

DYSFUNCTION IN CONGRESS: SYMPTOMS, CAUSES, AND SOLUTIONS

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17.20: Introduction to the American Political Process

In 2020, the United States witnessed the most expensive federal election in history; while attention was focused on the top of the ticket, congressional races cost even more—over \$7 billion was spent (Center for Responsive Politics, 2020). Majority control of the Senate is now dependent on two runoff elections in Georgia; these races decide how capable the incoming Biden administration would be in advancing its policy goals.

However, it would be naïve to assume that, even with control of Congress, these goals can be achieved—after all, less than 20% of Americans have confidence in the United States Congress (Brenan, 2020). Over the past few decades, a characteristic feature of Congress has been dysfunction and gridlock, defined by McCarty (2016) as “declining legislative output, an appropriations process that increasingly fails to conclude prior to the beginning of the fiscal year, and increasing delays in the confirmation process, which have enlarged the number of vacancies in the executive branch and the judiciary” (224). Regardless of the partisan composition of both houses of Congress, it appears almost entirely unable to carry out its responsibilities (232). Evidenced by falling output and quality of legislation and reduced power in government, Congressional dysfunction is driven by polarization, the filibuster and veto, and lack of legislative priority of lawmakers; achievable institutional reforms to reducing these factors include eliminating the Senate filibuster and empowering committee heads.

One can find anecdotal evidence of dysfunction by looking at the 115th and 116th Congresses, governing from 2017 to 2021. Since the initial COVID-19 response package passed in March 2020, Congress has been unable to pass any additional stimulus bill that would extend the rapidly expiring benefits, leaving many families and small businesses without much-needed support even as they are left without a stable source of income. The split in party power of the

116th Congress is not the sole cause of gridlock—the signs of gridlock were very apparent in the 115th Congress. Despite the Republican Party having control of both the House and Senate as well as the White House, the federal government shut down both years and the GOP famously failed to make good on their promise to “repeal and replace Obamacare.”

Developing formal measures that demonstrate the failures of Congress is grounds for much debate. Binder (2015) cites the scholars’ tendency to point to the steady decline in “numerator” metrics that essentially “count of the major laws enacted by each Congress,” over the past three to four decades (7.7). Binder notes, however, that low numerical output does not necessarily imply a dysfunctional Congress; for example, it is now common to “[aggregate] bills into mammoth legislative packages” termed omnibus bills (7.7). Clinton and Lapinski (2006) share a similar view, noting that “although [the number of statutes passed] does capture differences in the quantity of legislation passed, this number cannot account for differences in quality” (245). They propose a formalized metric of “Congressional Accomplishment,” which statistically score Congress based on legislative action taken considering available opportunities and the significance of laws passed—and find that from the late 60’s to the mid 90’s, the total significance of laws passed in each session of Congress dropped by over 30% (245-246).

Taking yet another viewpoint, Lewallen et al. (2016) use “congressional information processing” as evidence of change in the intent of Congress from making policy to fighting partisan wars (179). Analyzing at how congressional hearings have evolved in nature from 1977 to 2002, they found that committees have been “acquiring, synthesizing, and, in turn, using” information that is more partisan in nature and have been holding “more hearings driven by problem and implementation purposes and fewer solution-focused hearings” (185). All of these

metrics point to one thing: Congress has been becoming increasingly unsuccessful at passing meaningful bills.

Another consequence of and piece of evidence for the failure of Congress is expanded executive power. Contrary to popular belief within Conservative circles, Carmines and Fowler (2017) chronicle the expansion of presidential power starting in the Bush administration (371); they claim that “congressional inaction because of polarization has led to an increase in major policy initiatives being implemented through unilateral presidential discretion rather than legislation” (384). This strengthening of the President to fill the void left by Congress is dangerous, because the Executive Branch is largely devoid of the internal structural features that Congress has in place to prevent it from making rash decisions.

Given clear evidence of the significant dysfunction of Congress, it is natural and necessary to analyze the source of this dysfunction. The most obvious cause, as described by McCarty (2016), are increased polarization and partisanship in the Congress. McCarty cites statistical analyses of congressional voting patterns demonstrating a steady increase in polarization in legislators from both parties starting in the 1970s, rapidly increasing even through the financial crisis of 2008 (227). Polarization of the American body politic, McCarty claims, has resulted in one party rarely holding full legislative and executive control, meaning policy requires compromise between both parties (231). Strong polarization between legislators of both parties, then, “shrink[s] the set of compromises” the two parties are able to strike, resulting in fewer laws being passed by both the House and the Senate (232). The authors of the Constitution intended for Congress to practice deliberate and moderated policymaking, so the inability to compromise obviously significantly handicaps the ability of Congress to pass any laws.

McCarty also cites institutional causes of dysfunction—namely, the Senate filibuster and the Presidential veto (233). In the senate, three-fifths of the senators must vote to invoke cloture and end debate before a vote on the bill can be taken; if the President vetos a bill, two-thirds of both houses of Congress must vote to overturn it. As prescribed by the Krehbiel's pivotal politics model, the existence of the veto and the filibuster mean that winning coalitions are usually significantly larger than a simple majority, and that the law only passes when the status quo is significantly disparate from the median legislator (1998, 35-36). Thus, strong polarization not only prevents either party from having overwhelming majorities in either the House or Senate—let alone both—but it also prevents forming bipartisan coalitions to advance legislation.

However, citing polarization and institutional reasons for dysfunction ignore a key motivating factor for elected officials: winning re-election. As such, it is not unreasonable to assume that parties metagame the legislative process. In line with this idea, Curry (2014) argues that rather than try to engineer policy on the basis of consensus to deliver positive results to their constituents, parties often often make standoffs over certain legislation as public and high-profile as possible, driving it to failure and pinning the blame on their opponents (2). With the connectivity of the internet and the direct lines of communication between politicians and their constituents, this level of brinksmanship has become very common and very apparent in recent political history. Furthermore, according to Curry, studies have shown that politicians are more motivated by avoiding blame as opposed to seeking credit, drawing a direct connection between sabotaging policy goals and a politician's desire to stay in power (6). Blame-avoidance also explains discord within a party; party caucuses in Congress are not homogenous; an example of this was made evident by the Senate GOP's attempt to pass the "skinny repeal" of the Affordable

Care Act, which was shot down by moderate Republican senators Murkowski and Collins, likely in an attempt to protect their support from moderate voters even if it meant sacrificing their party's policy goal. Politicians' desire to avoid actions unpopular with their constituents therefore explains, in part, how gridlock is possible even when one party has full control of government.

Connected to this brinksmanship for personal political gain, one last proposed cause of congressional dysfunction is the lack of policymaking ambition of legislators. While James Madison envisioned the legislative branch being the most active and most powerful due to the policy ambitions of its members, Levin argues that "Many members view the institution of Congress as an effective platform for themselves—a way to raise their profile, to build a bigger social-media following, and in essence to become stars" (2018, 18). This shift in the focus of politicians from seeking policy goals to their own celebrity status has siphoned the motivation of Congresspeople to take legislative action—without significant public pressure, at least.

The dire consequences of congressional dysfunction more evident today than ever; several solutions have been proposed to fix Congress. Polarization is the most prominent, and most cited cause of congressional dysfunction. However, per McCarty's 2019 work on polarization, it is a very complicated phenomenon, and the underlying causes are hard to identify and distinguish from concurrent factors (99). Thus, it is more productive to focus on institutional changes to Congress that would mitigate the effects of polarization and/or address the other aforementioned causes.

One common proposal is the elimination of the Senate filibuster, which would reduce the influence of the minority opposition and eliminate the need for a simple majority to seek further compromise. In response to the defense of the filibuster as a means of forcing deliberation,

Marcosson argues that the modern partisan structure of the Senate has destroyed the filibuster's ability to be used for its original purpose; instead, it enables relentless obstructionism (2019, 227). At a bare minimum, making laws passable via simple majority, as opposed to a $\frac{3}{5}$ majority, would increase legislative output and restore power to Congress as an inception, preventing power vacuums being filled by a dangerous executive or unrepresentative judiciary.

However, simple majority rule fails to address increasing partisanship's role in stimulating brinksmanship. Chergosky and Roberts (2018) call for combatting the "de-institutionalization" of Congress and reducing the concentration of power in the hands of the party leadership within the House and Senate, instead providing more latitude to the committees and individual members to play roles in the decision-making process (494-495). This would not only encourage compromise on a policy-by-policy basis, but also give more power to individual members of Congress, thereby allowing Congresspeople to potentially develop a locus of control over policy, combatting the lack of ambition decried by Levin. Furthermore, this would directly alleviate the reducing solution-orientation of Congressional committees described by Lewallen et al. by empowering congressional committees to produce good policy, rather than stage hearings and hijack deliberation to engage in a viscous partisan battle.

While the underlying factors driving Congressional dysfunction—namely, polarization, political brinksmanship and blame avoidance, and reduced ambition—are culturally-driven factors, institutional changes can be made to shift Congress' primary goal from furthering consolidating political and partisan power closer towards developing effective policy. These changes could bring Congress one step closer to ending the constant stalemate that has destroyed confidence in government in over four-fifths of the American people.

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