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The President's Legislative Agenda

By JAMES P. PFIFFNER

ABSTRACT: The president has come to be known as our chief legislator within the past fifty years, with Franklin Roosevelt and his successors taking a much more active role in the legislative process than nineteenth-century presidents took. Despite elaborate efforts and a fully developed congressional liaison capacity in the White House, however, only three presidents have been markedly successful with Congress: Franklin Roosevelt, Lyndon Johnson, and Ronald Reagan. This article examines some of the lessons that have been learned about presidential effectiveness with Congress. Even the most successful presidents, however, have not been able to sustain their legislative effectiveness throughout their terms, and this article analyzes the frustrations of divided government and proposals for constitutional reform to alleviate the problem. The article concludes that whether one approves of these reform proposals depends how one conceives of the problem.

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WHILE it is a commonplace in the last decades of the twentieth century that the president is our chief legislator, it was not always thus. In the nineteenth century, Congress dominated the policymaking process. President Taft was the first modern president to send a draft of a legislative proposal to Congress, and that was seen as a bit presumptuous. Woodrow Wilson was the first president in 100 years to go to the Capitol to present a message in person.

Major changes came during the legendary 100 days, when the newly inaugurated Franklin Roosevelt initiated a spate of legislation designed to bring the country out of the Great Depression. Bills were drafted in the White House, sometimes with and sometimes without congressional participation, and sent to Capitol Hill for passage. Only one major bill was drafted by Congress, and no bill was altered in any fundamental way from Roosevelt's intentions.

Roosevelt's huge victories were an exception, and it was not until the Truman administration that the president became more systematic about legislative leadership, taking such measures as sending an annual legislative message to Congress and assigning two full-time specialists to be in liaison with Congress.¹

President Eisenhower was the first to establish an Office of Congressional Liaison, though primarily as a buffer for demands for patronage and pork barrel from the Hill. Eisenhower did not intend to push an extensive legislative agenda actively, but when he neglected to send an annual legislative agenda to Congress, there was an outcry from the Hill, and he resumed the practice initiated by

Truman. Because of his ambitious legislative program, John F. Kennedy made Larry O'Brien, one of his more powerful and trusted aides, director of his Office of Legislative Liaison. O'Brien stayed on to head Lyndon Johnson's legislative efforts during one of the most productive legislative sessions in American history.²

The 1960s saw the emergence of a full-blown presidential apparatus to deal with Congress, though the fortunes of presidents since then have fluctuated considerably. In the 1960s, the active presidency was championed by liberals who saw Franklin Roosevelt as a role model, solving large-scale national problems by pushing legislative programs through Congress.

The war in Vietnam ended the liberals' fascination with a strong presidency. Johnson's penchant for secrecy and his continuation of the war after public and congressional opinion began to turn against it began a period characterized by Arthur Schlesinger, Jr., as "the imperial presidency."³ Just as the war brought out the worst side of Johnson, as he circled the wagons around his flagging presidency, it also soured the first term of Richard Nixon, as he strove futilely to bring an honorable end to the war. The secrecy, paranoia, and hostility toward Congress and the press that began in his first term planted the seeds of the Watergate scandals that would finally bring his presidency down.

President Ford faced a Democratic Congress that was reasserting itself after the resignation of President Nixon. It countered presidential vetoes with legislative vetoes and asserted its own budget priorities with its newly formulated bud-

1. See James L. Sundquist, *The Decline and Resurgence of Congress* (Washington, DC: Brookings Institution, 1981), chap. 6.

2. See Nigel Bowles, *The White House and Capitol Hill* (Oxford: Clarendon Press, 1987).

3. Arthur Schlesinger, Jr., *The Imperial Presidency* (Boston: Houghton Mifflin, 1973).

get process.⁴ Jimmy Carter came to office with a Democratic majority in Congress rivaling that of Lyndon Johnson, but in a time of greatly changed political expectations. Carter's fiscal conservatism was not matched in Congress, and a series of blunders early in his administration soured relations with Congress. At the end of the Carter presidency, there were proposals to amend the Constitution in order to enable the president "to form a government" and there was talk of the "no-win presidency."

President Reagan's impressive legislative victories during his first year in office demonstrated that a determined and popular president could, even with control of only one house, have his way with Congress. In 1981, there were comparisons of his victories with those of FDR and LBJ, but the bloom was soon off the rose. The last six years of the Reagan presidency have been marked by stalemate with Congress over the fiscal problems that were created by the legislative victories of his first year in office. Reagan's legislative support score declined steadily from 80 percent in his first year to less than 50 percent in 1987.⁵ His second term has been dominated by the Iran-contra scandal, which seemed to display many of the elements of Schlesinger's imperial presidency.

FACTORS IN PRESIDENTIAL SUCCESS

What can explain the widely varying rates of success of presidents with Con-

gress over the past three decades? Franklin Roosevelt, Lyndon Johnson, and Ronald Reagan were spectacularly successful—but only at the beginning of their presidencies. They were not able to sustain their earlier levels of success. Presidents Kennedy, Nixon, Ford, and Carter each had legislative victories, but their administrations are not considered models of legislative effectiveness, and each was frustrated in his dealings with Congress.

One possible explanation of differing legislative success is the legislative skill and political judgment of different presidents. Another is the partisan balance in Congress: some presidents have more members of their party in House and Senate seats and thus might expect more support in Congress for their agenda. Another explanation is the nature of the times: the international situation, the state of the economy, public opinion, and the existing policy agenda of pressing issues that must be dealt with.

Certainly, partisan support in Congress can be crucial to a president's legislative success. Both Roosevelt and Johnson had significant partisan majorities in both houses of Congress to help them pass their proposals. Reagan's success, however, was achieved even though his party controlled only the Senate, with the House dominated by the Democratic Party. Jimmy Carter had substantial Democratic majorities in both houses but was not able to mobilize congressional support the way Johnson had done. So while partisan support in Congress can be crucial, it is not determinative.

Another explanation of presidential success is the nature of the policy agenda when the president is elected. While some scholars have emphasized how some presidents seemingly have been

4. For an analysis of the reassertion of congressional prerogatives, see Thomas Cronin, "A Resurgent Congress and the Imperial Presidency," *Political Science Quarterly*, 95(2):209 (Summer 1980).

5. The legislative support scores are calculated by Congressional Quarterly. *Congressional Quarterly Weekly Report*, 16 Jan. 1988, p. 93.

able to shape and direct the congressional agenda, others have emphasized how presidents are constrained by agendas already in place when they are elected. Charles O. Jones has argued that presidents are constrained by the broad issues facing the nation that are reflected in public opinion.⁶

Jones argues that presidents are constrained by existing policy agendas when they come to office and that their legislative success is affected by whether they and members of Congress can agree on the specific policy alternatives necessary to deal with existing problems. Jones emphasizes that both Johnson and Reagan faced existing policy agendas when they came to office but were legislatively successful because they were able to mobilize congressional majorities around those agendas. Jones also argues that no president can dominate the policy agenda throughout a term.

In trying to understand why some presidents are more successful than others in their dealings with Congress, many analysts examine the various strategies and tactics used by the White House to get its way with Congress. On the surface, this seems to be a natural place to start. Stories of Lyndon Johnson's arm twisting and cajolery are fascinating, and those tactics are assumed to be the reason for his impressive successes with Congress. Other scholars see these legislative skills as surface factors that do not fundamentally affect a president's chances for legislative success.

The most systematic attack on the thesis that a president's legislative skills make a large difference in success on the Hill has been made by George Edwards.

6. See Charles O. Jones, "Presidents and Agendas: Who Defines What for Whom?" in *The Managerial Presidency*, ed. James P. Pfiffner (Chicago: Dorsey Press, forthcoming).

In a series of empirical studies of votes in Congress over the past several decades, Edwards has come to the conclusion that "there is no systematic relationship between presidential legislative skills and congressional support for the White House. . . . Moreover, [presidents] are *not* more likely to win close votes, on which skills might play the crucial role in obtaining the last few votes needed to pass a program."⁷

Edwards argues that legislators are influenced by a number of factors in deciding how to vote on a particular piece of legislation. Among these factors are ideology, personal policy preferences, and constituency pressures. He argues that presidential appeals are unlikely to overcome these strong pulls on a legislator. The partisan makeup of Congress has much more influence than pressures from the president. Thus Lyndon Johnson's successes had much more to do with Democratic dominance of the Eighty-Ninth Congress than with his legendary legislative skills.

Of course, a new president will do better with Congress if he wins his election to office by a landslide, runs ahead of members of Congress in their own states and districts, has large partisan majorities in both houses of Congress, and maintains high popular approval with the public. Few presidents are blessed with such circumstances, however. In the mid-twentieth century, many presidents have been faced with a divided government, close elections, a decrease in popularity over their terms, and loss of seats in midterm elections.

Edwards's conclusions do not mean,

7. George C. Edwards, "Reforming the 'President': The Individual as Leader," *PS*, 20(3):623 (Summer 1987). See also *idem*, *At the Margins* (New Haven, CT: Yale University Press, forthcoming).

however, that presidential skills can be ignored. First of all, the aggregate data on voting that he uses in his analysis cannot capture all of the ways in which legislators might be affected by presidential actions,⁸ and some forms of congressional support for the president cannot be measured by roll-call votes.⁹ Second, members of Congress believe that presidential skills make a difference. They feel the heat from presidential pressure, especially from presidents of their own party. They react hostilely when they think they have been slighted by the White House.

Third, the absence of presidential skills can hurt a president. It is likely that President Carter would have done better if his White House staff had not made some mistakes early in his administration that seemed to alienate many members of his own party in Congress. There is, of course, no way to prove this. Edwards would argue that no member of Congress would vote against his own interests and against the president out of spite. On the other hand, President Carter's head of legislative liaison, Frank Moore, felt that "a lot of times you can get a guy's vote just by having done a lot of little things. And a lot of times they'll vote against you, just out of damn spite."¹⁰

TACTICS AND STRATEGY

If one were advising a new president about how to behave toward Congress

so as to maximize the chances of legislative success, what could be recommended based on the experience of recent presidents? This section will consider the advantages of getting off to a quick start, various carrots and sticks that recent presidents have used in dealing with Congress, and the rifle and shotgun strategies of presenting agendas to Congress. The final section will deal with the broader issue of whether changes in the Constitution would alleviate the frustrations of divided government.

A quick start

If a president wants to do well with Congress, a fast start is helpful; early victories can set the tone for the administration and take advantage of the mandate from the voters. The most important reason for moving quickly is what Paul Light calls the policy cycle of decreasing influence. He argues that presidents begin their terms in office with a maximum of political capital that must be exploited quickly before it is dissipated. At an administration's beginning, presidential popularity is likely to be at a peak; Congress is more likely to be sympathetic to presidential appeals for support than after tough policy decisions have been made. In addition, after the first year, members will be focusing on the midterm elections, and the president's party can almost always expect to lose seats in both houses of Congress in those elections.¹¹

Moving quickly means introducing legislation early in the term. Light found that, between 1960 and 1980, of the items introduced between January and March of the first year, 72 percent were

8. See Barbara Kellerman, *The Political Presidency: Practice of Leadership* (New York: Oxford University Press, 1984), p. 49.

9. See, for example, Cary Covington, "'Staying Private': Gaining Congressional Support for Unpublicized Presidential Preferences on Roll Call Votes," *Journal of Politics*, 1987, pp. 737-55.

10. Robert Shogun, *Promises to Keep* (New York: Thomas Y. Crowell, 1977), p. 209.

11. Paul Light, *The President's Agenda* (Baltimore, MD: Johns Hopkins University Press, 1982), p. 36.

eventually enacted. During the next three months, the rate dropped to 39 percent, and from July to September, it fell to 25 percent.¹² Lyndon Johnson put it this way:

I keep hitting hard because I know this honeymoon won't last. Every day I lose a little more political capital. That's why we have to keep at it, never letting up. One day soon, I don't know when, the critics and the snipers will move in and we will be at stalemate. We have to get all we can, now, before the roof comes down.¹³

The irony is that the cycle of decreasing influence is mirrored by a cycle of increasing competence. That is, presidents learn from early mistakes and become more effective in their relations with Congress. Unfortunately, the hang-over from early mistakes can overshadow increasing competence.

Early mistakes can hurt a president's reputation on the Hill out of proportion to their initial significance. Stories of the Carter White House's unreturned phone calls and reported insensitivity toward Congress came back to dog Carter later in his administration long after the initial problems had been remedied. Speaker of the House Thomas P. "Tip" O'Neill, Democrat of Massachusetts, was miffed when his family received poor seats for an inaugural gala at the Kennedy Center. He blamed the slight on Carter's aide Hamilton Jordan. "As far as Jordan was concerned, a House Speaker was something you bought on sale at Radio Shack."¹⁴

Another, more substantive, blunder of the early Carter administration,

viewed with perfect hindsight, was the water projects fiasco. In early 1977, President Carter decided that, in line with his fiscal conservatism, he would eliminate a number of water projects from the 1978 budget. The projects were chosen as examples of congressional pork barrel whose benefits did not outweigh their costs, but from the congressional perspective they were the lifeblood of service to one's district.

Bert Lance, Carter's director of the Office of Management and Budget, said the intention was to show Congress who was in charge, but it turned out to be a disaster. "We alienated a large portion of the Congress: those who had projects and those who had hopes of having projects: 100 percent alienation. It was not a good decision in my judgment, but the president felt very strongly about it."¹⁵ Members of Congress were irate, in part because some were not consulted about the decision but primarily because they saw the projects as crucial to their own political interests. In the end, Carter lost when the Senate attached the water projects as a rider to an economic stimulus bill wanted by the administration.

According to Stuart Eizenstat, "I don't think Carter's image ever recovered from some of those early mistakes."¹⁶

Carrots and sticks

In order to move quickly, it is important to organize the congressional liaison operation early, before the inauguration. Immediately after the election, campaign debts will come due, and the new administration will be flooded by requests and demands from the Hill,

12. Ibid., p. 45.

13. Jack Valenti, *A Very Personal President* (New York: Norton, 1975), p. 144.

14. Tip O'Neill, *Man of the House* (New York: Random House, 1987), p. 311.

15. Interview with Bert Lance, Calhoun, GA, 21 June 1983.

16. Interview with Stuart Eizenstat, Washington, DC, 14 July 1983.

primarily for patronage. The function of the Office of Congressional Relations is to help bridge this gap between the two branches of government in policy cooperation that cannot be bridged by the weak party system in the United States.¹⁷

If the Office of Congressional Relations is to be effective, it must use professionals in dealing with Congress; this is not the time or place for on-the-job training. President Carter was hurt by appointing Frank Moore to head congressional liaison. Moore had worked for Carter in Georgia in dealing with the legislature there, but he had no experience on Capitol Hill. According to Tip O'Neill, Moore "didn't know beans about Congress."¹⁸ In contrast, President Reagan's first head of congressional liaison was Max Friedersdorf, an experienced hand on the Hill who was respected as a professional on both sides of the aisle. His approach to his job was that one has to "know all of their individual idiosyncrasies and know how they think and act. You have to know when Tip O'Neill needs a cigar."¹⁹

One of the traditional ways of winning friends and influencing votes in Congress is patronage—making political appointments in the executive branch at the behest of members of Congress. There can be no doubt that the pressure to make these appointments is high. Both Carter and Reagan faced thousands of requests from the Hill early in their administrations. "The House and Senate Republicans just start cramming people down your throat," complained Pendleton James, who headed presidential

personnel for President Reagan.²⁰

The mileage to be gotten out of patronage is not great, however, and it is concentrated at the beginning of an administration. The president receives only a little credit when he makes an appointment, and he receives much grief when he fails to make an appointment. President Taft's dictum still holds: "Every time I make an appointment I create nine enemies and one ingrate." Most often the job of the president's congressional liaison in dealing with patronage is one of damage limitation.²¹ Almost every president is criticized by his own political party when, early in his administration, not enough jobs for the party faithful are forthcoming.²²

Similarly, using programs or construction projects in congressional districts to win votes in Congress is often overrated. In the first place, an administration does not have carte blanche in placing projects. White House pressure can be helpful at times, but most laws governing projects contain quite specific criteria, which are conscientiously applied by bureaucrats. Even when the White House can influence the outcome, it is not always wise to do so. "I never swapped a vote for a project," recalled Johnson aide Henry Hall Wilson. "That would have been extremely crude, and wouldn't have worked. Once word got around, everybody would have wanted to trade their votes for projects."²³

20. *Wall Street Journal*, 31 Aug. 1982.

21. See Bowles, *White House and Capitol Hill*, p. 74. See also Theodore Sorensen, *Kennedy* (New York: Harper & Row, 1965), p. 349.

22. See James P. Pfiffner, "Nine Enemies and One Ingrate: Political Appointments during Presidential Transitions," in *The In-and-Outers*, ed. Calvin Mackenzie (Baltimore, MD: Johns Hopkins University Press, 1987), pp. 60-76.

23. Bowles, *White House and Capitol Hill*, p. 79.

17. See Bowles, *White House and Capitol Hill*.

18. O'Neill, *Man of the House*, p. 308.

19. Quoted in Joel Swerdlow, "How to Handle the First 100 Days," *Potomac Magazine*, *Washington Post*, 9 Jan. 1977, p. 25.

For the most part, therefore, an effective congressional liaison operation is concerned not with specific arm twisting and vote trading but rather with the longer-term strategic task of creating an atmosphere of cooperation between the White House and Congress. Instead of trying to convert votes on specific issues from opposition to support, congressional liaison operatives, according to Cary Covington, concentrate on

the relatively mundane and routine actions of maintaining and mobilizing their existing coalitional base of support . . . the bulk of their time is spent communicating with congressmen, listening to their concerns, keeping them informed of the status of the president's priorities, rewarding the president's supporters, and seeking to create a diffusely sympathetic environment, rather than pressuring recalcitrant or wavering members into adopting the president's position.²⁴

Creating a favorable atmosphere for the president in Congress is a long-term undertaking, and negative pressure must be applied very selectively. "It's just not a good idea to tell people to jump out the window on behalf of your bill," according to Larry O'Brien. "You don't go up to a member when a vote is coming up and say 'Hello, congressman, we haven't met in three months, but we've got a problem on a bill now.' You keep in touch with him. . . . In a tough headcount, the important marginal difference is made 9 out of 10 times by the element of human relations."²⁵

The human and social factors in presidential relations with Congress are important, according to the professionals.

24. Cary Covington, "Mobilizing Congressional Support for the President: Insights from the 1960s," *Legislative Studies Quarterly*, 12(1):91-92 (Feb. 1987).

25. Bowles, *White House and Capitol Hill*, pp. 65, 73.

The matter of the *Sequoia* serves as an example. Since the 1930s, presidents had used the *Sequoia*, the presidential yacht, as an informal setting for low-key congressional lobbying. Nevertheless, Jimmy Carter decided to sell the yacht to symbolize his administration's austerity. This action did not win praise from O'Neill: "More than any of the other trappings of power, the *Sequoia* provided a unique opportunity for the president to spend a relaxed couple of hours socializing and talking business with small groups of legislators in a serene and friendly environment," Tip O'Neill has observed. "If somebody had only arranged a few evenings on that yacht with the right people, the president [Carter] could have accomplished far more on Capitol Hill than he actually did."²⁶ The kind of political small talk and storytelling that Lyndon Johnson relished and Ronald Reagan is so adept at was eschewed by Jimmy Carter, however, and that hurt him on the Hill.

The human and social side of courting Congress is also emphasized in the granting of small favors to members of Congress. The Johnson White House, for example, was generous and systematic about giving out personally signed photographs of the president, cuff links with the presidential seal, tours of the White House for constituents, visits to the White House, flights on Air Force One, and trips on the *Sequoia*. These favors were kept track of carefully and were consciously used to political advantage. In a detailed analysis of White House invitations, Cary Covington found that the Kennedy and Johnson administrations carefully used invitations to the White House to reward their strong supporters, regardless of party. The strategy

26. O'Neill, *Man of the House*, p. 315.

was used to assure the support of allies rather than to recruit new supporters.²⁷

Other tokens that are highly prized by members of Congress are pens used by the president in signing bills into law. These are mounted in glass cases and framed with inscriptions of the titles of the laws for which they were used. Presidents at times go to some length to have more pens for presentation. They can sign each letter of their names with a different pen and add dates and locations of signing in order to use enough pens. In what must be a record, President Johnson used 72 pens in the signing of the Economic Opportunity Act in 1964. By contrast, President Carter, at the end of his first two years, still refused to use more than two pens to sign a bill.²⁸

The lesson to be drawn is that, though vote trading, arm twisting, and the granting of specific favors do go on, the bulk of the presidential courting of Congress is done in a low-key manner and is aimed at rewarding friends and maintaining the president's coalition. The assumption is that if these activities are done well, the tough, marginal votes will be easier to win in the crunch. While Edwards argues that these votes are only marginal, professional politicians insist on their importance.

Presenting the agenda:

The rifle or the shotgun?

President Carter has been criticized for sending too many initiatives to Congress and for failing to set priorities

among them. "Everybody has warned me not to take on too many projects so early in the administration," Carter wrote in his diary, "but it's almost impossible for me to delay something that I see needs to be done."²⁹ At one point, there were eight major proposals in the House Rules Committee at one time. "We overloaded the circuits and blew a fuse," recalls Frank Moore.³⁰ The volume of legislation was aggravated by Carter's refusal to rank his many initiatives.

The shotgun strategy seems to have hindered the Carter administration in its first year in office. Carter wrote in his memoirs:

With the advantages of hindsight, it now seems that it would have been advisable to have introduced our legislation in much more careful phases—not in such a rush. We would not have accomplished any more, and perhaps less, but my relations with Congress would have been smoother and the image of undue haste and confusion could have been avoided.³¹

Crowding the legislative calendar in the beginning is not necessarily fatal, however, as demonstrated by Lyndon Johnson.

The question of priorities may instead be a problem of perception. If an administration tries to do many things and fails on a majority of them, the public perception of competence may be lower than if it tries to do only a few things and succeeds.

The Reagan administration very self-consciously chose the rifle strategy. This strategy systematically neglected many goals voiced in the Republican cam-

27. Cary Covington, "Guess Who's Coming to Dinner": The Distribution of White House Social Invitations and Their Effects on Congressional Support," *American Politics Quarterly*, in press.

28. See Bowles, *White House and Capitol Hill*, pp. 105, 213.

29. Jimmy Carter, *Keeping Faith* (New York: Bantam Books, 1982), p. 65.

30. Telephone interview with Frank Moore, 4 Sept. 1986.

31. Carter, *Keeping Faith*, p. 87.

paign, particularly so-called social issues such as busing, abortion, school prayer, and crime as well as promises to abolish the newly created Departments of Energy and Education. According to Max Friedersdorf, "The president was determined not to clutter up the landscape with extraneous legislation."³² This drastic limiting of presidential priorities was part of the administration's strategic approach to the presidency. Under this approach, the economy was seen to be the most important issue facing the country, and success on budget priorities—increasing defense spending, cutting social spending, and cutting taxes—was paramount.

This focus in the early Reagan administration's agenda—along with the shrewd tactics of using reconciliation and effective politics in the administration's southern strategy—was an important component in the impressive legislative victories in Reagan's first year. The point here is not necessarily that the rifle is more effective than the shotgun, because Johnson was successful with the shotgun. Rather, the point is that the strategies ought to be consciously chosen and combined with other elements of presidential effectiveness.

THE DEADLOCK OF DEMOCRACY

You have an arrested Government. You have a Government that is not responding to the wishes of the people. You have a Government that is not functioning, a Government whose very energies are stayed and postponed. If you want to release the force of the American people, you have to get posses-

sion of the Senate and the Presidency as well as the House.³³

The presidential candidate was arguing that divided government, when the same political party does not control both houses of Congress and the presidency, was preventing the will of the majority from being enacted. He urged the voters to elect a government of a single party, and they did. The candidate was Woodrow Wilson, and the year was 1912. The Wilson presidency and its New Freedom programs marked one of the periods of greatest creativity and cooperation between the president and Congress in the years between Reconstruction and the New Deal.

Later in the twentieth century, an eminent historian made a similar complaint. "Our government lacks unity and teamwork. . . . We oscillate fecklessly between deadlock and a rush of action. . . . We can choose bold and creative national leaders without giving them the means to make their leadership effective."³⁴ James MacGregor Burns's book, *The Deadlock of Democracy*, published in 1963, argued that periods of creative and productive cooperation between the president and Congress were the exception rather than the rule in American history. He proposed several changes, legislative and constitutional, that would allow our system to have "responsible, committed, effective, and exuberant leadership."³⁵

So the frustrations of the separation-of-powers governmental structure are

33. Wilson, quoted in Lloyd N. Cutler, "The Cost of Divided Government," *New York Times*, 22 Nov. 1987.

34. James MacGregor Burns, *The Deadlock of Democracy* (Englewood Cliffs, NJ: Prentice-Hall, 1967), pp. 324-25.

35. *Ibid.*, p. 340.

32. Quoted in Stephen J. Wayne, "Congressional Liaison in the Reagan White House," in *President and Congress: Assessing Reagan's First Year*, ed. Norman Ornstein (Washington, DC: American Enterprise Institute, 1982), p. 56.

not new, but they do seem to be worsening. Lloyd Cutler has pointed out that for the 150 years from John Adams through Franklin Roosevelt we experienced divided government only 25 percent of the time. Later, however, that proportion increased. From Truman through Reagan, the branches were divided 60 percent of the time, and for the past two decades, 80 percent of the time. In the past 20 years, the party winning the presidency failed to hold both houses of Congress in four of five elections. In the whole nineteenth century, this happened only four times.³⁶ Ticket splitting among voters has also increased: 4 percent of congressional districts split votes between the president and House member in 1900, while 45 percent did so in 1984.

Nevertheless, the system can work quite effectively at times. In 1933 and again in 1965, large Democratic majorities supported presidents bent on major changes. In 1981, Ronald Reagan rode the crest of a wave of public dissatisfaction with the economy. Though the Republicans did not control the House, Reagan was able to capitalize on the Democrats' disarray in forging a coalition in the House to pass virtually all of his legislative priorities in his first year in office.

Even successful chief legislators have not been able to sustain their momentum throughout their terms, however. Roosevelt suffered legislative setbacks after his initial victories. Johnson's ruling coalition dissolved with the Ninetieth Congress and growing opposition to the war in Vietnam. Reagan and Congress have been at loggerheads since 1982.

In normal times, when we are not in a period of major congressional-presi-

dential synergy, laws are still passed and issues are addressed, though not in the systematic way that many would desire. Compromise is the rule, and no one is fully satisfied.

After experiencing the Carter administration's frustration with Congress, Lloyd Cutler, White House counsel to President Carter, wrote an article titled "To Form a Government," in which he argued that the constitutional roadblocks in the system of checks and balances were too great and that it was time for a series of reforms to move us toward a parliamentary system.³⁷ Scholars began to write about the lack of two-term presidents since Eisenhower and the "no-win presidency."

In 1981, Ronald Reagan did the unexpected: he began his administration with a series of legislative victories that made impressive changes in the national agenda and policy priorities. Brandishing his claimed mandate, he and his able lieutenants, Office of Management and Budget director David Stockman and chief of staff James Baker, moved with dispatch to rewrite President Carter's lame-duck budget. They then shepherded Reagan's economic priorities—deep cuts in taxes and the domestic budget along with increases in defense spending—through the gauntlet of congressional procedures to win virtually all of their major priorities within their first six months in office.³⁸

The 1981 experience demonstrated that, despite the reassertion of con-

37. Lloyd Cutler, "To Form a Government," *Foreign Affairs*, 59:127 (Fall 1980).

38. For an analysis of Reagan's 1981 legislative and budget victories, see James P. Pfiffner, "The Reagan Budget Juggernaut: The Fiscal 1982 Budget Campaign," in *The President and Economic Policy*, ed. James P. Pfiffner (Philadelphia: ISHI, 1986).

36. Cutler, "Cost of Divided Government."

gressional prerogatives in the 1970s and especially the new procedures of the 1974 Budget Act, presidential leadership was still possible and necessary. Reagan showed that a strong president, even when not elected with a landslide victory, could mobilize public opinion and put together a coalition in a split Congress to enact major changes in the policy agenda.

That impressive initial leadership has not been sustained throughout the Reagan presidency. Immediately after the initial budget victories, consensus broke down over how to deal with the huge deficits generated by the early Reagan economic policies. The rest of the 1980s have been dominated by budgetary deadlock between the president and Congress.

While the lack of budget cooperation during the Reagan presidency is not unusual for divided government, an even more serious breakdown in comity between the branches occurred in the Iran-contra scandal.

During 1985 and 1986, the Reagan administration decided to try to obtain release of U.S. hostages held in Lebanon by giving arms to Iran in exchange for Iran's help in freeing the hostages. While the United States, through secret and devious means, managed to ship a significant amount of arms to Iran, only two hostages were released. When word of the attempted deals leaked out, the administration tried to cover it up but eventually admitted to the effort.

The arms-for-hostages deal was against the official U.S. policy of not dealing with terrorists, and it undercut U.S. relations with those allies whom the United States had importuned not to sell arms to Iran. It also contradicted President Reagan's previous frequent condemnations of giving in to terrorists. While the actions taken may have been

unwise, and while the administration should not have lied to Congress and the public in covering up the relationship with Iran, the decision to attempt a rapprochement with a hostile nation is generally at the discretion of the president.

When the payments from Iran for the U.S. arms were diverted to help the contra rebels in Nicaragua, however, the bounds of comity were clearly overstepped. The aid was given during the time when the Boland amendment prohibited "any direct or indirect" aid to the contras. This violation of the spirit of the Constitution prompted the Iran-contra committee of Congress to state:

In the Iran-Contra Affair, officials viewed the law not as setting boundaries for their actions, but raising impediments to their goals. When the goals and the law collided, the law gave way. The covert program of support for the Contras evaded the Constitution's most significant check on Executive power: the President can spend funds on a program only if he can convince Congress to appropriate the money.³⁹

CONCLUSION

Over the years, Americans have been fascinated with proposals for constitutional changes that might relieve the frustrations of divided government and the breakdown of comity. The 1980s were marked by a resurgence of such proposals to deal with unacceptably high budgetary deficits and disagreements between the president and Con-

39. U.S., Congress, Senate, Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition, and U.S., Congress, House, Select Committee to Investigate Covert Arms Transactions with Iran, *Report of the Congressional Committees Investigating the Iran-Contra Affair*, 100th Cong., 1st sess., Nov. 1987, S. Rept. 100-216 and H. Rept. 100-433, p. 18.

gress over foreign policy. The perennial favorites of the balanced-budget amendment and the item veto captured the imagination of some.

More fundamental reforms to the separation-of-powers system, however, have been proposed by those who think that the system is inherently biased toward stalemate and that a more expeditious system is necessary for the United States in the twentieth century. Among the reforms that have been proposed are a four-year term for House members and an eight-year term for senators and some device to force voters to vote for a party ticket. In addition, mechanisms have been proposed to allow the president and/or Congress to dissolve the government and require new elections when an impasse has been reached. All of these proposals, among others, are predicated on the need for more party discipline in Congress and the desire to move the United States toward a parliamentary model of government.

Arthur Schlesinger, Jr., who believes the problem is one of personnel—we should elect better presidents—disagrees with those who seek solutions in structural change.⁴⁰ He points out the irony that reformers during the Nixon administration thought that a more nearly parliamentary system would give the legislature more power and allow it to fight presidential usurpation more effectively, while during the Carter administration, reformers felt that a more nearly parliamentary system would give the president the power that he needed to command legislative support and lead the country.

40. For the arguments for structural change, see James L. Sundquist, *Constitutional Reform and Effective Government* (Washington, DC: Brookings Institution, 1986); James MacGregor Burns, *The Power to Lead* (New York: Simon & Schuster, 1984).

In pointing to British experience over the past century, Schlesinger concludes that the British have read their history better and that a parliamentary system leads to dominance by the executive.⁴¹

Whether one thinks that fundamental constitutional change is necessary to deal with the problems of institutional conflict previously cited depends on how one conceives of the problem. If one believes that the problem is one of a latent majority within the electorate in favor of concerted action but frustrated by the checks and balances of the separation-of-powers system, then one will likely favor fundamental change in our institutions. In this situation, a more nearly parliamentary system would allow the government to act more expeditiously.

If, on the other hand, the inability of Congress and the president to agree on the solution to the deficit problem or on a coherent foreign policy accurately reflects divisions within the electorate, a structural change will not solve the problem of lack of agreement. With a country divided, allowing one side to have its way will lead to further conflict rather than concerted action.

Schlesinger argues that presidential leadership is necessary in situations of crisis. That leadership cannot be conferred, however, by giving the president the authority to act without congressional approval. Presidential leadership must be demonstrated by convincing Congress and the electorate of the wisdom of a particular course of action. If the president is successful in convincing the public that a given course of action is wise, Congress will follow.⁴²

41. Arthur Schlesinger, Jr., *The Cycles of American History* (Boston: Houghton Mifflin, 1986), pp. 301-4.

42. See Sam Kernell, *Going Public* (Washington, DC: CQ Press, 1987).

Ronald Reagan was convincing in 1981. The Democrats in Congress did not fully support the Reagan economic prescription, but they were convinced that the people, particularly in their home districts, did; and they gave him the votes he needed to enact his program. But Reagan has not provided that kind of leadership in the budgetary arena during the remainder of his administration. He has continued to propose his 1981 program, but members of Congress have felt that the fiscal and political situation of the country has changed and that the same policies are no longer appropriate. Reagan has refused to make the kind of compromises that Republicans in the Senate and within his own administration urged upon him, and deadlock has resulted. Congress alone has not been able to enact budgetary solutions; presidential leadership is necessary but has not been forthcoming.

In foreign policy, President Reagan has felt that the Sandinista government in Nicaragua is a fundamental threat to the United States and that support to the contras is vital to U.S. interests. He has made this argument in Congress and to the public, but neither has agreed.⁴³ Congress expressed its policy position by passing the Boland amendment, which was signed by the president.

The Reagan administration resorted to secret support for the contras. When it failed to secure support for the policy in Congress, it decided to circumvent

the Constitution by resorting to secret aid through nonappropriated funds.

American historical experience has shown that foreign military entanglements that are not supported by Congress cannot be sustained by presidential will. In order to sustain active military commitments, presidents must convince the people and Congress that military action is essential to our national interests. If they refuse to or cannot convince the people or Congress, the policies are doomed to die from lack of support.

Schlesinger sums up the argument against making it easier for a president to commit the United States to military action. "The separation of powers . . . has permitted action when a majority is convinced that the action is right. In short, if the executive has a persuasive remedy, you don't need fundamental constitutional change. If the executive remedy is not persuasive, you don't want fundamental constitutional change."⁴⁴

Without fundamental constitutional change, the kind of presidential-congressional cooperation that marked the early years of the administrations of Franklin Roosevelt, Lyndon Johnson, and Ronald Reagan will recur only in unusual sets of circumstances—landslides, partisan majorities in Congress, and broad public consensus that change is needed. Short of that change, presidents seeking cooperation in Congress will be forced to make their cases convincingly to the Congress. In making their cases, the kinds of legislative skills that a president possesses will continue to play an important role.

43. For a discussion of the series of votes on aid to the contras, see Victor C. Johnson, "Congress and Contra Aid 1986-87," in *Latin America and Caribbean Contemporary Record*, vol. 6, 1986-87, ed. Abraham F. Lowenthal (New York: Holmes & Meier, forthcoming).

44. Schlesinger, *Cycles of American History*, p. 311.