

Reflections on Congressional Government at 120 and Congress at 216

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The Woodrow Wilson International Center for Scholars is adept at marking anniversaries. I have been privileged to reflect on Congressional Government, Woodrow Wilson's doctoral dissertation, on two such occasions: today, as we mark the 120th anniversary of that book's publication, and in 1994 as part of a lecture series on the Center's own 25th anniversary.¹ My 1994 talk, as it turned out, was given barely three months before a watershed election that shifted control of the House to a Republican majority led by Newt Gingrich and that provided me with an unsought two-year sabbatical back at Duke University. Don Wolfensberger, probably suspecting that I would not write precisely the same essay now that I did then, has generously offered me a chance to "update" my earlier thoughts. His suspicion is correct, but while my amended reflections no doubt reflect my altered personal perspective as a defeated incumbent who returned to the House as a minority member, I hope they have some validity beyond that subjective aspect. In any event, I am grateful for the opportunity to share these thoughts with you and will look forward to the discussion afterwards.

The Center has provided you with a copy of the 1994 essay, and I will not review it in detail. Rather, I will offer supplementary thoughts on the three broad areas on which Wilson concentrated which seemed to me to be of contemporary interest, with a particular but not exclusive focus on the House: the role of parties in government; congressional performance, with particular reference to the committee system; and the quality of political discourse. I must also report, however, that in rereading

¹ David E. Price, "Congressional Government Revisited," in James M. Morris, ed., Legacies of Woodrow Wilson (Washington: Woodrow Wilson Center Press, 1995), chap. 1.

Congressional Government, certain Wilsonian themes struck me with much more force than they did eleven years ago: the balances of power between Congress and the executive in the federal government and between the committees and the parties within the Congress. Those balances were in better repair, I believe - - not perfect repair, but better repair - - in the 1990s than they are today, and thus I will add those themes to our discussion.

Party Leadership

In reflecting on party leadership - - at that point, Democratic leadership - - in Congress in 1994, the bruising budget battle of the year before was very much on my mind. I spoke in terms of “responsible party government,” not only because of Woodrow Wilson’s important (if somewhat idiosyncratic) contribution to that school of thought and my own political science background, but because I was at that moment part of the effort to make unified Democratic control of Congress and the presidency work effectively. We whipped numerous measures, some of them long-stalled, to passage: Family and Medical Leave, “Motor Voter,” national service, a background check for gun purchases, an NIH reauthorization freeing research from ideological constraints, and major crime and deficit reduction initiatives. Yet the budget and crime victories came after long struggles that revealed deep divisions among Democrats, and President Clinton’s health care and welfare reform proposals died ingloriously, contributing greatly to the party’s negative image going into 1994.

Republicans have run a tighter ship and have generally been rewarded politically, although it may turn out that today’s discussion, like the one we had eleven years ago, is being held on the eve of major shifts in party fortunes. In any event, Republicans have

taken the consolidation of leadership control in the House and partisan unity in supporting a Republican administration far beyond what we Democrats aspired to, much less achieved. Newt Gingrich took major steps beyond the Democrats' leadership – strengthening moves of the 1970s and 1980s with regard to the appointment of committee chairs and members and control of committee and House agendas. This did not significantly change under Dennis Hastert, despite his professed desire to return to the “regular order;” the consolidation of leadership control over the past decade has reached levels not seen since the days of Reed and Cannon.

With the accession of George W. Bush, a Republican president determined to govern from the “right-in” rather than the “center-out,” GOP control took on a harder edge in terms of tactics designed to eliminate dependence on or participation by Democrats, while keeping the narrow Republican majority in line. Most obvious is the practice of going to the floor with a narrow whip count and holding the vote open as long as necessary to cajole the last few Republican members to vote yes. The most notorious example was the vote on the Republicans' privatized Medicare drug benefit, held open for almost three hours on November 22, 2003, but the tactic was utilized as recently as last month on the post-Katrina bill dealing with refinery construction and price-gouging.² A second tactic is to bring bills to the floor under increasingly restrictive rules. The incidence of completely closed rules that preclude the offering of any amendments whatsoever, including the traditional minority substitute, went from 9 percent in the last Democratic Congress (103rd) to 22 percent in the 106th and 107th to 28 percent in the

² Jeff Tollefson, “With Environmental Provisions Cut, House Approves Energy Bill,” CQ Weekly, October 10, 2005, p. 2722.

108th.³ A third tactic is to exclude Democrats from House-Senate conference deliberations. Here the watershed year was 2003, after the Republicans gained control of the Senate as well as the House and the presidency. The poster boy for the practice is Ways and Means chairman Bill Thomas, who told House Democratic conferees on the Medicare prescription drug bill that sessions would be cancelled if they showed up. And fourthly, leadership intervention in and preemption of committee decisions has had a particular impact on Democratic members of committees with a history of partisan cooperation - - Appropriations, certainly, but also Transportation and Infrastructure, Armed Services, and others. In sum, Republicans have “manipulated the process to serve partisan interests far beyond what the Democrats did during their 40-year reign in the House.”⁴

As a member of the congressional minority on the receiving end of such practices, it will perhaps not surprise you to learn that I have had some second thoughts about responsible party government. But the fact is that those second thoughts began years ago and were refined in the crucible of 1993-94 as well as during Democrats’ years in the wilderness. The second thoughts do not bespeak a reversal: I continue to believe in the virtues of party discipline in the House and to try to help achieve it on our side of the aisle. It is basically a good thing that both parties have gained strength and solidarity in the modern House, opening up productive, cooperative roles for individual members, overcoming fragmentation, and enabling the majority to rule. But there are balances to

³ Computed by Don Wolfensberger of the Woodrow Wilson Center in “A Reality Check on the Republican House Reform Revolution at the Decade Mark,” January 24, 2005, p. 14.

⁴ Thomas Mann and Norman Ornstein, The Broken Congress (New York: Oxford University Press, forthcoming), ms. p. V-41; cf. Paul J. Quirk and Sarah A. Binder, “Congress and American Democracy: Assessing Institutional Performance,” in Quirk and Binder, eds., The Legislative Branch (New York: Oxford University Press, 2005), p. 540.

be struck and excesses to be avoided, and the current iteration of party government should give us pause in at least three respects.

First, there are legitimate issues of fairness and institutional openness - - to the participation and contributions of Democratic members and to the interests of the districts (almost half of the country) that we represent. Secondly, reminders abound that unified party control and other systems and mechanisms favored by champions of government efficiency from Wilson's day forward can in fact magnify the effects of irresponsibility and error if badly used. They certainly do not guarantee the enactment of coherent or sustainable policies. Consider the budget process: it made possible serious fiscal course corrections in 1990, 1993, and 1997, but for most of its history, including the last five years, it has facilitated what David Stockman termed "fiscal excesses that had never before been imagined."⁵ Efficient structures are no substitute for responsible leadership, and they may enable irresponsible or inept leaders to do far more damage. It is therefore important to temper party efficiency and discipline with processes that foster diverse input, due deliberation, and the building of consensus.⁶

Thirdly, Congress needs a bipartisan as well as a partisan capacity. The sharply partisan approach of President Bush and congressional leaders arguably has decreased rather than increased their ability to handle areas such as trade and energy effectively. Certainly it bodes poorly for our ability to deal with the major "dedistributive" issues - - notably deficit reduction and entitlement reform - - that loom over the horizon.⁷ Is it

⁵ Stockman, *The Triumph of Politics* (New York: Avon, 1987), p. 409.

⁶ For an assessment linking the current mode of party control to a dearth of "moderate, responsible policy choices" and a tendency to pass inadequately considered measures based on ideology or narrow interests, see Quirk and Binder, "Congress and American Democracy," pp. 541-42.

⁷ The term is Paul Light's; see the discussion in David E. Price, *The Congressional Experience*, 3rd ed. (Boulder, CO: Westview Press, 2004), pp. 201-203, 209-210.

remotely conceivable that anything resembling the 1990 bipartisan budget agreement could be concluded in Washington today, even though today's budget crisis is more serious? One problem is that this President Bush, unlike his father, barely acknowledges the problem. But even if he did, the partisan divide is so wide, and the mechanisms of collaboration so atrophied, as to make a 1990-style bipartisan agreement almost unthinkable. Nor does 1993 offer a reliable alternative model. In retrospect, that budget plan, passed with Democratic "heavy lifting" alone, appears even more remarkable than it did at the time. But it was that experience that decisively convinced me that for the major redistributive issues we face, we must keep the mechanisms of bipartisan communication and cooperation - - as well as those of majority-party mobilization - - in working order if we are to govern successfully. It is that bipartisan capacity that we have at least temporarily lost in the current era, and it is a dangerous loss.

Committee Decline

Woodrow Wilson portrayed committees as at once dominating the work and the power structure of Congress and exemplifying its defects as a governing institution. In 1994 I offered a contrasting view of the role of committees in offering members incentives to engagement, fostering expertise and deliberation, and facilitating oversight of executive agencies and programs. Today all of those functions are in decline.

Most House committee chairs have considerably less autonomy than their Democratic counterparts had before 1994 - - a function of how they are appointed and reappointed, of term limits, and of the leadership's degree of intervention and control. In turn, senior majority positions on most committees have been devalued: there is less for senior members to determine in terms of committee direction; the chairman's frame of

reference has likely shifted from his or her committee peers to party leaders; and the authority and resources of subcommittee chairs have been reduced. Senior members on the minority side are less likely to be drawn into collaborative relationships, and they are often under pressures of their own to maintain partisan distinctiveness. Junior members from both parties will rarely be more than bit players, counted on for their votes but not much more.

I make these generalizations knowing quite well that there is considerable diversity in performance and practice among committees, and even on the same committee from one endeavor to another. Let me also emphasize: I am not inclined to idealize the committee-party balance under Democratic leadership. I thought that our party leaders deferred inordinately to senior committee leaders, and I will want to see some changes when we regain the majority. Still, I believe that the decline in committee (and ultimately institutional) capacity under Republican leadership is real. When political scientists get around to what they call “operationalizing” committee decline, they will find abundant evidence overall of a less substantive, sustained, or self-starting legislative role.

Congressional scholars are already decrying the deterioration of congressional deliberation, mainly implicating weakened and subservient committees.⁸ Woodrow Wilson did the same, although he attributed the abysmal quality of congressional debate to the ascendance of the committees rather than to their decline. Wilson readily conceded the utility of strong committees in rendering Congress a “facile statute-devising machine.” But he valued the lawmaking function far less than “the instruction and

⁸ See Mann and Ornstein, *Broken Congress*, ms. pp. V-34-45; and Paul Quirk, “Deliberation and Decision Making,” in Quirk and Binder, eds., *Legislative Branch*, pp. 330-342.

guidance in political affairs which the people might receive from a body which kept all national concerns suffused in a broad daylight of discussion.”⁹ By this standard, committee government fared poorly. Much of what committees did was hidden from public view, but even their open discussions, Wilson wrote, were seldom “instructive to the public.”

They are as a rule the pleas of special pleaders, the arguments of advocates. They have about them none of the searching, critical, illuminating character of the higher order of parliamentary debate, in which men are pitted against each other as equals, and urged to sharp contest and masterful strife by the inspiration of political principle and personal ambition, through the rivalry of parties and the competition of policies. They represent a joust between antagonistic interests, not a contest of principles. They could scarcely either inform or elevate public opinion, even if they were to obtain its heed.¹⁰

One who sees, as I do, greater value than Wilson saw in Congress’ legislative and oversight functions and in the contributions committees make to their performance, is less likely to denigrate the deliberation antecedent to those functions, even if it sometimes becomes technical and fails to scale the rhetorical heights. But I wonder: has committee decline brought forth the kind of “common counsel” to which Wilson aspired? Committee bills now hew more closely to party and administration priorities, and their public justification no doubt draws on broader ideological themes. But hearings are often cursory and markups abbreviated. Deliberation and debate among committee members are often displaced by backstage interactions among a few committee leaders, administration officials, lobbyists, and staff. “Chairmen’s marks” are often summarily approved with little justification and less debate. I would suggest that the current performance of most committees falls as far short of Wilson’s standards as it does of

⁹ Woodrow Wilson, Congressional Government (1885; Reprint, Gloucester, MA: Peter Smith, 1973) pp. 193,195.

¹⁰ *Ibid.*, p. 72.

supporting effective lawmaking and oversight. Party leadership strength and committee vitality can be mutually reinforcing, but they are currently locked in something close to a zero-sum relationship. Discussions of leadership strategy and institutional reform, both inside and outside the Congress, should give a high priority to recalibrating this balance and reinvigorating the committee system.

Congressional – Executive Balances

Reflecting eleven years ago on Woodrow Wilson’s portrayal of committees as the dominant force in Congress and Congress as the dominant force in the federal establishment - - virtually taking “into its own hands all the substantial powers of government”¹¹ - - I did not anticipate that we were in serious danger of moving to the opposite extremes. In fact, in that fleeting period of unified Democratic control, I was interested in tilting the balances toward less committee autonomy and more effective cooperation between Congress and the White House in enacting a Democratic program. Obviously, the dynamics soon shifted, with the Republican leadership consolidating power within the House and settling in for what proved to be a six-year exercise of checks and balances with President Clinton. That period, bracketed by government shutdowns and a partisan impeachment, displayed more than enough unproductive standoffs and partisan excesses. As messy as it often was, however, it measures up relatively well - - in terms of the constitutional balance of power and modulated, sustainable policy outcomes - - when compared to the period of unified Republican control that followed.

Consider the budget process, for example, both the positive outcomes realized and the fiscal excesses avoided, during this period of divided government. The 1997 budget

¹¹ Ibid., p. 49; see also pp. 44, 53-54, 69.

agreement was less heroic in some respects than single-party plans might have been. Democrats swallowed more upper-bracket tax cuts than they wanted as part of the package, while Republicans cut Medicare and domestic discretionary spending less deeply and accepted a new health insurance program for children. But the cross-partisan accommodations also mitigated the redistributive character of the package and increased both its legitimacy in the eyes of the public and its political viability.

The 1997 agreement was not replicated in any of the other five years; the usual pattern was budgetary standoffs and protracted end-of-session interbranch negotiations. But even this ragged process produced outcomes that, I would argue, were more balanced and responsible than the budget outcomes of the George W. Bush years. Republicans did not get all the tax cuts they wanted; Democrats did not get as much funding as they wanted for domestic priorities; and Clinton maneuvered both into declaring the Social Security portion of the surplus off limits, to be used only for debt reduction. Checks and balances, in other words, insulated budget politics from extreme outcomes. After 2000, that insulation was gone. The budget process that had been designed to promote fiscal balance and to give Congress its own tools for responsible budgeting was instead utilized to render Congress subservient to the Bush agenda, facilitating tax cuts and other policies which took the country over the cliff fiscally in remarkably short order.¹²

The election of a Republican president was a watershed event in terms of the character of Republican governance of the House. Exclusionary tactics escalated, and centralized power was deployed uncritically in service of the White House agenda. Bill Connelly has suggested an interesting parallel between Newt Gingrich's speakership and

¹² See Price, Congressional Experience, 3rd ed., pp. 157-173.

Wilson's notion of congressionally-centered party government.¹³ Does the parallelism continue between the changes of 2001 and Wilson's shift, by the time he wrote Constitutional Government in the United States (1908), to a model of governance centered on the presidency? Whatever one makes of such comparisons, the fact is that President Bush's approach to Congress has been, in Tom Mann and Norm Ornstein's terms, "both partisan and executive-centered. [Bush] eschewed serious negotiations with Democrats on the substance of policy and aggressively sought to expand executive power vis-à-vis the Congress." Speaker Hastert and other Republican leaders proved quite compliant. "Strong majority leadership in Congress led not to vigorous exertion of Congressional authority and responsibility but to a general obeisance to presidential initiative and passivity in the face of presidential power."¹⁴

Not everyone expected this of Bush, who had campaigned as a "compassionate conservative" and touted his ability to work with Democrats. But with few exceptions Bush chose to cater to his conservative base and to govern from the "right-in." House leaders put together their winning majorities the same way, attuned as they were to the conservative "majority of the majority" within the Republican Conference. Far from the collision course some had predicted, Bush, Hastert, and Majority Leader Tom DeLay collaborated in passing the purest (i.e. most conservative) version of their agenda items in the House, so as to start as far to the right as possible in dealing with the Senate, whether that body was under Democratic or Republican control. This was not a mission that

¹³ William F. Connelly, Jr., Introduction to Congressional Government (New Brunswick: Transaction Publishers, 2002), pp. ix-xi.

¹⁴ Mann and Ornstein, Broken Congress, ms. p. I-22, For an account of presidential aggrandizement and congressional deference since the 1970s, with particular attention to foreign policy and to the post-September 11, 2001, environment, see Andrew Rudalevige, The New Imperial Presidency (Ann Arbor: University of Michigan Press, 2005), especially chaps. 7-8.

permitted much in the way of legislative initiative or independence on the part of House members and committees; indeed, it required measures to regiment Republicans and marginalize Democrats that went considerably beyond Gingrich's practice.

No congressional function has atrophied under unified Republican control more than oversight of the executive. This has become a major sore point among Democrats, as evidenced by Senate Minority Leader Harry Reid's invoking of an obscure rule to convene an executive session to light a fire under the Intelligence Committee's investigation of the possible manipulation or misrepresentation of intelligence before the Iraq War. In the House, Democrats questioned the majority's willingness to fully air the administration's failures in responding to Hurricane Katrina, holding out for an independent investigative body on the 9/11 Commission model, or at least an equally divided select committee with each side having subpoena authority.

These partisan challenges had considerable provocation. The list of legitimate oversight inquiries foregone - - many of them explicitly blocked after Democratic requests - - is long and varied: the conduct of Vice-President Cheney's task force on energy, the administration's suppression of cost estimates for its Medicare prescription drug plan, contractor abuses in Iraq, the formulation and execution of administration policies on detainee abuse, and so forth. It is true, of course, that the majority party almost always has weaker incentives to conduct vigorous oversight when the president is of the same party. But one need only recall William Fulbright's stewardship of the Senate Foreign Relations Committee or the willingness of John Moss and John Dingell of the House Commerce Committee to take on Republican and Democratic administrations alike, to appreciate the extent to which partisan loyalty and deference to a Republican

president have trumped any sense of institutional identity or constitutional responsibility since President Bush took office.¹⁵

So it turns out that Congressional Government still stimulates and provokes. That was true amidst the struggles of 1994 and it is true today, when Wilson's determination to get beyond the "literary theory" and to assess how the constitutional balance of powers was actually working has taken on fresh urgency.¹⁶ The parallels to our own time are inexact and the prescriptions not always convincing. But the topics that, with Wilson's help, I have raised here today - - hyper-partisanship in running the Congress; the decline of congressional committees and, with them, of a capacity for deliberation; and a decisive shift in power and prerogative toward the executive - - are compelling and consequential. They are worthy subjects for "common counsel," and it is time for our country's political leaders, scholars, and citizens to take heed.

¹⁵ For an account of the impact of the House reforms of the 1970s on the performance of oversight, with a focus on Moss and his subcommittee, see David E. Price, "The Impact of Reform: The House Commerce Subcommittee on Oversight and Investigations," in Leroy N. Rieselbach, ed., Legislative Reform: The Policy Impact (Lexington, MA: Lexington Books, 1978), chap. 11.

¹⁶ Wilson, Congressional Government, pp. 31, 53-55.