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Chapter Two

Partisan Polarization, Politics, and the Presidency: Structural Sources of Conflict

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Bill Clinton's presidency began in 1993 with great optimism in the Democratic Party. The Democrats controlled both houses of Congress and the presidency for the first time since the Carter administration. In his campaign Clinton promised to "end welfare as we know it," provide a middle-class tax cut, and reform the nation's health care system. But health care reform did not even get to a vote in Congress, and in the 1994 elections, a Republican wave swept many Democrats out of office. This gave Republicans control of Congress for the first time in forty years. The aggressive policy agenda of the 104th Congress threatened to dismantle many central programs from the New Deal and the Great Society. But Clinton used his veto power to face down the challenge from the Republican Congress and got reelected in 1996. The Monica Lewinsky scandal erupted in 1998, and the Republican House impeached President Clinton, although there were not enough votes in the Senate to remove him from office.

In the campaign of 2000 President Bush campaigned as a "compassionate conservative," said that he would pursue a "humble" foreign policy, and promised to be a "uniter, not a divider." Rather than trying to build a moderate coalition of Democrats and Republicans in his policy agenda, he played to his base in the electorate and the cohesive Republican Congress on the Hill. The terrorist attacks of 9/11 gave him tremendous political capital and public approval ratings in the 90 percent range, the highest in the modern presidency. He successfully displaced the Taliban regime in Afghanistan, but before the war was over, decided to pursue "regime change" in Iraq. After deposing Saddam Hussein in Iraq, the U.S. occupation of the country faced a deadly insurgency that dragged on for the rest of his presidency. Rather than being a uniter, President Bush turned out to be the most divisive president in at least a half century.¹ His low public approval ratings led Republicans in



Congress to avoid appearing with him during the 2008 elections, and John McCain took care to distance his candidacy from the Bush administration.

Some of the difficulties in these two presidencies were due to the individual personalities of the two presidents and their differing policy agendas. But a good portion of their difficulties was the result of an extremely polarized Congress. The country as a whole began voting more along party lines than in previous decades, and political elites, particularly the two parties in Congress, were more polarized than they had been since the late nineteenth century.

In addition to the partisan and policy rivalry between president and Congress, the two branches also struggle with each other over their institutional power in the separation of powers system. The framers of the Constitution built into the government sources of friction between the president and Congress that have been played out over the history of the republic. As Madison said in “Federalist No. 51,” “ambition must be made to counteract ambition.” This necessary and often healthful competition for power between the president and Congress sometimes degenerates into struggles for power that stretch the bounds of the separation of powers system. Congress pushes the envelope when it attempts to tie the president’s hands too narrowly in the normal execution of public policy, a practice often known as “micromanagement.” In the twentieth century, however, the executive was most often the branch pushing the envelope. In the twenty-first century, George W. Bush challenged the role of Congress by claiming extraordinary constitutional authority in several areas of public policy.

This chapter will first examine the roots of partisan polarization and its consequences for public policy and politics. It will then look at the consequences of that polarization for the two contentious presidencies of Bill Clinton and George W. Bush. Finally, it will briefly address the fundamental constitutional challenge that President Bush presented to Congress. His claims to constitutional authority were in some ways unprecedented, and his assertions struck at the very base of the constitutional separation of powers and the rule of law in the United States.

THE ORIGINS OF CONGRESSIONAL POLARIZATION

In the latter quarter of the twentieth-century, Congress was transformed from a relatively consensual institution with significant overlap between the Democratic and Republican parties to an ideological, polarized battlefield with virtually no middle ground. The path to partisan polarization was begun with the political revolution that turned the U.S. South from a Democratic

bastion to a conservative stronghold; Republicans dominated the region, with pockets of liberal and African American strength.

Congressional polarization has ebbed and flowed over the history of the United States. It reached a high mark in the latter decades of the nineteenth century. In the first third of the twentieth century, the parties began to converge, with more cross-pressured members of each party voting with the other party. During the middle third of the twentieth century, from the early 1930s to the early 1970s, Congress enjoyed an unusual period of voting overlap in the middle of the ideological spectrum. During this period conservative Democrats (Boll Weevils) from the South often combined with Republicans in the “conservative coalition” to defeat civil rights and other liberal legislative proposals. So there was plenty of ideological confrontation, but ideology did not reinforce partisanship, because there were significant numbers of conservative Democrats and liberal Republicans who often crossed party lines in voting on important legislation.

During this era relative power in Congress devolved to committee chairs who dominated their separate fiefdoms, and consequently party leaders presided over the two houses but did not dominate the legislative agenda. During this period of relative stability between the parties, Democrats controlled Congress for the most part. But in their voting records, 36 percent of Democrats were more conservative than the most liberal Republicans, and 95 percent of the Republicans were more liberal than the most conservative Democrats.² This significant overlap prompted George Wallace in his 1968 campaign for the presidency to declare that there was “not a dime’s worth of difference” between the two parties.

But beginning in 1973 members of Congress began to vote increasingly along party lines, leading to the intense polarization that marked the end of the twentieth century and the beginning of the twenty-first century in Congress. The steady polarization began with the breakup of Democratic domination of the “Solid South.” From the 1950s to the 1980s migration of whites from the North to southern cities and suburbs led to the gradual ascendancy of the Republican Party. Many of these immigrants brought with them Republican voting habits. From the 1960s to the 1980s, approximately 40 to 50 percent of southern Republicans were born outside of the South.³ Along with general urbanization in the south and black migration to the north, the partisan complexion of the South began to change. The Republican Party was becoming a viable political party and beginning to attract more voters.⁴ Partisan realignment in the South was further encouraged by the Civil Rights Act of 1964 and the Voting Rights Act of 1965, both of which increased the number of black voters who voted overwhelmingly Democratic.⁵

Conservative whites began to identify with the Republican Party, and to send more Republican representatives to Congress. The creation of majority-minority districts concentrated more liberal blacks in districts while more conservative whites ended up in districts that voted Republican. The result of this realignment was that the Democratic Party in Congress lost its “Dixiecrat” (conservative southern Democrats) members and became more homogeneously liberal.⁶ The conservative coalition, which had been thwarting Democratic presidents since FDR, began to decline in importance, because the conservative southerners were now in the Republican Party.

The transformation of the South from domination by the Democratic Party to Republican control was only one of the factors that led to congressional polarization. House delegations outside the South as well as senators became more polarized during the same time period. One of the important factors in the process was the ideological “sorting” of voters in which those who labeled themselves liberal began voting more consistently for Democrats and conservatives voted regularly for Republicans. In addition, congressional districts became more politically homogeneous, with Democrats and Republicans tending to live near each other. In 1976, 26.8 percent of voters lived in districts where one congressional candidate won by a margin of more than 20 percent; by 2004 that percentage had increased to 48.3.⁷

Along with homogeneous districts, redistricting led to safer seats in which members won reelection by large margins and did not have to worry much about losing to the opposing party. As a result, there were fewer congressional districts “in play,” that is, seats that might be won by either party. According to Gary Jacobson’s analysis, the number of safe seats increased significantly between 1992 and 2002: Democrats’ safe seats increased from 142 to 158, and Republicans’ safe seats increased from 139 to 198.⁸ Thus the total number of safe seats was 356 of 435, but the number of House races that were actually competitive was significantly less than that.⁹ In the 2004 elections 83 percent of House races were won by margins of 20 percent or more, and 95 percent of districts were won by more than 10 percent. In the 2006 and 2008 congressional elections Democrats were able to put more seats in play because of voter disenchantment with the Bush presidency.

Redistricting, however, was only part of the cause of polarization in Congress.¹⁰ Before the 1960s, party elites who were active in politics (as office holders, convention delegates, or active participants in partisan political activities) were concerned primarily with winning elections and were often willing to compromise on policy issues. But beginning in the 1960s a different type of elite began to dominate political parties. The new elites were more ideologically committed to particular causes or policy issues. They were less willing to compromise and were even willing to risk losing an election in

order to make ideological statements. These Democratic and Republican partisan elites were also those who were most likely to turn out to vote in primary elections, and they favored more extreme candidates from their own party.¹¹

Safer districts, the advantages of incumbency, and the influence of party activists led to the election of more liberal Democrats and more conservative Republicans. Safe seats put moderate candidates of both parties at a disadvantage. Turnout for primary elections is predictably low, and most of those who actually vote are committed partisans, that is, true believers who hold more extreme views than most voters in their parties. Thus in order to get nominated and then to remain in office, members must please those on the wings of their parties or be outflanked by more extreme candidates.

Congressman Jim Leach (R-IA), with some exaggeration, explained the problem this way:

A little less than four hundred seats are totally safe, which means that there is competition between Democrats and Republicans only in about ten or fifteen per cent of the seats. So the important question is who controls the safe seats. Currently, about a third of the over-all population is Democrat, a third is Republican, and a third is no party [independent]. If you ask yourself some mathematical questions, what is a half of a third?—one-sixth. That's who decides the nominee in each district. But only a fourth participates in primaries. What's a fourth of a sixth? A twenty-fourth. So it's one twenty-fourth of the population that controls the seat in each party.¹²

The changes in the partisanship of members of Congress over the several decades included both the replacement of moderate members with more partisan candidates as well as individual members changing their own ideological perspectives and becoming less moderate in order to head off a challenge in the primaries.¹³ The retirement of many moderate senators and their replacement with more extreme senators, who often moved from the more polarized House and brought with them their more confrontational ways, increased the polarization in the Senate.¹⁴

The advantages of incumbents who sought reelection, always considerable, have become even more pronounced. From 1984 to 1990 House members seeking reelection were successful 97 percent of the time and in 2002, 98 percent successful. Senators were a bit more vulnerable, but still quite successful, winning 86 percent of bids for reelection from 1982 to 2003 and 95 percent in 1996.¹⁵ In 2004, aside from the redistricted Texas, 99 percent of House incumbents won reelection, with only three incumbents being defeated.¹⁶ In 2006 Democrats were partially successful in nationalizing the elections by treating them as a referendum on the war in Iraq and were able to drive the reelection rate down to 94 percent.¹⁷

As Congress became more polarized the two party caucuses became more homogeneous internally at the same time that the two parties diverged more sharply on ideological and policy issues. The transformation of the South from the Democratic to a Republican stronghold, ironically, led to a more successful Democratic control of the House. The increasing liberal consensus among the Democrats in Congress led the Democratic caucus in the House to become more cohesive and, through control of committee membership, assert its liberal policy views more effectively (e.g., on civil rights, old-age assistance, health care, housing, and other federal programs). According to David E. Price, Democratic representative from North Carolina,

Rejuvenating the House Democratic Caucus proved necessary in order to rewrite the rules, depose recalcitrant chairmen, and otherwise effect the desired transfer of power. The leadership, moreover, was the only available counterweight to conservative bastions like the House Rules and Ways and Means Committees. Therefore, two key early reforms removed the committee-assignment function from Ways and Means Democrats and placed [it] in a leadership-dominated Steering and Policy Committee and gave the Speaker the power to nominate the chair and the Democratic members of the Rules Committee.¹⁸

The number of Democrats in the House began to increase in 1958, and particularly in the Democratic landslides in 1964 and 1974. In order for the Democratic caucus to gain more effective policy control, more power was delegated to its leadership in the 1970s and 1980s.¹⁹ As the Democrats in the House became more ideologically similar, their leadership became more assertive in the use of parliamentary tactics and provoked the ire of Republicans by denying them procedural rights in ways that were perceived as unfair.²⁰ Newt Gingrich led the outraged Republicans in the House to develop Republican candidates, particularly in the South, and orchestrate the development of Republican candidates, which culminated in the 1994 election landslide that put the Republicans in charge of Congress for the first time in forty years.²¹

Thus the Republican domination of southern congressional delegations led to a more homogeneous, liberal Democratic party in Congress, which led to more polarized parties and finally to the Republican takeover of Congress in 1994.²²

Polarizing parties with more internal cohesion combined with near parity of party balance in Congress led to the delegation of more power to the leadership of both houses but particularly the House. Thus in the 1980s Democrats used heavy-handed parliamentary tactics to keep Republicans from delaying and obstructing the legislative process. Republicans denounced these Democratic practices, yet when they came to power in 1995, they resorted to the same tactics in order to prevail in passing their own priority legislation.

The Democrats, in turn, complained, but when they came back to power in 2007, they again use similar tactics to assure their legislative success. This negative spiral of parliamentary warfare in Congress feeds on itself, making procedural voting more important and makes Congress a contentious battleground with fewer opportunities for cooperation.²³

We turn now to the consequences of polarization: the decline of the center and its impact of civility in Congress.

THE WANING CENTER AND DECLINE OF CIVILITY

In the middle of the twentieth century the two political parties in Congress were not ideologically monolithic. That is, each party had a significant number of members who were ideologically sympathetic to the other party. The Democratic Party contained a strong conservative wing of members, the southern Boll Weevils, who often voted with the conservative Republicans. The Republican Party contained a noticeable number of moderates, mostly from the northeast, the “Rockefeller Republicans,” who would often vote with the Democrats. These cross-pressured members of Congress made up between one-fifth and one-third of each house of Congress from 1950 to the mid-1980s.²⁴

In the last fifteen years of the twentieth century the cross-pressured members of each party all but disappeared. Bond and Fleisher have calculated the number of liberal Republicans and conservative Democrats in Congress from the 1950s through the 1990s and have documented their decline. The number of conservative Democrats in the House has decreased from a high of 91 in 1965–1966 to a low of 11 in 1995–1996. In the Senate the high of 22 in the early 1960s was reduced to zero in 1995–1996. Liberal Republicans similarly fell from a high of 35 in the early 1970s to a low of 1 in 1993–1994 in the House, and a high of 14 in 1973–1974 to a low of 2 in 1995–1996 in the Senate.²⁵ This disappearance of the middle is a convincing demonstration of ideological polarization in Congress.

Sarah Binder has also found that the area of ideological overlap between the two parties in Congress has drastically decreased from a relatively high level of overlap in 1970 to “virtually no ideological common ground shared by the two parties.”²⁶ The *National Journal* developed its own ideological scale of liberal and conservative voting and has calculated individual scores for members of Congress. Since 1981, most House Democrats would be on the liberal end of the spectrum and most Republicans on the right. There was always a number of members of each party whose voting record put them in the middle, overlapping ideological space. In 1999, however, only two Republicans and two Democrats shared the middle ground.

Theriault reports that in the 93d Congress 252 members of the House could be placed ideologically between the most liberal Republicans and the most conservative Democrats. By the 108th Congress no member of the House could be placed similarly. In the Senate of the 93d Congress forty senators could be placed in this middle portion of the ideological spectrum, and by the 108th Congress, there were only four.²⁷ The percentage of Republicans who were moderate decreased from 49 percent in 1977 to 3 percent in 2005. And in the 2006 elections, eight of the most moderate Republicans were defeated for reelection, leaving the 110th Congress with the fewest moderates since the nineteenth century.²⁸

What the above data mean in a practical sense is that each of the political parties in Congress is more ideologically homogenous and that there is greater ideological distance between the two parties. Thus there is less need to compromise in a moderate direction when reaching a consensus within each party. And it is correspondingly more difficult to bridge the ideological gap between the contrasting perspectives of the two parties. Finding middle ground where compromise is possible becomes much more difficult. It is more likely that votes will be set up to highlight partisan differences and used for rhetorical and electoral purposes rather than to arrive at compromise policies.

According to Sarah Binder systematic comparisons of the ratio of actual laws enacted to important issues considered by the political system, two dimensions of polarization outweighed even the effect of divided government: the ideological gap between the parties and the ideological distance between the two houses of Congress. Thus if one is concerned with the problem of *gridlock* (which she defines as “the share of salient issues on the nation’s agenda left in limbo at the close of each Congress”), ideological polarization in Congress is even more important than divided government (when the president’s party does not control both houses of Congress).²⁹

From this rather abstract discussion of the consequences of polarization, we now turn to the more human consequences: the decline of civility in Congress.

The traditional norms of courtesy, reciprocity, and comity that marked the 1950s and 1960s in Congress began to break down in the 1970s.³⁰ Reflecting broader divisions in U.S. politics over the Vietnam War and Watergate, life in Congress became more contentious. Legislative language had traditionally been marked by overly elaborate politeness in order to manage partisan and sometimes personal conflict. But instances of harsh language and incivility became more common and more partisan in the 1970s and 1980s. In the House the Republicans felt increasingly suppressed by the majority Democrats through the rules of debate and legislative scheduling and, under the leadership of Newt Gingrich, began to use obstructionist tactics to clog up the legislative

process.³¹ The predictable Democratic response was to tighten up the rules even more to deal with disruptive tactics. After Republicans took control of Congress in 1994, relations between the parties continued to deteriorate.

Even the usually more decorous Senate suffered from declining civility. As long ago as the early 1980s Senator Joseph Biden remarked, “There’s much less civility than when I came there ten years ago. There aren’t as many nice people as there were before. . . . Ten years ago you didn’t have people calling each other sons of bitches and vowing to get at each other.”³²

Scholars David Brady and Morris Fiorina summarize the political context during the 1990s:

In a context in which members themselves have stronger and more distinct policy preferences, where they scarcely know each other personally because every spare moment is spent fund-raising or cultivating constituents, where interest groups monitor every word a member speaks and levy harsh attacks upon the slightest deviation from group orthodoxy, where the media provide coverage in direct proportion to the negativity and conflict contained in one’s messages, where money is desperately needed and is best raised by scaring the bejesus out of people, is it any wonder that civility and courtesy are among the first casualties?³³

The decline in civility that marked the end of the 1990s continued into the early twenty-first century, as the polarized politics of the era continued to erode the relatively more decorous times of the mid-twentieth century. With the narrow Republican control of the Senate at stake, Majority Leader Bill Frist of Tennessee decided to go to South Dakota to campaign against Minority Leader Tom Daschle. Such personal campaigning by the Senate majority leader in the minority leader’s home state was unprecedented in the twentieth century and highlighted the animosity that marked the polarization in Congress.³⁴ Frist was successful when Daschle lost his bid for reelection in 2004.

On the floor of the Senate, the personal animosity resulting from the polarization was illustrated when Vice President Cheney publicly said to Democrat Senator Patrick Leahy, “Fuck yourself.” Although such insults are common among politicians (and nonpoliticians), they are most often expressed in private. This particular insult was particularly egregious because it was not a comment about a third party but stated directly to the person insulted; it was not private, but public; it was said on the floor of Congress; and it was said publicly by the president of the Senate, the vice president of the United States. In explaining his remark, the vice president did not address a substantive difference between the two men, but said that it correctly expressed his feelings, “I expressed myself forcefully, felt better after I had done it.”³⁵

Democrats in 2004 also complained that Republicans systematically excluded them from important conference committee negotiations between the two houses and that the procedural rules were used against them in ways that exceeded the Democrats' partisan use of procedures in the later years of their domination of Congress. Republican Senator John McCain commented on the partisanship of the procedural battles, "The Republicans had better hope that the Democrats never regain the majority."³⁶ Sure enough, when the Democrats returned to power in 2007, they also used heavy-handed parliamentary tactics to ensure that their legislative priorities were enacted.

PRESIDENT AND CONGRESS IN AN ERA OF POLARIZED POLITICS

The Clinton era was a contentious time for relations between the President and Congress. At one level the conflict reflected a personal rivalry between Bill Clinton and Newt Gingrich. Clinton, a self-described "New Democrat," pulled the Democratic Party in a more moderate direction and "captured" some issues from the Republicans, for example, support for crime control, fiscal prudence, family values (at least in rhetoric). Gingrich, on the other side, had led the Republicans from the wilderness of minority status to the promised land of majority control of Congress, and sought to dismantle much of the liberal Great Society legislation that Democrats had passed in the 1960s.

President Bush campaigned for the presidency in 2000 as a moderate, "compassionate conservative," but once in office he pursued a conservative policy agenda of tax cuts and a unilateral foreign policy. Immediately after the 9/11 terrorist attacks on the United States, Bush enjoyed some of the highest approval ratings of the modern presidency and support for the United States throughout the world. By the end of his second term, his approval ratings were among the lowest of the modern presidency, and international attitudes toward the United States had dropped precipitously because of the Iraq war and U.S. treatment of detainees in the war on terror. This section will examine the polarized politics of the Clinton and Bush presidencies.

President Clinton and Congress: Partisan Conflict and Impeachment

In the 103d Congress (1993–1995) the Democrats still held a majority in Congress and had high hopes that they would achieve a positive policy record that would mark a resurgence of Democratic hegemony after twelve years of

Republican control of the presidency.³⁷ But the dream was not to come true. Clinton's first major policy push was for deficit reduction, which he won with no Republican votes, but which was bitter medicine for congressional Democrats who would rather have pushed new programs. Then, Clinton's big initiative for universal health care coverage was defeated by the Republicans in 1994. The huge and complex plan favored by the administration was framed by the Republicans as more "big government" and too costly. In 1994 the Republicans were able to use the Clinton record to "nationalize" the midterm congressional elections and take control of Congress for the first time in forty years.

The Gingrich-led Republican victory was so overwhelming that at the beginning of the 104th Congress they were able to push the Contract with America agenda through the House in the spring of 1995 and roll over the Democrats in doing so. The national agenda was so dominated by the Republican contract that on April 18, 1995, President Clinton had to argue that, as president, he was still "relevant" to the policy process. "The President is relevant. . . . The Constitution gives me relevance; the power of our ideas gives me relevance; the record we have built up over the last two years and the things we're trying to do give me relevance."³⁸ But when many of the Contract with America proposals foundered in the Senate, the Republicans decided to build into the appropriations process provisions that would go far beyond the contract in trying to reduce severely many of the government programs of which they disapproved. They wanted to abolish three cabinet departments and cut back severely programs in education, environmental protection, Medicare, and Medicaid as well as eliminate smaller programs such as the National Endowments for the Arts and Humanities.

These priorities were packaged in omnibus legislation in the fall of 1995, and President Clinton vetoed the bills several times. When the Republicans did not change the provisions, much of the government was shut down for lack of appropriations. When it became clear that the public saw the Republican Congress rather than President Clinton as responsible for the shutdown, Robert Dole, who was running for president, convinced Congress to pass appropriations bills and negotiate the budget bills. Clinton was reelected in 1996, and the Republicans retained control of Congress by narrow margins.³⁹

The 105th Congress (1998–1999) began with Clinton's plans to propose a number of "small bore" policy proposals that would be acceptable across the political spectrum, but in late January the Monica Lewinsky scandal hit. The rest of the spring was dominated by the efforts of Kenneth Starr to collect evidence for the Republican impeachment of Clinton in the fall of 1998. The articles of impeachment passed on party-line votes, with only a few members

from each party defecting on the two articles that were adopted. The 106th Congress began with the Senate trial of the president and its decision not to remove him from office. The rest of the session was taken up with the aftermath of the impeachment trial and partisan battles over policy priorities. The second session began in an election year (2000) and was not marked by major policy victories or an impressive legislative record.

As bitter as the battles between Clinton and Gingrich were, the argument of this chapter is that the fundamental causes of the partisan battles that dominated the four Congresses of the Clinton era were driven by the polarization of Congress rather than by the personalities of the two men. It must also be kept in mind that the whole political spectrum had shifted in a conservative direction in the 1980s, just as it shifted in a more liberal direction in the 1960s.

Partisan conflict and battles between the president and Congress, however, do not mean that no important legislation gets passed. Stalemate is a relative term, and the government keeps operating (even during a shutdown) during intensely partisan periods. Thus President Clinton and Congress were able to pass a number of important policy initiatives. In 1993 President Clinton fought for congressional approval of the North American Free Trade Agreement (NAFTA). But he was able to get it passed only by knitting together a coalition of more Republicans than Democrats.

Similarly, although he thought the measure too harsh, President Clinton decided to sign the Republican welfare reform bill in the summer of 1996, despite opposition of the Democrats in Congress (and some in his own administration). It was an election year, and Clinton did not want to give Republicans the opportunity to argue that he vetoed three welfare bills after promising to “end welfare as we know it.”

In 1997 President Clinton and the Republican Congress were able to compromise in order to come to an agreement that would balance the budget within five years. This impressive agreement was achieved by the willingness of each side to set aside partisan warfare and negotiate an outcome in which each side could claim victory. The 1997 deal was followed by a FY1998 budget that was actually balanced—four years earlier than had been projected, and surpluses continued in 1999, 2000, and 2001.⁴⁰ This historic turnaround was based on the groundwork laid by Presidents Bush in 1990 and Clinton in 1993 with their deficit reducing agreements and spending constraints. But it was made possible by a booming economy and historically high stock market.⁴¹

In the spring and summer of 2000 President Clinton was able to work with Republicans in Congress to win approval of permanent normal trade relations with China. In the House more than twice as many Republicans as Demo-

crats supported the measure, echoing the coalition that passed NAFTA in 1993. The above policy achievements were possible only through bipartisan cooperation and the willingness to share credit. But such cross-party victories have been unusual; the primary pattern has been one of partisan rancor and stalemate.

Clinton ended his terms in office with a limited, but creditable legislative record. His overall legacy, however, was marked by policy struggles with the Republican Congress and his impeachment in 1998. Eight years later, President Bush would also leave office with a mixed legislative record.

President Bush and Congress: Two Wars and Constitutional Challenges

President Bush's terms in office were marked by his initial conservative policy agenda, historic public support after 9/11, the divisive war in Iraq, and his aggressive assertions of presidential power.

During the presidential campaign of 2000 candidate Bush set a moderate tone by asserting that he was a "compassionate conservative" and advocating educational proposals that often appealed to Democratic voters. He promised to "change the tone" in Washington by taking a bipartisan approach to governing, as he had in Texas. While arguing for more defense spending and a national missile defense, privatizing part of Social Security, and a large tax cut, the emphasis was not on the more conservative aspects of his policy agenda.

In his initial months in office, however, he pursued a conservative agenda that appealed to his Republican base in the House of Representatives and the electorate. In January 2001 Republicans controlled both houses of Congress and the presidency for the first time since the beginning of the Eisenhower administration, but their control of Congress was narrow, with a 221 to 212 margin in the House (with two independents) and a 50–50 tie in the Senate (with the vice president able to cast the tie-breaking vote).

President Bush's first and largest legislative initiative was to propose a large tax cut, as he had promised in the campaign. The administration's proposal was for a \$1.6 trillion cut over ten years; Congress gave him a tax cut of \$1.3 trillion, an important policy victory for the president. In another of Bush's top priorities he established by executive action a White House Office of Faith-Based and Community Initiatives to facilitate the use of federal funds for social purposes to be administered by faith-based organizations. He also won approval of the No Child Left Behind program and a new Medicare drug benefit by compromising with the Democrats.

But the Bush administration was transformed on September 11, 2001.

The terrorist attacks on the World Trade Towers and the Pentagon created a surge of public unity that gave President Bush unprecedented public support and a compliant Congress willing to support the administration's war on terrorism. The first and most important political effect of the terrorist bombings of September 11 was a huge jump in public approval of President Bush. In the September 7–10 Gallup poll public approval of the president stood at 51 percent; the next poll, on September 14–15, registered 86 percent approval—a 35 percent jump, virtually overnight.

Congress quickly passed a bill providing \$40 billion in emergency appropriations for funding military action, beefing up domestic security, and rebuilding New York City. Congress also passed antiterrorism measures proposed by Attorney General John Ashcroft with broad, bipartisan support. The administration also asked for and got sweeping authority to pursue an international war on terrorism. On September 14 Congress passed a joint resolution giving President Bush broad discretion in his direction of the military response to the terrorist attacks. The grant of power was sweeping in that it allowed the president to decide as “he determines” which “nations, organizations, or persons” U.S. forces may attack.

The president used his authority to attack the Taliban regime in Afghanistan, which had harbored the Al Qaeda terrorists. After U.S. air power and the ground forces of the Northern Alliance successfully defeated Taliban forces, the United States and allied troops occupied the country. As the war in Afghanistan went on and Osama bin Laden was being pursued, secret planning was under way for war with Iraq.⁴² But the partisan unity that marked the administration's immediate reaction to the 9/11 attacks and the war in Afghanistan began to erode as the administration's plans for war in Iraq came to be debated in 2002.

In the fall of 2002 President Bush decided to go to the United Nations for a resolution demanding that Saddam Hussein disclose his weapons of mass destruction (WMD). He then went to Congress for a resolution giving him authority to take the country to war with Saddam. The president framed the issue as the necessity of standing up to Saddam Hussein and backing the president in his attempt to get Saddam to back down. With an eye to the upcoming 2002 elections, the implication was that if Democrats in Congress did not support the president, they would be attacked in the campaign as weak on national security. The final resolution passed Congress by large margins in the House and Senate.

After the administration convinced Congress to give the president authority to attack Iraq, the UN Security Council passed Resolution 1441, which ordered UN weapons inspectors into Iraq and gave them until February 21, 2003, at the latest, to report back on Iraq's compliance. The UN weapons in-

spectors searched Iraq with seeming *carte blanche* and surprise visits to sites of possible weapons manufacture, but by late January had found no “smoking gun.” Chief UN inspector, Hans Blix, said that he needed more time to do a thorough job. But President Bush became increasingly impatient with the inability of the UN inspection team to locate evidence of Iraq’s weapons of mass destruction.

In his State of the Union address on January 28, 2003, President Bush said that the UN had given Saddam Hussein his “final chance to disarm.” On March 19 U.S. forces attacked Saddam, and after three weeks had prevailed over Saddam’s forces in the battle for Baghdad. Winning the initial military battle was relatively easy for U.S. forces, but controlling the country after the initial victory was another matter. Paul Bremer, the U.S. person in charge of the occupation, decided to disband the Iraqi army and eliminate all Baathist party members from the top levels of the Iraq state bureaucracy. These decisions threw hundreds of thousands of Iraqis out of work and deprived the U.S. occupation of the capacity to provide security for the country.

As a result, an insurgency against U.S. forces grew, and sectarian fighting between Sunni and Shiite factions became very bloody. For the rest of the Bush administration, U.S. forces fought the insurgency, losing more than four thousand U.S. soldiers and killing tens of thousands of Iraqis. The weapons of mass destruction that justified the war to the American people were never found. Nevertheless, in a campaign in which President Bush emphasized the terrorist threat to national security, he was able to defeat Democrat John Kerry in the 2004 election. But the deteriorating situation in Iraq dominated President Bush’s second term in office.

After his election victory in 2004, President Bush declared “I earned capital in the campaign, political capital, and now I intend to spend it.”⁴³ In early 2005 he launched a campaign to introduce private accounts into the Social Security system and traveled throughout the country to win support for it. Public opinion, however, was not swayed, and he admitted defeat and dropped the proposal. Then in August 2005 Hurricane Katrina devastated the Gulf Coast and particularly New Orleans. The administration was not able to deal effectively with the aftermath, and President Bush did not give the impression of being closely engaged in the federal response. Though the resulting disaster was not all its fault, the administration was blamed for its inability to deal expeditiously with the disaster.

The failure of the president’s Social Security initiative and the aftermath of Hurricane Katrina began a decline in President Bush’s public approval and support in Congress, even among Republicans. Republicans in Congress passed a harsh immigration bill, and Bush eventually signed a law to create a fence along the southern border between the United States and Mexico. Congress

also passed a bill to allow the government to fund research using stem cell research, and President Bush used the first veto of his presidency to stop it. With the president's public support eroding, the Republicans went into the 2006 elections at a disadvantage, and the Democrats were able to recapture control of Congress. They picked up thirty seats in the House and six seats in the Senate, giving them significant majorities in both chambers. Thus President Bush received little legislative support during the 110th Congress, but he was able to stymie Democratic attempts to slow the war in Iraq.

In Barbara Sinclair's analysis, Bush sought large changes in public policy and used a partisan strategy to achieve them, and he was partially successful with his partisan approach. Sinclair describes Bush's approach to winning legislation in Congress in his first term: he pursued a few major priorities "compromising only late in the process and when absolutely necessary, and having the House go first and to the right, Bush got more of what he wanted on those bills that passed than he would have with a more accommodating strategy."⁴⁴

Constitutional Challenges to Congressional Authority

Apart from President Bush's legislative record with Congress, he mounted an aggressive campaign to enhance executive power at the expense of the other two branches. From the beginning of the administration, both President Bush and Vice President Cheney argued that Congress had usurped presidential power in the 1970s and they intended to right the balance. The attacks of 9/11 gave them the opportunity to assert executive power and use the commander in chief clause of the Constitution to exclude Congress from important national security policies. Among other assertions of presidential power, President Bush pushed further than other presidents in four policy areas: he asserted the authority to detain suspects of terrorism indefinitely without charging them with crimes, he suspended the Geneva Conventions on the treatment of prisoners, he ordered the national security agency to monitor communications involving Americans without the warrants required by law, and he used signing statements to an unprecedented extent. A brief explanation of each of these claims to presidential power follows.⁴⁵

After the U.S. invasion of Afghanistan, the administration faced the problem of what to do with the many prisoners that were captured by U.S. and allied forces. Some of these prisoners were suspected of aiding Al Qaeda and posed a danger to the United States. The administration decided to fly the detainees to Guantanamo Bay, Cuba, an area of the island under complete U.S. control. Ordinarily, prisoners of war would be imprisoned to keep them off the battlefield and released at the end of the war. But the Bush administra-

tion envisioned the war on terror lasting for decades, with no sharp ending where the enemy surrendered. Some of the detainees who were incarcerated at Guantanamo for an indefinite period argued that they did not oppose the United States and committed no terrorist acts and applied for writs of habeas corpus. Such an appeal would allow judges to decide whether the administration had sufficient evidence to keep them in custody.

The administration argued in court that the detainees had no right to habeas corpus appeals, in effect suspending the right of appeal that the Constitution says can only be suspended by Congress in cases of invasion or insurrection. After years of appeals, the Supreme Court decided that detainees did have the right to appeal to the court system and present arguments that they were detained without sufficient evidence of their guilt. After this legal defeat, President Bush was able to persuade Congress to strip the courts of jurisdiction over the detainee cases. But in the end, the Supreme Court decided that the president does not have the right to suspend habeas corpus and that the laws that stripped the courts of jurisdiction were unconstitutional. Thus President Bush's assertion of the unenviable right to hold detainees in prison indefinitely without charging them with a crime was eventually overturned by the Supreme Court.

Implied in the administration's decision not to charge suspected terrorists with crimes was the decision that obtaining intelligence from them was more important than convicting them of crimes and punishing those found guilty. The administration feared that there would be future attacks on the United States by Al Qaeda and that those plans could be discovered by interrogating detainees at Guantanamo. When intelligence was slow in coming, the administration decided to use harsh interrogation methods that were forbidden by the Geneva Conventions, which were signed by the United States in 1955. To allow such harsh interrogations, President Bush suspended the Geneva Conventions for Al Qaeda suspects on February 7, 2002.

The administration trained interrogators in techniques that had been developed by the Chinese and North Koreans and used on U.S. prisoners during the Korean War in order to force them to make false confessions that they committed atrocities. These techniques were used at Guantanamo and then were imitated at Bagram Air Force Base in Afghanistan and Abu Ghraib prison in Iraq. In April 2004 photographs of U.S. soldiers grossly abusing Iraqi prisoners at Abu Ghraib became public and investigations of the origins of the abuses were begun. A number of official government reports were issued that documented the harsh techniques, and Congress, in spite of veto threats by President Bush, passed the Detainee Treatment Act of 2005 that forbade torture or cruel and degrading treatment of detainees. Nevertheless, the Bush administration maintained that the CIA could continue to use harsh

interrogation techniques that were denied to the U.S. military. Critics of the administration argued that the Supreme Court made it clear that the United States was bound by the Geneva Conventions, and that any CIA secret techniques that broached the treaty were illegal.

Shortly after the 9/11 attacks, President Bush secretly ordered the National Security Agency to undertake surveillance of communications between foreign and U.S. persons that might involve terrorism. The Foreign Intelligence Surveillance Act allows surveillance of U.S. communications only after a warrant is secured from a special court. Despite the denial of only five of more than 18,000 applications for warrants from 1978 to 2006, President Bush decided that the law was too cumbersome and he did not have to obtain the warrants required by law.

The issue raised one of constitutional presidential authority versus the constitutional rights and duties of the other two branches. The Constitution does not give the president the authority to ignore the law. The wisdom of surveillance policy is a separate issue. In 2007 President Bush convinced Congress to amend the law so that he could continue to conduct the surveillance that he had previously been doing illegally. Despite this political victory, President Bush did not admit that he did not have the constitutional right to ignore the law as he had before the new law was passed.

Since early in the Republic, presidents have issued statements upon their signing bills into laws. Usually these statements have been hortatory, often praising members of Congress for their participation or touting the importance of the new law to the country. By the late twentieth century, presidents occasionally issued signing statements that challenged the constitutionality of the laws they were signing, and the Reagan administration tried to establish them as a regular part of the legislative process. President Bush, however, used signing statements very aggressively to challenge the idea that laws could constrain his actions as president. For instance, he used them to indicate that he did not feel bound by all of the provisions of laws regarding: reporting to Congress pursuant to the PATRIOT Act; the torture of prisoners; whistleblower protections for the Department of Energy; the number of U.S. troops in Columbia; the use of illegally gathered intelligence; and the publication of educational data gathered by the Department of Education. He issued more than twelve hundred signing statements during his two terms, more than twice as many as all other previous presidents combined.

The implications of these sweeping claims to presidential authority are profound and undermine the very meaning of the rule of law. Despite the Constitution's granting lawmaking power to the Congress, the Bush administration maintained that executive authority and the commander in chief clause can overcome virtually any law that constrains the executive. President Bush

was thus claiming unilateral control of the laws. If the executive claims that it is not subject to the law as it is written but can pick and choose which provisions to enforce, it is essentially claiming the unitary power to say what the law is. The “take care” clause of article II can thus be effectively nullified.

Even though there may occur some limited circumstances in which the president is not bound by a law, expanding that limited, legitimate practice to more than one thousand threats to not execute the law constitutes an arrogation of power by the president. The Constitution does not give the president the option to decide *not* to faithfully execute the law. If there is a dispute about the interpretation of a law, the interaction of the three branches in the constitutional process is the appropriate way to settle the issue. The politics of passage, the choice to veto or not, and the right to challenge laws in court all are legitimate ways to deal with differences in interpretation. But the assertion by the executive that it alone has the authority to interpret the law and that it will enforce the law at its own discretion threatens the constitutional balance set up by the Constitution.

CONCLUSION

The Clinton and Bush presidencies each experienced difficult relations with Congress. Clinton did not get much of what he wanted from the Democratically controlled Congress in his first two years in office. Ironically, his major achievements in office resulted from six years of his contentious relations with the Republican-controlled Congress of the late 1990s. He was able to blunt the more extreme cuts in domestic programs sought by the Gingrich-led House, and in negotiations with them achieved a series of four budget surpluses, the only surpluses the United States enjoyed since 1969. His impeachment by the House marked the low point of his administration, one of the most hostile incidents in president-Congress relations since the Nixon administration.

George W. Bush got most of what he wanted from the Republican-controlled Congress for his first six years in office. He did not even use his veto power until his sixth year in office. His relative success reflected the willingness of Democrats to vote for Bush’s national security priorities as well as the care that Republicans in Congress took to shape legislation to his liking. He might also have felt little need to issue vetoes because his signing statements declared that he did not feel bound by many provisions of the laws that Congress passed and he signed. When the Democrats took over Congress in the 2006 elections, he was still able to stymie them on the national security issues that were important to him.

Barak Obama took office in 2009 promising to change the partisan tone in Washington. He carefully courted Congress and paid particular attention to Republicans as he sought support for his first policy initiatives. First among them was the huge expenditure proposal that totaled more than \$750 billion that he hoped would blunt the economic downturn set off by the financial crisis in the fall of 2008. Republicans in Congress signaled that they would oppose Obama on that and other issues. Although the Democrats controlled both houses of Congress by significant margins because of the 2008 elections, Obama was not likely to have an easy time with Congress. New Democrats who were elected in 2008 were often moderates who defeated liberal Republicans, so the Democratic caucus was not as unified as the Republicans were in the House. And in the Senate the Democrats lacked the necessary votes to invoke cloture to shut off a Republican filibuster.

Thus, despite the sizable Democratic majorities in Congress and President Obama's overtures to Republicans, the polarization that had characterized the previous three decades was likely to guarantee continuing friction between the president and Congress in their rivalry for power.

NOTES

1. See Gary Jacobson, *A Divider, Not a Uniter* (New York: Longman, 2006).
2. Sean M. Theriault, *Party Polarization in Congress* (New York: Cambridge University Press, 2008), 26. The Wallace quote is also from Theriault.
3. Nelson Polsby, *How Congress Evolves* (Oxford: Oxford University Press, 2004), 87–93.
4. Polsby, *How Congress Evolves*, 80–94.
5. For analyses of the changing electoral makeup of the South and the partisan implications, see: Earl Black and Merle Black, *The Vital South* (Cambridge, Mass.: Harvard University Press, 1992); Bruce Oppenheimer, "The Importance of Elections in a Strong Congressional Party Era," in *Do Elections Matter?* eds. Benjamin Ginsberg and Alan Stone (Armonk, NY: M. E. Sharpe, 1996); Gary Jacobson, "The 1994 House Elections in Perspective," in *Midterm: The Elections of 1994 in Context*, ed. Philip A. Klinker (Boulder, CO: Westview Press, 1996); Gary C. Jacobson, "Reversal of Fortune: The Transformation of U.S. House Elections in the 1990s" (paper presented at the Midwest Political Science Meeting, Chicago, April 10–12, 1997); Paul Frymer, "The 1994 Electoral Aftershock: Dealignment or Realignment in the South," in *Midterm: The Elections of 1994 in Context*, ed. Philip Klinker (Boulder, CO: Westview Press, 1996); Lawrence C. Dodd and Bruce I. Oppenheimer, "Revolution in the House: Testing the Limits of Party Government," in *Congress Reconsidered*, Dodd and Oppenheimer (Washington, DC: CQ Press, 1997), 29–60, and "Congress and the Emerging Order: Conditional Party Government or Constructive Partisanship?" 371–89.

6. Polsby, *How Congress Evolves*, 94.
7. Theriault, *Party Polarization*, 50.
8. Gary C. Jacobson, *The Politics of Congressional Elections*, 6th ed. (New York: Pearson Longman, 2004), 252.
9. Charlie Cook, "Value of Incumbency Seems to Be Growing," *National Journal*, March 20, 2004, 906.
10. Theriault concludes that redistricting led to 16 to 48 percent of safe seats and accounts for 10–20 percent of the polarization in Congress. *Party Polarization*, 83.
11. Theriault, *Party Polarization*, 111. See also Morris Fiorina, *Culture War?* (New York: Pearson Longman, 2006).
12. Quoted in Jeffrey Toobin, "The Great Election Grab," *New Yorker*, December 8, 2003, 76.
13. See Gary C. Jacobson, "Explaining the Ideological Polarization of the Congressional Parties Since the 1970s," in *Parties, Procedure and Policy Choice: A History of Congress*, eds. David Brady and Mathew McCubbins (Palo Alto, CA: Stanford University Press, forthcoming), draft of June 2004, 10–12. For an argument that individual shifts in ideology contributed to the overall shift, see Sean M. Theriault, "The Case of the Vanishing Moderates: Party Polarization in the Modern Congress" (manuscript, Austin, University of Texas, April 15, 2004).
14. Theriault, *Party Polarization*, 130.
15. Burdett A. Loomis and Wendy J. Schiller, *The Contemporary Congress*, 4th ed. (Belmont, CA: Wadsworth/Thomson Learning, 2004), 66.
16. In Florida, if an incumbent is not opposed, his or her name does not appear on the ballot. Thus the candidate is "automatically reinstated in Washington" without any constituent having to cast a ballot in his or her favor. David S. Broder, "No Vote Necessary," *Washington Post*, November 11, 2004, A37.
17. See Russell Renka, "The Incumbency Advantage in the U.S. Congress," at cstl-cla.semo.edu/renka/ps103/Fall2007/congressional_incumbency.htm (accessed January 13, 2009).
18. David E. Price, "House Democrats under Republican Rule," *Miller Center Report* 20, no. 1 (Spring/Summer 2004): 21.
19. Polsby, *How Congress Evolves*, 80, 150.
20. See Loomis and Schiller, *Contemporary Congress*, 150–60.
21. For an analysis of the 1994 elections and the 104th Congress, see James P. Pfiffner, "President Clinton, Newt Gingrich, and the 104th Congress," in *On Parties: Essays Honoring Austin Ranney*, eds. Nelson W. Polsby and Raymond E. Wolfinger (Berkeley, CA: Institute of Governmental Studies Press, 1999), 135–68.
22. Polsby puts it this way, "Air conditioning (plus other things) caused the population of the southern states to change [which] changed the political parties of the South [which] changed the composition and in due course the performance of the U.S. House of Representatives leading first to its liberalization and later to its transformation into an arena of sharp partisanship, visible among both Democrats and Republicans." *How Congress Evolves*, 3.
23. See Sarah Binder, et al., "Assessing the 110th Congress, Anticipating the 111th," in the "Mending the Broken Branch" series, vol. 3 (January 2009),

at www.brookings.edu/~media/Files/rc/papers/2009/0108_broken_branch_binder_mann/0108_broken_branch_binder_mann.pdf (accessed January 13, 2009).

24. Jon R. Bond and Richard Fleisher, "The Disappearing Middle and the President's Quest for Votes in Congress," *PRG Report* (Fall 1999): 6.

25. Bond and Fleisher, "The Disappearing Middle," 7. The authors calculate their ideological scores from the rankings of liberal and conservative groups, Americans for Democratic Action (liberal) and American Conservative Union (conservative).

26. Sarah Binder, *Stalemate: Causes and Consequences of Legislative Gridlock* (Washington, DC: Brookings, 2003), 24, 66.

27. Theriault, *Party Polarization*, 226.

28. Calculation by Keith Poole, reported by Zachary A. Goldfarb, "Democratic Wave in Congress Further Erodes Moderation in GOP," *Washington Post*, December 7, 2006, A29.

29. Sarah A. Binder, "Going Nowhere: A Gridlocked Congress?" *Brookings Review* (Winter 2000): 17.

30. See Eric M. Uslaner, *The Decline of Comity in Congress* (Ann Arbor: University of Michigan Press, 1993).

31. Eric M. Uslaner, "Is the Senate More Civil than the House?" in *Esteemed Colleagues: Civility and Deliberation in the U.S. Senate*, ed. Burdett A. Loomis (Washington, DC: Brookings Institution, 2000), 32–55.

32. Uslaner, "Is the Senate More Civil than the House?" 39.

33. David Brady and Morris Fiorina, "Congress in the Era of the Permanent Campaign," in *The Permanent Campaign and Its Future*, eds. Norman Ornstein and Thomas Mann (Washington, DC: Brookings-AEI, 2000), 147.

34. Carl Hulse, "A Longtime Courtesy Loses in the Closely Split Senate," *New York Times*, April 24, 2004, A7; Sheryl Gay Stolberg, "Daschle Has Race on His Hands and Interloper on His Turf," *New York Times*, May 23, 2004, 18.

35. Dana Milbank and Helen Dewar, "Cheney Defends Use of Four-Letter Word," *Washington Post*, June 26, 2004, A4.

36. Charles Babington, "Hey, They're Taking Slash-and-Burn to Extremes!" *Washington Post*, December 21, 2003, B1, B4.

37. See James P. Pfiffner, "President Clinton and the 103rd Congress: Winning Battles and Losing Wars," in *Rivals for Power: Presidential-Congressional Relations*, ed. James Thurber (Washington, DC: CQ Press, 1996), 170–90.

38. Quoted in Joe Klein, "Eight Years: Bill Clinton and the Politics of Persistence," *New Yorker*, October 16 and 23, 2000, 209.

39. For an analysis of the shutdown and the partisan battles surrounding it, see Pfiffner, "President Clinton, Newt Gingrich, and the 104th Congress," 135–68.

40. See Allan Schick, *The Federal Budget: Politics, Policy, Process* (Washington, DC: Brookings Institution, 2000), 26–30.

41. See Louis Uchitelle, "Taxes, the Market and Luck Underlie the Budget Surplus," *New York Times*, October 20, 2000, 1.

42. Bob Woodward, *Plan of Attack* (New York: Simon and Schuster, 2004), 77, 80, 96, 98. In the spring of 2002, President Bush said several times in news conferences, "I have no war plans on my desk." Woodward, *Plan of Attack*, 120, 127.

43. Quoted in Barbara Sinclair, "Living (and Dying?) by the Sword," in *The George W. Bush Legacy*, eds. Colin Campbell, Bert Rockman, and Andrew Rudalvige (Washington, DC: CQ Press, 2008), 181.

44. Sinclair, "Living (and Dying?) by the Sword," 184.

45. For a more thorough analysis of these constitutional issues, see James P. Pfiffner, *Power Play* (Washington, DC: Brookings Institution, 2008).