

A Study in Atrophy: How Legislative Divestment Impacts Contemporary Affairs

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A principal source of tension among Americans and their elected congressional officials comes from the notion that the institution does not function properly, depriving them of purposeful representation. With historically low approval ratings, Congress has, largely, seen its perception among the public collapse within recent decades as partisan polarization intensifies and gridlock halts major legislative initiatives in their tracks. An overlooked but salient factor shaping the institution comes from a lack of investment into congressional staff, specifically those with policy experience working in Washington D.C. This divestment, coupled with the increased role of lobbying groups and bureaucratic agencies, debilitates Congress and prevents one of America's governing branches from providing the check needed to curtail executive power.

Beginning with Congress's role in providing representation to the people, it is evident that many representatives increasingly seek the maintenance of their party in majority control. Frances Lee theorizes that the emphasis on maintaining partisan political power impacts the success rate of bi-partisan legislation, if such cooperation happens at all, and the manner in which politicians attack their opposition.¹ Differences between Republicans and Democrats get embellished to signal urgency in removing the incumbent ruling party from their place of prominence, making most collaboration efforts futile. Another ramification of this increased partisan competition comes with the prioritization of spending staff resources on district events and other methods of enhancing an official's brand before they face a challenger, especially among House members constantly up for reelection. *The Washington Post* outlines this process: "Congress isn't just cutting these resources. Its members are redistributing them away from lawmaking and out toward the care and feeding of voters. As we documented previously,

¹ Frances Lee, 'Governing Versus Messaging The Party Politics of the Debt Limit' in *Insecure Majorities: Congress and the Perpetual Campaign* (Chicago, IL: The University of Chicago Press, 2016).

Congress has consistently shifted staff from D.C. to members' district offices. This means fewer resources for D.C. staff—who are more likely to work on policy than on constituent relations.”² If their approach to participation within Congress mirrors their focus on the demands of their voters, many House members, and quite a few senators, choose a showhorse approach when constructing their political identity.

Although it is not a strictly positive development, one may see the benefits of an increased focus on the needs of everyday constituents rather than focusing one's staff resources on hiring experienced and calculating policy wonks; that notion, however, is deeply misguided. What some may mistake for a more dynamic and personable approach to politics is merely a cynical and self-serving method of presenting statesmanship without any of the due diligence required of such a figure. Curtlynn Kramer perfectly articulates this consideration with his article on the impact of Congress's staffing issue: “It is generally tough to say how “informed” any particular member is on each vote he or she takes, but there is evidence that, in the absence of other sources of information analyzing a piece of legislation, Congress members will fall back on documents provided by interest groups and lobbying efforts.”³ As such, a loss in expertise among a legislator's staff gives interest groups more opportunities for manipulation, using research data or public polling when making their appeals.

Given the finite amount of time available to elected officials constantly focused on the next campaign cycle, the only way for officials to receive adequate information on proposed bills comes from their legislative staff or the aforementioned lobbyists. With more funds spent on

² Anthony Madonna, Ian Ostrander, “If Congress Keeps Cutting its Staff, Who is Writing Your Laws? You Won't Like the Answer” *The Washington Post*, August 20, 2015, <https://www.washingtonpost.com/news/monkey-cage/wp/2015/08/20/if-congress-keeps-cutting-its-staff-who-is-writing-your-laws-you-wont-like-the-answer/>.

³ Curtlynn Kramer, “Vital Stats: Congress Has a Staffing Problem, Too” Brookings Institution, May 24, 2017, <https://www.brookings.edu/blog/fixgov/2017/05/24/vital-stats-congress-has-a-staffing-problem-too/>.

advertisements, town halls, and other networking events, staffers are less specialized in the intricacies of particular policy areas. The result for a legislator is a policy vision shaped by those with stakes in how they vote or the political ideology they profess to voters, should their staffers be too busy handling district matters. Whether one believes our officials live up to the latter Burkean model of representation is a determination to be made by themselves, what we can ascertain are the pitfalls opened up by a reliance upon interest groups or gut instinct with the absence of staff expertise seen in Congress's bygone eras. Lobbyists do not have to be the evil caricature they are sometimes portrayed as to have outsized influence in our political process; influence they may not have, or at least have in shorter supply, should staffers receive fair compensation for their efforts. Similarly unimpressed by partisan platitudes, Lee Drutman also expresses qualified sympathy for representatives, given their current limitations: "One reason many members of Congress often take a reactive position is that they don't have any other option. Lacking genuine policy resources, most members can only go along with what party leaders tell them, or what lobbyists tell them, or what the executive branch tells them. Given a limited budget, most think it's better to invest in a press shop that will make the member look good."⁴ Ironically, many talented staffers often take positions within lobbying firms shortly after their stint with an official, earning a salary they view as in-keeping with their output. Those suffering the true outgrowth of escalated ineptitude are the voters whose legislators prioritize campaign fundraisers and occasional media appearances.

"Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the

⁴ Lee Drutman, "Congress Should Do its Job. But the Job Members Can Do Depends on the Resources They Have," *Vox*, February 15, 2017, <https://www.vox.com/polyarchy/2017/2/15/14623588/congress-underresourced>.

majority.”⁵ Perhaps the foremost consequences of Congress’s staffing shortage come from its heightened inability to adequately provide oversight of the executive branch and inability to adequately administer the few laws they do pass. Given that the bureaucracy is far more extensive and influential than at any other time in the nation’s history, the legislative branch’s stagnation offers a grim outlook on the future of political power variation. One of Congress’s primary responsibilities is policing the executive and preventing the branch from exercising undue influence in spheres outside its scope of authority. James Burnham, a relatively obscure political philosopher, feared that a dwindling legislative role over America’s most consequential policy decisions could consolidate power around a Caesarian figure predisposed towards using permanent bureaucratic agencies as a means of undermining Congress’s already diminished influence. *Congress and the American Tradition*, although by-in-large forgotten, succinctly describes the competing power dynamics working between these growing agencies and the traditional mechanism of congressional governance envisioned by Madison.

Devoid of the prospect of hiring and retaining the most capable and knowledgeable policy strategists, Congress is unable to match the executive branch’s proficiency. Perhaps even more troubling than the growth of the executive branch in comparison to its two counterparts comes from Congress’s unwillingness to halt or undo their loss of prominence. Indeed, allowing the president or nine Supreme Court justices to dictate policy on America’s most divisive issues increases the probability of a legislator’s reelection, a chief priority among incumbents. The result is broad policy changes without the consultation of America’s elected representatives, whether that be President Obama’s memorandum extending protection to immigrants illegally residing within the United States or President Trump’s executive order placing restrictions on

⁵ James Madison *Federalist* No. 51, in *The Federalist Papers*, Bill of Rights Institute, <https://billofrightsinstitute.org/primary-sources/federalist-no-51>.

travel to the United States for citizens of multiple countries including Iran, Iraq, Somalia, and Yemen. With Congress lacking the resources necessary to counteract executive overreach, presidents employ previously underutilized methods of enacting their policy preferences, often to curry favor with the coalitions responsible for electing them, putting power control and governing representation in further doubt. Burnham lucidly details how an executive with that much leeway ultimately subverts the public: “The office of President is coming to be the embodiment of the citizens of the nation in their aspect as the masses. Congress, supplemented by the lobbies, continues to represent the citizens in their aspect as the people. The President is the political resultant of a process approximating a plebiscitary, direct, all-national election. Congress is the second level resultant of hundreds of limited elections.”⁶

Expanded executive authority is not specific to either party. Culminating the party’s years of resources into a national campaign pays dividends for the party in power long after election day. Cabinet positions, executive orders tailored to high-turnout voters, and an expansive scope over foreign policy all make the presidency the most desirable and contested office in America, hardly a surprising development. Disconcerting is the increasingly negligible role Congress plays in American power relations, save the passage of significant bills requiring broad support such as President Biden’s Build Back Better agenda. Leaning on the executive branch is short-sighted, as many minor executive orders they pass to energize voters before midterm elections are large, undone when the opposing party regains power. More expansive orders, with the aforementioned two occurring within the past decade, may remain in place but do so without the consultation of the officials charged with protecting the public interest. Checks and balances are not set in stone, they are malleable, and the extent to which one branch may curtail another is dependent on its capacity to function appropriately, a responsibility, as we have seen, curtailed by a lack of

⁶ James Burnham, *Congress and the American Tradition* (Chicago: IL: Henry Regnery Company, 1959), 327.

skillful, dedicated congressional staffers. Fearing a loss of liberty entirely should Congress forgo its duties altogether, Burnham made a similar plea to the political observers of his age: “The tie in this century and this nation between the survival of Congress and liberty is not abstract and formal but historical and specific. Within the United States today, Congress is in existing fact the prime intermediary institution, the chief political organ of the people as distinguished from the masses, the one body to which the citizenry can now appeal for redress not merely from individual despotic acts but from large-scale despotic innovations, trends, and principles.”⁷

In addition to addressing the concerns of an unchecked executive branch, Burnham also details the difficulty of sufficiently overseeing administrative agencies as a legislative body: “In practice each commission, developing a political life of its own, tends to become a kind of baronial sovereign over its own special demesne. It is exceedingly difficult for Congress to supervise them actively. The technical complexity of the fields with which most of the commissions deal is itself an almost insurmountable obstacle to discerning supervision.”⁸ Indeed, the sheer number of workers making policy decisions across multiple agencies likely spans to the tens of thousands. Congress does not have the manpower requisite to match such a vast management network. Whether a result of moving staff to district offices, providing those offices with vast expenditures, or declining budgets, representatives simply have less policy staff qualified to surveil America’s bureaucracy.⁹ Congress’s diminished capacity directly affects the approach taken when implementing legislation, as understaffed legislators may pass bills without having a full understanding of their implications. Empowering executive branch agencies tasked with enforcement, Congress outsources decision-making to nameless, faceless, and unelected

⁷ James Burnham, *Congress and the American Tradition* (Chicago: IL: Henry Regnery Company, 1959), 338.

⁸ Burnham, *Congress and the American Tradition*, 158.

⁹ Lee Drutman, “Congress Should Do its Job. But the Job Members Can Do Depends on the Resources They Have,” *Vox*, February 15, 2017, <https://www.vox.com/polyarchy/2017/2/15/14623588/congress-underresourced>.

bureaucrats. Defenders of this system point to the credentials and experience among civil servants, but this necessitates those professionals making resolutions in keeping with Congress's intent when initially passing a piece of legislation.¹⁰

“When the legislative function is limited, as it normally should be, to issues of principle and broad policy, there is seldom any real need for immediate action. Even when quick action might seem abstractly desirable, there are usually competing advantages - through, for example, the achievement of a wider public consensus - from legislative delay.”¹¹ Much frustration with Congress comes from the perception that legislators are not working together at a high enough rate to assuage the demands of the broader populace. This notion, although tenable, is mistaken. Gridlock within the legislative branch is the zenith of America's system of government, not a fault. Burnham's commentary, inspired by Machiavelli and his intellectual successors, underscores the need for ambitious, competing power players to be pitted against one another, preventing either from exercising near-total power with the backing of an incensed, disillusioned population. This is all to say that criticism of Congress's governing capacity should center not on how many bills they pass, but instead on the manner in which they pass them. Aptly surmised in *The United States Congress*: “A different perspective suggests that perhaps we have simply entered a new era of congressional operations and therefore we should recalibrate our expectations about legislative accomplishment and the functioning of the legislative body.”¹² As originally designed, Congress was meant to be a deliberative body dominated by the well-educated and privileged unimpeded by allegiances to parties and shaped by the common goal of uplifting their nation. An almost utopian vision even at the time of America's founding,

¹⁰ Curtlynn Kramer, “Vital Stats: Congress Has a Staffing Problem, Too,” Brookings Institution, May 24, 2017, <https://www.brookings.edu/blog/fixgov/2017/05/24/vital-stats-congress-has-a-staffing-problem-too/>.

¹¹ James Burnham, *Congress and the American Tradition* (Chicago, IL:: Henry Regnery Company, 1959), 265.

¹² E. Scott Adler, Jeffery A. Jenkins, Charles R. Shipman, *The United States Congress* (New York, NY: W.W. Norton & Company, 2021), 280.

certainly hyper-partisanship and increased polarization further complicate the inner workings of both chambers. As such, legislators rely on party leaders when casting their votes or on interest groups lobbying for or against a bill. The consequence is a body influenced more by how their votes may increase their party's war chest than any prolonged deliberation on the merits or shortfalls of legislation. Even in the early twentieth century, after decades of party bosses and other corruption efforts, legislators, especially, but not exclusively senators, made attempts at public persuasion with extensive speeches and published writings, a far cry from the era of social media hashtags and flimsy pejoratives. These are not mere differences in the methods of communication from the past to modern times, but a more profound commentary on the underlying commitment, or lack thereof, elected officials and their staff have to make substantial improvements to the country they represent. Lee Drutman hones in on the difference in staffers of years past with the following observations: "They (staffers) were more likely to view the House or the Senate as an institution, not a résumé line. Now turnover is much higher. Staff are younger, less likely to be repeat players who have the experience and relationships to make Congress truly effective. They are less likely to think like institutionalists."¹³ Structured as it remains currently, legislators appear content to focus their efforts on majority status and reelection, constantly fighting for control as a means in itself, devoid of any deeper commitment to their constituents. An absence of capable policy-focused staffers belittles Congress's expectations of what it can and should accomplish, thereby weakening American governance and the American people's faith in institutions.

Theorizing about apparent Congress's apathy towards a regression in its authority requires an understanding of when staffing levels changed and why. A substantial shift occurred

¹³ Lee Drutman, "Congress Should Do its Job. But the Job Members Can Do Depends on the Resources They Have," *Vox*, February 15, 2017, <https://www.vox.com/polyarchy/2017/2/15/14623588/congress-underresourced>.

in the early 1990s after Newt Gingrich, then the Speaker of the House, shank the size of the Congressional Research Service, one of the tools used by congressional aides to expand their policy expertise; Gingrich also cut committee staff levels during his tenure.¹⁴ While beginning under the leadership of a Republican Speaker, members of both parties, over time, have invested fewer resources into their legislative staff. This divestment is the result of partisan competition rather than a right-leaning ideological antipathy for centralized government. In line with this theory is evidence that the American people support divestment in legislative staff: “A study conducted by Hibbing and Thiess-Morse revealed that the public was both critical and misinformed about legislative staff. Roughly 75 percent of those surveyed supported cutting the size of personal congressional staff; their estimates of congressional staff levels were approximately half of reality.”¹⁵ Additionally, most Americans do not realize that committee staff and budgets have already seen cuts, with only 2.27 percent believing that legislative staff has decreased while 85.1 percent thought that staff had increased.¹⁶ Antagonism towards robust, well-founded congressional staff cut across ideological lines, a rare and misdirected showing of near-unity among the American populace.

As discussed previously, offshoring deeply divisive issues to the other branches enhances a legislator’s reelection efforts, further bolstering why a re-focus of funds in district offices remains such a popular choice among representatives. Therefore, when considering the consequences of legislative divestment, it is important not to overstate the impact of an increase in congressional personal office budgets under the current political climate. The reality is that

¹⁴ Jeff Stein, “A Staff Survey Shows Just How Broken Congress Is,” *Vox*, August 8, 2017, <https://www.vox.com/policy-and-politics/2017/8/8/16112362/congress-survey-broken-yikes>.

¹⁵ Anthony Madonna, Ian Ostrander, “If Congress Keeps Cutting its Staff, Who is Writing Your Laws? You Won’t Like the Answer,” *The Washington Post*, August 20, 2015, <https://www.washingtonpost.com/news/monkey-cage/wp/2015/08/20/if-congress-keeps-cutting-its-staff-who-is-writing-your-laws-you-wont-like-the-answer/>.

¹⁶ Madonna, Ostrander “If Congress Keeps Cutting its Staff, Who is Writing Your Laws? You Won’t Like the Answer,” *The Washington Post*.

politics, like any other sphere, is not always dominated by rational decisions. Increasing office budgets without requirements on how those funds are appropriated invites further wasteful spending centered on an incumbent's perception among their constituents. Legislators who, for decades, stood idly by as the executive branch expanded its power at their expense will not turn on a whim and offer significant opposition unless forced. Proponents of this policy rightly point to many of the complications evident as a result of divestment in staff; those consternations, however, will see limited amelioration with the proposed policy. The benefits from participation in partisan competition outweigh the costs of an entrenched bureaucracy; in the minds of legislators, it is a mere cost-benefit analysis. The proceeding remarks on the utility of the proposed reform offer no exemption for the legislators in question, whose behaviors, increasingly, warrant rebuke from anyone with a cursory knowledge of America's political tradition. It is an unquestionable misfortune to witness the decline of the world's foremost democratic deliberative body, but those observations can not entail offering a reform with overly broad leeway. Unless strict measures are put into place, requiring legislators to carry out their duties in a manner consistent with the Founder's vision, there remains little optimism for redress through the provided methods. It is, indeed, a complex predicament born of a variety of circumstances which must be considered, in full, when formulating potential remedies; anything less is an exercise in futility.

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