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CONGRESSIONAL REFORM IN THE POST-WAR ERA:

A BRIEF HISTORY AND SOME LESSONS

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G. Calvin Mackenzie
Goldfarb Family Distinguished Professor of American Government
Colby College

The American Congress is a work in progress. Always has been. Always will be. In each generation of members are some who feel stifled by their inheritance of procedural and organizational constraints. When their numbers mount or their frustration boils, they seek an outlet through the process of legislative reform.

But reform—when it occurs at all--is more often placebo than palliative. Change comes slowly to Congress, almost never with dramatic intensity. The beneficiaries of the status quo guard their benefits jealously; the seekers of change rarely have the power and skills to take them away. So the struggle for reform is part of the natural cycle of congressional life. Each reform creates the seeds of its own obsolescence. One reform effort ends; new pressures for reform begin to build almost immediately.

Since World War II, the Congress has changed in many ways. Some of the alterations have been evolutionary, often caused by external forces to which Congress reacted (television, the decline of political parties, a Cold War). Other changes have come from the inside, the product of reform efforts and the outcome of power struggles. There is no single model of congressional change. The proper characterization is that Congress is an organic institution, sensitive to its environment and to the needs and desires of its members. Change is common, but evolutionary.

This paper briefly explores the history of congressional reform since World War II, focusing especially on those occasions when reform pressure forced Congress to conduct a formal

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examination of its operations and alter its organization and its procedures. A summary of the most common objectives and purposes of those reforms will then follow. The paper concludes with an exploration of the lessons that might be drawn from this reform history.
This paper is part of a project that seeks to assess the capacity of Congress to anticipate and prepare for the long-range consequences of important issues. Here I will use the term "foresight" to capture that dimension of congressional operations. What has Congress done to improve its capacity for foresight, to better enable it to comprehend the character and consequences of issues that will grow in impact in the years ahead? And what does the reform experience of Congress tell us about the possibilities for improving the legislature's foresight capabilities?

Congressional Reform: A Brief History

1910-1911.

The first legislative reform of the 20th century was also the most significant. It occurred in the transition between the 61st Congress and the 62nd. History calls it the "revolt against the speaker." It marked the end of nearly two decades of unique congressional operation—unique because this was the only time that House was under the central domination of its Speaker. During the first decade of the 20th century, Joseph G. Cannon (R-IL) used his authority in a way that many members of both parties thought dictatorial. He dominated debate with his absolute powers of recognition. He appointed the members and chairs of the committees, and he personally chaired the 5-member Rules Committee.

After several years of failed reform efforts, the membership succeeded in 1910 in overcoming Cannon's opposition and approving a reform resolution. It effected several important changes:

- Expanded the membership of the Rules Committee from 5 to 10 (6 majority, 4 minority)
- Removed the Speaker from the Rules Committee
- Shifted the appointment of committee members and chairs from the Speaker to a Committee on Committees in each party.
- Created a discharge petition procedure allowing a majority of members to remove a bill from committee.

Speakers of the House would never again be as powerful as they were in the two decades between 1890 and 1910. In the years that followed this revolt, new power centers evolved. Committees emerged as potent islands of authority within the Congress. Within its own jurisdiction, each committee had nearly unchallenged hegemony. Each decided which bills to consider and which to report. Often a sympathetic Rules Committee permitted bills to go to the floor with closed rules, thus preventing amendments.

Within the committees, the chairs quickly assumed nearly absolute power. Chairs could determine whether there would be any subcommittees—on Ways and Means, for example, there were none. The full committee chair selected the chairs of the subcommittees and appointed the members. Chairs also controlled the committee agenda, called—or didn't call—meetings, and appointed the staff. The authority exercised by committee chairs was magnified by the rapid emergence of the seniority rule. One got to be a chair, not by winning the approval of fellow party members or even of fellow committee members. Skills, sensitivity, even party loyalty were not part of the equation in committee leadership selection.

The seniority rule applied only two criteria for becoming a committee chair. You had to be a member of the majority party and you had to have the longest, unbroken service on the committee. By the end of the second decade of the 20th century, the seniority rule was iron-clad and committee chairs had become the dominant figures in Congress. Not surprisingly, this created steady pressure among the members for the creation of new committees, and thus more of these positions of power.

1917.

The Senate has always been a more loosely organized body than the House. One of its distinguishing traits has been its commitment to unlimited debate; the modern House has had no such luxury. But unlimited debate in the Senate has often been used as a tactic to thwart action on bills for which there was significant, but less than majority opposition. Until 1917, a single senator or small group of senator could prevent final action on a bill by refusing to surrender the floor and end debate.

In March, 1917, the Senate limited this practice by approving Rule 22 which created a procedure for "cloture." If 16 senators signed a cloture petition, the entire Senate would vote on whether or not to end debate on a bill. Imposition of cloture required the votes of two-thirds of senators present and voting. In 1975, Rule 22 was amended to reduce the percentage of votes required for cloture from two-thirds to three-fifths.

1921.

The Sundry Civil Appropriation Act of 1911 placed $100,000 at the disposal of President William Howard Taft to employ "accountants and experts" to "inquire into the methods of transacting the public business of the government…with the view of inaugurating new or changing methods of transacting such public business so as to attain greater economy and efficiency." Taft soon appointed a Commission on Economy and Efficiency to study the operations of the federal government. Among its primary concerns was the absence of a centralized federal budget. The typical practice at the time was for departments to recommend expenditures to Congress and for the Appropriations Committees to respond to them. There was little role for the president in this, and little organized oversight by the Congress. While Congress had to pass the individual appropriations bills, it never reviewed the overall expenditures or revenues in any systematic way.

Taft's commission recommended the establishment of an annual federal budget prepared by the president with the assistance of anew agency created specifically for this purpose. Not until World War I had demonstrated beyond doubt the wisdom of this recommendation did Congress respond. In 1921, it passed the Budget and Accounting Act which authorized the president to supervise the preparation of annual budget which would be submitted to the Congress early in each calendar year so that Congress could act on it before the beginning of the fiscal year on July 1. To properly equip the presidency for this task, the Congress also authorized the creation of the Bureau of the Budget. And to improve congressional oversight of federal expenditures, the Act also created the General Accounting Office in the legislative branch. Notably absent in this Act was any provision for long-range budgeting or government finance. The Congress chose an annual budget focus, rejecting calls for biennial or longer budget cycles. Annual budgeting has remained the practice ever since.

1946.

The explosive growth of government during the Depression and World War II had yielded in both houses of Congress a steady increase in the number of committees. When World War II ended there were 48 full committees in the House and 33 in the Senate. To many members this growth seemed to defy rationality. In the Senate especially, the 96 members were stretched very thin over 33 committees.

To address these concerns, the Congress created a Joint Committee on the Organization of Congress. The Committee became the model for several subsequent reform efforts, taking testimony from members and outside experts, weighing several models of reform, submitting a reform package for consideration by both houses. The product of this self-examination was the Legislative Reorganization Act of 1946.[i]

The Act reduced the number of committees from 48 to 19 in the House and from 33 to 15 in the Senate. Jurisdictions were consolidated and new rules governing committee procedures, staffing, and record-keeping were established. To improve the analytical capacities of committees and individual members, the Act also created the Legislative Reference Service--later renamed the Congressional Research Service (CRS)--in the Library of Congress. The Act also increased staffing for committees and individual members, raised congressional salaries by 25%, directed committees to improve their oversight capabilities, and required lobbyists to register. Though some members of the House had hoped that the 1946 reforms would reduce the influence of the Rules Committee on the flow of legislation, no provisions to that effect were included in the Act.

1961.

Through the late 1950s and especially after the huge surge of new liberal members in the election of 1958, frustration grew steadily over the ability of the conservative coalition in Congress to stifle liberal policy objectives. The conservative coalition was a loose but potent affiliation of southern Democrats and Republicans. Its effectiveness in blocking liberal legislation was magnified by the disproportionate control of committee chairmanships by the southerners. Though the Democrats in this period had overwhelming majorities in Congress and liberals predominated within the Democratic Party, conservative southerners chaired nearly all the powerful committees and, because of the rigid seniority rule, their power positions were impregnable.

The greatest obstacle to liberals was the House Rules Committee. A decision by the Committee not to grant a rule to any bill could keep the bill from the House floor and thus kill it. The committee was controlled by conservatives and ruled with an iron hand by Howard Smith (D-VA). Shortly after his election, President Kennedy met with Speaker Sam Rayburn to discuss the possibility of enlarging the Rules Committee from 12 to 15 members in the hope that the new appointments could create a liberal majority on the committee. Rayburn agreed to try this and there ensued a battle royal in the House, finally decided in January of 1961 with a 217-212 House vote to support the enlargement. [ii] The apparently minor change in the House became a significant pivot into the years of liberal legislation that followed.

1970.

The combination of large Democratic majorities in Congress and Democratic presidents in the White House between 1961 and 1968 permitted the enactment of much of the liberal agenda of that era. But this had not always come easily and liberals in Congress believed that the rules still favored conservatives. The committees were still the central feature of the legislative process, southerners still dominated the committee system and super majorities were often necessary to push liberal legislation forward through the legislative labyrinth. Younger liberals especially began to talk about legislative reforms that would, in their view, level the playing field. The process they initiated in the mid-1960s would continue for a decade.

Its first milestone occurred with the passage of the Legislative Reorganization Act of 1970. [iii] The primary effect of this act in both houses was to dilute the power of committee chairs. Individual members were given access to more staff and more financial resources. Committee decision-making was opened more widely to public view. Debate on the floor of each house would permit more member participation with fewer limitations on amendments. More of members' votes in committee and on the floor would be recorded and made public. Members of the minority party would have more authority to hire committee staff and call witnesses.

The 1970 act did not address the seniority system, however. Its failure to do so, and the continuing arbitrary actions of some committee chairs, sustained the on-going reform movement in Congress.

1971.

The reform focus shifted in the early 1970s to the House Democratic Caucus. The 1970 reorganization act would be the last of the omnibus legislative reform bills passed by the Congress in the 20th century.

In 1971, the Caucus approved some of the recommendations of a group of Democrats headed by Julia Butler Hansen (D-WA). It limited members to no more than one chairmanship of a legislative subcommittee, thus yielding a wider distribution of these important positions. And it removed the responsibility for assigning Democrats to committees from the Democratic members of the Ways and Means Committee, who had performed this function for more than half a century to a new Committee on Committees in the Democratic Caucus. It also subjected that new committee's selections to review by the full Caucus. If ten or more Caucus members sought a vote on committee assignments or chair designations, a secret vote would follow, and any assignments that failed to win approval would go back to the Committee for submission of new nominations.

The Caucus rarely voted to reject the slates it received from its Committee on Committees, but that it now had the ability to do so made the interests of rank-and-file members a much more imposing consideration in committee assignments than ever before.

1972.
In 1972, the Congress voted to expand its analytical resources—especially for dealing with the complex scientific questions that were taking up more space on the legislative agenda--by creating an Office of Technology Assessment (OTA). [iv]

1973-1974.
The Hansen group pushed the reform momentum further at the beginning of the 93rd Congress. It proposed and the Democratic Caucus approved a "subcommittee bill of rights" which freed the subcommittees from control by committee chairs.

In 1973, the House leadership created a bipartisan Select Committee on Committees to study the committee system. This was chaired by Richard Bolling (D-MO) a long-time advocate of congressional reform. The Bolling Committee held extensive hearings and engaged the creative energies of many experts on the legislative process. It was the most thorough examination ever undertaken of the internal operations of the House. The Committee produced a plan that would significantly alter the existing pattern of committee jurisdictions. To the objective eye, this seemed a rationalization of committee responsibilities and workloads. But to many committee leaders and lobbyists, the plan was too threatening to existing power structures and relationships, and it was rejected. A less intrusive substitute succeeded in making modest changes in jurisdictions and reforms in staffing patterns.

It was also in the 93rd Congress that the modern era of campaign finance regulation was established.[v] This imposed rigorous reporting requirements on contributions to and spending by campaigns, created a Federal Elections Commission, established the political action committee mechanism, and limited individual and PAC contributions to federal campaigns.

After years of frustration over federal deficits and its inability to match forces with the president on fiscal matters, the Congress in 1974 undertook a sweeping reorganization of its budget procedures. The Congressional Budget and Impoundment Control Act of 1974 moved the beginning of the fiscal year from July 1st to October 1st, created a sequenced set of internal deadlines for congressional review of revenues and expenditures, created new Budget Committees in each house to manage this process, curtailed the president's authority to impound funds that had been appropriated by Congress and established a new Congressional Budget Office (CBO) to improve Congress's capacity to perform its own analyses without relying on the executive Office of Management and Budget. [vi]

1975.

The Watergate scandal and the resignation of Richard Nixon on the eve of the 1974 elections contributed to large Democratic seat gains that year. When the new House began to organize after the election, its 75 new Democrats sought immediately to flex their muscles by participating collectively in the selection of committee chairs. They provided many of the votes in the Democratic Caucus that caused the removal of 3 long-serving members from the committee chairs that seniority had granted them.

The Democratic Caucus in the preceding Congresses had altered its procedures to allow all Democrats to vote for committee chairs, but this was the first time, since the seniority system took hold early in the 20th century, that senior members had been denied a chairmanship by a party caucus. Such denials would not become a common practice—senior members would continue to accede to most committee chairs—but the actions in 1975 were a warning to every future chair that arbitrary actions, mistreatment of committee members, or disregard for the substantive concerns of party members could threaten their hold on committee power. It was, said future Speaker Tom Foley, a "thundershock through this institution." [vii]

1977.

Reform in the Senate has rarely been as overt as in the House, but the decade-long reform effort on one side of Capitol Hill had inevitable repercussions on the other side, In March of 1976, the Senate created a bipartisan committee to study its own internal operations. Adlai Stevenson (D-IL) and Bill Brock (R-TN) co-chaired the committee but it came to be known as the Stevenson Committee. Nearly a year later, the Senate approved a resolution—much less sweeping than the original committee proposal—which reduced the number of Senate committees, altered some committee jurisdictions, limited the number of committee and subcommittee assignments for each senator to eleven and increased staff for each senator.

1993-1995.

After a decade and a half of little more than peripheral attention to congressional reform, a new joint committee was established to review committee jurisdictions and other internal matters. It could not come up with proposals that either house would approve.

The 1994 elections brought Republicans into control of the House for the first time in 40 years. Since no Republican had ever been a member of the majority before that time, this was a fertile opportunity to make changes in the operations of the House that would not threaten any individual member's turf.

Republicans reorganized some committee jurisdictions, renaming some committees in the process. They agreed to impose term limits on committee chairs. And the new speaker, Newt Gingrich, moved aggressively to handpick committee chairs, passing over senior members in several key instances.

Summary.
In the past century, largely through internal reform efforts led by members themselves, the Congress has gone through three broad phases of organization. In the phase that ended in 1910, power was tightly concentrated in the hands of party leaders, especially the Speaker of the House and the Majority Leader of the Senate. In the next phase which lasted into the early 1970s, power devolved to committees and especially to committee chairs. The current phase features a great deal of independence for individual members and a significant role in the legislative process for subcommittees. There are no power centers in the contemporary Congress to match those of the two earlier phases, though the Republican Party in the House has often demonstrated significant capacity for producing legislative majorities even in a closely divided chamber.

Reform Objectives

This review of the history of legislative reform indicates that such changes are guided by a mixture of purposes:

Housekeeping.
Like any organization, Congress allows incremental changes to accumulate until they became burdens on efficient operations. Periodically, it steps back and tries to clean up the mess. Reducing the number of committees and reorganizing committee jurisdictions, for example, is part of the regular congressional reform cycle.

Modernization.
Some reforms occur when Congress adapts to changes in its environment or to new technologies. New issues (environmental protection, energy crises, homeland security) yield revisions in the committee structure. Television, computers, jet travel lead to changes in operations and members' schedules.

Capacity.
One outcome of the post-war accumulation of congressional reform has been a steady increase in the intellectual and analytical resources available to members. Principal among these have been more personal and committee staff and new support units like CBO and CRS.

Transparency.
Yielding to demands for greater accountability and the opportunities provided by new technologies, Congress has become a more visible and penetrable institution with open committee meetings, televised floor sessions, more recorded votes, etc.

Executive branch relations. Congress is in a constant and constantly evolving competition with the executive branch for influence over public policy. One changes, the other responds. The growing capability and assertiveness of the presidency since World War II has caused some significant adaptations in Congress (e.g., revised budget process, war powers act, new intelligence committees, etc.)

Redistribution of power.
The most compelling reason for legislative reform has been the desire of some members for greater access to influence in the legislative process. The energy for most significant reform efforts comes from those members who will gain power from the changes they seek. The primary thrust of post-war reform in Congress, in the House especially, has been to decentralize power so that it is more widely shared.

Foresight (the dog that doesn't bark).
Missing from this catalog of reform objectives is attention to congressional capacity for foresight. In none of the postwar reform episodes has this been a significant concern. Some of the reforms undertaken by Congress, especially those improving its analytical capacity, may have contributed to the ability of Congress to conduct more effective foresight, but the desire for improved foresight has never been a driver of reform momentum.

<u>Lessons</u>

Why has Congress equipped itself so poorly to conduct effective foresight, and why does attention to long-range considerations rank so low among congressional priorities? A review of the postwar experience in Congress sheds light on both questions.

- Congress seems to observe something like a Gresham's law of legislative interest: attention to pressing issues squeezes out attention to those that are less pressing.
- Public consensus is an important ingredient in most successful legislative efforts. But legislation dealing with the future requires members of Congress to engage issues or to spend money (or raise taxes) before the need for that has crystallized in the public mind. It's hard enough to act when there is public consensus that Congress should act; it's much harder when no such consensus has been forged. Congress is rational in this sense: it avoids difficult tasks in favor of those that are more readily accomplished.
- The democratization of Congress in the 1970s weakened its capacity for foresight because it made law-making more difficult. The number of public laws enacted by Congress has declined over the past 5 decades as Congress has become a more open institution and power has been shared more widely.

- Budget reform is a good example of that. The primary purpose of budget reform was to permit Congress to get control of runaway spending and deficits. But reform occurred simultaneous with democratization which ultimately made it impossible for Congress to forge the agreements necessary to make the new budget control processes work as intended. Spending and deficits grew despite reforms designed to achieve the opposite.
- Much of the work of Congress has become institutionalized since World War II. But Congress has never institutionalized a capacity for bold leadership which is critical to effective foresight.
- One cannot underestimate the importance of "moments of opportunity" in forging congressional attention to foresight. The social security crisis of 1983 was an example. So, too, was the Arab oil embargo. In times of crisis, Americans are much more willing to subordinate their current comfort to future exigencies. But those moments always pass, and political leaders have to move quickly to harvest the opportunities they provide. Congress, however, does not move very quickly on its 1070 feet.
- The contemporary Congress has been characterized by closely divided partisan balances. Neither party in either house has had a sizeable majority in the past decade and a half. History tells us one thing clearly: closely divided Congresses are risk-averse. Big changes come when one party dominates. But one party hasn't dominated for a long time, and the current pattern of partisan gerrymandering offers little likelihood that one party will be dominant again any time soon.
- Congress is almost perpetually, one might say habitually, held in low regard by the American people. They may return their own representative election after election, but they don't trust the Congress. And there's the rub. An institution with so little credibility is poorly situated to convince the American people that (a) a major crisis lies ahead, (b) that it knows the right way to head off that crisis, and (c) that Americans should make sacrifices now because the Congress tells them it's necessary to prevent a crisis later. Low levels of public trust in Congress are a constant deterrent to its capacity for effective foresight.
- Any effort to improve congressional foresight is likely to succeed in inverse proportion to the alterations it requires in current institutional structures and processes. Members will oppose reforms, not because they disagree with their goals or purposes, but because they cause uncertainties or intolerable changes in current distributions of power and influence. Successful efforts to improve foresight will take advantage of existing patterns rather than propose significant disruptions of them.

Notes:

[i] PL 79-601.

[ii] See William R. MacKaye, “A New Coalition Takes Control: The House Rules Committee Fight of 1961,” Eagleton Institute Cases in Practical Politics 29 (New Brunswick, NJ: Rutgers University, 1963).

[iii] PL 91-510.

[iv] PL 92-484. At the initiative of the Republican leadership in the House of Representatives, OTA was eliminated in 1995.

[v] PL 93-443.

[vi] PL 93-344. The Congress continued to tinker with the budget process in the years that followed, constantly seeking a better handle on the budget totals that would reduce the budget deficits that were endemic in this period. It enacted the Gramm-Rudman-Hollings (the Balanced Budget and Emergency Deficit Control Act) reforms in 1985 and a Budget Enforcement Act in 1990. Neither measure fully accomplished its objectives.

[vii] Quoted in John E. Young, “How the Watergate Class of ’74 Played Kings of the Hill.” <u>Washington Post National Weekly Edition</u>, June 22-28, 1992, p. 12.