

## Introduction

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**M**uch of the contemporary discourse about Congress among scholars, journalists, and politicians has its origins in the writings of Woodrow Wilson and early twentieth-century progressives. These thinkers saw Congress as a roadblock to needed change and ill-adapted to meet the requirements of modern government. Similarly, critics today complain that the constitutional system is not designed for dispatch and is particularly vulnerable to political forces that thwart progress. Congress, they conclude, lies at the center of this dysfunction.

We recognize that all is not well with Congress. But have these Wilsonian expectations intensified disappointment with congressional partisanship and legislative productivity?

No doubt Congress is not as effective as it should be. Problems obviously exist. This volume raises two questions: whether the reforms designed to make Congress more effective have, in fact, done so; and more fundamentally, if the standard by which we judge those reforms is the correct one to begin with. As a constructive alternative, we seek to revive a more traditional Madisonian perspective on Congress. This approach takes a more complex view of the institution, recognizing that there is room for both cooperation and conflict. Yes, the constitutional system is full of friction, as Justice Brandeis wrote, but friction creates light as well as heat.

Tough partisan conflict can promote needed oversight, give rise to serious deliberation, and prevent ill-considered legislative innovations. Since Congress is, first and foremost, a representative institution, partisan conflict reflects factional divisions within the polity.

James W. Ceaser gave the opening keynote address at the conference that was the genesis of this volume. Because Congress will never be loved by presidents, he said, it might as well be feared. This fear has been absent in recent years; thus Congress must regain its proper role in the policy process. Congress might, for example, revive the constitutional power of the purse as the best means to defend itself against the overgrown prerogatives of the executive branch. Perhaps Congress needs to revisit the 1974 Budget Impoundment and Control Act, as budgetary process scholar Peter Hanson recommends.<sup>1</sup> As James Madison noted in *Federalist* No. 58: “This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance and for carrying into effect every just and salutary measure.”<sup>2</sup>

While many of the essays in this volume look back to the Founders for insight into what they saw as the proper functions of Congress, our focus is on the future of Congress. At present, Congress does not deliberate as thoughtfully, legislate as carefully, or oversee the executive branch as thoroughly as it should. Broadly, this collection is an attempt to promote analysis and develop ideas for returning Congress to its proper place in our constitutional system. For successive generations, congressional reforms have been supported as making the institution more “open,” more “responsive,” more “democratic.” As several essays herein suggest, however, the cure for the ills of democratic governance might be, not more openness and more democracy but, rather, a greater respect for the complexity of the institutions and their intended place in producing responsive and sound government.<sup>3</sup> Today, Congress may be better at representing the factional parts of American society and, thereby, less adept at legislating in the interest of the whole. A Congress more Madisonian responsible than Wilsonian responsive may be more effective at fulfilling its other functions to deliberate, legislate, and oversee the executive.

Challenging the conventional wisdom begins with questioning whether Congress is, indeed, hopelessly dysfunctional and whether effective government requires a continued drift toward deference to presidents, courts, and executive bureaucracies. To restore public trust in Congress, we need

the public to remember that Congress's task is both to represent and enlarge the public good. To accomplish the latter, we need to provide members with the institutional "space" to deliberate as the Constitution's architects intended republican institutions to do.<sup>4</sup>

Trusting politicians does not mean being naïve; it does require, however, not being endlessly cynical about our elected leaders. Madison, after all, was a realist who famously wished to unleash ambition to counteract ambition. He had confidence that politicians, acting within properly established institutions, could produce sound policies. In short, he expected elected representatives to be somewhere between the naiveté of Mr. Smith and the cynicism of Frank Underwood.

Madison's design was for a government limited in scope. Expecting a restricted structure to support a government whose ends now seem unlimited is to require that government to perform its role in a way that will inevitably lead the population to frustration, a sense that the system is broken, and distrust of the institutions themselves. A key theme of this volume is that reforms designed to transform the Constitution's architecture have only deepened this problem. Putting a saddle on an elephant does not make the elephant a racehorse. Hence, to regain public trust in government and its institutions, to manage expectations of what Congress was designed to do, we may need to think once again of what it means to have limited government. A fuller appreciation for our system of separated powers, federalism, and bicameralism is a critical, if not simply sufficient, starting point.

In his maiden floor speech first-term Senator Ben Sasse (R-Nebr.), who holds a Ph.D. in history, cited the Founders' Constitution and the "unique place in the architecture of Madisonian separation of powers" served by the Senate. Senator Sasse lamented "short-termism" and the "sound-bite culture" in today's Senate, calling for the "recovery of more honest Socratic debate." While he offered no magic bullet solutions, Senator Sasse focused on executive overreach and congressional abdication: "The growth of the administrative state, the fourth branch of government, is increasingly hollowing out the Article I branch, the legislature—and many in Congress have been complicit in this."<sup>5</sup> Senator Sasse appears concerned that a new president with an ever-expanding policy agenda may make even more aggressive use of executive power than his or her predecessors, making an institutionally stronger Congress more imperative than ever.

The authors in this volume agree there are no magical solutions to restoring Congress's place in our constitutional constellation, though they

generally concur that, as important as changes in how Congress organizes itself may be, a return to a more nuanced and realistic perspective about Congress's role is a necessary first step.

Daniel Stid's chapter offers an ideal opening for our collection of essays, providing useful historical perspective. He argues that "we are not obliged to keep working against the grain of our longstanding constitutional arrangements." Instead, he calls for revitalizing the reform tradition embodied in the Legislative Reorganization Act of 1946, designed to uphold Madison's separation of powers, as an alternative to the Wilsonian perspective so popular among reformers for decades. Stid thinks we need to return to this alternative congressional reform tradition to restore Congress:

An institution so restored would be much better positioned to serve as the first branch of government, to retain and actively exercise rather than continue to cede its power and authority to the President, administrative agencies, and the courts . . . For this restoration to occur, Congress needs to take back the power of the purse and oversee the executive branch much more systematically and effectively. The frayed and tattered "regular order" needs to be re-envisioned and reestablished. But the imperatives of representative democracy over the next 50 years will mean that any functional order will work much differently than it did 50 years ago.

Stid laments the "big lobotomy" of congressional staff cuts, blaming Wilson's preference for the unifying national executive versus the parochialism of Congress. Stid broaches the "careful what you wish for" quandary; to wit, Wilsonian reformers sought "responsible parties," yet now they lament red versus blue polarization. Responsible party government reforms may have begun with Democratic reformers but, ultimately, they proved bipartisan: "Gingrich's Republican majority represented the apex of responsible party government." Newt and Nancy are two peas in a pod.

Stid also suggests that elections may matter more than tinkering with institutional reforms. A critical election, not reform, may be better at resolving impasses, an argument echoed throughout this volume. Is reform a leading or lagging indicator? After all, large majority elections (1974, 1994) enabled significant institutional reforms. This raises another question: Is reform really a stalking horse for a particular policy agenda?

In his essay on congressional representation, chapter 3, Andrew Busch makes thoughtful use of the federalist/anti-federalist debate as a rubric for judging reform. Busch underscores the importance of thinking institutionally, faulting progressive reformers for following Woodrow Wilson's lead in slighting the importance of constitutional and institutional structure. He makes the case for revisiting the Seventeenth Amendment, re-federalizing American politics, and curbing the growth of the administrative state. Busch also develops the constructive point that elections, not reforms, will provide the real solution to current purported dysfunction.

In chapter 4, Dan Palazzolo grounds his discussion of deliberation within congressional committees on the floors of the House and Senate in Madison's expectations of legislative politics and on the work of scholars such as Joseph Bessette and Randall Strahan. The Framers sought to design institutions that fostered deliberative lawmaking, but they realized that factional politics could overwhelm deliberation. In the contemporary Congress, institutional reforms, group activism, and heightened partisanship routinely trump (pun intended) deliberation in the legislative process. Yet Palazzolo challenges the simplistic notion that Congress is hopelessly gridlocked and incapable of deliberation. Notwithstanding partisan polarization, the degree of deliberation varies by issue, committee, chamber, and the strategic choices of parties and leaders. Palazzolo suggests that scholars should focus more attention on deliberation within parties. In addition, he recommends strengthening and closing committees, instituting a five-day work week, promoting a three weeks on—one week off schedule, and limiting the number of committees on which members serve, especially senators.

Donald Wolfensberger grounds chapter 5 on House rules in decades of personal experience on Capitol Hill, most notably as a longtime senior Rules Committee Republican staff member. He usefully draws on the work of scholar Greg Weiner, House Parliamentarian Charles Johnson, and others, and makes constructive use of his own long-term perspective on congressional history. Wolfensberger, too, makes apt use of the Madison versus Wilson debate. Like others, he criticizes the cutting of committee staff, along with the shift from committee to party leadership staff. But given his detailed knowledge of legislative rules and procedures, Wolfensberger outlines specific procedural prescriptions in the closing paragraphs of his chapter. First, he says:

The current rule that allows recorded votes in committees to be postponed and clustered at the end of a bill markup session should be repealed so that members can reengage in the important deliberative stages of argumentation and persuasion. Leaders should desist in scheduling unreported bills on the floor except in emergency situations. Likewise, closed amendment rules on the floor should be reserved only for emergency bills, while opening up most other bills to modified open rules with time caps on the amendment process. And finally, leadership should refrain from substituting new bill language in the Rules Committee for that already agreed to by committees.

He finishes the chapter saying: “There are no procedural quick fixes that can instantly reverse the vice-like constrictions on members’ individual rights and committees’ deliberative roles. But the steps outlined above can begin an incremental process of reestablishing a balance between responsible party agenda-setting and responsive committee lawmaking in the nation’s interest.”

Placing such recommendations in context, Wolfensberger cites a speech that John Boehner gave just before he became Speaker about the need to return to regular order:

the truth is, much of the work of committees has been co-opted by the leadership. . . . In too many instances, we no longer have legislators; we just have voters. In my view, if we want to make legislators legislate again, then we need to empower them at the committee level. If Members were more engaged in their committee work, they would be more invested in the final products that come to the floor.<sup>6</sup>

A return to regular order may be a worthy goal, yet implementing this change may be more difficult than some realize, placing the transition from Speaker Boehner to Speaker Ryan in context, as well.

In chapter 6, Melanie Marlowe argues that Congress has eviscerated itself, abdicating to the executive branch by delegating lawmaking to the administrative state. Entitlements are another example of the abdication of lawmaking responsibility. So, too, are the proliferating independent boards and commissions. Marlowe offers budget reforms to reverse this process. Further, Marlowe argues, Congress can promote public delibera-

tion by using serious committee oversight hearings to educate members of Congress and the general public. As part of that reform, Congress should eliminate term limits on committee chairs and transfer staff resources from personal offices to professional committee staff. She concludes: “If Congress wants to be taken seriously, it must behave seriously” and “Congress must invest in itself.”

Gary Schmitt and Rebecca Burgess, in chapter 7, bring a foreign policy and administrative state focus to this volume, explaining how, in conjunction with the rise of the president as party and popular leader, the presidency has become the dominant branch of government. That said, Congress remains the most powerful legislature in the world if only it would step up to its responsibility and functions. “Turf” lost to the executive may be less important than “ensuring that the authority” Congress “does wield is properly directed.” This will require rolling back previous reforms that have weakened committees to promote more serious deliberation and oversight. Congress must “refine and enlarge the public view,” as Madison argued, rather than simply reflect the “slice-in-time” partisan gamesmanship that dominates congressional–executive relations today. As such, Schmitt and Burgess argue, we need to change the terms of debate about Congress from our current simplistic populism to a more fully deliberative republican perspective. This might enable Congress to find both the incentive and capacity to act on its convictions.

In chapter 8, Kathryn Pearson offers a thoughtful perspective on contemporary congressional leadership in the context of separation of powers, including how institutional context affects the behavior of party leaders and members. She notes the deepest disagreements within congressional party caucuses are commonly over party strategy, not policy. The central leadership dilemma is managing party caucus divisions over “political strategy and institutional loyalty.” Pearson’s key conclusion is that we need to strengthen both committee and party leaders. Weak party and committee leaders leave “Congress with insufficient power and incentives to overcome institutional hurdles and fulfill its constitutional responsibilities.” Stronger committee chairs can empower a Speaker to balance “the dual imperatives of the speakership—responsibility for the institution and for one’s party.” Therein lies the challenge for congressional leadership in Madison’s constitutional context. Ironically, strengthening committee leaders may be the necessary predicate for strengthening party leadership. Newly minted Speaker Paul Ryan seemingly read Pearson’s conference

paper, since he adopted one of her recommendations, namely, reducing the Speaker's votes on the Steering Committee. Will he also end committee chair term limits?

In chapter 9, Peter Hanson offers insight into the budget piece of the reform puzzle in his short Brookings Institution essay, replicated here. This essay, however, may only whet the reader's appetite for his longer essay found on the George Mason University website, or for Hanson's recent book, *Too Weak to Govern: Majority Party Power and Appropriations in the U.S. Senate*. Here, Hanson argues that the annual appropriations process is on the verge of collapse given the decline of "regular order," by which he means the debating and passing of individual appropriations bills in the House and Senate. Instead, today's Congress often budgets by passing large omnibus packages at the end of the legislative session following a budget summit with the president, with little scrutiny or opportunity for amendment by rank and file members. Hanson blames primarily Senate rules and procedures for this breakdown. To restore regular order, Hanson recommends filibuster reform, concurrent House and Senate consideration of appropriations, restoring earmarks, and reducing transparency. A more deliberative and republican Congress might budget more effectively than the more open and democratic Congress does at present.

In his closing conference keynote address, Jonathan Rauch drew on his Brookings Institution "Political Realism" essay, which he abridges in chapter 10. Rauch argues that we cannot take the politics out of politics, because "governing is difficult and politics is transactional." Consequently, we need "political machines" in which we re-empower party and committee leaders with the carrots and sticks needed to lead. Congressional party and committee leaders require leverage and opportunities to deliberate behind closed doors. The Wilsonian push for transparency has failed. "The public sees more of the sausage making while getting less sausage." Rauch is willing to make the "case for corruption," complete with "honest graft." He wants a return to the smoke-filled rooms, though without the smoke. Rauch wants to "rescue compromise." Rauch's political realism reflects Madison's sober yet optimistic realism about human nature and Madison's confidence about republican self-government.

The concluding chapter, "A Return to Madisonian Republicanism: Strengthening the Nation's Most Representative Institution," by Bill Connelly and Jack Pitney, pulls together the various threads of the previous essays and reflects more broadly on what a Madisonian reform agenda



would be to set Congress on a future path to retake its rightful place in the constitutional order.

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### Notes

1. Peter Hanson, “New Ideas for Federal Budgeting: A Series of Working Papers for the National Budgeting Roundtable,” Centers on the Public Service, George Mason University (<http://psc.gmu.edu/wp-content/uploads/New-Ideas-for-Federal-Budget-Working-Paper-No.-1.pdf>).

2. *Federalist* No. 58, Avalon Project at Yale Law School ([http://avalon.law.yale.edu/18th\\_century/fed58.asp](http://avalon.law.yale.edu/18th_century/fed58.asp)).

3. Martin Diamond, “The Separation of Powers and the Mixed Regime,” *Publius* 8, no. 3 (1978), pp. 33–43.

4. Randall Strahan, “Personal Motives, Constitutional Forms, and the Public Good: Madison on Political Leadership,” in *James Madison: The Theory and Practice*

*of Republican Government*, edited by Samuel Kernell (Stanford University Press, 2003).

5. Department of Defense Appropriations Act, HR 2685, 114th Cong., 1st sess., *Congressional Record* 161 (November 3, 2015) ([www.congress.gov/congressional-record/2015/11/3/senate-section/article/s7697-1](http://www.congress.gov/congressional-record/2015/11/3/senate-section/article/s7697-1)).

6. Representative John A. Boehner, “Congressional Reform and ‘The People’s House,’” remarks delivered at the American Enterprise Institute, September 30, 2010 ([www.aei.org/publication/congressional-reform-and-the-people-house/print](http://www.aei.org/publication/congressional-reform-and-the-people-house/print)).