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Qualified Exceptionalism: The US Congress in Comparative Perspective

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ABSTRACT

The framers of the American Constitution devised a singular bicameral legislative body, which invested substantial power in both a broadly representative lower chamber and a second “deliberative” chamber that was both insulated from the voters and unrepresentative of the population as a whole. Until the early 20th Century, the singular U.S. Congress changed little, but with growing national responsibilities, it sought to construct organizational forms that could address a consistently stronger executive. Since the 1980s, the Congress has relied increasingly on stronger parties to organize its activities. This development, embraced in turn by Democrats and Republicans, has led to changes that have edged the Congress in the direction of parliamentary democracies. We conclude this analysis has real, but limited utility, as congressional party leaders continue to barter for votes and, in the context, of narrow chamber majorities, often rely heavily on presidential assistance on divisive issues that are important to their party brand. Yet, the traditional features of the American separated system - bicameralism, the committee systems, and the centrifugal forces emanating from diverse congressional districts, increasingly complex policy issues, and the fear of electoral retribution – also remain strong, and effectively constrain the influence of leaders. ‘Qualified exceptionalism’ thus most aptly describes the contemporary American Congress, which remains ‘exceptional,’ but less than unique, as it responds to many of the same forces, in some of the same ways (e.g., strong parties), as do many other representative assemblies around the world.

To some degree, all democratic legislatures are *sui generis* in that they are the products of the unique history and culture of the states that host them. In comparative legislative research theory, the United States Congress is typically portrayed as distinctive, given its status as a significant and autonomous decision-making institution within a singular governmental system. America is neither a parliamentary nor a presidential system. Rather, it operates as a ‘separated system’¹ - a ‘government of separated institutions sharing powers’ in Neustadt’s famous phrase,² whose origins and dynamics lie in the nature of American society, its political culture, and its ‘exceptional’ historical experience.³ This separated system is defined by institutional competition among and between the branches of the federal government, as well as between the national government and the states, and among various other institutions within specific branches of government not mentioned in the Constitution. Rockman and Weaver are thus correct in their conclusion that comparing the American system with all other (parliamentary) systems ‘is less a matter of comparing apples and oranges than of comparing apples with all other fruits’.⁴

Understanding the US Congress in Comparative Perspective

The days when political scientists made only constitutional or stylised comparisons between political systems have long passed. Our focus now rests on second, third and fourth tier explanations that examine how politicians act purposively within different institutional and constitutional configurations to effect change and how institutions and processes constrain them. So, in order to evaluate how decision-making patterns vary across different systems and to assess the policy capabilities of a particular system, we need to move analysis beyond the architecture of institutions within formal regime types (presidential, separated or parliamentary) to explore a much broader array of institutional arrangements and social environments. These include secondary institutional characteristics, prevailing political conditions, policymakers’ goals, socio-economic and democratic conditions, and past policy choices.⁵ Tsebelis has moved this line of

¹ Charles O. Jones, *The Presidency in A Separated System* (Washington, D.C.: The Brookings Institution, 1994).

² Richard E. Neustadt, *Presidential Power*. New York: John Wiley and Sons, 1960, p. 42.

³ Alexis de Tocqueville, *Democracy in America. Vols. I and II*. Ed. J.P. Mayer. New York: Harper 1988; Louis Hartz, *The Liberal Tradition in America*. New York: Harcourt, Brace, 1955; Seymour Martin Lipset, *American Exceptionalism. A Double-Edged Sword*. New York and London: W.W. Norton), 1997, pp. 42ff; Byron E. Shafer, ed., *Is America Different? A New Look at American Exceptionalism* (Oxford: Clarendon Press, 1991); cf. Graham K. Wilson, *Only in America? The Politics of the United States in Comparative Perspective*. Chatham, NY: Chatham House Publishers, 1998, pp. 104-106.

⁴ R. Kent Weaver and Bert A. Rockman, ‘Assessing the Effects of Institutions’. In R. Kent Weaver and Bert A. Rockman, eds., *Do Institutions Matter? Government Capabilities in the United States and Abroad*. Washington, DC.: The Brookings Institution, 1993, p. 19.

⁵ Weaver and Rockman, ‘Assessing the Effects of Institutions’, pp. 10-11.

argument further by emphasizing the importance in comparative legislative analysis of determining the pervasive qualitative effects of institutional, partisan and collective veto players, who must all agree if the policy status quo is to change. Every political system, Tsebelis insists, has a configuration of veto players with specific ideological distances among them, and a certain amount of cohesion within each player. These configurations also place veto players in particular sequences, so that certain veto players have significant power over setting policy agendas.⁶ When applied to the United States, Tsebelis' schema confirms the conventional wisdom of a system with multiple veto points. Even more useful for present purposes, however, is the schema's capacity to identify similarities between systems that do not rest exclusively on formal institutions.

A second comparative perspective shows that a political system's distinctive qualities – constitutional, political, informal – do not remain fixed over time, even for relatively short periods, because politics within democratic systems is dynamic. Interactions between policymakers and governmental institutions change not only in response to their leaders, but also to what Woodrow Wilson called 'the voices in the air which cannot be misunderstood'⁷ – those long- and short-term political, economic and social changes in the host society that transform the nature of problems facing ordinary citizens, and thus the public policies proposed by policymakers. For example, following the terrorist attacks on New York and Washington, power shifted visibly towards the executive in both the British executive-dominated party government system and the American separated system. Likewise, when President George W. Bush experienced political setbacks in the Congress in November 2005, the British Labour Government – with a numerical majority of 66 seats – experienced its first defeat in eight years on a three-line whip in the House of Commons, as 63 Labour MPs (one quarter of all backbenchers) deserted their party. In the longer term, of course, Wilson's 'voices' may compel structural changes in institutions, party systems, and the conduct of democratic politics without any changes to the constitution.

Finally, as the world grows more and more interdependent, and economies in democratic societies converge, politicians increasingly recognise that they share common societal problems, whether with health, the environment, national identity, new technology, aging populations,

⁶ George Tsebelis, *Veto Players. How Political Institutions Work*. Princeton, NJ and London: Princeton University Press, 2003; George Tsebelis, 'Decisionmaking in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism', *British Journal of Political Science*, 25 (1995): 289-325.

⁷ Woodrow Wilson, *Congressional Government* (Baltimore and London: The Johns Hopkins Press, 1981. Originally published 1885), p. 54.

migration, security and terrorism, or myriad other issues.⁸ In turn, these issues generate new and complex political questions about the proper role of government and the authoritative allocation of societal resources. The commonality of these problems and contexts begs a third comparative legislative research question - do these common problems produce similar cross-system effects and trends? These might include the universal presidentialisation of executives (with further consequences for the status and autonomy of legislatures), weakening electoral partisanship, declining parties and fluid electoral coalitions, the permanent election campaign, the ascendancy of 'message' and media politics, and heightened interest group activity.

In this article, we examine, from both an historical and comparative perspective, the claim that the US Congress is unique. We begin with an exploration of how constitutional imperatives structure congressional politics. The discussion then turns to the electoral connection between Congress members and voters, the congressional lawmaking process, and the nature of legislative organisation in the Congress. We draw direct links between the nature of the electoral connection and congressional representation and lawmaking through members' personal offices, committees, and parties. In the third section, we explore the committee-based 'textbook' Congress of the middle decades of the twentieth century, which remains a popular interpretation of congressional politics, and then explain the contours of the highly partisan contemporary institution. Finally, we evaluate the Congress' current manifestation in comparative perspective.

Constitutional Imperatives and Change

The framers of the American Constitution in 1787 were guided by three principal predispositions that continue to dominate considerations of republican government in the US today. First, unlike the British parliament of the late 1700s, the new Congress had to be *representative* in a meaningful sense, especially of local constituents. Second, given their experience with British imperialism and preferences for limited government, governmental power could not be concentrated in a powerful executive. Third, institutions would need to exercise balance in responding to the needs and demands of constituents while remaining sufficiently insulated from the worst excesses of 'the spirit of locality' (Madison) and 'elective despotism' (Jefferson), which had often characterised representative government in the individual states.

⁸ See, for example, Wilson, *Only in America?*

These guiding principles led to a separated system, in which the House and Senate, as well as the president, would be elected at different times, by different constituencies, and serve for fixed terms. A second element required that the House, the Senate, and the president would participate with, compete against, and check one another in making national policy. According to Madison's famous dictum, 'Ambition must be made to counteract ambition ... to control the abuses of government'.⁹ Although Article I, Section 8 of the Constitution does give the Congress extraordinary powers, neither chamber is assigned unilateral legislative power. Nor does the Congress as a whole possess such pre-emptive power, in that its actions remain subject to a presidential veto, which in turn may be overturned by supermajorities in both chambers (Section 7). The Constitution does provide solid legislative constraints on the president's powers, but the Congress cannot dismiss the executive, save by impeachment for 'high crimes and misdemeanours'. Conversely, the executive cannot call elections that dissolve the Congress. Other constitutional provisions constructed various ingenious mechanisms that require the participation of one branch of government in the affairs of others, thus providing for mutual checks upon the respective institutions.

Institutional competition is rooted in the separated powers, different electoral bases and periods of office, staggered elections and the Constitution's multiple ambiguities. This competition constitutes the American system's defining feature and separates the Congress from other legislatures, which are mostly deferential or subordinate to the executive branch. The Congress' autonomous lawmaking, spending, and oversight powers, along with the differentiated powers and responsibilities of the House and Senate, mean that the different institutions and chambers will usually develop different political perspectives and policy agendas. As anticipated by the Constitution's framers, any attempt by the legislature or the executive to act unilaterally, or to change the balance among institutions, would provoke a powerful reaction from the other branch.

Writing in the wake of 100 years of constitutional experience, Woodrow Wilson noted that the US Constitution's great strength lay in 'its elasticity and adaptability ... and thus its ability to endure and survive.'¹⁰ The framers expected that the Congress would initially be the dominant institution of the national government. In reality, as Sundquist has aptly observed, 'the framers

⁹ James Madison, Alexander Hamilton, and John Jay, *The Federalist Papers* (New York and Toronto: New American Library, 1961), No.51, p. 322.

¹⁰ Woodrow Wilson, *Congressional Government* (Baltimore and London: The Johns Hopkins Press, 1981. (Originally published 1885), p. 29.

put two combatants into the ring and sounded the bell that sent them into endless battle.’¹¹ The expectation of congressional government was rudely disabused in the nineteenth century, first by ‘King’ Andrew Jackson¹² and then by Abraham Lincoln for most of the Civil War. Following Lincoln’s assassination, however, Congress’ radical Republicans ruled much like a British Cabinet from Capitol Hill and dominated the post-bellum Reconstruction period. In common with democratic political systems elsewhere, the twentieth and twenty-first centuries have witnessed steady augmentations in executive power, particularly in moments of national crisis, most notably during the presidencies of Franklin Roosevelt (1933-45), Lyndon Johnson (1963-69), Richard Nixon (1969-74), and George W. Bush (2001-). But to underline Sundquist’s point, this period has also witnessed a continual seesawing in the pre-eminence and power of the two branches. Apart from these presidencies, and to a lesser extent those of Theodore Roosevelt (1901-1908), Woodrow Wilson (1913-20), and Ronald Reagan in his first year (1981), the remaining years should properly be characterised either as periods of congressional dominance or of balance between the two institutions.¹³ In this vein, Jones’ analysis of the legislative histories of twenty-eight important enactments over the post-Second World War period reveals that presidential preponderance was atypical. Rather, different patterns of institutional interaction emerged, with lawmaking through balanced participation the most common, regardless of which party (or parties) controlled the different institutions.¹⁴

The same societal forces that produced fluctuations over time in congressional-presidential relations also generated important variations in the internal organisation of the Congress. The Constitution makes no provision for how the national legislature should be organised -- except that the presiding officer of the House of Representatives (the Speaker) should be elected and that the Vice President (and in his absence, the president pro tempore) should preside over the Senate. Nor is there any mention of political parties or congressional committees. The Congress has thus enjoyed almost complete freedom to develop its own organisational framework, internal rules and

¹¹ James L. Sundquist, *The Decline and Resurgence of Congress* (Washington, D.C.: The Brookings Institution, 1981), p. 16.

¹² Sundquist, *The Decline and Resurgence of Congress*, pp. 23-29.

¹³ Lawrence H. Chamberlain, *The President, Congress and Legislation* (New York: Columbia University Press, 1946); Ronald C. Moe, and Steven C. Teel. ‘Congress As Policymaker: A Necessary Reappraisal’, *Political Science Quarterly*, 85 (1970), pp. 443-470; Mark A. Peterson, *Legislating Together. The White House and Capitol Hill From Eisenhower to Reagan* (Cambridge, MA and London: Harvard University Press, 1990); Nelson W. Polsby, ‘Some Landmarks in Modern Presidential-Congressional Relations’, in Anthony King, ed., *Both Ends of the Avenue. The Presidency, the Executive Branch, and the Congress in the 1980s*. Washington, DC and London: American Enterprise Institute for Public Policy Research, 1983), pp. 1-25.

¹⁴ Charles O. Jones, *The Presidency in a Separated System*. Washington, DC. The Brookings Institution Press, 1994, pp. 19-23, 270-273, 291.

behavioural norms – and to make changes over time. In the period immediately after the founding of the American Republic, the legislative branch was substantially inchoate and for its first seventy-five years it was composed of amateur, transient and poorly educated politicians. As the House and Senate memberships increased with the growth of population and addition of new states, and the length of congressional careers rose sharply after the mid-nineteenth century, both institutions developed increasingly elaborate forms of internal organisation, which have continued to evolve since that time.¹⁵

The Constitution's framers insisted on a representative assembly, and specifically the representation of local people, although until the twentieth Century 'the people' excluded most women, Native Americans and most southern blacks. The "Continental Congress" – three successive assemblies in place from 1774 through 1789 – and then the new Congress established by the constitution of 1787 (and sitting as of 1789) would be composed of representatives who accepted that they were agents of the local citizens who elected them.¹⁶ This insistence on local representation emphasized the need to reflect the geographical diversity of the United States. The local perspective was underpinned by (1) the constitutional requirement that House members and senators must be residents of the state (though not natives) from which they seek election; (2) simple plurality voting; (3) popular election for two-year terms in the House; (4) single-member constituencies. These currently comprise about 670,000 people each and, when combined with candidate selection through primary elections, deny national party leaders strong control over candidate nominations. Even in the early nineteenth century, when the Congress was an undeveloped institution populated by transient, part-time amateurs who did not see themselves as career politicians,¹⁷ their individual electoral connections with constituents were paramount. Constituents could hold legislators individually accountable for their actions in Washington. By the 1840s, for example, between 20 and 30 percent of incumbents failed to win re-election.¹⁸

¹⁵ Michael Foley and John E. Owens, *Congress and the Presidency. Institutional Politics in a Separated System*. (Manchester and New York: Manchester University Press, 1996), chapter 1.

¹⁶ See James Madison in James Madison, Alexander Hamilton, and John Jay, *The Federalist Papers* (New York and Toronto: New American Library, 1961), No.52, p. 324; and John Adams quoted in Edmund S. Morgan, *Inventing the People. The Rise of Popular Sovereignty in England and America*. (New York and London: W.W. Norton, 1988), p. 241.

¹⁷ Nelson W. Polsby, 'The Institutionalization of the US House of Representatives', *American Political Science Review*, 62 (1968), pp. 144-168; H. Douglas Price, 'Congress and the Evolution of Legislative "Professionalism"' in Norman J. Ornstein, (ed.), *Congress in Change* (New York: Praeger, 1975). Generally, see Foley and Owens, *Congress and the Presidency*, chapter 3.

¹⁸ William T. Bianco, David B. Spence, and John D. Wilkinson, 'The Electoral Connection in the Early Congress: The case of the Compensation Act of 1816', *American Journal of Political Science*, 40/1 (1996), pp. 145-171. See also Jamie L. Carson, Jeffrey L. Jenkins, David W. Rohde, and Mark A. Souva, 'The Impact of National Tides and District-level Effects on Electoral Outcomes: The Congressional Elections of 1862-63', *American Journal of Political Science*,

In the early twentieth century, widespread antipathy towards strong party organisations led to the reforms of the Progressive era, such as the introduction of the Australian ballot (government-printed secret ballots that listed all qualifying candidates rather than ballots provided by candidates, parties and newspapers that listed only favoured candidates) and direct primaries. The reforms weakened party influence, reinforced the notion that congressional officeholders would be held accountable to their local constituents at election time, and encouraged House members and senators to develop highly individualistic electoral connections with their voters, regardless of party affiliation. Almost all research on the modern Congress accepts David Mayhew's stylized assumption that re-election – or fear of retrospective punishment by voters - is either the sole or primary goal that guides contemporary House members and senators in their legislative behaviour.¹⁹ In consequence, the United States Congress has long been the terrain *par excellence* for the individual legislator.²⁰

Senators and House members win (re) election as individuals, not because of their party connections. Candidates nominate themselves, offer themselves to a party, often raise large amounts of money, create their own publicity, and direct their own campaigns. Personal ambition is a major factor. “Today, you are either a self-starter or a no-starter”, the former US Senator Thomas Eagleton observed in the early 1980s.²¹ In other words, Congressional candidates tend to recruit their parties, not vice versa, and for the very good reason that parties cannot control nominations or provide candidates with many campaign resources (volunteers, campaign finance,

45/4 (2005), pp. 887-898; and Jamie L. Carson and Erik J. Engstrom, ‘Assessing the Electoral Connection: Evidence from the Early United States’, *American Journal of Political Science*, 49/4 (2005), pp. 746-757. Other scholars have argued that deference to social and political elites (Formisano) or support for the incumbent party (Skeen) rather than electoral accountability were more potent forces while Polsby and Price have argued that since most legislators were not interested in a legislative career at this time, they lacked incentives to cultivate constituency support. See Ronald P. Formisano, ‘Deferential-Participant Politics: The Early Republic’s Political Culture’, 1789-1840’, *American Political Science Review*, 68 (1974), pp. 484-510; C. Edward Skeen, ‘Vox Populi, Vox Dei: The Compensation Act of 1816 and the Rise of Popular Politics’, *Journal of the Early Republic*, 6 (1986), pp. 253-74; Polsby, ‘The Institutionalization of the US House of Representatives’; Price, ‘Congress and the Evolution of Legislative “Professionalism”’.

¹⁹ Mayhew, *The Electoral Connection*. In more complex models, legislators balance their reelection goals with other goals, including making good public policy, gaining influence in the Congress, or progressive career ambition. See Richard F. Fenno, *Congressmen in Committees* (Boston, MA: Little Brown, 1973); John W. Kingdon, *Congressmen’s Voting Decisions*. Second edition. New York: Harper and Row, 1981.

²⁰ Jonathan N. Katz and Brian R. Sala, ‘Careerism, Committee Assignments, and the Electoral Connection’, *American Political Science Review*, 90/1 (1996), pp. 21-33; Stephen D. Ansolabehere, James Snyder and Charles Stewart. ‘Old Voters, New Voters, and the Personal Vote’, *American Journal of Political Science*, 44/1, 2000: 17-34; Bruce Cain, John Ferejohn, and Morris P. Fiorina, *The Personal Vote*. Cambridge, MA and London: Harvard University Press, 1987.

²¹ Lawrence N. Hansen, ‘The Vanishing American Candidate’, unpublished manuscript, The Joyce Foundation, 1991 quoted in Thomas A. Kazee, ed., *Who Runs For Congress. Ambition, Context and Candidate Emergence* (Washington, D.C.: Congress Quarterly Press, 1994), p. 167.

consulting services, etc.).²² Not surprisingly, electoral campaigns are candidate-oriented, rather than party- or presidency-centred, and once in office House and Senate incumbents cannot rely on the popularity, brand and reputation of their president or party to win re-election. As a consequence, they develop their distinctive personal ‘home styles’²³ and conduct a permanent campaign geared to generating positive evaluations of their individual behaviour in the hope that constituents will repay their service with votes at the next election. Although in some parliamentary systems legislators must also emphasise local representation and personal connections,²⁴ the American case is unique. With each incumbent enjoying at least \$3 million by the Congress to run his/her congressional offices, as well as having great fund-raising advantages, it is no wonder that most sitting legislators receive few serious challenges. Testimony to the success of incumbents’ efforts abounds and House members and senators seek and win re-election with extraordinary success. The mean re-election rate for House incumbents in 2004 was over 98 percent (96 percent in 2002), and 90 percent in the Senate. Survey evidence repeatedly demonstrates the importance that congressional voters attach to an incumbent’s constituency attentiveness, personal qualities, and experience. So, even though public trust and confidence in the Congress has often been low,²⁵ constituents’ support for their members of Congress has been consistently high.²⁶

²² Candidates for the Brazilian *Câmara dos Deputados* the Colombian *Cámara de Representantes* as well as the legislatures of the Baltic States are in a similar position. See Barry Ames, ‘Party Discipline in the Brazilian Chamber of Deputies’ in Scott Morgenstern and Benito Nacif, eds., *Legislative Politics in Latin America*, Cambridge and New York: Cambridge University Press 2002: 193; Barry Ames, ‘Electoral Rules, Constituency Pressures, and Pork Barrel: Bases of Voting in the Brazilian Congress’, *Journal of Politics*, 57/2, 1995: 324-343; Rachael E. Ingall and Brian F. Crisp, ‘Determinants of Home Style: The Many Incentives for Going Home in Colombia’, *Legislative Studies Quarterly*, 26/3: 487-512; and Marcus Kreuzer and Vello Pettai, ‘Patterns of Political Instability: Affiliation Patterns of Politicians and Voters in Post-Communist Estonia, Latvia and Lithuania’, *Studies in Comparative International Development*, 38/2, (Summer 2003): 73-95.

²³ Richard F. Fenno, *Home Style: House Members in Their Districts* (Boston and Toronto: Little Brown, 1978 and Richard F. Fenno, *The United States Senate. A Bicameral Perspective* (Washington, D.C. and London, American Enterprise Institute, 1982).

²⁴ Giuseppe Di Palma, *Surviving Without Governing: The Italian Parties in Parliament*. Berkeley, CA: The University of California Press, 1977: 55-63; Raphael Zarinski, ‘Intra-Party Conflict in a Dominant Party: The Experience of Italian Christian Democracy’, *Journal of Politics*, 1/1, 1965: 3-33; Giovanni Sartori, *Parties and Party Systems: A Framework For Analysis*. Cambridge and New York: Cambridge University Press, 1976: 88-90, 90-99; Masaru Kohno, *Japan’s Postwar Party Politics*. Princeton, NJ and London: Princeton University Press: 91-115; Gary W. Cox and Frances Rosenbluth, ‘The Electoral Fortunes of Legislative Factions in Japan’, *American Political Science Review*, 87/3, 1993: 578-579.

²⁵ The National Election Studies, *NES Cumulative Data File dataset*.

²⁶ The National Election Studies, *NES Cumulative Data File dataset*. See also Richard F. Fenno, ‘If, As Ralph Nader Says, Congress Is “The Broken Branch”, How Come We Love Our Congressmen So Much?’ in Ornstein, *Congress in Change*, pp. 277-287; Glenn R. Parker and Roger H. Davidson, ‘Why Do Americans Love Their Congressmen So Much More Than Their Congress?’ *Legislative Studies Quarterly*, 4 (1979), pp. 53-61.

Congressional Organisation

The personal nature of the lawmakers' connections with their constituents has direct implications for the way congressional politicians conduct themselves once elected, and how they organise the chambers to serve their interests. Just as individual House members and senators are goal oriented in seeking election and re-election, when they arrive in Washington, they behave in similarly individualistic ways. They represent their constituencies, formulate public policy, and organise the House and Senate to reflect their needs. As Collie has observed: 'When candidates tend to win on their own outside the legislature, they tend to act on their own inside the legislature.'²⁷

How House members and senators will participate and influence congressional decision-making processes will be determined by the time, energy, and political capital that they invest as individuals, their staff assistance as well as the chamber's prevailing formal and informal contexts, which structure members' incentives. All legislative bodies are collectivities of particular representatives who reflect the wishes of particular electoral coalitions. Most parliaments emphasize collective representation, typically manifested in strong party ties. Most MPs win election because they bear a particular party label, not because of their individual qualities. Once elected they are expected to toe the party line in the belief that their party loyalty will benefit all party MPs and in many cases lead to promotion within the party hierarchy. In the US, the framers' preoccupations with representation and limited (rather than efficient) government created an inherent tension between representation and lawmaking in Congress. Members of Congress have been obliged to marry dual and contrasting roles.²⁸ These roles reflect the classic distinction between legislators as delegates, who represent the parochial interests of their constituents, and legislators as trustees, *à la* Burke, who collectively make laws for the nation. House members and senators must constantly juggle these competing notions of representation, decide their own representational calculus, and create congressional structures that serve these dual roles. Before exploring the implications of the delegate-trustee duality, let us first note some essential differences between the House and the Senate, which are central to understanding the U.S. Congress as a singular institution.

²⁷ Melissa P. Collie, 'Universalism and the Parties in the US House of Representatives, 1921-80,' *American Journal of Political Science*, 32 (1988), pp. 865-83.

²⁸ Roger H. Davidson, 'Congress As a Representative Institution'. In Uwe Thaysen, Roger H. Davidson, and Robert Gerald Livingston, eds., *The US Congress and the German Bundestag. Comparisons of Democratic Processes* (Boulder and Oxford: Westview Press, 1990), p. 49

Although recent scholarship has significantly reduced the imbalance, our knowledge of the Congress comes largely from the House. The Senate, however, is unique among legislative chambers in its organisation, representation, and decision-making.²⁹ The House and Senate differ in the size of their membership, the length of members' terms, their constituencies, constitutional responsibilities, their distinct internal decision-making processes, their informal procedures and their formal rules. As the larger chamber, the House's procedural rules are more formalised, less flexible, more comprehensive, and constrain members far more than those in the Senate. Like most legislative bodies, the House is primarily a majoritarian institution, and is more hierarchical and bureaucratic than the Senate. House rules generally ensure that a voting majority - specifically, a party majority acting through the Speaker and the majority leadership - can effectively control the chamber's agenda, timetable, and floor proceedings. In contrast, the Senate has fewer and less restrictive rules, which are flexible by design, and, crucially, intended to promote and preserve the individual prerogatives of senators and procedural minorities. One manifestation of these procedural differences is that although the House provides for a motion to move the previous question by majority vote (to cut off debate), the Senate does not. Thus, a House majority may require a decisive vote on a pending question, but a Senate majority has no similar mechanism. The Senate also boasts a tradition of mutual accommodation, courtesy, and comity,³⁰ and is often seen as Burke's 'deliberative assembly of one nation',³¹ in contrast to his 'Congress of ambassadors', which identifies the House.³²

Levels of subject specialisation and expertise in the two chambers also differ. With less than a quarter of the membership of the House, and the need to cover the same policy ground, senators must spread their time and energy more thinly across several committees and the floor. In contrast, committees and subcommittees dominate the House's work to an extent that would be alien to the Senate. Senate floor action is at least as important as action taken by Senate committees. This is partly because Rule XIV allows a senator wishing to propose a bill or resolution to bypass committees completely and place her bill directly on the Senate Calendar (which identifies bills and resolutions³³ awaiting floor actions) or propose it in the form of an

²⁹ See Bruce, I. Oppenheimer, ed. *US Senate Exceptionalism*. Columbus, OH: The Ohio State University Press, 2001.

³⁰ However, see Eric M. Uslaner, 'Is the Senate More Civil Than the House?' and Barbara Sinclair, 'Individualism, Partisanship, and Cooperation in the Senate'. In Burdett A. Loomis, ed., *Esteemed Colleagues: Civility and Deliberation in the US Senate*. Washington, DC: The Brookings Institution Press, 2000.

³¹ Edmund Burke, 'Speech to the Electors of Bristol' (1774). Quoted in Hanna Fenichel Pitkin, *The Concept of Representation*. Berkeley, CA: University of California Press, 1967, p. 171.

³² Ross K. Baker, *House, and Senate*. Third edition. New York and London: W. W. Norton and Company, 2001, p. 50.

³³ In contrast with House and Senate bills, House, Senate, Joint and Concurrent Resolutions do not have the force of law.

amendment to a bill already under consideration on the floor. In consequence, the Senate majority party faces real difficulties in using the chamber's rules and processes effectively to control the agenda and, unlike the House with its Speaker; the Senate lacks a powerful presiding officer. Though hardly powerless, in steering the Senate the majority leader is always vulnerable, in that any individual senator is entitled to move a motion to debate a particular measure on the chamber floor. Moreover, any such motion is subject to a filibuster, unless it is an executive or judicial nomination or treaty, which is listed for Senate floor consideration on the Executive Calendar. None the less, the majority leader does have a number of procedural tools, which can be used if individual senators or factions seek to dominate the floor.³⁴

Regardless of these institutional differences, House members and senators are elected and re-elected largely because of their own individual efforts, rather than because of the support of the president, other party leaders, their party organisations, or interest groups. Once elected, they also act purposively and vigorously to represent their constituents, play a meaningful role in the making of national policy, and organise the chambers of which they are members to serve these ends.

In the same way that congressional candidates create their own personal organisations to win office, once they are members of the House and Senate, they construct their own personal enterprises to pursue their individual legislative and policy interests. Notwithstanding variations in their complexity, structure and function,³⁵ the personal offices of House members and senators are significant drivers of congressional activity. The 100 senators, 435 representatives, four delegates (from the territories of American Samoa, Guam, and the Virgin Islands, plus District of Columbia), and one resident commissioner (from Puerto Rico)³⁶ spend more than \$3.9 billion from annual appropriations (2004) to run the Congress, or about \$7.2 million a year for every member – quadruple the amount appropriated in 1977. About 10,000 congressional staffers are employed by members in their personal offices, outside the control of party or committee leaders. Excluding interns, House members may employ no more than 18 permanent staffers, split between Capitol Hill and district offices, although four additional individuals may be employed if part-time, temporary, or partly employed by another House committee or other unit. Senate

³⁴ Tiefer, *Congressional Practice and Procedure*, chs. 8-10.

³⁵ Robert H. Salisbury and Kenneth A. Shepsle, 'US Congressman as Enterprise', *Legislative Studies Quarterly*, 6 (1981), pp. 559-576; Burdett A. Loomis, 'The Congressional Office as a Small (?) Business: New Members Set Up Shop', *Publius*, 9 (1979), pp. 35-55.

enterprises may include as many as 100 staffers, depending on the population of the state. In addition, House members may each spend up to \$1.6m. per annum for travel, office, staff, and communications, with senators allowed between \$2.2 and \$3.8 million (FY2004).³⁷ Unlike presidential candidates, however, congressional candidates for office are not eligible to receive public funding for their election campaigns. These resources are the envy of legislators elsewhere.

Although significant proportions of Congress members' resources are used to provide constituent services from district and state offices, a lot remains for legislative work and other Washington activities. For individual legislators, particularly junior members, the magnitude and control of these resources underline the importance that the Congress attaches to representation and maximizing the discretion of lawmakers in fulfilling their congressional responsibilities. For Congress as a whole, strong individual enterprises flatten the internal distribution of power while enhancing the capacity of both chambers to assert their will broadly and independently in national policymaking.

Members of the Congress are responsible for making laws, as well as representing the people. Although representation and lawmaking cannot in practice be separated from one another, members of Congress certainly find it easier to represent than to make laws. Thus, in comparative perspective, the Congress is less efficient as a lawmaker – and deliberately so - than legislatures within parliamentary systems. The Congress' inefficiencies lie in the framers' insistence on diffused responsibility, mixed representation, and institutional competition.

Tsebelis makes the point that the configuration of institutions in different political systems places veto players (with special powers, especially agenda-setting) in policymaking sequences.³⁸ The legislative process in the Congress includes more institutional veto points than any other. First, the responsibilities for collecting policy-related information and processing legislation are dispersed among numerous units; inevitably, the legislative process becomes highly fragmented. Broad policy areas such as the budget, energy, health care, homeland security and international

³⁶ Delegates are elected for 2-year terms; the Resident Commissioner for a 4-year term. The Resident Commissioner and Delegates may take part in House floor discussions but have no vote in the full House or in the Committee of the Whole House. They may, however, vote in the committees to which they are assigned.

³⁷ For details of the complex formulae by which these allowances are calculated, see Paul E. Dwyer, *Congressional Salaries and Allowances*. CRS Report for Congress RL30064, 26 January 2004
<http://66.249.93.104/search?q=cache:QHVQ8MJCtIoj:www.thecongress.net/FAQ/images/RL30064.pdf+salary+and+allowances+crs&hl=en&client=firefox-a>

³⁸ Tsebelis, *Veto Players*.

trade are subdivided and parcelled out to various standing committees (and subcommittees) with real decision-making powers. When spending is involved, the process is even more complex. Programmes must first be authorised (by House and Senate subject committees), appropriations made (by the appropriations committees), revenues raised or borrowed (by the revenues committees), and revenue reconciled with spending in a complete budget (by the budget committees). Overlapping and dispersed committee responsibilities, often encouraged and reinforced by interest group activities and legislators themselves, frequently generate inter-committee jurisdictional disputes and impede the formulation of coherent and/or comprehensive legislation.³⁹

Second, the legislative process in Congress is deliberately cumbersome. The process includes: (1) bill introduction; (2) referral to committee(s) and subcommittee(s); (3) requests for reports from executive agencies; (4) hearings; (5) mark-ups (bill-writing); (6) reports to the House or Senate; (7) requests for a special procedural rule in the House -- which determines whether a bill (or resolution) will be considered, for how long, and under what conditions it will be debated (including the sections to be debated, those to be voted on and when, and those to be protected from points of order, and so forth) – and, therefore, how the majority controls the floor agenda⁴⁰ or consideration in the Senate from the majority leader; (8) floor debate in both chambers, typically preceded by an important vote in the House on a special rule, which the majority party must win; (9) a House-Senate conference committee to resolve House-Senate differences; and (10) the presidential signature or veto, which if denied requires even more steps. This is a breath-taking set of serial requirements to pass a single measure.

Third, the legislative process is cumulative and sequential. At any point, a measure may not be considered, delayed, amended (sometimes beyond recognition), ignored, or defeated. Thus, strategically positioned party leaders, committees, interest groups, and individual members of Congress can obstruct the process – and, by doing so, kill a measure. There are fifty or so veto points along the way, and double this number if expenditures are involved. For a measure to proceed through all stages of what amounts to a formidable legislative obstacle course, its supporters must assemble a succession of chamber majorities at each step or veto point.⁴¹

³⁹ David C. King, *Turf Wars. How Congressional Committees Claim Jurisdiction*. Chicago, IL and London: The University of Chicago Press, 1997.

⁴⁰ See, for example, Bryan W. Marshall, *Rules For War. Procedural Choices in the US House of Representatives (Aldershot and Burlington, VT, 2005)*.

⁴¹ Robert Bendiner, *Obstacle Course on Capitol Hill* (New York: McGraw-Hill, 1964), p. 16.

Between 1947 and 2004, each two-year Congress witnessed the introduction of about 10,000 to 12,000 bills and resolutions. Almost all were referred to a committee (or several), usually within twenty-four hours of their introduction, but only between 14-35 percent were reported out of committee, and only between 5-7 percent became law. The chances of a legislative measure falling are far greater than those for it succeeding.⁴²

Fourth, the Congress' decentralised character, its weak party organisation and the nature of the electoral connection make legislative bargaining and compromise essential. At each decision point, votes and favours must be traded, arms twisted, and concessions made in order to construct winning coalitions. Fifth, the congressional legislative process works in a two-year cycle. Failure to complete action on any measure before Congress adjourns sine die means that it dies automatically.

Overall, the congressional processes for agenda setting, considering policy options and making decisions are influenced greatly by a mass of complex chamber rules and procedures. In contrast to the British House of Commons, substitute amendments are permitted in the Committee of the Whole (i.e. a commonly used floor procedure involving the entire House meeting in the form of a committee, which allows more expeditious action) or in standing committees. Thus, four amendments may be pending at any time (in contrast to two in the Commons): a first-degree amendment, which may be subject to a second-degree perfecting amendment and a substitute amendment, which in turn may be subject to a further second-degree amendment. Majority party leaders can use an array of procedural devices to advance or protect their party's interests. Under current arrangements, House leaders may bundle diverse legislative measures into omnibus packages, use other 'unorthodox' techniques, and manipulate the rules to push through controversial legislation that is important to the majority party.⁴³ In the Senate, the legislative process is very different and even more difficult (increasingly so in recent decades), since senators have exploited their individual prerogatives through the increased use of filibusters, floor amendments, and informal "holds" on given bills.⁴⁴

⁴² Authors' analyses from US. Congress. *Congressional Record. Résumé of Congressional Activity*. Various dates.

⁴³ Barbara Sinclair, *Unorthodox Lawmaking. New Legislative Processes in the US Congress*. Washington, DC: CQ Press, 2000; Barbara Sinclair, 'The "60-vote Senate": Strategies, Process and Outcomes'. In Oppenheimer, *US Senate Exceptionalism*; Glen S. Krutz, *Hitching a Ride. Omnibus Legislating in the US Congress*. Columbus, OH: The Ohio State University Press, 2003.

⁴⁴ Sarah A. Binder and Steven S. Smith, *Politics Or Principle? Filibustering in the United States Senate*. Washington, DC: Brookings Institution Press, 1997; Barbara Sinclair, *The Transformation of the US Senate*. Baltimore, MD and London: The John Hopkins University Press, 1989; Sinclair, 'Individualism, Partisanship, and Cooperation in the

Finally, despite Congress' constitutional autonomy and empowerment to pass laws, the system of separated institutions requires members to take seriously their responsibility for consulting with other parts of the government, including the president, hundreds of executive agencies, state and local governments, and the law as interpreted by the courts. Such consultation further increases the chances of legislative delay.

Historically, legislatures have delegated to parties and committees the important tasks of agenda setting, examining and processing legislation, building majority coalitions and shaping collective outcomes. The U.S. Congress is unique in the substantial resources and important roles accorded to congressional committees. Like all democratic legislatures, the Congress has always had some sort of committee system,⁴⁵ which has served the collective needs of the institution as well as the personal political interests of individual members. Committees have also played prominent roles in famous congressional investigations: the Senate Foreign Relations Committee's Vietnam hearings, the Senate's Watergate committee hearings, the House Energy and Commerce Committee's tobacco hearings, as well as the Army 'red-baiting' hearings of the Senate Permanent Subcommittee on Investigations led by Senator Joseph McCarthy.

For the legislature as a whole, committees encourage specialisation and a division of labour, which enable both congressional chambers to process large volumes and wide varieties of legislative proposals simultaneously, in part by acquiring and disseminating valuable political and policy information. In an institution replete with veto points, moreover, committees provide arenas where small numbers of members can arrive at the compromises and bargains necessary to carry proposals into legislation. Woodrow Wilson's declaration that 'Congress in its committee rooms is Congress at work'⁴⁶ is as true today as it was more than one hundred and twenty years ago. In any two-year congress, almost nine out of ten bills die in committee, never making the journey to the House and Senate floors.⁴⁷ Committees provide individual Congress members with opportunities to specialise and thus to serve their constituencies, exercise influence and

Senate'; C. Lawrence Evans and Daniel Lipinski, 'Obstruction and Leadership in the US Senate'. In Lawrence C. Dodd and Bruce I. Oppenheimer, eds., *Congress Reconsidered*. 6th edition. Washington, DC: CQ Press, 2003, pp. 227-248. See also Walter J. Oleszek, *Congressional Procedures and the Policy Process*. 6th edition. Washington, DC: CQ Press, 2004, chs. 4 and 5.

⁴⁵ See Joseph Cooper, *The Origins of the Standing Committees and the Development of the Modern House*. Houston, TX: Rice University Studies, 1970 at <http://jhunix.hcf.jhu.edu/~jcooper/papers.html>

⁴⁶ Woodrow Wilson, *Congressional Government. A Study in American Politics* (Baltimore and London: The Johns Hopkins Press, 1981), p. 69. Originally published 1885.

⁴⁷ US Congress. Congressional Record. *Resume of Congressional Activity*. First and Second Sessions, 80th and 108th Congresses. Washington, DC: USGPO, 1947, 1948, 2004, and 2005.

make good public policy.⁴⁸

When legislatures delegate power to committees (and parties), they run the risk that these sub-groups will make decisions on their behalf that do not accurately reflect the collective preferences of the chamber. Legislative scholars have focused on the nature of the relationship between committees and the entire chamber (floor) and between committees and the parties, especially the majority party. In the British House of Commons, for example, committees do not present many legislative hurdles for leaders.⁴⁹ This is not the case in the Congress and other legislatures with significant veto points.⁵⁰ Moreover, the committee-party relationship has changed over time and has been the subject of fruitful theoretical debates in recent congressional studies.

Distributive theorists argue that legislators with particular constituency or policy interests seek assignment to committees that are unresponsive to the chamber majority. In committee members become socialised into certain norms and receive selective committee-based information. In consequence, committees make decisions reflecting particularistic preferences rather than the general policy preferences of the parent chamber as a whole. For the legislature to take collective action through majority action on those issues that interest them most, members must make concessions on issues of lesser interest to them. On this reading, committees are agencies for interests outside the legislature.⁵¹

In contrast, informational theorists view committees as reflecting the distribution of preferences across the chamber as a whole. Committees, then, provide vital expert information to risk-averse committee non-members, who wish to reduce uncertainty over the effects of their floor voting decisions.⁵² Finally, partisan - or party government - theorists, argue that committees are

⁴⁸ Fenno, *Congressmen in Committees*, p. 1.

⁴⁹ Philip Norton, 'Nascent Institutionalisation: Committees in the British Parliament' in Lawrence D. Longley and Roger H. Davidson, eds. *The New Roles of Parliamentary Committees*. London: Frank Cass, 1996.

⁵⁰ Matthew S. Shugart and John M. Carey, *Presidents and Assemblies*. New York: Cambridge University Press, 1992; Daniel Diermeier and Roger B. Myerson, 'The Internal Organization of Legislatures', *American Economic Review*, 89/5, (1999), pp. 1182-1196.

⁵¹ Barry Weingast, 'A Rational Choice Perspective on Congressional Norms', *American Journal of Political Science* 23/1 (1979), pp. 245-62; Kenneth Shepsle and Barry Weingast, 'The Institutional Foundations of Committee Power', *American Political Science Review*, 81 (1987), pp. 85-104; David P. Baron and John A. Ferejohn, 'Bargaining in Legislatures', *American Political Science Review*, 83/4 (1989), pp. 1181-1206.

⁵² Thomas W. Gilligan and Keith Krehbiel, 'Organisation of Informative Committees By A Rational Legislature', *American Journal of Political Science*, 34/1 (1990), pp. 531-564; Krehbiel, *Information and Legislative Organisation*; Bruce Bimber, 'Information As A Factor in Congressional Politics', *Legislative Studies Quarterly*, 16/4 (1991), pp. 585-606; Garry Young, 'Committee Gatekeeping and Proposal Power under Single and Multiple Referral', *Journal of Theoretical Politics*, 8 (1996), pp. 65-78; and David C. King, *Turf Wars. How Congressional Committees Claim Jurisdiction* (Chicago and London: The University of Chicago Press, 1997).

essentially agents of the majority legislative party, rather than the chamber as a whole. Majority party leaders effectively structure committee memberships to promote the majority party's collective agenda and simultaneously seek to satisfy the disparate policy and constituency interests of majority party members.⁵³

These models – distributional, informational, and partisan -- stake out the theoretical possibilities for committee-party relations in the Congress. In practice, however, given the dynamic context of legislative politics in Washington, as agents committee members must simultaneously satisfy a variety of different principals, including clientele groups outside Congress, the parent chamber, as well as party leaders and party colleagues. The extent to which they seek to do this will vary from issue to issue and over time and this in turn has important implications for comparisons with other legislatures.

The Textbook Congress and 'Committee Government'

In comparative legislative studies, the dominant interpretation of the US Congress remains the powerful, if outdated, view of the so-called 'textbook' Congress of the middle decades of the twentieth century.⁵⁴ Its key components are highly decentralised decision-making structures, with weak parties and strong committees. As noted, nothing in the US Constitution, American political culture, or the style of American politics preordained this organisational configuration.⁵⁵

The background to the textbook Congress lies in the late nineteenth century, when the American party system stabilised around clearly defined constituency bases and produced large numbers of

⁵³ Some partisan theorists, however, see the majority party's ability to dominate committees as depending on its preference cohesion. See David W. Rohde, *Parties and Leaders in the Postreform House*. Chicago: University of Chicago Press, 1991, pp. 28-39; Barbara Sinclair, *Legislators, Leaders, and Lawmaking. The US House of Representatives in the Postreform Era* (Baltimore and London: The Johns Hopkins University Press, 1995); Forrest Maltzman, *Competing Principals: Committees, Parties, and the Organisation of Congress* (Ann Arbor, MI: The University of Michigan Press, 1997). Others do not. See D. Roderick Kiewiet and Mathew D. McCubbins, *The Logic of Delegation. Congressional Parties and the Appropriations Process* (Chicago and London: The University of Chicago Press, 1991); Gary W. Cox and Mathew D. McCubbins, *Legislative Leviathan. Party Government in the House* (Berkeley and Oxford: California University Press, 1993); and Eric Schickler and Andrew Rich, 'Controlling the Floor: Parties As Procedural Coalitions in the House' and 'Party Government in the House Reconsidered: A Response to Cox and McCubbins', *American Journal of Political Science*, 41/4 (1997), pp. 1340-75.

⁵⁴ See, for example, the United Nations Development Programme paper on legislative committee systems at http://www.undp.org/governance/publications.htm#pubs_pardev and National Democratic Institute for International Affairs, *Committees in Legislatures: A Division of Labor. Legislative Research Series*. Paper No. 2. Washington, DC: National Democratic Institute for International Affairs, 1996. The term is from Kenneth A. Shepsle, 'The Changing Textbook Congress'. In John E. Chubb and Paul E. Peterson, eds., *Can the Government Govern?* (Washington, D.C.: The Brookings Institution, 1989), pp. 238-266.

⁵⁵ For a list of books best identified with the 'textbook Congress', see Nelson W. Polsby and Eric Schickler, 'Landmarks in the Study of Congress Since 1945', *Annual Review of Political Science*, 5, 2002, p. 339.

safe seats for each party.⁵⁶ Under these conditions, congressional party government developed with the Republicans as the dominant party. Particularly in the House, central party leaders could determine whether a public bill would be considered out of order on the Calendar, exercise tight control over committees, ensure strong discipline on the floor, and impose party discipline by extending or withholding desirable committee assignments. With the House's adoption of the Reed Rules (named after Speaker Thomas Brackett Reed) between 1880 and 1894, the majority party could control the timing and content of key floor bills, prevent the minority from obstructing the majority by reducing the number for a quorum, limit dilatory motions, require that all public bills be referred to standing committees, require Rules Committee (chaired by the Speaker) approval of committee bills before floor consideration, and control floor amendments.⁵⁷ In other words, *circa* 1900 the House majority party dominated the legislative agenda and process in a manner roughly similar to party-dominated parliaments. Through these institutional mechanisms, the Speaker could directly affect the political careers of individual House members, enhance legislative predictability, encourage greater policy coherence on the part of the majority party, command cohesive majorities on important legislation, ensure that the majority party's agenda was considered and enacted, and in these ways promote the party's brand and reputation with the electorate.⁵⁸

In the Senate, the combination of the chamber's limited and often-ignored rules and the prerogatives accorded individual senators did not conduce towards party government. Still, after the mid-1880s, the chair of the majority caucus began acting as majority leader - the nearest equivalent to the House Speaker - and used the committee system, control over committee assignments, and the Republican Steering Committee to engender majority party control over the Senate's agenda and cohesive party voting.⁵⁹

⁵⁶ David P. Brady, *Congressional Voting in a Partisan Era: A Comparison of the McKinley House to the Modern House*. Lawrence, KS: Kansas State University Press, 1973.

⁵⁷ Charles O. Jones, 'Joseph G. Cannon and Howard W. Smith', An Essay on the Limits of Leadership in the House of Representatives', *Journal of Politics*, 30/3, 1968, pp. 617-646; Polsby, 'The Institutionalization of the US House of Representatives'.

⁵⁸ James Bryce, *The American Commonwealth*. London and New York: Macmillan and Co., 1888, pp.185-187; Joseph Cooper and David W. Brady, 'Institutional Context and Leadership Style: The House From Cannon to Rayburn', *American Political Science Review*, 73/2, 1981, p. 415.

⁵⁹ Gerald Gamm and Steven S. Smith, 'Policy Leadership and the Development of the Modern Senate'. In David W. Brady and Mathew D. McCubbins, eds., *Party, Process, and Political Change in Congress: New Perspectives on the History of Congress*. Stanford, CA: Stanford University Press, 2002; David J. Rothman, *Politics and Power: The United States Senate 1869-1901* (Cambridge, MA: Harvard University Press, 1966), Margaret Munk, 'Origin and Development of the Party Floor Leadership in the United States Senate', *Capitol Studies*, 2 (1974), pp. 23-24; Joseph S. Clark, *The Senate Establishment* (New York: Hill and Wang, 1963), pp. 24-28.

Ironically, the appeal of party rule as an operating principle of American government declined in the early 1900s as Progressive insurgents became increasingly frustrated with the inability of the Republican leaders to respond to the nation's emerging industrial, urban political agenda. In this context, individual members, with their legislative career ambitions, grew restive. In the House, a revolt inspired by Progressive Republicans and Democrats sharply reduced the power of Speaker Joseph G. Cannon (1903-1911) by removing him from the Rules Committee and increasing that committee's membership. Following the 1910 elections, the new Democratic majority removed the Speaker's primacy in making committee assignments. The effect was to set in motion a process that led to a much more decentralised form of party government – often called committee government - which reached its apotheosis in the middle decades of the twentieth century, with Democrats in the majority.⁶⁰

Party influence in the Senate also waned as Progressive insurgents took advantage of the chamber's tradition of unlimited debate and amendments. The introduction of the direct election of senators after 1913, which the Progressives initiated, meant that majority party rule, never as strong in the Senate, was further weakened. As a consequence, Senate committees also acquired greater autonomy, and majorities of committee members were permitted to call committee caucus meetings, elect subcommittees, and appoint conferees with the House.⁶¹ Except for an interval during the early New Deal congresses, when majority Democratic leadership acquired considerable power and influence working in tandem with the Democratic-controlled White House,⁶² highly decentralised decision-making became the norm, as southern Democrats dominated committee chair positions and combined with Republicans in an emerging “conservative coalition to undermine and thwart the Second New Deal in the mid-to-late 1930s.”⁶³

⁶⁰ See Brown, *The Leadership of Congress*, pp.195-197; Brian R. Sala, ‘Party Loyalty and Committee Leadership in the House, 1921-40’. In Brady and McCubbins, *Party, Process, and Political Change in Congress*’ on the importance of dating committee government after 1940. cf. Gary W. Cox and Mathew D. McCubbins, *Setting the Agenda. Responsible Party Government in the U.S. House of Representatives*. Cambridge and New York: Cambridge University Press, 2005, ch. 7.

⁶¹ Brown, *The Leadership of Congress*, pp. 257-258, 275; Rothman, *Politics and Power*, p. 90.

⁶² Donald C. Bacon, ‘Joseph Taylor Robinson: The Good Soldier’. In Richard A. Baker and Roger H. Davidson, eds., *First Among Equals: Outstanding Senate Leaders in the Twentieth Century*. Washington, DC: Congressional Quarterly Press, 1991, pp. 63-97; Gamm and Smith, ‘Policy Leadership and the Development of the Modern Senate’; Gerald Gamm and Steven S. Smith, ‘The Emergence of Senate Party Leadership’. In Bruce I. Oppenheimer, ed., *US Senate Exceptionalism*. Columbus, OH: The Ohio State University Press, 2002.

⁶³ Richard Bolling, *House Out of Order*. New York: E.P. Dutton, 1965, pp. 200-01; Mack C. Shelley, *The Permanent Majority: The Conservative Coalition in The United States Congress*. University, AL.: University of Alabama Press, 1983; Rohde, *Parties and Leaders in the Postreform House*, p. 45.

Within this textbook Congress format, which characterised legislative politics from the late 1940s until the mid-1960s, and the House more than the Senate, power within the dominant Democratic Party was decentralised. Although the number of standing committees was reduced in 1946, individual committees won formal jurisdiction over reasonably specific subject matter, seniority became entrenched (especially in appointing committee chairs) and committee property rights were vigorously protected. As committee membership became increasingly stable, committees developed their own norms and orientations. Moreover, in the 1950s and 1960s, legislative resources grew steadily. Especially in the House, legislators' committee assignments came to define and determine their careers and reputations. During this period, real power in the House did not rest with the chamber as a whole or with the majority party, which was divided on many issues. Rather, it was concentrated in the full standing committees and their markedly conservative, southern chairs. Party leaders, such as Speaker Sam Rayburn (1940-1946, 1949-1952, 1955-1961) were not powerless in the textbook Congress, but they were obliged to bargain with powerful committee chairs.⁶⁴ The Rules Committee, which had previously been under the control of the Speaker, was dominated by conservatives and on occasions blocked liberal bills supported by the majority party leadership,⁶⁵ while actively promoting conservative priorities.⁶⁶

Committee power during this period was based on gatekeeping (the ability to determine which legislative measures would proceed to the floor), informational advantage (the capacity to apply their cumulative policy expertise to legislation), and proposal power (the power to develop and shape congressional policy). Underpinning these foundations were powerful norms of deference and reciprocity, which dictated that non-members of the reporting committee respected committee decisions, with the expectation of reciprocal respect for their own committees' decisions. Cementing committee power was the *ex post veto*, which gave reporting committee members a second chance, as members of a House-Senate conference committee, to use their power at the penultimate stage of the legislative process to negotiate the final contents of the bill. The conference committee could effectively present both chambers with a *fait accompli*, which

⁶⁴ Ralph K. Huitt, 'Democratic Party Leadership in the Senate', *American Political Science Review*, 55/2, 1961, p. 335. Cooper and Brady, 'Institutional Context and Leadership Style', p. 411.

⁶⁵ George B. Galloway, *History of the House of Representatives* (New York: Thomas Crowell, 1969), p. 147; Bolling, *House Out of Order*; Louis J. Lapham, *Party Leadership and the House Committee on Rules*. PhD dissertation. Cambridge, MA: Harvard University, 1954; James A. Robinson, 'The Role of the Rules Committee in Arranging the Program of the US House of Representatives', *Western Political Quarterly*, 12/3, 1959, pp. 653-69; Bruce I. Oppenheimer, 'The Rules Committee: New Arm of Leadership in a Decentralised House' in Lawrence C. Dodd and Bruce I. Oppenheimer, eds., *Congress Reconsidered* (New York: Praeger, 1977), pp. 96-116.

⁶⁶ Eric Schickler, *Disjointed Pluralism: Institutional Innovation and the Development of the US Congress*. Princeton, NJ and London: Princeton University Press, 2001.

both would be reluctant to reject.⁶⁷ Committee power, then, had both negative and positive components.⁶⁸ The negative or gatekeeping power involved the ability to restrict the choices available to colleagues in the parent chamber, to kill legislation, if necessary, by refusing to report it to the floor, and to use the *ex post veto*. Negative power was inextricably tied to the sequential and iterative character of the legislative process. For a measure to win House and Senate approval, it needed the recommendation of at least one committee. The positive aspects of committee power included their ability to propose policy prescriptions, to circumvent the floor, and ultimately, with the help of party leaders, to persuade a majority of committee non-members to vote in favour of a committee's recommendations.

Negative committee power was particularly important in the House, in that a stringent germaneness rule, which prohibits amending a bill or resolution to include a different subject, made it difficult for committee non-members to circumvent a committee by offering floor amendments. It was often reinforced by 'amendment trees' that limited the number and type of amendments that may be pending at any one time, although a special rule or unanimous consent agreement can allow for the consideration of a specified bill or resolution.

Floor managers of committee bills - usually the full committee or subcommittee chair - were recognised to speak and offer defensive amendments on behalf of the committee before any other members were recognised or their amendments considered. Bill managers were also recognised before other members to offer second-degree amendments designed to counter or dilute hostile amendments and/or consolidate support for a bill.⁶⁹ Floor consideration of bills title-by-title and section-by-section, House special rules, and Senate unanimous consent requests also effectively precluded certain types of hostile amendments. Even if a bill's managers did not actually use negative committee power to the fullest, its threatened use often allowed committees additional leverage with which to bargain for support. Positive committee power was weaker, but far from insignificant. Committees were expected to propose and report legislative measures to the floors. They enjoyed wide discretion to write the contents of bills, and on the floor they could exploit

⁶⁷ Kenneth Shepsle and Barry Weingast, 'The Institutional Foundations of Committee Power', *American Political Science Review*, 81/1, 1987, pp. 85-104; Keith Krehbiel, 'Why are Committees Powerful?' and a reply by Shepsle and Weingast in *American Political Science Review*, 81/3, 1987, pp. 929-945; and Keith Krehbiel and Douglas Rivers, 'The Analysis of Committee Power: An Application to Senate Voting on the Minimum Wage', *American Journal of Political Science*, 32/4, 1988, pp. 1151-1174.

⁶⁸ Steven S. Smith, *Call To Order. Floor Politics in the House and Senate* (Washington, D.C.: The Brookings Institution, 1989), Ch. 6.

⁶⁹ See, for example, Barry R. Weingast, 'Fighting Fire With Fire: Amending Activity and Institutional Change in the Postreform Congress'. In Roger H. Davidson, ed., *The Postreform Congress*. New York: St. Martin's Press, 1992, pp. 142-168.

their recognition privileges to change proposals (by accepting amendments, for example) that took account of shifting majorities.

Of course, positive committee power did not mean that all proposals were accepted on the floor. Majority party leaders could refuse to schedule a measure, floor majorities could refuse to consider a measure and committee recommendations could be overturned in the other chamber or in a conference committee. Indeed, recent scholarship has criticized committee government as a description of the textbook Congress and placed greater emphasis instead on the persistence of party government over the course of congressional history.

To explain this recent scholarship, we need to revisit the theoretical models set out in the previous section. Informational theorists are generally sceptical of the existence of ‘party’ as a phenomenon in the legislature and, from their perspective, the idea of a transition from party to committee government or vice versa make no sense. The dominant view among partisan theorists, expressed by Brady and Cooper, Rohde and Sinclair, depicts a transition from party to committee government and back to party government.⁷⁰ But Cox and McCubbins argue that committee government was *de facto* decentralised party government, because throughout this period the congressional majority party was able to maintain firm control over the floor agenda. Only rarely did a majority party fail to obtain its goals in setting the agenda, and only rarely did it fail to prevent an unfavoured bill from reaching the floor or in getting it voted out of the chamber. The Cox-McCubbins argument runs that the powers enjoyed by the majority party were then, and are now, unconditional. In contrast to conditional party government theory, the majority party’s power does not depend on the preference homogeneity of its members. So, when applied to the textbook Congress period, and notwithstanding the conservative coalition’s well-documented existence, in both houses the majority party was the dominant actor. It elected or selected all institutional leaders, including committee and subcommittee chairs, made assignments of its own members to standing, select, and conference committees, established the legislative timetable, wrote the chamber’s rules and procedures and guaranteed its policy priorities over those of the minority party.⁷¹ The majority party also held a supermajority on the Rules Committee, and controlled a disproportionate share of staff and other legislative resources.

⁷⁰ Cooper and Brady, ‘Institutional Context and Leadership Style’; Rohde, *Parties and Leaders in the Postreform House*; and Sinclair, *Legislators, Leaders, and Lawmaking*, pp. 18-25.

⁷¹ Cox and McCubbins, *Legislative Leviathan*; Gary W. Cox and Mathew D. McCubbins, ‘Agenda Power in the US House of Representatives, 1877-1986’. In Brady and McCubbins, *Party, Process, and Political Change in Congress*, pp. 107-145; Cox and McCubbins, *Setting the Agenda*, ch. 7.

Cox and McCubbins' analysis of House floor votes on final passage shows that between 1937-1973 the majority party was defeated less than three per cent of the time, with defeats exceeding seven per cent in only one congress. Given the strength of southern conservatives in the majority Democratic party during this period, a coalition of southern Democrats and Republicans surprisingly did *not* oppose majority Democrats on 92 per cent of these final votes. No southern Democratic/conservative coalition chair ever forced a conservative coalition bill out of his committee and on to the House floor.⁷² Moreover, between 1937-1960 – the heyday of the conservative coalition - the conservative-dominated Rules Committee rarely took action to defeat a (majority party) rule⁷³ and rarely defeated majority party resolutions relating to committee investigations. Such investigations included those conducted by the House Un-American Activities Committee, which liberals often wished to restrict and conservatives typically wanted to expand. The committee did, however, use its gatekeeping powers effectively to obstruct and weaken the majority party's agenda by providing stronger than previous (or subsequent) support for minority-party positions and by keeping some bills from being considered.⁷⁴

Perhaps surprisingly, similar results may be demonstrated for the Senate. Between 1937-1973, and excluding votes requiring 2/3 or 3/5 supermajorities, the majority party was defeated on just over three per cent of final passage and executive and judicial nomination votes (see earlier), compared with the minority party, which was defeated on 22 per cent of votes. In eleven of the eighteen Senates during this period, the majority experienced no defeats whatsoever.⁷⁵ These data suggest strongly that even without the majoritarian rules and tools available to the House majority leadership, majority leaders in the nonmajoritarian Senate *could* control their chamber's agenda during the textbook period. However, their capacity to do so was made even more difficult when the minority party also controlled the presidency.

Based on this and other evidence, and allowing for important House-Senate differences, the

⁷² Cox and McCubbins, 'Agenda Power in the US House of Representatives', pp. 128-132, 134-35. But, for a contrary view, see Eric Schickler and Kathryn Pearson, 'Agenda Control, Majority Party Power, and the House Committee on Rules, 1937-1952'. Paper presented to the annual meeting of the Southern Political Science Association, Atlanta, GA, 7 January 2006.

⁷³ Cox and McCubbins, *Setting the Agenda*, ch. 7. cf. Schickler, *Disjointed Pluralism* and Douglas Dion, *Turning the Legislative Thumbscrew: Minority Rights and Procedural Change in Legislative Politics*, Ann Arbor, MI: University of Michigan Press, 1997.

⁷⁴ Cox and McCubbins, *Setting the Agenda*, ch. 7; see also Lapham, *Party Leadership and the House Committee on Rules*.

⁷⁵ Andrea C. Campbell, Gary C. Cox, and Matthew D. McCubbins, 'Agenda Power in the US Senate, 1877 to 1986'. In Brady and McCubbins, *Party, Process, and Political Change in Congress*, pp. 154-157 Results recalculated from data in Table 1. Majority party defeat rates were actually lower than in the earlier period between 1917 and 1937 (5.3%) but higher than in the period from 1973 to 1986 (2.2%).

majority party in the Congress at that time, as in most parliamentary systems, appeared able to retain formal control over the floor agenda and, therefore, influence to a certain extent and in varying degrees the electoral appeal of its party brand. The era of committee government might then more appropriately be regarded as a period of decentralised party government. In any event, the combination of influence, discretion and autonomy enjoyed by congressional committees and their chairs was not only much greater than that experienced in parliamentary committees in Europe and elsewhere but also greater than in the Congress today. Regardless of how it is labelled, the form of legislative organisation equated with the 'textbook Congress', and accepted still by many comparative legislative scholars, does not accurately represent the late twentieth and early twenty-first century Congress. Of that, there is no question.

The Contemporary Congress and American-Style Party Government

The US Congress today has become much more party-oriented and party-structured. The history is familiar. Committee (or decentralised party) government did not mesh well with either democratic accountability or the Congress' responsibilities to represent and make laws. More than any other single event, the 1965 Voting Rights Act and its effective implementation, shifted the ideological and regional balance of power within the majority Democratic Party, which in turn wrought reform to the Congress' internal organisation.

As a consequence of the franchise enlargement and, subsequently, the divergent electoral responses to the policies of the Reagan, Clinton and George W. Bush administrations, as well as partisan gerrymandering,⁷⁶ predominantly conservative southern Democrat districts become increasingly Republican. At the same time, Democrats won centrist and more liberal Republican seats in the northeast. As a consequence, the electoral parties became increasingly homogeneous, ideologically and geographically, and their electoral bases grew more polarised. The twin trends of electoral partisanship and polarisation produced two major effects on congressional organisation.

⁷⁶ Gary C. Jacobson, 'Explaining the Ideological Polarization of the Congressional Parties Since the 1970s'. Paper presented to the Conference on the History of Congress, University of California, San Diego, 5-6 December 2003 and to the annual meetings of the Midwest Political Science Association, Chicago, IL, 15-18 April 2004; Jacobson, Gary C. 2005. 'The Congress: The Structural Basis of Republican Success' in Michael Nelson, ed., *The Elections of 2004*. Washington, DC.: Congressional Quarterly Press; Alan Abramowitz, Brad Alexander, and Matthew Gunning, 'Incumbency, Redistricting, and the Decline of Competition in US House Elections', *Journal of Politics*, forthcoming, 2006; John E. Owens, 'American-Style Party Government: Delivering Bush's Agenda, Delivering the Congress' Agenda'. In Iwan Morgan and Philip John Davies, eds., *Right On? Political Change and Continuity in George Bush's America*. London and Washington, DC: The Institute for the Americas/Brookings Institution Press, 2006. See also, Thomas E. Mann and Bruce E. Cain, eds., *Party Lines*, Washington, DC: Brookings Institution Press, 2005.

First, as the respective parties' electoral constituencies became more homogeneous and polarised, so did the congressional parties. In the late 1970s a majority of House Republicans opposed a majority of House Democrats on two out of every five floor votes, but by the early 1990s almost two-thirds were party votes. A similar development occurred in the Senate, where the percentage of party votes increased from just above 40 to 60 per cent over the same period. As the number of party votes increased, so did the frequency with which House members and senators of the same party voted together (party unity) on these votes – rising for both congressional parties from about 75 per cent between the 1960s and the early 1980s to consistently more than 85 per cent in the 1990s (and sometimes above 90 per cent).⁷⁷ Inevitably, as the congressional parties became more homogeneous and polarized, the number of the southern Democrats and northeastern Republicans of the textbook era declined.⁷⁸ Indeed, such was the increase in Republican cohesion in the new century (almost 93 per cent for House and Senate Republicans combined) that *CQ Weekly* identified 2003 as the most partisan year in the Congress since the publication began in 1945.⁷⁹ In the 108th Congress (2003-04), Republican party discipline was so strong on party unity votes that no House or Senate Republican voted with his/her party less than 65 per cent of the time, and only seven House and six Senate Republicans voted with their party on fewer than 80 per cent of party votes.⁸⁰ As congressional party unity strengthened, partisan policy preferences

⁷⁷ The conventional means by which congressional party cohesion are measured are notoriously loose, especially in comparison with the British House of Commons. See John E. Owens, "Explaining Party Cohesion and Discipline in Democratic Legislatures: Purposiveness and Contexts", *The Journal of Legislative Studies*, 9/4 (2003), p. 15-18. Conventionally, a "party vote" is defined as a roll call vote on which at least 50% of the majority party is opposed by at least 50% of the minority party. "Party unity" scores are calculated for each member as a percentage of the times he/she voted with the party majority. Mean party unity scores for each party are then calculated as means of individual members' party unity scores in each party (on party votes). "Party cohesion" scores are calculated in similar ways, except that all roll call votes form the set rather than just the set of "party votes".

⁷⁸ Richard Fleisher and Jon R. Bond, 'The Shrinking Middle in Congress', *British Journal of Political Science*, 34/3, 2003, pp. 429-451.

⁷⁹ Isaiah J. Poole, 'Votes Echo Electoral Themes', *CQ Weekly*, 11 December 2004, pp. 2906-08.

⁸⁰ Although the concepts of party cohesion and discipline are analytically distinct, in that legislators may agree with one another *ipso facto* - because of shared preferences (cohesion) or because they are persuaded or coerced into agreement with one another (discipline) - they are empirically indistinguishable insofar as we observe legislators voting together to some degree or another. See Owens, "Explaining Party Cohesion and Discipline", p. 29n. 1. House and Senate party leaders have few sanctions against recalcitrant members and so party discipline, in the coercive sense in which the term is used in west European parliaments is largely foreign to the Congress. Typically, whips activate their chamber party's formal whip system to undertake "whip counts" on votes that are seen by party leaders as important to the party's brand. The current House Republican majority does not disclose how many votes are whipped each year. However, recent research by Larry Evans and his team indicate that in recent decades House majority whips count votes on only a tiny minority of floor votes: about 20 votes per year by majority Democrats in the 1950s rising 50 votes per year in the late 1980s. See Courtney L. Behringer, C. Lawrence Evans, and Elizabeth R. Materese, "Parties, Preferences, and the House Whip Process". Paper presented to the annual meeting of the Southern Political Science Association, Atlanta, GA, January 5-7, 2006, p. 7. Similar number of counts were conducted through the less formal and routinised systems in the Senate. In the late 1980s and the late 1990s, for example, they numbered just over 20 per year. It is important to note, however, that on many important votes the Senate party that also controls the White House may eschew independent whipping for nose counts taken by the White House. Erin M. Bradbury, Ryan A. Davidson,

polarized: between the 90th and 107th Houses (1968-2002), the gap between the two parties' mean DW-NOMINATE scores - which seek to locate party members' policy preferences along a single left-right policy dimension - grew by a remarkable 71 percent in the House and by 56 percent in the Senate.⁸¹ Party strength in the Congress has consistently edged closer to that in western European parliaments since 1980, albeit without the tight control parliamentary parties enjoy over those who bear the party label in elections.⁸²

Second, in the aftermath of the Watergate crisis in the early 1970s, the Democratic Party implemented the most comprehensive reform of the House's internal distribution of power since Speaker Cannon's fall in 1910. The Democratic caucus made the committees and their chairs much more accountable to the party rank-and-file. In addition, seniority would no longer be the sole criterion for selecting committee chairs whilst limits were placed on the number of committee assignments and subcommittee chairs that members could hold.⁸³ Perhaps most importantly, the powers of the House Speaker were strengthened to ensure that floor agendas, committee agendas, and floor decisions better reflected majority party priorities and that legislative proceedings generally favoured the majority party. In the Senate, the powers of the Majority Leader were strengthened somewhat. After the Republicans won control of both chambers in the 1994 congressional elections, these trends grew even stronger.

By the 1990s the congressional parties had become the most significant organizational structures on Capitol Hill⁸⁴ and the days of the textbook Congress were long gone. As they became more

C. Lawrence Evans, "The Senate Whip System: An Exploration". Paper presented at the annual meeting of the Southern Political Science Association, Atlanta, GA, January 5-7, 2006, p. 8.

⁸¹ Owens, 'American-Style Party Government', p. 131..

⁸² Despite increased dissent in the British House of Commons, levels of majority party cohesion and unity remain extremely high in absolute terms. Thus, Cowley and Stuart note that at least one majority Labour MP dissented from his/her party in only 20 per cent of whipped divisions between 2001 and 2005. Even more tellingly, the governing majority party is defeated extremely rarely. Philip Cowley and Mark Stuart, 'Parliament'. In Anthony Seldon and Dennis Kavanagh, ed., *The Blair Effect 2001-5*. Cambridge: Cambridge University Press, 2005 and Philip Cowley, *The Rebels: How Blair Mislaid His Majority*. London: Politico's Publishing, 2005; Gary W. Cox and Mathew D. McCubbins, 'Setting the Agenda in the British House of Commons', <http://www.settingtheagenda.com/parliaments/uk.pdf>. See also Sam DePauw, 'Government Party Discipline in Parliamentary Democracies: The Cases of Belgium, France and the United Kingdom in the 1990s', *Parliamentary Affairs*, 9/4, 2003, pp. 130-146.

⁸³ See Burdett A. Loomis, *The New American Politician*, New York: Basic Books, 1988.

⁸⁴ Rohde, *Parties and Leaders in the Postreform House*; Sinclair, *Legislators, Leaders, and Lawmaking*; Foley and Owens, *Congress and the Presidency*; ch. 2; John E. Owens, 'The Return of Party Government in the US House of Representatives: Central Leadership Committee Relations in the 104th Congress.' *British Journal of Political Science*, 27/2 (1997), pp. 249-253; Burdett A. Loomis and Wendy J. Schiller, *The Contemporary Congress*. Belmont, CA: Wadsworth Publishing, 2003; Nelson W. Polsby, *How Congress Evolves: Social Bases of Institutional Change*. New York: Oxford University Press, 2004; and Julian E. Zelizer, *On Capitol Hill: The Struggle to Reform and Its Consequences, 1948-2000*. New York: Cambridge University Press, 2004.

cohesive and more polarized, the congressional parties strengthened the hands of their central leaders, especially in the House. When their party formed the majority, rank and file members came to depend on their central party leaders to set and promote a chamber agenda that reflected the majority party's positions and priorities and promoted the party's collective reputation.⁸⁵ As a consequence, the power and prestige of recent Speakers – notably Republicans Newt Gingrich and Dennis Hastert - has approached, perhaps even surpassed, that of their predecessors Reed and Cannon (also Republicans) in the late nineteenth and early twentieth centuries.⁸⁶

Following their party's takeover of the House in 1994, the newly elected Speaker Gingrich and his party colleagues sought to use their electoral document, the *Contract With America*, as a party manifesto to set the agenda for the 104th Congress. Echoing Cannon's party government strategies in an earlier period, Gingrich attacked committee autonomy by creating a powerful party steering committee, which he chaired and which possessed supreme agenda setting powers. He established majority legislative priorities, scheduled items for House and Conference consideration, and strongly influenced the nomination of majority-party committee members and chairs. As Speaker, Gingrich personally selected committee chairs who, in a number of cases, were not the most senior members of their committees but those judged to be more assertive, dynamic, and loyal to the party's agenda. Chairs of the ten Appropriations subcommittees were required to pledge loyalty to the majority party's legislative agenda, on pain of removal, the terms of committee chairs were limited, the number of committees cut and committee staffs reduced by almost one-third.

Under Gingrich's successor, party government has been further reinforced. Speaker Hastert and the House Republican Steering Committee now interview and subsequently appoint all committee and Appropriations subcommittee chairs on the basis of previous loyalty and service to the party (including fund raising), rather than by seniority. This means in practice that committee chairs go

⁸⁵ Sinclair, *Legislators, Leaders, and Lawmaking*; and John H. Aldrich, and David W. Rohde, 'The Consequences of Party Organization in the House: The Role of the Majority and Minority Parties in Conditional Party Government'. In Jon R. Bond and Richard Fleisher, eds., *Polarized Politics: Congress and the President in a Partisan Era*. Washington, D.C.: CQ Press, 2000: 31–72

⁸⁶ Randall W. Strahan, 'Leadership in Institutional and Political Time: The Case of Newt Gingrich and the 104th Congress'. Paper presented to the Annual Meeting of the American Political Science Association, San Francisco, September 1996; Ronald M. Peters, 'The Republican Speakership'. Paper presented to the annual meetings of the American Political Science Association, San Francisco, CA, September 1996; Ronald M. Peters, 'Institutional Context and Leadership Style: The Case of Newt Gingrich' in Nicol Rae and Colton Campbell, eds., *New Majority or Old Minority. The Impact of Republicans on Congress*. Lanham, MD and Oxford: Rowman and Littlefield, 1999: 43-6. John E. Owens, 'Late Twentieth Century Congressional Leaders as Shapers of and Hostages to Political Context: Gingrich, Hastert, and Lott', *Politics and Policy*, 30/2: June 2002: 242; and Randall Strahan and Daniel J. Palazzolo, 'The Gingrich Effect', *Political Science Quarterly*, 119/1, 2004: 89-114.

to those with a proven track record of party loyalty, whilst the leadership is afforded opportunities to veto applicants in each new Congress. The clear losers have been party centrists, who have not received the committee chairs that strict seniority would have accorded them.

In the present congressional era of a Republican majority, the influence of the leadership over House floor proceedings increasingly resembles that found in many parliamentary regimes, and their actions are legitimised by reference to the party's continuing majorities at the polls. Following the 1994 elections, Gingrich removed various procedural protections afforded committees. This was to permit the majority leadership to intervene more easily at the post-committee or floor legislative stage to mould legislation more closely to the priorities of the Republican Conference (caucus).⁸⁷ Committees have also been more frequently bypassed and major bills lumped together in omnibus packages, which are rammed through the chamber at the end of the year with the full panoply of disciplinary weapons⁸⁸ At the floor stage, moreover, the majority leadership have resorted more and more to restrictive special rules and self-executing amendments to structure floor debate on legislation seen as important to the party, and ultimately determine the chamber's legislative product, in the process limiting the ability of members (including majority party members) to introduce and vote on amendments.⁸⁹ By the end of 2005, only one in every five special rules (N = 69) did not restrict the offering of floor amendments during initial floor consideration in the 109th House, compared with almost three in five in the 104th House (1995-96).⁹⁰ As a consequence, the number of floor amendments offered to major legislation has declined. Moreover, if committee chairs stray too far from the party's median position and report bills that do not reflect caucus opinion, the Speaker requires the bill to be rewritten before sending it to the floor. In violation of House rules and in the context of a small majority for the majority, on a series of very close floor votes on legislation important to congressional Republicans and the Bush Administration, Hastert and Majority Leader Tom DeLay (second-ranking in the majority leadership hierarchy) have held open voting (which by custom since 1995 has been limited to 17 minutes) for as long as three hours while recalcitrant members have been pressured to toe the party line. Minority members have also been excluded from conference committees with the Senate, and the Speaker has presided over debates on

⁸⁷ See Owens, 'The Return of Party Government in the US House of Representatives'.

⁸⁸ Sinclair, *Unorthodox Legislating*.

⁸⁹ Donald R. Wolfensberger, 'A Reality Check on the Republican House Reform Revolution at the Decade Mark'. Paper presented to the Congress Project Roundtable on *The Republican Revolution at 10: Lasting Legacy or Faded Vision?* Woodrow Wilson International Center for Scholars, 24 January 2005, pp. 15-17.

conference reports, even though he has sponsored a bill himself.⁹¹

Underpinning contemporary party government in the House is an expressly partisan ‘majority of the majority’ strategy.⁹² That is, the majority leadership is only willing to seek House approval of legislation that they or the Bush administration regard as crucial to the Republicans’ national reputation *if a majority of majority Republicans support it*. It is not happy to seek House approval of such legislation if only a (bipartisan) chamber majority – rather than a majority of Republicans – support it. This stratagem is part of a broader majority party strategy, which is to push through the House by the narrowest of voting margins the strongest measures possible that can attract the support of Republican conservatives.⁹³ The clear objective is to maximise the House majority’s advantage in negotiations with the Senate, where centrists exert greater influence.⁹⁴ Implementing this partisan ‘majority of the majority’ strategy typically necessitates, first, excluding minority Democrats (who are almost equally cohesive in their efforts to thwart the majority party) from intra-House negotiations and, second, placing enormous pressure on recalcitrant House Republicans – who may well face potent counter pressures from constituency interests – to vote with the party line. These party pressures on the reluctant members are then reinforced by promises, usually realised, that they will receive extraordinary financial and other assistance from the national party in the next and subsequent elections. As part of the Republican team building, such funds are increasingly provided by legislators in noncompetitive seats, who are “taxed” by the party leadership to donate generously in support of their more endangered colleagues.

Increasing partisan homogenisation and polarisation has strengthened party activity and leadership in the Senate too, albeit with some familiar limitations. Following House approval of much of the Republicans’ *Contract With America* in 1995, conservative Republicans supported various attempts by their majority leaders, Trent Lott and Bill Frist, to instil greater party accountability and responsibility. Several failed attempts have been made, for example, to discipline errant centrist committee chairs, most notably the centrist Appropriations Committee

⁹⁰ I am grateful to Don Wolfensberger of the Woodrow Wilson International Center for Scholars for providing me with these data. See also Wolfensberger, ‘A Reality Check on the Republican House Reform Revolution at the Decade Mark’, p. 14.

⁹¹ Owens, ‘American-Style Party Government’; Lawrence C. Dodd and Bruce I. Oppenheimer, ‘A Decade of Republican Control: The House of Representatives, 1995-2005’. In Lawrence C. Dodd and Bruce I. Oppenheimer, eds., *Congress Reconsidered*. 8th edition. Washington, DC: CQ Press, 2005, pp. 23-54.

⁹² Hastert, ‘Reflections on the Role of the Speaker’.

⁹³ Owens, ‘American-Style Party Government’ and Jacob Hacker and Paul Pierson, *Off Center: The Republican Revolution and the Erosion of American Democracy*, New Haven: Yale University Press, 2005.

⁹⁴ See, for example, Jonathan Allen, ‘Effective House Leadership Makes the Most of Majority’, *CQ Weekly*, 29 March 2003: 746; Juliet Eilperin, ‘House GOP Practices Art Of One-Vote Victories’, *Washington Post*, 14 October 2003: A1.

chair for not supporting the balanced budget constitutional amendment in 1995, and the centrist chair of the Judiciary Committee over President Bush's judicial nominations in 2004. Although these efforts failed, in 2004 the Republican Conference allowed Frist to fill half the Republican vacancies on the most desirable standing committees without regard to seniority (which would favour party centrists), and limited Republican senators' assignments on less desirable committees. (Senate Democrats already give complete committee assignment power to their leader.)

On key legislation, moreover, Senate majority leaders of both parties have attempted to instil greater party accountability and responsibility by exploiting their agenda setting powers, expediting the legislative process by bypassing committees, negotiating and orchestrating post-committee deals on the floor or in conference, or even by initiating a filibuster to advantage the majority party's position.⁹⁵ Still, all such attempts remain subject to the unanimous consent of all senators, the essential nonmajoritarian character and individualistic culture of the Senate – all of which present real limits to party government in the chamber. The Senate party majority (or its majority party leader) simply cannot control the chamber's agenda – positively or negatively – to the extent that a House party majority or Speaker can. Underlining any action by the majority leader in the contemporary Senate is the increased threat of extended debate and pervasive obstructionism – by individual senators or by the minority party acting in concert, and especially if the legislation or nomination is important to the majority party.⁹⁶ Under current Senate rules, any individual senator may hold the floor indefinitely on any debatable motion unless or until 60 senators invoke Rule XXII (the cloture rule) and vote to shut off extended debate. But, in the current party-oriented context, even extended debate may fall before the threat of a determined Republican majority to use its procedural power to restrict – or abolish – filibusters on some judicial nominations.

The Congress: The Exceptional Legislature?

Our review of the US Congress as “exceptional” has identified a fundamental combination of its formal institutional features that are unique among world legislatures. These fundamental features

⁹⁵ Charles Tiefer, *Congressional Practice and Procedure. A Reference, Research and Legislative Guide*. New York and London: Greenwood Press, 1989, pp. 647-690; Oleszek, *Congressional Procedures and the Policy Process*, ch. 7; Michael L. Koempel, *Routes to the Senate Floor: Rule XIV and Unanimous Consent*. CRS Report RS22299. Washington, DC: Congressional Research Service, 14 October 2005.

⁹⁶ Sinclair, *The Transformation of the US Senate*; Sinclair, ‘Individualism, Partisanship, and Cooperation in the Senate’; Evans and Lipinski, ‘Obstruction and Leadership in the US Senate’; John E. Owens, ‘Challenging (and Acting

stem from the separated system created in 1787 and the Constitution's insistence on competition among the different institutions of the government. The Congress' unique set of features includes legislative autonomy from the executive; a simple plurality voting system, which effectively discriminates against third parties and coalition governments; strong bicameralism with single-member districts in the House and equal representation for all 50 states in the Senate, regardless of population; and exceedingly lax procedural rules in the Senate, with a corresponding reliance on informal agreements among all senators. At various times and in different eras, these institutional features may produce some close similarities with some parliamentary regimes, but sometimes they will not. America's is not a parliamentary system and never will be. As Dahl observes, 'among the [22] countries most comparable to the United States and where democratic institutions have long existed without breakdown, not one has adopted our American constitutional system'.⁹⁷ The US system is an exceptional one, and the institutional Congress contributes a great deal to this exceptionalism.

Specifically, in this article we have emphasised the ubiquity of veto points within America's separated system and within the Congress in particular. But, beyond the formal institutional structures, the specifics of congressional politics flow from the exceptionalism of American society and political culture, which emphasises individualism and assertiveness, republicanism and constitutionalism, establishing rules, equality of opportunity, participation, cultural and geographic diversity, and decentralisation. Thus, even as partisanship and partisan polarisation have grown stronger in the contemporary period, local representation and its corollary, parochialism, continue to dominate congressional electoral politics. The highly personalised connections forged between lawmakers and their constituents remain, and are continually reinforced by their enterprises in House and Senate office buildings on Capitol Hill. These potent decentralising forces also act as a constraint on stronger parties and party accountability.

At the same time, both in the daily conduct of congressional politics and in the research findings, there are significant similarities with other legislative regimes, including those within different types of parliamentary systems. Indeed, the dynamism of the Congress as a political institution has dictated that its internal arrangements and relations with other institutions within America's separated system have fluctuated over time. In particular, the Congress has not always been the

For) the President: Congressional Leadership in an Era of Partisan Polarization'. In George C. Edwards and Phillip John Davies, eds., *New Challenges for the American Presidency*. New York and London: Longman, 2004.

⁹⁷ Robert A. Dahl, *How Democratic Is the American Constitution?* New Haven, CT. and London: Yale University Press, 2002.

autonomous centre of government that the Constitution's framers sought or the assertive institution that at times it became. For almost every period of assertiveness, we can find one characterised by acquiescence and subordination to the president. Because America has a separated system, we see the fluctuations in congressional-presidential relations as substantially greater than in parliamentary systems. For the same reasons, we have eschewed examining the Congress exclusively through the lens of the committee-based textbook institution commonly portrayed in the middle decades of the twentieth century. Notwithstanding Madison's warning of the 'mischiefs of faction' in *Federalist No. 10*, considerable empirical evidence confirms his subsequent observation that 'in every political society, parties are unavoidable.'⁹⁸ Indeed, congressional parties are currently alive and well, and in the early twenty-first century they constitute the most important political organisations on Capitol Hill. These scholarly findings, as well as the day-to-day reporting of the contemporary legislative process, serve to undermine the claim for the Congress' absolute singularity.

Still, various forces, both on Capitol Hill and within the United States as a whole, have systematically strengthened American legislative parties since the mid-1970s. House seats have grown less competitive, because of sectional realignments (e.g., Republican dominance in the conservative South), the growing value of incumbency, and the active redrawing of districts to benefit incumbents. Within the Congress, the power of seniority, which slowly, but automatically, promoted members on individual committees, has waned, replaced in large part by substantial increases in the power of party leaders. Especially in the House, leaders' strength derives from their ability to convince the party backbenchers that they are better off collectively if they stick closely together and delegate to their leaders legislative responsibility for formulating legislation important to the party's brand. This grant of power remains contingent, however; leaders can be – and have been – replaced, even the most powerful ones, like Speaker Gingrich and Majority Leader DeLay. Still, the ideological homogeneity of both parties and the calculated, collective delegation of power by the House Republican Conference and Democratic Caucus reflect an institutional arrangement that has moved the American Congress, and particularly the House of Representatives, more toward a parliamentary model.

But this analogy can be pressed only so far, in that legislative party leaders have found it essential to engage in extensive bartering for votes on very divisive issues and have relied heavily since 2003 on presidential assistance to move forward a partisan agenda. The powerful

⁹⁸ Douglas W. Jaenicke, 'Madison v. Madison'. In Richard Maidment and John Zvesper, ed., *Reflections on the Constitution: The American Constitution after Two Hundred Years* Manchester: University of Manchester Press, 1989,

“centrifugal” forces of diverse congressional districts, complex issues, and the fear of electoral retribution remain strong, and the long-term success of legislative leaders must take them into account. So, ‘qualified exceptionalism’ seems the most appropriate description for the American Congress. It may well be “exceptional,” but it is less than unique as it responds to many of the same forces, in some of the same ways (e.g., strong parties) as many other representative assemblies around the world.