

# The Transformed Congressional Experience

## New Directions in Legislative Research: Lessons from Inside Congress

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Over the last several decades, we have watched power and control over public policy flow away from the legislative branch towards the executive and judicial branches. Critics of the federal government lament the perceived increased use of unilateral presidential tools—including executive orders and agreements, signing statements, recess appointments, and presidential proclamations—claiming an out of control imperial presidency. Others worry that judges insulated from electoral pressure are effectively making policy with rulings in cases such as *Shelby Counter v. Holder* and *Citizens United v. Federal Election Commission*. Meanwhile, Congress moves from crisis to crisis.

In order to learn why these changes happened, we asked several members of Congress to reflect on these changes in long-form essays. Four current or former members answered our call—three Democrats in the House and one Republican in the Senate. Two of the House members, Representatives David Price (D-NC) and Dina Titus (D-NV) have PhDs and were faculty in political science departments at Duke and the University of Nevada, Las Vegas, respectively. Representative John Barrow (D-GA), who was finally defeated in 2014 after several attempts to gerrymander him out of his district, is serving as the first Scholar in Residence at the University of Georgia's School of Public and International Affairs. Senator Mike Lee (R-UT) holds a BA in Political Science and JD from Brigham Young University and has written several pieces on congressional reform. Members were asked to write essays before it was clear how the transition away from Speaker

Boehner would play out, so they did not have the benefit of seeing the start of the Ryan speakership.

Despite some diverse backgrounds, the members were in agreement on several points. All the essays concurred with the sentiment that Congress is weakening and that the Executive, Judiciary, and state governments are benefiting.<sup>1</sup> The essays supported the view that this weakness stems from congressional gridlock. And they all concurred this has negative normative implications for American democracy. Finally, all agreed that both ideological changes external to Congress and internal congressional rules and processes—specifically the centralization at the hands of chamber leaders—were to blame.

As expected, there were some disagreements as well. The Democratic members focused more on changes in the ideology of Republican members. And the House members were generally more concerned about their chamber than the lone senator. There were also disagreements over the extent to which congressional dysfunction was internal as opposed to being influenced by electoral factors. Perhaps most notably, there was little consensus about internal procedural reforms. In what follows, we provide an overview of the essays and conclude by offering some comments and highlighting avenues for future political science research. For clarity, we divide the arguments into two categories: those focused on external ideological changes and those focused on internal process issues.

### EXTERNAL IDEOLOGICAL CHANGES

While the essays primarily focus on internal congressional procedures, all four members argue that one external cause of congressional weakness stems from changes in the ideology of elected officials. This increasing polarization has been well-documented by political scientists.<sup>2</sup> Not surprisingly, the members do point to differing causes for these ideological changes. For example, the Democratic members focused more on asymmetric ideological changes in the Republican Party. Representative Price suggests that the libertarian movement within the Republican Party has made compromises on public goods particularly difficult to achieve. In contrast, Senator Lee argues that there is a lack of moderate members on both sides and that this problem is particularly complicated by the centralization of internal procedures.

Representatives Titus and Barrow suggest that increased polarization goes hand in hand with changes in the electorate. Specifically, they argue that fewer competitive seats have led to more ideologically extreme members. Representative Titus notes that “according to CQ Weekly (9/28/2015), only 32 seats of 435 are in play in 2016.” They move beyond the simple gerrymandering explanation for this and argue that “partisan sorting” plays a part as well. Specifically, Representative Barrow suggests voters have moved into different communities of interest.

Whether caused by geographic sorting or simply gerrymandering districts in a way that favors one political party over the other, Representative Titus notes the effect is still the same. The lack of a competitive general election challenger leads incumbents to be more concerned about potential primary challengers, forcing them to the ideological extremes. Additionally, when moderates do get elected, Representative Titus reasons they become electoral targets and rarely serve long enough to build seniority or power within the institution.

Further, the members argue that problems stemming from ideological changes are compounded by relatively small majorities where control of the House and Senate can fluctuate from election to election. In the current electoral environment neither party has the type of control over the legislative branch that the Democrats enjoyed for so long after WWII. Consistent with scholarship by Frances Lee (2009), Representative Price rightly claims that the competitiveness between the two parties provides little reason for cooperation and giving a win to the other side. Senator Lee builds on this,

Undoubtedly, gridlock has advantaged the Executive Branch. For example, although Democrats and Republicans in the Senate worked to pass immigration legislation, it did not make it out of the Republican controlled lower chamber. As a result, President Obama saw an opening and signed a series of executive orders that established the Deferred Action for Childhood Arrivals (DACA) program.

#### INTERNAL LEGISLATIVE PROCESSES

Consistent with their views on ideological changes, the members all agreed with the broad view that internal legislative processes share a good amount of blame for the state of congressional politics. Senator Lee, for example, argues the “real source of congressional dysfunction and weakness is within Congress itself.” Moreover, all four essays suggest changes to internal processes have served to centralize lawmaking at the hands of chamber leaders. This point is best addressed in the “conditional party government” theory of legislative organization (Rohde 1991). Despite this broad agreement, just like with ideological changes, the essays differed over the degree to which internal processes were problematic, which processes were most detrimental and how to strike the right balance with leadership.

All three House Democrats took issue with the increased power of the Speaker of the House. Representative Price pointed to the centralization of power sparked by the “Gingrich Revolution” of 1994 and continued by leaders ever since has come at the expense of the committee system.<sup>5</sup> Representative Barrow smartly argues that one reason why some of

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suggesting that electoral competition and a desire to maintain their majority status has led to further centralizing of policy-making on the party of leadership. After all, leadership has the most to lose if majority status changes hands.

Regardless of its cause, members note that changes in the ideology of members has led to depressed cooperation and the ability to pass needed legislation. Senator Lee notes the increased polarization is especially harmful in the US Senate, where bipartisanship is necessary due to the lack of a simple majority rule for ending debate. This is consistent with a great deal of scholarly work on the Senate, which has argued that chamber rules have resulted in both an expansion of the gridlock interval and an increased likelihood that legislation will fail.<sup>3</sup>

The members also pointed to several policy areas that were once bipartisan that no longer function as well as they once had. As a long-term member of the appropriations committee, Rep. Price maintains that the committee previously could hold the executive accountable when it came to spending and traditionally displayed restrained partisanship. Now, policy riders added to appropriations bills at the last minute make bipartisan action more difficult.<sup>4</sup>

the Republicans wanted to fire their Speaker was precisely because he was so powerful. Representative Price comments that Speaker John Boehner was backed into a corner with the Hastert Rule—only allowing votes on legislation with the support of the majority of the majority party. He could either move legislation without the support of his party or face the consequences of a government shutdown or worse, failing to service the federal debt. Arguably, several of the violations of the Hastert Rule resulting in majority party rolls were indications of the overall strength of Speaker Boehner, *and* a weakness in the rank-and-file over the leadership.

Price additionally argues that the relationship between committees and leadership strength is not necessarily zero-sum. He also concedes that some curbing of committee chair power was necessary. However, nearly all essays suggest centralization has come at the expense of committee autonomy. Titus argues that committees are virtually “rubber stamps” for the leaders’ positions. She notes that: “Committee chairmen have little power when it comes to setting agendas, moving bills, or considering amendments.” Further, consistent with Curry (2015), she points out that many bills are written directly by party leadership.

Senator Lee points out that centralization is not confined solely to the House. He notes that chamber leaders in the Senate have used their procedural abilities to bar floor amendments in an effort to save their rank and file members from having to take “tough votes.” Lee concedes that these amendments are often not intended to improve legislation, but rather to put members of the opposing party on the record as being “on the wrong side of public opinion.” He believes leaders then use hard “cliff” deadlines as excuses to block these amendments for efficiency reasons. The senator suggests that a more decentralized, open amending process would help improve the functionality of the chamber.

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Similar to Lee, many of the House members also called for a more open amending process. Barrow argues changing the powerful Rules Committee might be a good place to start reforms. If the minority has the ability to offer real substantive amendments or offer alternatives to the majority, perhaps more bipartisan legislation will receive a vote on the floor. While Barrow also concedes problems stemming from “messaging” amendments, he suggests that reforming structured rules could help mitigate these issues. Titus also suggests limited floor amending opportunities are compromising bipartisanship. In so many words, members of Congress are concerned about the positive and negative agenda control asserted by party leadership (Cox and McCubbins 1993).

All four essays also point to other procedural tools as being either problematic or potentially helpful in reforming Congress. Representative Barrow thinks reforms to the discharge petition could help. This procedure was recently used to bring the Export-Import Bank legislation to the floor. Representative Price points out that the “filibuster and other non-majoritarian features of Senate operations have erected formidable obstacles to legislative action, even in periods of unified party control.” Representative Titus suggests the usage of the motion to recommit as a minority messaging tool has been problematic, and that the ban on earmarks has weakened leaders’ abilities to build broader coalitions. And Senator Lee calls for a reformed budget process that would eliminate the hard “cliff” deadlines used to justify barring amendments.

#### CONCLUDING THOUGHTS

The goal of the symposium is for members of Congress to reflect on how power has flowed away from the legislative branch. In doing so, we hope the essays will provide legislative scholars with avenues for future research that might be helpful to both scholars and practitioners. We believe these essays have been very successful in that regard. In this section, we build off of the essays and highlight avenues for future research.

First, the essays demonstrate the difficulties inherent in trying to disentangle concepts like “party” and “ideology.”

This is an issue quite familiar to scholars of legislative politics (see Lee 2009). Do we view ideology as a theoretically consistent concept that guides member views on policy or is it a concept used to measure latent member behavior? Both scholars and members often discuss it theoretically using the former definition, but evaluate it using the latter.

Students of legislative behavior are aware that many bills, amendments, and procedures that generate roll-call votes have no substantive policy implications. These proposals are not meant to become law or improve existing laws. However, we often treat aggregate roll-call behavior as being representative of a member’s ideology. And we commonly conflate

ideological labels like “conservative” or “liberal” with “Republican” or “Democrat.”<sup>6</sup> This leads us to infer that partisan tools—like structured rules—are used to advantage more ideological members of a party’s constituency. Indeed, several of the essays suggested that one solution to centralization would be for moderate Republicans to “revolt” against the Speaker’s powers. While this is consistent with some scholarly work, it is by no means settled. An alternative view is that centralization has benefited moderate Republicans in the sense that it has saved them from having to vote against more conservative amendments that might leave them vulnerable to primary challenges.<sup>7</sup>

Second, and relatedly, there are practical reasons for centralization to which both the members and scholars have not devoted enough attention. As the members correctly point out, centralization in the House is not new.<sup>8</sup> However, there are clearly changes in Congress that influence legislative efficiency in ways that did not exist in previous congresses. Workload has increased, leading to greater time demands on leaders. These demands are aggravated by members who—by necessity—are spending more time back in the district and raising money.

Open amending processes marked by large numbers of roll-call votes are very time consuming. New Speaker Paul Ryan (R-WI) demonstrated his frustration on this point by gaveling closed a vote on a bill tightening oversight of Iran’s nuclear program after the allotted 15 minutes were up. Vote time is often extended and 137 members did not register their votes before the voting was closed.<sup>9</sup> Moreover, the utility of messaging amendments has increased sharply in recent years as congressional control fluctuates and more money is spent highlighting member votes.<sup>10</sup> This has led to a sharp increase in proposed amendments.

As Senator Lee notes, this can create “tough votes” for members and often has little to no influence on policy. However, while members are correct in noting that we are transitioning to an era of greater transparency, where more information is available to voters, it is unclear whether *more* information translates to *better* information. The scholarly work on messaging bills and amendments is still developing.<sup>11</sup>

And the broader debate over transparency and effective governance is a long-standing one. For example, during the Constitutional Convention, the Founders were at odds over publicizing votes. One member, Nathaniel Gorham, opposed recorded voting, fearing it would lead to members “stuffing the Journals with roll calls on frivolous occasions” in an effort to “mislead the people.”<sup>12</sup> Indeed, more scholarly work in this area would likely be beneficial.

Finally, the essays highlight the gap between executive and legislative scholarship on specific procedural tools. In general, scholars of executive politics have done a better job describing and contextualizing the use of specific presidential tools than legislative scholars. This is not to say good work is absent in this area. However, in recent decades scholars have focused on broader theoretical implications of legislative behavior, as opposed to answering narrower questions about how a given procedural tool is employed. This limits our abilities to draw inferences for reform.

In closing, we believe the essays written by members of the legislative branch will help provide new directions for scholars moving forward. While it is important for students of Congress to maintain a professional distance from the subject at hand, there is much to be gained from listening to the concerns from individuals who operate daily in the House and Senate. Scholars, practitioners, and the general public all benefit from a more functional Congress. ■

#### NOTES

1. For example, as a consequence of congressional failure to act, Representative Titus argues that states are stepping into policy domains that were once the purview of the federal government. We see this when states pass their own immigration bills or increase their own gas tax to fix crumbling infrastructure.
2. See e.g. McCarty, Poole, and Rosenthal (2006); Carson et al. (2007); Poole and Rosenthal (2007); Bonica (2014); Theriault (2006); Hetherington and Rudolph (2015).
3. See e.g. Binder and Smith (1997); Binder, Madonna, and Smith (2007); Madonna (2011); Wawro and Schickler (2006).
4. See MacDonald (2010) for a political science discussion of the effect of policy riders.
5. The centralization in the Gingrich Congress solidified changes that began in the 1970s when the Democrats enabled secret ballots to elect committee chairs.
6. See e.g. Crespin and Rohde (2010); Cox and Poole (2002); Dougherty et al. (2014); Lee (2009); Noel (2013).
7. See Lynch, Madonna and Roberts (2016) for work on how there are more amending opportunities afforded to centrists under structured rules.
8. For example, when complaining about then-Speaker Joseph Gurney Cannon (R-IL)'s usage of special rules in 1905, House Minority Leader John Sharp Williams (D-MS) observed that he had “never seen a time in [his] life when the majority of the majority was not willing to trust the minority of the majority (*Congressional Record*, 58<sup>th</sup> Congress, February 17, 1905, 2788).”
9. The vote was later vacated and taken again (see Dick 2016).
10. Scholars generally agree that highlighting roll-call behavior is an effective technique in elections. See e.g. Ansolabehere and Jones (2010); Bovitz and Carson (2006); Canes-Wrone et al. (2002); Lipinski (2001).
11. See Crespin et al. (2016); Madonna and Kosar (2015).
12. See e.g. Binder (1997); Lynch and Madonna (2013); Madonna and Kosar (2015).

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## SYMPOSIUM CONTRIBUTORS

**John Barrow** was elected to represent Georgia's 12<sup>th</sup> District in Congress in 2004. At the time of his defeat in 2014, he was co-chair of the Blue Dog Democratic Coalition, the most gerrymandered member of Congress, and the most bipartisan member of Congress running for reelection. He currently serves as the first Scholar in Residence at the University of Georgia's School of Public and International Affairs.

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**Dina Titus** represents Nevada's 1<sup>st</sup> congressional district, serving since 2013. She represented Nevada's 3<sup>rd</sup> congressional district from 2009–2013. Rep. Titus earned her PhD in Political Science from Florida State University. Currently, she serves on the House Committee on Transportation Infrastructure and the House Committee on Veteran's Affairs.