

Promoting the General Welfare

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NEW PERSPECTIVES ON
GOVERNMENT PERFORMANCE

Alan S. Gerber
Eric M. Patashnik
editors

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Congress as Problem Solver

DAVID R. MAYHEW

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“U.S. citizens expect Congress to address key policy issues ranging from health care to education and homeland security. Some critics argue that law-making today is mostly a symbolic or rhetorical exercise designed to score political points rather than a genuine collective effort to promote social welfare. Does the American Congress have the institutional capacity and/or political incentive to be an effective problem solver? What political or other factors tend to improve or reduce the quality (along dimensions such as appropriate priority setting, technical soundness and instrumentality) of Congress’s legislative product?”

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That was the assignment posed to me by the editors of this volume. In addition, the policy areas of housing, education, and criminal justice were specified as ones in which problems might be solved.

Let me start with a discussion of the ideas of a “problem” and “problem solving.” What is a problem? It is something like an unfortunate or disordered state of affairs to which there might be a “solution.” Probably a problem is not quite the same thing as a “puzzle,” to which there is always a solution. But in the case of a problem, there is good reason to think that there might exist a solution, or possibly a family of solutions.

But in whose mind do these considerations reside? It has to be somebody’s. Somebody needs to read a state of affairs as posing a “problem” and

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imply that it might be possible to arrive at a solution. In the case of a sewer overflow on my front lawn, this is a relatively easy undertaking. But in the case of an entire society, where are we? How can we think about “problems” or “problem solving” for an entire society?

Perhaps it will help to distinguish problem solving from other styles of policymaking. Is distributive politics problem solving? Well, it does not look that way. I get a dam, you get a dam, he gets a dam. That does not seem to meet the commonsense meaning of the idea of problem solving. What about policymaking where one ideological side defeats another, or one party simply votes down the other? Are those kinds of enterprises problem solving? They do not seem to be, at least ordinarily. They seem to be exercises of belief system or muscle. It might be a consideration that, in cases like these, a large proportion of the society will insist that a problem is being caused, not solved, by a specified government action. Was the Bush tax cut of 2001 an instance of problem solving?

Problem solving seems to entail a particular, empirically detectable mindset. Some person, or some large or small set of persons, needs to frame a state of affairs as exhibiting a “problem” and to point toward a “solution.” Can a whole society, or a large or hegemonic share of one, do this? Possibly the most confident affirmative answer to this question was posed to thinkers and actors of the American Progressive era. For John Dewey, science was isomorphic to democracy.¹ Both are a search for solutions—in the case of democracy a public can arrive at a satisfactory system of governance through seeking and sharing information and ascending a learning curve. In an optimally functioning political system, the public, partly through the work of its elective representatives, comes to agree on what the problems are, perhaps frames general solutions, and then mandates government agencies to work out the details and implement them. “Research bureaus” commissioned by governments or legislatures figured importantly in the Progressive scheme of things. In some areas, where the public interest was obvious, independent commissions could be given open mandates to gather the facts and do the job. Above all, nonpartisanship was to reign.

This is a thoughtful blueprint for societal and governmental action. It is one way for a society to operate, but one quickly has reservations. Partisanship, ideological warfare, and selfish claims will intrude. Also, having a society define something as a “problem” can raise its own horrors. Consider “the Jewish problem” that became a widespread concern in Germany a century ago. Consider Rwanda. One really does need to pause. But let us posit that in a reasonably decently functioning society, where monsters do not lurk, problem

solving has attractions as a way of socially constructing reality and making policy. As a definitional matter, it can be said to involve a widespread, shared perception that some state of affairs poses a problem and that policymaking should entail a search for a largely agreed on solution. Consider the Danes.

Now, some may object that we do not really need all this. Experts are all we need for a problem-solving mode to prevail. Let them define, or at least crystallize, the lineaments of the problems, tell us how to solve them, and then solve them. That is the way the Y2K problem was handled, more or less, as the 2000 calendar loomed. Airport inspections have perked up since 2001.

Unfortunately, however, once beyond a realm of technical or semitechnical matters, the recognition of problems and the weaving of causal stories having to do with their origins and possible solutions are in large part a matter of social construction. Often, the citizens of a society will not agree on what a problem is or whether it exists. Consider as possible problems, for example, obesity, the lapsing of Christian faith, obscene Hollywood movies, provision of health care (remember the Republican riposte in 1993–94: “There *is* no health-care crisis”), income inequality, high taxes, capital punishment, the electoral college, the USA Patriot Act, global warming, the Saddam Hussein regime, the budget deficit, immigration, the decline of labor unions, global outsourcing, affirmative action, and lawsuits against physicians. In all these cases, some people would say a problem exists or existed; others would not.

Even if there were agreement on whether a problem exists, the causal stories related to it may differ. If schools are failing, will vouchers help? If crime is rampant, is poverty or just plain bad behavior at the root of it? There is no easy way to get around these difficulties by consulting a natural scientist or an economist. The other side may consult one, too, with an equally impressive degree. Recently, for example, that has happened on the questions of school vouchers and the effects of the minimum wage—striking illustrations of the way disagreements within social science can replicate and bolster disagreements within society. On the evidence to date, the question of what causes crime cannot be settled by expert advice. How about housing, another problem area assigned to me here? At perhaps the chief critical juncture in this issue domain during American history, the close of World War II, when widespread agreement did indeed exist about the existence of a housing shortage, there was also classic disagreement about how to solve it. Should a solution entail government provision or the market? Causal stories clashed. This was not a question resolvable through resort to experts. A similar controversy convulsed Capitol Hill in the late 1970s in the face of a major oil

shortage—an indisputable problem of that era. What was the best solution?—rationing and regulation or the operation of the market? Talented experts could be summoned on both sides.

On top of all this, even if agreement can be reached on what a problem is and how to solve it, there remains the formidable question of weighing problems according to their importance in a context of scarce time, attention, and money. Which ones should be tackled and solved? It is a rare society that will leave such weighing to experts.

Even the plainest, seemingly least-asterisked instances of societal problem solving can exhibit aspects like those described above. As an iconic example from fiction, consider the movie *High Noon*. As viewers, we learn that there was a problem. The bad guys led by Frank Miller were coming back to Hadleyville. They posed a threat of disorder, gunplay, violence in general, immorality in general, a decline of law and civic order. The solution was to stop them. Marshal Will Kane (Gary Cooper) did exactly that—indeed, with the help of his wife (Grace Kelly), he killed them all. In short, a problem arose and it was solved. That is the most obvious meaning of *High Noon*. But along the way we learn about the complexities of problem recognition in a democratic setting. There can be a good deal of pluralism. For Mayor Jonas Henderson (Thomas Mitchell) and many others, the real problem was that Marshal Kane might get the town shot up. It was a matter of weighing concerns. And of causal analysis: would the marshal's defensive strategy really work? For one thing, would Kane be able to solve a pressing collective action problem? (Few local citizens were ready to join an armed defense against the scary Frank Miller.) On balance, the mayoral faction concluded, after much chin scratching, would it not be better to have the bad guys back than to risk the damage to life and property needed to keep them away? Perhaps the marshal should just leave town himself. This was an entirely plausible stance. In addition, we learn that the town's saloon dwellers—of whom there were many, and they were citizens, too—saw the marshal himself as the chief problem. He had been a chronic problem. There was too much law and order in Hadleyville. Get rid of the marshal, welcome the bad guys back, and the town would be magnificently wide open again.

In general, a good many complexities familiar to real societal problem solving appear in this *High Noon* story—dissonant problem perception, competing causal analysis, uneasiness about expertise (the marshal was a package of expertise), cacophonous deliberation, the intrusion of public opinion. It is not a simple story.

Hadleyville seems to have lacked a legislature. Add one to the picture and what happens? More specifically, in terms of this chapter, what is, can be, or should be the role of the U.S. Congress in a political realm where, as an ingoing stipulation, problem solving is the aimed-at style of decisionmaking? I mean problem solving in a particular and ambitious sense. Congress is not a research bureau. Nor is it an organization that merely creates and hires research bureaus. It is a representative institution poised in a complicated way between ordinary citizens and specialized bureaucrats. To contribute effectively to societal problem solving, its members need to be able to help define as "problems" the often inchoate fancies, preferences, or demands of society or its elite sectors. The members need to make such definitions widely known and accepted. They need to frame these problems in ordinary, commonsense language so as to bring the public along, yet also frame them in a way that adapts to the instrumental-rationality needs of political executives and bureaucrats. They need to merchandise plausible causal stories to a wide audience, or else the roll-call votes to take action might not be there. Beyond this, they need to probe evidence reasonably hardheadedly in a search for "solutions," and they need to deliberate, bargain, and compromise in a fish-bowl setting in a fashion that can swerve both publics and experts toward emergent solutions.

That seems to be what problem solving should amount to in a popularly based legislature. It is a tall order, but as a descriptor of congressional activity it does not refer to a null set. To go back a ways, consider the Missouri Compromise of 1820 or the Compromise of 1850. In both of these cases, the problem was North-versus-South friction, and the solution was a complicated deal arrived at by inventive politicians operating in a context of lengthy deliberation contributed to and monitored by a broad public. Here are some recent instances. In the early 1980s, a projected insolvency of Social Security rose high on the public and congressional agenda courtesy of Senator Daniel Patrick Moynihan and others, who, through extended bargaining and deliberation, crafted a bipartisan \$170 million solution of tax increases and benefit cuts. Also in the 1980s, members of Congress took the lead in defining, highlighting, and to some degree solving the "deficit problem" at a time when the Reagan presidency was relaxed about the matter. Thus, for example, the Gramm-Rudman-Hollings Act of 1986 was passed. In the early 1990s, Senators Sam Nunn and Richard Lugar took the lead in defining a "loose nuclear material in the ex-Soviet Union" problem and in crafting an enactment to help solve it. A few years ago, Senator John McCain and others

highlighted a “soft money” problem, ran a publicity campaign, worked both sides of the aisle in both houses, spurred a classic debate in the Senate, and kept on driving until Congress passed the McCain-Feingold Campaign Finance Reform Act of 2002. Yes, this statute has its downsides, but the process that generated it is a textbook instance of problem solving.

What kind of attributes does the U.S. Congress or its membership need to possess to engage effectively in problem solving? Assume the American Constitution, as it exists today, that is, and consider secondary attributes. Assume American society as it exists today. I believe that this is an interesting question, and I will attempt here to address it. I will suggest ten such attributes. In discussing some of them, I will offer judgments about how well Congress is performing today compared with past times or with plausible absolute standards. The resulting report card is not very favorable.

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Transparency

No legislative body could foster societal problem solving, as I have defined it, without opening its proceedings to the public. Deal making may not need to be open, but the airing of ideas, deliberation, and the cut and thrust of conflict do.² Famously, the U.S. Senate met in secret during its very early years and failed to forge much of a connection then to the public. It is fortunate that the Constitution requires each house to “keep a journal of its proceedings, and from time to time publish the same” and stage yea-and-nay roll calls, on the demand of one-fifth of members, which need to be published in the journals. This is vital stuff, although it is taken for granted.³ This is the basic congressional transparency framework. But there can be angles. C-SPAN is one current favorable angle. Yet there are disturbing recent developments in the processes of the U.S. House of Representatives, as indicated in the following from a long, convincing analysis in the *Boston Globe*, published in 2004:⁴

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The House leadership is changing the way laws are made in America, favoring secrecy and speed over open debate and negotiation. Long-standing rules and practices are ignored. Committees more often meet in secret. Members are less able to make changes to legislation on the House floor. Bills come up for votes so quickly that elected officials frequently don't know what's in them. And there is less time to discuss proposed laws before they come up for a vote. . . . Bills are increasingly crafted behind closed doors. . . . The amount of time spent openly debating bills has dropped dramatically.

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And so on.

To be sure, this state of affairs traces back many years through former House Speaker Jim Wright and the previous Democratic ascendancy. It is not just a fancy of Speaker Dennis Hastert and former majority leader Tom DeLay. But we as political scientists seem to have become numbed to it. Focused as we are on parties, roll calls, and members of Congress as allegedly robotic announcers of exogenously induced ideal points, we are forgetting about processes. From the vantage point of societal problem solving, transparency is key.⁵

Visibility

A somewhat different matter is visibility. Even if legislative processes are open, does the public actually tune in to them? One cannot be a romantic about this. It would be an economically unproductive and no doubt crazed public that spent all its days watching C-SPAN. But one does get the sense that Congress's place in American public life may be slipping. The public is much distracted. There is too much otherwise to do, watch, and listen to. *Law and Order* reruns and other attractions are stiff competition. An attribute of the public itself may be at issue here, but visibility is also an attribute of Congress. In various ways, the institution can render itself more engaging or less engaging. C-SPAN certainly engages a small slice of the public. That is all to the good, but there seems to be flagging on other fronts. Why are Senate debates not more engaging to a general audience? Where are the speakers of yore? The Senate's three-week "great debate" on the McCain-Feingold bill in 2001 seems to have drawn attention partly because such enterprises have become so rare. Similarly, in the face of vast U.S. intelligence problems and failures during recent times, neither house has proven capable of staging riveting public hearings on the subject. They booted it—for reasons of partisan wrangling, lack of suitable leadership, or whatever. The task was passed to an extracongressional body—the Kean-Hamilton commission.

Understandability

This is a difficult one. Virtually everything in modern life is becoming more complicated, including laws, which are getting thicker.⁶ Congress needs to employ thousands of staffers to compete with the expertise terms of administrative agencies and interest groups. Expanded staff expertise means complexity. All this is true, but it is also true that, from the vantage point of societal

. Promoting the General Welfare : New Perspectives on Government Performance.

: Brookings Institution Press. . p 234

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problem solving, sizable shares of the public need to be able to grasp what is going on in Washington. Medicare in 1965 can be said to have solved a problem. The Medicare Modernization Act of 2003 possibly did not—at the least (there were other difficulties) because evidently too few people outside Capitol Hill could understand the logic of the ingoing bill or the resulting complicated enactment. In general, increasingly over the years, congressional law-making has gotten caught up in several-inch-thick omnibus enactments, many of them budgetary, that are incomprehensible and fall with a thud.⁷ There is much to be said for thin, discrete, comprehensible laws.⁸ Today, it might be a positive step to abandon the post-1974 congressional budgetary process that contributes to such omnibus clumping and clogging. Just plain abandon it. Even if it is contributing to budgetary management, an iffy question, it may be impairing societal problem solving.

Independence

To participate effectively in problem solving, members of Congress need to be, and to appear to be, adequately autonomous. They cannot be just puppets of interest groups or parties. They need to enjoy, and to be seen to enjoy, the level of discretion called for in an effective problem-solving process—discretion to maneuver, deliberate, persuade, and decide. I do not have much to say about this matter, but campaign finance practices do arise as a consideration. In general, I would guess that the autonomy of members is best served by regulations that rule out big money, channel contributions to individual candidates rather than to parties, and help diversify the money bases of the various members (the greater the variety of money coalitions, the better).

Attentiveness

Being a legislator is among other things a craft. It requires diligence, responsibility, and attention. A disturbing feature of modern congressional life is that members are spending less and less time at their basic tasks. In a recent study comparing the U.S. House of the 1990s with that of the 1960s, Lewis G. Irwin concludes, “There is less time spent on the floor, allowing for fewer professional and personal opportunities for member-to-member contacts.”⁹ In general, committee activities have deteriorated. House hearings, once often the sites of vigorous, well-attended testimony, have become “dreary, sparsely attended, perfunctory events” marked by “brief, often tedious testimony,

followed by tens, if not hundreds, of pages of reports submitted as part of the record."¹⁰

It is no mystery why this deterioration has occurred. Congress's workload has soared, the availability of plane travel makes it obligatory to go back to Las Vegas or Milwaukee regularly, campaign money needs to be raised, and, in general, modern life is busier for everybody. But there are costs—particularly from the vantage point of Congress as a problem-solving body. A problem-solving mode requires member application. A small proposal: Perhaps media organs like *Congressional Quarterly* could nudge the members' practices a bit by clocking attendance at committee hearings the way they clock attendance at roll calls.¹¹

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Communality

Attentiveness can breed interaction among members, which can in turn breed a sense of communality. Perhaps especially important can be carefully built-up personal relationships across party lines. In Richard F. Fenno Jr.'s account of House committees of the 1960s and 1970s, the close personal and working relations between chairs and ranking members stand out in one's memory.¹² The House was once characterized as a "cocoon of good feeling."¹³ No one would say that today. Now, to be sure, one has to be careful about accepting communality as a good in itself. It is not clear that the legendary "Senate club" of the 1950s was not at least in part a conspiracy against the public interest, but communality in an institution probably does assist a culture of problem solving.

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Experience

It seems a good bet that problem solving can benefit from participants who have practiced it. This is one argument against congressional term limits. True, it is not easy to envision the counterfactuals, but as common sense would suggest, there exist many plausible instances of experience evidently counting. In recent times, consider the following senators of veteran vintage who have taken a role in defining problems, getting the definitions across, promoting suitable causal stories, and crafting solutions: Pete Domenici (R-N.M.) on budget deficits, Edward Kennedy (D-Mass.) on education, Bill Bradley (D-N.J.) on tax loopholes, Alan Simpson (R-Wyo.) on immigration, and the aforementioned John McCain (R-Ariz.) on campaign finance,

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Daniel Patrick Moynihan (D-N.Y.) on Social Security financing, and Richard Lugar (R-Ind.) and Sam Nunn (D-Ga.) on loose nuclear materials.

Diversity

To draw the ingredients of problems from, and disseminate solutions successfully to, the whole of a society, a representative institution needs to be reasonably representative of that society. This is one advantage legislatures should have over courts. This means diversity in the usual terms of gender, race, religion, and ethnic background. In current Congresses, the scarceness of African Americans in the Senate may be making it difficult to arrange policy solutions that are salable to the African American population. Diversity might also refer to capacity—in the sense of occupational background. People from different occupational backgrounds often have different ways of thinking about things. We need to be more alert to trends in the membership. Congress seems to be losing its ex-military component as World War II recedes into the past. To a marked, perhaps alarming, degree, the contemporary Senate seems to be filling up with ex-House members. Ex-governors seem to contribute a smaller share of the Senate than they once did. Would this latter trend denote a lapse in a kind of problem-solving outlook? Research into occupational backgrounds used to be a staple of congressional scholarship, but it seems to have fallen away.

Instrumental Activity

A downside of elective legislatures is that they may do little at all that is consequential. Electoral incentives may detour members into small-bore distributive politics and feckless position taking.¹⁴ Also, Terry M. Moe and Scott A. Wilson have written, "The transaction costs of moving a bill through the entire legislative process are enormous. . . . The best prediction is that, for most issues most of the time, there will be no affirmative action on the part of Congress at all. The ideal points may logically support a given outcome, but in reality *nothing will happen*."¹⁵ These considerations do not bode well for problem solving, which can after all require vast time, energy, and application of skill. Pettiness, partisanship, ideological stubbornness, and cognitive chaos, to say nothing of inertia, may need to be overcome. Thus, a legislative body requires a system of incentives, or perhaps a culture, that fosters instrumental activity.¹⁶ The reelection incentive may help, but in Congress there are additional features. Craftsmanship, or an instinct of workmanship as is

found in crafts or professions, is probably as important as anything. Consider the career of the late Wilbur Mills.¹⁷ Honor in the larger society is not to be ignored, as with possibly Daniel Patrick Moynihan. Ambition for higher office may play a role, as with possibly John McCain. In today's Congress, there is a disturbing possibility that craftsmanship may be flagging. As one indication, the recent 9/11 commission report found that "the oversight function of Congress has diminished over time. . . . The unglamorous but essential work of oversight has been neglected, and few members past or present believe it is performed well."¹⁸ Such a downslope could have many causes, but one on the House side might be the weakening of the committees vis-à-vis the party leaderships during the last three decades.¹⁹

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Nonpartisanship

Nonpartisanship or bipartisanship is not a sure indicator of successful problem solving. Certainly, it would not be a misuse of language to point to instances where a party "solved a problem" all by itself, or, contrariwise, where the two parties ganged up to do something that did not look at all like solving a problem. Nonetheless, given the nature of problem solving as I have discussed it, we should not be surprised to find a high incidence of nonpartisanship in its successful pursuit. In recent times, of course, congressional politics have gravitated toward being more partisan, often bitterly partisan. One place to troll for that pattern is the following. Consider recent instances of major legislation that cleared Congress under conditions of unified party control (that is, one party could not simply block the other). That means under Clinton during 1993–94 and under George W. Bush in early 2001 and in 2003–04. On virtually every such enactment, in the roll calls on final passage, a majority of one party voted yea in both houses and a majority of the other party voted nay. It was party versus party. That was true of, for example, Clinton's budget in 1993, the North American Free Trade Agreement in 1993,²⁰ the Family Leave Act of 1993, the Motor Voter Act of 1993, the National Service Act of 1993, the Brady bill regulating handguns in 1993, the omnibus crime act of 1993, the Bush tax cut of 2001, the Bush tax cut of 2003, and the Medicare Modernization Act of 2003.²¹

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Perhaps surprisingly, this is a new pattern. In the earlier instances of unified party control since World War II—that is, during the relevant years of the Truman, Eisenhower, Kennedy, Johnson, and Carter presidencies—major enactments ordinarily earned the assent of majorities of both parties in both houses.²² I would like to search back through all of U.S. history for patterns

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of roll call voting on final passage of major legislation, but I have not had a chance to do that. Yet it is interesting to spot-check the record for some of the very tall legislative monuments of the 1930s and 1960s. Both of these eras were times of unified party control as well as of high legislative productivity. Here are some enactments that cleared Congress by majorities of two-thirds or better in both houses *and* that majorities of both parties voted for in both houses: the Social Security Act of 1935 (the House and Senate votes on final passage were 372 to 33 and 76 to 6), the Civil Rights Act of 1964 (289 to 126 and 73 to 27), the Voting Rights Act of 1965 (328 to 74 and 79 to 18),²³ and the Hart-Celler Act opening up immigration in 1965 (320 to 69 and 76 to 18).²⁴ In addition, here are some enactments that cleared Congress by majorities of two-thirds or better in both houses *and* that majorities of both parties voted for in one house, affording at least some degree of cross-party legitimization: the Wagner Labor-Management Relations Act of 1935 (no record of the vote in the House; 63 to 12 in the Senate), the Fair Labor Standards Act of 1938 (280 to 89, House, with most Republicans voting yea; 56 to 28, Senate), and Medicare in 1965 (307 to 116, House, with most Republicans voting yea; 70 to 24, Senate).

From these earlier times comes at least a smell of problem solving. Something enfolded the minority party members into these enactment coalitions, and perhaps a spirit and practice of problem solving is what did it.²⁵

What Can Be Done?

In general, is problem solving wasting away as a style of operation in congressional politics? As I have defined it, perhaps it is. Several of the relevant attributes have possibly been trending down: transparency (on the House side), visibility, understandability, attentiveness, communality, instrumental activity, and nonpartisanship. Of course, problem solving is not the only way in which a political system can operate. In this country, it harks back to a simpler past shadowed by a Progressive-era way of approaching politics, and perhaps those days are going or gone. Partisanship taken straight is perhaps a viable replacement mode. Yet the American system remains replete as ever with formal veto points, as we have been seeing under Clinton and the Bushes. In the past, a problem-solving mode has offered one route past those veto points.²⁶

What can be done? To nourish a culture of problem solving on Capitol Hill is at least, albeit far from entirely, a matter of establishing the right kinds of incentives under which members of Congress operate. That means, in the case

of members of Congress, not only the obvious reelection incentive, but also considerations of honor, income, and the opportunity to exercise craftsmanship. The authors of *The Federalist*, in discussing the new U.S. elective offices being created two centuries ago, raised all four of these considerations—not just the first. In our own day, political science does not seem to give rich or careful enough attention to background incentives. At the risk of sounding foolish or utopian, I will close by presenting a number of ideas for institutional change that bear on congressional incentives. In all cases my aim is to foster congressional problem solving as I have defined and discussed it above. In general, the tonics I suggest here conjure up the spirit of the Progressive era—a plausible reach given that era's emphasis on problem solving, expertise, effectiveness, accountability, and, in the service of those ends, nonpartisanship.

Open up Congressional Primaries

In the spirit of the particular Progressive reformer Hiram Johnson, it might be wise to move toward nonpartisanizing congressional elections. One design for reform, although it has run into judicial reservations in recent times, would be to open up congressional primaries to all voters regardless of party. The aim would be to generate more congressional “moderates” and thus reduce partisan polarization on Capitol Hill by stirring congressional candidates to appeal to broader coalitional bases in their states and districts. Why do this? In the past, it might be remembered as a caution, strong parties themselves have been routinely urged as a remedy for congressional difficulties—and as a route to societal problem solving.²⁷ Again, granted, strong partisanship may indeed be a tolerably viable mode of Capitol Hill operation, but on the real-world evidence of the last three decades it is not a great one. Those decades invite another look at standard dictionary etymology with its “*partir*, to divide” and *The Federalist* with its “factions.” In a Westminster-type system, strong parties work well enough, but the United States given its separation of powers is not structurally such a system. The last three decades of partisan polarization have not been an impressive lawmaking era. The results of heated partisan showdowns have included the Reagan tax cuts of 1981 bringing on deficits, the crash of Clinton's health care plan in 1993–94, the crash of the Gingrich-Dole budget in 1995–96, and the strange eked-out Medicare reform of 2003.

Restrict Redistricting

In the same vein, it might be wise to cripple partisan gerrymandering and, in general, computer-assisted drawing of U.S. House districts by insisting that

districts be compact, contiguous, respectful of lower-level governmental jurisdictions, and reasonably continuous over time. Again, the chief aim here would be to encourage congressional candidates to appeal to constituencies that are less purely partisan based—yet also possibly to spur members of Congress to a greater sense of Capitol Hill independence by tying them to the idiosyncrasies of local communities and making it easier for voters to see who they are and what they are doing.

Encourage Local Funding

In the area of campaign finance reform, it might be wise to require that House or Senate candidates collect, say, half their contributions from home-district or home-state sources. That would cut down on free-flowing national money that may have a standardizing effect—that is, a left-right dualizing effect—on the ideological positioning of members of Congress. Why should both parties' candidates in the Dakotas raise 90 percent of their money from out of state—notably from the East and West coasts?

Assess Party Influence on Capitol Hill

After thirty years of centralization on Capitol Hill through creeping party leadership, it might be time to assess whether this has been a positive development. For their part, political scientists have spent more time and energy explaining this centralization than assessing it. In reality, what are the ends that have been served? What has been lost? In recent times, party leaders have increasingly displaced committee leaders and subcommittee chairs as writers of major bills.²⁸ Have the bills improved as a consequence? Only an incurable party-government romantic would answer yes. In the long run, the disempowering of committee chairs now combined as it is with term limits in both houses on chair service might be having the overall effect of dimming an institutional commitment to legislative craftsmanship. Why invest in learning tax lore if the job of committee chair is, or, in the mind of an aspiring backbencher, is expected to be, a short one, or if a Speaker of the House might swoop down at any moment and take over?

Streamline Legislation

In the Progressive era there was a drive for the “short ballot.” Voters were said to be confused by the conventional bedsheet-long ballots. At stake were comprehensibility and accountability. It was said, Give the voters a short, easy sense of what was going on and who was or would be responsible for what was going on. On Capitol Hill today, for comparable reasons, we could use a

drive for the “short bill.” As a matter of incentives impinging on members of Congress, clean, comprehensible bills may afford an easier pinpointing of responsibility to a greater number of members than do today’s muddled, massive omnibus instruments. Honor, reelection, and an impulse to craftsmanship might be at issue.

Create Academic Landing Pads . . .

Soon after losing his Senate seat in November 2004, Tom Daschle became a Washington lobbyist. That is a familiar story. It is also a tale of a background incentive system widely thought to be perverse. As a member of Congress, why not cater to K Street interests if you wish or may need to work for them eventually? Where else can one go? Question: Why could not the country’s 3,000 or so colleges and universities play more of a role as landing pads for former members of Congress? As a matter of incentives impinging on members, both honor and income could be brought to bear. More specifically, why couldn’t colleges and universities *compete* for particularly distinguished former members of Congress—such as, say, Tom Daschle and Richard Lugar whenever he retires? Why not have a hiring market? From the standpoint of intellectual environments alone, rare is the American political science department that would not be enhanced by the addition of a distinguished ex-public official—full time, not just to teach a course.

and Provide More Recognition

At my own home university, I have conducted a losing campaign to award honorary degrees to especially distinguished members of Congress or former members. This is a move to inch along—that is all, to be sure—honor as an incentive lining the environments of incumbent members of Congress.

Package C-SPAN

In one sense, C-SPAN is a wonderful achievement, but in another it is a disappointment. Aside from unemployed political junkies who can devote full days, how can C-SPAN be watched effectively? From the standpoint of the average interested citizen, to televise everything from the House and Senate rostrums unrelievedly, wall-to-wall, day after day, is not a great deal better than televising nothing. In my own experience, most times I am reduced to watching the ten-second sight bytes that the regular or cable channels excerpt from C-SPAN. Oddly, as a practical matter, it seems to be easier to get a sense of British parliamentary goings-on from the televised question periods that are available to us than it is to get a sense of American congressional

goings on from C-SPAN. What is needed is a secondary market—some organization or set of organizations ready to excerpt and package especially important or interesting congressional debates in watcher-friendly, hour-long or half-hour-long presentations. For members of Congress, considerations with regard to reelection and honors might be incentives. Good member performances should be widely witnessed, as should bad ones.²⁹

Encourage More Realistic Ways to Measure Congress Members' Effectiveness

In writing *Congress: The Electoral Connection* three decades ago, I argued that “making up ideological indexes [using roll-call data] is an agreeable enterprise, but from the voter standpoint it ignores other dimensions of considerable importance.”³⁰ Today, the journalistic and academic communities still rely overwhelmingly on roll-call indexes as their summary arithmetic guides to congressional behavior. I believe it is still true that, valuable as such indexes are, they leave out a lot. We do not have good summary measures of the “effectiveness” of members of Congress—to use a reasonably suitable term, though it is imprecise. A list of bills passed per member is not very helpful. Participation in roll-call voting, which *Congressional Quarterly Weekly* has been nicely clocking for quite a while, may have the perverse effect of helping to induce members to show up and vote on Tuesdays, Wednesdays, or Thursdays but lets them get away with not doing much else; no other behavior is being arithmetized in a way that journalists and potential opponents can seize on and use. As I suggested earlier in this chapter, perhaps attendance at committee hearings could be systematically clocked. Obviously, this is a tricky and difficult area. Even so, it is one in which political science might invest. For every hundred or so journal articles based on roll-call behavior, perhaps a few could experiment with new measures of congressional performance. Journalists and congressional staffers often have a good sense of the individual effectiveness of members of Congress. The relevant information is scattered and decentralized, yet it is ample. It could be aggregated and systematized.

Notes

1. John Dewey, *The Public and Its Problems* (Chicago: Swallow Press, 1954).
2. Yet deal making off camera can risk merchandising troubles later on. Consider the Clinton administration's off-camera crafting of its comprehensive plan for health care reform in 1993.

3. Surprisingly, many Latin American legislatures have not been anywhere near as transparent. See John M. Carey, "Recorded Votes and Legislative Accountability in Latin America," paper prepared for the conference "Exporting Congress? The Influence of the U.S. Congress on World Legislatures," at the Jack D. Gordon Institute for Public Policy and Citizenship Studies, Florida International University, Miami, Florida, December 6–7, 2002.

4. Susan Milligan, "Back-Room Dealing a Capitol Trend," *Boston Globe*, October 3, 2004, pp. A1, A23–24.

5. On the decline of congressional transparency, see also Richard E. Cohen and others, "The State of Congress," *National Journal*, January 10, 2004, pp. 83–105.

6. Joel D. Aberbach, *Keeping a Watchful Eye: The Politics of Congressional Oversight* (Brookings, 1990), p. 38.

7. On the rise of omnibus enactments, see Glen S. Krutz, "Getting around Gridlock: The Effect of Omnibus Utilization on Legislative Productivity," *Legislative Politics Quarterly*, vol. 25 (2000): 533–49.

8. See Jeremy Bentham, "Of Promulgation of the Laws and Promulgation of the Reasons Thereof," in *The Works of Jeremy Bentham*, edited by John Bowring (New York: Russell and Russell, 1962), 1: 157–63.

9. Lewis G. Irwin, *A Chill in the House: Actor Perspectives on Change and Continuity in the Pursuit of Legislative Success* (State University of New York Press, 2002), p. 141.

10. *Ibid.*, pp. 146–47.

11. This is a small move toward a regimen of MC monitoring that I once suggested in *Congress: The Electoral Connection* (Yale University Press, 1974). Beyond the familiar ideological indexes based on roll-call voting, "there is, or could be, an 'intentions-effects' dimension, gauging the inclination of congressmen to try to accomplish what they say they are in favor of" (p. 180).

12. Richard F. Fenno Jr., *Congressmen in Committees* (New York: Little, Brown, 1973). See also Nelson W. Polsby, *How Congress Evolves: Social Bases of Institutional Change* (Oxford University Press, 2004), pp. 114–24.

13. Clem Miller, *Member of the House: Letters of a Congressman* (New York: Scribner, 1962).

14. Mayhew, *Congress: The Electoral Connection*.

15. Terry M. Moe and Scott A. Wilson, "Presidents and the Politics of Structure," *Law and Contemporary Problems*, vol. 57 (1994): 26–27 (italics in original).

16. See David R. Mayhew, *America's Congress: Actions in the Public Sphere, James Madison through Newt Gingrich* (Yale University Press, 2000).

17. Julian E. Zelizer, *Taxing America: Wilbur D. Mills, Congress, and the State, 1945–1975* (Cambridge University Press, 1998).

18. *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* (New York: W. W. Norton, 2004), p. 105. See also Helen Fessenden, "Hill's Oversight Role at Risk," *National Journal*, March 27, 2004, pp. 734–37.

19. For a related argument, see Gregory Wawro, *Legislative Entrepreneurship in the U.S. House of Representatives* (University of Michigan Press, 2000), pp. 158–60.

20. On NAFTA, which Clinton favored, majorities of Republicans voted yea in both houses, and majorities of Democrats voted nay.

21. For the record through 2002, see http://pantheon.yale.edu/~dmayhew/dataset_DWG04_roll_calls_1991_2002.xls.

22. See David R. Mayhew, *Divided We Govern: Party Control, Lawmaking, and Investigations, 1946–2002* (Yale University Press, 2005), p. 122.

23. The Civil Rights Act of 1964 and the Voting Rights Act of 1965 were dogged by Senate filibusters, but I have not seen mention that any other enactment discussed in this paragraph was thus dogged.

24. It used to be thought that Medicare, the Voting Rights Act, and the Elementary and Secondary Education Act were the most important enactments of the ambitious Great Society Congress of 1965–66. Now, in the light of long-term consequences, I would guess that most people would nominate the first two of these plus the immigration act.

25. This is not to say that all the major enactments of these years cleared Congress by such expansive majorities. Relatively narrow majoritarianism could prevail. Instances of major laws that were passed by majorities smaller than two-thirds in both houses, and on which majorities of Republicans in both houses voted nay on final passage, include the bitterly contested Public Utilities Holding Company Act of 1935, the Housing Act of 1961, and the establishment of the Department of Housing and Urban Development in 1965.

26. See Mayhew, *Divided We Govern*, pp. 130–31, 134–35.

27. See, for example, Mayhew, *Congress: the Electoral Connection*, pp. 174–77.

28. See Cohen and others, “The State of Congress,” pp. 88–91.

29. Senator Joseph McCarthy was brought down by the nationally televised Army-McCarthy hearings. Senator Joseph Montoya of New Mexico is said to have lost his Senate seat in 1976 as a result of a dim performance in the nationally televised Watergate hearings of 1973.

30. Mayhew, *Congress: The Electoral Connection*, pp. 179–80.