

A United Nations Assessment Project Study

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REFORMING THE IMPERIAL CONGRESS

INTRODUCTION

Despite scandal-prompted pledges of change, the reform record of the 102nd Congress, which completed work on October 6, is abysmal. The most important reforms, such as term limits, were not even considered, minor reforms announced as complete in the House of Representatives were not implemented, and congressional leaders delayed establishment of a committee to study and consider reforms. Congress's chief problem is the neglect of legislative duties in favor of efforts to secure reelection and expand individual power. Four principles should guide reform efforts: the legislature should legislate, it should be accountable, it should control spending, and its members should act as representatives rather than rulers.

Refocusing Congress on its legislative mission will require forcing Congress to stop much of what it now does. Congress must curb micromanagement of the executive branch; suspend the wholesale pursuit of constituent service in order to direct more energy toward major policy issues; it must abstain from pork barrel spending; and end "policy prosecutions," the practice of avoiding policy debates by addressing issues in a one-sided, prosecutorial fashion. These steps are not intended to reduce congressional authority, much less to replace it with an imperial President, but to encourage Congress to exercise power through constitutional, legislative means. The result is likely to be far greater attention to making government programs work properly rather than the current Band-Aid approach of constituent service.

A return to legislation, which requires open debate and votes, will itself greatly promote increased accountability to the voters. Congress therefore must reform the legislative process to make it more fair, meaningful, and orderly. The number of congressional committees and subcommittees should be drastically cut. Congress must open its legislative, financial, and administrative actions and records to greater public scrutiny. The power to tax and spend is the first among Congress's enumerated powers,

Many of the themes and recommendations in this study can be found in The Heritage Foundation book, *The Ruling Class: Inside the Imperial Congress* by Eric Felten, scheduled for publication in early 1993.

and the area in which Congress has most obviously and strikingly failed. Major reforms are needed in the congressional budget process to emphasize spending control, and ultimately a constitutional amendment is needed to force Congress to face the difficult choice of balancing competing spending demands.

Congress has lost its moorings to the Constitution and to the voters because its members have become a ruling class, viewing their mission as governing rather than representing the American people. The most glaring example of this attitude is the congressional practice of routinely exempting itself from the laws it imposes on the rest of the government and the private sector. The huge congressional staff and a plethora of perks also demonstrates this imperial attitude. While voters should demand that Congress obey the laws it passes, end the perks and cut the staff, term limits may be the most ready and effective step to re-establish links between legislators and those they represent, and to set the stage for other, necessary reforms.

Voters appear ready to replace up to a third of the House, electing as many as 150 new Representatives, and a dozen Senators. Even incumbents are running on reform platforms. But new blood alone will not be enough. Voters must demand that the new Congress deliver on its reform promises. As Congress and the public sort through the many specific reform options, four fundamental principles should be kept in mind.

- 1) **The Legislature Must Legislate.** The fundamental reason Congress “doesn’t work” is that it doesn’t legislate, expending its energies instead in non-legislative pursuits. Congress should adhere to its constitutional charter as the legislative branch.
- 2) **Congress Must Be Accountable.** The activities of Congress should be visible to all Americans. Votes must be meaningful, records must be public.
- 3) **Congress Must Begin to Exercise Fiscal Responsibility.** The power to tax and spend is lodged in the Congress, and major reforms in congressional spending and budgeting procedures are necessary to get federal spending, and the deficit, under control.
- 4) **Congress Must Return to Representation.** In order to represent their constituents Congressmen must share their concerns and problems. As a first step, Congress should do unto themselves as they do unto others by obeying the laws they pass. Perks, large staffs, and long tenure serve to separate representatives from the communities they represent.

Some proposals which fulfill these principles include:

- ✓ **Term limits**
- ✓ **Limits on congressional sessions**
- ✓ **Cuts in congressional staff**
- ✓ **A balanced budget/spending limitation constitutional amendment**
- ✓ **A line-item veto**

- ✓ Covering Congress with the laws it passes
- ✓ Ending wholesale constituent service
- ✓ Reforming the scheduling process
- ✓ Establishing fair parliamentary procedures
- ✓ Reducing the number of committees

THE REFORM RECORD

Introducing Senate Concurrent Resolution 57 to establish a committee on congressional reform on July 31, 1991, Senator David Boren, the Oklahoma Democrat, stated that "Congress is in trouble as an institution. No one doubts it. In poll after poll, Americans describe Congress as inefficient, wasteful, and compromised by the way it finances campaigns."¹ Senator Boren delivered these words months before scandals in the House Bank and Post Office rocked the House of Representatives. Since that time, public regard for Congress has hit an all-time low, with many polls showing an approval rating lower than 20 percent.²

Despite public outrage and the expressed support of a majority of Senators and Representatives, Boren's proposal (and a companion House measure, H.Con.Res. 192) was delayed for months, first by House Speaker Thomas Foley and then, according to Boren's staff, by Senate President Pro Tem Robert C. Byrd. Though the reform study plan was passed on July 30, 1992, the committee is still not operating. Foley and Senate Majority Leader George Mitchell delayed appointing members to the new Joint Committee on the Organization of the Congress until after Congress recessed in October. As a result, this effort merely to study and recommend reforms cannot get started until sometime in 1993.

Delays and Wrist Slaps. The pattern of promise and delay is common. In March of 1992 Speaker Foley announced the suspension of a number of House Members' perks and the creation of a non-partisan professional administrator to take over the patronage-ridden and scandal-plagued House Sergeant at Arms and House Post Offices. The House Administration Committee failed to implement fully the perk reforms, however, and several of the Members-only favors will still be available when the new Congress convenes in January of 1993. Also awaiting the new House apparently will be the appointment of a House Administrator: despite two deadline extensions, no one has yet been hired for the new position.

Congress is infamous for its unwillingness to discipline its Members, even those caught in flagrant wrongdoing. The Senate's Keating Five scandal resulted in a token wrist slap to only one offender, who was planning to retire. The Senate also promised

¹ *Congressional Record*, July 31, 1991, p. S11582.

² *The New York Times*, April 2, 1992 p. D21.

new constituent service guidelines, but the rules issued after months of delay will do little to prevent future abuses. House committees investigated its Bank and Post Office scandals for months and professed themselves unable to find significant wrongdoing, though public outrage finally forced disclosure of the number of checks Representatives bounced at the House Bank.³ New information, such as the possibility of bad checks being used to cover gambling debts, is still coming to light.⁴

As the public has caught on to Congress's unwillingness to reform or discipline itself, the term limits movement has caught fire. Term limits were approved in 1990 for state legislators in Oklahoma and California, and for state and federal legislators in Colorado. A very strict, retroactive term limits measure was narrowly defeated in Washington in 1991. Fourteen states, including California, Florida, Ohio, and Michigan, representing about one-third of the seats in Congress, have term limit initiatives on the ballot on November 3. But even with term limits, subsequent reforms in the internal operations of Congress will still be necessary. Once its members are appointed, the new Joint Committee on the Organization of Congress may be a useful vehicle for achieving some necessary changes. Unless voters remain vigilant, however, the new committee could become a ruse for Congressmen to claim they are reforming while continuing business as usual. While the details of reform packages may vary, the principles of legislation, accountability, spending control, and representation should guide any genuine reform effort.

A LEGISLATING LEGISLATURE

Voters are unhappy with Congress because legislators have failed to effectively address problems such as the economy, crime, and education. Congress cannot because it has largely abandoned legislation. Take, for example, Congress's approach to transportation. The 1991 highway bill⁵ was a monument to pork barrel politics and congressional self-promotion. One Senator named a boat ramp after his father. Localities in Tennessee, Ohio, and Wisconsin got new bicycle paths, and the Staten Island Ferry hauled in an extra \$2.7 million. At least two Representatives brought home over a quarter of a billion dollars in grants and subsidies for their districts. The bill was a monument to complexity as well: 298 pages of small print text with a 186-page report adding more details.

Compare this with the bill that created the interstate highway system. The Federal Aid Highway Act of 1956 was a mere 32 pages. The section describing how the interstate highways would be funded and built took up only eleven pages. No state, county, or locality was mentioned in the bill. Yet the 1956 Act revolutionized America's transportation network. There is little danger that anyone will make a similar judgment about the 1991 transportation bill 35 years from now: \$150 billion will have been spent to little effect.

3 Two Justice Department investigations are taking more serious looks at the House Bank and Post Office matters.

4 See remarks of Representative Robert Walker, *Congressional Record*, p. H 9982, September 30, 1992.

5 Officially known as The Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240.

Instead of legislating, Congress has organized its structure and staff around non-legislative activities, aimed principally at reelection. Foremost among these is constituent service. To revive the practice of legislation, and the power that comes with it, Congress must limit or end most of these non-legislative activities.

The Favor Factory

Most staffers working directly for Congressmen are dedicated not to legislative concerns, but to "casework" or constituent service. Forty percent of House staff works in district offices,⁶ nearly exclusively on casework, and a large percentage of Washington-based staff is dedicated to that task as well. The percentage of Senate staff based in state offices has almost tripled, from 12.5 percent in 1972 to 35 percent in 1990.⁷ But Congressmen do not help constituents out of charity, they do it because it helps them get reelected. In a recent survey, 56 percent of House administrative assistants (staff who manage congressional offices) identified constituent service as the most important factor in solidifying their Members' political bases, while only 11 percent identified a Member's legislative record.⁸

Constituent service goes far beyond finding lost Social Security checks. Pork barrel spending and regulatory manipulation are two of its most damaging forms. Legislators often intervene with federal regulators on behalf of powerful constituents and campaign contributors. In one instance, Washington State Republican Representative John Miller put a hold on enforcing a law regulating a boat's stability at the request of Arctic Alaska Fisheries Corp. Shortly afterward, a fishing boat operated by that company sank in the freezing waters of the Bering Sea. Investigators for the Transportation Department claimed that fatalities might have been avoided if the Coast Guard had enforced the relevant law.⁹

Not the Exception. The collapse of the savings and loan industry was largely a result of regulatory changes and pressures by Congressmen who actively lobbied on behalf of failing S&Ls in the name of constituent service.¹⁰ Three major House figures, former Speaker Jim Wright, former Whip Tony Coelho (who had also served as the Democrats' chief campaign fundraiser), and former Banking Committee Chairman Fernand St. Germain, left Congress in the 1980s under clouds of scandal owing to involvement with financial industries lobbyists and regulators. The Senate's Keating Five scandal also involved pressure on regulators to ease up on S&L kingpin Charles Keating, who was also a significant fundraiser for each of the five Senators involved.¹¹ The importance of these cases is that they are the rule, not the exception. "Those Senators did exactly what every Senator is called on to do every day," said Senate Ethics Committee Chairman Terry Sanford, the North Carolina Democrat.¹² Sena-

6 Norman Ornstein and Thomas Mann, *Vital Statistics on Congress, 1991-1992* (Washington, D.C.: American Enterprise Institute, 1992) p. 128.

7 *Ibid.* p. 129.

8 Richard H. Shapiro, *Frontline Management* (Washington D.C.: Congressional Management Foundation, 1989), p. 94, Fig. 6-1.

9 "The Limits of Constituent Service," *Government Executive*, June, 1991, p. 28.

10 "Members Intervene With Bank Regulators," *Roll Call*, May 7, 1990, p. 24.

11 Separate report by Senator Jesse Helms of the ethics committee investigation of Senator Alan Cranston, p. 42.

tor Dennis DeConcini, one of the Keating five, claimed that at least twenty colleagues told him, "There but for the grace of God go I."¹³

The Pork Barrel

Equally scandalous, and perhaps more damaging in the long run, is pork barrel spending. Allocating spending based on political ties rather than on need or merit is a crime when practiced by executive branch officials. It is standard operating procedure for legislators. The scandal that took place at the Department of Housing and Urban Development during the late 1980s exemplifies this double standard for congressional influence peddling, and shows how little congressional oversight has to do with good management.

The HUD scandal involved allegations of influence peddling to control the award of housing grants. Documents obtained by The Heritage Foundation under the Freedom of Information Act show that HUD received an average of 2,425 phone calls per month from Congress during the period that questionable grants were made.¹⁴ Despite the thousands of calls, dozens of reports by HUD's Inspector General detailing the problems, and as many as 111 congressional committees with some jurisdictional claim over HUD,¹⁵ Congress failed to notice the scandal until it blew up in the newspapers. In other words, congressional oversight authority was not being used to oversee the Department.

What, then, were all the calls about? According to Charles Dempsey, HUD Inspector General from 1977 to 1985, "Congress was more interested in getting favors from HUD than in overseeing its operation."¹⁶ Seventy percent of the letters to HUD between 1986 and March of 1990 request favors from HUD,¹⁷ usually funding for a project, but also jobs for friends and waivers of regulations.

Disgraceful Double Standard. The new Secretary of the Department, Jack Kemp, called it "disgraceful...for Congress to take those monies that ought to go to helping homeless people or fighting poverty and distributing them without any competition, without any merit, other than political influence."¹⁸ It is doubly disgraceful to do so in the midst of criminal investigations, initiated by Congress, of HUD officials for doing exactly the same thing.

The discovery of what Congress is really up to when it calls executive branch departments can be so embarrassing that Congress has actually tried to prohibit departments from keeping records of such contacts. When one agency began keeping records of

12 "A Status Report on the Keating 5 Scandal," *Roll Call*, April 2, 1990, p. 5.

13 "Keating 535, Five are on the Grill, but Other Lawmakers Help Big Donors, Too," *The Wall Street Journal*, January 10, 1991, p. 1.

14 Based on phone records of HUD Congressional Affairs Office.

15 Committees exercising HUD jurisdiction were determined based on *Rules of the House of Representatives, Rules adopted by the Committees of the House of Representatives*, and *Standing Rules of the Senate*, as were committees and subcommittees to which HUD legislation has been referred.

16 "Congress' Busywork: Constituent Service has Replaced Governing," *The Washington Post*, January 28, 1990, p. C 4.

17 Based on a review of HUD summaries of congressional correspondence.

18 "Kemp Lashes Out at Hill's Projects," *The Washington Post*, November 27, 1989.

contacts from Members of Congress, the House Appropriations Committee attempted to prohibit the record-keeping practice,¹⁹ eventually backing down only under threat of a veto.

The focus on pork and constituent service narrows Congressmen's attention from broad, national concerns to minutiae. The resulting micromanagement of executive agencies can be debilitating and the implications criminal. Even worse, the practice has now reached the point where Congressmen have a perverse incentive against addressing systemic problems in favor of applying Band-Aids to festering sores. Congress grants sweeping powers to bureaucrats, then stands ready to claim credit for easing the resulting pain. Constituents are supposed to express gratitude by voting for them. This process removes any incentive for Congress to limit the size of government or to fix the problems that cause voters so many headaches. In fact, bad government gets Congressmen reelected. Without constituent service, Congress would have to focus on getting federal agencies to do the job right the first time.

Micromanagement

Congress has increased its influence over the executive branch in a variety of ways. Though at first this might seem an intra-governmental spat of no immediate concern to the general public, in fact it represents a fundamental breakdown of representative government. The constitutional principle of separated powers is being replaced by clandestine interactions between Congress, interest groups, and the executive bureaucracy.²⁰ Congress effectively runs large parts of the executive branch, from personnel and policy to "the size and styles of calendars on the walls of agency offices."²¹

Oversight hearings, in which Congress investigates and second guesses executive agency decisions, have increased both in absolute terms and as a percent of committee activity. There was a 300 percent increase in the number of days committed to oversight hearings from 1961 to 1983. During that time, oversight as a percent of total hearings rose from 8.2 percent to 25.2 percent of the committee workload.²² A large part of the time, then, Congress is not even pretending to legislate.

One of Congress's favorite ways to control what the executive branch does without actually writing a law is to require detailed reporting. Reports to Congress by Cabinet agencies between 1980 and 1988 climbed by an average of 93 percent. Hardest hit during that time was the Department of Defense, with an increase from 168 to 545 required reports—a 224 percent increase.²³ A DoD analysis of the effects of this congressional hyperactivity complained "every working day...entails an average of almost three new General Accounting Office audits of DoD, an estimated 450 written queries

19 H.R. 2788, Interior appropriations bill for FY 1991, Sec. 120, as reported in the House.

20 See Mark B. Liedl and Douglas A. Jeffrey, "Congressional Ethics and the Administrative State," Heritage Foundation *Backgrounder* No. 743, December 13, 1989.

21 "The Cost of Congressional Micro-Management," *The Wall Street Journal*, October 18, 1984.

22 Joel Aberbach, *Keeping a Watchful Eye: The Politics of Congressional Oversight* (Washington, D.C.: Brookings Institution, 1990), Table 2-1, p.35.

23 From "Reports to be Made to Congress," annual list of reports made to Congress compiled by the Clerk of the U.S. House of Representatives, 1980, 1988.

and over 2,500 telephone inquiries from Capitol Hill, and nearly three separate reports to Congress, each [of them] averaging over 1,000 man-hours in preparation and approximately \$50,000 in cost."²⁴

Thin Skin. While Congress defends oversight as necessary to ensure that agencies comply with the law, sometimes the reason is pure pettiness. In response to a Park Service newsletter that contained a joke about Congress, a staff member on the appropriations committee eliminated funding for the newsletter the following year. In another instance a Representative reportedly tried to get a federal employee fired for writing a critical letter that was published in a newspaper in the Congressman's district.²⁵

Other times, Congress micromanages agencies to keep federal revenue in their districts. Outspoken advocates of defense cuts fought to keep military bases in their districts from closing, for example. To prevent an FBI Field Office in Butte, Montana, from being downgraded to a "satellite" office, Montana's Senators placed an amendment in a bill that prohibited the entire Justice Department from spending any money to "relocate, reorganize, or consolidate" any office, agency, or function anywhere in the United States.²⁶

One analyst has concluded that congressional oversight "has inhibited, sensitized, and changed [federal] agencies, sometimes with a thoroughness bordering on the dramatic."²⁷ Lists of hundreds of questions (known as Dingellgrams) from Energy and Commerce Committee Chairman John Dingell have been known to paralyze entire agencies for days or weeks.²⁸ Some Members of Congress agree that "Congress is bogged down in detail, missing the big picture and slow to respond to our real problems."²⁹

Micromanagement is also expensive. According to a report by the Project on Military Procurement, a combination of 42 pork "earmarks," and program restrictions imposed by Congress will added over \$800 million to the cost of defense programs in just one year.³⁰

Show Trials

Committee hearings increasingly are the vehicles for publicity seeking, showcasing "experts" such as the Grateful Dead or Ben and Jerry of ice cream fame. One hearing this year in a House Agriculture subcommittee featured videotaped testimony from actress Kim Basinger, Bob Barker of the TV game show "The Price is Right," and actor Richard Kiley on the subject of animal rights. Such hearings produce little in the way of policy change or legislation, but they frequently manage to get Congressmen on the evening news.

24 "DoD is Preparing Presidential Report on Congress' 'Policy Gridlock,' Due Oct. 1st," *Armed Forces Journal*, July, 1989, pg. 10.

25 *Congressional Record*, July 24, 1991, p. H-5774, and *The Washington Times*, July 29, 1991, p. A 6.

26 H.R. 2402, Dire Emergency Supplemental Appropriation, Sec. 105.

27 Christopher H. Foreman, Jr., *Signals From the Hill* (New Haven and London: Yale University Press, 1988) p.84.

28 "I, Dingell: Woe to Those Whose Interests Conflict," *The Wall Street Journal*, February 17, 1989.

29 Statement by Senator David Boren on introduction of Congressional Reform Initiative.

30 "Pentagon says Hill adds Cost," *The Washington Times*, December 11, 1989.

Criminalizing Disputes. Hearings are also used to persecute agencies or individuals in the executive branch, or anyone else who crosses a Congressman. While the mere threat of a congressional inquisition is often sufficient for a powerful Congressman to get his way, when disputes heat up, Congress threatens executive officials with an independent counsel. Enacted as part of the Ethics in Government Act of 1978, the independent counsel procedure usurps executive branch functions and violates fundamental rights of the accused. Even more fundamentally, in practice the independent counsel statute has little to do with real ethical violations. Instead, it is used to criminalize disputes between the executive branch and Congress. In one notable instance, Theodore Olsen, formerly a top Justice Department lawyer, was finally exonerated after being hounded for three years by an independent counsel over a dispute with Congress involving the release of EPA documents. Olsen was accused of misleading Congress, but the real issues were environmental policy and executive privilege. Fighting on those grounds with the Reagan Administration, however, Congress almost certainly would have lost, so Congress turned to an independent counsel in an effort to cow Administration officials into submitting.

The independent counsel law shows how Congress has been able to breach the separation of powers in its extra-constitutional activities. Justice Antonin Scalia notes that "Congress had taken the prosecutorial power not by legal means but through political ones. Under the new system, an administration could either keep helplessly investigating itself in one case after another or to see itself portrayed as a bunch of crooks and obstructors of justice."³¹ Fortunately, the performance of Iran-Contra independent counsel Lawrence Walsh may have been the undoing of the law. A last-minute effort in September to extend the independent counsel law past its scheduled December 15, 1992, expiration was unsuccessful.

Legislation Abandoned

As Congress has increased its non-legislative activities, the number of substantive laws passed has declined steadily, from 627 in the 91st Congress (1969-1970) to 517 in the 96th (1979-1980), to only 418 in the 101st Congress. At the same time, more bills are being introduced, largely for publicity reasons. Of the 6,973 bills introduced in the 101st Congress, only 3 percent were enacted.³² And many of the bills passed are meaningless. In 1989, Congress considered 1,359 bills commemorating days, weeks, or months, and passed 287 of them. Among the winners were National Drinking Water Week, Tap Dance Day, and Radon Action Day. Almost 35 percent of all laws passed in the first year of 102nd Congress were commemoratives, up from under 10 percent in the 91st Congress twenty years ago.³³ The cost of each such bill is estimated to be in excess of \$300,000.³⁴

31 Suzanne Garment, *Scandal: The Culture of Mistrust in the American Government* (New York: Times Books, 1991) p.106.

32 Senator David Boren, *Congressional Record*, July 31, 1991, p. S11582.

33 "A Day (or Month or Year) in the Sun," *The Washington Post*, January 13, 1991.

34 "Commemorative Fight Gets Testy," *Roll Call*, February 8, 1990.

ACCOUNTABILITY

By conducting most of its activities through non-legislative and extra-constitutional means Congress frustrates accountability. Congressmen trumpet their constituent service records rather than their stands on issues, they seek to control the government through continual micromanagement and investigations rather than through legislation. By doing so, they can avoid taking a firm stand on the issues themselves, leaving voters with little substantive basis on which to judge a Congressman's performance. When they do have to vote, Members use a variety of ruses to stake out positions on both sides of an issue, voting one way while doing the opposite, even not voting at all on controversial issues.

The Conference Conspiracy

Conference committees are supposed to resolve differences between House and Senate versions of a bill. But all too often conference committees come up with entirely new provisions, or eliminate sections agreed to by both Houses. The "compromise" worked out on the 1991 highway bill, for instance, split the difference between the House version, containing \$5.4 billion worth of pork barrel demonstration projects and the Senate version, which contained none, by adding fifty projects worth an extra \$1.1 billion. Because conference deliberations are carried on in secret, no one is responsible for the added pork, and no justification need be provided. Even Senator Robert Byrd, the West Virginia Democrat, notorious for slipping extra funding for West Virginia into appropriations bills, once offered an amendment regulating lobbying, complaining that "...certain appropriations line items were appearing in the bill during conference committee debates even though neither house had voted on the specific contract, grant or award...."³⁵

Because there are no open roll call votes in conference, it is also used to extricate Congress from sticky situations when it is forced to vote on things it does not like, such as a 1989 amendment by Iowa Republican Senator Charles Grassley to apply a major civil rights law, the Americans With Disabilities Act, to Congress. Despite votes in both the House and Senate to apply the law to Congress, the conference committee reported a provision which technically covered Congress, but without any real enforcement procedures. The conferees were able to get away with this in part because the House and Senate had passed slightly different versions of the so-called congressional coverage amendment. A similar ruse was used in 1991 to kill Senator Jesse Helms's amendment prohibiting federal funding for obscene or sacrilegious art. In that case conferees simply ignored a House vote to agree with the Senate-passed Helms amendment. In both cases, Congressmen wanted to vote one way on a political hot button issue, yet have the outcome be the exact opposite. Conference committees are often called upon to do the dirty work in such cases.

35 *Inside the White House*, October 3, 1991, p. 17.

Posing With Holy Pictures

Conference committees are not the only means for Congress to do what Congressman David Bonior has called “posing with holy pictures”: casting cosmetic votes that have no real meaning. In the House, “King of the Hill” rules, allow Representatives to vote in favor of several competing proposals, knowing that only the last amendment adopted really counts. Normally, passage of one amendment on a subject precludes adoption of competing approaches. With a King of the Hill rule, Representatives can have several varieties of cake and eat them too. Unfortunately, the purpose is to fool voters into thinking their Congressman voted just the way they wanted when in fact he did not.

In addition to voting both ways on an issue, Congress can pass legislation without any votes at all. Such was the case with a 1991 bill raising the Senate’s pay from \$101,900 to \$125,100. Ohio Republican Representative John Boehner demanded a House vote on the pay boost, but could not get one. Normally roll call votes are nearly automatic under a procedure which requires a recorded vote when called for if a majority of Members are not present on the House floor. Usually, only a dozen or so of the 435 Members of the House are on the floor at any given time. Getting wind of Boehner’s plans, however, party leaders made sure a majority was present and then discouraged them from supporting Boehner’s request for a vote. The House has formalized such shenanigans with something known as a “self-executing rule.” With this device a supposedly procedural vote can be stretched to include adoption of various substantive amendments and even passage of important legislation, including a \$6 billion welfare reform package, which was included in a rule for the Guaranteed Deficit Reduction Reconciliation Act voted on in the House October 29, 1987.³⁶ The House also has a standing (permanent) rule which approves increases in the federal debt limit with no votes at all.

Ignoring the Rules. Other times, House leaders avoid controversial amendments with a procedure known as suspension of the rules. If leaders can muster a two-thirds vote, bills are passed with no opportunity for amendments to be offered. The procedure also allows the House to ignore its own rules, including budget restrictions. Over half of all House legislation is now passed this way. If they lack a two-thirds majority, House Democrats still can manage to avoid controversial votes by securing a special rule from the House Rules Committee. Such rules are used to govern the procedures for debate on the House floor, but increasingly the Rules Committee has limited what amendments can be offered. Such “restrictive rules” were used only 15 percent of the time in the 95th Congress (1977-1978), rising to 55 percent in the 101st Congress (1989-1990).

About the only way House Members have around all these procedural hurdles is a “discharge petition.” If a majority of House Members sign a document demanding it, committees are bypassed and a bill is brought directly to the House floor. However, the petition is kept secret, allowing Members to support a measure publicly without

36 *Congressional Record*, May 24, 1988, p. H.3579

signing the petition. Again, voters are misled by representatives who say they support a proposition while failing to do what is necessary to get it passed.

Bill Bloat

Senator Boren has observed that “Bills are five times longer on the average than they were just as recently as 1970, with a far greater tendency to micromanage every area of government.”³⁷ Omnibus bills covering multiple subjects, and especially massive continuing resolutions containing most of the government’s appropriations for a year, are open targets for legislators wanting to slip a little something into a bill—pork, narrow tax loopholes, pet projects. “Over the years, [the continuing resolution] became a huge legislative dumpster into which members could throw what remained of their in-baskets at the end of the year, a kind of sanitary landfill for the safe burial of some of the year’s more odiferous ideas.”³⁸

Aside from making it easier to insert stealth provisions, Representative Chris Cox, the California Republican, points out, such bills make any vote defensible before almost any audience, because anyone can find items he supports and items he opposes among the hundreds of provisions. Perhaps even worse than making representatives unaccountable, the process through which omnibus bills are assembled and passed denies even most Congressmen any real knowledge about the legislation. In the wee hours of the day before Thanksgiving 1989, Congress passed a “Reconciliation Bill” covering over \$1 trillion without anyone ever having read it. The bill was brought to the House chamber in a large cardboard box, over a thousand pages of uncollated, unindexed pages fresh from dozens of printers throughout various offices, and wrapped by twine. There were no other copies for Members to look at. Representative Cox recalls being “permitted to walk down into the well and gaze upon [the bill] from several angles, and even to touch it.” But not a single person knew all the bill contained.³⁹

Sometimes the Congressmen even seem not to care. Late at night the eve of passage of another unread thousand-plus-page bill, the Omnibus Budget Reconciliation Act of 1990, Representative Bill Richardson, the New Mexico Democrat, gave what he believed to be the three most compelling reasons for passing the second largest tax increase in American history: “So we can go home...so we can go home...so we can go home!”

An Army of Aides

When elected representatives do want to exercise more responsibility, the size and activities of Congress’s huge staff often prevent them. Senator Boren observes that “large staffs tend to generate their own agendas.”⁴⁰ In fact, unelected committee staff often wield more power than many elected representatives themselves. A study of the influences on committee oversight agendas shows that top staffers and Members alike agree that staff members have more say in setting committee agendas than minority

37 Senator David Boren, “Fixing What’s Broken in Congress,” *The Washington Times*, August 9, 1991, p. E2.

38 “Dreaming of a Continuing Resolution? Lacking Usual Vehicle, Senators Try to Pack Riders Onto Tax Bill,” *The Washington Post*, October 12, 1988, p. A17.

39 Congressman Christopher Cox, “Why Congress Doesn’t Work” *Heritage Lecture* No. 406, June 25, 1992.

40 *Congressional Record*, July 31, 1991, p. S 11582.

party members. "In the vast majority of cases, ranking minority members do not have (or even tend to share) major influence."⁴¹ Senator Boren recollected a conference committee meeting where "staffers talked to each other for an hour and a half" before allowing lawmakers to complete work "in about five minutes."⁴²

Former Senator Barry Goldwater observes that "Today's Hill staffers write most of the legislation and speeches, they do all kinds of work that the members of Congress should be doing. In fact, it is safe to say that the U.S. Congress is now run by paid staffers, not by people elected to do the job."⁴³ According to some veteran Members, this has not been necessarily to the betterment of legislation. House Minority Leader Robert Michel recalls, "In the nearly 32 years that I have been in Congress we have seen a five-fold increase in committee staff, but a 70 percent decline in legislation moved out of committees. The bigger we get, the less we do."⁴⁴

In introducing his reform proposal, Senator Boren noted that Senate staff had grown 600 percent, from 2,000 in 1947 to 12,000 today.⁴⁵ The total congressional staff now amounts to 31,000 aides, the largest legislative staff in the world nine times over.⁴⁶ Many of those staffers are well paid, too. Over 300 House staff are paid salaries in excess of \$100,000 a year, as are many staff in the Senate.⁴⁷ The Congress's own budget has grown over 3,500 percent since 1946, over four times the rate of inflation.⁴⁸ The staff explosion has clogged the legislative process and robbed elected representatives of a grasp of legislation. It has also been instrumental in converting Congress into the administrator of the executive bureaucracy. Observes White House Counsel C. Boyden Gray, "Thirty thousand congressional staffers are all very bright and well-meaning, and they have to do something. What they do is run the executive branch."⁴⁹

Committee Congestion

Long before anonymous staffers wrap massive bills in twine, and before Congressmen dodge votes on the House or Senate floor, the work of Congress goes on in its committees. Committees produce legislation or bury it, their hearings generate publicity, and the staff micromanages the executive branch. Committee positions are the source of much of a Congressman's power and prestige. Unsurprisingly, committees and committee staffers have proliferated and their jurisdictions expanded.

Following a major committee reform, the 79th Congress (1945-1946), had fifteen Senate and nineteen House Committees, with few if any subcommittees. The 102nd Congress has 295 standing, special, and select committees and subcommittees. Com-

41 Joel D. Aberbach, *Keeping a Watchful Eye* (Washington, D.C.: The Brookings Institution), pp. 126-128.

42 "Reforming Congress by Committee," *The Washington Post*, August 1, 1991, p. A15.

43 Barry Goldwater quoted in *In the Shadow of the Dome: Chronicles of a Capitol Hill Aide* (New York: William Morrow, 1990).

44 *Congressional Record*, May 24, 1988, p. H.3576.

45 *Congressional Record*, July 31, 1991, p. S.11582.

46 Luis Saenz, "The Costly Congress Becomes More Costly," Heritage Foundation *Backgrounder* No. 832, May 30, 1991, p. 4.

47 "Number of House Staffers Paid \$100,000 or More Soars to 304, New Survey Finds," *Roll Call*, July 20, 1992, p. 21.

48 *Vital Statistics on Congress, 1991-1992*, Table 5-9, pp. 136, 137.

49 Richard E. Cohen, "The Game Begins," *Government Executive*, January 1989, p.13.

mittee staff has grown from 399 in 1947 for both House and Senate to around 3,000 today, a 750 percent increase. Today the average Senator is a member of twelve full committees or subcommittees, and one Senator sits on no fewer than 23 such panels. The mean number of committee assignments for House Members has more than doubled, from three to nearly seven slots per Member. The resulting schedule overload means that committee meetings generally are not well attended. Staff does much of the work, and most votes are taken by "proxy." That is, a chairman or senior minority representative is allowed to cast votes for absent committee members. This practice, combined with the fact that minority Members are often underrepresented on committees, frequently allows panel chairmen to control votes singlehandedly.

The proliferation of committees had led to overlapping jurisdictional claims. The result is legislative gridlock and disjointed oversight. Some legislation is referred to as many as ten committees and subcommittees,⁵⁰ prompting a leading Senator to complain that "I can't tell you how many pieces of legislation go nowhere because they got divided up and disappeared among committees."⁵¹ For example, the number of committees and subcommittees holding hearings with DoD witnesses climbed from 24 to 111, between 1964 and 1987, a 460 percent increase.⁵²

When every committee with a finger in every pie, frequently issuing conflicting directives, no one is responsible. Up to 111 committees had jurisdictional claims on the Department of Housing and Urban Development, but Congress failed to pick up the scandal. Congressionally mandated reports by HUD Inspectors General detailing abuses were ignored, leading a former IG to complain that "Congress, when it enacts legislation and mandates reporting requirements, should at a minimum read the reports."⁵³

...

CONTROLLING THE PURSESTRINGS

The single most important responsibility entrusted to Congress, short of declaring war, is control of the federal purse. Most of Congress's power is derived from its constitutional prerogatives of laying and collecting taxes, and the authority to spend funds from the Treasury. Because it is quantifiable, it is also the congressional responsibility most easily judged. A look at the condition of federal finances demonstrates that Congress is failing miserably with its fiduciary duties.

Despite record-breaking revenues of \$1.091 trillion last year, the federal deficit was also a record \$400 billion. The total federal debt is in excess of \$4 trillion. America is going into debt at a rate exceeding \$1 billion per day (including Sundays and holidays)—approximately \$20,000 per second. Over three-fifths of all personal income tax collected goes to interest payments on the national debt.⁵⁴ Congress has virtually auto-

50 "Watergate Helped Field Army of Hill Reformers But Class of '74 Now Draws Some Fire," *The Washington Post*, June 15, 1992.

51 "Reforming Congress by Committee," *The Washington Post*, August 1, 1991, p. A 15.

52 Information compiled by the DoD Office of Legislative Affairs.

53 "Congress Lax About Oversight, Inspector General Says," *Congressional Quarterly*, May 12, 1990, p. 1481.

54 National Taxpayer's Union, *Hello Sucker!* (Washington, D.C.: National Taxpayer's Union, 1992) p. 12.

mous control of and responsibility for federal finances. The overriding problem is Congress's inability to rein in spending.

In the face of these alarming figures, and in the midst of the current recession, Congress has taken no substantive action on the economy, choosing instead to stick to the failed 1990 budget agreement. A balanced budget amendment was defeated this summer. The House went so far as to turn down legislation to keep the S&L bailout agency, the Resolution Trust Corporation, functioning, in part because doing so would have required increasing the federal debt limit, likely reopening the 1990 deal. Delaying the shutdown of insolvent thrifts costs \$6 million per day, adding at least \$2 billion in costs before the next Congress gets around to paying the bills.

The Budget Act

The Congressional Budget Act of 1974 is the basic framework for the federal budget process (though in recent years it has given way to an ad hoc "summit process" in which congressional leaders and the President agree on spending and taxation levels). The enumerated purposes of the Act are: to assure congressional control over the budget process; to reduce the President's ability to impound (withhold) funds; to establish national budget priorities; and to give Congress access to executive branch budget information.⁵⁵ In other words, the budget act virtually removed the President from the federal budget picture, and put virtually all power in the hands of Congress. The President is still required to submit a budget, but it is regularly declared "dead on arrival" on Capitol Hill.

Nowhere in the purposes of the budget law is there mentioned the notion of controlling spending or balancing the budget. Because the Budget Act consists primarily of internal congressional rules, rather than statutes, the few restrictions that do exist can be violated at will. In the 101st Congress, for instance, the House waived Budget Act restrictions ninety times. Even the annual Congressional Budget Resolution, which sets overall spending and taxation levels, is not a law (and thus cannot be vetoed or signed by the President), making the budget process Congress's most outrageous non-legislative exercise. Setting spending targets by statute would make it far more difficult for Congress to circumvent the limits. Doing so would require a change in the law, signaling the public that the budget was about to be busted, and giving the President an opportunity to veto the increases.

The budget process has proven to be a machine to increase spending rather than a tool to control it. With ineffective controls on overall spending and taxation, spending decisions are made on a case-by-case basis, a process which guarantees that only spending advocates are heard. It is by no means impossible to design a system which either automatically limits spending or forces Congress to make difficult decisions. In fact, two different versions of the Gramm-Rudman-Hollings Deficit Reduction Act (which altered the 1974 Budget Act), in 1985 and 1987, were quite effective; but when the limits began to pinch, Congress just changed the rules. The most flawed of those changes, made in the 1990 budget deal, reinforced the "current services baseline" sys-

55 The Congressional Budget Act of 1974 (Public Law 93-344), Sec. 2.

tem of automatic spending increases. Indeed, any limitation in the growth of these bureaucratic wish lists is advertised as a spending "cut."

It is clear that the Congressional Budget Process needs a major overhaul. It is equally clear that any workable solution will involve some limitation on Congress's spending power, either by restoring a significant presidential role in the budget process or by imposing constitutional limitations on the Congress.

RETURN TO REPRESENTATION

One of the most frequent complaints about Congress is that it has lost touch with the American people, that Congressmen have become a ruling class. One of the most striking evidences of the truth of this observation is the regularity with which Congress exempts itself from the laws it passes. This matter of simple equity has a profound effect on the legislation Congress produces. Its not just that Congress considers itself above the law, but that as a result it writes laws without sufficient consideration of their effects. Covering itself under the language of legislation, but not the enforcement, as Congress has begun to do, only compounds the duplicity of the practice. The author of the Constitution, James Madison, warned that unless rulers live under the same laws as common citizens, "every government degenerates into tyranny."

Congress exempts itself, actually or effectively, from most civil rights, worker safety, and environmental laws. So too with good government measures. The Freedom of Information Act, and key provisions of the Ethics in Government Act, apply only to the executive branch, not Congress. Promises that Congress will comply with the spirit of the law, or will provide equivalent enforcement ring hollow. The record of ethics enforcement in both houses, for instances, is demonstrably lax. A recent inspection of a few congressional work areas under OSHA standards revealed significant safety violations for which Congress would be subject to nearly \$1 million in fines⁵⁶—except, of course, that Congress is exempt from the law.

Consternation in Congress. After years of attempting to get Congress to apply various laws to itself, then-Representative Steve Bartlett was successful with the Minimum Wage Act of 1989. Then-Chairman of the House Administration Committee Frank Annunzio, the Illinois Democrat, averred that the provisions would be an accounting nightmare. "Members are finally beginning to find out what it's like to run a small business in this country—the paperwork and economic burdens that attend every extension of each new 'right'."⁵⁷ Horrified Congressmen wanted to repeal or amend the law's application to Congress, but Annunzio himself came to their rescue when his committee ruled that the vast majority of congressional employees were exempt from the law under other provisions.

The same consternation gripped the Senate when Senator Grassley tried to apply the Americans With Disabilities Act (ADA) to Congress in 1989. Senators rushed to the floor to denounce the possibility of executive branch meddling in congressional af-

⁵⁶ "OSHA: Uneven Protection Provided to Congressional Employees," GAO Report of October, 1992, HRD 93-1.

⁵⁷ "Poetic Justice," *Roll Call*, April 9, 1990, p. 4.

fairs, and Majority Leader Mitchell decried "this phony argument that we ought to be treated just like everyone else."⁵⁸ The amendment sent many Senators back to see for the first time what was actually in the bill. While Senators had declaimed in general and glowing terms about the bill's benefits for disabled Americans, most had no idea of the crushing costs it contained. Grassley's amendment was finally gutted by a conference committee, as usual by deleting enforcement provisions, leaving the employer (Congress) as the court of last resort for employee complaints.

Another easy measure of how Congress has lost touch is to look at where Congressmen live. The vast majority live permanently in the Washington, D.C., area. When legislators move from their home communities, pull their children out of schools, stop commuting, shopping, and working among the people they represent, they inevitably lose touch with the views and everyday concerns of their constituents. The culture of Congress, the perks, the power, the staff, the lobbyists, and the media attention, tend to distort the representative's view. In fact, several studies have shown that Congressmen's voting records change in a predictable direction the longer they stay in office. The longer a Congressman stays in Washington, the more likely he is to see government spending, or government programs, as the solution to problems.⁵⁹

A Program for Reform

Congress does not work because it has stopped legislating, preferring instead to influence policy through management, publicity, investigations, and similar means. As a result, Congress fails in its assigned duties. Avoidance of legislation reduces accountability and ultimately unravels the representation principle at the heart of democracy. This explains why the American people are not just angry with Congress, they feel alienated from their own government. Reforming Congress, then, will require adherence to four basic tenets: legislation, accountability, spending control, and representation.

Legislation is foremost among the reform principles because legislating is Congress's unique constitutional role. While it is easy to see why congressional trespassing on executive branch turf would annoy the President, the failure to legislate hurts everyone, Congress most especially. Congress passes vague laws hoping to avoid political controversy while controlling the ultimate outcome through micromanagement of the bureaucracy. The result is either an explosion of regulation or requirements so vague that lawsuits are required to nail them down. The Americans With Disabilities Act, for instance, requires that employers make "reasonable accommodations" for handicapped workers as long as there is no "undue burden." Congress specifically turned down efforts to define these vague terms more explicitly. Congress goes to the other extreme when pork is involved, producing monstrosities like the 1991 Highway Bill which do little for transportation policy but lots for individual Congressmen's reelection.

58 "Congress' Sweetheart Justice," *The Wall Street Journal*, November 1, 1991, p. A 14.

59 James L. Payne, *The Culture of Spending* (San Francisco: ICS Press, 1991) p. 81. See also "Cut Federal Spending—Limit Congressional Terms," *The Wall Street Journal*, August 19, 1991.

The non-legislative activities on which Congress spends most of its time , investigations, publicity-oriented hearings, micromanagement, and constituent service, are at best distractions from Congress's more important duties. An honest reform package, then, would both encourage legislation in the true sense and discourage or eliminate non-legislative activities.

Accountability is an early casualty in the congressional flight from legislation. If all that Congress passes are either vague mandates or self-serving spending bills, voters have a difficult time judging their representatives. While returning to legislation is the first step in restoring accountability, the legislative process itself must be reformed to make Congressmen's actions and stands more evident to the public. This requires reforms in legislative procedure and shedding more light on the internal workings of Congress than is now the case.

Spending control is essential to restoring the American economy. Record deficits and a federal debt exceeding \$4 trillion are the premier legacies of the modern Congress. Congress must find a way to inject fiscal discipline into a process that has no political or procedural constraints on spending.

Representation will be promoted by increased accountability. But Congress also needs to stay in closer touch with the American people, not through polls, but by living with the everyday problems of business and government. That means living somewhere other than Washington, or at least going back after a time, and it means living under the laws, just like everyone else.

The following ten reforms meet the test of these principles:

1) Term Limits. By ending congressional careerism, term limits will encourage attention to larger legislative issues. With a career Congress, voters face an apparent dilemma: Paying taxes to Washington and getting them back in the form of pork and entitlements is a bad bargain, but as long as the system is rigged, it makes sense to vote for the incumbent to ensure a fair return. Congressmen face a similar dilemma: Take the easy road to reelection or face the often difficult choices of balancing local and national interests. Take away the career mindset and both representatives and voters can make choices based on philosophy and the merits of each case.

Given the historic congressional turnover of 1992, some ask whether term limits are moot: Have not the bums already been thrown out? Despite the turnover, at least two-thirds of the House and an even higher percentage of the Senate will return. Twenty-, thirty-, and even forty-year incumbents remain in key positions where they can frustrate reform and tame the reformers. More important, unless incentives change, new Members will be lured, some slowly and some more quickly, into the paths that have produced today's problems.

2) Session Limits. Term limits may not be enough. The number of days spent in Washington is as damaging as the number of years. Better representation, and better representatives, will result if Congressmen return for some time each year to their own communities and occupations. Doing so would not require any sacrifice of legislative duties. It was not until July of 1992, after a year and a half of three-day work weeks (interrupted by some long vacations), that the 102nd Congress went on a five-day schedule. Congress should replace three-day weeks with a five-day schedule, and compress their year-round sessions into six months of honest work. A definite end to ses-

sions will also communicate to Congressmen that they are representatives rather than managers of the permanent bureaucracy.

3) Cut Staff. As a panacea for congressional ills, staff cuts rank just behind term limits. Reducing the size of the staff would help reduce incumbent electoral advantages; trim the length and complexity of legislation (and encourage legislators to read it); cut the volume of midnight deals in conference sessions and committee reports; and limit improper interference with regulatory and other executive branch functions. With fewer aides, lawmakers would have to do more legislative work themselves.

To make a real difference the cuts need to be large. Bill Clinton has proposed a 25 percent cut in congressional staff, and George Bush has offered to slash a third. Even those numbers are probably not enough. House Republicans have proposed a 50 percent cut in committee staff, but committee aides represent only 10 percent of all congressional employees. Cuts must be applied across the board, including personal staff, to force Congress to reassess how it operates and change its behavior. Staff should be cut by at least 25 percent immediately and eventually by 50 percent.

4) A Balanced Budget/Spending Limitation Amendment. A constitutional amendment is the only way to bring discipline to congressional spending. Any other limitations will either be ignored or changed. A constitutional amendment will require Congress to set a spending level first, and then divide up the pie among competing needs. While the amendment should limit spending, it must not allow automatic tax increases—an idea the House Democratic Leadership proposed in the spring of 1992. Automatic taxes would make a mockery of any spending limit. Given the choice between voting to cut spending (and taking the heat) and failing to act, thereby triggering an “automatic” tax increase which each legislator can disavow individually, Congress will go for the tax increase every time.

Given the congressional proclivity for higher spending, a balanced budget amendment needs a provision making it harder to raise taxes. Wisconsin Republican Senator Bob Kasten and Texas Republican Representative Tom DeLay, for instance, have proposed a balanced budget amendment which includes a requirement that any tax increase be approved by a 60 percent majority. Raising the barrier for increasing taxes would make it more difficult to assemble a coalition of spending advocates to provide political cover for new tax schemes.

A constitutional amendment also would help restore an appropriate presidential role in the budget process, through implicit or explicit presidential enforcement authority. The ability to “impound” funds to stay within established budget limits, for instance, should be restored. Annual budget targets should be set by law, and signed by the President, replacing the existing system of internal congressional promises which can be ignored or changed on a whim.

5) A Line-Item Veto. A presidential line-item veto would help limit spending, though less significantly than a balanced budget amendment. More important, an item veto would allow the President to limit unreasonable congressional encroachments on executive authority, and would enable him to excise pork and other crooked deals concocted by committee chairmen, or even staffers, against the will of the congressional majority. This would greatly limit the degree to which conference committees, for instance, could be abused to approve unpopular provisions in unaccountable secrecy. An

item veto does not equal unlimited executive power. Knowing that legislation was subject to challenge piece by piece, lawmakers no longer would paste bewilderingly large bills together with pork. Instead they would perfect simpler, clearer statutes that could not be pried apart easily.

6) Make Congress Obey the Laws. The attitude of being above the law corrupts the legislative process at its heart. Incumbents claim that Congress must be exempt from the law so as not to fall under the control of the executive or judicial branches. This makes no more sense than arguing that Congress should not be allowed to pass legislation affecting judges or cabinet members, lest those officials become subservient to the legislature. In most cases there is no constitutional issue in applying the law to Congress. It is difficult to see what constitutional damage would wrought by, for instance, OSHA inspectors visiting congressional offices. Making Congress subject to the laws it approves would provoke more attention to the problems a well-intentioned law may present. More important, making Congress live under the laws it passes would drive home a point that too many legislators have forgotten: they are not rulers but servants.

If there is a single law that most needs be applied to Congress it is the Freedom of Information Act. Congress gets away with many abuses simply because no one can find out about them. If Congressmen and their staffs were required to keep adequate records and to make them available to the public, congressional behavior would improve overnight, and questionable actions would be subject to the informed judgment of voters.

7) End the Constituent Service Racket. Casework, helping constituents solve problems with the government, is Congress's number-one occupation. Stopping it would do wonders to restore a legislative focus to Congress. For those inevitable cases where paperwork is lost or constituents confused, an ombudsman system, either within agencies or as an arm of Congress, would be far preferable to the current arrangement. Short of stopping, Congress could come clean about casework. All manner of scandalous political favors are covered by the little-old-lady-with-the-lost-check ploy. Congressmen should be required to report all communications with executive agencies periodically in the *Congressional Record*. If it is all just honest casework, Congressmen should be proud. If it is not, they must have something to hide.

8) Reform the Scheduling Process. Frustration over failure to advance major legislation has led House Democrats to propose that their party caucus set an agenda at the beginning of each Congress. But the schedule would specify only topics and not specific bills, and would be difficult to enforce since caucus decisions exclude the 40 percent or so of House Members who are not Democrats.

A better system would give every lawmaker a voice, and a stake, in setting an agenda. Early Congresses conducted a brief debate on legislation when it was introduced. Simple bills were approved, silly ones disposed of, and complex ones sent to a committee. (The Senate retains vestiges of this system: an objection to referral of a bill to committee forces it onto the calendar immediately.) Reviving this procedure would allow Congress to decide on an agenda openly and enforce it. In referring a bill, Members could instruct committees to act within a given time or indicate what sort of amendments are needed. If debating every bill is too much, Congress might allow the procedure to be invoked selectively by the leadership of either party or by a significant number of Members.

9) Establish Fair and Open Procedures. The House Rules Committee, which sets ground rules for debating bills on the House floor, too frequently bends procedures in favor of the majority, especially by blocking politically contentious amendments. While some variation may be necessary, a few standard procedures should be developed to cover most bills. Changes in those standard rules should require a super-majority (60 percent or more) vote. Absent an agenda reform, significant minorities within the House should be given a greater voice in what legislation is considered. Discharge petitions should be made public, and the threshold for forcing action should be lowered to one-third of House Members. Senate rules, which already give more protections to minorities, need fewer revisions. In fact, the Senate should avoid mimicking the more centrally controlled House procedures.

Rules in both bodies should be revised to make votes more meaningful. The House practice of approving legislation or amendments without votes (“deeming”) should be prohibited. Conference committees, which are supposed to work out differences between House and Senate versions of bills, should not be allowed to delete provisions both bodies have agreed to or add new material neither had approved.

10) Cut Committees. The number of congressional committees should be cut in half or more. Proxy voting in committee should be ended. To avoid concentration of power in the hands of fewer chairmen, Congress should impose term limits on those chairmen. Oklahoma Democratic Representative Dave McCurdy has proposed changing House rules to limit tenure, but it is the Republican and Democratic caucuses in each body that designate chairmen and ranking members. Those party organizations should move on their own to limit the service of chairmen, or even of all committee members.

CONCLUSION

The 102nd Congress failed to deliver on its promises of reform. Now, through elections and referenda the American people have an opportunity to pass judgment on the performance of the Congress. The likely results—a record number of new members, many with limited terms—will be helpful, but further steps will still be needed. The principles of legislation, accountability, spending control and representation should guide congressional reform efforts, whether by the new Joint Committee on the Organization of Congress, by party caucuses, or through other means.

Limits are a major answer to Congress’s problems — limits on terms, sessions, staff, committees, spending, and pork. In addition, Congress must obey the laws it passes, reform its schedule, open up congressional procedure, and junk the casework scam. This is an ambitious program, but one that will work, one that can be achieved through continuing public pressure.

Reclaiming Responsibilities. These limits will not weaken Congress, they will rejuvenate it, and the American government with it. Congressmen will argue that these activities are necessary to control the huge federal bureaucracy, and they are probably right. But rather than giving up control, and leaving bureaucrats roaming at will, Congress must limit the powers delegated to that bureaucracy. Only by reclaiming its legislative responsibilities can Congress restore its political dignity.

When Congress legislates through fair and open procedures, representatives become accountable to voters. An accountable Congress will, by definition, do the right thing. A Congress that legislates no longer will be in need of reform.

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