

Can Congress Reclaim Its Status as “The World’s Greatest Deliberative Body?”

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To reverse the decline in the quality and amount of debate in Congress, we must expand the opportunities and incentives for people to engage in serious discussion and exchange of views in our legislative branch. Party caucuses should be places where genuine participation occurs, increasing the mutual confidence that party members have in each other and affording more opportunities for legislative give-and-take. There is no perfect arrangement to achieve the goal of deliberation in balance with the need for accountability and compromise, but that ideal of a legislative assembly where Members show up for and engage in debate—the ideal that citizens seek in so many other countries but not in our own Congress—is not unattainable.

When citizens visit the Capitol in Washington, DC, and observe the proceedings of the House of Representatives and the Senate from the gallery, they are often struck by how anti-climactic the experience is. The chambers themselves are beautiful and awe-inspiring, but the activity that goes on in them is not. They are usually empty: Very few Members bother to show up to listen to or participate in debate. If a Member is speaking, he is speaking for the cameras rather than to his colleagues. The debates are carefully planned and scripted, lacking any real spontaneity or exchange of views.

The contrast with parliamentary debates in other countries is striking. In the British House of Commons, the arguments and insults fly dizzyingly back-and-forth. All of the members are present and deeply engaged in the

debate that is taking place. In other countries, members are so engaged that violence is not uncommon. There was a time when our own Congress engaged in these kinds of debates and when violence too would break out, but those days seem well behind us.

Many Members of Congress acknowledge that something important has been lost. In short, they agree that Congress no longer engages in deliberation. In July 2014, for example, Orrin Hatch (R-UT) gave a speech on the floor of the Senate calling for a restoration of the “world’s greatest deliberative body,” a phrase that seems to have been coined by former President James Buchanan in 1867. Hatch argued that the past four decades have witnessed “the breakdown of the Senate as an institution.” “Until recently,” he observed, “this Chamber often lived up to its reputation as the world’s greatest deliberative body.” Hatch contrasted the “robust discussion and meaningful debate” that has characterized the Senate “throughout most of its history” with the “partisan grandstanding and cheap political theater” that prevails in the Senate today.¹

Other Senators have lamented the decline of deliberation in Congress as well. After the vote to confirm Justice Neil Gorsuch to the Supreme Court in 2017, a bipartisan group of more than 60 Senators pleaded with then-Majority and Minority Leaders Mitch McConnell (R-KY) and Chuck Schumer (D-NY) to preserve the right of unlimited debate. “We are mindful of the unique role the Senate plays in the legislative process,” the letter explained, “and we are steadfastly committed to ensuring that this great American institution continues to serve as the world’s greatest deliberative body.”²

Although there is widespread agreement that Congress no longer engages in deliberation, little consideration is given to such critical questions as what deliberation means and why it is important. For some Senators, deliberation is another word for bipartisanship and compromise. For others, it has to do with processes such as open debate and unlimited amendment so that all viewpoints are heard and considered. The former definition is substantive: Deliberation occurs when the majority works with the minority. The latter is procedural: The more that a legislature behaves like a town hall meeting or open forum, the more deliberative it becomes. These various definitions attempt to capture a concept—deliberation—that is not easy to define.

Thus, even when a Member calls for a return to deliberation in Congress, he is often unsure what it would look like in practice.

- Are the parliamentary assemblies in other countries, where majority and opposition parties engage in debate to score rhetorical points, really better at deliberating than our Congress is?

- Does deliberation require that Members of Congress change their minds during a debate, or is it simply about giving Members an opportunity to express their views before voting on a foreordained outcome?
- Does more deliberation lead to better legislation?
- Even if it doesn't, should Congress deliberate anyway so that Americans feel that their voice reaches the halls of power?

The purpose of this essay is to shed light on these questions and examine Congress today in light of the way Congress deliberated in the past.

The Founders' Understanding of Deliberation

The term “deliberation” does not appear in the Constitution, but a few of the provisions of Article I (which establishes Congress) indicate indirectly that the Founders wanted to create a deliberative Congress. The most significant are the age requirements to serve in both the House (25 years) and the Senate (30 years).³ In *Federalist* 62, when discussing the qualifications for Senators, James Madison explained that the higher age requirement would help to ensure “that the senator should have reached a period of life most likely to supply” advantages such as “greater extent of information and stability of character.”⁴ Our representatives in Congress, and particularly in the Senate, according to most of the Founders, should be calm and sober, more likely to reason about public policy than to react immoderately to events and arguments from colleagues. In short, the Founders wanted representatives who were mature and sober.

A second provision relates more directly to deliberation. Article I, Section 6 of the Constitution provides that Members “shall not be questioned in any other Place” “for any Speech or Debate in either House.”⁵ Known as the Speech and Debate Clause, this provision guarantees that Members “enjoy the fullest liberty of speech” when they engage in debate on the floor of Congress.⁶

Aside from these few provisions, however, deliberation was not a significant subject of discussion at the Constitutional Convention of 1787. One of the few exceptions occurred on August 13 when the Convention discussed the provision of the Constitution that requires all revenue bills to originate in the House of Representatives.⁷ James Wilson of Pennsylvania opposed giving the House this power, predicting that the House would “insert other things in money bills, and by making them conditions of each

other destroy the deliberate liberty of the Senate.”⁸ Edmund Randolph of Virginia defended the provision by pointing to the President’s influence over the Senate. If the Senate were allowed to originate revenue measures, Randolph argued, the President’s influence “will be sure to mix itself in their deliberations & plans,” giving the President too much power.⁹

In both cases, Wilson and Randolph appealed to the importance of independence in deliberation. External influence by outside actors, such as the President, or attaching strings to certain provisions, as when policy riders are attached to revenue bills, would undermine legislative independence and therefore deliberation. The Framers of the Constitution generally understood that deliberation can occur only when an assembly is free to consider legislation on its own merits rather than bundling a policy with other issues that will incentivize Members to take the good parts with the bad. (This same idea inspired John Quincy Adams’s endorsement of a House rule that forbade putting policy measures in appropriations bills, a rule that stands to this day but is routinely waived.) It might be necessary in some cases to package multiple bills together to promote a compromise, but such omnibus bills would necessarily come at the expense of deliberation on each individual measure in the package.

On the Convention’s final day, Benjamin Franklin of Pennsylvania offered some reflections that suggested the difficulty of promoting legislative deliberation. Franklin announced that while he did not think the Constitution was perfect, he was inclined to support it because of the impossibility of producing a perfect assembly of disinterested legislators. As he explained, “when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views.”¹⁰

While Franklin’s comments were about the deliberations of the Constitutional Convention, they apply equally to the deliberations of a legislative assembly. Many of the Framers shared Franklin’s view that an assembly of legislators will be composed of a wide variety of interests and opinions and that passions would become attached to those interests and opinions.¹¹ This presents a serious challenge to deliberation, since the discussions in a legislative body will often be motivated not by a disinterested pursuit of the common good, but by a partial interest or a passionate attachment to a narrow point of view.

The Constitutional Convention had one critical feature that promoted deliberation but would be absent from the Congress: Its debates occurred behind closed doors, and members vowed to keep their discussions secret.

Article I of the Constitution, by contrast, requires that “Each House [of Congress] shall keep a Journal of its Proceedings” and authorizes one-fifth of the Members present to call for a vote to be recorded in the journal.¹² The Convention’s secrecy facilitated a more open expression of opinions and reduced the external influences over members that inhibited compromise. While the Congress would also have protections for free and open debate, accountability would be threatened if all of its deliberations were held secretly. The Constitution’s Framers favored and sought to promote deliberation, but they also understood that deliberation could compete with other important goods such as accountability and the need to compromise.

Deliberation and the Sense of the Majority in *The Federalist*.

Although deliberation was not a prominent theme in the Constitution or the Constitutional Convention’s debates about Congress, it became a major theme during the ratification debates. In the midst of these debates, the authors of *The Federalist Papers* described the careful balance that would occur in Congress. On the one hand, defenders of the Constitution admitted that the capacity of Congress to deliberate would be limited. Members of Congress, after all, would have to serve the wishes of their constituents, and this would limit their ability to adopt positions that were at odds with those of their constituents.

In *Federalist* 10, the most famous paper, James Madison described the “latent causes of faction” that are “sown in the nature of man.” The causes of division in society are many, ranging from different opinions on politics and religion, to different amounts and types of property, to the variety of interests—creditors, debtors, landowners, manufacturers, merchants, financiers, and so on—that a large society encompasses. “The regulation of these various and interfering interests,” Madison concluded, “forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.”¹³

Factions based on interest, in other words, are a normal and necessary part of the ordinary legislative process, which has to find some way to adjust all of these various interests. The representatives of these interests are not likely to deliberate about the merits of a policy. Instead, they will advocate for their own interest without thinking too much about the common good. As Madison explained in the next paragraph, “what are so many of the most important acts of legislation, but so many judicial determinations...concerning the rights of large bodies of citizens? And what are the different classes of legislators, but advocates and parties to the causes which they determine?”¹⁴ In this view, most legislators will not be deliberating on policy but will be advocates for special interests—the interests that prevail in their

own districts. This would be especially true in the House, Madison predicted in another essay, whose members would “have an immediate dependence on, and an intimate sympathy with, the people” they represent.¹⁵

According to this argument, legislators are more likely to advocate for the interests in their districts than they are to deliberate freely about the common good of the whole country. This view of legislative debate is a *pluralist* view in which the many different interests of society clash, bargain, and ultimately compromise to produce an outcome that is acceptable to a majority of the interests. In the pluralist view, members of the legislature are *delegates* of their constituents.

The alternative is the *deliberative* model of legislative activity, in which members consider the merits of various policies and vote according to their own opinions rather than following the opinions of their constituents. In this view, members are the *trustees* of their constituents. James Madison’s argument in *Federalist* 10 suggests a pluralist view of Congress as a body in which Members reflect the interests of their constituents and those interests clash with each other.

Yet there are also indications even in *Federalist* 10 itself that the Founders wanted to establish deliberation in Congress. The Constitution was supposed to produce a *balance* between the pluralist and deliberative models of congressional activity. In *Federalist* 10, Madison noted that representation can “refine and enlarge the public views, by passing them through the medium of a chosen body of citizens.” Representatives chosen for their wisdom and virtue can moderate public opinion’s influence so that “the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves.”¹⁶ Members selected for longer terms and from larger districts will be more likely to serve this deliberative purpose. The Senate, therefore, was understood to be a more deliberative body that would balance the pluralist model with more deliberation.¹⁷

Deliberation and the Right to Instruct Representatives. After the Constitution was ratified, one of Congress’s first objectives was to draft a Bill of Rights. One of the proposed amendments related directly to the concept of deliberation. During the discussion of what became the First Amendment, Representative Thomas Tucker of South Carolina proposed to add the right of the people “to instruct their Representatives.”¹⁸ The discussion that followed, in which Tucker’s amendment was rejected, illustrates the Founders’ views on deliberation in Congress.

Members raised various practical concerns in opposition to the amendment,¹⁹ but most of them rejected Tucker’s proposal because it would

interfere with representatives' right to vote based on their own independent judgment. Thomas Hartley of Pennsylvania argued that:

[T]he principle of representation is distinct from an agency, which may require written instructions. The great end of meeting is to consult for the common good; but can the common good be discerned [unless] the object is reflected and shown in every light[?] A local or partial view does not necessarily enable any man to comprehend it clearly; this can only result from an inspection into the aggregate.²⁰

In Hartley's view, the purpose of representation was not simply to act as mere agents of public opinion, but to bring people from different constituencies together to consult for the common good. This necessitated preserving the ability of Members to change their minds upon encountering the views of others.

Other Members voiced similar concerns. George Clymer from Pennsylvania said that if the amendment were taken to mean that representatives "are bound by those instructions," it would establish "a most dangerous principle, utterly destructive of all ideas of an independent and deliberative body, which are essential requisites in the Legislatures of free Governments."²¹ Roger Sherman of Connecticut added that binding instructions on Members of Congress "would destroy the object of their meeting. I think, when the people have chosen a representative, it is his duty to meet others from the different parts of the Union, and consult, and agree with them to such acts as are for the general benefit of the whole community. If they were to be guided by instructions, there would be no use in deliberation."²² Both Clymer and Sherman linked the freedom from instructions to the ideas of deliberation and consultation. There would be no use in pursuing consultation and deliberation if representatives were to follow blindly the instructions from their constituents.

Some Members defended the amendment, declaring that the right of constituents to instruct their representatives would provide a valuable check on the Members of Congress, but even they acknowledged that the instructions would be merely advisory rather than binding on Members' votes. After some discussion, the House voted not to include the right to instruct representatives in the First Amendment by a wide majority, voting 41 to 10 against Tucker's proposal.²³

This discussion in the First Congress helps to clarify what the Founders meant by deliberation. While Members of the First Congress acknowledged that representatives would reflect the views and wishes of their constituents,

they nevertheless wanted to preserve space for Members to engage in consultation and discussion and to exercise their independent judgment. They connected the notion of deliberation to these goals of consultation and discussion. They suggested that, even if Members did not change their minds during a debate, there was still value in bringing all of the varying views of the nation together in a single body.

They also understood, however, that the primary purpose of this process was not simply to exchange policy information, but rather to help Members to become acquainted with the views of other parts of the country (consultation); to exchange arguments on behalf of their constituents (discussion); and ultimately to engage in bargaining and compromise. They did not think that Members of Congress would be philosopher-kings engaging in detached discussion and analysis of the issues. Rather, they expected that representatives would be advocates of all of the various views and interests contained in the extended republic. This expectation was largely fulfilled in the first few decades of Congress's history.

Deliberation in Congress's Early Years

When Congress first convened, the rules governing the legislative process were minimal in both the House and the Senate. The House allowed for unlimited debate, and there were no standing committees to do the initial work of drafting and amending proposed bills. Instead, legislative proposals would be debated by the House in the Committee of the Whole and were introduced through petitions from citizens, in resolutions introduced by Members, or by recommendations from the executive branch. When debate had produced general agreement on the principles to be contained in a bill, the House would refer the matter to a select committee to write up the legislation. These select committees were ad hoc bodies that were established solely for the sake of drafting legislation. They were intended to act as instruments of the whole House, not as independent policymaking bodies within the House.

Once the select committee had finished its work, legislation would be sent back to the Committee of the Whole for further discussion and amendment and, ultimately, for passage. During these steps, debate was unlimited in the House. Because the House was still small in its early years, filibusters were somewhat common and generally tolerated. Barent Gardenier, a Federalist from New York, was infamous for obstructing business in the House by giving long speeches. Other Federalists conspired with Gardenier to delay the passage of Thomas Jefferson's Embargo Act, and the House

even agreed to implement the “previous question” motion in February 1811 to allow a majority of Representatives to call the question and end debate.²⁴

But the most notorious abuser of unlimited debate in the House of Representatives was Virginia’s John Randolph, who butted heads on several occasions with Speaker of the House Henry Clay in the 1810s and 1820s. Although the House had the option of using the previous question motion to end debate by this time, Randolph was adept at using parliamentary tactics to prevent the House from utilizing the motion, and many Members did not like the idea of using “gag rules” to end discussion. Unlimited debate in the House essentially lasted until 1841, by which time the House had become too large and unwieldy to continue the practice. At that time, the House adopted the “one hour” rule that prevented any Member from speaking on any question for longer than an hour.

While the House of Representatives therefore allowed for unlimited debate and facilitated input by the entire membership during its first few decades, it is harder to evaluate whether this made the House a deliberative body. On the one hand, most of the debates were widely attended, and Members addressed each other, arguing back and forth about the relative merits of different policies.

The lax rules governing debate, however, produced as much disorder and confusion as deliberation. James Madison, who served in the House of Representatives from 1789–1797, complained to Edmund Randolph that “Scarcely a day passes without some striking evidence of the delays and perplexities springing merely from the want of precedents.”²⁵ William Maclay, a Senator from Pennsylvania in the First Congress, wrote in his journal that the Representatives in the House had “certainly greatly debased their dignity, using base invective, indecorous language; three or four up at a time, manifesting signs of passion, the most disorderly wanderings in their speeches, telling stories, private anecdotes, etc.”²⁶

Many of the participants in these debates, of course, were not deliberating. They were not dispassionately reasoning about the merits of different policies. When John Randolph engaged in debate to stall the passage of a bill, he was not interested in entertaining the arguments on the other side. He was using the rules of the House to delay proceedings and prevent the majority from pursuing its goals. We should not therefore simply equate unlimited debate with greater deliberation.

Furthermore, even during this period, many Members of the House were committed to their positions regardless of the arguments raised by the other side. Members from districts with powerful financial interests supported the main elements of Alexander Hamilton’s financial plan, and Members

from agricultural districts opposed the plan. These Members were not seriously interested in changing their votes regardless of the arguments offered by their opponents.

Nevertheless, providing some forum for discussion and communication of views forced the Members of Congress to marshal the best arguments for their positions that they could muster. It also helped them to understand the way different policies were perceived in different parts of the country—something that was especially critical in a period when this information would not have been readily available to them.

Was the Senate Different? But what about the Senate? Perhaps, as the Constitution’s Framers expected, Senators’ indirect method of election, larger districts, and longer term lengths would make them more resistant to this mode of argument and therefore more capable of exercising their own independent judgment.

In Congress’s early days, the same approach to debate and passing legislation was used in both chambers. Of course, debate in the early Senate was unlimited, as it was in the House, and the Senate, like the House, did not use standing committees, which essentially did not emerge until 1816.²⁷ If anything, the rules governing Senate proceedings were more haphazard than those of the House. The Senate met in closed session until 1794 and kept no journal of its proceedings. (It is not clear why the Senate decided to meet secretly, but some suggested that it was because Members of the House commonly addressed their speeches to the gallery rather than to their colleagues, a point that underscores the nature of deliberation in the House.²⁸) Therefore, Senators were free to discuss measures at length and were not restrained by a standing committee system from commenting on any matter they pleased.

These rules, combined with the lengthy terms and indirect election of Senators, served as a potential vehicle for producing deliberative Senators who felt free to act as open-minded legislators rather than as mere advocates for their partial constituencies, but the results in the Senate were similar to those in the House in important ways. Before the Civil War, Senators engaged in lengthy and high-level debates, for which the institution became well-known. The “golden age” of the Senate occurred before the Civil War as such great figures as Daniel Webster, Henry Clay, and John C. Calhoun debated the most important issues of the period. A suitably impressed Alexis de Tocqueville remarked that the Senate “is composed of eloquent advocates...whose language would, at all times, do honor to the most remarkable parliamentary debates of Europe.”²⁹

However, individual Senators still represented their constituents faithfully and did not come to these illustrious debates open to persuasion. In the great contests over slavery and westward expansion, the Senators behaved predictably, with northerners like Webster making the case for the North and southerners like Calhoun making the case for the South. In other words, while the parliamentary debates of the Senate during its golden age were distinguished, the individual Senators themselves were simply making the arguments their constituents wanted them to make and were not going into these debates with open minds. In this sense, both the House and the Senate engaged in debate before the Civil War not as disinterested legislators unattached to their views, but as partisans acting on behalf of their constituents.

The Decline of Floor Deliberation

Early Congresses, therefore, were deliberative bodies, but that did not mean that each Member came to every debate with an open mind. Deliberation in a legislative assembly involves many members, from different parts of the country, representing different interests, bringing their arguments into contestation with the others. That process of contestation is deliberation, and its outcome is the result of deliberation. As Congress changed over the first century of its existence, however, deliberation shifted from the floor of the House and Senate to other places—first to committees and then to political parties.

The Shift to Committee Deliberation. It was not long before Congress, and the House of Representatives in particular, became too large and unwieldy for genuine deliberation to occur on the floor. In *Federalist* 55, James Madison predicted that the House would contain 400 Members within 50 years of the Constitution’s ratification, and this would present a challenge to legislative deliberation. As Madison explained:

[A] certain number [of representatives] at least seems to be necessary to secure the benefits of free consultation and discussion.... [O]n the other hand, the number ought at most to be kept within a certain limit, in order to avoid the confusion and intemperance of a multitude. In all very numerous assemblies, of whatever character composed, passion never fails to wrest the sceptre from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.³⁰

Madison agreed that “free consultation and discussion” should occur in Congress, and this would require an adequate number of representatives who

would be acquainted with and represent the various viewpoints in society. But going beyond that number would undermine consultation and discussion by turning the Congress into a mob where passion supplanted reason.

Madison did not specify the ideal number of representatives in a legislature, but he clearly predicted that an increase in the size of Congress would significantly impact its capacity for discussion and deliberation. The House of Representatives indeed grew significantly during the 19th century, although not as rapidly as Madison had predicted. By 1820, there were 213 Members of the House, and by 1881, the House had grown to 291 Members.

As this growth occurred, deliberation shifted from the House as a whole, with measures debated on the floor, to standing committees. During the 19th century, both the House and Senate gradually created a system of permanent standing committees with defined jurisdiction over policy issues. At the same time, the House established rules limiting debate on the floor. The “previous question” motion enabled Members to cut off debate and proceed directly to voting, and the one-hour and five-minute rules limited debate on bills and amendments. By the middle of the 19th century, the Senate remained a place where open-ended debate could occur, but the House had become more efficient and majoritarian, shifting deliberation away from the floor to other institutions.

This was the subject of a dissertation produced by young political scientist Woodrow Wilson, who received his PhD from Johns Hopkins University in 1886. Wilson’s dissertation, titled *Congressional Government: A Study in American Politics*, perceptively described the transformation of Congress that had occurred after the Civil War. As Wilson famously explained, “[t]he leaders of the House are the chairmen of the principal Standing Committees.”³¹ Consequently, “[t]he House virtually both deliberates and legislates in small sections.”³² These committees “dictate the course to be taken, prescribing the decisions of the House not only, but measuring out, according to their own wills, its opportunities for debate and deliberation as well. The House sits, not for serious discussion, but to sanction the conclusions of its Committees as rapidly as possible.”³³ This fact led Wilson to his famous statement that “Congress in session is Congress on public exhibition, whilst Congress in its committee-rooms is Congress at work.”³⁴

The most important feature of this development, Wilson emphasized, was the shift in the location of deliberation. As he explained, “Congress, or at any rate the House of Representatives, delegates not only its legislative but also its deliberative functions to its Standing Committees.”³⁵ “One very noteworthy result of this system,” he argued, “is to shift the theatre of debate upon legislation from the floor of Congress to the privacy of the

committee-rooms,” as committee hearings were not open to the public during the late 19th century.³⁶ Wilson believed that the shift from deliberation by the House as a whole to deliberation by committees made Congress less transparent and accountable to the public. It was difficult to hold Congress responsible for its decisions because the people did not know where or how those decisions were made in the first place.

The Senate. Although Wilson complained about the shift from collective deliberation to committee deliberation, it is hard to imagine how collective deliberation could occur in a legislative assembly with nearly 300 people, as the House had become by the 1880s. Madison had predicted a century ago that the increase in the size of the House would transform deliberation, and the shift to committee deliberation was merely a natural outgrowth of the changes that had taken place in the House.

The Senate, for instance, experienced far fewer restrictions on debate and amendment in the late 19th century because it remained a relatively small body that could debate measures freely. The first “cloture” rule to end debate did not come about until the 20th century, and filibusters became increasingly common in the Senate after the Civil War. One history of the Senate says that “Filibusters...became a virtual epidemic in the 1880s and 1890s.”³⁷ A filibuster in 1881 prevented the Senate from acting on any legislation from March 24 to May 16, and by the turn of the century, the practice was destroying the Senate’s reputation, which had declined dramatically since the “Golden Age” of Webster, Clay, and Calhoun.

One filibuster in 1908 transpired over two days during which Robert La Follette, Sr., of Wisconsin held the floor for over 18 hours. “La Follette fortified himself periodically with egg-nogs from the Senate restaurant. According to one account, he rejected one of the egg-nogs as doped, and it later was found to contain a fatal dose of ptomaine.” This filibuster ended unceremoniously. When it was time for Oklahoma’s Thomas Gore, a Senator who was blind, to yield the floor to Missouri’s William Stone, Gore failed to notice that Stone was in the cloakroom. Gore surrendered the floor believing that his successor was present, but he had inadvertently ended the filibuster, and the bill (an emergency currency measure) was passed immediately.³⁸

In spite of these foibles, after the Civil War, debate remained much freer and more open in the Senate than in the House. To illustrate, in his farewell address to the Senate in 1897, Adlai Stevenson of Illinois argued:

In [the Senate] alone are preserved, without restraint, two essentials of wise legislation and of good government—the right of amendment and of debate. Great evils often result from hasty legislation, rarely from the delay which

follows full discussion and deliberation. In my humble judgment, the historic Senate, preserving the unrestricted right of amendment and of debate, maintaining intact the time-honored parliamentary methods and amenities which unfailingly secure action after deliberation, possesses in our scheme of government a value which can not be measured by words.³⁹

Action after deliberation rather than hasty legislation still characterized the Senate, but even the Senate would change the nature of its deliberations at the end of the 19th century.

Party Deliberation. The House and the Senate, in short, had taken different paths by the 1880s. The former had shifted from collective deliberation on the floor to deliberation in committees, while the latter retained the practices of unlimited debate and amendment. However, after 1880, deliberation in both houses of Congress moved into party organizations and caucuses, which dominated the House and the Senate for several decades.

In the House, the shift to party deliberation resulted from the emergence of the Speaker of the House as the dominant figure in the entire government. Thanks to Maine's Thomas Brackett Reed, who reformed the rules of the House upon becoming Speaker in 1889, the Speaker gained significant powers. He could appoint all committee members and chairmen, had the power to recognize Members of his choosing on the floor, and chaired the Committee on Rules, which had the ability to prioritize which bills would receive consideration on the floor.

As a result of these powers, committee chairmen became accountable to the Speaker of the House and to the majority party that the Speaker represented. Wilson himself acknowledged this in the 1901 preface to the 15th edition of *Congressional Government*. He wrote that between 1885, when the book was first published, and 1901, "The power of the Speaker has of late years taken on new phases. He is now, more than ever, expected to guide and control the whole course of business in the House."⁴⁰ Consequently, Wilson admitted in 1901, his description of Congress was "not as accurate now as I believe it to have been at the time I wrote it."⁴¹

Party leaders gained control in the Senate as well, but the power was concentrated in a small group of Senators rather than in a single authority like the Speaker of the House. Because Senators were still elected by their state legislatures prior to 1913, they had to court and maintain the support of state party organizations. This meant that they had to use their control of patronage appointments to assist the party, which would then provide support to the Senator. Certain Senators did so very effectively and became chairmen of powerful committees. Eventually, the "Senate Four" (Nelson

Aldrich of Rhode Island, William Allison of Iowa, Orville Platt of Connecticut, and John Spooner of Wisconsin) emerged as the power brokers of the upper chamber. As Wilson described in 1901, the character of the Senate “has undergone a noticeable change. The tendency seems to be to make of the Senate, instead of merely a smaller and more deliberate House of Representatives, a body of successful party managers.”⁴²

These developments in both the House and the Senate, bringing about stronger party leadership and control of Congress, did not eliminate deliberation; they merely shifted it to another place. The parties themselves provided the forum in which deliberation would occur. The Speaker of the House was understood to be the representative of the majority party as a whole and to carry out the wishes of the party as they were expressed by the caucus.⁴³ Speakers had to remain accountable to the majority of their party because they were elected by them, and they could be removed by their party at any time.

Thus, the centralization of power in the hands of the Speaker empowered the majority party, deliberating collectively, to enact legislation. Deliberation had shifted to the majority party as a whole acting through its party leadership. This is something that was well understood and defended at the turn of the century. For example, Senator Elihu Root of New York (who later served as Secretary of War and Secretary of State) explained in a public address that “[t]he great work of popular government is done in the associations and primaries and caucuses and conventions, in the conferences and discussions and canvassing and personal association....”⁴⁴

New York’s Jacob Sloat Fassett, a Republican Member of the House of Representatives who defended the Speaker during a revolt in 1910, defended this role for parties in Congress: “[P]arties, like governments, provide machinery whereby men may adjust differences of opinion. If we have 200 men on this side, I believe they are likely to have...at least 200 different kinds of opinion on almost any one of the great questions that concern the people of the United States....” The best method for settling these differences, Fassett believed, was in party caucuses: “[T]he place to adjust differences of opinion...on important questions of public policy and party policy is not in public...but in the family caucus, where we may adjust our opinions and govern ourselves, as representative government must always be controlled, by an expression properly taken in a popular place....”⁴⁵

These defenders of parties in Congress emphasized that party caucuses provided the forum for settling disputes, compromising, and airing different opinions. They were, in other words, the forums for deliberation in Congress.

For much of the first half of the 20th century, therefore, the parties rather than committees provided the space for deliberation in Congress. At first, party leaders such as the Speaker of the House and party leaders in the Senate led this deliberative process. After party leaders were weakened in the early 20th century, this deliberative function shifted to the party caucus. For instance, the Democratic Party instituted a rule that bound its members to vote for any bill that received the support of two-thirds of the party in caucus even if they personally opposed it. Much of President Woodrow Wilson's legislative program, known as the New Freedom, was enacted under the discipline of the party caucus.⁴⁶

The Decline of Deliberation

To summarize, by the early 20th century, Congress had experimented with several different approaches to deliberation. The earliest approach, which lasted in the Senate much longer than in the House, was collective deliberation on the floor. Debates were relatively unlimited, and the right to amend legislation was not tightly restrained. After the Civil War, the House in particular shifted to deliberation in committees. Legislation was largely discussed, studied, and crafted by these sub-units of the legislature, and Members as a whole deferred to their decisions. But by 1900, in both the House and the Senate, deliberation had shifted to party caucuses, where the majority and minority parties made decisions collectively based on discussion and deliberation that occurred altogether outside of the legislature.

The power of parties in Congress, however, eroded steadily throughout the first half of the 20th century. While the party caucus was used extensively by Democrats to enact Woodrow Wilson's New Freedom and Franklin Roosevelt's New Deal, it became increasingly weak as Members of Congress fought to make committees independent of the party as a whole.

The result of the decline of parties was the shifting once again of deliberation to committees, but committee deliberation did not last long. In a short time, committees shifted from serving a deliberative purpose to promoting other goals, especially the goal of managing and overseeing the federal bureaucracy. As Samuel Huntington explained in a fascinating essay in 1965, throughout the 20th century:

Within Congress power became dispersed among many officials, committees, and subcommittees.... As a result, the legislative function of Congress declined in importance, while the growth of the federal bureaucracy made the administrative overseeing function of Congress more important. These three

tendencies—toward insulation, dispersion, and oversight—have dominated the evolution of Congress during the twentieth century.⁴⁷

As committees became stronger during the 20th century, their focus shifted from deliberation to management and oversight. The Legislative Reorganization Act of 1946, a critical piece of legislation that organized the modern Congress, reduced the number of committees in the House and Senate and ensured that each committee would have a clearly defined jurisdiction as well as a mission to exercise “continuous watchfulness” over administrative agencies.⁴⁸ The chairmen of these committees during the middle part of the 20th century were selected by seniority, so they held power not by following the will of their party, but by doing the bidding of their constituents.

In short, Congress was gradually decentralizing and insulating its power by placing it in the hands of independent committees, but those committees were increasingly focused not on legislating, but on overseeing the bureaucracy. Therefore, they did not engage in legislative deliberation, but focused instead on other tasks besides legislation.

By the 1960s, then, Congress had moved from deliberation and lawmaking to a committee structure that valued expertise and oversight. When legislation needed to be passed, however, committees deliberated on the merits of a bill before sending it to the floor to be enacted. In other words, although deliberation had shifted back to committees after the parties were weakened, Congress legislated far less frequently and committees deliberated less, but when deliberation did occur, it occurred at the committee level.

A second development during the latter half of the 20th century undermined the committee-based deliberation that remained. During the 1950s, 1960s, and 1970s, Congress was renowned for its committee hearings. Members were expert at asking difficult questions and using the drama of a committee hearing to spotlight issues and influence public opinion. From the Army–McCarthy hearings of 1954 to the Nixon–Watergate hearings, Members understood that the committee was a place where serious issues could be debated and addressed. But these dramatic hearings were more the exception than the norm. Typically, congressional hearings were not forums for high-profile interrogation, but fact-finding sessions in which Members educated themselves about policies and engaged in discussion and compromise.

Changes both in technology and in the rules governing committees eroded this approach to hearings. The most significant rules changes occurred in the 1970s when liberal Democrats, frustrated by the conservative leanings

of the senior Democrats who chaired the standing committees, successfully pressed for several reforms to make committees more directly democratic. A set of reforms passed in 1973 in the House (and in 1975 in the Senate) stripped committees of the ability to hold hearings in closed session with limited exceptions such as hearings involving national security. The percentage of closed hearings plummeted in the middle of the decade from 44 percent in the House in 1972 to just 10 percent a year later. The Senate followed a similar trend toward open committee hearings.⁴⁹

This transparency opened up the committee process to the general public, but most citizens had neither the time, the ability, nor the inclination to follow committee hearings closely. Instead, interest groups utilized the openness of committees to influence their deliberations, and Members themselves gradually sought to capitalize on committee publicity by using their time to make speeches to the public rather than using witness testimony to gather information or improve the quality of legislation under consideration. Hearings came to be seen as partisan affairs, opportunities for members to speak to their constituents and supporters, rather than deliberative sessions where Members spoke to each other and listened to the testimony of expert witnesses.

Today, therefore, even committees have ceased to enhance deliberation. Members routinely “pop-in” and “pop-out” of hearings, showing up to make a five-minute speech and leaving before a witness has even finished his or her response. In 2014, the *Washington Examiner* found that dozens of House members missed two-thirds of their committee meetings.⁵⁰

Can Deliberation Be Preserved?

There are many things wrong with Congress today, but one of the most visible failures of our legislative branch is its inability or unwillingness to engage in debate, discussion, and deliberation. However, legislative deliberation is a more complicated notion than we typically understand it to be. History has provided us with few if any legislative assemblies filled with disinterested, impartial legislators who came to each discussion with an open mind, merely seeking the best policies to promote the common good. In reality, almost every representative assembly is composed of members who advocate on behalf of their constituents and engage in debate to impress their views upon others, not simply to dispassionately seek the truth.

In our own country, however, it is clear that the quality and amount of debate and discussion in Congress has decreased dramatically over time, and this has contributed to both the weakening of and the public’s contempt

for Congress. Can we hope for a reversal of these trends and a restoration of deliberation in Congress? For this to happen, we must first understand the role that legislative deliberation plays in a republican form of government. As this essay has argued, deliberation in the legislature does not occur when all of the members are open-minded and impartial, but rather when some members advocate strenuously for their view, are opposed by other members who are similarly attached to theirs, and ultimately come to some settlement based on the verdict of public opinion. Like deliberation in individuals, who are divided internally among several impulses, deliberation in a legislative assembly is the process by which many different parts vie for influence over and control of the final decision.

Restoring deliberation in Congress therefore does not require reforming it into a debating society full of disinterested politicians. Rather, it requires that we expand the opportunities and incentives for people to engage in serious discussion and exchange of views in our legislative branch. Party caucuses should be places where genuine participation occurs, increasing the mutual confidence that party members have in each other and affording more opportunities for legislative give-and-take. Committees should adopt procedures that incentivize members to speak to each other and listen to witnesses rather than grandstanding for television cameras and social media. Floor debate should allow for limited debate and amendments, offered by members of both parties, to provide a space where Members of Congress can discuss and highlight their differences in person rather than airing their grievances on cable news.

It is important, however, not merely to increase the opportunities for Members to engage in deliberation during the committee, caucus, and floor debates. Members should also use these increased opportunities to communicate *with each other* rather than with people outside of the deliberations. It is useless to increase the number of speeches on the House and Senate floors or the number of congressional hearings if Members are not engaging in deliberative activity when they use these opportunities. The dramatic increase in transparency in Congress has been accompanied by a dramatic increase in Members communicating to their constituents rather than to each other. Genuine discussion and negotiation occur when the parties engage with each other rather than appealing to people who are not part of the assembly in the first place.

The specific rules and processes that would restore deliberation are matters of judgment. There is no single perfect arrangement to achieve the goal of deliberation in balance with the need for accountability and compromise, but that ideal of a legislative assembly where members show

up for and engage in debate—the ideal that citizens seek in so many other countries but not in our own Congress—is not unattainable. We can take steps right now to bring our Congress closer to that goal.

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Endnotes

1. Senator Orrin Hatch, "Senate Dysfunction," *Congressional Record*, Vol. 160, No. 115 (July 22, 2014), pp. S4678–S4681, esp. p. S4679, <https://www.congress.gov/113/crec/2014/07/22/CREC-2014-07-22.pdf> (accessed January 20, 2024). A few days later, on July 28, 2014, Senator Hatch followed up with a second speech on deliberation. See Senator Orrin Hatch, "State of the Senate," *Congressional Record*, Vol. 160, No. 119. (July 28, 2014), pp. S4983–S4985, <https://www.congress.gov/113/crec/2014/07/28/CREC-2014-07-28.pdf> (accessed January 20, 2024).
2. Press release, "Klobuchar and Bipartisan Group of Senators Pledge to Preserve Existing Senate Rules to Engage in Debate and Compromise on Legislation," Office of Senator Amy Klobuchar, April 11, 2017, <https://www.klobuchar.senate.gov/public/index.cfm/news-releases?ID=AEC7A4DB-949F-4E78-8057-DF00FD7A5963> (accessed January 20, 2024). A few months later, John McCain (R–AZ) rose to speak about preserving the "world's greatest deliberative body," echoing similar themes. Senator John McCain, "Role of the Senate," *Congressional Record*, Vol. 163, No. 125 (July 25, 2017), pp. S4168–S4169, <https://www.congress.gov/115/crec/2017/07/25/CREC-2017-07-25.pdf> (accessed January 20, 2024).
3. U.S. Constitution, Article I, Sections 2 and 3, <https://www.archives.gov/founding-docs/constitution-transcript> (accessed January 21, 2024).
4. James Madison, *The Federalist* No. 62, https://avalon.law.yale.edu/18th_century/fed62.asp (accessed January 21, 2024).
5. U.S. Constitution, Article I, Section 6.
6. James Wilson, *Lectures on Law* (1791), quoted in James L. Buckley, essay on Article I, Section 6, Clause 1 in *The Heritage Guide to the Constitution*, <https://www.heritage.org/constitution/#!/articles/1/essays/27/speech-and-debate-clause>.
7. U.S. Constitution, Article I, Section 7.
8. *The Records of the Federal Convention of 1787*, Vol. 2, ed. Max Farrand (New Haven: Yale University Press, 1911), <https://oll.libertyfund.org/title/farrand-the-records-of-the-federal-convention-of-1787-vol-2> (accessed January 22, 2023).
9. *Ibid.*
10. *Ibid.*
11. Consider James Madison's formulation of this problem in his most famous essay, *The Federalist* No. 10, https://avalon.law.yale.edu/18th_century/fed10.asp (accessed January 21, 2024).
12. U.S. Constitution, Article I, Section 5.
13. James Madison, *The Federalist* No. 10.
14. *Ibid.*
15. James Madison, *The Federalist* No. 52, https://avalon.law.yale.edu/18th_century/fed52.asp (accessed January 21, 2024).
16. Madison, *The Federalist* No. 10.
17. See Madison, *The Federalist* No. 62, and James Madison, *The Federalist* No. 63, https://avalon.law.yale.edu/18th_century/fed63.asp (accessed January 21, 2024).
18. *The Debates and Proceedings in the Congress of the United States; with Appendix, Containing Important State Papers and Public Documents, and All the Laws of a Public Nature; with a Copious Index [Annals of Congress]* (Washington: Gales and Seaton, 1834), Vol. 1, August 15, 1789, p. 761, <https://memory.loc.gov/cgi-bin/ampage> (accessed January 21, 2024). Cited hereafter as *Annals of Congress*.
19. These questions included the following: Would the instructions bind the representatives' votes? How would the instructions be enforced? Would a representative's vote be negated if it were contrary to the instructions? And who would be authorized to send the instructions?
20. *Annals of Congress*, Vol. I, pp. 761–762.
21. *Ibid.*, p. 763.
22. *Ibid.*
23. *Ibid.*, p. 776.
24. Robert Luce, *Legislative Procedure: Parliamentary Practices and the Course of Business in the Framing of Statutes* (Boston and New York: Houghton Mifflin, 1922), p. 271, <https://ia902602.us.archive.org/33/items/legislativeproce00luceoft/legislativeproce00luceoft.pdf> (accessed January 21, 2024).
25. "From James Madison to Edmund Randolph, 31 May 1789," U.S. National Archives, Founders Online, <https://founders.archives.gov/documents/Madison/01-12-02-0122> (accessed January 21, 2024).
26. *Journal of William Maclay, United States Senator from Pennsylvania, 1789–1791*, ed. Edgar S. Maclay (New York: D. Appleton and Company, 1890), p. 222, <https://tile.loc.gov/storage-services/service/lj/llscd/llmj001/llmj001.pdf> (accessed January 22, 2024).
27. Several minor committees were established prior to 1816, but they were not major policymaking bodies. In August 1789, for example, the House and Senate created a standing Joint Committee on Enrolled Bills; in 1800, Congress appropriated \$5,000 to support the purchase and maintenance of books, to be directed by a joint committee; in 1806, the Senate created a standing Committee on Engrossed Bills; and in 1807, the Senate created a standing Committee to Audit and Control the Contingent Expenses of the Senate.

28. This is suggested by Clara Hannah Kerr, *The Origin and Development of the United States Senate* (Ithaca, NY: Andrus & Church, 1895), p. 39.
29. Alexis de Tocqueville, *Democracy in America*, trans. Henry Reeve, Esq. (London: Saunders and Otley, 1835), Vol. I, "Chapter XIII: Government of the Democracy in America—Part I," <https://www.gutenberg.org/cache/epub/815/pg815-images.html> (accessed January 21, 2024).
30. James Madison, *The Federalist* No. 55, https://avalon.law.yale.edu/18th_century/fed55.asp (accessed January 21, 2024).
31. Woodrow Wilson, *Congressional Government: A Study in American Politics*, 15th ed. (Boston: Houghton Mifflin, [1885] 1901), p. 60.
32. *Ibid.*, p. 67.
33. *Ibid.*, p. 79.
34. *Ibid.*
35. *Ibid.*, p. 82.
36. *Ibid.*, p. 81.
37. *Origins and Development of Congress*, 2nd ed., ed. Barbara R. de Boynville (Washington: Congressional Quarterly, 1982), p. 229.
38. *Ibid.*, p. 243.
39. Adlai E. Stevenson, Farewell Address to the United States Senate, March 4, 1897, in *Something of Men I Have Known*, 2nd ed. (Chicago: A.C. McClurg & Co., 1909), p. 65, <https://ia902702.us.archive.org/12/items/somethingofmenih00instev/somethingofmenih00instev.pdf> (accessed January 21, 2024). (This is Adlai Stevenson I, grandfather of the better-known Adlai Stevenson who was the Democratic Party's nominee for President in 1952 and 1956.)
40. Wilson, *Congressional Government*, p. ix.
41. *Ibid.*, p. v.
42. *Ibid.*, p. viii.
43. Speakers often reminded their parties of this point when they faced internal opposition. They reiterated that they were not acting independently, but were merely implementing the will of their party. Some empirical evidence supports the view that late-19th century speakers reflected the will of their parties. See Keith Krehbiel and Alan Wiseman, "Joseph Cannon: Majoritarian from Illinois," *Legislative Studies Quarterly*, Vol. 26, No. 3 (August 2001), pp. 357–389, https://www.researchgate.net/publication/4812195_Joseph_G_Cannon_Majoritarian_from_Illinois (accessed January 21, 2024).
44. Elihu Root, *The Citizen's Part in Government* (New Haven, CT: Yale University Press, 1920), p. 54, <https://ia800301.us.archive.org/13/items/citizenspartingo00rootoft/citizenspartingo00rootoft.pdf> (accessed January 21, 2024).
45. Speech of Representative J. Sloat Fassett, *Congressional Record*, Vol. 45, March 17, 1910, p. 3302, <https://www.congress.gov/bound-congressional-record/1910/03/17/house-section> (accessed January 21, 2024).
46. See James L. Sundquist, *The Decline and Resurgence of Congress* (Washington: Brookings Institution Press, 1981), p. 172.
47. Samuel P. Huntington, "Congressional Responses to the Twentieth Century," in *The Political Economy: Readings in the Politics and Economics of American Public Policy*, ed. Thomas Ferguson and Joel Rogers (Armonk, NY: M.E. Sharpe, 1984), pp. 182–183.
48. S. 2177, Legislative Reorganization Act of 1946, Public Law 79-601, 79th Congress, August 2, 1946, Section 136, <https://www.umd.edu/media/wilderness/NWPS/documents/publiclaws/79-601.pdf> (accessed January 21, 2024).
49. Eric Schickler, *Disjointed Pluralism: Institutional Innovation and the Development of the U.S. Congress* (Princeton, NJ: Princeton University Press, 2001), p. 211; Barbara Sinclair, *The Transformation of the U.S. Senate* (Baltimore: Johns Hopkins University Press, 1989), pp. 105–106.
50. Luke Rosiak, "Many House Members Miss More than Two-Thirds of Their Committee Meetings," *Washington Examiner*, September 29, 2014, <https://www.washingtonexaminer.com/politics/421301/many-house-members-miss-more-than-two-thirds-of-their-committee-meetings/> (accessed January 21, 2024).