his Secretary of the Treasury, who had great influence with Congress. Jefferson's successors, moreover, were nominated by the congressional caucus, which preserved his strong legislative position for 24 years—through the administrations of Madison and Monroe. The case is easy to make that this was a presidential era.

Jackson, too, was strong. He rode into power on the crest of a genuine popular revolution, the builder of a grass-roots party. Jackson did not perceive his role as that of an initiator; but he used the veto unsparingly, and he did not hesitate to appeal to the people over the heads of Congress (on the United States bank issue). Moreover, he confidently proclaimed his capability of making his own constitutional interpretations.

But this presidential preeminence was not to last. The committee system made leadership difficult. More important, slavery was the dominant issue for the next two decades. It could not be solved but peace could be prolonged through compromise, a task for a "numerous" institution, not a singular executive. Certainly, the presidents of this era were not distinguished. Lord Bryce, the English authority of *The American Commonwealth*, believed they

⁹ The historical section is based largely on Edward S. Corwin, *The President: Office and Powers*, 4th Edition (New York: New York University Press, 1957), Ch. 1.

were the most mediocre presidents in American history. "They were intellectual pygmies beside the real leaders of that generation—Clay, Calhoun, and Webster." And again, "Who now knows or cares to know about the character of James K. Polk or Franklin Pierce?"¹⁰ Who, indeed?

Lincoln's strength needs no testimonial but he did not exercise it through Congress. He relied on the "war powers," on his position as "Commander-in-Chief." He left Congress mostly to his secretaries. But this was indubitably a presidential era, with Lincoln exercising as near dictatorial powers as any executive in the country's history.

But his successor came as close to being ousted from his job by Congress as was possible. One senatorial vote saved him. There is no need to approve congressional policies of that time to recognize that Congress was in the saddle.

There followed then a period which Bryce thought had somewhat better presidents than in the pre-Civil War period. Perhaps so, but it was in 1888 that Bryce published his famous chapter, "Why Great Men are not Chosen Presidents."¹¹ One reason he gave was that "four-fifths of his work is the same in kind as that which devolves on the chairman of a commercial company or the manager of a railway. . . ," a judgment probably based on the incumbents of that period.¹² It is true that Congress deserves no plaudits either. It was a sad time, with the brains and aggression going into building and plundering the country, with government having to settle for second-best.

Theodore Roosevelt, the first modern president, recognized the great power of moral leadership; the White House, he said, was a "bully pulpit." He tried to capture the people's imagination with releases designed to hit the news-hungry Monday papers and his personal style was dynamic and dramatic. Nevertheless, his administration could not be called a presidential era. The tyrannical Cannon, his jaw set against the future and even his own time, gave Roosevelt little to gloat over. He and Senator Aldrich, not the president, said what was to be.

Woodrow Wilson's first term marked one of the great periods of presidential leadership of Congress in this century. His first 18

¹⁰ (New York: Macmillan Company, 1912 edition), 83.

¹¹ *Ibid.*, 77.

¹² *Ibid.*

months saw the passage of great acts of legislation—Clayton Anti-Trust Act, Federal Trade Commission Act, Federal Reserve Act, Underwood Tariff, to name a few. And it was he who stormed against a filibuster which would give him authority to arm merchant ships—which he did anyway—and prompted passage of the first cloture act. But in the end he made mistakes with Congress—calling for a Democratic Congress in 1918 in defiance of bi-partisanship and negotiating the Versailles Treaty without the help of senators. It was the Senate which finally pulled him down.

Franklin D. Roosevelt returned charisma to the presidency. Like Wilson, he had a period of enormous legislative productivity. But he hurt himself terribly with the 1937 court-packing plan, only to have his authority reinstated by World War II. By the time of his death toward the end of the war, he had lost much support again. His career seems clearly to support the “law of ebb and flow.” In twelve years there were distinctly presidential and congressional periods.

No successor until Lyndon B. Johnson had firm leadership of Congress. Immediately after Kennedy’s death, and with his landslide victory over Goldwater, he had scope to exercise his superb legislative skills and the third period of enormous legislative output in this century was achieved by the President and Congress.

The rest is too recent to need recounting.

PRESIDENT AND CONGRESS: A BALANCE

The conventional wisdom of our time holds that Congress is the weak sister in the national triune and must be propped up and reformed. Congress is weak and the President strong, so it goes, and the imbalance is becoming progressively more grave. The argument is supported by a Janus-like logic which, in its way, is unanswerable: if a flood of major legislation is passed it is because Congress is weak and compliant; if legislation does not move it is because Congress is weak and obstructive. A national preoccupation among the system pundits, therefore, is diagnosis of the congressional malaise and prescriptions for it. It is not a new game; Woodrow Wilson initiated the long unrequited love affair of many American political scientists with the British parliamentary system almost a century ago. Today an array of reformers make some part of their living telling Congress what it ought to be and do.

Even some members of Congress have joined the chorus, but it is obvious that Congress itself, in its institutional life, has not got the word. It summons executive officers just short of the President to come to the Hill to advise or to account for their performance. Ignorant of its impotence, Congress pigeon-holes or re-writes Administration bills, reenacts vetoed appropriations, and sometimes overrides vetoes. The Senate refuses confirmation of Supreme Court nominees. Members introduce bills of their own as if that were their right and often see all or part of their ideas incorporated into law.

The history of Congress is a curious story of failure indeed when viewed in the context of its historical counterparts. Since the time when Congress was established in the first article of the Constitution, England has seen its monarch—a real chief executive then—become a bored civil servant, its upper house lose all its power to the lower, which in turn has succumbed to a ministry which runs the Commons and the bureaucracy both. France has run through two kingdoms, two empires, five republics and one Charles de Gaulle. The list could go on but this should do. Congress has changed with the times within its original constitutional structure and mandate. It is today without question the most powerful national legislature in the world. The powers and prerogatives of its individual members are the envy of their brethren in the most prestigious of parliaments.

What is the relative strength of the executive and Congress?

One is confronted at once with the lack of an adequate measure of political power. Equally ambiguous is the matter of which performs better the shared functions of governance for the system. Perhaps this is the place to begin—with a summary analysis of the way each goes about the tasks of representation, legislation and controlling the government of the United States.

Whatever its deficiencies, Congress is a representative body (which may be why the Americans see its flaws so clearly). Its members, as we have said, literally are never wholly safe with the electorate. Most keep in touch with constituents, some obsessively, through visits home, newsletters, TV and radio tapes, and a variety of other tactics. Almost any citizen can have some degree of access through his representative because no member of Congress is impotent and some are influential indeed. Interest groups need not work their way into the inner sanctum of a ministry; multiple points

of access are offered by members of appropriate committees. The marvelous flexibility of committee hearings lends itself to a variety of representational roles. Information and public education on new problems—say, radiation fallout—can be had from the best faculty the country affords. Causes which cannot win can be given their day in court. Explosive issues can be slowly deflated through progressively duller and more technical witnesses. Morality plays can be staged. The permutations are almost endless.

It is safe to say the executive branch cannot match the warmth and versatility of Congress's representational performance. But who can strike a balance between that and the grand role of the President as chief of state, symbol of unity, spokesman for America? The founding fathers knew the Nation needed a king and gave it one. The endless difficulties caused by this unhappy mixture are well known, especially to a presidential candidate running against an incumbent. Nevertheless, the combination provides assets too. In a time of crisis no committee can equal the grandeur of the single leader.

The division of labor in the legislative function is not so easy to delineate. Congress is pleased to consider the President the initiator; his bills and messages are the points of departure, at least, for what the committees do. But congressmen initiate too, often well before a proposal has caught on with the public. When it does the Administration appropriates it as it pleases, seldom giving credit. The specialized committees probably give an individual measure as good consideration as it could get. They are in continuous communication with the interest groups which are themselves part of the representational system. But the executive agencies are, in effect, interest groups as well. Their help is invaluable in bringing to bear the vast resources of the bureaucracy. It is useful to think, not of a legislative policy system but of many, each made up of congressmen, bureaucrats, interest groups, and concerned publics, all of which are involved in a policy issue.

But one distinction may be made sharply: only the President so far can set priorities. Strengths have their costs: the decentralized power structure of Congress which is proof against presidential domination precludes the kind of party leadership which can make national programs. The congressional system has respected its inner logic, rejecting devices which might exercise control over the whole body, just as the English parliamentary system has rejected

whatever might dilute the perfect and responsible concentration of power in the Prime Minister and his colleagues. We shall discuss later the attempt of Congress to set priorities through a reformed budget process.

What of control of the government? In his justly famous *Considerations on Representative Government*, published in 1861, John Stuart Mill said, "Instead of the function of governing, for which it is radically unfit, the proper office of a representative assembly is to watch and control the government. . . ." ¹³ This the House of Commons tries to do by holding the ministry, which is its own leadership, responsible for all the acts of government. Congress requires in its rules that each specialized committee shall oversee the work of the agencies which administer the programs in the committee's jurisdiction. It is safe to say congressional oversight is not very effective. Congress can and does perform well as ombudsmen for constituents who think they find the bureaucracy unresponsive. But the important task is seeing that legislation is carried out as its authors intend in hearings and reports, floor debate and conference reports. There is no way that congressional committees can make sure that those who write regulations and supply details will read the record.

In fairness, it should be said that the President probably does not do much better. Two million civil servants spread across a continent-wide nation are hardly susceptible of control by a thin overlay of temporary political appointees. What makes the bureaucracy generally a productive and responsive partner in governance is not political control, it is likely, but professional integrity and a commitment to the democratic ideals which most of us share.

If the foregoing truncated assessments are fair, we have not offered much help in measuring the respective strengths of executive and Congress. Perhaps it will be better to put the question more crudely: to what extent can the President get his own way? More than before?

In foreign policy, everyone knows the answer: the President is dominant; Congress is reduced pretty much to scolding. Not so in domestic affairs. The power of the President vis-a-vis Congress has shifted and continues to shift, over time and within single administrations. The only interpretation of this history which seems

¹³ *On Liberty and Considerations on Representative Government* (Oxford: Basil Blackwell, 1948), 172.

convincing is found in the "law of ebb and flow." The presidents have not grown at the expense of Congress; some great periods have been shared and some have been alternated. The presidency may be "imperial" today, but the incumbent cannot afford to be imperious. The partnership goes on, with relative power ambiguous, as always.

A similarly ambiguous answer is suggested by the record of the respective branches in protecting their own turfs. Each has committed aggressions on the other; both have avoided constitutional showdowns. Roland Young states in his *Congressional Politics in the Second World War* that both President and Congress clearly crossed the boundary into the other's domain several times; when the outcome was satisfactory neither complained. This suggests that pragmatic common sense has had much to do with the success of the partnership.¹⁴

In any event, "partnership" is the key word. The evidence does not show that either partner can attain a lasting primacy over the other.

AN ATTEMPT AT ASSESSMENT

The entire focus of this essay has been on Congress as an institution of government, a part of the American political system. No attempt has been made to itemize substantive actions for success or failure. For one thing, it is not possible to isolate what was distinctly congressional from what was contributed by other operational sectors in the system. Again, actions have unintended and unanticipated consequences; what seems achievement today may be perceived as disaster later. But it is possible to suggest what Congress as a legislative body and representative assembly can and cannot do.

Congress almost never can address itself to whole questions affecting the whole system. It is organized to deal piecemeal with problems. Jurisdictions assigned and jealously guarded see to this. One remembers the late 1960's when the House Subcommittee on Postsecondary Education held hearings for amendments to the higher education legislation. The most crucial question facing higher education then was what would be done to the draft law. Mrs. Green, who chaired the Subcommittee, was bitterly frustrated;

¹⁴ (New York: Columbia University Press, 1956), *passim*.

the witnesses could not discuss that. The subject belonged to the Armed Services Committee. In 1976, problems of energy and the economy are in like circumstance.

A second disadvantage is that committees and subcommittees have such close ties with interest groups, which are an integral part of their world, that the subcommittee may come in effect to represent the interests. One thinks especially of the House Agriculture Committee, six of whose subcommittees were for many years organized along *commodity* lines, a frank admission that the job of the subcommittee is to protect the interests of those who produce that commodity. When the administrative agencies which carry out the programs are added, the circle is complete. There are differences among these parties to be sure, and they are not conspirators against the public interest, but there still is a parochialism and narrowness in their outlook.

What cannot be gainsaid is that the Congress cannot be held politically responsible for its overall performance. Congress is two houses, separate and distinct, with differing modes of operation. Congress is two parties, unable to hold party lines, not organized to take party positions. Congress is 40 standing committees, many more special committees, task forces, etc., each with a piece of the job. Congress is 535 individual members, each catering to his own district or state and depending on his own resources to retain his seat. Nowhere is there a handle with which to take hold of the whole Congress. The President must face the whole people but he truly leads Congress only occasionally and for short periods. He can go down in utter ruin without necessarily affecting the fortunes of a single member of Congress.

Weaknesses and strengths often are opposite sides of the same coin. The glory of Congress is that it is an independent national legislature, truly the last of that kind. It can oppose the President, override his veto, and hold him to account. There should be great national pride in that.

To the citizens it offers multiple points of access. No individual nor group need penetrate to a ministry; one's own congressman or a committee member will be available and frequently can be effective help. Frequent trips home by most members assure that the opinions of the great Nation are pretty accurately reflected on Capitol Hill. Not so with the President. Given the vastness of his domain and the necessary shield between him and people, he is apt to fall

prisoner to the views of the world held by his staff. Needless to say, their lives tend to be cabined and confined as well.

If Congress is, as it is argued here, a highly successful political institution and a durable partner in the grand alliance, how can we account for the widespread clamor for its reform and reorganization?

The reasons doubtless are many—including always the possibility that the critics' assessment might be right. But this may be suggested: the operations of Congress are far and away more open and public than those of the President and the appellate courts. Congress, its committees and members, are on almost continuous display. We know its faults because we can see them—over and over again.

The President, who begins with the advantage of the inherent drama of his office, can with modern technology stage-manage almost every appearance he makes before the public. He is becoming increasingly remote from the American people. The internal life of his office is not open to systematic scrutiny by anyone. The decision-making processes of the administrative agencies are likewise secure from public view. It is easy therefore to believe that they are more rational and based on better knowledge than the untidy procedures of Congress. Experienced persons say they are not.

The Supreme Court enjoys even more nearly complete privacy. Blackrobed justices render decisions of far-reaching political import and explain how they arrived at them mostly in legalisms.

But the congressional "image" is not nearly so important as the political education of the people which comes from openness to the public. Members of Congress recognize this and are moving toward more, not less, open actions. Recorded votes in committee of the whole in the House, public mark-ups and even some open conferences, are examples. The House of Representatives is even considering televising some of its proceedings.

An intriguing aspect of the congressional image, noticed again and again by scholars, is the paradox of a poor opinion of Congress coupled with high marks for the district's own congressman. Traveling around their home districts with 10 representatives, Richard Fenno found that, "Invariably, the representative I was with—young or old, liberal or conservative, Northerner, Southerner, Easterner or Westerner, Democrat or Republican—was described as 'the best

congressman in the United States.”¹⁵ At the same time, polls show only about a quarter of respondents speaking favorably of *Congress*. He suggests several reasons, one of which is that members work harder at their own than institutional public relations. This surely is true, even to the extent of running “against” the institution—i.e., blaming the structures and procedures of Congress for preventing his carrying out many of his own promises.

Congress, in the 1970’s, was in a mood for reform. Several steps had been taken, the most important being the Congressional Budget Act of 1974.¹⁶ This legislation established a budget committee in each house and a joint Congressional Budget Office. It requires two resolutions a year, one in the spring and another in the fall, which will control the most important elements of taxing and spending, overall and by individual appropriations. The future of the legislation remains to be determined but if it succeeds it will repair the largest undeniable defect in the operations of Congress, its inability to set priorities.

Reforms are hindered by the uncertainty of what *is* a reform. Today’s evil often is yesterday’s reform. The tyrannical Rules Committee against which Speaker Rayburn fought was one of the reforms imposed on tyrannical Speaker Cannon. Seniority as a selector of chairmen is a reform over selection by a Speaker who exacted detailed promises of legislation as a price, and of election by the whole body preceded by several months of log-rolling. Structural and procedural devices give little assurance of permanent rectitude.

The same is true with the questions of why Congress is slow, and why Congress does not pass legislation that solves our problems. There is no proof that hurrying legislation makes it better nor that anyone knows what legislation will solve problems. In its 200 years of life the Nation has endured travail and made much progress. Today we face bright opportunities and threatening crises. Like the people who create it biennially and sustain it, Congress must do the best it can.

¹⁵ “If, as Ralph Nader Says, Congress is ‘the Broken Branch,’ How Come We Love Our Congressmen So Much?” In Ornstein, *Congress*, 277-287.

¹⁶ Allen Schick, “The Battle of the Budget,” in Harvey C. Mansfield, Sr., ed., *Congress Against the President* (New York: The Academy of Political Science, 1975), 51-70.