

## ABSTRACT

Rhetorical Practice in Congress: A New Way to Understand Institutional Decline

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This dissertation examines a previously unexamined factor that may contribute to the recent decline in Congress, the historical development of congressional rhetoric. Chapter one begins by examining the relationship between rhetoric and factors that lead to institutional health in Congress. Primarily, it argues that certain uses of rhetoric contribute to deliberation, regular order, and institutional identity, while others undermine these institutional goals. Rhetoric that undermines these goals has been used increasingly as congressional speeches have become more public in recent history. The chapter then proposes five specific standards to trace the development of rhetoric in two historical case studies. These standards are taken from scholarship on presidential rhetoric. They include: 1) the connection between speech and thought, 2) the constitutional tradition, 3) rhetorical self-restraint, 4) masculine and feminine rhetoric, and 5) crisis rhetoric.

The first case study examines the two eras of congressional responses to the President's Annual or State of the Union Address. Chapter two examines the institutional response prepared by both the House of Representatives and the Senate during the first

twelve years of the United States existence. Chapter three turns to the televised opposition party responses offered by members of Congress that began in 1966. These two chapters show the more extreme examples of rhetoric according to the above standards. The second case study shows this transition more gradually. Chapters four through eight examine the floor debates of five important congressional reforms. These include: 1) the Pendleton Act, 2) the “revolt” against Speaker of the House Joseph Cannon, 3) the 1946 Legislative Reorganization Act, 4) the 1961 changes to the Rules Committee, and 5) the 1970 Legislative Reorganization Act. These chapters illustrate the slow decline in rhetoric, according to the five standards developed. The conclusion in chapter nine ties the two case studies together with congressional decline and proposes an agenda for future research in the area of congressional rhetoric.

Rhetorical Practice in Congress: A New Way to Understand Institutional Decline

by

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A Dissertation

Approved by the Department of Political Science

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## DEDICATION

To my wife and children

## CHAPTER ONE

### Introduction

The United States is said to be a nation dedicated to the rule of law. If this is true, then the quality of the laws produced by our legislature is one of the most important factors in the quality of our regime. It is fitting, then, that our Constitution begins by laying out a framework for the legislature. The characteristics of Congress, including member qualifications, bicameralism, term length, assigned powers, and limits were chosen by the framers primarily for the end of producing good laws. While constitutional arrangement cannot *guarantee* good laws it can encourage certain types of legislative behavior to improve lawmaking. In recent years, scholars have raised the possibility that Congress as an institution may be broken, that it may no longer be capable of performing the functions it was intended to perform. Some have argued, certain historical developments have undermined the Constitution's ability to promote its desired legislature. In 2009, for instance, the Boston University Law Review published the transcripts of a Symposium entitled *The Most Disparaged Branch: The Role of the Congress in the Twenty-First Century*.<sup>1</sup> Throughout seven different panels, top congressional scholars examined issues from whether or not Congress is a "broken branch" to Congress in a comparative perspective. The symposium provided a rather comprehensive treatment of Congress. Yet, one area that lacked treatment in the symposium, and almost all congressional scholarship, was congressional rhetoric. There

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<sup>1</sup>"The Most Disparaged Branch: The Role of Congress in the Twenty-First Century," *Boston University Law Review* 89 (April 2009): 331-870.

has yet to be a systematic treatment of Congress that takes as its primary concern the relationship between rhetorical and institutional development. This is surprising, as this is not the case with presidential studies. Numerous scholars in both the political science and communication fields have examined the relationship between rhetorical development and presidential leadership. One wonders why this is the case. If changes in the topics of presidential speeches, to whom the president speaks, and how often he speaks has an influence on the institution and leadership, changes in congressional speechmaking might have an effect on the institution and leadership. This dissertation will begin examining the relationship between historical rhetorical developments in Congress and institutional developments and operations. Beginning the study of the development of congressional rhetoric allows for the examination of rhetoric as a possible contributor to a decline or crisis in Congress. By examining this unexamined phenomenon, a more complete picture of the current state of the institution may emerge.

A possible explanation for why congressional rhetoric has not been treated like presidential rhetoric in the scholarship is perhaps the overwhelming amount of congressional speeches. Presidential rhetoric, dealing with *one* possible speaker at any given historical moment, has massive amounts of untapped speeches and writing for consideration. Congress had eighty members when it was at its smallest and now has 535 members. Each member speaks *at least* to his constituents at home, in committee, and on the floor. The number of possible congressional speeches is certainly greater than presidential speeches, making the finding of trends and progressions more difficult. Yet, through case studies focusing on certain types of congressional speeches, one can begin the project of examining congressional rhetoric from a historical-institutional standpoint.

Jeffrey Tulis, one of the first major political scientists to systematically examine presidential rhetoric, had the benefit of numerous case studies on presidential rhetoric and presidential biographies when writing his groundbreaking book *The Rhetorical Presidency*. This is not the case with Congress. The combination of the current literature posing the possibility of a congressional crisis and the lack of attention paid to congressional rhetoric makes the time ripe for the development of a new political science sub-field of congressional rhetoric. This study will engage in in-depth case studies of two genres of congressional rhetoric: 1) the congressional responses to the presidents' State of the Union Address and 2) floor debates on congressional reform. While limited in breadth, such an examination allows for a deep qualitative study of changes in rhetoric in particular areas. Such studies are the building blocks for comprehensive histories like Tulis' in the *Rhetorical Presidency*. They allow for the beginning of important questions. For example, if major changes in rhetoric precede other factors that scholars hold accountable for the decline in Congress, might these changes in rhetoric be an underlying cause for congressional decline? Additionally, if the decline in Congress is linear and not a cyclical downturn in institutional performance, might not a linear decline in rhetoric, rather than other cyclical variables, provide a better explanation for the condition of Congress? Finally, if rhetoric is an underlying cause for institutional decline in Congress, what types of "reforms" might be suggested to aid in institutional recovery?

### *Deliberation, Rhetoric, and Decline*

Before examining whether rhetorical changes have undermined the ability of Congress to function well, what it means for Congress to function well must be determined. Joseph Bessette, in his book *The Mild Voice of Reason: Deliberative*

*Democracy and American National Government* argues that the framers of the Constitution wanted a Congress that would be both deliberative and democratic.<sup>1</sup> That is, it would reason well about the public good and be responsive to the will of the people. Bessette defines political deliberation as “a reasoning process in which the participants seriously consider substantive information and arguments and seek to decide individually and *persuade one another* as to what constitutes good public policy.”<sup>2</sup> Further, it is reasoning about “some public good,” rather than a calculation of one’s own good.<sup>3</sup> Sometimes, Bessette argues, deliberation is at odds with democracy. Transparency, responsiveness to opinion polls, and speaking directly to the people, may not always promote the best reasoning on the public good. Thus, while not mutually exclusive, there is a tension between deliberation and democracy, or as Alexander Hamilton characterizes it in Federalist #71, the immediate desires and the long term good of the people. He observed,

the republican principle demands that the *deliberate* sense of the community should govern the conduct of those to whom they intrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests. It is a just observation, that the people commonly *intend* the PUBLIC GOOD. This often applies to their very errors. But their good sense would despise the adulator who should pretend that they always *reason right* about the *means* of promoting it. They know from experience that they sometimes err; and the wonder is that they so seldom err as they do, beset, as they continually are, by the wiles of parasites and sycophants, by the snares of the ambitious, the avaricious, the desperate, by the artifices of men who possess their confidence more than they deserve it, and of those who seek to possess rather than to deserve it. When occasions present themselves, in which the interests of the people are at variance with their inclinations, it is the duty of the persons whom they have appointed to be the

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<sup>1</sup> Joseph M. Bessette, *The Mild Voice of Reason: Deliberative Democracy and American National Government*, (Chicago: University of Chicago Press, 1994).

<sup>2</sup> *Ibid.*, 46.

<sup>3</sup> *Ibid.*, 48.

guardians of those interests, to withstand the temporary delusion, in order to give them time and opportunity for more cool and sedate reflection.<sup>4</sup>

If the decline in Congress is a recent development, it would be difficult to argue that the problem is a lack of democracy. To be sure, the very fact that Congress is *representative* means it cannot perfectly reflect the will of people. Certainly, some anti-federalists would have argued that the new Congress was aristocratic rather than democratic. Yet, the American people had more, rather than less, access to national politics as time progressed. Suffrage has been extended, the nomination process for both the president and Congress has become more open to the people through primaries, and technology has made it easier to both observe and contact one's representatives. The sudden breezes of passion and impulses of the people can be known quicker through public opinion polls. Thus, it does not seem that a decrease in the democracy side of the tension is the problem. A lack of deliberation might be a better starting point.

The problem of a decline in congressional deliberation is presented by Norman Ornstein and Thomas Mann in their 2006 book *The Broken Branch: How Congress is Failing America and How to Get it Back on Track*.<sup>5</sup> While the authors present other causes of congressional decline such as the decline in "institutional identity," the decline in "regular order," the increased use of earmarks, and the lack of executive oversight, the decline in deliberation is their most persuasive argument. According to the authors, the above mentioned factors are *means* to proper institutional functioning, which seeks good

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<sup>4</sup> Alexander Hamilton, "Federalist Paper No. 71," in *The Federalist Papers*, ed. Clinton Rossiter (New York: Mentor, 1961), 432.

<sup>5</sup> Norman Ornstein and Thomas Mann, *The Broken Branch: How Congress is Failing America and How to Get It Back on Track*, (New York: Oxford University Press, 2006).

public policy (law) as an end. Public policy is also a means to the people's good. *Means* are what one deliberates about. As Aristotle notes in his *Ethics*,

We deliberate not about ends but about means to attain ends: no physician deliberates whether he should cure, no orator whether he should be convincing, no statesman whether he should establish law and order, nor does any expert deliberate about the end of his profession. We take the end for granted, and then consider in what manner and by what means it can be realized.<sup>6</sup>

Deliberation determines public policy itself *and* other institutional means that seek good public policy. A breakdown in the institution's ability to deliberate would inevitably lead to problems in the other factors discussed by Ornstein and Mann. For example, institutional identity deals with whether a member of Congress identifies himself primarily as a member of his institution (Congress or his specific chamber) or of his political party. Deciding where one's loyalty lies is a matter that members deliberate about. As will be seen in the case studies, often the proper balance between institutional and partisan identity was a matter of intense discussion and deliberation on the floor. Similarly, the decline in "regular order" cannot be separated from deliberation. As the case studies on congressional reform will illustrate, regular order was not a set, absolute standard. Rather, it involved the balancing of factors such as responsibility and responsiveness, majority rule and minority rights, and the power of committee chairs and centralized party power. There are no clear answers as to what these balances should be in the abstract. Again, deliberation is necessary to determine the correct balance at a particular time. Oversight, a separation of powers issue, also requires deliberation on the part of Congress to determine when and in what manner Congress ought to check presidential power. Either too little or too much oversight can result in problems for our

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<sup>6</sup> Aristotle, *Nicomachean Ethics*, trans. Martin Ostwald (Upper Saddle River, NJ: Prentice Hall, 1999), 60.

system of government. Additionally, if Congress tries to spread its oversight too thinly, it may be rendered ineffectual when it is truly necessary. Finally, earmarks, the authors admit, have always been a problem. Yet, they also admit that pork is necessary for the wheels of government to move. While they argue that the practice is now out of control, this is related to deliberation as well. When the practice of deliberation has broken down, individuals may pursue earmarks even more. Since deliberation is necessary both for good policy and good congressional behavior that leads to good policy, deliberation is more fundamental than the others.

By arguing that there has been a *decline* in deliberation, the problem becomes a historical one for Ornstein and Mann. For them, Congress's institutional/constitutional make-up provides the *necessary* but not *sufficient* condition for deliberation. Changes in certain factors have eroded the ability to deliberate. This is not a foregone conclusion in congressional scholarship. Gary Lawson, writing in the above mentioned 2009 symposium on *The Most Disparaged Branch*, takes another approach to the current problem of Congress. Unlike Ornstein and Mann, he does not think that Members of Congress, or Congress as an institution, can do any better than they are doing now. To prove his point he focuses on the Constitution and argues that the framers, through the insertion of many obstacles to congressional action in the text, showed a healthy skepticism of the national legislature and legislatures in general. From these clauses he concludes,

the Constitution is very worried that Congress will be full of power-mad, petty, vindictive, venal, greedy, corrupt gasbags who, unless constitutionally constrained, will abuse their power, punish anyone who tried to stop them, force themselves into positions in other departments, create lucrative offices to which

they will get themselves appointed, and vote themselves largesse from the public till.<sup>7</sup>

Similarly, in *The Dysfunctional Congress? The Individual Roots of an Institutional Dilemma*, Kenneth Mayer and David Canon argue that “public attitudes toward Congress are in large measure driven by qualities inherent to systems of geographic representation, candidate-centered elections, and the collective nature of Congress as an institution, rather than any recent political developments.”<sup>8</sup> They point to two major dilemmas that led to the behavior so many scholars are critical of, the institutional dilemma and the policy dilemma. The institutional dilemma is characterized by two things, “open criticism of Congress by members who tear down its reputation in order to secure partisan or personal advantage” and “members' unwillingness to pay the costs of institutional maintenance.”<sup>9</sup> The policy agenda consists of the tension that legislators have between local and national interests. If these dilemmas are the major driving force behind congressional action, then lack of or poor deliberation may be an inherent rather than a historical problem.

While both of these authors may be correct that popular legislatures have certain inherent problems that erode deliberation, they push the argument too far. The framers of the Constitution, while perhaps wary of legislatures, did believe that the Congress they created had the potential for deliberation. Jeffrey Tulis, in characterizing the system of separation of powers in *The Rhetorical Presidency*, holds that the special qualities and functions to be aimed at by the different branches are different. Congress' “special

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<sup>7</sup>Gary Lawson, “The Constitution's Congress,” *Boston University Law Review* 89, no. 2 (2009): 403.

<sup>8</sup>Kenneth R. Mayer and David T. Canon, eds. *The Dysfunctional Congress?: The Individual Roots of an Institutional Dilemma* (Boulder, Colo.: Westview Press, 1999), 3.

<sup>9</sup> Mayer and Canon, 3.

quality” is deliberation; the presidency seeks energy and the steady administration of the law; and the court seeks judgment, not will. Likewise, Joseph Bessette, in his work *The Mild Voice of Reason*, argues that the founders were able to design a system where deliberation was possible. By turning to the Constitution, he gives counter-examples to Lawson’s. He argues that

the governmental experience of the 1780s taught the framers that their new plan of government would have to solve four problems if deliberative democracy was to be achieved: (1) it had to defuse the problem of majority faction, (2) it had to restrict the legislative authority to properly legislative matters, (3) it had to promote the election of more responsible and knowledgeable political leaders, and (4) it had to fashion an institutional environment that would foster genuine deliberation.<sup>10</sup>

The Federal Constitution Bessette argues, was able to address all of these concerns adequately through means such as extending the legislative sphere, increasing the duration of legislative terms, and a system of separation of powers.

Additionally, if one looks to *The Federalist*, one sees that, both in looking to past legislatures and in defending the newly created Congress, the authors believe that deliberation is to be the main function of a legislature. Often, in the course of the papers, the authors analyze past regimes such as the Athenian Assembly and the Irish Parliament. In many of these cases the predicate describing the legislature acting as a legislature is deliberation. In Federalist #20, for example, Publius refers to the “deliberations of the States General.”<sup>11</sup> Referring to the United States Congress in particular Publius argues in Federalist #26 that the clause in the Constitution that limits Congress to making military appropriations for a period of two years forces them “to *deliberate* upon the propriety of

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<sup>10</sup>Bessette, 13.

<sup>11</sup>James Madison, “Federalist No 20,” in *The Federalist Papers*, ed. Clinton Rossiter (New York: Mentor, 1961), 136.

keeping a military force on foot.”<sup>12</sup> In Federalist #48 James Madison compares our representative republic with a direct democracy and argues that while the former is conducive to deliberation, the latter is not. He observes,

in a democracy, where a multitude of people exercise in person the legislative functions, and are continually exposed by their incapacity for regular *deliberation* and concerted measures, to the ambitious intrigues of their executive magistrates, tyranny may well be apprehended, on some favorable emergency, to start up in the same quarter. But in a representative republic where the executive magistracy is carefully limited; both in the extent and the duration of its power; and where the legislative power is exercised by an assembly, which is inspired, by a supposed influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be incapable of pursuing the objects of its passions, be means which reason prescribes, it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions.<sup>13</sup>

The legislative power in *democracies*, in Publius' understanding, tends to simply reflect the passions of the people and is not conducive to deliberation. However, in a representative republic, it is often in the interest of the legislative assembly not to simply reflect the passions of the people, but to engage in deliberation.

Finally Federalist #70 classifies the major functions of the executive and legislative departments:

Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justice of their views...have with great propriety, considered energy as the most necessary qualification of the [executive], and have regarded this as most applicable to power in a single hand, while they have, with equal propriety, considered the legislature as best adapted to deliberation and wisdom.<sup>14</sup>

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<sup>12</sup> Alexander Hamilton, “Federalist No 26,” 171.

<sup>13</sup> James Madison, “Federalist No 48,” 309.

<sup>14</sup> Alexander Hamilton “Federalist No 70,” 424.

If the main defenders of the newly proposed Constitution thought that deliberation was the primary function of legislative bodies, can one truly hold Lawson's view that the founders were completely cynical of legislative power? Is it not more likely that the Constitution provided the structure for the possibility of deliberation, with an understanding that it could be undermined by other factors? In other words, the Constitution allowed for but did not guarantee deliberation.

Accepting deliberation as the primary function or aim of Congress, why turn to rhetoric? The first answer, a somewhat simple one, is that rhetorical development has not been examined from a congressional standpoint, but has been done so successfully from a presidential one. Those scholars who argue that Congress is in the midst of a crisis do not turn to rhetoric as a cause. Likewise, those who do not believe Congress is not in a crisis fail to turn to rhetoric. If presidency scholars take rhetoric seriously, perhaps congressional scholars should follow suit. Rhetoric may offer new answers to whether a crisis exists, and, if a crisis does exist, rhetoric may offer possible solutions.

Yet, there is something more than just the lack of scholarship that requires a turn to rhetoric. Aristotle, in Book I Chapter 2 of his *Rhetoric*, observes that “so it follows that rhetoric is a sort of outgrowth of dialectic and also of the study that has to do with states of character, to which it is just to apply the name of politics.”<sup>15</sup> While Aristotle makes it clear that rhetoric and political science are not the same thing, rhetoric is closely related to political science. More particularly, rhetoric is related to the legislature. In Book I, chapters 3 and 4, Aristotle contends that political rhetoric is one of the three kinds of rhetoric and that legislation is one of the five main subjects of political rhetoric.

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<sup>15</sup> Plato, Joe Sachs, and Aristotle., *Gorgias* (Newburyport: MA, Focus Publishing R. Pullins Company,2009), 138

Political rhetoric, he continues, concerns giving counsel on things that “admit both of happening and of not happening.”<sup>16</sup> In other words, its subject is whatever possible course of action is most advantageous for the city. Further, “it is clear that advice is concerned with everything there is deliberation about, namely, all the things that are of such a nature as to be traceable back to us, and of which the source of their coming into being is up to us.”<sup>17</sup> By establishing legislation as a topic of political deliberation and holding that we can only give counsel on matters which require deliberation, Aristotle points us to the importance of studying rhetoric in Congress, for it is a body that both legislates and deliberates.

Having established that legislatures in general, and the United States Congress in particular, are primarily deliberative bodies and that rhetoric is concerned with that which can be deliberated on, it makes sense to turn to rhetoric as a possible factor in congressional performance. In fact, since Congress is the branch whose primary function is deliberation, it may prove more fruitful to examine congressional rhetoric rather than presidential rhetoric. Certainly rhetoric has an important role to play for presidents in their interactions with the people, their cabinet, and Congress. Yet, the constitutional powers granted to the president give him an energy that exists even if he uses rhetoric poorly. He can pardon, veto, make treaties, and is the commander-in-chief regardless of his ability to give an account of his actions to the public or the Washington establishment. Of course he may pay in the polls if he fails to do so, but the unity of the office allows him to act. His ability to command makes it unnecessary to persuade in certain situations. Congress, on the other hand, due to its plurality, must rely on rhetoric *always*

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<sup>16</sup> Ibid., 145.

<sup>17</sup> Ibid., 145.

to act. In order to take almost any action, a vote must be taken. If one wants a vote to go his way, he must persuade others through speech. This is not to say that it is always the most reasoned deliberative speech. In fact, through the process of bargaining, the speech used to move another to vote could be as simple as, “vote for my bill, otherwise my allies and I will not vote for yours.” Likewise, party leaders may use strong language to move members to vote a particular way. Ornstein and Mann point out examples of party leaders withholding campaign funds from undisciplined members. Even if these tactics seem coercive, *they are not commands*. It may be a type of “hard” persuasion, but is persuasion nonetheless.

Ornstein and Mann attribute the decline in deliberation mostly to the lack of time members of Congress spend in Washington. To be sure, this has implications for deliberation. If members are only in Washington from Tuesday to Thursday and the time spent in committee and on floor debate has radically decreased, members are talking to each other less. As Bessette argues, deliberation involves persuasion, and, as Aristotle reminds us, rhetoric involves giving counsel. Both of these are difficult if members are not spending time together. However, time is only a necessary and not a sufficient cause for deliberative rhetoric. Using certain *types* of rhetoric in committee and on the floor could undermine deliberation to an even greater extent than congressmen not speaking to one another. A deeper study of the quality of congressional rhetoric itself then is necessary.

Sunil Ahuja in his 2008 work *Congress Behaving Badly: The Rise of Partisanship and Incivility and the Death of Public Trust*, treats the substance of congressional

rhetoric. Ahuja's main argument centers on an increase in partisanship. He states, "the politics of Congress is decidedly too partisan at the moment."<sup>18</sup> Further,

in this state, the issues are viewed only through partisan lenses, producing an "anything goes" atmosphere. Whatever works for the party goes. If one party has to demonize the other side to make itself look better to the voters that is fine...in this state, members hasten to personalize everything...name-calling begets contempt, contempt begets distrust, and distrust undermines working relationships and friendships across the aisle, and as a result a rational legislative process falls apart.<sup>19</sup>

One could fairly substitute the word "deliberation" for Ahuja's term "rational legislative process." They are not simply the same, but the rest of Ahuja's work focuses on something like a decline in deliberation. Ahuja then dedicates the majority of his book chronicling evidence of incivility that he believes is caused by partisanship in recent speeches. He also cites elder and former members of Congress who testified to the change in tone in rhetoric. His study, while providing a valuable description of some of the extreme rhetoric heard on the Hill recently, is limited in a number of ways. First, the strong link between partisanship and incivility, relegates rhetoric to a symptom of something else. In a sense, Ahuja is studying partisanship as manifested through extreme language. Jeffrey Tulis argues in his introduction to *The Rhetorical Presidency* that to examine rhetoric as simply a symptom of something more fundamental in the political order is problematic. He states, "political rhetoric is reflective of something more fundamental. But that more fundamental phenomenon is intimately bound up with rhetoric itself; it is the idea or set of ideas that legitimizes political practice."<sup>20</sup> Rhetoric

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<sup>18</sup>Sunil Ahuja, *Congress Behaving Badly: The Rise of Partisanship and Incivility and the Death of Public Trust* (Westport, Conn.: Praeger, 2008), 3.

<sup>19</sup> Ahuja, 4.

<sup>20</sup> Jeffrey Tulis, *The Rhetorical Presidency* (Princeton, N.J.: Princeton University Press, 1987), 13.

itself is part of an idea of governance. Ahuja's relegation of partisanship and rhetoric to a simple cause and effect relationship then is limited.

Additionally, his narrowing of his examination to only incivility in the context of the last 30-40 years limits what one might learn through looking at congressional rhetoric. This makes sense since he is not examining the change in rhetorical practice as a cause of institutional decline. However, if Ahuja had examined more of congressional history, he perhaps would have been open to the possibility that rhetoric might be a cause of decline rather than just a symptom of partisanship.

Finally, intense partisan rhetoric, as will be shown in the case studies, has been present in congressional rhetoric throughout American history. Debates on Congress' response to George Washington's address on the Whiskey Rebellion, the Pendleton Act, the Revolt Against Cannon, and the 1961 expansion of the rules committee are all debates that involved intense partisan behavior. Yet, all partisan debates were not created equal. As the case studies will show, some debates, despite partisanship, were more deliberative than others. Partisanship alone does not undermine deliberation. In fact, at times, it may even contribute to deliberation. If Ahuja's examination of uncivil partisan rhetoric does not provide a complete picture of the relationship between rhetoric and deliberation, where can we turn for a more systematic understanding of congressional rhetoric?

#### *Ornstein and Mann's Other Concerns*

While I believe that deliberation is the most important concern of Ornstein and Mann because its decline will lead to the decline of the other problems they discuss, the causality also runs the other way. That is, a decline in regular order or institutional

identity for example, can undermine deliberation. Ornstein and Mann see regular order as a necessary condition for deliberation. Describing the decline in regular order they argue, “the lack of interest in the admittedly arduous process of going through multiple levels and channels of discussion, debate, negotiation, and compromise that make up a robust deliberative process has been a symptom of the broader malady in the contemporary Congress.”<sup>21</sup> The main problem with the decline in regular order for the authors is that it creates an environment where the ends justify the means. That is passing a particular measure is ultimately important, the process is not. The process, in addition to guaranteeing some type of fairness, often improves the final product. Amendments and debate can improve laws. Additionally, a decline in institutional identity might undermine deliberation as well. If members identify primarily as members of Congress, they would think of their purpose in terms of doing what members of Congress ought to do, which is or ought to be, deliberating about public policy. If institutional identity is replaced by other things, such as membership in a political party or a direct relationship with the people, a member would think of his purpose in terms of those relationships.

This is important because rhetoric that directly undermines regular order and institutional identity is also problematic. Rather than just looking for rhetoric that undermines deliberation directly, this dissertation will also look for rhetoric that indirectly undermines these factors as well.

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<sup>21</sup>Ornstein and Mann, 170.

### *The Case Studies*

In order to begin the project of a treatment of congressional rhetorical development, the best method to proceed is the use of case studies following particular areas of speeches. Only through the examination of a particular type of speech or debate on a particular topic can meaningful comparison take place. Meaningful comparison cannot be done by turning to particular Congresses or particular members. While presidential rhetoric is able to organize itself according to individual presidencies, studying congressional rhetoric in such a manner would prove unfruitful. Something useful might be learned by comparing Jackson's rhetoric and Lincoln's rhetoric, but comparing the 33<sup>rd</sup> and 87<sup>th</sup> Congress would be less meaningful. Looking at an entire session of Congress is too large a unit for rhetorical analysis. Additionally, with all of the different issues that dominate different Congresses, it would be tough to draw comparisons. A Congress dealing with the impending Civil War and one dealing with the tax reform might not provide much in the way comparison. Something must be held constant in order for a meaningful comparison to take place.

The other option would be to compare individual congressional speakers over time. These types of studies could provide interesting examinations of congressional leaders and other major historical figures. For example, a comparison of major Republican figures who opposed Democratic presidents from Senator Lodge, to Robert Taft and Newt Gingrich, for instance would be very interesting. Important studies could be done in the future chronicling the rhetoric of a specific position, such as the Speaker of the House or majority and minority leaders. The study of congressional leadership would benefit by the examination of individual speakers, as it has often been neglected in

studies. However, studies of individual speakers would make it tougher to draw out *institutional* trends in congressional rhetoric.

In order to treat a breadth of historical debates, the case studies must be limited, for the most part, to floor debate on these topics. The only exception, which is made for an important reason, is the first half of the case study on responses to the State of the Union Address (chapter 2). In this case, turning to televised opposition responses highlights the radical change from internal deliberation, where members discussed the proper congressional response with one another, to external non-institutional speeches aimed primarily at the people. There is support for turning to floor debates for the assessment of congressional deliberation. In the 2006 book *Deliberative Choices*, Gary Mucciaroni and Paul Quirk assess congressional deliberation by turning to three case studies of floor debates on welfare reform, the estate tax, and telecommunications deregulation. They defend their turning to floor debates stating,

to be sure, deliberation takes place by other means. Members of Congress read newspapers, talk to lobbyists, and receive a stream of written materials, among other occasions for considering policy decisions. The most thorough deliberation on a bill usually occurs in committee.

We focus on floor debate, *nevertheless*, for several reasons. To begin with, we are interested in how Congress deliberates at the final decision-making process rather than the stages of agenda setting or policy formulation. Floor action is important in Congress.<sup>22</sup>

Further they observe,

Floor debate is crucial for this process of deliberation in several ways. First it is an important means for legislators to obtain information about the merits of policy decisions. Notoriously, attendance at floor debate is usually a small fraction of the membership. Nevertheless, some MC's especially if undecided on the bill, will actually attend the debate. Others will read the printed record, which

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<sup>22</sup> Gary Mucciaroni, and Paul J. Quirk, *Deliberative Choices: Debating Public Policy in Congress* (Chicago: University of Chicago Press, 2006), 6.

becomes available the next day. And still others will receive a briefing from a staff member or some other second-hand report.<sup>23</sup>

Finally, “We assume that floor debate will largely *define the claims and arguments* that advocates will be willing to defend in any other prominent venue.”<sup>24</sup>

Of course, floor speeches are not the only congressional speeches worthy of study. Indeed committee speeches and deliberation are extremely important. As Joseph Bessette points out in *The Mild Voice of Reason*, “by design it is in committees and subcommittees that the most detailed and extensive policy deliberation occurs within Congress.”<sup>25</sup> This may be the case, but when Congress acts in committee Congress does not act as the institution. Rather, the servants of the institution are acting to bring something to the institution to act on. In looking to the floor debates one gets a picture of the institution acting as a whole. Even if Bessette is correct in that most of the deliberation in Congress today has shifted to the committee, a decline in deliberation on the floor may mirror a decline in committee. For, in many cases, it is the members of the committee who present and defend a measure being debated on the floor. If the deliberation is inadequate at the level of the committee, the rhetoric of the committee members on the floor would reflect this.

Worse still, it may be that non-deliberative speech on the floor could undermine deliberation in the committee. This is for two reasons. First, members who continuously see argument carried out in a certain manner are sure to employ similar modes of argument. Second, the process of “osmosis,” could indirectly reinforce rhetorical

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Bessette, 156.

practices that undermine deliberation in committee.<sup>26</sup> Osmosis is the process in which the debate on the floor influences members indirectly through reading the congressional record or newspapers and through conversing with colleagues who attended the floor debate. Thus, even in cases where relatively few members attend floor debate, it can have an important effect on members' decision-making. Bessette discusses the process of osmosis to show that floor debate can be deliberative and persuade members. If this is the case, it does not take a large jump to say that non-deliberative rhetorical floor practices might influence individual members to abandon deliberative rhetoric in other contexts. This would likely take place over a longer period of time than the osmosis discussed by Bessette as reasons for voting on *particular* bill could be absorbed quickly by a member while non-deliberative rhetoric may take longer to sink in. An observed practice may take longer to take root in an individual than an argument. If Bessette would be willing to accept my reasonable extension of the osmosis argument to apply to rhetorical practice and not just to a particular argument, he cannot simply abandon floor debate. Non-deliberative floor debates cannot be made up for completely by deliberative committee hearings, for the two are in a certain sense inseparable.

In addition to the positive justification for turning to floor debates, turning to committee hearings and meetings presents certain practical problems. First, it is tougher to get access to committee reports early in American history, and, in some cases, there are no records at all. Additionally, the amount of speeches is far too unwieldy for a manageable study, for instance the Legislative Reorganization Act of 1946, part of the case study on congressional reform. Before debating the act on the floor, there was close to a year of committee hearings and meetings involving many expert witnesses and

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<sup>26</sup>Bessette, 171.

debates. If one were concerned primarily with the act itself rather than rhetorical development, it would no doubt be fruitful to examine committee reports. However, in looking for general trends in reform rhetoric, the amount of speeches must be limited.

The two case studies this dissertation will undertake, as mentioned above are: 1) a study of congressional responses to the State of the Union Address (or as it was earlier called the Annual Address) and 2) a study of congressional rhetoric on institutional reform.

The study begins with an examination of congressional responses to the State of the Union Address because this has a strong link with the presidential rhetoric literature. The response case study is more dependent on the words of the president. If there have been major changes in the substance and intended audience of the State of the Union itself, congressional responses might mirror this. This part will be further divided into two chapters. The first is on the congressional responses to the president from the years 1789-1800. The second chapter examines the reemergence of the congressional response to the State of the Union through televised party responses from 1966-present. In between 1800 and 1966 there neither Congress as an institution nor congressional members of the opposition party gave any formal response to the State of the Union Address.

The second case study dealing with congressional reform is suitable for a number of reasons. First, this section is the most removed from presidential influence. Often, in these studies, Congress is exercising its constitutional power of making rules for itself. This case study provides a valuable counter-part to the first study. For one could argue after studying the changes in the response to the State of the Union that changes in

congressional rhetoric simply mirror changes in presidential rhetoric. Since the nature of the State of the Union has changed, the nature of responses would change as well. The chapters on congressional reform show that congressional rhetorical change is so pervasive that it can be seen even when Congress deliberates on its own institutional operations. The combination of these two case studies allows an examination of congressional rhetoric that follows presidential rhetoric and an examination of congressional rhetoric independently.

Second, if the argument cited from Tulis earlier is correct, that rhetoric is intimately tied up with more fundamental principles of government, perhaps the best area for an examination of the fundamental principles of congressional government would be when Congress engages in reform. For congressional reform often touches on the fundamental questions of what Congress is and what it ought to be. Specifically, it asks questions such as what the role of parties is in the institution and what the proper relationship between Congress and the president, court, people, and Constitution ought to be. The rhetoric employed to deal with such questions is intimately tied to the questions themselves.

*What to Look For: The Contribution of Presidential Rhetoric Scholarship*

A good deal of excellent scholarship has been devoted to presidential rhetoric and can be used to provide a framework for a study of congressional rhetoric. Two characteristics of the scholarship are particularly helpful. First presidential rhetoric scholarship often takes a broad historical approach that seeks to understand developments in rhetoric throughout American political history. Additionally, presidential rhetoric

scholarship, due to its emergence as a sub-field, has much to offer in the way of rhetorical standards, some of which will be applied or distilled for Congress.

*The Rhetorical Congress? Congressional Rhetoric?*

Since the standards discussed below and indeed this study as a whole are prompted by existing presidential rhetoric scholarship, one of the important debates within that field ought to be at least briefly mentioned. Different scholars have come to term the study of presidential speech either the “rhetorical presidency” or “presidential rhetoric.” These phrases have come to signify two different approaches to the study. As Martin Medhurst observes in his introduction to *Beyond the Rhetorical Presidency*, “at the most basic level these constructs point to two different objects of study: the presidency in one case and rhetoric in the other.”<sup>27</sup> These two constructs tend to be pursued by political science scholars and communication scholars respectively. This leads to a question about this work. Is it a study in “the rhetorical Congress” or “congressional rhetoric?” I would argue that in certain senses, it is both, at least according to Medhurst’s constructs. One could call this a study on the “rhetorical Congress” because its primary motivation is institutional. The study turns to rhetoric because congressional institutional scholars have ignored it in their work. This study does not turn to congressional speeches for the sake of the speeches themselves, their beauty, or what they have to offer the larger field of rhetorical studies. At the same time, this study does not argue for something called the “rhetorical Congress,” which began at

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<sup>27</sup>Martin J. Medhurst ed., “A Tale of Two Constructs: *The Rhetorical Presidency Versus Presidential Rhetoric*,” in *Beyond The Rhetorical Presidency* (College Station: Texas A&M University Press, 1996), xii.

a specific point, has specific characteristics, and is separated from a “non-rhetorical,” or to follow Tulis, a “constitutional” Congress. In this sense it does not easily fall into the rhetorical congress category “at least as originally formulated.”<sup>28</sup> The rhetorical president construct laid out by Tulis makes a clear delineation between a constitutional and an extra-constitutional rhetorical presidency. These two presidencies correspond roughly with the pre and post-Woodrow Wilson presidency respectively. This study will show that Congress, like the presidency described by Tulis, has abandoned or watered-down its discourse on the Constitution and American fundamental principles over time. In the sense that congressional rhetoric discusses the Constitution less, it is less “constitutional.” This will be discussed further in the second standard discussed below. Yet, I do not believe that the Constitution itself lays out any particular form that congressional rhetoric ought to take. Thus, one cannot say that the rhetoric is non-constitutional in the sense that it violates the prescriptions for rhetoric in the Constitution. In other words, in failing to talk *about* the Constitution, Congress is not acting contrary to the Constitution’s intentions. Congress is given a great deal of discretion as to how to organize itself. Explicitly, in Article I Section 5, the Constitution allows each house to make its own rules. These rules often touch upon rhetoric. For example, the House of Representatives often limits debate time on the bills and amendments on the floor. Both houses may decide what type of public access will be allowed for committee meetings and floor debates. They can decide whether to allow reporters and television cameras in during committee or floor sessions. Allowing open and televised sessions gives members more access to the public, which in turn might give rhetoric a more “popular” character.

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<sup>28</sup>Ibid., xiii.

Tulis holds that the increase in popular presidential rhetoric is not in line with the Constitution. I do not believe this is the case for Congress. Again, in Article I Section 5, the discretion given to Congress in how to run each house seems to give constitutional sanction to these decisions.

At the same time, the dissertation follows Jeffrey Tulis' revision of the rhetorical presidency. One could replace "president" with "Congress" in the following statement to characterize this dissertation: "In an important sense, all presidents are rhetorical presidents. All presidents exercise their office through the medium of language, written and spoken...our principle access to the legacies of previous administrations is through words. Yet, presidents may use words in a variety of ways."<sup>29</sup> He follows this opening by reiterating the major difference in rhetorical practices between the 19<sup>th</sup> and 20<sup>th</sup> centuries. Like Tulis, I believe that, while Congress has always been rhetorical, it has used rhetoric in a variety of ways which changed dramatically over time. These particular changes will be laid out below.

Like Tulis, I argue that more recent rhetoric is less deliberative than earlier rhetoric. However, a clear delineation of a constitutional and a non-constitutional period is not as simple. The first case study on congressional responses to the State of the Union Address shows two radically different periods, this is because one period encompasses the first twelve years of American history and the other encompasses the last forty-four years. The other case study on congressional reform shows a more gradual change in rhetorical practice.

In other senses this work shares characteristics in common with the "congressional rhetoric" construct mentioned by Medhurst. Primarily, it acknowledges

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<sup>29</sup> Tulis, *The Rhetorical Presidency*, 3.

that there is a “pervasive indeterminacy”<sup>30</sup> involved in studying rhetoric. As Medhurst observes: 1) any rhetorical situation is complex and cannot be reduced to a one-to-one cause and effect relationship, 2) one or more exigencies are always present, and 3) all is dependent on human action. This study looks at the speeches on their own terms. While looking for trends it does not seek precise easily distinguished eras or causes and effects. Yet, Medhurst does acknowledge that one can assess a general rhetorical situation and rhetorical context. This work will attempt to determine rhetorical situations and contexts throughout congressional history. By merely drawing out historical, rhetorical situations and contexts, new factor emerges that can be viewed along with others in the institutional development of Congress. Developing a sense of rhetorical practice at different points in congressional history can point to gaining a better sense of the fundamental ideas of congressional government.

### *Five Standards*

In order to frame the development of congressional rhetoric in the case studies, five broad standards are used. All five standards are presented as historical developments away from deliberative rhetoric. They undermine reasoning on the public good, or they undermine giving good counsel on what is advantageous for the regime. These standards are distilled from existing rhetorical scholarship and adapted for use in judging congressional rhetoric. These standards are not hermetically sealed from one another. For example, the self-restraint standard and the crisis rhetoric standard discussed below are certainly related. Crisis rhetoric may indeed be a result of a lack of self-restraint. Further, both of these may be related to the discussion of the divorce of speech from

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<sup>30</sup> Medhurst, *Beyond the Rhetorical Presidency*, xvi.

thought. This means that certain specific examples of rhetoric encountered in these case studies may touch upon more than one of the following standards. As a particular piece of rhetoric might undermine deliberation in more than one way, this is not problematic. The different standards are separated from one another not because they categorize different types of rhetoric, but because they provide different *focuses* with which to view the rhetoric of the case studies.

*Standard #1: The divorce of speech from thought.* Kathleen Hall Jamieson, in her book *Eloquence in an Electronic Age* argues that due to modern media there has been a divorce of speech and thought. Those who make political speeches rely so often on ghost-writers that many times they have not vetted the ideas they are advocating. This is particularly the case in floor debates in Congress. Jamieson quotes congressional reporter Steve Roberts:

The role floor speeches play in the legislative process is almost infinitesimal,” observes Roberts. “People do not make up their minds on the basis of floor speeches. The speeches there are designed to summarize arguments, to gain press coverage and with the advent of television to inform the general public, but does any Senator or Congressman sit in front of his TV or sit on the floor and say, my God, that guy has really made the point. I’m going to change my vote?’ I’d be surprised if that happens half a dozen times a year.<sup>31</sup>

Further, Jamieson observes, “The audience for the congressional speech is now not so much the other members of Congress but the public that can be influenced and mobilized by persuasive speech carried whole to a small part of the audience by C-SPAN and digested for a larger audience by print and broadcast news.”<sup>32</sup> As a result, what is lost in the changed character of congressional speechmaking is the refinement born of a direct

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<sup>31</sup>Kathleen Hall Jamieson, *Eloquence in an Electronic Age: The Transformation of Political Speechmaking*, (New York: Oxford University Press, 1988), 215.

<sup>32</sup> Ibid.

and spontaneous clash of ideas. When the substance of congressional hearings is the scripted speech and question and the substance of floor debates is the pre-fashioned text, both leadership and legislation are torn from the moorings provided by the search for arguments, evidence, and language to cogently sustain a case.<sup>33</sup>

If these statements are true, there has been a dramatic negative development in floor deliberation in Congress. This might not be too damaging for Congress as a whole, if, as Roberts observes above, floor speeches play an infinitesimal role in the legislative process. However, if we turn back to the idea of osmosis articulated by Besette, we can argue that this is not the case. Even if Roberts is correct that the osmosis that occurs from watching or hearing about floor debates changes only half a dozen minds a year, my addition to the osmosis argument may hold. That is, even if individual members are not influenced in how to vote on a particular issue by osmosis, the rhetorical norms viewed in floor debate might be absorbed and brought back to committee, a place that certainly has a major role in the legislative process. The norms described here by Roberts and Jamieson seem pretty bleak. We may conclude that a divorce between speech and thought can have a major influence on the legislative process, especially over the long run.

Tulis also points to the dangers of politicians relying heavily on ghost-writers. While Tulis acknowledges that “ghost-writing for presidents is not new,”<sup>34</sup> the extent upon which ghost-writers are relied upon now is problematic. He concludes,

the danger here is not, as some suggest, that anonymous speechwriters make policy in the name of the president without his knowledge. The very fact that the president has to give the speech insures that he will know what is in it.

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<sup>33</sup> Ibid.

<sup>34</sup> Tulis, *The Rhetorical Presidency*, 186.

Speechwriters do not pose a problem of accountability. The problem is rather that by reinforcing the fictive qualities of presidential speech, this institution of experts exercises a subtle but considerable influence upon how a president thinks about politics-upon the presidential mind.<sup>35</sup>

This effect described by Tulis re-iterates the idea of a divorcing of speech from thought. While Tulis holds that a president must still give *consent* to the content of a speech and thus think about it, the president must not think much about the *construction* of the speech. The politician's role is far more passive. Most of the grunt-work deliberation is done by the speech-writer rather than the politician. While he may agree with the arguments or sentiments in the speech, he may not be able to defend it or see flaws that ought to be amended.

One can clearly see the problem this might pose for Congress. The framers hoped that Congress would be a deliberative institution. However, if members continue to delegate the majority of their individual deliberation to speech-writers, the possibility for institutional deliberation diminishes. Merely giving consent to a policy position constructed by a speech-writer does not force a member of Congress to know his arguments, to know the evidence for his position, or to be ready to address counter-arguments as well as he would if he had been made to speak on the spot.

Both of our case studies will illustrate this move in congressional rhetoric. In the case of the responses to the State of the Union (or Annual Address as it was then called), the earlier period of responses often involved days of debate and questioning to amend a written response prepared by each house of Congress. There was a strong link between thought and speech here. The final product was a result of extensive give and take. Both broader arguments and the choice of specific words were debated and revised. In the

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<sup>35</sup>Ibid.

modern period individual members of the opposition party in Congress were selected to give a speech for their party. There was no institutional vetting or deliberation about the content of the response. In this sense speech and thought were divorced. Only the thought of the speechwriter and the speaker needed to be taken into account. The “thought” of Congress as an institution was absent. At best, the thought of certain members of the opposition party was taken into account. No defense of ideas was necessary. In the case of reform, one will notice that the earlier debates contained much more genuine question and answer exchanges and actual debate. Members yielded to their opponents for questions and attempted to provide answers. Later debates engaged in these exchanges far less. More will be said of this standard in the context of the particular chapters.

*Standard #2: The constitutional tradition.* A skeptical observer of congressional rhetoric today might hold that it is unprincipled. This is not the case. However, the types of principles used in congressional debate have changed over time. In *The Rhetorical Presidency*, Tulis lays out two specific eras of presidential speech, the old way and the new way. Each way has a certain understanding of fundamental governing principles and the forms by which they are articulated. The change in forms is of primary concern for our study. In the 19<sup>th</sup> century, Tulis argues, speeches “were often constrained by a constitutional tradition of argument and by other customs consistent with the general doctrine.”<sup>36</sup> The constitutional tradition includes the written Constitution of the United States, but would include other small-c constitutional issues related to broader American and republican principles. Rhetoric, even if dealing with particular policy choices,

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<sup>36</sup>Ibid., 135.

tended to stay within the bounds of this tradition and often justified actions and policies in terms of it. The 20<sup>th</sup> century saw two rhetorical moves away from this tradition. These moves, which Tulis articulates in his qualitative study of presidential rhetoric, are supported by quantitative evidence as well. Scholar Elvin T. Lim in a 2002 study entered *all* of the president's inaugural and annual addresses between 1789 and 2000 in a computer-aided content analysis. He notes in his research that presidential rhetoric has become "anti-intellectual."<sup>37</sup> Part of the anti-intellectual move has been an abandoning of "references to legal and judicial terms," as well as "references to the tools and *forms* of formal power."<sup>38</sup> This type of rhetoric would surely be included in the "constitutional tradition," articulated by Tulis.

In abandoning this constitutional tradition, rhetoric moved in a more abstract direction by attempting to provide "vision." Tulis describes this type of rhetoric as that "which would articulate a picture of the future and impel a populace toward it. Rather than appealing to, and reinvigorating established principles, this forward-looking speech taps the public's feeling and articulates its wishes. At best it creates rather than explains principles"<sup>39</sup> It also tends to be "moral, even moralistic."<sup>40</sup> Lim's quantitative work also supports this claim by Tulis. He notes that "modern presidential rhetoric is curiously accompanied by a certain penchant for abstraction: an expansive rhetoric that makes

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<sup>37</sup> Elvin T. Lim, "Five Trends in Presidential Rhetoric: An Analysis of Rhetoric from George Washington to Bill Clinton," *Presidential Studies Quarterly*, (June, 2002): 333.

<sup>38</sup> *Ibid.* Emphases added.

<sup>39</sup> Tulis, *The Rhetorical Presidency*, 135.

<sup>40</sup> *Ibid.*, 136.

religious, poetic, and idealistic references.”<sup>41</sup> In addition to being abstract, Lim's evidence supports Tulis' point by arguing that there has been a move “away from the sometime model of republican rhetoric toward a certain democratic chattiness: a rhetoric that honors the people (and their visionary leader), is compassionate, inclusive, and egalitarian.”<sup>42</sup> Further he adds,

presidential rhetoric has become more people-oriented in the past century and especially in the past three decades. The subtle change in salutations is illuminating. Whereas Theodore Roosevelt addressed his annual message, “To the Senate and the House of Representatives” and even Woodrow Wilson (who reintroduced the tradition of personally delivering the annual message before Congress) addressed his annual message to the “Gentlemen of the Congress,” Ronald Reagan appended the telling “and fellow citizens” to his introductory salutations, and Bill Clinton added, “my fellow Americans.”<sup>43</sup>

Thus, Lim's data can be used to support both the move toward abstraction and might suggest a move toward expressing the will of the people and guiding them toward newly established principles.

While moving in a more abstract direction away from the constitutional tradition, rhetoric also moved in a more concrete direction. That is, recently there are more rhetorical attempts to make “policy stands” than there had been. This type of rhetoric “aimed at specificity” and articulated what the president “would do regarding the issues of the day.”<sup>44</sup> Tulis points to the difficulty in maintaining both of these moves while at

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<sup>41</sup> Lim, 334.

<sup>42</sup> Ibid., 338.

<sup>43</sup> Ibid., 339.

<sup>44</sup> Tulis, *The Rhetorical Presidency*, 136.

the same time arguing that “it is difficult for a single speech to be inspirational and highly specific at the same time.”<sup>45</sup>

Tulis believes that this move occurred because, rather than popular speeches being influenced by the standards of the president's messages to Congress, his messages to Congress were influenced by developing standards of popular rhetoric. I believe that similar moves can be seen in congressional rhetoric, for a similar reason. Earlier in the history of congressional rhetoric, members' speeches to their constituents were influenced by how they spoke to each other in the institution. More recently, the way that members speak to their constituents influences the way they speak to each other. This has led to the same two moves that Tulis sees in presidential speech with more negative consequences.

Our cases studies will show that congressional speech has become more “inspirational” over time. That is, it attempts to articulate broad moral ideals and the feelings and senses of the people. The second move, toward specificity, is a move in a relative sense. Congress has always had to deal with specific policy issues, yet the articulation of policy over time becomes jarred loose from the constitutional tradition. Thus, we have a dangerous combination of highly abstract moral-isms of the people with specific policy decisions. It is dangerous because deliberation entails the matching of means with ends. As Aristotle notes in the *Ethics* we do not deliberate about ends. The end must be set. The problem with the dual move seen in Tulis is that *common* ends are abandoned. While the moral-isms and the articulated “will of the people” inherent in visionary speeches are principles, they tend to be too abstract to guide deliberation. Truth, Justice, and the American Way, may work as a guide for the god-like Superman

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<sup>45</sup>Ibid.

(at least in his George Reeve manifestation), but it provides little guidance for human legislators. Finding agreement on the concepts of liberty, equality, security, rights, human dignity, and compassion within a specific constitutional tradition is difficult enough; to do so without one is nearly impossible.

This constitutional tradition discussed by Tulis is actually an articulation of a necessary characteristic of political rhetoric discussed by Aristotle. While Aristotle would certainly believe that a good rhetorician should have knowledge of those things necessary for a “visionary” speech, including broad moral principles and the possible emotions of his audience, something else is necessary for successful *political* speech. In Book I, chapter 8 of the *Rhetoric* Aristotle states, “the greatest and most decisive of all the things that contribute to being able to be persuasive and to do a beautiful job at giving advice is to have a grasp of all forms of government, and to distinguish the characters of the people and customary practices in each, and the things advantageous to them.”<sup>46</sup> In the same chapter he observes, “we must also notice the ends which the various forms of government pursue, since people choose in practice such actions as will lead to the realization of their ends...it is clear, then, that we must distinguish those particular customs, institutions, and interests which tend to realize the ideal of each constitution, since men choose their means with reference to their ends.”<sup>47</sup> Thus, for Aristotle, knowledge of moral principles and particular policy alternatives is not enough. Knowledge of one's constitution or regime is extremely important. Turning back to Aristotle provides additional justification for applying Tulis' moves to Congress. Since “regime knowledge” is essential for all political rhetoric (under which falls legislative

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<sup>46</sup> Plato, Joe Sachs, and Aristotle, 159.

<sup>47</sup> Ibid., 160.

rhetoric), failure to take this knowledge into account would damage political rhetoric and deliberation.

Additionally, congressional rhetoric couched in constitutional tradition has a secondary positive effect on Congress. It reinforces what Ornstein and Mann call “institutional identity.” That is, it reminds members of Congress that they are members of Congress, not simply members of a political party or individuals representing a certain state or district. This might make members more likely to defend the powers and reputation of Congress against attack.

Both of the case studies in this dissertation will see these moves over time. In responses to the State of the Union Address from 1789-1800, members addressed the president's concerns within a constitutional context. The reform case study will show that substantive discussion of the role of institutions and parties, traditional American political figures, the constitution, and, institutions was largely abandoned.

*Standard #3: The Movement away from self-restraint.* As Tulis points out in *The Rhetorical Presidency*, during the 19th century “old way” of presidential rhetoric there was awareness on the part of presidents and audiences that there were certain forms of rhetoric that ought to be followed.<sup>48</sup> Presidents wanted to be perceived as statesmen rather than demagogues. Due to this awareness, presidents refrained from certain types of speech. The only exception was Andrew Johnson who was restrained externally through impeachment. Yet, over time, with the rise of the rhetorical presidency, presidents became less concerned with the proper boundaries of rhetoric. The only real

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<sup>48</sup> Tulis, *The Rhetorical Presidency*, 27

restraint became whether or not the speech could move the president's audience in the manner desired.

The development away from self-restraint can be seen even more explicitly with Congress than in the president. Due to the unitary nature of the executive, it is more difficult to determine if the president is using self-restraint. Certainly a president's advisors might advise him to use restraint. There may even be records of these discussions. However, this is not properly *self*-restraint. The president as executive may ignore this advice. Any real self-restraint must be a result of the president's own decision. Typically such a decision is not a public one. Congress, due to the plurality of members, has parts. Thus, members checking each other rhetorically can still be properly called self-restraint since the *institution* is checking itself.

Rhetorical self-restraint can be seen easily if members actually talk about rhetoric during debate. The most basic form of restraint might come from members arguing for the importance of debate or praising debate. It might also come through the criticism of certain types of rhetoric. The rhetoric that is criticized could be rhetoric that undermines deliberation or other important ends such as institutional identity.

In both case studies, one sees that earlier periods of congressional rhetoric involved members of Congress speaking about what the standards of speech ought to be. More recent speech lacked the discussion of rhetorical standards. This can be seen obviously in the case of responses to the State of the Union Address. In the written responses of the first twelve years of the republic, members often discussed how the particular words, phrases, and tone of their rhetoric would be perceived by the president and by the public. In the case of modern televised responses, this was obviously lacking.

The debates on reform show a similar development. Only in the earlier debates does one often see members criticizing each other's use of rhetoric.

*Standard #4: The feminizing of congressional rhetoric.* In her work *Eloquence in an Electronic Age*, Jamieson discusses another problem that modern technology poses for public speaking, the feminizing of political rhetoric. Throughout the work she discusses the difference between masculine and feminine speech. While she believes that these types do not necessarily correspond to men and women, or that they should be the normative standard for each sex, she seems to favor manly speech in the political realm. She observes, "whether men and women are naturally disposed to different communicative styles is difficult to ascertain. The task of separating stereotypes about male and female communication from actual behavior is complicated by our tendency to internalize the behaviors and attitudes approved by society."<sup>49</sup> Nevertheless, she goes on to lay out the characteristics of manly and feminine speech. Manly speech is factual, analytic, organized, impersonal, ordered, energetic, perspicacious, and competitive. Feminine speech is emotive, personal, self-disclosing, excessive, disorganized, and ornamental. In Jamieson's view the feminine style is at home in televised communication. For television, among other things, "favors a conciliatory style over a combative one."<sup>50</sup> It also "invites a personal, self-disclosing style that draws public discourse out of a private self and comfortably reduces the complex world to dramatic narratives."<sup>51</sup> As a result of this move away from manly rhetoric, "two ironies result: only to the extent that they employ a once spurned 'womanly' style can male politicians

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<sup>49</sup> Jamieson, 81.

<sup>50</sup> Ibid., 82.

<sup>51</sup> Ibid., 84.

prosper on radio and television; meanwhile in their surge toward political equality, women abandoned and must now reclaim the 'womanly' style.”<sup>52</sup>

Lim's research also supports the qualitative point made by Jamieson with quantitative data. In his section discussing the increased democratization of presidential speech, he mentions that there has been increasing reference to the family, something that would characterize feminine rhetoric. He observes, “words denoting kinship have become more popular since Franklin Roosevelt and extremely popular since Jimmy Carter, from whom references to infants and adolescents have also increased exponentially. These patterns suggest that contemporary presidents have discovered the endearing effect that familial references have on their auditors.”<sup>53</sup> Second, Lim shows that rhetoric has become “more compassionate and emotive since the Civil War and especially in the past three decades, suggesting an increased use of emotional appeals, or pathos, and a transformation of the president-public relationship from one of authority to comradeship.”<sup>54</sup> Lim also argues that rhetoric has become more conversational, a characteristic of feminine rhetoric according to Jamieson. He observes, “presidential rhetoric has become more conversational, it has become more intimate, it has focused increasingly on the trustworthiness of the rhetor, and it has become more anecdotal.”<sup>55</sup> Additionally Lim's study shows that since FDR words denoting kinship have increased. This use of terms related to family would also likely be considered feminine speech according to Jamieson.

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<sup>52</sup> Ibid., 89.

<sup>53</sup> Lim, 339.

<sup>54</sup> Ibid., 341.

<sup>55</sup> Ibid., 343.

Jamieson, the case studies will show, is on to something here. While, Ahuja's is correct to point out that rhetoric has become more combative, this does not mean that it has become more masculine, as masculine speech requires competition that is analytical and evidence driven, as opposed to being emotive. Rather, there has been, on balance, a move in congressional rhetoric towards a feminine style. Members increasingly engage in personal story-telling, make more emotional appeals, and discuss the family, more than in the past. Speeches have become less logical and more disorganized, ornamental, and excessive.

Additionally, a point mentioned earlier in the section on the divorce of speech from thought applies here as well. There is the decline in real question and answer exchanges on the floor. Earlier debates examined here will illustrate that there tended to be heated yet respectful questions, which were replaced by either rhetorical questions or no questions at all. Questions and answers are an important means of competition in debates. They force speakers to actually engage one another. The abandoning of the give and take of questioning is an abandoning of competitive and manly rhetoric.

*Standard #5: Crisis rhetoric.* In the concluding chapters of *The Rhetorical Presidency*, Jeffrey Tulis discusses the rhetorical presidency and its relationship to "crisis politics." While admitting that the use of crisis rhetoric aimed at the public might be necessary at certain times for presidential leadership, he is wary about the over-use of it by the rhetorical president. After conceding that "the rhetorical presidency is, equivocally, both good and bad," he observes,

Popular leadership seemed necessary and suitable for presidents who face crises as profound as World War II and the Great Depression. The continual or routine use of the "crisis tool" of popular leadership was meant to make the president more effective in normal times as well. The long-term consequences of the

rhetorical presidency may be to make presidents less capable of leadership at any time. If crisis politics are now routine, we may be losing the ability as a people to distinguish genuine from spurious crises. Intended to *ameliorate* crises, the rhetorical presidency is now the creator of crises, or pseudo-crises. How to harness the rhetorical presidency to the tasks of crisis politics for which it might be essential without adopting it as the routine for all time is the central dilemma.<sup>56</sup>

Tulis discusses Johnson's "War on Poverty" as an example of the misuse of crisis rhetoric. Here Johnson creates a crisis which is not as tangible as World War II or the Great Depression. This misuse, Tulis argues, leads to a undermining of deliberation in public policy. Yet, Tulis does admit that crisis rhetoric is a tool that can be rightfully used by the president even during "normal" times. Constitutionally speaking, this makes sense. The presidency is the institution that is specifically designed to deal with crises. Alexander Hamilton discusses the crises that presidential energy is designed to solve in Federalist #70 arguing,

It [energy] is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy.<sup>57</sup>

These crises, foreign attacks, irregular combinations taking property, and anarchy, are all to be dealt with by the president's role as commander-in-chief and chief executive covered by the "commander-in-chief" clause and the "take care" clause of the Constitution. If one turns to *specific* powers of the president, one can see that many of them are centered on his crisis-solving role. The power to pardon certainly is a power to alleviate a crisis. The crisis (ideally) being a situation where someone convicted is innocent of the crime they of which they are accused. Innocent people being convicted is

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<sup>56</sup> Tulis, *The Rhetorical Presidency*, 181.

<sup>57</sup> Alexander Hamilton, "Federalist No 70," 423.

certainly one of the worst crises in the carrying out of justice. The president's abilities to both convene and adjourn Congress (in cases where the Houses disagree on adjournment) are tools for crisis management. The power to convene allows for the president to receive Congress' support during a national crisis. The power to adjourn allows for a decision to be made when the two branches of the legislature are deadlocked. During normal times a president typically must receive the advice and the consent of the Senate for his executive appointments. This is part of the normal administration of the law. However, if major posts in the government are vacated without replacement, the consequences could be disastrous. Thus, the president may make temporary appointments to fill vacancies until the end of the next session of the Senate.

The president then, both broadly and specifically, is given the constitutional power to handle crises. Thus, while Tulis may be right about certain credibility and deliberative problems that might arise from the misuse of this rhetoric, it seems fitting for the president to use crisis rhetoric. Congress, on the other hand, has neither broad nor specific constitutional powers to manage crises. They are granted the power to legislate over the matters enumerated in Article I Section 8. However, laws are to be general and deliberated upon, and there is a *process* that must be followed for a bill to become a law. The powers discussed above which are given to the president are more properly commands or single-step actions. Laws are not the *immediate* reaction to a crisis. They are typically aimed at preventing future similar crises or alleviating a current crisis in the long-term. Even the "necessary and proper" clause is aimed more at providing flexibility than at managing crises. In this sense crisis rhetoric undermines deliberation by undermining regular order.

Crisis rhetoric only has value insofar as it is related to the remedying and identifying of crises. Due to its inferior institutional ability and power to remedy crises, it seems that crisis rhetoric is far less fitting for Congress and does more to undermine the institution than it does to help it. As for identifying crises, this also seems to be more properly a presidential role. When discussing the State of the Union Address, scholars Campbell and Jamieson observe that presidents, “must report and advise the Congress, the diverse representative of the people of all states and regions, a fact suggesting that the presidency gives its occupant a unique national vantage point.”<sup>58</sup> This is because the president is elected by the people as a whole and has the officers who can provide him with information unavailable to other political officers. With decreased ability to remedy and identify crises, Congress’ use of crisis rhetoric is more likely to only have the negative consequences of creating pseudo-crises and undermining deliberation.

Unfortunately, Congress has indeed increasingly adopted the rhetoric of crisis as will be seen in both of the case studies below. This may be due to some of the same factors that have led to the adoption of crisis rhetoric by presidents or, perhaps, to Congress’s attempt to mirror rhetorical practices of the presidency.

### *Why the Change?*

As mentioned above, while this paper does not apply Tulis’ dichotomy of a constitutional and a rhetorical president, it does take its lead from Tulis’ work. In addition to Tulis’ aid in what to look for in congressional rhetoric, the causes and factors leading to the changes in the character of presidential rhetoric are also enlightening for this study. In an earlier article, “The Rise of the Rhetorical Presidency,” written with

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<sup>58</sup> Karlyn Kohrs Campbell and Kathleen Hall Jamieson, *Presidents Creating the Presidency: Deeds Done in Words* (Chicago:University of Chicago Press, 2008), 53.

James Ceaser, Joseph Bessette, and Glen Thurow, Tulis lays out three major causes for the rhetorical presidency: 1) the modern media, 2) the permanent campaign and, 3) changes in the notion of presidential leadership.<sup>59</sup> All three of these play into the changes in congressional rhetoric as well.

The first two causes make congressional rhetoric more public, or what Tulis would call “popular.” This leads to all of the changes in rhetoric listed above. The media is explicitly linked by Jamieson to both the feminization of rhetoric and the divorce of speech from thought. Mary Stuckey, in her book *The President as Interpreter in Chief*, observes that, in an era of televised politics, “the president has become a presenter; public argument has been largely supplanted by public assertion.”<sup>60</sup> However, Stuckey does not go so far as to maintain a strict dichotomy between a deliberative pre-television era and a non-deliberative television era. She concludes her book stating that televised rhetoric

Does not necessarily mean the end of all thoughtful and meaningful politics and political choices. After all, there was no golden age of political communication when reason ruled and moral choices were made after full debate on the issues, which were fully understood by all. Political communication, like other forms of communication and politics, has always been full of the weak, the shallow, and the superficial. All that television does is to encourage precisely these elements.<sup>61</sup>

As will be seen in the cases in this study, as the rhetoric becomes more open to popular media coverage, the rhetoric becomes less deliberative. Joseph Bessette lays this out as an inherent tension that the founders saw between deliberation, which was to be reasoned policy-making, and the role of the public in democracy. The founders, through the

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<sup>59</sup> Jeffrey Tulis, James Ceaser, Glen Thurow, and Joseph Bessette. “The Rise of the Rhetorical Presidency,” *Presidential Studies Quarterly* 11, no 2 (1981): 158-171.

<sup>60</sup> Mary E. Stuckey, *The President as Interpreter-in-Chief* (Chatham, NJ: Chatham House Publishers, 1991), 5.

<sup>61</sup> Stuckey, 140.

institutions they laid out, attempted to balance these two values. However, the modern media seems to have raised new challenges for maintaining this balance.

The permanent campaign also has a detrimental effect on rhetoric. Tulis, relying on the changes in the selection process laid out by James Ceaser in his book *Presidential Selection: Theory and Development*, discusses how the “outside” candidate-centered selection process that began with Woodrow Wilson and the Progressives has effectively led to the rhetorical presidency. He observes,

today the campaign of an incumbent for reelection begins less than two years into his term; challengers begin their campaigns earlier still. The overlap of the electoral campaign with the process of governing means that the distinction between campaigning and governing is being effaced. In the nineteenth century, the tone of campaigns was set by that of governance. Candidates did not issue statements in their behalf, much less give speeches. By feigning disinterest, candidates exemplified a public teaching that political campaigns were beneath the dignity of men suited for governance, that honor attended more important activities than campaigns. *Today, in a striking reversal, campaigns are becoming the model for governing.*<sup>62</sup>

This change in the selection process leads to the changes that Tulis sees in the rhetorical presidency. I believe that it also contributes to the changes in congressional rhetoric mentioned above. For while the permanent campaign literature is often centered around presidential politics, scholarship has shown that Congress is affected by it as well. In their chapter in *The Permanent Campaign and its Future*, David Brady and Morris Fiorina observe, “Congress is the most electorally sensitive of our national institutions. Consequently it is not surprising that the effects of the permanent campaign appear to be widely evident in its recent evolution and current operation.”<sup>63</sup> While Brady and Fiorina

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<sup>62</sup> James W. Ceaser, *Presidential Selection: Theory and Development* (Princeton, N.J.: Princeton University Press, 1979), 320.183. Emphasis added.

<sup>63</sup> David Brady and Morris Fiorina, “Congress in the Era of the Permanent Campaign,” in *The Permanent Campaign and Its Future*, ed. Thomas Mann and Norman Ornstein, (Washington, D.C.: American Enterprise Institute, 2000), 134.

do not touch directly on the rhetorical effects of the permanent campaign on Congress as Tulis does with the president, they do discuss a breakdown of congressional norms. They observe,

According to descriptions of the “textbook Congress” of the prereform era, congressional behavior was governed as much by internal norms and practices as by formal rules and procedures. Like members of an exclusive men’s club, senators adhered to a set of norms—courtesy reciprocity, apprenticeship, institutional patriotism, and hard work—that made social interaction congenial and facilitated the work of the institution. In the House, at least on some committees, representatives served an apprenticeship, learned the value of courtesy, specialization, and reciprocity, and otherwise learned to “go along to get along.”<sup>64</sup>

Combining Tulis’ observation about the permanent campaign’s affect on presidential rhetoric and Brady and Fiorina’s observation that the permanent campaign has the effect of undermining congressional norms suggests the undermining of congressional *rhetorical* norms as a logical possibility.

While the first two factors which might lead to these changes in congressional rhetoric are also factors which lead to the changes in presidential rhetoric, the third factor is presidential rhetoric itself. Towards the end of *The Rhetorical Presidency* Tulis talks about the relationship between the rhetorical president and Congress. He observes,

Today the pace of policy development follows less the rhythms of Congress and more the dynamics of public opinion. The consequence of this development is not only that Congress will often be left out of the deliberative stages of policy formation and that rhetorical imperatives will play a large role, but also that Congress will be forced to respond in kind. Television and radio networks now regularly provide for congressional response—actually, opposition party response—to presidential speeches, including the State of the Union Address. Crafted as popular appeals before receipt of the president’s messages, these congressional speeches are beamed to the people over the head of the president.<sup>65</sup>

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<sup>64</sup> Ibid., 146.

<sup>65</sup> Tulis, 178.

For Tulis, this will ultimately undermine deliberation. His instincts are correct. The shift from members of the government speaking to each other to speaking to the “amorphous constituency” will undermine deliberation. This dissertation attempts to illustrate what that change looks like in the rhetoric itself.

### *Plan for the Dissertation*

This dissertation will proceed in two parts. The first will compare two eras of the congressional response to the Annual Address or State of the Union Address given by the president. The modern televised responses will be discussed in chapter two and the earlier written responses will be discussed in chapter three. The second part will show the more gradual change in rhetoric seen in the debates on congressional reform. Chapter four will examine the debate on the Pendleton Act. Chapter five will examine the revolt of Democrats and Insurgent Republicans against Speaker of the House Joseph Cannon. Chapter six will treat the 1946 Legislative Reorganization Act. Chapter seven will examine the enlarging of the Rules Committee in the House from twelve to fifteen members. Chapter eight will turn to the 1970 Legislative Reorganization Act. Chapter nine will provide a brief conclusion.

## PART I OVERVIEW

Article II, Section 3 of the United States Constitution states that the president “shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient.”<sup>1</sup> While this “giving of information” to Congress has taken both the form of a speech spoken in front of Congress and a written message delivered to Congress, every president has complied with this Constitutional “requisition.” This annual tradition known now as the State of the Union Address and earlier simply as the Annual Address has received a great amount of attention from scholars in both the fields of communication and political science.

Less famous and certainly less studied are congressional responses to the State of the Union Address. This may be for a number of reasons. The first reason is that while the president’s message is constitutionally mandated, the response by Congress is not. Senator Dirksen, in the second year of televised congressional responses in 1967, admitted that the “President has a mandate under the Constitution to give to Congress information of the State of the Union, together with his recommendations. We have no such mandate. We do believe we have a duty as elected Representatives to present our views.”<sup>2</sup> Rhetorical scholars Campbell and Jamieson echo the Senator’s words observing, “the annual message is a *uniquely* presidential genre of discourse and, as such, works to

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<sup>1</sup> U.S. Constitution, art. 2, sec. 3 cl. 1.

<sup>2</sup> Everett Dirksen, “Republican Appraisal of the State of the Union,” (speech, Washington, D.C., January 19th, 1967.) Ford Congressional Papers.

maintain the role of the executive in the system.”<sup>3</sup> If they are correct, it follows that those who wish to understand the role of the executive in the American system better might turn to this message. Since the congressional response is not a standard or constitutional congressional practice, Congress’ responses have not been examined in order to understand its role in the system. In other words, the State of the Union Address is more essentially an act of presidential leadership than the response is an act of congressional leadership.

In addition to the specifically executive character of the State of Union address (which has led to its being studied more than the congressional response) is a simple quantitative fact. As stated above, the president’s message has been delivered almost annually since the founding of the nation. The congressional response has been delivered far less. In fact, it was only given during the first twelve years of the republic’s existence and sporadically throughout the last forty-five years. The fact that this speech simply disappeared from 1800-1966 might lead some to assume that it is not all that important. Yet, in recent years the question of which member of Congress will respond to the president’s address, as well as the merits of this response, have become topics of media attention.

The following two chapters attempt two things. Primarily they show the stark rhetorical differences between “institutional” congressional rhetoric that is aimed primarily at members of Congress and the president and “popular” congressional rhetoric aimed primarily at the people. This is valuable to our study as it shows institutional and popular rhetoric in their purest forms. In other words, it lays out the poles of the spectrum of congressional rhetoric. Part two of the dissertation, which examines five

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<sup>3</sup> Campbell and Jamieson, 52.

reform debates over the course of close to one hundred years, will illustrate the development of congressional debate along the spectrum. Second, the chapters answer the question of whether the congressional response to the State of the Union Address can serve as a useful tool for maintaining the role of Congress within the American system. In order to begin this examination, one must first ask whether the congressional response ought to take a similar form, be produced in a similar manner, and be judged by the same standards as the State of the Union itself. The modern televised response beginning in 1966 seems to answer all three of these questions in the affirmative. That is, the form of the address is similar to, albeit shorter than, the president's address. It is produced in a similar fashion, that is, through a combination of the work of speechwriters and the speaker himself. Finally, the media seems to judge the response according to the same standards as the president's speech. Tulis hits on this congressional mirroring of the president in his concluding chapter of *The Rhetorical Presidency*. He argues,

The more the rhetorical presidency succeeds as a strategy in the short term, the more likely it is the deliberative process will be eroded. Today the pace of policy follows less the rhythms of Congress and more the dynamics of public opinion. The consequence of this development is not only that Congress will often be left out of the deliberative stages of policy formation and that rhetorical imperatives will play a large role, but also that Congress will be forced to respond in kind. Television and radio networks now regularly provide for congressional response—actually, opposition party response—to presidential speeches, including the State of the Union Address. Crafted as popular appeals before receipt of the president's messages, these congressional speeches are beamed to the people over the head of the president.<sup>4</sup>

Thus, the mere fact that the response has followed the State of the Union in these the written institutional responses during the Washington and Adams Administrations. In fact, Jeffrey Tulis, in a chapter entitled "Deliberation Between Institutions" in the book *Debating Deliberative Democracy*, suggests this old practice as an excellent way to foster

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<sup>4</sup> Tulis, *The Rhetorical Presidency*, 178.

*inter-branch* deliberation.<sup>1</sup> Thus, Tulis touches upon both the modern televised response and the earlier written response. However, he does not examine the televised responses themselves and only briefly examines the debate surrounding the earlier written responses. An in-depth analysis and comparison of the rhetorical substance of these speeches will provide us with two excellent snapshots of congressional rhetoric at the beginning of the republic and at present. The analysis will use the five standards developed in chapter 1 to assess the level of deliberative rhetoric.

Chapter two will turn first to the modern congressional response to the State of the Union and examine some of the major problems it presents for proper congressional deliberation. Chapter three will turn back to the first twelve years of the republic's existence and will examine the congressional responses to the annual addresses of George Washington and John Adams.

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<sup>5</sup> Jeffrey Tulis, "Deliberation between institutions," in *Debating Deliberative Democracy*, ed. James Fishkin and Peter Laslet, (Malden Mass.: Blackwell Publishing, 2003), 201.

## CHAPTER TWO

### Where We Are Now: The Modern Televised Response

#### *Introduction*

Since 1966, members of the opposition party to the president have provided televised responses to the State of the Union Address. The overwhelming majority of the speakers in the opposition party have been members of Congress. In fact, only six of the responses given since 1966 have not had any member of Congress participate.<sup>1</sup> One might argue that these responses are more properly understood as “opposition” responses rather than congressional responses. Thus, when Paul Ryan responded to Obama’s State of the Union Address this year, he was speaking primarily as a Republican, not as a Representative, or, when Jim Webb responded to President Bush in 2007, he was speaking primarily as a Democrat not as a Senator. Indeed, at the time of the speech, the speaker may identify more with his or her party rather than his or her institution. Yet, the fact remains that many of the speakers *are* members of Congress who, after their speech is given, will return to their institution to participate as members and often as a leader. Consequently, even if the speaker wants to be *perceived* as representing his or her party, he cannot help being perceived as a member of Congress as well.

This dissertation is concerned primarily with how rhetoric affects the institution of Congress. Yet, these speeches were not given within the institutional context. That is, unlike the other chapters, these speeches were not given during a session of Congress.

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<sup>1</sup>For a list of all of the opposition responses see, “Opposition Responses to the State of the Union Messages,” United States Senate. [http://www.senate.gov/artandhistory/history/resources /pdf/RespondStateUnion2.pdf](http://www.senate.gov/artandhistory/history/resources/pdf/RespondStateUnion2.pdf) (Accessed on June 16th, 2009).

Thus, for these speeches to be worth studying there must be some relationship between these speeches and congressional rhetoric in the institution. There are two relations between the two, both of which make the speeches worth studying. The first is that the opposition speeches given are a *reflection* of current rhetorical practice norms within the institution of Congress. Whether those who are chosen to offer the opposition responses are chosen because of their leadership position in Congress or their speaking ability, the result is the same. In the case of being chosen for one's leadership position, it can be assumed that the leader's experience would have habituated him to the conventional rhetorical practices necessary to advance within his or her institution. The case of a member being chosen for his or her speaking ability even more directly illustrates the current valued rhetorical norms of the institution. If the opposition responses use rhetoric that undermines deliberation, this might indicate that the rhetoric within the institution undermines it as well. Additionally, one might argue that the current congressional response is one of the most public or as Tulis would say "popular" instances of congressional rhetoric. If speeches given within Congress itself are becoming more popular due to changes in technology, the responses might indicate how speeches within the institution have moved as well.

The second implication of Congress members delivering this speech is that if the rhetorical norms of the speech are not especially deliberative, the delivery of the speech could *undermine* deliberation in the institution. Thus, it does not only gauge congressional deliberation, but it can also affect deliberative practice. Granted, the opposition response is not delivered during floor debate or committee meetings which are the primary forums for congressional deliberation. In fact, the desired end of a speaker

giving the response is not in many cases the encouragement of deliberation. However, the rhetorical norms followed in the speech can serve an educative or reinforcing function for rhetoric in committee or on the floor. For instance, members of Congress who watch their colleagues deliver a very public address in a particular fashion might be more likely to follow their colleague's rhetorical lead, even if disagreeing with his politics. Thus, while the speech may *reflect* current rhetorical practices which undermine deliberation, it may also, due to its particular form, *further* the downward spiral of congressional rhetoric.

We turn then to a number of the opposition responses in an attempt to determine some of the basic rhetorical norms of the speech and their relationship to deliberation. In doing so, we need not ignore the fact that opposition responses, like the State of the Union Addresses themselves are often different.<sup>2</sup> Different historical situations and speakers allow for a certain amount of diversity among responses. However, like Campbell and Jamieson's characteristics of the the State of the Union Address, the opposition responses also have certain generic characteristics. Unlike Campbell and Jamieson's discussion of the State of the Union Address, the discussion of the "genre" of the opposition response will be prescriptive in addition to being descriptive. That is, it

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<sup>2</sup> Campbell and Jamieson observe in their chapter on the State of the Union Address in *Deeds Done in Words*, "The latitude offered by the constitutional provision has affected presidential practice from 1790 to the present and has produced a body of discourse that varies greatly. Some addresses have been lengthy compendia covering dozens of topics; others sharply defined a limited number of legislative priorities. Some have outlined only general programs, leaving policy details to Congress; others have laid out specific legislative programs. Some have informed without recommending, in some instances merely calling congressional attention to issues of concern, in others simply indicating administrative implementation of congressional enactments. Some have been coherent wholes; others have been catalogues of unrelated concerns or policies. Some have been delivered orally; others have been written. Some have been addressed to the Congress; others have been addressed to the public as well in an effort to marshal popular support for presidential initiatives; some have addressed the increasingly international audience. Some have made carefully reasoned arguments for policies; others merely listed areas for potential action. Some have been eloquent exhortations; others have been factual and dull. These addresses also vary depending on when they occur in a presidency."53-54.

will be argued that generic characteristics of this speech undermine both deliberation and public perceptions of Congress.

Our examination will include a number of available transcripts of these speeches. These include the Republican responses of 1996, 1997, 1998, 1999, 2000, and 2011 and the Democratic responses of 2001, 2002, 2003, 2004, 2005, and 2007. Responses from 1966, 1967, 1976, 1983, and 1991 are included as well. This will help to illustrate that the rhetorical norms seen here are evident even in the early televised responses to the State of the Union. Additionally, the responses are relatively evenly divided between Democratic and Republican responses with nine Democratic responses and eight Republican responses.

### *Going Public*

The first important aspect of the modern televised response to the State of the Union Address is that it is public. Of course, most of the speeches made by members of Congress are public in the sense that they are a matter of public record. However, we mean something more than that here. The new public character of these responses is more like Jeffrey Tulis' observations on presidential policy rhetoric which had "formerly been *written* and addressed principally to *Congress*, [but] would now be *spoken* and addressed principally to the *people* at large."<sup>3</sup> Samuel Kernell also characterizes the overall political trend of "going public" well by stating, "appeals for support to the *constituencies outside Washington* are the *core activities* of going public."<sup>4</sup> Tulis and Kernell are focusing on the president. Indeed, the president's State of the Union Address

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<sup>3</sup> Tulis, *The Rhetorical Presidency*, 133.

<sup>4</sup> Samuel Kernell, *Going Public: New Strategies of Presidential Leadership* (Washington, D.C.:CQ Press, 1997), 106. Emphasis added.

beginning with Wilson's restoration of the speech being delivered in person, as well as the advent of radio, television, and the internet have expanded the president's audience greatly beyond Washington. Interestingly, the opposition response has not only followed suit, but may have outdone the president when it comes to "going public."

The first noticeable way in which the opposition responses are *more* public than even the current televised State of the Union Address is the greeting. There are often various audiences that a president is addressing when giving the State of the Union. As Campbell and Jamieson observe of the address, "some have been addressed to the Congress; others have been addressed to the public as well in an effort to marshal popular support for presidential initiatives; some have addressed the increasingly important international audience."<sup>5</sup> Tulis argues in *The Rhetorical Presidency* that the oral presentation of the State of the Union Address makes it less "official" (aimed at Congress) and more "popular" (aimed at people) than the written message tradition that lasted from Jefferson to Wilson. Yet, even if in some cases the primary audience of the current State of the Union Address may be the public rather than government officials, the president at least keeps up the *form* of the address in that it is addressed to Congress. For example, in 2011 President Obama began his State of the Union Address with the following greeting, "Mr. Speaker, Mr. Vice President, members of Congress, distinguished guests, and fellow Americans."<sup>6</sup> This is typical for the modern address. The president addresses the leaders of Congress, members of Congress, other government officials, and finally the American people. In a sense this greeting is not a mere

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<sup>5</sup> Campbell and Jamieson, 54.

<sup>6</sup>Barak Obama, "State of the Union Address," (speech, Washington D.C., January 25, 2011) <http://www.whitehouse.gov/the-press-office/2011/01/25/remarks-president-state-union-address>.

formality. It represents the reality of the situation. All of the officials mentioned in this form of greeting *are actually there*. This gives the speech an official character, whoever the *intended* audience might be.

Conversely, the opposition response does not even make an effort at masking its popular appeal with an official greeting. Greetings, if given, are given directly to the American people. Senator Dirksen began his 1966 and 1967 response with merely: “My Fellow-Americans.” His House counter-part Gerald Ford offered no greeting at all. Additionally, Senator Muskie in 1976 and Senate Mitchell in 1991 did not offer greetings but went directly into their speeches. By 1996 the majority of opposition responses (if they had a greeting at all) began with a simple “Good evening my name is (insert speaker name).”

Perhaps the epitome of the unofficial character of the response is the 1983 response which was a produced program entitled “The State of the Union-A Democratic View.” The introduction to this speech openly and explicitly followed Mary Stuckey’s observation that televised speeches makes the speaker into a “presenter” who asserts rather than argues. Congressman Tony Coelho opened by stating, “We are pleased to *present* ‘The State of the Union-A Democratic View’ to the American people this evening. The program was *produced* for the House Democratic Steering and Policy Committee and the Senate Democratic Policy Committee with House Democrats taking the lead.”<sup>7</sup> Not only was the greeting aimed directly at the American people, but also it was admitted that this was a “presentation” that was “produced” for mass consumption.

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<sup>7</sup> Tony Coelho and Wendell Ford, “The State of the Union: A Democratic View,” (speech, Washington, D.C., January 25, 1983).

Not only is the greeting of the opposition response directed toward the people and away from the president, but also the grammatical person of the speech is different from the president's. The president when referring to the Congress does not refer it in the third person. This is of course related to the fact that he is speaking directly to them. He either refers to them in the first or second person plural. That is, he either includes them as a partner in a common government, or he praises, blames, urges, or cautions them directly. One can see how this type of speech fulfills the president's "energetic" role within the system. The constitutional "requirement" for the speech is a way to inject energy into the deliberate law-making process. It also allows the president to be a part of the deliberative process by articulating problems, providing information, and proposing solutions, *directly to Congress*.

Opposition responses, on the other hand, always refer to the president in the third person. Praise and more often blame of the president is then *presented* to the people rather than *addressed* to the president himself. What possible function can this serve? Certainly it is not an exercise in energy. The member is speaking as one person in an institution of 535 members. It is not nearly as easy for a member to convert the words of his speech into action as it is for the president to do so. While a presidential threat to Congress can be carried out, one member of Congress cannot act alone against the president. Additionally, it is addressed to the public, who have no *institutional* place to deliberate. To be sure, the speech may provide information to the public, critique the president's policy prescriptions, and offer alternatives. Certainly, this seems to foster deliberation. As Amy Gutmann and Dennis Thompson state in the opening chapter of

*Why Deliberative Democracy?* an essential characteristic of “deliberative democracy” is that the

reasons given in this process should be *accessible* to all the citizens to whom they are addressed. To justify imposing their will on you, your fellow citizens must give reasons that are comprehensible to you. If you seek to impose your will on them, you owe them nothing less. This form of reciprocity means that the reasons must be public in two senses. First, the deliberation itself must take place in public...The other sense in which the reasons must be public concerns their content. A deliberative justification does not even get started if those to whom it is addressed cannot understand its essential content.<sup>8</sup>

As the further analysis below will illustrate, the “reasons” given in opposition responses are simple and “accessible” to the public. These responses might then fulfill the requirements of deliberative democracy according to Gutmann and Thompson. The problem is that Gutmann and Thompson are concerned with moral justification rather than institutional maintenance. They do not seem to see the tension that Besette and others see between deliberation and democracy. That is, making political justifications more accessible to “all citizens” might undermine the complicated deliberation that must go on within an institution.

Additionally, are the citizens being addressed here even deliberating? Deliberation ends with a decision. What decision do the citizens ultimately make with the information given to them by the president and the opposition response? Ultimately, they vote in elections. Of course, the dissemination of information and policy alternatives to inform voters during elections is a key element of a healthy democracy. However, is a response to the State of the Union the appropriate time for this? Note again the phrasing of Article II Section 3, “He shall from time to time give Congress Information of the State of the Union, and recommend to their Consideration such

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<sup>8</sup> Amy Gutmann and Dennis F. Thompson. *Why Deliberative Democracy?* (Princeton: Princeton University Press, 2004), 4.

Measures as he shall judge necessary and expedient.”<sup>9</sup> This clause is then followed by the president’s power to convene and in certain cases adjourn Congress. While a secondary effect of the State of the Union might be to foster citizen deliberation, its primary concern is Congress. Traditionally, the Annual Address given by the president is given at the beginning of a congressional session *after* elections. Elections are over and *governing* should begin; it is time for Congress to begin deliberating. The president helps to set the deliberative agenda by recommending certain ends to be pursued. There is a sense of immediacy to the president’s speech. He articulates problems that he sees *now* and urges Congress to address these problems soon, not after the next election. The deliberation on immediate problems cannot be done by the people, who can only really act through elections and threats about coming elections. An address to the people would be only for the sake of the next election or to urge the people to pressure Congress to act a certain way. Neither of these could properly be said to contribute to deliberation. Yet the opposition response is directed *primarily* at the people.

There seems to be a mismatch here. Granted, the president has approval ratings and re-election on his mind during these speeches. Yet, he is fulfilling a constitutional action that is part of the *governing* process. The opposition response, however, has more openly embraced the electoral function of the speech. A formal Congressional Research Service (CRS) report in 2010 on the State of the Union Address admits as much. It observes that the opposition party “often select[s] rising stars, new congressional leaders or possible presidential candidates to give the opposing view.”<sup>10</sup> This gives the response a

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<sup>9</sup> U.S. Constitution, art. 2, sec. 3 cl. 1.

<sup>10</sup> Congressional Research Services, *The President’s State of the Union Address: Tradition, Function, and Policy Implications*, Colleen Shogun and Thomas H. Neal, *Congressional Research Service*,

far more hypothetical character. The CRS report observes, “The response usually explains what the policy agenda *would be if* the opposition party controlled the White House.”<sup>11</sup> Again, since true deliberation ends with a *decision*, one wonders how stating what the opposition party *would be like if* it had control contributes to immediate deliberation. The president, on the other hand, through his holding of office and veto power, can shape the deliberation of Congress. As mentioned above, the president, by virtue of his unity, can convert his words into action. Congress, being a majoritarian institution, does not allow one member to easily convert his words into action. Thus, since the opposition response is not voted upon, there is no real power behind the words, and it is unlikely either to force the president’s hand or to contribute to the deliberation of the Congress. Robert Denton and Gary Woodward articulate this problem well in their book *Political Communication in America*. They observe,

Even the President is accepted as a figure who strives to speak for the nation as a whole.

But who does the member of Congress speak for? What formal and official structure is symbolized in his or her communication? There is no simple answer because legislative roles are so varied, and because deliberative bodies were set up to make representation intentionally diffuse.<sup>12</sup>

As a result,

The presidency provides an endless range of opportunities for its occupants to take bold initiatives, propose necessary actions, and generate what appear to be innovative forms of legislation. A member of Congress may be equally bold in proposing solutions, but the member’s efforts will occur in what is, comparatively speaking, a publicity vacuum. Ultimately, he or she is left with the necessity to deal with initiatives of the White House. This fact itself does not represent a flaw in the organization of deliberative bodies. After all, parliamentary democracies are supposed to examine and weigh the consequences of proposed legislation.

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2012, 11.

<sup>11</sup> *Ibid.*, 12.

<sup>12</sup> Robert E. Denton and Gary C. Woodward, *Political Communication in America*, (New York: Praeger, 1985), 225.

But the reactive nature of Congress naturally mitigates whatever sympathies American may be inclined to have toward it.<sup>13</sup>

Denton and Woodward do not discuss the modern party response to the State of the Union Address, but what they describe above applies to the State of the Union Address and the response. It is likely that the Constitution's framers understood this reality when making a place for the State of the Union Address but not for a "bold" and "innovative" congressional response. Denton and Woodward also rightly argue that this is not a flaw in our system. Nor does it mean that the legislature is or its members are inferior to the President, but merely that they serve a different function. If both branches were made to be bold and innovative, deliberation would suffer.

The fact that the opposition response is addressed neither to the president or Congress is problematic in and of itself as discussed above. It is also problematic because of the character of rhetoric it promotes in a seemingly official speech. The character of rhetoric associated with the speech will be discussed below. The type of rhetoric discussed below is not always "poor" rhetoric. It is not always inappropriate. Rather, it is inappropriate in this official context. It both promotes non-deliberative speech and damages the reputation of the institution of Congress.

*Standard #1: The Divorce of Speech From Thought— False Dichotomies and Rhetorical Question.*

In Kathleen Hall Jamieson's *Eloquence in an Electronic Age*, Jamieson tells the story of William Jennings Bryan's interrogation by Clarence Darrow in the famous Scopes trial. She opens the chapter stating. "William Jennings Bryan was among the

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<sup>13</sup> Ibid.

finer speakers of his age. Yet he was ultimately a victim of his own rhetorical success.”<sup>14</sup>

The chapter then attempts to explain why somebody so well-reputed as a rhetorician, was so unsuccessful at defending himself rhetorically against Darrow. Jamieson’s answer is as follows:

It is my claim that Bryan had developed facility in a dependence on a rhetorical genre alien to that demanded of a witness. Consequently, the outcome of the clash between Bryan and Darrow was ordained once Bryan agreed to assume the witness chair.

William Jennings Bryan’s performance as a witness can be viewed as a study in self-immobilization. While Bryan had developed his rhetorical reflexes on the Chautauqua circuit, Darrow’s were formed in the courtroom. Bryan’s strength lay in polished exposition; Darrow’s in interrogation. Bryan has perfected his lectures over years until they embodied his true sentiments and inspired the desired response. His most popular lecture, “The Prince of Peace,” which had been delivered throughout the world, evolved this way. By contrast, Darrow’s rhetorical environment demanded immediate response to constantly changing rhetorical challenges.<sup>15</sup>

Jamieson’s story is analogous to the two forms of congressional response to the State of the Union Address. Just like Bryan’s prepared speeches, the modern televised speech is produced ahead of time. It is polished by speech-writers, party leaders, and other staff-members. Like Bryan’s speeches, there is not a great deal of contingency involved in the televised speech. The audience’s reaction is contingent, but the speaker is not forced to deal with any contingencies during the speech. It is prepared ahead of time with language designed to be sympathetic to as many viewers as possible. Even if the audience is ultimately unsympathetic to the appeals, there is no way for this to immediately affect the speaker. There is no chance for any questioning of the statements made by the speaker. Of course, just like in the case of Bryan, this does not mean that the televised responses are *bad* speeches. In fact, some might be considered inspiring,

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<sup>14</sup> Jamieson, 35.

<sup>15</sup> Ibid.

eloquent, persuasive, and examples of epideictic rhetoric. Yet, this does not mean that they are ultimately conducive to congressional deliberation or maintaining the role of Congress in the American system. In fact, it may be that, as in the case of Bryan, Congress' "failure" might follow the rhetorical "success" of its members. That is, if certain, non-deliberative forms of speech contained in these responses are not questioned by other members and are in fact praised by the media or public opinion polls, it may reinforce bad rhetorical practice in the institution itself.

Darrow's speech practices would be closer to the practices that were necessary for members of Congress who contributed to the earlier responses to Washington and Adams discussed in chapter 3. Since the responses, while written by a small committee, were presented and voted on by the committee of the whole, both the writers of the draft and those wishing to amend it had to master the ability to defend themselves against questions and ask questions themselves. True, Darrow's speech, which is suited to a courtroom, and the early responses to the State of the Union might be different types of rhetoric. Aristotle would classify them as forensic and political rhetoric respectively. Both, however, require a type of thinking where the speaker must be able to respond quickly and be able to defend specific objections to his or her position.

Without the give and take of congressional debate, that is, without being subject to the objections of one's peers, members of Congress are going to be less likely to exercise any type of rhetorical restraint. Nor are speakers going to be restrained rhetorically by other speakers' criticisms. This lack of restraint manifests itself in at least two ways in the televised responses to the State of the Union. The first is that there seem to be certain questionable or false dichotomies presented which never get challenged.

The second is that these speeches contain a large number of rhetorical questions. Rhetorical questions are indeed designed to avoid external restraint. They are designed to suggest an answer to the listener without the listener hearing or thinking about possible objections. The intentional avoidance of possible objections to one's position might be persuasive, but not deliberative. There can be no weighing of alternatives when only one view is presented as feasible.

As for dichotomies, all of the speeches present a basic dichotomy between the president's policy prescriptions and those of the minority party. After all, this is the main purpose of the speech, to provide an alternative approach to the president's framing of American problems and solutions to those problems. Yet, presenting alternative approaches to problems and policies is one thing, and presenting a false or hyperbolized dichotomy where your opponent is forced to take the "anti-children" position is another. These types of dichotomies undermine deliberation and might contribute to rhetorical laziness. It is easy to use convincing logical fallacies but difficult to defend them.

An example of a challengeable, but unchallenged dichotomy might be seen in Trent Lott's 1998 response to the State of the Union. After reviewing some of the basics of president Clinton's policies and suggesting Republican alternatives he stated, "Once again, the choice is clear: Big Government? Or families? More taxes? Or more freedom?"<sup>16</sup> To be sure, there are some who believe that big government and solid families are mutually exclusive. But might this not be more a matter of degree? Even if Lott is correct in that larger government tends to undermine the role of family in American life, the claim is certainly open to challenge. Likewise, more taxes or more

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<sup>16</sup> Trent Lott, "Republican Response to the 1998 State of the Union Address" (speech Washington, D.C., January 27, 1998), <http://www.librarycsiCuny.edu/core100/response.html>.

freedom, simply put, might be a false dichotomy. There are many possible situations where one could argue an increase in taxes leads to an increase in freedom. For example, tax money that goes to the military to defend America against foreign attacks or to fund police officers to better protect the lives, liberties, and property of citizens arguably increase freedom. Jennifer Dunn, in 1999 made a similar statement saying, “In all of our [Republican] tax policies, we start from this premise: the people’s money belongs to the people, not to the government.”<sup>17</sup> Here, Dunn wanted to express that the burden should be on the government to justify taxing the people rather than on the people to keep money they have earned. But might not this distinction be too stark? Is there really a strict divide between the people’s money and the government’s money? If no money that people have *belongs* to the government this might imply that the government is not *owed anything*. If it is not owed anything can it legitimately tax at all? While an extreme libertarian might hold this position, it is debatable in the realm of political philosophy. But, again, since this dichotomy is stated in a speech where there is no possibility for a response, it cannot be debated. No nuanced argument is necessary.

The following year in 2000 both Susan Collins and Bill Frist, co-respondents, argued for their proposed policies by presenting both educational and healthcare dichotomies. Collins, arguing for more flexibility than currently incorporated in Clinton’s education policy, stated, “*Instead* of imposing a ‘one-size fits all’ straightjacket, our plan recognizes that one community may need more math teachers, while another

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<sup>17</sup> Jennifer Dunn and Steve Largent, “1999 Republican Response to the State of the Union Address.” (speech, Washington, D.C., January 19, 1999), Washington Post. <http://www.washingtonpost.com/wp-srv/politics/special/states/docs/gop99.htm>.

may need better reading program—and still others new computers.”<sup>18</sup> Again, one understands Collins point; she believed that Republicans allowed for more needed flexibility in education policy. But this might more properly be expressed as a manner of degree rather than as a dichotomy between flexibility and no flexibility. Likewise, Frist implied a dichotomy between the current United States healthcare system and a government run program. He stated,

during my surgical fellowship, I worked in England for the “British National Health Service” and I saw firsthand the rationing, the lack of choice, the long waits, and the denial of care for seniors. I learned that socialized medicine—whether in England or in Canada, where patients are fleeing to the U.S for treatment—just does not work. In fact, if David Letterman had lived in Canada, he’d still be waiting for his heart surgery.<sup>19</sup>

Granted, the health-care plan proposed by Clinton may have moved the country closer to a system like those of England and Canada; however, Frist did not discuss the particulars of the plan. Rather, it was like that of Canada, where David Letterman would have *died* if he had gone for care. The dichotomy, after a few logical steps, might be restated as Clinton’s healthcare plan equals death and the Republican healthcare plans equal life.

Democrats, like the Republicans above, have also used hyperbolic dichotomies to differentiate their policies from Republican presidents. In 2004, Tom Ie, responding to Bush’s address, compared Bush’s Social Security proposal to the Democrats stating, “That why we believe that America’s pension system needs to be strengthened, and that Social Security’s benefit should be a guarantee, not a gamble.”<sup>20</sup> Certainly, Bush’s plan

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<sup>18</sup> Susan Collins and William Frist, “State of the Union: The GOP Response,” (speech, Washington, D.C., January 27th, 2000), Washington Post. <http://www.washingtonpost.com/wp-srv/politics/special/states/docs/gop00.htm>.

<sup>19</sup> Collins and Frist.

<sup>20</sup> Thomas Daschle, and Nancy Pelosi. “The Democratic Response to President Bush’s State of the Union Address.” (speech, Washington, D.C. January 20, 2004), PBS News Hour, <http://www.pbs.org/>

to partially privatize Social Security involved more risk for those investing their money than the set benefits of the current Social Security system. However, the dichotomy between a guarantee and a gamble might be false. Certainly, President Bush would not have used a roulette wheel as a logo for his privatization plan.

Presenting stark alternatives in this way is not always bad. There is a long history of this type of speech in a *campaign* setting. Indeed, because of the campaign feel of these speeches and campaign role that these speeches played, it is not surprising that these dichotomies were presented. The campaign is a conflict, and dichotomous language is a weapon used to win the conflict. Does this language however aid in deliberation or help to maintain Congress' "role in the system?" As far as deliberation is concerned, one must keep in mind that the State of the Union Address is usually given at the *beginning* of a session of Congress. Thus, options and alternatives for policy are still open for deliberation and negotiation. In other words, the questions of the best means are still open. Usually there are not already developed clear either/or scenarios. Does the presentation of dichotomies, like taxes or freedom and guarantee or gamble, really promote a deliberate consideration of means? It seems unlikely.

As for maintaining Congress' role in the system, recent research suggests that the presentation of stark dichotomies by respondents might actually undermine both Congress as an institution and political parties. Richard Forgette and Jonathan Morris, in their 2006 article entitled "High-Conflict Television News and Public Opinion," argue that "conflict-laden television coverage decreases public evaluations of political institutions, trust in leadership, and overall support for political parties and the system as

a whole.”<sup>21</sup> These scholars actually take the State of the Union Address and its media coverage as a starting point for their study. They focus mainly on the media’s method of presenting and analyzing the speech and compare CNN’s *Crossfire* (a conflict-laden program) with CNN’s *Inside Politics*’ coverage (less conflict-laden) of the speech. *Crossfire*, they conclude leads to lower public evaluation for political institutions among its viewers. Might not the *content* of the news coverage itself have the same effect? If the content is more conflict-laden, there would also be a decrease in public evaluations of institutions. Hyperbolized dichotomies specifically and a partisan response in general contribute to high-conflict television regardless of the way the media chooses to cover the speech and the response. There is no need for the media to create conflict if it is already present in the opposition response. If the conclusion of this article is correct and it can be applied to the opposition response, it seems that the speech undermines respect for both Congress and for political parties. Neither of which could be good for the speaker who dually represents both Congress and the opposition party.

The second phenomenon in this section, rhetorical questions, could have a similar effect to the dichotomies above. It makes a certain amount of sense that, if there is no forum for questions and answers, a speaker might create his own dialogue in which he or she has control over the framing of the question and the desired response that the question will invoke in his or her audience. The televised responses to the State of the Union Addresses are filled with rhetorical questions. In fact, some of the responses are driven by rhetorical questions. Senator Dirksen’s response in 1967, which examined Vietnam policy, focused on the word “wonder.” Wonder was Dirksen’s response to a

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<sup>21</sup> Richard Forgette and Jonathan Morris. "High Conflict Television News and Public Opinion." *Political Research Quarterly* 59 no 3 (2006): 447.

number of rhetorical questions he posed about Johnson's policy in Vietnam. In fact, the activity of wondering seems integrally connected to unanswered questions. He asked,

is there an answer to this vexing problem other than the classical one of enough troops, enough weapons, enough firepower to render the aggressor unable to continue his nefarious intent and design? I wonder.

Have self-inspired fears of Soviet and Red China intervention dissuaded us from a more vigorous effort on land, sea and in the air to bring this conflict to an end, including stern measures to stop the inflow of supplies, food and weapons from supposedly neutral nations?<sup>22</sup>

Later he asked,

what thought has been given thus far, not only to the exercise of far stronger military and diplomatic muscles as the war goes on, but, to the making of eventual peace? What policy will we be asked then to support? Do we sit at the conference table and bargain with elements other than representatives of the duly constituted government in Hanoi? To do so might mean that any agreements reached would disintegrate overnight and no line of defense would any longer exist from Saigon to Singapore if such a peace table surrender should occur.<sup>23</sup>

While answering the question of what would happen *if* we make a certain type of peace, he did not answer whether the Administration was pursuing that type of peace. He continued,

but Vietnam is not our only migraine. Elsewhere in the world, American foreign policy and its conduct are coming, increasingly, into serious question. In Latin America, the Alliance for Progress causes us now to wonder: Where is the Alliance? Where is the Progress? The failures of economic and social reform required, under Alliance agreement, of those Latin American nations receiving our financial aid are all too visible.<sup>24</sup>

Finally, toward the end of his speech he hit Johnson with one last powerful rhetorical question, "What justification can be cited for the Administration's persistent effort to liberalize and extend terms tantamount to aid to the Soviet Union and communist

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<sup>22</sup> Everett Dirksen, "Republican Appraisal of the State of the Union," (speech, Washington, D.C., January 19th, 1967.) Ford Congressional Papers.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

governments of Eastern Europe, while these nations are supplying most of the guns and missiles that are killing American soldiers and shooting down American planes in Southeast Asia?”<sup>25</sup> This had the effect of asking, without the possibility of an answer, “Mr. President, why are you intentionally promoting the killing of American soldiers?”

Edmund Muskie’s 1976 response, while not structured around rhetorical questions like Dirksen’s, was nonetheless filled with them. There are three major segments of rhetorical questions in the speech. After discussing President Ford’s policies, which Muskie believed led to unemployment, he asked,

what prices does a father or mother pay who cannot support their children? What price does a master carpenter pay when he is reduced to welfare? How can we calculate the cost to America’s jobless in lost seniority, job training, and pension rights? What price will we all pay when two out of every five inner city youths grow up without ever having had a fulltime job?<sup>26</sup>

After stating a likely agreed upon premise that “Under our system, the President, after all is the Chief Executive. Efficiency in the general government is his responsibility,” Muskie hit Ford with a series of questions:

But what steps has he taken to improve efficiency and reduce costs in the Executive Branch?

Why does it cost the government twice as much as a private insurance company to process medical claims?

Why does the government take months to get the first check out to a woman entitled to a federal pension?

Why does the Social Security Administration take a year or more to process a citizen’s claim for disability compensation?

Why can’t defense contractors be made to deliver their goods at agreed-upon prices without cost overruns? Have you ever heard of a Defense Department being fired for permitting a cost overrun paid for with our tax dollars?<sup>27</sup>

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<sup>25</sup> Ibid.

<sup>26</sup> Edmund, Muskie, “Senator Muskie on the State of the Union,” (speech, Washington D.C., January 23, 1976.)

<sup>27</sup> Ibid.

Finally, Muskie closed with some rhetorical questions on national defense. He asked,

what is your definition of national security?...protecting our shores from attack?...standing by our allies in Western Europe and Asia?...protecting our vital economic interests?...playing a leadership role in moving the world away from the arms race?...If it is, I would agree.

We must also ask what is the most dangerous foreign policy problem we face today? I think, once again, it is a gulf of doubt and mistrust between us and our government.<sup>28</sup>

Later televised responses seemed to be more assertive and used rhetorical questions less. However, rhetorical questions did not disappear. In the 1983 "A Democratic View" program, the Democrats used their "people on the street" mentioned above to pose rhetorical questions challenging current Reagan policy. A "woman on the street," wondered, "Now if you're talking about spending, you've got to start by talking about the amount of money they're spending on the Department of Defense. 1.6 trillion over the next five years. Can you imagine that amount of money?"<sup>29</sup> Later "high school student #1" added, "Right now, Russian students my age are studying an average of five years more science than us. What does this mean for our national defense? The Japanese with half our population are turning out electronic engineers at double the rate that we are. What does that say for our national economy?"<sup>30</sup> In 1996, Dole, in his response to Clinton, said, "As you bend over to tuck your child in, think about this: If we continue down this path we will place a tremendous burden of debt on every child in America. How can we betray them, their parents and grandparents? How can we fail to act? We cannot, and we will not."<sup>31</sup> In 1998 Trent Lott speaking on education asked, "When one-

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<sup>28</sup> Ibid.

<sup>29</sup> Coelho and Ford.

<sup>30</sup> Ibid.

<sup>31</sup> Dole, Robert. "Republican Response to the State of the Union." (speech, Washington, D.C.,

quarter—one out of four—of our high school students can barely read, isn't it obvious the current system isn't working?"<sup>32</sup> Also discussing education Susan Collins, the Republican respondent in 2000, observed and asked, "I've watched my younger brother Sam serve on the school board in our hometown of Caribou, Maine. He is motivated by the same goal as parents everywhere: to get the world's best education for their children. *Doesn't it make sense to have the people who know your children's names decide how best to educate them?*"<sup>33</sup> Bill Frist, the same year, discussing medical care stated, "I believe we will dramatically improve medical care in American. *How could anyone not be hopeful with what we've seen?*"<sup>34</sup> Harry Reid, in his 2005 response after discussing American values, shot off a series of rhetorical questions:

Are we willing to do right by our parents and take care of our children? Do we believe that big corporations with powerful lobbyists should get special favors and that the wealthiest should get special tax breaks? Or do we believe we are all God's children and that each of us should get a fair shot and a say in our future?

Will we be able to tell young people, like Devon back in Searchlight, that America is still the land of the open road and that you can travel that open road to the place of your choice?<sup>35</sup>

To conclude, in a setting where there was not actual debate and members did not rhetorically challenge each other, false dichotomies and rhetorical questions seem to have taken the place of these exchanges. While questions and exchanges force members to truly understand their positions and be ready to defend them at the drop of a hat, false dichotomies and rhetorical questions, undermine a deliberative environment. They lead

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January 23, 1996), PBS News Hour, [http://www.pbs.org/newshour/bb/politics/janjune96/dole\\_01-23.html](http://www.pbs.org/newshour/bb/politics/janjune96/dole_01-23.html).

<sup>32</sup> Lott.

<sup>33</sup> Collins and Frist.

<sup>34</sup> Collins and Frist.

<sup>35</sup> Nancy Pelosi and Harry Reid, "Democratic Response." (speech, Washington, D.C., February 2, 2005), PBS News Hour, [http://www.pbs.org/newshour/bb/white\\_house/jan-june05/dems\\_text\\_2005.html](http://www.pbs.org/newshour/bb/white_house/jan-june05/dems_text_2005.html).

to a certain laziness by the speaker as those who use them in these circumstances cannot be called out. These forms of rhetoric also do not encourage hearers to think in nuanced, analytical ways, as they often are used to emphasize the absurdity of the point of view that is being attacked by the speaker.

*Standard #2: Lack of Constitutional Principles, Lots of Values*

As Jeffrey Tulis notes in *The Rhetorical Presidency*, modern presidential rhetoric has moved away from what he calls the “constitutional tradition.” That is, it has largely abandoned the discussion of the Constitution, American political institutions, and the particulars of the American political tradition. This does not mean that rhetoric has given up values and principles, however. Constitutional principles have been replaced by appeals to abstract values. Simultaneously, presidential rhetoric has, according to Tulis, moved toward the public discussion of the details of particular policy prescriptions. Opposition responses to the State of the Union have mirrored these moves. Just as the president lays out particular policy suggestions for Congress and the American people to consider, the opposition response makes suggestions. This section will not examine all of the policy suggestions contained in the speeches, as the bulk of most of the speeches is a presentation of alternatives to the president’s policy. What will be examined however is the replacement of the “constitutional tradition” with visionary concepts of “values” as the end or framework for policy prescriptions.

To begin with the most obvious and concrete examples of the “constitutional tradition,” we turn to the United States Constitution itself. How often is the document itself or are specific clauses or concepts that are laid out in the document mentioned in opposition speeches? The word “mentioned” is fitting here, for in these speeches hardly

any part of the Constitution is *discussed* at length. Even brief mention is limited. In the fourteen speeches examined, the document is only mentioned a handful of times. In Senator Dirksen's response in 1966 there was the above mentioned reference to the constitutional mandate for the State of the Union Address. Gerald Ford in his addition to the 1966 response briefly mentioned the Constitution and the principle of federalism it espouses. He stated,

our nation has thrived on the diversity and distribution of powers so wisely embedded in the Constitution. The Administration believes in centralized authority, ignoring and bypassing and undermining State responsibilities in almost every law that is passed. As a result, our constitutional structure is today in dangerous disrepair. The States of the Union form a vital cornerstone of our Federal system, and the headlong plunge toward centralization of power in Washington must be halted.<sup>36</sup>

Ford's remarks here are the most in-depth discussion of constitutional values in any of the responses examined. Ford, later in the speech, briefly mentioned the Constitution in a section on civil rights stating, "It is only right to expect that the Constitution of the United States be put in force everywhere now."<sup>37</sup> While not explicitly mentioning the document of the Constitution, Ford continued bringing up the constitutional theme of federalism in his 1967 response observing, "Republicans have faith in the constitutional concept of Federalism, which requires strong and vigorous state as well as national action on a variety of problems."<sup>38</sup>

In 1976 Edmund Muskie briefly appealed to the Constitution in his response. He stated,

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<sup>36</sup> Gerald Ford, "The State of the Union—A Republican Appraisal," (speech, Washington, D.C., January 17, 1966. Ford Congressional Papers.

<sup>37</sup>Ibid.

<sup>38</sup> Gerald Ford, "Republican Appraisal of the State of the Union," (speech, Washington, D.C., January, 19, 1967.

still, even though some members of my party in Congress may not share all my views, we do share a common bond: The oath and obligation of office—to defend the Constitution of the United States, to advance its principles, and to represent fairly and according to our individual conscience and best understanding, the interests of the people we serve—our own constituencies and the Nation whose well-being is quo constitutional obligation.<sup>39</sup>

There was no continued discussion of how Muskie understood the Constitution or what principles it espouses. Nancy Pelosi in 2005 made a similar reference to the Constitution and the oath of office stating, “and we must protect and defend the American people, and we must also protect and defend our Constitution and the civil liberties contained therein. That is our oath of office.”<sup>40</sup>

In 1998 Trent Lott closed his speech by stating, “the reason is that Americans, *we the people*, have been willing to sacrifice everything to protect our families, to practice our faith, and defend our freedom.”<sup>41</sup> There was no explicit mention of the Constitution here, but most would recognize the beginning of the preamble. These are *all* of the references to the Constitution to be found in the texts of the speeches examined. One can say with confidence, especially after we see in section 4 below the amount of time devoted to personal stories, that the Constitution did not occupy a prominent place in these speeches. In fact, Jennifer Dunn in her 1999 response stated, “Our lives will continue to be filled with practical matters, *not constitutional* ones.”<sup>42</sup>

References to the Constitution are not the only measures of the “constitutional tradition.” Tulis also has the discussion of our political institutions in mind. Opposition responses have lacked this type of rhetoric as well. In fact, the question of the proper

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<sup>39</sup> Muskie.

<sup>40</sup> Pelosi and Reid.

<sup>41</sup> Lott.

<sup>42</sup> Dunn and Largent.

functioning of institutions was discussed less than a handful of times in the speeches examined. To be sure, Congress, the president, and political parties were mentioned repeatedly but mostly as subjects who make policy decisions. That is, they were either praised or blamed for a specific outcome. The discussion of institutions, their roles within the American system, and their proper functioning was rarely discussed. There were some exceptions but, again, relatively few.

Gerald Ford, both in his 1966 and 1967 responses, spent more time on institutional matters than any other speaker discussed. He opened his 1966 response with a brief description of the role of the minority party arguing, “as a minority party, it is our task to carry the torch of dissent responsibly and constructively.”<sup>43</sup> Later, in a section on executive reform, Ford discussed needed changes for the executive branch to function better in our system. Granted, he blamed the current institutional problems on the Democrats, but he was concerned with the institution. He observed,

The Executive Branch of the Federal government needs reform—not Presidential repatching or piecemeal creation of new departments.

The proliferation of Federal programs, compounded by the mass production of laws in the last session of Congress, demands the attention of our people.

There are now 42 separate Federal agencies involved in education programs alone. There are at least 252 welfare programs today, including 52 separate Federal economic aid program[sic], 57 job training programs and 65 Federal programs to improve health. In the ten years since the second Hoover Commission made its report, during five Democratic-controlled Congresses, employees of the Federal payroll have increased 175,000 and Federal expenditures have increased by \$57 billion.

The Executive Branch has become a bureaucratic jungle. The time has come to explore its wild growth and cut it back.<sup>44</sup>

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<sup>43</sup> Ford, “State of The Union.”

<sup>44</sup> Ibid.

The next year he added the following to his thoughts on executive reorganization: “the need for streamlining the national government has become even more urgent since we recommended a new Hoover-type commission a year ago. The president’s only specific proposal for reorganization—to combine the Departments of Labor and Commerce—merely scratches the surface.”<sup>45</sup> He also briefly mentioned the institutional roles of the judiciary and Congress. Of the judiciary he stated, “we call upon the independent Judicial Branch of our Government to uphold the rights of the law-abiding citizen with the same fervor as it upholds the rights of the accused.”<sup>46</sup> When discussing foreign policy Ford observed, “this is not a partisan issue. The conflict is primarily between the Administration and Congress.”<sup>47</sup> Then, after discussing some of the possible ways Congress could contribute to national security, he concluded, “within its Constitutional responsibility, Congress can do no more.”<sup>48</sup> Granted, these were not lengthy substantive insights into the operation of American institutions, but there was at least some institutional awareness. The judiciary ought to be independent; Congress has certain limits to its power; and the executive needs to be well organized to administer the government well.

Edmund Muskie, in 1976, made a similar observation about executive reorganization arguing,

I was disappointed that the President made no proposal in his State of the Union message to improve government efficiency—to bring new businesslike methods into the bureaucracy.

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<sup>45</sup> Ford, “Republican Appraisal.”

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

Under our system the President, after all, is the Chief Executive. Efficiency in the general government is his responsibility.<sup>49</sup>

Ford and Muskie were the only two speakers who discussed the health and function of American institutions as such. Even their discussions tended to be short and were couched in the midst of partisan attacks.

Talk of “republican values” or values that are specific to the American regime was also lacking in these speeches with perhaps two small exceptions. In 1976 Edmund Muskie discussing foreign policy stated, “A free people deserve to be informed and to consent to the foreign policy we pursue.”<sup>50</sup> After addressing the arguments for a closed “secret” foreign policy he continued, “But a Republic gets its strength from the consent of the governed and from a consensus on shared objectives. It gets only weakness and disappointment from secrecy and surprise.”<sup>51</sup> George Mitchell, in 1991, made a similar comment about foreign policy stating, “before the war began, we debated openly, as democracy demands.”<sup>52</sup> Again, these were the only real appeals to “republican values.”

Appeals to America’s shared political history are another way of articulating our “constitutional tradition.” While Campbell and Jamieson do not use Tulis’ term of a “constitutional tradition,” they do argue that the president in his State of the Union Address should use history to articulate a “national ethos.”<sup>53</sup> Appeals to historical figures then might be a way to educate Americans about their constitutional tradition. Historical

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<sup>49</sup> Muskie.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> George J. Mitchell, “State of the Union: Democratic Reply,” (speech, Washington, D.C., January 29, 1991), New York Times, <http://www.nytimes.com/1991/01/30/us/state-of-the-union-the-response-mitchell-replies-for-democrats-to-bush-s-message.html?pagewanted=all&src=pm>.

<sup>53</sup> Campbell and Jamieson, 55.

appeals to figures representing the American constitutional tradition were few in the opposition responses. Discussion of the American Founding and the Founders simply did not occur. In fact, none of the historical references stretched back further than Daniel Webster, and the majority of them were more recent.

Gerald Ford opened his 1966 speech stating, “Daniel Webster here proclaimed the immortal words, “Liberty and union, now and forever, one and inseparable.”<sup>54</sup> Edmund Muskie in 1976 observed, “If we’ve learned anything as a nation—from Valley Forge to Yorktown, from the Great Depression to the landing on the moon—it is this: Give Americans the tools and they’ll do the job.”<sup>55</sup> Steve Largent in 1999 made passing reference to Lincoln when summarizing the history of the Republican party asking, “I believe tonight is an appropriate time to ask once again, what does the GOP stand for? What does the party of Lincoln and Reagan stand for today? What are the lasting bedrock principles that personify and distinguish the Republican party?”<sup>56</sup> In the 1983 Democratic response, one of the everyday Americans known simply as “farmer #1” stated, “Government’s role in research and development is as American as apple pie, in fact, it’s just about as old. You know, back in the days of Abraham Lincoln, we created land grant colleges that worked as partners with farming communities to develop the technology of scientific farming all the way across America.”<sup>57</sup> Jim Webb in 2007 opened his speech with a short historical reference saying, “I’m Senator Jim Webb, from Virginia, where this year we will celebrate the 400<sup>th</sup> anniversary of the settlement of

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<sup>54</sup> Ford, “State of the Union.”

<sup>55</sup> Muskie.

<sup>56</sup> Dunn and Largent.

<sup>57</sup> Coelho and Ford.

Jamestown—an event that marked the first step in a long journey that has made us the greatest and most prosperous nation on earth.”<sup>58</sup> Finally, Jim Webb made an appeal to Andrew Jackson in his 2007 response arguing, “In the early days of our republic, President Andrew Jackson established an important principle of American-style democracy—that we should measure the health of our society not at its apex, but at its base.”<sup>59</sup> These were the only historical references that date before the twentieth century. They were short and did not offer much in the way of lessons to be learned from the figures or events.

Appeals to 20<sup>th</sup> century politicians, especially presidents, are slightly more prevalent. While not quite a “historical” appeal but rather a comparison with the last Republican regime, Gerald Ford continually compared the current Johnson administration with the Eisenhower Administration speaking of the strength of the “Eisenhower dollar” and the benefits of the “Eisenhower for Peace Program.”<sup>60</sup> In the 1983 Democratic response Congressman Daschle, while discussing national defense, reminded his audience of the words of John F. Kennedy stating, “Strength is vital, but as John Kennedy said, ‘we should never negotiate from fear, nor should we fear to negotiate.’”<sup>61</sup> In the same response former Congresswoman Frances Farley attacked Reagan by appealing to other recent presidents arguing, “He may talk arms control, but President Reagan has reversed the commitment of every president since Dwight D. Eisenhower to keep this

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<sup>58</sup> James Webb, “Democratic Response to the State of the Union Address.” (speech, Washington, D.C., January 23, 2007). Washington Post. <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/23/AR2007012301369.html>.

<sup>59</sup> Webb.

<sup>60</sup> Ford, “State of the Union.”

<sup>61</sup> Coelho and Ford.

nation in the forefront of an effort to stop the spread of nuclear weapons in the world.”<sup>62</sup> In 1999, Steve Largent, giving the Republican response to Clinton, appealed to Reagan as a proponent of a limited government philosophy stating, “Finally Republicans stand for limited government. Ronald Reagan reminded us that a government that is big enough to give you everything you want is also big enough to take everything you have.”<sup>63</sup> In 2004, Nancy Pelosi invoked the memory of JFK by telling a story of her own experience with the former president: “Forty-three years ago today, as a college student standing in the freezing cold outside this Capitol building, I heard President Kennedy issue this challenge in his inaugural address: ‘My fellow citizens of the world,’ he said, ‘ask not what America will do for you, but what working together we can do for the freedom of man.’”<sup>64</sup> The following year Senator Reid appealed to Eisenhower and his building of the interstate system in the 1950s. In 2007 Democrat Jim Webb appealed to two 20<sup>th</sup> century *Republican* presidents, Theodore Roosevelt and Dwight D. Eisenhower. He observed,

Reading the economic imbalance in our country, I am reminded of the situation President Theodore Roosevelt faced in the early days of the 20<sup>th</sup> century. America was then, as now, drifting apart along class lines. The so-called robber barons were unapologetically raking in a huge percentage of national wealth. The dispossessed workers at the bottom were threatening revolt.

Roosevelt spoke strongly against these divisions. He told his fellow Republicans that they must set themselves “as resolutely against improper corporate influence on the one hand as against demagoguery and mob rule on the other.” And he did something about it.

As I look at Iraq, I recall the words of former general and soon-to-be President Dwight Eisenhower during the dark days of the Korean War, which had fallen into a bloody stale-mate. “When comes the end?” asked the General who had

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<sup>62</sup> Ibid.

<sup>63</sup> Dunn and Largent.

<sup>64</sup> Pelosi and Reid.

commanded our forces in Europe during World War Two. And as soon as he became President, he brought the Korean War to an end.<sup>65</sup>

As can be seen, there were a number of historical references made in the opposition responses. Yet, it is difficult to argue that these references really contribute to the articulation of or educating in American “constitutional principles.” Almost all of the references above contain the reference, *in its entirety*; so we see that the thoughts or ideas that a particular historical figure represents were not discussed at any length. The speakers were not expounding the difference in the principles of Jefferson and Hamilton or of Lincoln and Douglass as the speakers of earlier speeches and debates will be seen to do. The two exceptions are the references to Jackson and Reagan above. The former represents the egalitarianism of Jacksonian Democracy and the latter represents the tradition of small or limited government. One can fairly state that these individuals were mentioned to discuss American “constitutional principles,” albeit briefly. The other references focused primarily on the great words and deeds of individual Americans. The speakers used the inspirational words of Kennedy or the successful policies of Eisenhower to add weight to their own positions. This may be an appeal to authority, but that authority is not representative of the American “constitutional tradition” per se.

While opposition responses seem light on references to the “constitutional tradition,” there was absolutely no lack of appeals to values, principles, or ideals. In fact many of the speeches tended to be dominated by the articulation of broad, abstract ideals. Values and principles are not the same as policy goals. Both the president’s State of the Union Address and the response often laid out policy goals such as economic growth and national security. This section focuses on more abstract appeals to values.

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<sup>65</sup> Webb.

### *Abstract Values*

Beginning with Everett Dirksen's response in 1966, we see a use of more abstract values. He discusses "our leadership of the Free World, our relations to other lands, our respect for law, our devotion to peace, and our willingness to sacrifice even as others have done before us. It includes reason and realism in a world of tumult and confusion."<sup>66</sup> With the possible exception of the respect for law, these principles are not necessarily connected to the American regime in particular. Senator Biden, one of many speakers in the Democratic response in 1983, introduced the televised program stating "and two other *themes* run through all the Democratic ideas you are going to hear tonight—opportunity and fairness, the cornerstone rights of the American people."<sup>67</sup> In the same program Congressman Wirth, when discussing research and development, stated, "we will reaffirm our *faith in discovery* and in the *possibilities of the future*."<sup>68</sup>

By 1996 the appeals to abstract values had increased dramatically. Bob Dole began his response in 1996 stating, "that's what I want to talk with you about tonight. The future and the *values* that shape it."<sup>69</sup> After describing Republican attempts to work with President Clinton he observed, "for while we share an abiding love of country, we have been unable to agree. Why? Because we have starkly different philosophies of

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<sup>66</sup> Dirksen, "State of the Union."

<sup>67</sup> Coelho and Ford.

<sup>68</sup> Ibid.

<sup>69</sup> Dole.

government and profoundly different *visions* of America.”<sup>70</sup> These included “the values of self-reliance and family.”<sup>71</sup> Dole continued to talk about “values” repeatedly:

Life isn’t easy, but *values* are durable. Love of God and country and family. Commitment to honesty, decency, and personal responsibility. Self-reliance tempered by a sense of community. Those *values* made America the greatest nation on earth, and there is no doubt in my mind that we can get our country back on track if we reassert them again as a people. And if our government returns to them as a matter of national policy. Just like the debate over the budget this Winter, our arguments this Spring will seem a maze of conflicting numbers, assertions and high-sounding words. But what we’re really arguing about are the *values* that shape our nation, our government, and the future of your child sleeping down the hall.<sup>72</sup>

Republican Trent Lott began his 1998 response stating,

Tonight I’d like to share with you our plans, here in Congress, for a safer, stronger, and more prosperous America. Those plans are shaped by our commitment to family, faith, and freedom. And they highlight real differences between the Republican Party and the President, concerning what government should do—and how much money government should take. Big Government or families? More taxes or more freedom?<sup>73</sup>

Lott emphasized his focus on values by using alliteration and contrasting them with the president’s policies which he did not link to values. Throughout the speech he continued to do this. When criticizing the president’s current tax policy, he observed, “the typical family pays more than 38 percent of its income in taxes. That’s nearly forty cents of every dollar. That’s not just bad policy. *It’s immoral.* Our tax system should not penalize marriage, hard work, or savings, not to mention you efforts to keep up with

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<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Lott.

the cost of living. We believe these high taxes mean *less freedom overall*.”<sup>74</sup> Further, when discussing the current practices of the Internal Revenue Service (IRS), he stated, “It is *morally wrong* for a free people to live in fear of any government agency. It is *morally wrong* for citizens in a democracy to be presumed guilty until proven innocent.”<sup>75</sup> The arguments against Clinton’s policies were not argued in terms of bad policy; that is, Clinton’s policies were poorly chosen means to an agreed upon end. Nor did he argue that Clinton’s policies were out of line with our specifically American constitutional tradition. Rather, they were immoral or anti-freedom. He finished the speech by reiterating twice his three values of family, faith, and freedom.

During the following year, in 1999, there was an attempt by the Republican respondent Steve Largent to appeal to the “constitutional tradition.” He asked, “what are the lasting bedrock principles that personify and distinguish the Republican Party?” He answered, “Here’s the 15-second sound bite answer—the Republican Party’s mission is to promote, preserve, and protect individual liberty, free enterprise and limited government. But what does that mean to my family and your family?”<sup>76</sup> Largent then spent time discussing these principles and explaining how Republican policies would follow them. They were arguably more concrete “constitutional principles” that were related to the American regime. However, by the end of the speech, he had turned back to the more abstract values articulated by Lott and Dole stating, “back in my district, Oklahomans are steeped in America’s deep tradition of faith, family, hard work and strong neighborhoods. They represent the *values* that hold communities together, and

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<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Dunn and Largent.

they believe in the power of a better tomorrow.”<sup>77</sup> Senator Susan Collins the following year, in 2000, opened her speech with a similar appeal:

Our Republican agenda is driven by the simple but powerful truth that America will continue to lead the world as long as our government allows opportunity, initiative, and freedom to flourish. Letting people create what they can dream has transformed our economy. As we reflect on our economic health, we should never forget that America’s recent success is above all, *a triumph of values*. Americans will never let our country become rich in things and *poor in spirit*.<sup>78</sup>

Her co-respondent Bill Frist, who spoke about the American healthcare system, finished his speech stating, “It’s all possible because American are blessed with the *spirit to dream, the freedom to explore, and the work ethic to produce*. And so Mr. President, I ask you to put your trust in the American people—in their creativity, in their resourcefulness, in their ability to achieve—free of government interference.”<sup>79</sup>

Not to be out-done by their Republican counter-parts, the Democrats who responded to George W. Bush’s addresses cloaked themselves in “values.” Richard Gephardt, in his 2002 response, used the word “values” nine times in a speech that was only approximately 1500 words. He stated, “While our attention has shifted, our values have not,” and “real security depends not just on meeting threats around the world, but living up to our highest values here at home.”<sup>80</sup> Then, in a three paragraph segment, he appealed to values to promote Democratic domestic policy:

*Our values* call for tax cuts that promote growth and prosperity for all Americans. *Our values* call for protecting Social Security—and not gambling it away on the stock market.

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<sup>77</sup> Ibid.

<sup>78</sup> Collins and Frist.

<sup>79</sup> Ibid.

<sup>80</sup> Gephardt, Richard. “The Democratic Response.” Speech, Washington, D.C., January 29, 2002. PBS News Hour. [http://www.pbs.org/newshour/bb/white\\_house/jan-june02/gephardt.html](http://www.pbs.org/newshour/bb/white_house/jan-june02/gephardt.html).

*Our values* call for helping patients and older American—not just big HMOs and pharmaceutical companies—ensuring that seniors don’t have to choose between food and medicine. *Our values* call for helping workers who have lost their 401(k) plans and protecting pensions from corporate mismanagement and abuse. *Our values* call for helping the unemployed—not just corporations and the most fortunate. These same *values* guide us as we work toward a long-term plan for our nation.<sup>81</sup>

At no point during the speech did Gephardt actually state what these values are. He merely said that certain policy prescriptions must be followed because of them. Gephardt’s use of values might illustrate the epitome of the Tulis’ dual move toward the abstract and the concrete. As noted above Tulis holds that “it is difficult for a single speech to be inspirational and highly specific at the same time.”<sup>82</sup> Indeed something seems to be missing in the link between “values” and the specific prescriptions of Gephardt.

In 2004 Nancy Pelosi opened her speech speaking of “values,” “vision” and “inspiration.” She observed,

The state of our union is indeed very strong, due to the spirit of the American people—the creativity, optimism, hard work and faith of everyday Americans. The State of the Union address should offer a vision that unites us as a people—and priorities that move us towards the best America. For inspiration, we look to our brave young men and women in uniform.”<sup>83</sup>

Gephardt, joining Pelosi, called for what he termed an “opportunity society.” He then provided a vision for what that “opportunity society” would consist of. Basically, it would involve fixing the economy, bettering education, and improving healthcare.

To conclude, in these speeches, aimed primarily at a televised audience, there was a lack of rhetoric on the aspects of the “constitutional tradition,” as will be seen

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<sup>81</sup> Ibid.

<sup>82</sup> Tulis, *The Rhetorical Presidency*, 136.

<sup>83</sup> Pelosi and Reid.

throughout the following chapters. When speakers touched upon topics which could be considered part of this tradition, such as the Constitution itself and great American founders and politicians, they often did so in a passing way. There was no deeper probing into these questions as in some of the earlier reform debates. In the place of the constitutional tradition, speakers often littered their speeches with abstract appeals to ideals and value. Since these values were never discussed at length, and speakers from both parties seemed to claim them, one wonders what exactly was meant by these values. Without substance or clarification, it is unlikely that such appeals contributed to deliberation.

*Standard #3: Lack of Self-Restraint*

This standard does not come into play in this chapter. In the chapters which examine debates, we see that it was possible for members of Congress to critique the rhetoric of other members during debates. However, in the televised responses to the State of the Union Addresses, this could not happen. Certainly the speakers would not critique their own rhetoric. Since there were no direct responses to the responses, there were no presidential or congressional critiques of their rhetoric either. Additionally, since the responses were prepared in advance before the State of the Union Addresses, they usually were responding to general points of the speech, not the rhetoric used by the presidents. In this chapter, then, standard #3 is very closely related to standard #1 which discusses the divorce of speech from thought. It is, perhaps, because of this that the rhetoric that undermines deliberation is so exaggerated in the other four standards examined.

*Standard #4: Feminine Rhetoric: Story-telling in the Response*

As stated in the introductory chapter modern media has encouraged what Jamieson dubs “effeminate” rhetoric. One of the main characteristics of this style is story-telling. Story-telling is personal, non-aggressive, and typically attempts to bring people together in a shared past. Almost all of the opposition responses examined here involved at least some segment of story-telling in the speech. Typically the story-telling included one or both of the following aspects, disclosure about the speaker’s personal life and stories about the Americans he has met during his political career. The 1966 and 1967 responses by Dirksen and Ford are the only real exception. For example, in Senator Muskie’s 1976 response, he told his television audience, “I have just returned from two intensive weeks of travel, listening and talking among my people back home in Maine. We talked about a lot of very serious problems which are shared by millions of Americans.”<sup>84</sup>

In 1983, in the 28 minute program “The State of the Union-A Democratic View,” the opposition went so far as to have (along with members of Congress) Americans actually come to tell stories themselves. According to the transcript of the program, these story-tellers included, “unemployed carpenter,” “college student,” “woman on the street,” “farmers #1 and #2,” “factory worker,” “high school students #1 and #2,” “unemployed electrician,” and “retired businessman.” Of course, the speech of these everyday Americans was not congressional rhetoric, strictly speaking, but it did set the tone for a program that included many members of Congress. Senator George Mitchell began his 1991 response in a narrative fashion stating,

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<sup>84</sup> Muskie.

Across the Persian Gulf, dawn is now breaking. For Americans there, another night of danger is passing. Another day of combat begins.

In the skies over Iraq, aboard the ships in the Gulf, on the sands of Arabia, they're Americans—not Republicans or Democrats—but Americans who've answered their country's call.<sup>85</sup>

Later in the speech Mitchell told his viewers a bit about himself and those he had encountered in his political career. He stated,

Before I entered the Senate, I served as a federal judge. It's a position of great power.

But what I enjoyed most was presiding at citizenship ceremonies. People who'd come from all over the world gathered before me in a federal courtroom. There, in the final act, I administered to them the oath of allegiance to the United States, and they became Americans.

After every ceremony I spoke personally with each new American. I asked them how and why they came. Through their answers ran a common theme, best expressed by a young man who said, in halting English, "I came because here in American everyone has a chance."<sup>86</sup>

The Republicans, during the Clinton years, took story-telling to an even higher level. Bob Dole, near the beginning of his 1996 reply, stated,

A few years back I met with a group of high school seniors—one young man and a woman from every state. During the meeting one young man stood up and said "Senator everybody has somebody who speaks for them. But who speaks for us?" he asked me. "Who speaks for the future?"<sup>87</sup>

He revealed later in the speech,

I come from Russell, Kansas—there's not much money there, but the people are rich in many other ways. Life isn't easy, but the values are durable. Love of God and country and family. Commitment to honesty, decency and personal responsibility. Self-reliance tempered by a sense of community.<sup>88</sup> In 1998, we learned from Trent Lott that "as a father, and prospective grandfather, I realize that nothing is more important than the education of young people."<sup>89</sup>

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<sup>85</sup> Mitchell.

<sup>86</sup> Ibid.

<sup>87</sup> Dole.

<sup>88</sup> Ibid.

<sup>89</sup> Lott.

In 1999, Representative Jennifer Dunn stated,

I've been a single mother since my boys were little—six and eight. My life in those days was taken up trying to make ends meet, trying to get to two soccer games at the same time on two different fields, worrying about dropping the boys off early at school in order for me to get to work on time. I know how that knot in the pit of your stomach feels. I've been there.<sup>90</sup>

After introducing herself in this way she told her viewers the story of others like her:

Our current tax system is a burden on the economy and on the American people. Let me tell you a story about a fellow I represent in North Bend, Washington. His name is Robert Allan.

A few years ago, the IRS denied his right to file a joint return with his wife, because they said his wife Shirley was deceased.

Well, I've seen Shirley. She looks pretty good for a dead person. Robert took Shirley to the IRS office in Seattle. The IRS was not convinced. So the Allan's brought in their family doctor and in his medical opinion he pronounced Shirley alive.

The IRS was still not convinced. It took intervention by a member of Congress—me—to resolve this comedy, which in truth is a tragedy, because it's symbolic of how removed out entire tax system has become from reality and from common sense.<sup>91</sup>

Steve Largent, Dunn's counterpart, began his speech with "Let me tell you a bit about myself."<sup>92</sup> Approximately the first half page of the speech's transcript is filled with talk about his school years, his marriage, his NFL career, the beginning of his political career, and how he sung "Let There Be Peace on Earth" with his children on Christmas Eve. Later in his speech he related his story of meeting with local teachers who explained to him how federal education dollars should be spent. The next year, in 2000, Bill Frist related stories of his time as a doctor to illustrate how state-run health care programs do not work.

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<sup>90</sup> Dunn and Largent.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

The Democrats, during the Bush years, continued the story-telling practices of their Republican predecessors. In 2004 Tom Daschle told his audience,

It was brought home to me how Americans are already answering that call when I spoke to a friend of mine, who is the head of a postal union. Shortly after we learned of the anthrax threat, I spoke with him and asked how he was doing. “Not well,” he said. “We’ve lost two workers and some are sick.” He said, “I went to New Jersey where they had some of the biggest problems. Because of anthrax all the workers were working in a tent exposed to the cold—hand-sorting the mail.”

He said: “I thought I was going to get an earful, but when I asked for questions, a man stood up and said ‘I have been a postal worker for 30 years. We’re here and we’re going to stay here. And if we’ve got to be outside all winter, we’re going to stay here. The mail is going out. The terrorists will not win.’”<sup>93</sup>

In 2004 we learned from Nancy Pelosi that “as a mother of five, and now as a grandmother of five, I came into government to help make the future brighter for all of America’s children. As much as at any time in my memory, the future of our country and our children is at stake.”<sup>94</sup> In 2005 Harry Reid relayed the story of his upbringing:

I was born and raised in the high desert of Nevada in a tiny town called Searchlight. My dad was a hard rock miner. My mom took in wash. I grew up around people of strong values, even if they rarely talked about them. They loved their country, worshiped God, never shunned hard work and never asked special favors.

My life has been very different from what I imagined growing up, but no matter how far I’ve traveled, Searchlight is still the place I go back to and still the place I call home.

A few weeks ago, I joined some friends of mine for a bite to eat at the Nugget, Searchlight’s only restaurant. We were sitting down in a booth when a young boy, about 10 years old, named Devon walked up to us. Carrying a skateboard under his arm, he said, “Senator Reid, when I grow up, I want to be just like you.”<sup>95</sup>

In 2007 Senator Jim Webb told the story of his family and its record of military service:

I want to share with all of you a picture that I have carried with me for more than 50 years. This is my father, when he was a young Air Force captain, flying cargo

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<sup>93</sup> Daschle.

<sup>94</sup> Daschle and Pelosi.

<sup>95</sup> Pelosi and Reid.

planes during the Berlin Airlift. He sent us the picture from Germany, as we waited for him, back here at home. When I was a small boy I used to take the picture to bed with my every night, because for more than three years my father was deployed, unable to live with us full-time, serving overseas or in bases where there was no family housing. I still keep it, to remind me of the sacrifices that my mother and others had to make, over and over again, as my father gladly served our country. I was proud to follow in his footsteps, serving as a Marine in Vietnam. My brother did as well, serving as a Marine helicopter pilot. My son has joined the tradition, now serving as an infantry Marine in Iraq.<sup>96</sup>

So what can be gleaned from these stories? We know that the speakers, both Democrats and Republicans, were once children, that they have families, that they grew up in towns that had “values,” and that they, in the spirit of Prince Hal, rubbed elbows with hoi-polloi. With perhaps the exception of the last characteristic, these could apply to the majority of Americans. What then is the purpose of these stories? One can say that the speaker was concerned with his or her ethos or presenting his or her character in such a way as to strengthen his or her rhetorical effectiveness. In a democracy, the above mentioned characteristics are the ethos that a politician might shoot for. Yet, the president does not typically tell stories in the same way as these respondents did. True, the president is often concerned with “ethos” in his speeches. As Campbell and Jamieson state in their chapter on the State of the Union, in *Deeds Done in Words*, the president’s “public meditations include a retelling of the past that emphasizes *shared* experience in order to create a *collective* fiction, an ethos or national character.”<sup>97</sup> The president then moves from this national ethos to an assessment of the Union and then recommends legislation. The key here is that the president presents/creates a *national*, not a *personal*, ethos. In doing so, the president is able to contribute to deliberation by re-articulating the

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<sup>96</sup> Webb.

<sup>97</sup> Campbell and Jamieson, 55.

ends of the American polity. In order to begin to deliberate the means, the ends must be presented.

The creation of a personal ethos through the stories about a speaker's life or through his connection with everyday people does not perform this deliberative function. Admittedly, there is a place for this type of rhetoric in American politics, the campaign trail. Giving autobiographical stories and narratives about other Americans seems to be a legitimate way of answering the question "why should I vote for you?" One's democratic credentials and knowledge of constituents may be important characteristics in a democracy. However, they have only a very indirect connection to deliberation. They neither articulate ends nor suggest adequate means for policy.

It is understandable *why* the opposition speakers told these stories. They may have been trying to supply rhetorically what the president has in reality, a connection with the people. The president can begin with discussing the national ethos because he already brings to the table a certain personal ethos, just by virtue of being president. Most people already know something about the president, and he is elected by the nation as a whole. Even the most famous member of Congress typically cannot compete with this. Including these personal stories in responses leaves less time (and typically the response is shorter than the actual State of the Union to begin with) for an adequate articulation of a national ethos or a presentation of legislative alternatives.

These stories have not only not contributed to deliberation (and thus have not contributed to the maintenance of the institution of Congress) but may have actually *undermined* the maintenance of the institution. Part of Congress' institutional maintenance comes through public support of the institution. One wonders if these

stories, offered directly after the president's speech, have led to the people's support. Polls on the people's actual responses to the opposition responses are difficult to find. Yet, even without polling, one can suggest the probable effects these stories have had on the people. I suggest here that this might be a problem of the high and the low in politics. Joseph Bessette discusses the low and the high in *The Mild Voice of Reason* stating,

The political philosopher Leo Strauss once wrote: "It is safer to try to understand the low in the light of the high than the high in the light of the low. In doing the latter one necessarily distorts the high, whereas in doing the former one does not deprive the low of the freedom to reveal itself fully as what it is."

A theory of legislative behavior that only the low motive of re-election cannot even provide the vocabulary to describe and explain the serious lawmaking evident in the accounts summarized here.

Conversely, a full understanding of the high art of lawmaking allows the low arts of mere self-seeking to reveal themselves fully for what they are.<sup>98</sup>

Bessette is talking about the problems in law-making being simply a reflection of re-election motives in members of Congress, but this may shed light on the stories discussed here. When one is presented with the high, he can better see the low for what it is. Certainly, this is evident here. After witnessing speeches that, as Campbell and Jamieson observe, appeal to a "high" sense of national ethos, might it not seem "low" to talk about oneself and one's closeness to the people. While the viewers of the speech might not think this if they heard these stories in a different context, is not the disparity between the high and low, between the State of the Union and the stories of the response, apparent. Certainly, Americans, like all citizens in a democracy, are subject to the low arts of demagoguery. These stories are exercises in what James Ceaser calls "soft" demagoguery which is typified by flattery. He describes this phenomenon stating, "in the case of popular demagoguery, the ruler flatters the people by claiming that they 'know' what is best, and makes a point of claiming his special 'closeness' by manner or

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<sup>98</sup> Bessette, 135.

gesture.”<sup>99</sup> This is exactly what the purpose of these stories have been. Through telling the stories of “regular” Americans, these speakers seemed to be implying that these Americans understood the country’s problems best. By describing their up-bringing and families, they were claiming their “closeness” to the people.

Demagoguery often works because the people are unaware of the fact that they are being flattered or being roused by the speaker for his or her own advantage. In a democracy, this is often the state of affairs. But might not the viewing of this lower form of story-telling along with higher appeals to a national ethos, expose the low for what it is, *self-indulgent, self-seeking*? Even if the speaker is *not* self-seeking, might it not make him *appear* to be so? In either case, would not this tend to lower the esteem of the speaker in relation to the president? If the speaker happens to be a member of Congress, even if he claims to be speaking as a member of the opposition party, this might in turn, lower the esteem of Congress as an institution.

#### *Standard #5: Crisis Rhetoric*

The modern televised response to the State of the Union Address very clearly followed the presidential move of increased “crisis rhetoric.” Many of the speeches expressed some sense of crisis in America at the time of the speech. There was one exception to this trend which will be discussed before turning to the uses of crisis rhetoric. While some of the responses examined did not use crisis language, the 1999 Republican response to President Clinton’s address went even further by denying that there was any crisis in the United States. The response was given in the midst of

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<sup>99</sup> Ceaser, 320.

President Clinton's impeachment trial in the Senate, which could be legitimately characterized as a crisis. Representative Dunn opened her response stating,

These are disturbing and controversial times in our nation's capital. A couple of weeks ago, I even heard a network anchor say, the capital is in chaos. Another proclaimed we were in the midst of a constitutional crisis. Ladies and gentlemen, our country is not in crisis. There are no tanks on the streets. Our system of government is as solid as the Capitol dome you see behind me.<sup>100</sup>

It is certainly strange that, in a year where one could argue a crisis actually existed with the possible impeachment of Clinton, the response actually denied that there was a crisis. Certainly, there was a better case to be made for the use of crisis rhetoric in 1999 than in some of the responses below. Perhaps Dunn's denial of crisis was rhetorical self-restraint that refused to exploit a critical situation for rhetorical gain. Perhaps, on the other hand, Republicans were being blamed for the perceived crisis of the impeachment. Assuring the public that there was no crisis might have been a partisan damage-control move. Whatever the reason, this anti-"crisis rhetoric" is the only exception in a tradition of "crisis rhetoric."

In Dirksen's 1966 response to Johnson, we see him echoing the crisis rhetoric of Johnson's "War on Poverty" that Tulis disparages. He observed, "consider now the horsemen of despair who ride over the world—the population explosion, hunger, and poverty. They constitute a crisis already on our doorstep." Senator Muskie, in his 1976 response, did not use the word crisis. However, he certainly described the country as being in dire straits. He opened by stating,

My message tonight is not one of comfort or reassurance. But is truth and it is a warning. I have just returned from two intensive weeks of travel, listening and talking among my people back home in Maine. We talked about a lot of serious problems which are shared by Americans from coast to coast. The problem which concerns me more than all the rest—because unless we solve it,

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<sup>100</sup> Dunn and Largent.

we cannot solve the rest—is the extent to which you have lost confidence in your political system and your ability to govern yourselves.

Too many of you do not believe the government cares about you and your problems.

Too many of you believe that government can't do anything about your problems.

Too many of you believe that government exists only for the benefit of the few who are rich and powerful.

Too many of you believe that you can do nothing to improve the performance of your government.

Too few of you are willing to try. Political power in our system is still yours to use if you will.<sup>101</sup>

Muskie, speaking for the people he had visited, painted a very dark picture of the current State of the Union:

I find no confidence that government can restore economic health to our nation—put people back to work—get our factories open again—and stop the inflation that robs our elderly and poor—and deprives every one of us our hard-earned dollars.

I find no confidence that government can do something effective about this siege of crime that makes many of your prisoners in your homes, behind doors that lock out the threat which lurks in the darkness.

That government can make schools again into houses where children can learn and prepare themselves for the future

The government can slow down the spiraling health costs that add more misery to your lives each year.

That government can bring our powerful oil industry under control, to hold down the price of energy. That government can stop a disastrous retreat from the goal of environmental quality we set so resolutely not so long ago.

And I find no confidence that government would begin to curb the abuses of power that threaten you.<sup>102</sup>

He concluded this long list by stating, “Everywhere I turn in this nation, there are the problems I hear from your lips. This is the State of the Union.”<sup>103</sup> This summation is interesting because it makes the crisis a two-layered event. The first is the crisis of confidence amongst the people Muskie spoke with. Yet, Muskie did not only present a

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<sup>101</sup> Dirksen, “State of the Union.”

<sup>102</sup> Muskie.

<sup>103</sup> Ibid.

crisis in *confidence* in his speech, but an actual crisis in the *government*. This can be seen most obviously in the line, “This *is* the State of the Union.” Here he might have meant that the State of the Union was the lack of confidence and not the political problems themselves. However, if one looks to his list of problems because of which the “people” lacked confidence, we see that Muskie actually sympathized with the people’s views. While purporting to be speaking with the “people’s” voice, Muskie repeatedly used the second person plural pronouns “you” and “yours” to refer to the people and their problems. This means that there was some element of Muskie speaking *to* the people, not just *for* them. In doing so he was not just reporting their beliefs but agreeing with their evaluation of the current political state of affairs.

In the 1983 “A Democratic View” program hosted by the Democrats, Harry McPherson, while not a Congressman himself (he was a former Johnson aid), began the program by articulating a crisis that the other Democratic Congressmen picked up on throughout the program. He observed, “In 1981, Republican Majority Leader called Reaganomics a ‘riverboat gamble’ and he was right. But it’s a gamble that failed. It’s put our economy into crises [sic]. One immediate crisis and one long term crisis. Immediately we have to stop the economy from sliding backwards into catastrophe.”<sup>104</sup> After this statement members of Congress outlined their solutions to the current crisis.

In 1991, Senator Mitchell, responding to Bush’s address and discussing the military operations in Iraq, stated,

One nation, Israel has done much by its brave refusal to be provoked. This *crisis* has given us powerful new proof of the importance of Israel’s friendship.

But as *critical* as the Gulf conflict is, the other business of the nation won’t wait. The President says he seeks a new world order. We ask him to join

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<sup>104</sup> Coelho and Ford.

us in putting our own house in order. We have a *crisis* abroad. But was also have a *crisis* here at home.<sup>105</sup>

After discussing the domestic economic crisis, he stated, “we can meet this *crisis* by providing for the well-being of the American family.”<sup>106</sup> While admitting that the banking system was not *yet* in a crisis Mitchell added, “we must strengthen the banking system now, before it’s a full national crisis, not after.”<sup>107</sup> Warning about another future crisis related to healthcare, he stated, “and we don’t have any policy on what will be the crisis of this decade: Long-term care for the elderly.”<sup>108</sup> By articulating crises that were and crises that may be, Mitchell was acting as both the ghost of the political past and the ghost of the political future. With the help of the Democrats, perhaps the death of Tiny Tim can be avoided.

In 1996, Bob Dole somewhat ironically stated,

I am a practical man, but I believe in the miracle of America. I have never gone in for dramatics, but I do believe we have reached a defining moment. It’s as if we went to sleep in one America and woke up in another.

It’s as though our government, our institutions and our culture have been *attacked by liberals and are careening dangerously off course*. We know the way back, *but we must act now*.<sup>109</sup>

Trent Lott, in 1998, never used the word crisis, but he did refer to teen drug abuse as an “epidemic.” He also argued that, “by combining national leadership with community activism, we can—and we will—save America, one child and one

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<sup>105</sup> Mitchell.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Dole.

neighborhood at a time.”<sup>110</sup> An America that needs saving is, by implication, an America in some type of crisis. Likewise, in 2001, Tom Daschle, while never using the word crisis, warned of how past Republican policies brought the nation to the brink of disaster and how these policies, if followed by President Bush, could lead to disaster. He argued,

In 1981, Dick and I sat in the House Chamber when another new president talked to the American people about stimulating our economy. The words spoken that evening were strikingly similar to the message we heard tonight. We were promised that if we gave huge tax cuts to the wealthiest Americans, the benefits would trickle down, deficits would disappear and the economy would flourish.

Congress supported that experiment. It was a huge mistake. As President Bush's own Treasury Secretary Paul O'Neill said recently, it put America, "in a ditch that was horrendous." Deficits skyrocketed. The national debt quadrupled. High interest rates choked American industries. Unemployment soared. Working families struggled to meet their mortgages, pay for health care and save for college.

It took us 18 years, four acts of Congress, and a lot of hard work by the American people to get out of that ditch.<sup>111</sup>

While a ditch is somewhat less ominous sounding than a crisis, the language of disaster was still employed for similar effect.

Through all of these examples, one can clearly see that consistently throughout the televised responses to the State of the Union Addresses, a use of crisis rhetoric was employed. By using crisis rhetoric, members of Congress urged quick action, rather than deliberation. If a session of Congress *begins* at such a pace, if it is framed as a session during a time of crisis, deliberation, which takes time, may be undermined.

### *Summary*

The modern televised responses to the State of the Union Addresses show members of Congress using the least deliberative rhetoric examined in this dissertation.

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<sup>110</sup> Lott.

<sup>111</sup> Daschle and Pelosi.

As the first standard illustrates, there was no need for respondents to know the details of their policies and positions, for there was no one to question or challenge their speech. Discussion of principle within the American “constitutional tradition” virtually disappeared and was replaced by highly abstract talk of values and vision. Due to the nature of the speech, there was no possibility for other members to urge rhetorical restraint by criticizing the rhetorical excesses of the speech. Almost every speech contained some type of personal story. Finally, almost every speech referred to some particular issue as a crisis or to the nation as a whole as being in a state of crisis.

To be sure, this lack of deliberative rhetoric is due largely to that fact that these speeches were given publically to a television audience, rather than to other members of Congress. The debates examined in Part II, since they all take place on the floor of Congress, never reach the level of non-deliberative rhetoric contained in these speeches. However, examining these responses points to the effect of members making speeches aimed at an audience outside the institution of Congress. In the debates in Part II, members were making speeches in an environment that is increasingly open to the public. Thus, we can see an incremental move toward the type of rhetoric used here. These speeches may then serve as a warning.

## CHAPTER THREE

### A Rhetorical Alternative from the Past: Truly *Congressional* Responses

#### *Introduction*

Jeffrey Tulis, in his recent chapter entitled “Deliberation Between Institutions” in the edited volume *Debating Deliberative Democracy*, offers a six-page examination of the congressional responses to the State of the Union Addresses of Washington and Adams. He offers these responses as an example of inter-branch deliberation. The fact that the president’s speech was followed by a committee-written response and then debated by the committee of the whole illustrates the two branches taking each other’s words and arguments seriously and taking the needed time to deliver a deliberate response.<sup>1</sup> This chapter will illustrate, through a more rigorous examination of the debates surrounding the responses and responses themselves, that not only did this practice foster inter-branch deliberation, but it also reinforced deliberative practices *within* the

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<sup>1</sup> Tulis offers the following excellent summary of the process:

To satisfy the constitutional duty to “give to the Congress information on the State of the union and recommend for the Consideration such Measures as he shall judge necessary and expedient,” Presidents Washington and Adams opened each session of Congress with an Annual Address, which later came to be known as the State of the Union Address. The President appeared in person and read the address to both the House and the Senate, sitting together in the Senate Chambers.

After the speech, each House reconvened separately in their respective chamber, printed copies of the President’s speech were commissioned and a resolution was offered (and on several cases debated) outlining the general purposes of a Reply by each body to the President’s Address. In each chamber, a committee of three to five legislators was chosen to draft a Reply in the spirit of the resolution adopted. (The chair of the first several House committees spent as little as several hours and as much as a week drafting a Reply.)

When the drafting committees completed their work, their legislative body reconvened as a “committee of the whole.” In the case of the House, the clerk read the entire draft followed by the Speaker who structured the the debate by proceeding through the draft reply again, paragraph by paragraph. In the case of the Senate, the committee’s draft was signed and delivered to the Senate by the Vice-President (though he did not serve on the drafting committee) and he chaired the deliberations of the Senate on its adoption, taking that body through the draft paragraph by paragraph. Tulis “Deliberation Between Insitutions,”202.

institution of Congress. This, in effect, strengthened Congress' role within the system far more than the modern televised responses did.

### *The Public-Personal Letter*

As discussed in chapter two, the State of the Union Address has always been addressed (at least in words if not intent) primarily to the Congress. However, the televised responses were addressed to the people rather than to the president.. This written response examined in this chapter was actually addressed to the president. While addressed and given as a personal letter to the president, the letter was publically debated in Congress prior to its delivery. Thus, in a sense, the order of the process in the two different types of congressional responses is reversed. In the case of the modern televised response, the creation of the response is completely private. It is crafted by party members, ghost-writers, and the speaker out of the public eye, and then it is presented on television directly to the public. In the earlier responses, Congress debated the responses in both the drafting committee and on the floor. The process began, then, with public deliberation and ended with a personal or private delivery of the response. However, the key difference lies in the primary audience of the rhetoric in both cases. In the case of the televised responses the audience consists of the television audience, mostly the American people. In the earlier responses, the audience of the debate on the response consisted of other members of Congress only, and the response itself was aimed primarily at the president. This chapter will examine the rhetoric of the debates surrounding the letter and the written letter itself. Both will be considered part of the "response" to the address.

How do the two practices differ in relationship to deliberation? As mentioned in the last chapter, the deliberation practiced in the modern televised response (if any) is done privately amongst those preparing the speech and perhaps the voters at home. Congress at no point engages in deliberation. The earlier responses which called for debate on the floor of Congress allowed for congressional deliberation. The character of this congressional deliberation is further discussed by Tulis in “Deliberation Between Institutions”. He observes, “First, although matters suitable for legislation were discussed, those discussions...were conducted in a manner that was accessible to ordinary citizens.”<sup>2</sup> He adds that the debates, “although accessible to ordinary citizens, could be conceptually subtle.”<sup>3</sup> Finally, he states, “although there was undoubtedly a political agenda beneath or beyond the debate (for example, to secure partisan advantage in the upcoming election) or issues of personal ambition that prompted the intervention, the debate was conducted and resolved on the plane of reason—reason as articulated in the debate itself.”<sup>4</sup> Thus, these debates were reasonable, nuanced, and accessible to the public. The result ultimately was an improvement of congressional deliberation, which in turn strengthened the institution. Additionally, good deliberation in Congress leads to better deliberation amongst the public. Thus, going directly to the public, as in the modern responses, ultimately is worse for public deliberation. As Tulis observes, “part of my point is to suggest that under separation of powers, Congressional deliberation, Executive deliberation, and decision, *and public deliberation* are all facets of a separation

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<sup>2</sup> Tulis, “Deliberation Between Institutions,” 204.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

of powers arrangement, mutually dependent and, in the best of cases, mutually fructifying.”<sup>5</sup>

This chapter will expand on Tulis’ argument about the relationship between the practice of institutional responses to the State of the Union Addresses and deliberation. In order to demonstrate the relationship, Tulis provides anecdotal evidence for the thesis by mentioning the debates of two early responses. Below is a more systematic treatment of the particular types of speech that this practice encourages.

### *Standard #1: The Marriage of Speech and Thought*

The above introduction to this era of responses really provides most of what will be talked about in this section. Simply examining the form of this response shows how speech and thought were not divorced in the same way as they are in the televised responses. Since the earlier responses involved actual debate, they forced members to argue, defend their positions, and respond to questions on the spot. The members of the drafting committee had to submit their proposed draft for open criticism to the entire body. Often they were forced to give their reasons for a particular word or phrase. Since some of the following sections will show how these actual exchanges led to members being forced to think about their words, not much needs to be said about it here. Comparing this section with its chapter two counterpart, we can observe that in the older written responses and the debates surrounding them, there were hardly any examples of the types of false dichotomies and rhetorical questions seen in the televised responses.

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<sup>5</sup> Ibid., 206. Emphasis added.

## *Standard #2: Constitutional Rhetoric*

While modern televised responses to the State of the Union Address rarely discuss what Tulis calls the “constitutional tradition,” the institutional responses of the early era of responses were steeped in it. If “values” were discussed, they were discussed in the language of the American regime.

### *The Constitution Itself*

The most obvious use of rhetoric in the “constitutional tradition” is illustrated by references to the Constitution itself. References to the Constitution were constant throughout both the finished responses and the debates on the responses in this era. We turn first to look at the finished responses themselves.

Mention of the Constitution began in the first year of the response. In the Senate’s January 1790 response two references to the Constitution were made. The Senate observed, “The accession of the State of North Carolina to the Constitution of the United States gives us much pleasure: and we offer you our congratulations on that event, which at the same time adds strength to our Union, and affords a proof that the more the Constitution has been considered, the more the goodness of it has appeared.”<sup>6</sup> The Senate not only mentioned, but also praised the Constitution. Later in the speech, the Senate, touching on the importance of learning, again mentioned the Constitution: “Literature and Science are essential to the preservation of a free Constitution: the measures of Government should, therefore, be calculated to strengthen the confidence that is due to

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<sup>6</sup> *Annals of Congress*, 1st Cong., 2nd sess., 935.

that important truth.”<sup>7</sup> The means of government should be tailored to freedom. It is not an abstract notion of freedom however, but a free Constitution.

The House of Representatives’ response of October 1791 began with high praise of the Constitution, specifically for its ability to secure happiness for the American people. In fact, the response saw the Constitution as more responsible than God even for the current happiness of the nation. The address read, “The House of Representatives have taken an ample share in the feelings inspired by the actual prosperity and flattering prospects of our country; and whilst, with becoming gratitude to Heaven, we ascribing this happiness to the true source from which it flows, we behold with an animating pleasure the degree in which the Constitution and Laws of the United States have been instrumental in dispensing it.”<sup>8</sup> With its elevation above Providence, one can clearly see the status of the Constitution as a text of American civil religion.

In 1792, the House again spoke of the Constitution as the source of American happiness. They concluded their response by affirming “a desire to conciliate, more and more, the attachment of our constituents to the Constitution, by measures accommodated to the true ends for which it was established.”<sup>9</sup>

During the 1794 response, which followed Washington’s speech on the Whiskey Rebellion, the House of Representatives discussed the crisis, not in terms of abstract values, but in terms of the Constitution. The whiskey rebels had violated the Constitution itself. In order to illustrate this point, the House contrasted the actions of the whiskey rebels with those who obeyed the law during the crisis. They argued that those who

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<sup>7</sup> *Ibid.*, 936.

<sup>8</sup> *Annals of Congress*, 2nd Cong., 1st sess., 145.

<sup>9</sup> *Ibid.*

obeyed the law, “demonstrated to the candid world, as well as to the American People themselves, that the great body of them, every where, are equally attached to the luminous and vital principle of our Constitution, which enjoins the will of the majority should prevail; that they understand the indissoluble between true liberty and regular Government.”<sup>10</sup>

The House of Representatives briefly mentioned the Constitution in 1795. The response hoped that all threats to American tranquility would be extinguished, “on terms compatible with our national rights and honor, with our Constitution and great commercial interests.”<sup>11</sup>

After 1795 the actual mention of the Constitution dropped out of the responses for a few years, but returned in 1798. The House of Representatives opened its response by discussing the recent epidemic of disease that had hit the city of Washington. It assured President Adams that it would respond to his “inviting us to consider the expediency of exercising our Constitutional powers, in aid of the health laws of the respective States, your recommendation is sanctioned by the dictates of humanity and liberal policy.”<sup>12</sup> Although this seems to be only a passing reference to the Constitution, it is substantive nonetheless. In times of crisis, there might be a temptation to bypass the normal means of government to achieve a particular end. In this case, one can imagine that Congress would be tempted to go beyond its normal constitutional powers in the name of mercy, humanity, or some other abstract value. However, Congress asserted here that it would attempt to aid in the current health crisis only as much as the Constitution allowed them.

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<sup>10</sup> *Annals of Congress*, 3rd Cong., 1st sess., 948.

<sup>11</sup> *Annals of Congress*, 4th Cong., 1st sess., 155.

<sup>12</sup> *Annals of Congress*, 5th Cong., 3rd sess., 2438.

In 1799, President Adams reported that, as in the Whiskey Rebellion in 1794, certain men in the western counties of Pennsylvania had resisted national tax measures. Particularly, they had not allowed their lands and houses to be valued for tax purposes. Like the response in 1794, the House criticized those resisting the law as violating the principles of the Constitution itself. The House stated,

That any portion of the people of America should permit themselves, amid such numerous blessings, *to be seduced by the arts and misrepresentations of designing men into an* open resistance of a law of the United States, cannot be heard without deep and serious regret. Under a Constitution where public burdens can only be imposed by the people themselves, for their own benefit, and to promote their own objects, a hope might well have been indulged that the general interest would have been too well understood, and the general welfare too highly prized, to have produced in any of our citizens a disposition to hazard so much felicity, by the criminal effort of a part, to oppose with lawless violence the will of the whole.<sup>13</sup>

Thus, the Constitution secures that Americans are able to give their consent to their laws. Violently resisting constitutionally passed laws is thus illegitimate.

In 1800, the final year of the written congressional responses both the Senate and the House of Representatives mention the Constitution when discussing particular powers of the president and Congress. The House, discussing recent administration efforts to negotiate with France, observed, “The Constitution of the United States having confided the management of our foreign negotiations to the control of the Executive power, we cheerfully submit to its decisions on this important subject.”<sup>14</sup> Likewise, the Senate discussing its own powers, stated, “The question of whether the legal powers over the

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<sup>13</sup> *Annals of Congress*, 6th Cong., 1st sess., 194.

<sup>14</sup> *Annals of Congress*, 6th Cong., 2nd sess., 790

District of Columbia, vested by the Constitution in the Congress of the United States shall be immediately exercised, is of great importance.”<sup>15</sup>

### *Statements of Institutional Identity*

As stated in the introductory chapter, part of the rhetoric that is bound in the “constitutional tradition” is rhetoric that examines or reinforces what Ornstein and Mann call the institutional identity of Congress. Rhetoric of institutional identity is almost completely absent from the modern televised responses to the State of the Union, but it was prevalent in the earlier institutional responses.

In the most obvious case, the actual written responses began with a statement of who was responding, for instance, the Representatives of the People of the United States or the Senate of the United States. This was consistent throughout all twelve years of the responses and thus does not require a catalogued account. Perhaps the second most obvious reference to institutional identity in the responses was simply the mention of the legislative role of Congress. While this is somewhat simple, it is again noticeably absent from the modern responses. In January of 1790, the year of the first response, the House stated “we are resuming the arduous task of legislating” and refers to matters which “are entitled to legislative protection.”<sup>16</sup> In December of 1790 the Senate assured Washington that they would assist with the protection of the frontier by providing what it “may require on the part of the Legislature.”<sup>17</sup> Again, in 1792, when Washington reported that there had been some resistance to the whiskey excise which would eventually lead to the Whiskey Rebellion, the Senate assured Washington that, “should the means already

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<sup>15</sup> Ibid., 726.

<sup>16</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1052.

<sup>17</sup> *Annals of Congress*, 1st Cong., 3rd sess., 1733.

adopted fail in securing obedience to this law, such further measures as may be thought necessary to carry the same into complete operation cannot fail to receive the, *approbation of the Legislature.*”<sup>18</sup> The Senate, in responding to a portion of Washington’s 1795 speech concerning problems with the Creek Indians, stated, “we indulge the hope, that the measures that you have adopted to prevent the same, if followed by *those Legislative provisions* that justice and humanity equally demand, will succeed in laying the foundation of a lasting peace with the Indian tribes.”<sup>19</sup> In 1796, the Senate assured Washington that the inadequate salaries of public officials “will receive the most pointed Legislative attention ”<sup>20</sup> 1797 had the Senate assuring Adams that, “the several objects you have pointed out to the attention of the Legislature, whether they regard our internal or external relations, shall receive from us that consideration which they merit.”<sup>21</sup> The House, in 1798, discussing the nation’s fiscal policy, stated, “connected with this situation of our fiscal concerns, the assurance that the legal provisions for obtaining revenue by direct taxation will fulfill the views of the Legislature is particularly acceptable.”<sup>22</sup> Finally, in the last two Senate responses of 1799 and 1800, the Senate told President Adams that “the legislature of the United States will cheerfully enable you to realize your assurances of performing, on our part, all engagements under our treaties,”<sup>23</sup> and that “the several subjects for Legislative consideration contained in

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<sup>18</sup> *Annals of Congress*, 2nd Cong., 2nd sess., 612. Emphasis added.

<sup>19</sup> *Annals of Congress*, 4th Cong., 1st sess., 15.

<sup>20</sup> *Annals of Congress*, 4th Cong., 2nd sess., 1521.

<sup>21</sup> *Annals of Congress*, 5th Cong., 2nd sess., 473.

<sup>22</sup> *Ibid.*, 642.

<sup>23</sup> *Annals of Congress*, 6th Cong., 1st sess., 13.

your Speech to both Houses of Congress, shall receive from the Senate all the attention which they can give.”<sup>24</sup>

The use of the words legislature and legislative in the early congressional responses might seem intuitive and thus not all that significant. Yet, that is what makes the lack of the term in the modern televised responses so telling. The most basic statement of institutional identity is no longer a part of the speech. While the modern speeches might represent the abandonment of institutional identity caused by other factors as Ornstein and Mann might have it, it could be that the very nature of the speech leads to a lack of institutional identity. The term legislature makes less sense if talking to the people directly, than if speaking to the president as the legislature. It is also a more constitutional and a more technical term, one that may not be suited for popular oratory. Thus, choosing this type of speech might reinforce the lack of institutional identity already prevalent in the institution.

### *The Rhetoric of Deliberation*

The actual written responses also used the rhetoric of institutional identity in less obvious ways as well. Perhaps the most important use of institutional identity rhetoric was the use of the terms deliberation and its derivatives as well as related terms such as reflection and discussion. Additionally, the responses included the discussion of means and ends which are closely related to deliberation. The decline in deliberation is of course central to our examination of congressional rhetoric. As the opening chapter indicates, Congress is constitutionally designed to be a deliberative branch. Ornstein and Mann discuss deliberation and institutional identity as two separate factors of

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<sup>24</sup> *Annals of Congress*, 6th Cong., 2nd sess., 726

congressional maintenance. These two factors come together in the written responses to the State of the Union. In the responses, the House and the Senate often told the president that as legislators they would deliberate upon the matters raised in the president's speech. This strengthened both deliberation and institutional identity. The simple act of using the language of deliberation kept this function in the mind of members. It reminded them of why they were elected to Congress. Additionally, it strengthened institutional identity by re-articulating a function or purpose of the institution. An identity centered on some purpose is more likely to last than one that is not. Modern televised responses rarely, if ever, use the language of deliberation. Rather, as discussed in chapter 2, the modern responses often use the rhetoric of crisis. While crisis and deliberation are not necessarily antithetical, they are often difficult to reconcile. Interestingly, in the earlier State of the Union responses, even in cases where the nation was facing crisis situations (the Whiskey Rebellion and very possible wars with European powers for example), the responses often maintained the language of deliberation. A brief turn to the written responses will illustrate this point.

In the January 1790 response, the House stated, "The prosperity of the United States is the primary *object* of all *our deliberations*."<sup>25</sup> At another point in the response it stated, "we shall proceed, without delay, to bestow on them [matters raised by the President] that calm discussion which their importance requires."<sup>26</sup> The Senate, also in January, 1790, discussed "resuming our deliberations in the present session for the public good," as well as the "means of preserving peace" and state that their "attention shall be

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<sup>25</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1088.

<sup>26</sup> *Ibid.*

directed to the objects of common defense.”<sup>27</sup> In the December response of 1790, the Senate stated that “We shall not think any deliberations misemployed” which would lead to improved trade in the Mediterranean and that they hoped for the president’s cooperation, “in the course of our deliberations.”<sup>28</sup>

In 1791 the House never used the word deliberation, but it did use “discussing and deciding,” as well as making “pleasing reflections” on the population of the United States.<sup>29</sup> The Senate spoke of contemplating the president’s speech that year. To illustrate the above point, that Congress often kept deliberative language even in the face of “crises,” one can turn to the 1792 House response. In Washington’s speech this year he reported on the condition of war with the Indians. The House, in responding to these problems, even mentioned “the barbarous sacrifice of citizens,” by the Indians. Yet, even here, the House stated, “In our deliberations on this important department of our affairs, we shall be disposed to pursue every measure that may be dictated by the sincerest desire...of cultivating peace.”<sup>30</sup> Likewise, the 1793 response by the House, given after Washington’s Proclamation of Neutrality issued earlier that year, maintained the language of calm deliberation. Obviously, this proclamation reflected how close the United States was to being drawn into war. Yet, the House, after praising Washington’s proclamation, stated that it hoped he would aid “in guiding our deliberations to such results as may comport with the rights and true interest of our country.”<sup>31</sup> 1794, perhaps

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<sup>27</sup> *Ibid.*, 972.

<sup>28</sup> *Annals of Congress*, 1st Cong., 3rd sess., 1776.

<sup>29</sup> *Annals of Congress*, 2nd Cong., 1st sess., 146.

<sup>30</sup> *Annals of Congress*, 2nd Cong., 2nd sess., 677.

<sup>31</sup> *Annals of Congress*, 3rd Cong., 1st sess., 138.

the year where the president's speech was the most crisis filled because of the Whiskey Rebellion, the House's response was calm and deliberate. While not using the word deliberation the House still assured Washington that the measures he had recommended to them would "receive the attention they demand."<sup>32</sup> The Senate, the same year, assured Washington that his suggestions "will receive our deliberate consideration."<sup>33</sup> The following year, in 1795, the House concluded its response by promising "consideration" of Washington's speech toward which "we feel the obligation of temperance mutual indulgence."<sup>34</sup> Referring to the trade interests of the United States, the House in 1798 described them as "objects of moment, which shall be duly regarded in our deliberations."<sup>35</sup> In 1799 it concluded its responses saying, "in the progress of the session, we shall take into our *serious consideration* the various and important matters recommended to our attention."<sup>36</sup> The final year of the written response, 1800, had the House telling John Adams that the judiciary "shall receive our early and deliberate attention."<sup>37</sup>

There were many other references to deliberative actions promised by both Houses of Congress in the written responses of this era. Almost every speech assured attention, consideration, or due time would be given to the recommendations of the president. Above are only the most obvious. Clearly, one can see a major rhetorical

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<sup>32</sup> *Annals of Congress*, 3rd Cong., 2nd sess., 948.

<sup>33</sup> *Ibid.*, 795.

<sup>34</sup> *Annals of Congress*, 4th Cong., 1st sess., 155.

<sup>35</sup> *Annals of Congress*, 5th Cong., 3rd sess., 2438.

<sup>36</sup> *Annals of Congress*, 6th Cong., 1st sess., 196.

<sup>37</sup> *Annals of Congress*, 6th Cong., 2nd sess., 790.

difference between the earlier written responses and the modern televised responses on this point. While almost all written responses actually used the language of deliberation, few, if any, modern televised responses do.

*Standard #3: Rhetorical Self-Restraint*

While the nature of the modern televised responses is not conducive to an examination or discussion of the proper role of rhetoric in the speech itself or in the regime in general, this was not the case for the earlier institutional responses. This is not surprising; it is difficult to imagine a popular audience, even one that is willing to listen carefully to a political speech, to be interested in discussion of the proper use of language in a speech. The early debates surrounding each response, because they were not given to a popular audience, often raised the question of rhetoric in both a particular and a general context. That is, they raised questions concerning particular words and phrases and the relationship to the speech as a whole as well as questions about the nature of the response itself. By constantly raising the questions of rhetoric, deliberation was reinforced in two ways. First, it sharpened congressional reasoning on the policy matters at hand. By taking into account what words should be used in responding to the president, members, when responding to the speech, inevitably considered the deeds or possible congressional actions. For asking, “should we/can we say this?” is related to “should we/can we do this?” Second, even if deeds outside of the speech were not taken into account, the simple activity of asking questions about rhetorical ends and debating rhetorical means reinforces deliberation. Articulating ends and matching the appropriated means to those ends is perhaps the most basic necessary condition for

deliberation. By habituating itself in such a way, Congress reinforced its deliberation function.

### *Questions on the Speech and General Rhetorical Practice*

While general questions of rhetoric were not always apparent during the debates on the response, there were a number of occasions where crucial questions of rhetoric were discussed. This was to be expected since the congressional response to the State of the Union was a new practice without the constitutional guide that had been given to the president. Thus, even during the debates on the first response in 1790, questions about the rhetoric of the response were raised. These discussions of the proper role and practice of rhetoric continued throughout the Washington and Adams administrations.

Turning to the debates surrounding the response to Washington's first address in 1790, a number of important questions of rhetoric presented themselves for discussion. First, the House of Representatives, upon resolving itself in the committee of the whole to consider the president's speech, discussed what, if any, type of response should be given to the president. Mr. Smith of South Carolina began the debate in the Committee of the Whole by making a motion "that an Address be presented to the President in answer to his Speech to both Houses, assuring him that this House will, without delay, proceed to take into their serious consideration the various and important matters recommended to their attention."<sup>38</sup> Two other members objected to this motion on the grounds that calls for a response was too general as well as too limited to only those matters "recommended to their attention."<sup>39</sup> They believed that a response should address the speech in its

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<sup>38</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1081.

<sup>39</sup> *Ibid.*

entirety. Mr. White observed of the original motion, “it was too general to warrant a select committee to draught that particular reply which he hoped the House was disposed to make to every part of the President’s Speech.”<sup>40</sup> Mr. Boudinot, agreeing with White, added that

it must have struck every gentleman that there were other matters contained in the Speech deserving of notice, besides those recommended to their serious consideration. There was information of the recent accession of the important State of North Carolina to the Constitution of the United States. This event ought to be recognized in a particular manner, according to its importance; and he presumed to think that its importance was of the very first magnitude.<sup>41</sup>

After these remarks, a new motion calling for a committee response was offered. The language was very similar to the first motion made by Mr. Smith. That is, it remained committed to considering “the various and important matters recommended to their attention.”<sup>42</sup> Thus it seemed that the response would remain limited. However, the speech presented by the committee three days later actually did what White and Boudinot hoped for by responding to the entire speech. Thus, early in the first debate the House of Representatives committed itself to a detailed rhetorical response. In doing so, it set up the conditions for practicing deliberation.

After the committee’s draft was submitted on January 12th, other interesting rhetorical questions arose. This time the questions centered on the rhetorical process involved in creating the response. The questions began when Mr. Lawrence moved that the first line of the fourth paragraph of the response be amended. The line read, “Nothing can be more gratifying to the representatives of a free people than the reflection, that their

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<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

labors are rewarded by the approbation of their fellow-citizens.”<sup>43</sup> Mr. Lawrence moved that the word grateful be substituted for gratifying. Basically, he was arguing over a point of style. Here, the substantive merits of the motion were not taken up. However, the nature of the motion was. For Mr. Wadsworth immediately objected to Mr. Lawrence’s motion on two grounds. The first was that the Committee of the Whole ought, for the most part, to defer to the work of the response committee’s speech as written. He argued that he did not mean “to call into question the right of the gentlemen to amend the Address in what manner they thought proper, but he would just remark, that the composition of two or three gentlemen, done with deliberation and coolness, generally had more elegance and pertinency, than the patchwork of a large assembly.”<sup>44</sup> The second objection, related to the first, was that the only time the House as a whole ought not to defer to the smaller committee was when there was a problem with the principle of the speech. Wadsworth added that he

should therefore vote against any alteration that went to nothing more than to change the style; if gentlemen were disposed to contend for principle, he should listen to them with attention, and decide according to the best of his judgment, but he really conceived it to be a waste of time to discuss the propriety of two such terms as grateful and gratifying.<sup>45</sup>

Mr. Page responded to Wadsworth arguing that he

hoped the gentlemen would proceed to amend the Address in such a way as to give it the highest degree of perfection. He would rather have his feelings hurt, provided they could said to hurt by changing the language of his most favorite production, than that an Address should go from this body with any incorrectness whatever. He hoped the House would always criticize upon, strike out and amend, whatever matter was before them with boldness and freedom.<sup>46</sup>

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<sup>43</sup> Ibid., 1090.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

Thus, the Committee of the Whole should not only be concerned with the general message of the response, but it should be concerned with rhetorical perfection, style included. While the House never committed itself completely to either Mr. Page or Mr. Wadsworth's recommended procedure, the rejection of the initial motion for the word change is somewhat indicative of the House's general mood on the subject. The rejection of the motion was not based on the House preferring the word "gratifying" because that issue was never taken up. Rather, it seems that the House rejected the motion because it was not worth the time of the House to edit the speech in such a way.

Future debates however show that the House took a position that incorporated the remarks of both Mr. Wadsworth and Mr. Page. That is, the House did not tend to get bogged down in stylistic details. Neither, however, did it tend to defer to the committee, and often it rigorously debated particular words of future speeches. One can clearly see here that raising questions about proper rhetorical practices in the response itself led to deliberation on important questions outside of the speech. The questions included what things should be dealt with by the House in committee, what things should be dealt with by the House as a whole, and what things should the House as a whole spend time on?

The second response given by the House in December of 1790 raised further important questions about the nature of the response. The debate in question was over how general or specific the response ought to be. As mentioned in Tulis' account of the congressional response, the debate here did not begin as an abstract debate about rhetoric. Rather, it was motivated by partisan attachments. After a section of the response where it is pledged by the House to "take measures in respect to our own navigation,"<sup>47</sup> Mr. Smith of South Carolina observed that he believed such a statement "may in the issue, prove

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<sup>47</sup> *Annals of Congress*, 1st Cong., 3rd sess., 1840.

injurious to the agricultural interests of the United States.”<sup>48</sup> The partisan issue underlying the debate was that (mostly Southern) agricultural states have relied heavily on foreign ships to export their goods. Due to this, Smith believed that Congress, committing itself to the encouragement of “our own navigation,” had given a pledge that would eventually be used to promote policy that would restrict the use of “foreign bottoms”<sup>49</sup> which would in turn economically hurt crop exporting states.

The debate, however, did not continue to use simply partisan arguments, but rather was elevated to the more abstract question of the response itself. Mr. Smith argued, “He thought the Address went into too minute a consideration of the several parts of the Speech, and could have wished that more general terms had been used.”<sup>50</sup> He then offered a more general substitute. Mr. Williamson argued that the original language was general enough stating, “The mode of expression adopted by the committee is in so general terms, that he hoped it would have met the full approbation of every member of the committee. The President proposes that the commerce of the United States should be relieved from all injurious restrictions; nothing can be more just and reasonable.”<sup>51</sup> Mr. Sherman added that he believed that the amendment offered by Smith was actually more committal than the original language. Thus, while he agreed with Smith that the response ought to be general rather than specific, he thought the original draft was general enough. Mr. Smith responded again by stating, “To settle this important question...sometime ought to be given to reflect, and a day fixed for discussion; in the mean time, he thought

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<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

it improper at this stage of the session, the opinion of the House should be given.”<sup>52</sup> Mr. Tucker, a Smith ally, added that “he thought it improper that in an Address on this occasion, the committee should go into a particular detail on every subject much less commit their judgment without a previous discussion.”<sup>53</sup> Thus, while Smith and Tucker may have been primarily concerned with a rhetorical commitment to a policy they disagreed with, they changed the question to a more fundamental one. That is, how should we respond to the president? In asking this question further questions were raised, such as, what role should the president have in policy deliberation and should Congress take its lead from the president in considering matters or should it proceed at its own pace? Smith and Tucker seemed to imply that responding with a commitment on certain points of the president’s speech hindered Congress’ deliberative role.

James Madison, a member of the drafting committee, seizing on this elevation of the debate to the level of questions about the nature of the speech itself, decided to speak more generally about the purpose of the response. He began stating that he,

thought it proper to take some notice of the objections that had been made to the report. There were two modes of proceeding, which might be adopted in drawing up an answer. The first method was generally to declare that the House would take into their serious consideration the business recommended to their attention by the President. And this, he observed, would be saying nothing, for, as by the Constitution it was the President’s duty to communicate what matters he judged of importance, so it was undoubtedly that of the House to pay attention to the objects recommended. The second method was, to enter into detail of the different points mentioned in the President’s Address, and in such cases where there was no doubt as to the propriety of measures being taken, assure him, in the answer, that measures would be adopted; and if anything doubtful occurred, merely promise that the subject would be attended to.<sup>54</sup>

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<sup>52</sup> Ibid., 1841.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid., 1842

The broad general type of response proposed by Madison's opponents in this debate would simply state that the president's speech would be considered by the House. His understanding of the speech called for a certain amount of deliberation by Congress. That is, the House must be willing to make choices as to which parts of the president's speech it agreed with and which parts it was unsure about. Thus, this debate on the nature of the response fostered deliberation on the proper role of deliberation in Congress. In this instance Smith's amendment to the speech was lost. This established a precedent for having responses which look at particular parts of the president's speech.

In 1795 the debate began by discussing the general rhetorical question of whether a written response should be drafted and debated. Mr. Parker, an opponent of a written response, made a motion that, rather than the House prepare a written response, certain members should meet with the president and assure him that the House would take his speech into consideration. He argued that he "had always disapproved of this practice of making out Addresses in answer to these Speeches, and of the House leaving their business to go in a body to present them. Last session, the framing of this Address had cost very long debates, and produced very great irritation. Some of the most disagreeable things that occurred during the session occurred in these debates."<sup>55</sup> Mr. Murray, who the year before was arguing for the House to censure the president, responded that

the practice of drawing up such an Address was coeval with the Constitution. It was consistent with good sense; and he did not see that any arguments had been employed by the member that spoke against it. It was true that the House might send a verbal answer, and it was likewise true that the President might have sent them his Speech by his Secretary, without coming near them at all. He had come to Congress, and [I can] perceive no impropriety in Congress returning the compliment by waiting on him."<sup>56</sup>

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<sup>55</sup> *Annals of Congress*, 4th Cong., 1st sess., 129.

<sup>56</sup> *Ibid.*

The objection to drafting and debating the response lost out, and the practice continued until the end of the Adams' administration.

In 1797, there was one last major battle on whether there ought to be a written response debated by the House. Mr. Lyons, on November 24<sup>th</sup>, objected to a motion made by Mr. Harper that a written response should be given to the president. Referring to the often lengthy and intense debate sparked by the annual response, Lyons stated that he “wished to get rid of a debate of ten or fourteen days about the wording of an Answer to the President’s speech.”<sup>57</sup> Rather, he hoped that a committee would simply go to the president and inform him that the House would commence its business for the session. Mr. Venable, sympathetic to Lyons’ argument, argued that “it was not out of any disrespect to the Chief Magistrate that he was opposed to it [a written response].”<sup>58</sup> However, he did believe that the speech was “an unnecessary waste of time, and delay of public business.”<sup>59</sup>

In this case, no major defense of the response was given. Harper, the maker of the motion for response, simply defended the practice based on precedent. He argued that the response had “been a constant practice since the adoption of the present Government,” and that this “was a sufficient reason for continuing it.”<sup>60</sup> The motion passed, and a speech was prepared and debated.

After the response was agreed upon, another debate ensued about how the speech should be delivered. Typically, the response of each House was delivered by all of the

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<sup>57</sup> *Annals of Congress*, 5th Cong., 2nd sess., 635.

<sup>58</sup> *Ibid.*, Parenthesis added.

<sup>59</sup> *Ibid.*, 637.

<sup>60</sup> *Ibid.*, 635.

members directly to the president. This year, Mr. Lyon, who objected to the practice of a written response to begin with, asked that the House allow him to be excused from going to wait upon the president. His request was followed by a debate on whether it was a part of a member's duty to attend the delivery of the speech. Although this might appear to be a rather petty debate about one individual's attendance, it raises the more general question of whether there is some type of rhetorical duty imposed on members of Congress by the passage of the response. Mr. Sitegraves and Mr. Thatcher believed that the approval of a response required a member to join the House in delivering it in person. Mr. Sitegraves observed, "when a resolution passed that House, it was entitled to the obedience of all the members; and except the gentleman could assign some better reason than he had heard for the indulgence, he trusted he would not be excused from complying with the order ."<sup>61</sup> Likewise, Thatcher stated that he "saw no reason for excusing the gentleman...from his duty for a few minutes. If he had business, and chose to ask leave for a few days, he doubted not it would be granted; but when he wished to be excused from attending *upon a business of importance*, he thought very special reasons should be given for the indulgence ."<sup>62</sup>

On the other hand, Mr. Macon and Mr. Gallatin argued that a member should not be compelled to attend the speech delivery. Macon observed that "the gentleman might doubtless remain behind if he chose, as he had no idea that the House could compel members to go parading around the streets of Philadelphia. The gentleman might have conscientious scruples and if the ceremony were meant to be respectful to the President,

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<sup>61</sup> Ibid., 650.

<sup>62</sup> Ibid.

members should attend it freely or not at all.”<sup>63</sup> Macon’s argument seems to imply that, although the response of the House was passed by an official vote, this did not require an act of explicit support of the message by a member. Mr. Gallatin echoed this view arguing that “he did not believe there existed any power in that House to compel any member to wait upon the President with the Address; therefore it would be improper to grant an indulgence to a member from doing what there was no obligation upon him to do.”<sup>64</sup>

### *The Propriety of Praise or Blame*

Another major rhetorical question raised in the debates on the response was over whether a particular person, group, or event ought to be praised or blamed in the response. The majority of the debates on these questions centered on the object itself, that is whether it was actually praise or blame-worthy. However, often the debates raised the question of whether Congress ought to rhetorically praise or blame in general, regardless of whether the object in question deserved it.

In 1791, for example, the nature of the response was again debated. This time Mr. Smith, who had wanted a more general response in the previous year’s debate, argued for a more particular response to the president’s speech. Again, this debate was likely begun for partisan reasons but was elevated to a discussion of rhetoric. Smith, along with Mr. Sedgwick and Mr. Laurance, objected to the motion calling for a committee to draft a response. Their reason was that the motion was “an Address should be presented to the President...in answer to his Speech, to congratulate him on the

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<sup>63</sup> Ibid.

<sup>64</sup> Ibid., 651

prosperous situation of the United States expressive of the approbation of the House of the wise and prudent measures he has pursued during their recess.”<sup>65</sup> These members, generally considered to be “pro-administration,” thought that calling for a response that praised the president’s actions without actually examining them was not proper. They argued, “that no doubt the President had acted with his wonted prudence and wisdom in the execution of the trusts reposed in him; but also agreed that it was improper indeed, it was no compliment paid to the President, to approve before a formal examination.”<sup>66</sup> This year, Smith’s motion carried. The result was that the response would take into consideration the speech of the president before giving a laudatory response. Ultimately, this decision, like the decision the year before, to respond to specific parts of the president’s speech, led to a more deliberate response. That is, it called Congress to evaluate the president’s policy ends and means and commit to pursuing those it saw fit.

After the drafting committee presented their draft of the response in 1795, Mr. Muhlenberg proposed an amendment that would praise Washington’s administration. A debate followed which raised many questions, including whether the Washington Administration was actually praiseworthy. Important here though were again the questions dealing with the rhetorical nature of the response.

Mr. Harper, opposed to the amendment advocating explicit praise argued that he, had no difficulty in declaring that his own confidence in the President was undiminished, but he could not go so far as to pledge himself that that of all the people was so. He never, he said, had been in the habit of worshipping the President. He considered him as a man, not infallible, but as a wise, honest and faithful public servant, and he was prepared in all places and situations to declare

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<sup>65</sup> *Annals of Congress*, 2nd Cong., 1st sess., 144.

<sup>66</sup> *Ibid.*

this opinion; but he was not ready to pronounce concerning the opinion of the people of the United States.<sup>67</sup>

It may be that Mr. Muhlenberg did not actually have confidence in the president, but the argument he made was based on what legislatures should do. Praise and blame are acts that members of the House might perform privately but that the institution should refrain from performing. Mr. Livingston made a similar observation stating that he, “did not conceive himself called to a seat in the House to express opinions, much less the opinions of others, but to make laws.”<sup>68</sup> Livingston not only made the argument that it was not his role to rhetorically praise the president on behalf of others but that, even if he should do so, it would be too difficult to actually gauge the people’s opinion on the matter. He stated that he “was not *prepared* to say what the opinion of his constituents concerning the President was. The confidence of many of them he knew was shaken; that of others increased.”<sup>69</sup>

Those in favor of the amendment focused on whether the people actually still had confidence in the president. They of course answered this affirmatively. This in turn made the House expressing such a sentiment proper. Mr. Sedgwick, for example, argued that “as for the sense of the people of the President, he believed it unaltered, as to his immediate constituents he was sure it was; and if so, it was the *duty* of the House to make the declaration”<sup>70</sup> Not only could the House praise the president, but it *should*.

In the following year, 1796, the issue of praising the president was raised again. Since it was generally understood that this was Washington’s final year as president, this

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<sup>67</sup> *Annals of Congress*, 4th Cong., 1st sess., 145.

<sup>68</sup> *Ibid.*, 148.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*, 146

response was particularly filled with praise. Mr. Giles, clearly an anti-administration representative, states in a long speech against such praise, that he “hoped gentlemen would complement the President privately, as individuals; at the same time he hoped such adulation would never pervade the House.”<sup>71</sup>

Others again argued that it was proper for the House to rhetorically acknowledge the president’s good work. Mr. Williams observed that he “could not be satisfied with giving a silent vote on an occasion when the President’s popularity was doubted. He thought members ought to speak the will of the people they represent. He could assert that it was not merely his own opinion he spoke, but that of his constituents, when he voted for the Address as reported.”<sup>72</sup> Mr. Nicholas followed arguing that, if it was indeed true that the president’s administration had led to the happiness of the nation, it ought to be acknowledged. Thus, whether the praise was *true* was the standard for whether it should be included. He argued, “the words on which the most stress [in the debate] had been laid, were those expressive of the wisdom and firmness.”<sup>73</sup>

In 1794 Washington’s annual address focused primarily on the events of the Whiskey Rebellion. Specifically, Washington condemned what he called “self-created societies” which were formed in opposition to the whiskey tax passed by Congress. The status of these societies was debatable at this point. Those who were sympathetic to the cause of the societies saw them as groups of people legally meeting to petition the government. Others, the Washington Administration included, viewed them as unlawful combinations of men resisting the legitimate authority of the national government.

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<sup>71</sup> *Annals of Congress*, 4th Cong., 2nd sess., 1616.

<sup>72</sup> *Ibid.*, 1633.

<sup>73</sup> *Ibid.*, 1635.

Washington said as much in his address. While the House of Representatives discussed an appropriate response to the address, Mr. Fitzsimons offered an amendment which would join the president in censuring these societies. The amendment read,

As a part of this subject, we cannot withhold our reprobation of the self-created societies which have risen up in some parts of the Union, misrepresenting The conduct of the Government, and disturbing the operation of the laws, and which, by deceiving and inflaming the ignorant and the weak, may naturally be supposed to have stimulated and urged the insurrection.<sup>74</sup>

The record then indicates that this “gave rise to a very interesting debate.”<sup>75</sup>

Mr. Giles, an opponent of the amendment censuring the societies, was the first to speak; after first praising the president in order show that he had no personal motive for refusing to join in censure, he offered reasons why the House ought not to join in censuring. He observed,

If the House are to censure the Democratic Societies, they might do the same by the Cincinnati Society. It is out of the way of the Legislature to attempt checking or restraining public opinion. If the self-created societies act contrary to law, they are unprotected, and let the law pursue them. That a man is a member of one of these societies will not protect him from treason, if the charge is well founded.<sup>76</sup>

Giles was warning against a rhetorical slippery slope here. The Cincinnati Society, which Washington himself was president of, was created to recognize those who fought in the Revolutionary War. Surely, not many would wish to censure this group. But Giles argued that, once the House took it upon itself to pass judgment on legal actions of groups, the principle could be extended to any group the majority currently disliked. This is certainly not the constitutional role of the House. He added later in his speech that, “gentlemen were sent to this House, not for the purpose of passing

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<sup>74</sup> *Annals of Congress*, 3rd Cong., 2nd sess., 899.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*, 900.

indiscriminate votes of censure, but to legislate only.”<sup>77</sup> Thus, in addition to the slippery slope argument, Giles made an institutional argument. The proper role of the legislature is to legislate, not to rhetorically censure groups. Mr. McDowell joined Giles’ institutional argument observing that “The House of Representatives were assembled not to volunteer in passing votes of reprobation on societies or individuals but to legislate. He wished that gentlemen, instead of losing their time on such frivolous and inflammatory amendments, would proceed to the proper business of the House.”<sup>78</sup> Later he added that the House “should mind their [sic] proper business of legislation.”<sup>79</sup> Mr. Giles added that “the public have a right to censure us, and we have not a right to censure them.”<sup>80</sup> He believed that, in fact, the Constitution itself, in its not giving the right of censure to the legislature, implicitly prohibits it. He stated, “Sir if such a clause had been inserted in the Constitution, it never would have gone through. The people never would have suffered it.”<sup>81</sup> James Madison echoed this argument a few days later raising the rhetorical question of censure to a constitutional question. He observed, “Members seem to think that in cases not cognizable by law, there is room for the interposition of the House. He conceived it to be a sound principle, that an action innocent in the eye of the law could not be the object of censure to a Legislative body. When the people have formed a Constitution, they retain those rights which they have not expressly delegated. It is a question whether what is thus retained can be legislated upon. Opinions are not the

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<sup>77</sup> Ibid.

<sup>78</sup> Ibid., 902.

<sup>79</sup> Ibid., 902.

<sup>80</sup> Ibid., 918

<sup>81</sup> Ibid.

objects of legislation. You animadvert on the abuse of reserved rights: how far will this go? It may extend to the liberty of speech, and of the press .”<sup>82</sup> He continued, “the law is the only rule of right: what is consistent with that, is not punishable; what is contrary to that, is innocent, or at least not censurable by the Legislative body .”<sup>83</sup>

Mr. Smith of South Carolina, this year advocating for more rigorous support of the president, responded, “that if the Committee withheld an expression of their sentiments in regard to the societies pointed out by the President their silences would be an avowed desertion of the Executive .”<sup>84</sup> Contrary to Giles, Smith did not believe that the House’s only role was to make laws. He agreed with Giles that the groups were not necessarily acting illegally. He noted that he “did not mean to go into the constitution of these societies, or to say that they were illegal. The question before the House was not whether these societies were illegal or not but whether they have been mischievous in their consequences.”<sup>85</sup> Thus, the House ought to, at least in this circumstance, give rhetorical support to the president’s execution of the laws and censure of those groups who tended to promote lawlessness (even if acting within the laws themselves). Mr. Tracy agreed with this rhetorical role of the House adding that he

wished only that the House, if their opinions of these societies corresponded with that of the President, should declare that they had such an opinion. This was quite different from attempting to legislate on the subject. Has not the Legislature done so before? Is there any impropriety in paying this mark of respect to a man to whom all America owes such indelible obligations. He thought this declaration

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<sup>82</sup> Ibid., 934.

<sup>83</sup> Ibid., 935.

<sup>84</sup> Ibid., 901.

<sup>85</sup> Ibid., 902.

from the House of Representatives would tend to discourage Democratic Societies, by uniting all men of sense against them.<sup>86</sup>

In a sense, what Tracy, like Smith, seemed to be in favor of here was rhetorically warning constituents. That is, not only should legislatures directly prohibit through law improper behavior, but they should also rhetorically warn against undesirable behavior. Mr. Murray emphasized this point adding, “He could not see any evil that was to result from such an expression of the opinion of the House by the proposed amendment. It had not the quality of law; for if a law were proposed for the abolition of these societies he would oppose it. This amendment to the Address would operate as advise.”<sup>87</sup> He added, “this declaration...erects a warning beacon,” and “that our constituents ought to be warned against them [the societies].”<sup>88</sup> Mr. Boudinot likewise observed that, “It was urged, that, if Democratic societies are unlawful, ought to punish them alone. [I deny] this axiom. Many things were extremely deserving of censure, which it was impossible to punish .”<sup>89</sup>

In addition to the question of whether it is the proper function of the legislature to censure, the question of the proper relationship between the legislature and the executive was raised in this debate. Mr. Dexter, in favor of the censure argued that “if we do not [censure], we create a dangerous disagreement between the different branches of Government, distract the public mind and encourage disorder.”<sup>90</sup> An opponent argued that no such unity was necessary in our form of government. He argued, “we are called to support the President: but what are we to support—his actions or his opinions? The

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<sup>86</sup> Ibid., 903.

<sup>87</sup> Ibid., 906. Emphasis added.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid., 920.

<sup>90</sup> Ibid., 939.

Constitution does not depend on the President; but the President has only stated an opinion to the people, and leaves it to them to reflect on it. He lamented that the President's weight and influence was brought so often into debate.”<sup>91</sup>

After the debate was finished the amendment to censure was voted on and passed. It was, however, limited to the particular societies in Western Pennsylvania, the heart of the Whiskey Rebellion. This is another example of how the institutional setting for the response to the president's speech encouraged the House to examine the proper role of rhetoric in its response. This discussion in turn led to further deliberation on the proper sphere of legislative action, the Constitution, and the relationship between the legislature and the executive in the American system.

#### *Standard # 4 Less Feminine Rhetoric*

Chapter 2 illustrated how Kathleen Hall Jamieson's understanding of feminine rhetoric can be clearly seen in the story-telling in the modern televised responses. The earlier written responses contained little to no feminine rhetoric. This is most obviously apparent in the lack of story-telling in both the earlier responses themselves and the debates about the responses. While it seems obvious that there would be no place for story-telling in the actual written responses, the fact that there were few in the debates is important. In order to be fair, before giving examples of manly rhetoric, it should be noted that there was one “story” in the hundreds of pages of debates on the early State of the Union responses. In 1794, during the discussion of whether the response of the House of Representatives ought to censure the so-called “Democratic Societies” which had sprung up during the Whiskey Rebellion, Mr. Parker, an opponent of the president,

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<sup>91</sup> Ibid.

told a story to persuade the House that they ought not to censure. The record reports, “Mr. P said that he had the honor of being an honorary member of a Democratic society. Personally he knew nothing of the gentlemen, but he understood that they were respectable characters; and that they were friends to good order and the Federal Government.”<sup>92</sup> This, however, is the only prominent personal story in all of the debates.

Additionally, there were many positive examples of masculine rhetoric. First, they came through the explicit appeal to manliness or masculine attributes. Second, they came through the demand for and providing of evidence. The first example, explicit references to manliness, are completely absent from the modern televised responses. Although the explicit references to manliness are few in earlier debates, they supported the general use of more masculine rhetoric. For example, in 1794, as mentioned in section 2, the propriety of censuring “Democratic Societies” was being discussed. Mr. Carnes, a proponent of censuring these groups in the response, stated, “it would be better for the House to speak out like men, and name the culprits.”<sup>93</sup> This quote is important because it was not just a call to manliness but specifically a call to manly *rhetoric*. In 1798, in the response, the Senate, after agreeing with President Adams that a possible French threat still called for strong national defense, stated, “A steady adherence to this wise and manly policy—a proper direction of the noble spirit of patriotism which has arisen in our country, and which ought to be cherished and invigorated by every branch

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<sup>92</sup> Ibid., 913.

<sup>93</sup> Ibid., 941.

of Government, will secure our liberty and independence against all open and secret attacks.”<sup>94</sup>

Other examples made less explicit references to manliness, but reinforced the masculine rhetoric of the responses nonetheless. For example, concerning the first response made by the House in 1790, there was a debate about how much revision of the committee’s draft ought to take place. Mr. Wadsworth argued that, while revisions of major questions of principle might be made to the response, the House ought to refrain from making minor revisions to the committee’s draft. Mr. Page, on the other hand, believed that members ought to engage in any revision they felt was proper. His defense of revisions meets the criteria of masculine rhetoric. He stated, “he would rather have his feelings hurt, provided they could said to be hurt, by changing the language of his most favorite production, than that an Address should go from this body with any incorrectness whatever. He hoped the House would always criticise (sic) upon, strike out and amend, whatever matter was before them with boldness and freedom.”<sup>95</sup> As stated in the introductory chapter, masculine rhetoric is both rational and competitive. Page seems to encourage rational rhetorical competition here.

A similar exchange occurred during the 1794 House debate. During a debate on the “Democratic Societies” there was an exchange between Mr. Giles and Mr. Murray where Giles quoted a recent speech made by Murray. The record indicates that Murray interrupted Giles to state that Giles had misquoted him. The record then states, “Mr. Giles declared that he was sorry if he had misquoted him. He should be happy to be

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<sup>94</sup> *Annals of Congress*, 5th Cong., 3rd sess., 2192.

<sup>95</sup> *Annals of Congress*, 1st Cong., 2nd sess., 1090.

interrupted by any member whom he might happen to misquote.”<sup>96</sup> Again, one sees the call for manly competition. In addition to these examples, the give-and-take debates in the other sections of this chapter illustrate competitive, analytical rhetoric.

In addition to these uses of masculine rhetoric, there was also one example of an explicit criticism of feminine rhetoric. In 1796, Mr. Parker, an opponent of the Washington Administration, gave a speech criticizing the administration's move toward war with France. In doing so, he took Ames, a pro-administration representative to task for his statements on war with England during the last session. Parker called Ames out for being inconsistent by responding to the French threat with war but responding to the earlier English threat by peaceful negotiation. However, his criticism centered on the rhetoric Ames used to scare the House into peaceful negotiation with the English in the last session. He stated,

When the Treaty question was before us last session, the gentleman from Massachusetts [Mr. Ames] in order to frighten the House into appropriation for the British Treaty, told us the tomahawk was lifted up to strike the son, whose blood was to enrich the cornfield. The slumbers of the cradle were to be disturbed by savage yell, and a number of other high-toned, alarming metaphors, which I am not able to follow him in, as, in point of eloquence, the palm is yielded to him; but after this let me ask for his consistency; then we were to shut ourselves up in our shell, now we are to meet France; why has his tone so changed? When Britain insults us, we are to crawl in our shell; when France does, we must meet her: did that gentleman meet the British last war? Where was that gentleman when we were struggling for our liberty? I presume he shut himself up in his shell.<sup>97</sup>

As Jamieson observes, feminine rhetoric is often excessive. In the above debate, Parker contrasted Ames' lack of deeds (“I presume he shut himself up in his shell”) with his excessive rhetoric (“high-toned, alarming metaphors.”)

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<sup>96</sup> *Annals of Congress*, 3rd Cong., 2nd sess., 916.

<sup>97</sup> *Annals of Congress*, 4th Cong., 2nd sess., 1640.

To conclude, the biggest difference between the two eras of responses, according to this standard, is that the televised responses almost always contained stories while the earlier responses almost never did. However, in addition to this, the earlier responses did have some actual use and encouragement of masculine rhetoric.

#### *Standard #5: Lack of Crisis Rhetoric*

The rhetoric of crisis seen in chapter 2 is rarely seen in both the written responses to the Annual Address as well as the debates on these responses. Rather analytical debate, rhetorical restraint, and constitutional rhetoric tended to dominate the discourse. This can be seen by turning back to standard 2's section on deliberative rhetoric. This is quite important considering that the first twelve years of the nation's existence saw a number of events that certainly could have been considered crises, for instance the Whiskey Rebellion and near war with France. To be sure, there were dangerous and tumultuous times during the period of the televised responses from 1966 to the present including the Vietnam War, the Civil Rights Movement, and the attacks of September 11th, but the nation as a whole was probably not in as precarious a position as during the first twelve years of the republic.

#### *Summary*

Unlike the televised responses to the State of the Union Address, the institutional responses to the first twelve Annual Addresses contained rhetoric that encouraged deliberation in Congress. First, the very act of debating the written response rather than merely presenting it to the president calls on authors of the draft to defend their positions and allows other members of Congress to analyze, amend, and give consent to the message. When writing the message to another branch and debating it internally, the

rhetoric of the constitutional tradition is more prevalent. Perhaps most importantly, such an exercise allows and encourages raising questions about rhetoric. Such an activity encourages deliberation by forcing members to deliberate on the proper role of rhetoric, and this activity can also lead to more deliberative rhetoric by excluding improper rhetoric. Finally, a closed institutional environment, where members are primarily addressing each other encourages neither feminine rhetoric nor crisis rhetoric.

## PART II OVERVIEW

The second case study focuses on the debates concerned with major congressional reform efforts. The term “reform” here is limited to internal reform or efforts made by Congress to reform the institution itself not Congress bringing about reform in some public policy. Reform, as understood here, is also different from change. As Leroy Rieselbach holds, “contrary to critics’ charges, Congress changes constantly. Change usually comes quietly, noticed by only the closest observers of the legislature: a rules change here, a new precedent there, the gradual erosion of customary ways of conducting business.”<sup>1</sup> On the other hand, “occasionally...the legislature undertakes more self-conscious efforts, often labeled reform to reshape institutional structures and processes.”<sup>2</sup>

A study of congressional rhetoric during major reform is fruitful for a number of reasons. The first is that at these moments in congressional history the speeches on the floor are different from most other legislative days on the floor. Congress is not concerned with policy issues but with the operation of the body itself. This is not to say that there is no relation between the issues of institutional reform and policy outcomes nor that reforms do not contain particular changes of congressional practice. However, the end in these reforms is internal change rather than external legislation or resolution. Deliberative rhetoric is perhaps more important in the context of reform debates than in any other debates. In the opening chapter, I argued that a decline in deliberation is the most damaging development leading to problems with Congress because it encompasses

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<sup>1</sup> Leroy N. Rieselbach, *Congressional Reform* (Washington, D.C.: CQ Press, 1986), 9.

<sup>2</sup> *Ibid.*

all of the other problems. Questions of “institutional identity” and “regular order” are often touched upon in the course of reform debates. The reforms discussed often involve attempts to correct a lack of these things. Thus, a decrease in deliberative rhetoric here has a rippling effect that can lead to other institutional problems.

Five specific reform debates will be covered in this chapter. They are, in chronological order: 1) the Pendleton Act concerning civil service reform (1882-1883), 2) the “revolt” against Speaker Joseph Cannon (1910), 3) the Legislative Reorganization Act of 1946, 4) the expansion of the Rules Committee in 1961, and 5) The Legislative Reorganization Act of 1970. These specific reforms were chosen primarily because they represent a large span of American history. They do not reach back to the founding for a number of reasons. The first is that major systematic internal reform efforts did not really appear until later in the 19<sup>th</sup> century. Second, these are arguably some of the most famous and publically noted reforms in congressional history. Finally, they span the necessary timeline in *rhetorical* history. By rhetorical history I mean that they occurred at different times related to the developments in the media, permanent campaign, and presidential rhetoric discussed in the first chapter. Each reform’s placement along the time-line will be discussed at the beginning of that chapter.

In the way of a brief preview, these chapters will illustrate a gradual decline in rhetoric over time rather than the radical dichotomy presented in the two chapters on the response to the State of the Union. As changes in the mass media, the rhetorical presidency, and the permanent campaign happened, deliberative rhetoric slowly declined. That is, as the Congress was increasingly pressured to “go public” and became a more popular institution, deliberative rhetoric declined. Of course, since all of these debates

are on the floor of Congress, to members of Congress, they are never quite *as* public or popular as the televised responses discussed in chapter 2. Thus, the rhetorical problems were not quite as bad. Yet, perhaps the televised responses are a natural outgrowth of the rhetorical practices that developed inside the institution. This will be discussed more in the conclusion.

## CHAPTER FOUR

### The Pendleton Act for Civil Service Reform

#### *Introduction*

In 1883, the Congress passed what started out as bill S.133 to regulate and improve the civil service of the United States. This act, later termed the Pendleton Act for the Senator from Ohio who sponsored it, was debated on the Senate floor from December 12th-27th 1882 in the Committee of the Whole. The Pendleton Act is different from the other reforms examined for two important reasons. The first is that, as stated above, the reform was Senate dominated. Typically, the other reforms we examine which occurred in the 20th century were concentrated in the House of Representatives. Rieselbach attributed this House dominance to the fact that it “relies more heavily on a division of labor that uses an elaborate system of standing committees, and the personal relationships among members tend to be less intimate. These circumstances require formal procedures to define an organizational structure that will permit the House to work its will.”<sup>1</sup> That the Pendleton Act is not concerned with internal rules is at least one reason that it was able to begin in the Senate. There are certain differences between the way Senate and House debates occur which will be discussed later. However, there are rhetorical themes that the debate on the Pendleton Act shared with the other reform debates examined.

The second major difference between this reform and the others treated in this chapter is the bill’s concern with ends other than internal rules. While changing the civil

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<sup>1</sup> Rieselbach, 12.

service system in the United States affects Congress, it does so in a less direct way than the other reforms examined. Civil service reform is concerned primarily with offices created by Congress but under the control of the executive branch. Thus, one might argue that this measure is an institutional or administrative reform but not a congressional reform. However, the method of selection for office in the civil service affects the way members of Congress spend their time, political parties in Congress, the separation of powers, and other institutional questions. For these reasons, while not an internal reform directly, the Pendleton Act can be examined along with the other reforms in Part II.

### *A Brief History*

Before the passage of the Pendleton Act, almost the entire civil service of the United States was staffed through a system of patronage or the “spoils system,” where employees were chosen based primarily on political loyalty rather than skill. Historian Ari Hoogenboom writes, “before 1883 the spoils system largely prevailed, with politicians dictating appointments. Consequently, civil servants had varied and irrelevant backgrounds.”<sup>2</sup> Thus, “a civil servant would almost certainly be removed if he ceased his political activities or if his patron lost his influence. Even if his party remained in power, a civil servant was not secure in his position.”<sup>3</sup> Due to the method of selection and the constant anxiety that employees felt about removal, the system was not especially efficient. It also led to actual or apparent corruption in government, as elected officials could secure their place in office by the promising of jobs to their constituents. In addition to the problems resulting from the appointing and removal practices, political

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<sup>2</sup> Ari Hoogenboom, “The Pendleton Act and Civil Service,” *The American Historical Review* 64 no 2 (1959): 301.

<sup>3</sup>Ibid.

assessments were viewed as problematic by many. Assessments were political contributions that the party in power collected from civil servants in order to finance campaigns. Hoogenboom, explaining this practice, observes, “theoretically, a civil servant voluntarily contributed his portion to the campaign chest, but actually, he was coerced. If he did not respond to a letter stating the exact sum due, he frequently received a second or even a third threatening letter...civil servants lost their jobs for not continuing to contribute.”<sup>4</sup> This practice also led to actual and apparent corruption.

The Pendleton Act addresses these problems in a number of ways. The first is that it establishes a three person Civil Service Commission under the control of the president. No more than two of the members of the Commission can be from the same party. The Commission would help the president to implement merit-based exams for a number of federal employees. The Act also lays out certain guidelines for the exams and makes requirements for hiring employees from the different states according to population. It also makes the practice of laying assessments (forced campaign contributions) on employees illegal.

As corrupt as the system was, it was not at all certain that this reform would pass through Congress. After all, the system of patronage had been in full swing at least since the election of Andrew Jackson and, to a lesser (as we will see in the debates) extent, since the founding. Additionally, there had been consistently failed attempts at reform after the Civil War. Different political scientists and historians give different explanations. I will not attempt to decipher which of these explanations makes the most sense of the passage of the act. However, keeping these possible explanations in mind will help to frame the examination of the rhetoric in this case. Scholars Johnson and

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<sup>4</sup> Ibid., 303.

Libecap argue that civil service reform came about when it did because parties could no longer keep the distribution of patronage under control. They state, “the historical circumstances surrounding the shift to merit are closely related to the size of the federal labor force. Prior to the Civil War, the federal work force was relatively small, approximately 26,000 in 1851; but by 1871 civilian employment had grown to 51,000 and by 1881, 100,000.”<sup>5</sup> This increase in number forced the party in power to spend a great deal of its time dealing with staffing and conflicts in the federal work force. Additionally, it caused a great deal of tension between local and national party officials. “There were embarrassing scandals, involving patronage employees, corruption, and widespread inefficiencies.”<sup>6</sup> Thus, “electoral survival required that the President and particular members of Congress respond by reducing the partisan influence on federal employees exerted by local party machines through patronage.”<sup>7</sup> Basically, it was the inefficiency of the system and the costs it posed on officials that led to a move from a patronage to a merit system.

Sean Theriault offered a different explanation holding that it was overwhelming *public* pressure to bring about change that led to the decision of Congress to enact reform. He stated, “the politics of public pressure argument also begins with the micro-level behavior of members of Congress. Like the inefficiency explanation, the argument assumes that members of Congress are single-minded seekers of reelection. The reelection incentive in this argument however, has the members directly representing

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<sup>5</sup> Ronald N. Johnson and Gary D. Libecap, *The Federal Civil Service System and The Problem of Bureaucracy: The Economics and Politics of Institutional Change* (Chicago: University of Chicago Press, 1994), 94.

<sup>6</sup>Ibid.

<sup>7</sup> Ibid., 116.

their constituents' preferences. Rather than changing the structure to more efficiently deliver votes as Johnson and Libecap presuppose, members voted for the Pendleton Act because they feared the voters' wrath if they did not."<sup>8</sup> While he did not preclude the inefficiency explanation, he believed that public pressure was also a major contributing factor.

Both of these explanations appeared to have some truth to them and the authors' data backed up their claims. However, at the end of the day, they were simply able to give reasons for why a member of Congress should vote for or against the bill as a whole. As we will see, the debate on the Pendleton Act was only devoted in a small portion to the voting of the bill as a whole. Rather, like some of the other reforms examined, the majority of the debate occurred in the Committee of the Whole and dealt with amendments to the bill. While the votes on the passage of the entire bill may have been predicted by the indicators in the above articles, the nuanced moves that gave the complete story of the final bill passed may only be seen through following the debate. Additionally, looking at the debate has the advantage of hearing the account members of Congress themselves gave of the bill and of their motivations. Studying the rhetoric of reform provides a fuller picture of congressional reform.

### *Overview of the Debate*

Before we begin the examination of particular rhetorical themes in this reform it is important to get the basic framework of the debate down. It took place in the Senate beginning on December 12th, 1882 and concluding on December 27th, 1882. The *Congressional Record* contains close to 200 pages of recorded debate. Within the Senate

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<sup>8</sup>Sean M. Theriault, *The Power of the People: Congressional Competition, Public Attention, and Voter Retribution* (Columbus: Ohio State University Press, 2005), 60.

it took place in the Committee of the Whole. Many of the other reforms examined in this chapter also took place in this committee. The committee's main task was to hear, debate, and vote upon amendments to the bill. There were at least two major consequences of its setting in the Senate. The first, which was touched on above, is that the debate, while at times dealing with technical details, was less technical than certain House debates. This follows because it was not dealing with legislative rules but a broader policy reform. The second consequence, somewhat related to the first, is that, as senators have less stringent time restraints than in the House (or none at all at times), their speeches often pushed the limits of germaneness. This is not to say that the senators' speeches had nothing to do with the legislation; however, it was common in this case for a senator to not limit himself to the *particular amendment* being discussed. He may have talked about the merits of the bill as a whole or some topic relating to the constitutionality of the bill rather than advocating or denouncing the change to the bill. While reading House debates on the Legislative Reorganization Acts of 1946 and 1971 one is almost always aware of the particular provision of a bill being discussed; it is quite easy to lose one's place in these Senate debates.

As far as legislative leadership is concerned, Senator Pendleton, who reported the bill, would be the closest the debate had to a leader. As we will see in some of the other reforms, the floor manager who reports the bill typically manages the debate on the floor. In this bill Pendleton did not do this; however, he was consistently questioned about the bill and offered clarification on it. There were certain Senators who one sees as consistent speakers both for and against the bill, but no one who dominated the debate.

Having thus framed the debate, let us move to examine the particular themes and issues in the debate.

### *The Rhetorical Development Time-Frame*

The introductory chapter argues that the main contributing factor to the changes in congressional rhetoric over time is the fact that congressional speeches have become more popular in nature. They have become more popular for three reasons: 1) the increase in the reach and immediacy of mass media, 2) a response to the increasingly popular speeches of the presidency, and 3) the permanent campaign. If this is true, the more “deliberative” debates, according to our standards, should be seen when the mass media is less developed, when presidents made less popular speeches, and before the permanent campaign. In order to show this connection, each reform chapter must briefly summarize where the debate falls in relation to these three developments. The Pendleton Act debate, which is the earliest reform effort looked at, is simplest to place in its relationship to all three developments. It would obviously have the least mass media coverage and analysis. Clearly, while newspapers were prevalent, many of the vehicles of mass media were unavailable at this time. It was well before the age of electronic politics.<sup>9</sup> Mary Stuckey observes, “the prevalence of newspapers largely replaced the floor of Congress as the proper forum for the discussion of ideas. It is not surprising, then, that the most admired speakers of the period were not politicians at all, but activists

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<sup>9</sup>See Bruce E. Gronbeck, “The Presidency in the Age of Secondary Orality,” in *Beyond the Rhetorical Presidency*, ed. Martin Medhurst (College Station: Texas A&M Press, 1996), 31. Gronbeck observes that, “the beginning of the electric presidency is usually set at 1924, for in that year radio broadcast gavel-to-gavel coverage of the party conventions.”

and writers.”<sup>10</sup> While Stuckey may be correct in that newspapers had become the primary forum for *popular* deliberation and discussion, Congress itself still seemed to rely heavily on floor debate for discussion. They had not yet “gone public,” at least not while in session. The floor debates on the Pendleton Act were lengthy and kept in-house. That is, speakers rarely referred to outside stories from the media for evidence. This was not the case in later debates covered, especially in 1946 and 1961.

This debate was also well before the presidential rhetoric scholarship argues that the president really started to “go public.” While there is some disagreement as to when *exactly* a major change in presidential rhetoric took place, 1883 is before almost all accounts. Finally, it was before the emergence of the “permanent campaign” according to the political science scholarship that asserts that such a thing exists.

#### *Standard #1: The Marriage of Speech and Thought*

Since this bill was debated primarily in the Senate, which has more lenient rules on debate time, there were a number of lengthy speeches made by senators. For example, Mr. Hawley, a proponent of the bill gave an uninterrupted speech that took up four pages of the Congressional Record on December, 13th. Hawley gave a long over-view of the current situation under the spoils system and how this bill was a practical way to improve the situation. Mr. Miller, another proponent of the bill, gave a three page speech on its behalf. In it he turned to the histories of New York State’s and Great Britain’s civil service reform to make an argument in favor of reform. There were many such speeches on both sides of the issue. While often involving long speeches where a senator freely discussed issues that were important to him, this reform was balanced by actual debate.

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<sup>10</sup> Stuckey, 23.

That is, there was a good deal of back and forth. Senators, if asked to yield by another senator for a question or comment, usually did. If he felt that it was very important to finish his remarks, he would yield after he had finished. In the case of the Pendleton Act debates, most often the questions or comments that senators made when having the floor yielded to them were antagonistic or at least qualifying. Questions and comments were offered to poke holes in the speaker's argument or to get him to modify a position. This consistent practice is important, as in later debates examined the questions can take on a different character. For example, questions in later debates were what I call "softball" or "set-up" questions, where an ally offered a question for rhetorical effect to allow the speaker to make an important point that he had missed. This was rarely the case in the debates here. Real questions and challenges forced speakers to know their arguments well. They connected speech and thought.

Mr. Brown, one of the major opponents of the bill, made a speech on this bill that lasted for six pages. The majority of these pages involved Mr. Brown systematically laying out his opposition to the Pendleton Act. The precision and structure of the speech leads one to believe that Brown had prepared remarks in advance. He probably had. Yet, he was interrupted a number of times during the speech and engaged in a lengthy give and take with opponents at the end of the speech. Thus, a member could not simply prepare a polished speech ahead of time and sit down when finished. Members could not simply speak *at* each other, but must speak *with* each other. A few examples can be drawn by turning to Brown's speech in more detail. During the first page of his speech, Brown made an argument that the new civil-service would make a new aristocratic class that could not be removed from office. Mr. Hawley, interrupted to correct him:

Mr. Brown. My honorable friend from Ohio [Mr. Pendleton], who has this bill in charge, stated yesterday that the bill did not make any provision preventing removals from office. I do not find that it does in language, nor the honorable Senator from Massachusetts [Mr. Hoar] tells us today that that is the spirit of it; that that is what is contemplated, and that it is not likely that an executive officer would venture to make removals, acting under this bill, unless for cause, as misconduct in office and the like.

That is what the movers of this bill look to. I do not say that it is what the Senator from Ohio looks to, or that such is his purpose; but as I understand it, it is the purpose of those who lead on the other side of this chamber and bring to this bill its most efficient support. But that is not all—

Mr. Hawley. I do not like to interrupt; I refrain from it as much as I can; but I do desire to call the Senator's attention to the fact that those who have spoken for the bill affirm in the most vigorous and uninhibited manner the right and duty of the Executive to remove at pleasure. I will not take it away from the Executive. I do not see how the Praetorian guard can hurt him much if he can take the Praetorian guard by the ear and lead them out any morning he pleases.

Mr. Brown. Then I ask what is the value of this bill? It is the sheerest humbug and the sheerest deception and nonsense. If we are to go through all this great ado before the country of passing a civil service bill, which it is said is so much demanded by popular sentiment at this time, if we have to satisfy popular clamor by the enactment of a civil-service bill, what a deception, what a fraud upon the people to tender them this bill!<sup>11</sup>

Here we see an exchange that forced Brown to be accurate in his remarks about the bill. It also raised more questions about the purpose and adequacy of the bill. If this bill still allowed for the removal of civil-servants by the executive, would it really accomplish the merit-based civil-service? This issue was discussed in depth as the debate continued.

Other exchanges helped to correct possible defects in the bill. For example, on December 13th Mr. Pendleton, the sponsor of the bill, and Mr. Sherman, a supporter, had an exchange that arguably improved the bill:

Mr. Sherman. There is another amendment in the same interest which I wish to move. The last clause of the first section reads:  
And each of said commissioners shall be paid his necessary expenses incurred in the discharge of his duty as commissioner.

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<sup>11</sup> *The Civil Service* S 133 47th Cong., 2nd sess., *Congressional Record* (December 14, 1882): S 277.

That is a provision I think broader than is to be found anywhere else, and I should like to have it stricken out. I make that motion.

Mr. Pendleton. There are certain other provisions in the bill that the expenses of the commission shall be paid upon vouchers presented upon affidavit to the Secretary of the Treasury &c.

Mr. Sherman. The prescribed formula or proof ought not to be made by this proposed law. It ought to depend upon the general law regulating the passing of accounts in the Treasury Department. This clause is too broad, and I thought my colleague would at once see that it is.

Mr. Pendleton. Will the Senator suggest an amendment modifying it?

Mr. Sherman. I move to strike it out. I am told by the Senator from Connecticut [Mr. Hawley] that there is an amendment prepared which would limit it to necessary travelling expenses. "Necessary traveling expenses," would be proper, but this language is too broad.

Mr. Pendleton. Suppose the Senator moves to insert the word, "travelling" after the word "necessary" in line 23?

Mr. Sherman. I have no objection. That would remove the difficulty.<sup>12</sup>

In the over one hundred and ninety pages of debate in the *Congressional Record*, one can find dozens of these exchanges. To be sure, there were some examples of rhetorical questions and false dichotomies (which I point to in other chapters as an example of the divorce between speech and thought). However, here the discourse was driven primarily by real exchanges and questions, real amendments, and a real examination of both principles and particulars in the bill, rather than by the oversimplification of rhetorical questions and false dichotomies. The other sections in this chapter will further examine some of these exchanges.

### *Standard # 2: Constitutional Rhetoric*

#### *Presidential Removal*

In the case of the Pendleton Act, the main constitutional question debated was the appointment and removal powers of the president and Congress. As will be shown

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<sup>12</sup>*The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 13, 1882): S 248.

below, the Constitution does not seem to be used here simply as a mask for other motives or for rhetorical support for each side to gain an advantage. For constitutional arguments often cut across party lines and across those who support or oppose the bill; we will see that people taking the same position on the bill or an amendment made different constitutional arguments. This leads one to believe that there was at least some honest constitutional dialogue occurring throughout the course of the debate. This being said, there tended to be a certain broad agreement among the parties. It was very rare that a Democrat would argue in this debate that Congress could severely limit the president's power of appointment and removal. Likewise, one will not often see Republicans arguing for absolute presidential power in these areas. However, there were nuanced differences which are important.

For the Republicans, there were a number of speakers who consistently engaged in constitutional debate. These included George Edmunds of Vermont, John Ingalls from Kansas, George Hoar from Massachusetts, John Logan from Illinois, Joseph Hawley from Connecticut, and John Sherman from Ohio. One can say that these men were rhetorical leaders in the constitutional questions involved in this bill. Senators formed interesting pairs and groups according to the arguments they made. The first group examined was made up of those who argued in favor of congressional involvement in the appointment and/or removal process. This group included Senators Edmunds, Ingalls, Sherman, and Logan. All of these senators were in favor of the bill as a whole, and all preferred some congressional checks on the president. Yet, the arguments were not completely the same. Edmunds may have made the most extreme arguments about the limitation of presidential power in this bill. On December 15<sup>th</sup>, 1882, Senator Edmunds

got into a debate with the Democratic Congressman Bayard from Delaware that took up approximately four pages in the Congressional Record. The question was on whether Congress could pass tenure of office requirements on the proposed Civil Service Commission. Bayard admitted that there had been a history of established tenure that had insulated officers from presidential removal. However, this had only applied to military officers. Civil officers, Bayard maintained, must be accountable to presidential removal. The difference for Bayard was both constitutional and functional. Edmunds, on the other hand, maintained that there was no difference between the two classes of officers, and thus Congress could regulate both. This argument was clearly related to Edmunds' understanding of the Constitution. He stated,

I am a strict constructionist, and in that sense I think I am a democrat in best sense of the term...Being a strict constructionist I should be glad to have the Senator from Delaware or somebody tell me the distinction between civil and military offices under the United States which says the President shall appoint all the officers of the United States, by and with the advice of the Senate, but that Congress may provide by law for his appointment alone, or by the courts of law alone, of inferior officers. I am unable to see how you are to read into the Constitution the distinction that my friend from Delaware suggests as possible which shall apply one constitutional provision to the tenure of the office of a military man, and another to the tenure of a civilian.<sup>13</sup>

Edmunds thus held that the Constitution, strictly read, did not distinguish between civil and military officers and that Congress could limit appointments by law.

Strict construction was not the only constitutional motivation for Edmunds, however. It seems that there was an underlying theory that one might call a functional legislative supremacist theory. He articulated this theory repeatedly. The focus was on a balance of power between the three branches so as to avoid tyranny, mainly by the

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<sup>13</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 15, 1882): S 324.

executive. During the same debate discussed above, Edmunds elaborated on his theory of legislative supremacy. He stated,

the centralization of power ground in one branch of this Government, that the President of the United States, as is intimated by the Senator from Delaware, and possibly it may so, having the power of appointment cannot have his function of selection or the tenure of his appointed by law-a proposition absolutely destructive of a government by the people and for the people, represented by the direct representatives of the people in one house and indirectly by the States in this body.”<sup>14</sup>

The argument was that, in order to have a government by the people, that is in order to maintain the republic, the legislature must be able to limit the other branches as it sees fit. He went on further to argue that the legislature may control the president in any way just as it controls the judiciary in any way. He added,

the powers of the President of the United States under the Constitution to appoint and to remove are just as much under the Constitution the subjects of regulation by law *in every particular* as are the powers of the judiciary branch of the Government, *where from the very first and without questions*, but with the approval of the tribunal whose powers were perfected by it, *it has always been held* and admitted that Congress *may by law regulate every operation of that great tribunal, how it shall hear its causes when it shall hear its causes, and upon what terms and conditions and by what methods of process States even shall come before it.*”<sup>15</sup>

In other words, the other two branches do not have *any* function that cannot be regulated by law. Everything, it seems, becomes subject to legislative power. There is no room for constitutional grants of essentially different types of power that are independent of law. Indeed Edmunds went on to hold that presidential “prerogative” (a word used by others to describe the president’s independent constitutional authority) “is to me is a hateful word.”<sup>16</sup>

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<sup>14</sup> Ibid., S 325.

<sup>15</sup> Ibid. Emphasis added.

<sup>16</sup> Ibid.

On December 22nd, Edmunds debated Democratic Senator Brown and Republican Logan who held that the president had unlimited removal power. Again Edmunds made functional arguments about the separation of powers with an emphasis on avoiding a strong executive power. He argued,

if there be any one thing more than another...that is desirable for the welfare of the people of the United States, it is that the balance of powers of the Government as arranged in the Constitution shall be preserved...once you disturb the balance of the rights of the States, the rights of the Executive, the rights of the people as represented by the States and by themselves directly, and the rights of the judiciary, you are sending our good ship of state, to use a very old illustration, to sea without a compass.”<sup>17</sup>

He classified those who throughout history had disagreed with his understanding of removal power as “those who believe the other way, that there was kingly power.”<sup>18</sup>

Edmunds was not the only hard line legislative supremacist for the Republicans, however. Sherman took a similar whiggish view stating on December 16th that “the power of removal by the President is subject to the same general control by Congress as any other constitutional power conferred. Nobody can remove but the President, but Congress may establish a tenure of office and regulate its existence, and until that tenure expires the President has no power to remove.”<sup>19</sup> John Ingalls of Kansas agreed with Edmunds and Sherman that Congress ought to legislate conditions of removal. He argued:

The Constitution prescribes that the President shall have a fixed term, that Senators shall have a fixed term, that members of the House of Representatives shall have a fixed term, and it is proposed in this new gospel of civil-service reform that this doctrine of direct responsibility to the people shall be abandoned

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<sup>17</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 22, 1882): S 363.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*, S 364.

an that we shall set up an independent autocracy that shall do as it pleases, subject only to the arbitrary power of removal by the President of the United States.<sup>20</sup>

While Edmunds and Sherman argued that the Constitution allows for such regulation, Ingalls' argument was different from theirs in two respects. First, rather than sticking to the appointment clause of Article II Section 2 in the Constitution, he looked to the Constitution as a whole. Noting that the Constitution requires set terms for members of Congress and the president, he believed that this should also be applied to the civil service. These constitutional requirements embody a principle that ought to be transferred: responsibility. While Edmunds' argument seemed to center on his notion of separation of powers, Ingalls wanted a civil service that was responsive to the people and would be held accountable for job performance. This led to the second addition that Ingalls made to Edmunds' and Sherman's arguments. He offered a more practical explanation for the need for fixed terms. He continued "one fatal defect about the system has been advanced by the committee...is the failure to declare that the persons to be appointed shall serve for a fixed term."<sup>21</sup> For with a fixed term, Ingalls argued, "men may not become intrenched [sic] in prerogative and so formidably surrounded by privilege that they can at their will disregard their duties and neglect to discharge the functions that they are called upon to perform."<sup>22</sup> In fact, in debating the more moderate Republican Senator Hoar on December 16th, he went so far as to say, "unless we are to have a system that shall say affirmatively that we are in favor of the appointment of this commission for

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<sup>20</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 16, 1882): S 354.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

a specified term...the measure will not satisfy the country.”<sup>23</sup> The speech as a whole argued that the bill without fixed terms was useless at best and a sham at worst.

The Ingalls-Hoar debate is important for two reasons. First, it shows fellow Republicans, who agreed both on the bill and on the constitutional principle of responsibility, disagreeing on whether a particular amendment promoted responsibility. Hoar argued, “Mr. President, it is very difficult to see how there is any direct responsibility to the people under a fixed term of office.”<sup>24</sup> Second we see, not just intra-party debate on constitutional principle, but intense, one might even say angry, intra-party debate on constitutional principle. While debating the constitution Ingalls accused Hoar of being “very hypercritical.”<sup>25</sup> At which point Hoar responded that he was not. Ingalls, making sure that Hoar understood the accusation, responded, “I want the Senator to observe the distinction very clearly. I said hypercritical. I did not say hypocritical.”<sup>26</sup> To which Hoar responded “I did not say the Senator did, and pouring a little vitriol does not add to the Senator’s argument in my judgment.”<sup>27</sup> This illustrates that principled arguments and heated arguments need not be mutually exclusive.

While the above Republicans made arguments in favor of legislative conditions on removal, Republican John Logan of Illinois (while also for strong congressional power in matters of civil service) argued that Congress should exercise its power in the

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

same way. On December 15<sup>th</sup>, the same day that Edmunds and Bayard were debating constitutional questions, Logan jumped in to differ slightly with Edmunds. He said,

I know it is a presumption in me to undertake to talk about the Constitution when two lawyers have been discussing it of the character of the two gentlemen who have been discussing it; but I desire to call the attention of my friend from Vermont (Edmunds) to the fact I am about to state, inasmuch as I differ with him in reference to this question which has been raised, and that is the reason why I say what I am going to say now.”<sup>28</sup>

The question he referred to was a constitutional question. He did not differ from his Republican colleague on whether the bill or any particular amendment ought to be passed. Yet, he felt it necessary to speak his mind on a constitutional matter *for its own sake*. His different interpretation of the question of Congress’ involvement in the process of appointment and removals was as follows: “if the provision of the Constitution (Article II, Section 2, clause 2) means anything, it means that the appointing power is in the President and the power to remove is in the President, *by the advice and consent of the Senate*.”<sup>29</sup> This argument called for Senate involvement directly in a *particular* removal, whereas Edmunds and Sherman were arguing for general laws that might regulate removal.

There were also Republicans who believed that the entire bill could be decided without reference to constitutional questions. Senator Hoar of Massachusetts held this position. He opened the third day of debate on the 14<sup>th</sup> with a comprehensive speech offering all his reasons for support. In listing his reasons for support he made the following observation:

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<sup>28</sup>*The Civil Service*, S 133, 47<sup>th</sup> Cong., 2<sup>nd</sup> sess., *Congressional Record* (December 15, 1882): S 326.

<sup>29</sup> *Ibid.* Parenthesis and emphasis added.

The measure commends itself to me also because it carefully and wisely *avoids* all disputed constitutional questions which have been raised in the discussion of this subject. It nowhere trenches upon the constitutional power of the President under any definition or limitation, even the largest and the broadest, of executive powers which is to be found in our constitutional discussions”<sup>30</sup>

Further he said,

It does not assert any disputed legislative control over the tenure of office. The great debate as to the President’s power of removal, the legislative power to establish a tenure of office with which the President could not interfere, which began in the first Congress, which continued during the contests of the Senate with Andrew Jackson, revived again at the time of the impeachment of Johnson, and again in the more recent discussion over the tenure-of-office bill in the beginning of the administration of President Grant, does not in the least become important under the skillful and admirable provisions of this bill.”<sup>31</sup>

His approach, then, was one of what contemporary Constitutional Law scholar Cass Sunstein calls “minimalism.”<sup>32</sup> In an attempt to build broader consensus on the bill, Hoar wanted to leave certain deeper issues untouched. His suggestion that the Pendleton Act could be passed without the discussion of constitutional principles pointed to the fact that the other senators mentioned above did not need to discuss the constitution in order to discuss this bill as they did. There were Democrats who shared Hoar’s minimalistic approach to constitutional questions. As will be shown below most Democrats argued for strong unified executive power. Thomas Bayard of Delaware, however, seemed to take something like the Hoar position. While Bayard, during his debate with the Republican hard-liner Edmunds on December 15th (discussed above), maintained that the president ought to have the power to remove all civil officers, by the 23rd he held that the entire removal debate need not be settled with this bill. He argued,

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<sup>30</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 14, 1882): S 274.

<sup>31</sup> *Ibid.*

<sup>32</sup> Cass R. Sunstein, *One Case at a Time: Judicial Minimalism on the Supreme Court* (Cambridge: Harvard University Press, 1999).

This bill does not take on too much. If we only can get what it does undertake I shall be grateful indeed. I do not think the Senator from Georgia or any other Senator should expect a bill to regulate the tenure of civil office and make a final decision upon a very much debated question of the constitutional power of the President and the removal from office by the Executive. One thing is certain: this bill is wise in not establishing that tenure.<sup>33</sup>

While Bayard believed that the president's removal power ought to be left unregulated by Congress, he felt that the deeper questions of the debate could not be avoided in order to pass this legislation. Bayard, like Hoar, wanted to build consensus in support of the bill. Avoiding questions that divided national politics since the first Congress was a way to do this.

So far we have seen Republicans who had different views on how a strong Congress ought to regulate presidential appointment and/or removal and those who wished to avoid the constitutional questions. Senator Joseph Hawley, a major Republican speaker, made arguments for strong, virtually unlimited executive power in the area of appointment and removal. This, interestingly, was an argument that the Democrats tended to make during the debate. He spoke on this issue twice, first on December 13th and second on the 16th. Arguing for a civil service commission without legislatively set term limits, he said, "a commission I regard as indispensable to the *unity and harmony of the executive* power of this measure."<sup>34</sup> The commission, thus, was not something that would limit the president's power over the civil service but would provide the necessary support for him to control it. Next, Hawley addressed the issue of having set terms of office for commissioners. Arguing against set tenure he stated,

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<sup>33</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 14, 1882):S 274.

<sup>34</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 13, 1882):S 243.

I think the civil-service reformers have the advantage, for they yield to the Executive department in general, to the President, all that anybody had yielded him under the Constitution, supreme power over removal from the first day continuously, as well as over appointment. I believe that he has and ought to have the power of removal, as he has the power of appointment, and let the full judgment of the country then come down upon him for any failure to do his duty. He has the power to do his duty; he can command abundantly excellent service if you let him, but the moment you put up a barrier between him and his subordinates, and shield him from responsibility, you scatter it, divide it, and destroy it.”<sup>35</sup>

This argument was diametrically opposed to Edmunds’ argument. Edmunds believed that it is the Senate’s job to maintain the balance of power in the federal government by constantly putting barriers in the way of presidential prerogative. Hawley, on the other hand, believed that the best way this legislation could put a check on the president was to make him completely responsible to the people.

On January 16th, Hawley, getting in on the debate between the Ingalls’ extreme position on the regulation of presidential removal/appointment and Hoar’s minimalist position, stated, in no uncertain terms, his refusal to regulate the president in any way on removal. He responded to Ingalls:

I will not vote to take away the constitutional power of the President, because I can not do it, because it would be unwise to do it, and because I do not desire to do it. I say for myself that the President, responsible to public opinion and to the general laws, must remove any man whenever he thinks it’s his duty to do so. If he removes unwisely, entirely for low, personal, or party reasons, he is either impeachable in the high court of impeachment or before the court of public opinion.<sup>36</sup>

We have now seen that major Republican speakers, while agreeing on the merits of the bill and most of the amendments, articulated different arguments about the constitutional questions that it touched upon. The Democrats, on the other hand, tended

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<sup>35</sup> Ibid., S 244.

<sup>36</sup> Ibid.

to have a more unified understanding of the Constitution. They tended to favor unlimited presidential appointment and removal. Major speakers on the issue of appointment and removal on the Democratic side included Wilkinson Call of Florida, Francis Cockrell of Missouri, James George of Mississippi, John Morgan of Alabama, John McPherson of New Jersey, and Charles Jones of Florida. Before turning to the speeches of these senators it is important to make one observation that may help to explain the Democrats' position on executive power. While they made constitutional arguments that will be discussed below, it must be said that many Democrats had become disillusioned with attempts at reform by the Republicans in the past. There was perhaps then some practical motivation based on experience which affected the constitutional arguments of the Democrats. For while Republicans had attempted reform through law, Republican *presidential administrations* had been unwilling, in the eyes of many Democrats, to actually bring reform about. This tended to make many Democrats believe that only a Democratic *president* who could sweep the current service clean could bring about true reform. Keeping this possible motivation in mind, we now turn to the arguments.

First, Wilkinson Call, who laid out the most thorough constitutional argument on the Democratic side, will be examined. He took on the arguments of the Republican Edmunds and voted against the bill during the final vote. Call opened his speech on December 20th stating that "the government of this country is a government legislative, executive, and judicial..."<sup>37</sup> From the beginning then Call emphasized all three branches of government as distinct, thus emphasizing a more formalistic approach to the separation of powers. It can be easily contrasted with the functionalism of Edmunds who was primarily concerned with maintaining a balance of power. Continuing with this more

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<sup>37</sup> Ibid.

formalist approach, Call on both the 20th and 21<sup>st</sup> focused on the vesting clauses of the Constitution. Looking to the vesting clause of Article II Section 1 of the Constitution and the excepting clause Article II Section 2, he reasoned that Congress has no power to regulate appointments except by specific constitutional grants. He claimed,

if this power of appointment, this right of selection, designation, and induction be unlimited as it is, then manifestly there can be no power in Congress to limit, qualify or restrain it. The Constitution gives to Congress the power to vest the power of appointment of inferior offices, that is their selection, designation, and induction into office in the President alone, in the courts of law, or in the heads of Departments.<sup>38</sup>

For Call this was the only way that Congress could get involved in the appointment process. He then took on one of Edmunds' arguments directly. Remember that Edmunds extended the constitutional control granted to Congress over the courts in Article III to argue that Congress could regulate by law *any* power granted to the executive or the judiciary. On the 20th, Call responded to Edmunds observing,

The Senator from Vermont found the other day authority for legislation regulating, qualifying, and limiting the executive authority as provided by the Constitution in the laws regulating the time and place and means for the exercise of judicial powers. But the cases are not the same nor is there any analogy between them. Here the Constitution requires in express terms the unlimited power to do a single act of executive power to be vested by an act of Congress in particular persons of a particular Department of Government. In the case of the law regulating the time and place for the exercise of judicial power these are acts of legislation under the general power of the legislature, and are in no sense a diminution of or interference with judicial power but an aid to it.<sup>39</sup>

Rather than assuming, as Edmunds does, a whiggish view of the separation of powers, he believed that the legislature is only able to check the powers of the other branches in ways that are specifically enumerated by the Constitution.

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<sup>38</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 21, 1882): S 498.

<sup>39</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 20, 1882): S 470.

Senator George of Mississippi, who generally favored the Pendleton Act, also clearly believed that the bill could not force the president's hand in the area of appointment or removal. Thus, reform depended on an executive who was on board with the act. He argued,

I agree with the Senator from Georgia [Brown] that the effect of this measure depends in a large degree, if not entirely upon the good faith of the President and his Cabinet, who will be called upon to execute it...I admit that you can not pass laws which they [members of the administration] can not evade; it is impossible from the nature of things; but because we cannot, trammled as we are by the Constitution, make a law which they can not evade, is it any reason why we should not make an honest effort to enact a law which an honest administration may observe?<sup>40</sup>

George was responding to Brown's assertion that the Pendleton Act was a sham that would do nothing. He held that, while it would require a faithful executive (which in George's mind would have to be a Democrat), a law could still be a impetus for executive reform. George, then, responded to another argument of fellow Democrat Brown who believed that the bill might get in the way of the president's removal power, which would result in an aristocracy of office-holders. George argued that, since the bill is silent on removal, the default reading must be one that is in line with the Constitution. He observed,

Mr. President it was objected by the Senator from Georgia that the bill provided for a life tenure in office. This is an error. It does not provide for removals. That matter is left exactly where the Constitution leaves it. *It is not in the power of Congress to take away from the President his right to remove any more than to take away his right to appoint.* The one power is incident of the other, and they are inseparably united. How long an appointee shall remain in office must therefore necessarily depend on the discretion and judgment of the appointing power where the Constitution places it. The Constitution may be wrong, but until it is amended we must obey it.<sup>41</sup>

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<sup>40</sup>*The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 14, 1882): S 281.

<sup>41</sup>*The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 15, 1882): S

Francis Cockrell of Missouri was in agreement with his colleague George on the two above issues. First, the bill is only as good as the president enforcing it. Second he believed that the bill has no legal authority to bind the president. Cockrell engaged in some intense partisan battles on December 21st. While supporting the bill he still argued with Republicans that a change in administration was necessary:

Mr. Cockrell. I do not believe this bill with a Republican administration will accomplish one particle of good.

Mr. Hoar. Will it with a Democratic administration?

Mr. Cockrell. With a Democratic administration it will, and that is a proposition I propose to establish before I get through. With a Democratic administration a change will be accomplished without this bill.<sup>42</sup>

Cockrell did eventually vote for the bill. Thus, while he, like George, believed the biggest step in reform was a change in administration, he believed that the bill did serve some valuable purpose as a guide for action. Cockrell's argument then moved from the practical need for a Democratic administration to the more Constitutional argument about executive power. He stated later on the same day, "The bill all depends upon a willing Executive. He can ignore it and there is no dereliction of duty on his part. The bill creates no legal obligation upon the President. He can merely say, 'I will have nothing to do with it' he can override it, and there is no breach of legal duty."<sup>43</sup> Cockrell did not mention the Constitution directly but he seemed to think that provisions of the bill, many of which appeared to be binding, had no legal force on the president. It is likely that this was because of his agreement with George and other Democrats on the constitutionality of interfering with presidential removal. In fact, Edmunds, the

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<sup>42</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 21, 1882): S 509.

<sup>43</sup> *Ibid.*, S 509-510.

Republican Senator discussed above who believed strongly in Congress' ability to regulate presidential power, responded to Cockrell's above statement: "let us amend it so that he cannot do that."<sup>44</sup> In other words, Cockrell, you have a problem with the fact that Republican administrations have evaded past legislative attempts at reform, why not improve the bill to give it more teeth? Edmunds, of course, believed that Congress held the ultimate power in the American system and was thus institutionally suited to force the president's hand. Cockrell never took Edmunds suggestion up however. Rather, he changed the subject back to blaming Republicans' past actions.

Note in both Cockrell and George's speeches that the argument from experience (past Republican administrations have evaded reform) was given close to their constitutional arguments. This may indicate that they were simply masking their mistrust of Republicans with constitutional arguments or that past Republican abuses (even after legislative attempts at reform) prove their point that the Constitution's giving of the unlimited power of appointment and removal to the president was the only efficient way of enforcing reform. It is difficult to know their motivations. However, it seems important that both arguments were made. Constitutional arguments bolstered more experiential and partisan arguments.

Finally, two Democrats entered the debate on December 15<sup>th</sup> to discuss the nature of the proposed civil service commission, the panel of 3-5 members (it had not been decided yet) who would aid in the administration of the civil service. Democrats John McPherson of New Jersey and Charles Jones of Florida were concerned with the constitutionality of the commission and worried that it would not be politically responsible to the people. McPherson asked suspiciously whether the "purpose of the bill

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<sup>44</sup> Ibid.

is to appoint a legislative commission having no constituency, responsible only to the power that makes it possible for them to be appointed, composed of partisans, selected as partisans, and having no termination to their term of office whatsoever?”<sup>45</sup> In other words, would the bill establish a legislatively created branch that would be independent of the three constitutionally established branches of the Constitution? Jones, a fellow Democrat, assured him that “nobody on this floor would undertake to say that Congress would have the power to establish a distinct, separate, independent power in opposition to the President to appoint officers. This commission is to aid him in carrying out the principles of this bill.”<sup>46</sup> Both men agreed that the president ought to have control over the commission and that it would exist merely to help him in running the civil service. However, they differed on what type of commission would be more responsible to the president. Jones believed that fixed tenures on the commission would trample executive responsibility and would be unconstitutional. For fixed tenures imply that the president cannot remove officers at his will. Reiterating his belief in responsibility, Jones stated “I would say to the Senator [McPherson] that I am not in favor of establishing an antagonistic power to the President. To appoint a legislative commission with a fixed term of office, and say that commission shall be beyond the power of the President, would be a stretch of the authority of Congress.”<sup>47</sup> McPherson believed the opposite to be true, that the commission would become antagonistic to the president if it did not have fixed terms. This was because no president would have the political courage to remove officers. A lack of fixed terms would equal life terms. He stated “for one I am entirely

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<sup>45</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 15, 1882): S 322.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

opposed to a legislative commission having perpetual powers. I want a term for the expiration of the exercise of the duties and responsibilities placed upon them.”<sup>48</sup> He added

What sort of condition is the President of the United States placed in if he undertakes to remove a commissioner appointed under the provisions of this bill unless he has some good and sufficient cause for doing it? We will assume that the President may remove him; but no President will have the audacity to remove a commissioner except for some cause, and if he can give no cause the term of office is perpetual.<sup>49</sup>

Both Democrats here were devoted to the same principle. Neither believed, like Republican Edmunds for instance, that the commission should be used as a tool for the legislature to limit the power of the president. Yet, they each argued that a different institutional configuration would best promote the constitutional principle of responsibility.

What then can be concluded from the above discussion of the debate on the constitutional question of the appointing and removal power? It seems that the debate on the Pendleton Act dealt with important constitutional questions in a substantial manner. To be sure, the debate touched upon pragmatic and partisan questions. However, the Senators also justified their particular preferences as the best means of promoting constitutional values or attacked their opponents’ positions as being unconstitutional. While it is possible that a constitutional argument may be used strategically as an appeal to authority by a particular side in a debate, this does not seem to be the case here. Otherwise there would be no disagreement among those who agreed on the bill as a whole or a specific provision of the bill.

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<sup>48</sup> Ibid., S 323

<sup>49</sup> Ibid.

As was seen with the Republican speakers, there was disagreement among them even if they all supported the bill. Sherman, Edmunds, and Ingalls believed that Congress could regulate appointments and removals in any way. Ingalls, however, made the basis of his argument more on the constitutional *principle* of responsibility than on particular clauses like Sherman and Edmunds. Republican Logan seemed to agree that Congress could get involved in removal. However, he believed that the proper method of doing so lay, not in regulating appointment and removal, but in the Senate's role in consenting to removals. Hoar hoped to avoid the constitutional questions altogether and thought that the bill did the same, and Hawley tended to side with the Democrats in arguing against any restraint of presidential power.

The Democrats, on the other hand, while forming a general consensus around the principle of untrammelled presidential power and responsibility, made different arguments and at times disagreed with one another. Call made a systematic constitutional argument in response to Republican Edmunds' claims of legislative supremacy. George and Cockrell, on the other hand, seemed to blend a practical argument based on past experience with a constitutional argument. While they believed that the legislature could not constitutionally bind the president in his appointment or removal powers, they also observed that only a change in administrations would have any practical result in reforming civil service. Finally, in the interesting exchange between McPherson and Jones, one sees two Democrats agreeing on the constitutional principle of a responsible executive who has ultimate control over the executive branch. However, they disagreed about whether fixed terms were more likely to bring about this goal.

### *Regulating Assessments and Individual Liberty*

While the above section illustrates a comprehensive debate on the constitutional question of appointment, removal, and the separation of powers, another important constitutional question involving the conflict between government regulation and individual liberty was raised during the debate. On December 23rd and 27th the last two legislative days dedicated to the Pendleton Act, the question of the regulation of assessments was raised. The collecting of assessments was the practice where the party in power, which had appointed civil servants to their jobs, would collect “voluntary” donations from civil servants to support the parties’ campaign expenses. The problem was that these contributions were not truly voluntary. Often, the collector would write down the names of those who refused to contribute, and those doing so lost their jobs. There had been popular outcry against this practice, and thus the Pendleton Act attempted to deal with the practice in some manner. Democrat George Vest stated on the 27th that “it [assessments] is a great evil is conceded by all parties, by every Senator that has discussed the question.”<sup>50</sup> Yet, the means for fighting corrupt assessments remained controversial. The proper method of regulating assessments was discussed on these two days.

In order to understand the constitutional question raised here it is necessary to be familiar with the two main options for dealing with assessments. The first option presented in an amendment offered by Republican Senator Joseph Hawley of Connecticut would criminally penalize any officer who was found soliciting any other officer for contributions or who promoted or degraded another officer based on contributions.

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<sup>50</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 27, 1882): S 641.

Democrat James Beck of Kentucky held that this amendment did not go nearly far enough. He believed that clever campaign committees (especially Republican ones) would be able to get around these prohibitions. Beck believed that the only way to truly root out the evil of assessments was to prohibit, not only solicitations by government officials, but even voluntary donations by lower officials, mainly because he believed those donations were never truly voluntary. In effect, Beck believed that Congress should keep employees from making political donations for their own good. He stated “a law prohibiting the employes [sic] from giving to anybody money for political purposes is clearly within the scope of our authority; and if we mean to act in good faith we shall go to that extent on behalf of the employes [sic] themselves.”<sup>51</sup> It was during the discussion of this second option where a constitutional question was raised.

With this question, unlike the question of removal above, the sides were relatively clear cut. Those who spoke in favor of the Beck amendment were Democrats, and those who opposed it were Republicans. The Republican speaker who spoke in opposition to the Beck amendment most often was, unsurprisingly, Senator Hawley. He made two different but related arguments. The first was that such a regulation on donations was a violation of an individual’s natural rights. He called the Beck amendment “a trespass on the natural rights of mankind.”<sup>52</sup> The second argument centered around the idea of the rights of citizens. As a citizen of the United States, the Beck amendment was unacceptable. On the 23rd he noted, “I as a citizen of this Government, employed by it,

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<sup>51</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 23, 1882):S 624.

<sup>52</sup> *Ibid.*

do not lose my liberties and my rights by the employment.”<sup>53</sup> Continuing this line of argument on the 27th he added “that [the Beck amendment] was the thing I condemned, as I thought it a trespass on the rights of American citizens and so I think it is.”<sup>54</sup> Notice that Hawley did not actually state that a *constitutional* right was in question here. He talked of natural rights and rights of citizens. It was the Democrats who forced the debate to take on the rhetoric of constitutional rights.

Leading the Democrats’ counter-attack on the 27th was George Vest of Missouri. Vest had recently offered a substitute amendment which had a similar effect to Beck’s amendment. He asked his Republican opponents:

Is there a constitutional objection to what I have proposed? The Senator from Connecticut [Hawley] was pleased to say that he was stricken with horror, amazed beyond expression that any Senator should offer such an amendment as that which as a substitute was offered by myself, that it invaded the rights of American citizens. Will that Senator, or any other Senator who voted with him, point out to me, if the amendment I offered is violative of the rights of American citizens, that clause of the Constitution under which he can forbid any American citizen who holds an office in this Government from soliciting subscriptions for political purposes?<sup>55</sup>

Notice that right away there was a conflation of the “rights of citizens” with the Constitution, even though Hawley had not mentioned the Constitution. Vest, however, challenged Hawley to show where his proposed amendment violated the Constitution. Further, he asked, if Hawley could find such a clause, how would Hawley’s amendment not violate it as well? The Republicans took this question seriously, at least in the sense that they offered responses to the challenge. While Hawley himself did not respond,

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<sup>53</sup> Ibid.

<sup>54</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 27, 1882): S 638.

<sup>55</sup> Ibid.

Senators Harrison of Indiana, Sherman of Ohio, and Lapham of New York did. Senator Harrison addressed Vest directly observing,

The Senator from Missouri asks what constitutional provision is infringed upon or violated by a provision prohibiting an officer or clerk in one of those Departments from giving to legitimate political purposes. I do not need to point him to a constitutional provision. That instrument is a collection of comprehensive declarations relation to the Government; but I do insist that it is a common principle.<sup>56</sup>

Harrison addressed Vest's argument by arguing that the written constitution would not have a clause prohibiting Vest's amendment because the constitution is concerned more with the government than with individual rights. However, there was still a liberty interest which was a "common principle" that pushed back against the amendment. Rather than adopting a strict construction of the Constitution, Harrison seemed to make a common-law constitutional argument. There are certain traditional rights and principles which are constitutional even if not explicitly protected in the Constitution.

Senator Lapham responded to Vest's objection more directly on Vest's terms. Vest asked for a constitutional provision and Lapham attempted to provide him with one. Discussing the rights of the government employees to which the Vest amendment would apply he observed "A person has labored in the service of the Government and received the compensation which the law provides as his salary; and it has become is private property. Now have we, as a legislature, any power over it except within the bounds provided by the Constitution?"<sup>57</sup> Lapham went further than Harrison by naming a particular principle that the Vest amendment would violate, the right to private property. He discussed this right in the following paragraph:

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<sup>56</sup> Ibid., S 639.

<sup>57</sup> Ibid., S 640.

The Constitution provides in the fifth article of amendments to that instrument that no person shall be 'deprived of life, liberty, or property without due process of law.' What is depriving a man of his property? If we deprive a private a citizen of the right to use his property for all legitimate purposes, we take from him the value of his property as much as though we deprived him of it altogether.<sup>58</sup>

Lapham was arguing for something like the Constitutional Law doctrine of substantive due process. However, he focused more on the property part of the clause than on the liberty part. Rather than focusing on how the Vest amendment would take away property without due process, he focused on taking away property period. He seemed to believe that Congress could not tell a man how to spend his money unless it was spent criminally. If the money was spent on “legitimate purposes” Congress really had no power to regulate. In discussing legitimate purposes he related the liberty interest here to the particular protection given to religion in the Bill of Rights. He argued “if we may restrict the citizen in the use which he is to make of his property for the purpose of promoting the interests of the party to which he belongs, we may upon the same principle provide that he shall not contribute to the use of the religious organization with which he is connected.”<sup>59</sup> The slippery slope argument here related the property interest to the free exercise interest in the first amendment.

Finally Sherman took up Vest’s objection. He repeated the slippery slope argument of Lapham and related the right here to religious liberty. However, he added an additional argument. Sherman, like Harrison, admitted that there really was no specific constitutional prohibition of the action advocated in the Vest amendment. However, rather than making the common law defense of the liberty interest that Harrison had made, he made an argument similar to one made by Alexander Hamilton in Federalist

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

#84. He responded to Vest stating “but you say there is no constitutional prohibition. No, I do not think there is, because the framers of the Constitution never contemplated the possibility of Congress attempting to control officers in this way.”<sup>60</sup> Hamilton argues in Federalist #84 that a bill of rights is not necessary because the founders believed that the government had no power to regulate the press or religious practice etc. He also worries that articulating specific rights would promote the idea that all those matters not specifically protected would be open to regulation. Sherman attempted to point out the flaw in Vest’s argument by arguing that the Constitution does not specifically protect certain rights because it would be absurd to think that they could be violated.

The Republicans offered at least three counter-arguments then, a common-law argument, a 5<sup>th</sup> amendment due process argument, and the Federalist #84 argument. The Democrats, who spent most of their time making practical rather than constitutional arguments for the Vest amendment, addressed the constitutional argument of the Republicans briefly. Senator Beck responded on the 27<sup>th</sup> by appealing to past decisions of the Supreme Court. He argued, “when gentlemen talk about private liberty being encroached on because they can not pay out of the money received out of the taxes of all the people to run a partisan canvas let them read the opinion of the Supreme Court and they will find a dozen cases where the personal liberty of the citizen, when he accepts office, if you call it so, is abridged.”<sup>61</sup> Thus, rather than take on the Republicans justifications for the liberty interest directly, Beck argued that when an individual takes a job working for the government, where his salary is funded by taxes, the government can put conditions on the way an individual spends his salary.

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<sup>60</sup> Ibid., S 641.

<sup>61</sup> Ibid., S 637.

To conclude, it can be said that while the constitutional debate over regulating assessments seemed to have clearer partisan sides than the issue of appointment and removal, there were still a variety of developed constitutional arguments made. The Republicans offered the three defenses of the liberty interest mentioned above. Democrats argued both that in order for the Beck/Vest amendments to be found unconstitutional there needs to be a specific provision in the Constitution prohibiting the action taken and that while a constitutional liberty interest may exist, accepting employment with the Federal Government may limit particular liberties. While the question of assessments touched on many practical and partisan issues and the debate used only practical and partisan rhetoric, the debate touched upon fundamental constitutional questions.

#### *Appeals to Political Ancestors*

Another way in which a speaker might draw on the American constitutional tradition is to draw on the thought and actions of the great men associated with that tradition. A number of speakers not only referenced major political figures from the past, but spent time analyzing their thought in order to guide this debate. Two general observations can be made initially about such appeals in the case of the Pendleton Act. First, they were concentrated more heavily in the early days of the debate. Second, they tended to focus on the political thought and actions of Thomas Jefferson. This section will begin by examining the treatment of Jefferson and then move on to other appeals.

The first two speakers discussed, Pendleton and Hawley, while from different parties, pursued a common argument based in an appeal to Jefferson. Senator Pendleton,

the Democratic sponsor of the bill, in introducing it on December 12<sup>th</sup> appealed to Jefferson for support of civil service reform and ending the spoils system. He argued,

Fidelity, capacity, honesty, were the tests established by Mr. Jefferson when he assumed the reins of government in 1801. He said then and said truly, that these elements in the public offices of Government were necessary to an honest civil service, and that honest civil service was essential to the purity and efficiency of administration, necessary to the preservation of republican institutions.

Mr. Jefferson was right. The experience of eighty years has shown it. The man best fitted should be the man placed in office, especially if the appointment is made by the servants of the people.<sup>62</sup>

Pendleton thus appealed to Jefferson's ideal for a proper civil service. He did not focus on Jefferson's actual practice in civil service appointments. For, as other speakers showed, Jefferson's actions might not have been consistent with his ideal. Later in his speech, while not mentioning Jefferson directly, Pendleton articulated something like Jefferson's idea of a natural aristocracy stating that the bill's result would be that "everybody, humble, poor, without patronage, without influence, whatever may be his condition in life, shall have a right to go before the parties charged with an examination of his fitness."<sup>63</sup> Thus, Pendleton argued that Jefferson was against spoils and that this was a good thing.

Republican Senator Hawley offered a speech the next day also supporting the bill through appeals to men of the past. He, like Pendleton, believed that the early practice of appointing officers was based on merit rather than spoils. He argued, "the doctrine of old was a better doctrine than that we have lately practiced. It taught that the power and duty of making removals were vested in the President alone...fidelity and efficiency were the

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<sup>62</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 12, 1882): S 206.

<sup>63</sup> *Ibid.*, S 207.

measures of tenure, as capacity and character were the tests for appointment.”<sup>64</sup> He then went on to give figures showing the small amount of removals made by the first six presidents and noted that they were all for cause. Consistent with his argument discussed in the above section on constitutional interpretation, Hawley believed that untrammelled presidential removal power was the best way to secure a meritorious civil service.

Hawley also bolstered his argument against having set tenures for officers through a specific appeal to Jefferson. He argued,

A term of years was not in fashion in the origin of this Government . It was not until 1820 that a term of years was provided for collectors and certain other officers, and the bill then passed without discussion and without yeas and nays. When it came to be known it was met with unmeasured denunciation, and was denounced by nobody more severely than by the great Democrat, Thomas Jefferson.<sup>65</sup>

While Pendleton and Hawley, members of different parties, agreed in their assessment and praise of the beliefs of Jefferson, there were members of both parties who came to the complete opposite conclusion about Jefferson, albeit for different purposes. Democratic Senators Brown and Williams and Republican Senator Hoar all held that Jefferson did indeed endorse and engage in the spoils system.

Brown was against the bill in its entirety, mainly because he believed that it was an unjust attempt by Republicans to entrench their appointees in the civil service before they would possibly lose the upcoming elections. This would keep the power of patronage out of the hands of incoming Democrats. He would have preferred to either keep the spoils system or to make the number of partisan civil servants equal before switching to a merit system. In order to support his first alternative, maintaining the

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<sup>64</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 13, 1882):S 241.

<sup>65</sup> *Ibid.*, S 243.

spoils system, Brown turned to Jefferson. He directly took on the above interpretations of Jefferson by both Pendleton and Hawley arguing,

but reference has been made here to the letter and doctrines of Mr. Jefferson on this question. He has been cited as authority, and he is very high authority on any subject that he ever handles. There are certain expressions in his letter to Mr. Lincoln *that are warped to mean* that removals should only take place for cause only, and that qualifications and fitness alone should be looked to. Mr. Jefferson made important qualifications of that doctrine in that letter.<sup>66</sup>

After citing evidence from Jefferson's letter showing that he did indeed remove men, not simply for cause, but because of their political affiliation, Hawley concluded, "Mark his language. He [Jefferson] thought it not amiss that it should be known that they were determined to remove from office those who had been active and open-mouthed against the Government, whether in the legislative or executive department. That was the sort of civil service Mr. Jefferson advocated."<sup>67</sup>

On December 21st, Senator John Williams of Kentucky, a Democrat and dissenting member of the committee that reported the Pendleton Act, opened the debate with a lengthy speech criticizing the bill. Williams believed that this bill would not bring about any change. For him, the problem was not the method of selection or removal, but rather Republican corruption. Thus, the only solution was a change in the party controlling the government. He stated,

The only way to reform is to put a good, honest Democratic President in in 1884; then turn on the hose and give him a good hickory broom and tell him to sweep the dirt away. That is practical sense, that is honesty...Gentleman talk about Democrats having set this example. It is no such thing. Jackson put his friends in and turned his enemies out; Jefferson so did to some extent. All honest and

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<sup>66</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 14, 1882): S 278.

<sup>67</sup> *Ibid.*, S 279.

sensible men have done the same thing; but none of those Presidents ever raised a corruption fund, and no one of them ever farmed out the patronage of a State.<sup>68</sup>

Jefferson and Jackson were appealed to for the purifying role they played in American politics by using a spoils system rather than adopting a purely merit-based system.

Republican Senator Hoar gave a similar description of Jefferson and early civil service practice, but for different ends. As seen in the above section on constitutional interpretation, Hoar wished to avoid controversy by not touching upon deeper issues. He hoped to build consensus. This motivation can be seen in his use of Jefferson. Hoar consistently argued for the de-politicization of the civil service. He praised former President Grant stating that he “entered upon the administration of Government...in my opinion penetrated with an earnest desire to elevate the civil service of the country not only above corruption but above party.”<sup>69</sup> Hoar seemed to believe that this was a move in the right direction. Yet in order to move the country in this direction he did not cite Jefferson for support, but as an example of how things had been backwards from the beginning. He held that, while the Republicans had been responsible for corruption in the civil service *recently*, the problem was systematic and had existed since the beginnings of American government. Thus, the proper solution was not for the Democrats to strike back against the Republicans, but rather “by admitting and conceding the fact that this system which has come down to us from the very origin of party government in this country has gone on, sometimes operating better and sometimes operating worse, until it has reached a point where some of the abuses to which it is liable have excited the

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<sup>68</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 21, 1882): S 505.

<sup>69</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 14, 1882): S 274.

attention of the American people and caused a demand for their reform.”<sup>70</sup> After citing evidence similar to that which Brown did in his appeal to Jefferson (illustrating Jefferson’s partisan removals), Hoar added,

It is an entire injustice to say that when Mr. Marcy, under Jackson made his coarse and well-known statement that ‘to the victors belong the spoils’, he was introducing for the first time this vicious system. He was avowing not a new system, but was frankly stating a system which had so far preceded the accession of Mr. Jefferson to power in 1801 that when he came in he did not find, he said, a single one of his political associates in office.”<sup>71</sup>

Hoar defined the current problem as being a result of systematic partisanship that must be solved by moving beyond party in the civil service.

Before moving on to more general appeals to past men and traditions, a rather interesting appeal to Jefferson on another specific issue should be touched upon. On the last day of the legislative debate on the Pendleton Act, Republican Senator Henry Blair of New Hampshire, offered the following amendment “That no person habitually using intoxicating beverages shall be appointed to, or retained in, any office, appointment, or employment to which the provisions of this act are applicable.”<sup>72</sup> This amendment, which passed after being slightly altered, hoped to promote a more temperate civil service. In order to support the amendment, Blair appealed to Jefferson. He observed,

There has been much discussion of the principles of Jefferson from time to time, and they have been alluded to in this debate; and he has been quoted as saying that capacity and integrity form the grand criterion for appointment of office and not political sentiment or affiliations. This is true; but later in Jefferson's life, at the close of his administration, Mr. Jefferson announced another principle as still more important. I have his language here. I am not able to refer to the precise place in his works where it may be found, but I know it has been common stock in

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<sup>70</sup> Ibid., S 273.

<sup>71</sup> Ibid., S 274.

<sup>72</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 23, 1882):, S 645.

the temperance literature of the country for many years. At the close of his administration Mr. Jefferson wrote:

The habit of indulging in ardent spirits by men in office has occasioned more injury to the public than all other causes; and were I to commence my administration again with the experience I now have the first question I would ask respecting a candidate would be does he use ardent spirits?

That would be the first question propounded by Mr. Jefferson to-day were he the President of the United States.<sup>73</sup>

After the Blair amendment passed in the Committee of the Whole, it came up again for a separate vote on the floor. Again Blair appealed to Jefferson stating, “in regard to the particular language used in the amendment it was taken from the language of Jefferson himself. He said, in substance, that the habitual use of intoxicating or ardent spirits had wrought more evil to the American people, so far as office-holding was concerned, than all other causes combined.”<sup>74</sup>

While the above Senators Pendleton, Hawley, Brown, Williams, Hoar, and Blair cited Jefferson specifically on the question of patronage or liquor, others cited Jefferson in a broader way. Democratic Senator Francis Cockrell of Missouri would be an example. Cockrell neither had as much confidence in the bill as Pendleton and Hawley, nor was he against it like Williams and Brown. While he believed, like Williams and Brown, that true reform could only come about through a Democratic administration, he supported the bill as a way to move in the right direction. However, a return to Jeffersonian principles was essential to reform. He argued, “the Democratic party can only reform this Government by being true to its great cardinal principles...I refer to the great principles promulgated or epitomized by Thomas Jefferson...in his celebrated

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<sup>73</sup> Ibid., 645.

<sup>74</sup> Ibid.

inaugural.”<sup>75</sup> Democratic Senator Daniel Voorhies of Indiana took a similar approach to Cockrell in his citing of Jefferson. While concerned about the removal question, he was primarily concerned with calling current Democrats back to their Jeffersonian and Jacksonian heritage. On December 16th he made a lengthy speech examining the competing political traditions in American history. First, he set up Alexander Hamilton and John Adams as the enemies. He stated, “Alexander Hamilton did not believe in our present system of government. I have his correspondence here in which he declares the English monarchy to be the best form of government in the world. This correspondence shows that he hated the principles of the American Constitution.”<sup>76</sup> He added, “there is conclusive evidence that even John Adams had abandoned his faith in the people and in a people's government.”<sup>77</sup> Thus, to restore American politics there must be a return to Jeffersonian and Jacksonian principles. To Voorhies’ surprise, however, many current Democrats had turned away from the principles of these men. He observed,

In looking over the political text-book of the Republican party for the last campaign I find a furious assault upon Jefferson and upon Jackson in connection with appointment and removals. That is right; it is in order for them to be assailed from that source. It is natural for the Republican party to assail Jefferson and Jackson; but in my opinion Democrats should carefully guard their steps when they find themselves in collision with the views and principles of those great men. They are dead but their souls march on.<sup>78</sup>

Voorhies hoped to reinvigorate a debate that had been going on since the founding, a debate which the Democrats seemed to have given up on. The Republicans were doing

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<sup>75</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 21, 1882): S 526.

<sup>76</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 16, 1882): S 357.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

what was expected, but the Democrats needed to push back. If they would, Voorhies predicted that the American people would support them for it: “the American people today revere the principles of those apostles of the Democratic party with a devotion unabated by the lapse of time.”<sup>79</sup>

Strangely, while Voorhies pointed to current Republican criticism of Jefferson and Jackson, Republican Edmunds made a speech blasting John Adams rather than Jefferson. As discussed in the above section on constitutional interpretation, Edmunds' primary constitutional concern was maintaining the balance of powers. He, like Voorhies, seemed to believe that Adams was not a believer in this constitutional balance. In arguing against the unchecked power of presidential removal he stated that such an understanding of presidential power “is kingly, autocratic power which our fathers did not believe in.”<sup>80</sup> While “our fathers” generally did not support such an understanding, John Adams did. Edmunds continued, “I do not think there is a State in this Union that has any such system. I do not think, although I do know, that in the State of Massachusetts, where the Spirit of John Adams, who was thought to be the greatest autocrat of that time, and believed most strongly in aristocratic government, has descended to my honorable friend who so now represents the State.”<sup>81</sup>

Edmunds was not the only speaker in the debate to praise or blame a past politician contrary to what his party's creed or loyalty might have predicted. Democrat James George of Mississippi, rising in support of the bill on December 15th, cited both Calhoun *and* Webster for their support in ridding the system of patronage. Calhoun,

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<sup>79</sup> Ibid.

<sup>80</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 22, 1882): S 564.

<sup>81</sup> Ibid.

while breaking with Jackson over nullification, still ideologically represented a wing of the Democratic party. The whig Webster certainly did not. George was willing to use these two opposing figures to show how this reform transcended party. After quoting Calhoun on patronage he commented, “these are wise words, and seem to have been inspired by a prophetic insight into the present condition of our country. It would be well that we give heed to them. Mr. Webster was not less emphatic in his denunciation of this system.”<sup>82</sup> He then concluded, referring to both men, “differing as they did widely, fundamentally in their political creeds, opposed as they were to each other on most of the important questions which were agitated in their day, they were in hearty accord in denouncing the evils which this bill seeks to remedy. Sir, we have forgotten the lessons which they taught.”<sup>83</sup>

So far this section has moved from appeals to Jefferson on particular issues to appeals to Jefferson and other historical politicians on broader grounds. It is perhaps appropriate to move one step further in abstraction at this point to appeals to a political tradition that was not necessarily represented by a specific figure. There were at least two major instances of these types of appeals in this debate. The first was an argument about how much of the British political tradition ought to be imported to American politics. Senator Brown, in his major speech attacking the bill, argued that the Pendleton Act would lead to life-time tenure and would thus establish an aristocracy of office holders in the United States. He then made an extended analogy with the British regime:

I have heard the British system spoken very highly of; many eulogies passed upon it. It has been said by advocates of this bill—probably not on the floor, but again

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<sup>82</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 15, 1882): S 319.

<sup>83</sup> *Ibid.*

and again outside the Chamber-that we should adopt something similar to that system, if not the exact system itself.

Now, Mr. President, the forms of the two governments are entirely different, the circumstances are different, and the surroundings are different. The system that may work well there in a limited monarchy, the policy of which is to maintain an aristocracy...is not appropriate to a republican form of government like ours...

Under our republican system no man takes anything by hereditary right, but the way is open to the son of the humblest peasant within the broad limits of our domain, if he has merit and energy and ability, to occupy the highest position in government.<sup>84</sup>

Brown's argument that the new civil service reform in shifting from the turnover that is a result of the spoils system would establish an aristocracy had merit in a certain sense. It would be likely that officers would hold office for longer periods of time after the bill was passed. However, the new method of appointment would be by exams testing the merit of the candidate, and this was where his argument fell apart. Brown's contrasting of the American system of merit with the British hereditary monarchy did not show a proper understanding of the civil reform being advocated here. Republican Miller of New York responded to his argument with a defense of the current English civil-service and how it actually better promoted merit than the current American system did. He responded,

The Senator from Georgia told us that it was undemocratic, that it would create an office-holding class which he termed aristocracy. He warned us because it was English, because it had been tried in England, and he dilated upon the differences between the two governments...

Why should we object to this measure because it has been tried in England and found successful there? What great civil rights do we as free American citizens enjoy which we have not taken directly from the English constitution and English law...

But what is the present condition of the service in England? Instead of the Crown exercising this power and giving out the civil appointments of Government for the benefit of the aristocracy or of any privileged class, they are to-day free and open to competition to every person within the realm.<sup>85</sup>

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<sup>84</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 14, 1882): S 276.

<sup>85</sup> *Ibid.*, 283

In a way one can see the argument on the proper relationship with England that stemmed from the old battle between the Federalists and Jeffersonians resurfacing here. It makes sense here that the Democrat would be suspicious of any institutional move that made the United States more like England, while the Republican would give credit to England for the positive traditions that America adopted from it.

To conclude, one can see that the appeals to political ancestry in the debate on the Pendleton Act spanned a wide range of levels of generality. Jefferson and other politicians were appealed to on the particular issue of patronage. Jefferson was appealed to in a general call to reinvigorate the principles of the Democratic party. Finally, the British traditions were appealed to. While some of the arguments pursued in these appeals were less reasoned, one-sided, and emotive, they served the valuable function of raising important questions of political identity and offering guidance for political action that was beyond the here and now. Even if individuals chose particular appeals for purely strategic reasons, the citing of past political individuals and traditions called for responses by the opposition. This kept the fundamental questions raised by these political ancestors open.

### *The Role of Political Parties*

The development of political parties occurred early in American political history. While certain founders, such as Washington looked down upon political parties, by the time of the Pendleton Act they had certainly gained general acceptance. On the other hand, the exact role parties should play in American politics was not settled. Questions of the relationship between the good of the party and the “common good” of the nation remained. Additionally, the tension between partisan identity and institutional identity

was left open. In the above sections we have already seen political parties serving a role in uniting speakers behind particular arguments. We have also seen appeals to particular founders in order to articulate the principles a party ought to follow. This section examines how discussion of the role of parties in general contributes to deliberative rhetoric. While many of the reform debates discussed touched on the role of political parties in the American system, none did so as substantively as in this debate.

In the course of these debates at least two important questions about party arose. One was whether this issue could be looked at from a standpoint above party. The second question, which was somewhat related, dealt with the nature of the binding force of parties.

The first question was taken up almost immediately. The question dealt, not only with whether it were possible for senators to support the bill for non-partisan reasons, but also with whether the bill could achieve non-partisan results. At least three separate arguments were made to answer this question. One could categorize them simply as strong non-partisan arguments, strong partisan arguments, and moderate non-partisan arguments. However, there was more to the arguments. The first argument held non-partisanship up as a normative standard. The partisanship in opposing the bill and the partisanship currently used in patronage were contrary to other higher goods. Non-partisanship ought to replace it. The second argument answered that the type of non-partisanship sought by those above was impossible both because of the American system and because of human nature. The final argument argued for non-partisanship in the immediate bill in order to save the parties in the future.

Democrat Pendleton and Republican Hoar made the first argument. In introducing the bill on the 12th, Pendleton attacked Republican past behavior and corruption. However, his alternative was not to appeal to the greatness of the Democratic party but rather to turn to a higher spirit of non-partisanship. He stated, “I beg the Democratic party throughout the country not to mistake this result of last fall [Democratic victories at the state level] as a purely Democratic triumph. It was achieved by the Democratic party with the assistance of men of all parties upon whom their love of country sat heavier than their love of party.”<sup>86</sup> While Pendleton did not condemn party government, he did not simply conflate the good of the party with the good of the country. As will be seen in this debate and others, some partisans held that the good of the country was synonymous with the good of the party. Pendleton ordered these goods here, placing the good of country above the good of party.

Republican Hoar of Massachusetts articulated a similar relationship between party and the common good. While parties in and of themselves were not bad, there was a higher good in dealing with the question of civil service that must be addressed. Hoar illustrated this point by contrasting partisanship with statesmanship. He argued

Under the present system the civil service of the country is made up, and always will be made up, largely of the adherents of a single political party, and if the opponents of that party are so short-sighted as to admit that the principle object of their existence is to displace their political opponents and to gain those offices for themselves by resistance to any well-considered scheme of reform this particular evil will never be overcome...it has got to be met; and unless there is statesmanship enough, and confidence in the capacity of the American people to recognize and to reward statesmanship enough, to waive that objection, the evils which now exist and prevail must be taken to be incurable.<sup>87</sup>

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<sup>86</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 12, 1882): S 205.

<sup>87</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 14, 1882): S 273.

Again we see that while parties have a role in American politics they ought not to be the organizing principle of the civil service. Those who wanted parties to continue as the organizing principle were not reasonable or deliberative for they resisted “well-considered schemes of reform.” They were also not statesman. Thus, for Hoar, parties could at times undermine deliberation and the long-term common good. It is important to note, however, that there seemed to be a consensus among those in this debate that the Democrats were those who had to sacrifice short-term partisan gain for the common good. Hoar admitted this later in his speech stating “the thing which the Democratic party is asked to do in giving its assistance to this measure is an immediate and present sacrifice for the permanent and enduring welfare of the country.”<sup>88</sup> One wonders if Hoar would have made the same arguments if the Republicans had thought that they would lose in the short-term. However, as one can see from Pendleton's speech above some Democrats were making similar arguments.

On the other hand, there were those who held that parties were the only responsible organizing principle for the civil service. Democratic Senator Brown, who opposed the Pendleton Act made this argument right after Hoar spoke on December 14<sup>th</sup>. Brown believed that parties had a legitimate role in the election process and that the election process was what perpetuated the republican form of government of the United States. In order to maintain republicanism, *all* officers needed to be subject to elections and thus party competition. It was this competition rather than a competitive exam that promoted the best men to office. He argued

Our theory is that men are to be promoted on account of merit and qualifications...it is compatible, therefore, with that system to leave the changes in the legislative department, in the executive department, *and in every department*

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<sup>88</sup> Ibid.

except the judicial to the frequent mutations of parties and to the supposed merits of the competitors who compete for prizes.<sup>89</sup>

He commented further that “this is a republican government; it is democratic in form, and you have to change the nature of Government and change human nature also before you will be able to adopt in practice here and utopian theories about civil service.”<sup>90</sup> Since a change in human nature was unlikely, Brown believed that the bill's principle of non-partisan selection was a sham. In fact, the non-partisan rhetoric of the Republicans, Brown believed, was just a masked partisan attempt to entrench their party in government. Brown did not blame them for using such a strategy; however, he warned fellow Democrats that it was a mask. He stated “I do not blame them I do not see that their course is what it ought to be, if we go on the principles of justice and equality; but as a party measure, if we will sit here and permit them to enact such a law, I cannot blame them for doing it.”<sup>91</sup> Democrat Wilkinson Call agreed that a non-partisan civil service was impossible because of human nature. In addressing the proposed establishment of a civil service commission that would be non-partisan and would be removed only for cause he asked,

What foundation has any man...to assume that these commissioners will be infallible and impeccable; that with this vast power over 200,000 officers and the vast salaries that will be appropriated for their compensation irresponsible to the people or to the President, the commissioners and examiners will be honest and faithful to resist temptations before which the President and Senate themselves have given way. Sir, the proposition is utterly unreasonable.”<sup>92</sup>

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<sup>89</sup>*The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 14, 1882): S 277.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup>*The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 13, 1882): S 498.

The argument started with the agreed upon fact that the president and senators were men, and that, as men, they were by definition both partisans and fallible. Commissioners and examiners were also men. Thus, to somehow think that these men would be immune from the temptations of other men merely by claiming that their position was non-partisan would be foolish.

Democrat McPherson also believed in the impossibility of non-partisanship and took the argument of Brown and Call even further by arguing that indeed any meaningful reform had been brought about *by* partisanship, not in spite of it. He stated,

I wish to have it distinctly understood that, so far as I am concerned, I believe in party government; I believe in holding political parties responsible for the management and the administration of the affairs of the Government when intrusted [sic] to them. *No great reform was ever made in the Government except through one of the great political parties of this country...*I should like to see the time come when the rule of either political party will be the rule of patriots; but I can not consent by any vote of mine that a legislative commission shall be appointed, irresponsible to the people...and give them all the authority necessary to determine what shall be done in respect to certain offices in this government.<sup>93</sup>

Much like the dichotomy in the earlier section between a non-political commission and presidential responsibility, McPherson argued that one could either have a non-partisan commission or party responsibility. The latter was the only option consistent with reform in a republican government.

Finally there were those who believed that a certain non-partisanship must be advocated in this bill in order to save their party and the party system in general in the long-term. Republican Miller of New York made this argument on December 14<sup>th</sup>. He clearly believed that this bill would not weaken parties in the long run stating, "this

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<sup>93</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 15, 1882): S 323.

reform if carried out will in no way affect legitimate party management."<sup>94</sup> In fact, the current patronage practice was what got in the way of party control. For, eventually a party was no longer able to keep everyone who wanted a job happy. Miller observed,

The Republican Party seems to have very nearly approached that condition in the late elections. It has been defeated chiefly because of the vast patronage which it has in its hands and which it could not so manage and so distribute as to give satisfaction to the entire party; and I warn my Democratic friends who are opposing this bill to desist, for it is not within the power of any party, it will not be within the power of any set of men, if you should be so fortunate as to come into power in 1884, to take the 140,000 offices of this great Government and to distribute them among your party in such a manner as to give satisfaction.<sup>95</sup>

Miller's argument, unlike Pendleton's and Hoar's did not call for non-partisanship on principle. Rather, it merely acknowledged the limits of what parties could handle institutionally. He argued that they were not suited to be a sort of chief employer for all government jobs. Attempts to be so in the past had led to an over-extension that had hurt party cohesiveness.

Democrat Jones also fell into this third group. Clearly he favored the particular non-partisan results of the bill stating, "I am in favor of a bill for the future which shall secure a non-partisan civil-service system."<sup>96</sup> Yet, he also came out strongly in favor of party government. He responded to his colleague McPherson's attack on the non-partisan parts of the bill mentioned above on the 16<sup>th</sup>. He argued, "my honorable friend from New Jersey the other day said that he was for party government, and so am I. I am for party government, but not when it comes down to the little insignificant offices of the

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<sup>94</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 14, 1882): S 283.

<sup>95</sup> *Ibid.*, S 283.

<sup>96</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 22, 1882): S 570.

Republic. I am for party government here and in the other end of the Capitol."<sup>97</sup> His difference with McPherson seemed to turn, not on whether he believed in partisanship, but what was included in the definition of governing. Both claimed to believe in partisan governing. However, Jones would limit governing to the actions of those who were elected, specifically congressmen and senators. McPherson would include appointed offices as those who governed; they must then also fall under party control.

The second major question concerning parties in the course of the debate dealt with what the unifying principle behind the parties was. While there was not really "debate" about this question in the sense that different speakers or factions took different sides, there were some important observations made by speakers. The statements served an educative function, both to fellow members and to the public about what parties were really about. The arguments were designed to dispel the myths that parties could not exist without patronage and that parties existed for the sake of patronage. Of course, these educative statements were not devoid of strategic concern. For it was only Democrats who made statements about principle (rather than patronage) as that which united their party. It is strange that they were being forced to make this argument, as it was the Republicans who had control of the government and patronage since the Civil War. The reason they were forced to make these statements was that certain Democratic opposition to the bill had been blamed on the fact that the Democrats, inspired by recent success at the state level, felt that they were going to win the next set of national elections. They would thus not want to entrench current Republican civil servants but would rather use patronage to stay in power.

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<sup>97</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 16, 1882): S 350.

Democrat George, took on the strong partisan attack of the bill by his Democratic colleague Brown and made this point about the Democratic party: "I deny, sir, that the Democratic party is an association without principles, held together only by the cohesive power of public plunder."<sup>98</sup> Democrat Daniel Voorhies made a similar defense of the party stating,

In the midst of defeat they [the Democrats] have stood firm; during more than twenty years of disaster, fraud, and oppression they have not for a moment faltered, and it is offensive to them now to assume the necessity of protesting that they are not kept together by the power of public plunder. Of course they are not. They are welded together by the power of principle, often at a white heat in fiery times that I have known.<sup>99</sup>

Finally, Democrat Vest added, "the Democratic party of the United States is not held together by the cohesive power of public plunder. If offices had been necessary to hold us together we would have gone to pieces years and years ago."<sup>100</sup>

### *Standard #3: Rhetorical Self-Restraint*

#### *Defining A Mandate*

Charles O. Jones, in his work *The Presidency in a Separated System*, argues, with the help of past scholarship, that actual mandates do not exist. He states, "the mandate is a classic example of an illusion becoming reality in the context of power as persuasion."<sup>101</sup> His case is persuasive in many respects. However, this illusion can

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<sup>98</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 15, 1882): S 320.

<sup>99</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 16, 1882): S 357.

<sup>100</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 20, 1882): S 465.

<sup>101</sup> Charles O. Jones, *The Presidency in a Separated System*, (Washington D.C., Brookings Institution Press, 1994),184.

become a real power. He continues, "the preposterous can become genuine and may contribute to expectations that cannot, perhaps should not, be met. Still presidents are well advised to be cautious in accepting a mandate or in declaring one of their own."<sup>102</sup>

While Jones is concerned with the idea of a presidential mandate, a strong case may be made that his observations apply to Congress as well, especially in the case of congressional reform. To be sure, there are many motivating factors that cause members of Congress to act in major reform efforts. However, we will see that they often justify reform in terms of a mandate or a major shift in public opinion about Congress. Three points made by Jones can definitely be applied to Congress in these debates. The first is that very often there is not the clear mandate that certain members would like to claim exists. The second is that while the people may not have spoken through a clear mandate, arguments that they have, often move members to action. Thus, persuasion and perhaps illusion become real power. Finally, if this is the case, it may be that Congress, like the president, ought to be cautious about accepting a mandate or declaring one of its own.

How can Congress be cautious about accepting a mandate? Additionally, how can an observer judge whether Congress has been cautious in accepting a mandate? This is certainly a difficult question. Yet, at least from a rhetorical perspective, there seems to be some standard that can be used. I believe that when members of Congress explore through speeches and debates what exactly the definition of the proposed mandate is, they are being more cautious. Of course this exploration is not usually performed as a non-partisan search for truth. It usually comes through the opposing sides giving alternative readings of the mandate. Again, principled argument here may often be

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<sup>102</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 12, 1882): S 184.

linked to self-interest. However, the simple discussion of the scope of a perceived mandate may lead to a more cautious Congress. As will be seen in the coming chapters, it appears that earlier debates actually engaged in a dialogue over a particular mandate itself. Later debates, while arguing over the response to a perceived mandate, did not spend much time trying to define it.

The debate on the Pendleton Act, of all those examined on reform, involved the most extensive amount of time in speaking on mandates. As previously mentioned, the Democrats had won a great number of elections at the state level. This change raised questions as to just what part of the status quo, if any, the voters were rejecting. Were they advocating a complete replacement of patronage with a merit system? Were they more moderate in hoping for a curbing of the excess of patronage? Or perhaps they had relatively few problems with the current civil service's structure and thought that the problem was due to the Republicans who controlled patronage. These questions were present throughout the entire debate, with many speakers attempting to provide answers. Of course, the question was not finally settled. All were not persuaded to define the mandate in a similar manner. In fact, there was not evidence that any senators radically changed their opinion. However, it may be that the constant arguments for a specific definition might have kept one side from pushing theirs too far.

We turn then to the arguments. There are at least three definitions articulated in the course of the debate. The first was for a moderate reform in civil service. In this particular debate, the moderate interpretation of the mandate was the interpretation that supported passing the Pendleton Act close to the form it took at the beginning of the

debate. It was moderate merely in a relative sense since the other interpretations wanted to move further in different directions.

Pendleton, in his introduction of the bill, took this position. He first illustrated that something like a mandate existed. Expressing that, without a doubt, this was the case he stated, “the necessity of change in the civil administration of this Government has been so fully discussed in the periodicals and pamphlets and newspapers, and before the people I feel indisposed to make any further argument. This subject, in all its ramifications, was submitted to the people of the United States at the fall elections, and they have spoken in no low or uncertain tone.”<sup>103</sup> Once he established that the mandate did indeed exist, he proceeded to define it. He observed,

I do not doubt that local questions exerted great influence in many States upon the result; but it is my conviction...that dissatisfaction with the Republican party in the past few years was the most important single factor in reaching the conclusion that was attained. I do not say that the civil service of the Government is wholly bad. I cannot honestly do so. I do not say that the men who are employed in it are all corrupt or inefficient or unworthy...but I do say that the civil service is inefficient; that it is expensive; that it is extravagant; that it is in many cases and in some senses corrupt; that it has welded the whole body of its employees into a great political machine.<sup>104</sup>

While Pendleton showed clear partisanship in his blame of the Republicans, it was a limited blame for he balanced his observations in two senses. First he held that, while the primary cause of recent elections was dissatisfaction with the Republicans, there were also local questions which influenced elections. Thus, while the results may have justified actions taken by the Democrats in the current reform, the mandate was not simply a repudiation of Republican civil service practice.

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<sup>103</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 12, 1882): S 204.

<sup>104</sup> *Ibid.*

Why not simply attribute the results to Republican practice completely? After all, doing so might have justified more extreme measures by the Democrats. Perhaps Pendleton had the sense to warn Democrats not to push their perceived mandate too far. Also, framing the bill as the result of a Democratic mandate simply, would perhaps have alienated Republican votes necessary for its passage. We see Pendleton reaching out to Republicans and cautioning Democrats (at least somewhat) later the same day. This quote is mentioned above in the section on party but also serves a function here on mandates. He stated, “I beg the Democratic party throughout the country not to mistake this result of last fall as a purely Democratic triumph. It was achieved by the Democratic party with the assistance of men of all parties upon whom their love of country sat heavier than their love of party.”<sup>105</sup> This was certainly a warning for Democrats. Yet, *directly* after this Pendleton cited a list of abuses by the Republicans in defiance of the will of the people. He added,

The people demanded economy and the Republican party gave them extravagance. The people demanded a reduction of taxation and the Republican party gave them an increase in expenditure. The people demanded purity of administration and the Republican party reveled in profligacy; and when the Republican party came to put themselves on trial before that same people the people gave them a day of calamity.<sup>106</sup>

This last statement’s power seemed to undermine his limited definition of the mandate. The repeated contrast of the will of the people with Republican practice was indeed a stinging indictment. It may not, in fact, have been consistent with his other words. One must keep in mind, however, that there were not really any Democrats in the debate who did not assign the primary cause of the recent elections outcomes to Republicans’

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<sup>105</sup> Ibid., S 205.

<sup>106</sup> Ibid.

practices. So, the fact that both strains were present in Pendleton's rhetoric point to his moderation.

### *Rhetoric on Rhetoric*

This section for each reform will examine when members of Congress either praise or blame the rhetorical practices of others while on the floor. It is not looking at the criticism by members or the substance of the arguments of their peers, but rather the way in which they speak.

During the course of the debates on the Pendleton Act there were a number of different statements about and criticisms of rhetoric. At least the following points were made: 1) that there was and ought to be a difference between campaign and governing rhetoric, 2) that vitriolic arguments did not have a place on the floor, 3) that a members' intentions ought not to be doubted, and 4) that there should be allowed adequate time for debate.

The first point is interesting in light of what has been discussed about the development of the "permanent campaign" in Congress. While there was, at times, rhetoric that sounded like campaigning during this debate, it was something that was not completely acceptable. Although only one speaker raised this criticism, the fact that it was raised at all is important. Republican Joseph Hawley argued that political campaigns were not dirty. They were in fact extremely important in a republican government. He observed on December 13<sup>th</sup> that "when a campaign is organized a body of wide-awake and energetic young men take upon themselves the laborious details of what some call 'dirty political work,' but I call the cleanest work, next to worship of God, that is done in

this country, the political work without which the country can not exist."<sup>107</sup> However, Hawley saw the political work of the campaign as distinct from the work done in Congress itself. A day earlier, on December 12<sup>th</sup>, Hawley desired to "express hope that we shall keep out of the ordinary field of what is called *political debate* and confine ourselves to the bill in question. And I make that suggestion sincerely, for the purpose of aiding in making friends for the bill, for I think it will do us no good and do the bill no good to drag in the whole range of topics that were perfectly acceptable on the stump last fall."<sup>108</sup> Granted, Hawley seemed to want to keep issues from the past campaign out of debate primarily to get the Pendleton Act passed. Perhaps he did not think that campaign-like speeches ought always to be kept off of the floor. However, he did state that these types of speeches were appropriate for the stump. Regardless of his motivation, this criticism kept present the question of the proper time and place for campaign speeches.

The second point, that extreme vitriol had no place on the floor, was brought up at least twice during the course of the debates. Throughout this debate, there were many heated partisan attacks. However, the fact that vitriol was criticized at all shows that there was awareness, at least by some, of a standard concerning attack rhetoric. On December 16<sup>th</sup> two Republicans surprisingly engaged in a rather heated debate over whether fixed terms of office for civil service commissioners led to responsible government. Senator Hoar was suspicious of fixed terms, while Ingalls was not. In the exchange Ingalls accused Hoar of being "hypercritical," to which Hoar responded, "No

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<sup>107</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 13, 1882): S 245.

<sup>108</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 12, 1882): S 210.

sir, because if I were hypercritical I should object to the course the Senator is now giving to the discussion. Not being hypercritical I do not. There is plenty of opportunity for criticism."<sup>109</sup> Hoar then defended his position on responsibility and ended by restating that Ingalls called him hypercritical. Ingalls responded, perhaps misunderstanding Hoar, "I want the Senator to observe the distinction very clearly. I said hypercritical. I did not say hypocritical."<sup>110</sup> Hoar responded, "I understand what the Senator did not say."<sup>111</sup> Ingalls again defended himself saying, "whatever may have been my opinion, I did not say that."<sup>112</sup> Hoar then concluded saying, "I did not say the Senator did, and the *pouring a little vitriol does not add to the Senator's argument*, in my judgment."<sup>113</sup> While it is difficult to figure out exactly how Ingalls might have been vitriolic (due to the confusion in this exchange), the point is that another Senator called him out for it. Extreme vitriol had perhaps not become so common-place on the floor that it was immune from censure.

Days later, on December 23<sup>rd</sup>, the committee was discussing possible solutions for the problem of assessments. Republican Hawley, as seen in the above section on assessments, thought that laws prohibiting government employees from "voluntarily" contributing to political campaigns was a violation of a citizen's fundamental rights. Hawley offered the prohibiting of solicitations by party officials in its place. In making his arguments he, at times, used very strong attack language against those who advocated prohibiting contributions. For instance, in responding to those who attacked party

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<sup>109</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 16, 1882): S 345.

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

government (or as they might have seen it, the excess of party government), he stated, "That is a Miss Nancyism that never ought to come from the mouths of sensible men."<sup>114</sup> Further, "I would not be made a dog as that proposed law would make me; I would resist it."<sup>115</sup>

In response to this language, three democrats censured Hawley's language. First Senator Beck stated, "the Senator from Connecticut shows the bad faith of his amendment by denouncing everybody as a fool or an idiot who dares to take that further step."<sup>116</sup> Senator Vest, the next speaker added,

I have been in public life long enough, and practiced my profession long enough, to know that whenever a man resorts to sound and fury there is no argument and no logic on his side of the question. The Senator from Connecticut has demonstrated the fact to-night, by his sound and fury on the floor of the Senate, that he knows nothing as to the logical results of the proposition which I offered.<sup>117</sup>

Finally, Senator George observed that

Unless the arguments which have been advanced can be answered- and they can not be answered by rhetoric, they can not be answered by mere passion-unless they are answered in full cool reason, I believe we have the power to pass the amendment offered by the Senator from Oregon; and believing we have that power, although I subject myself to the imputation cast by the Senator from Connecticut of being unlearned in constitutional lore, I shall feel it my duty to vote for it.<sup>118</sup>

George referring to the "arguments" made by those who wished to prohibit even contributions, believed that while Hawley has *responded* to them he had not actually *answered* them. For, in order to answer an argument, cool reason rather than passion and

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<sup>114</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 23, 1882): S 626.

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*, S 627.

<sup>117</sup> *Ibid.*, S 627.

<sup>118</sup> *Ibid.*, S 628.

"rhetoric" was needed. Of course, George here may have been unfairly using the term rhetoric to mean unreasoned appeals. However, his censure of Hawley may have still been valid. Passionate attacks should not have been able to stand alone as a position in debate. It is important to note that the criticism of Hawley could fall into the masculine vs. feminine rhetoric section of this debate as well. Note how those who criticized Hawley's rhetoric did so; rather than contributing to a reasoned analytical debate, it was merely emotional. They were encouraging masculine as opposed to feminine rhetoric.

A third type of rhetoric that was criticized in the course of these debates was speech that called into question the motives of one's opponents. For example, on December 16th, Mr. Ingalls, an opponent of the Act, cast doubt on the motives of members of both parties who supported the bill. He argued, "But this bill appears to be supported by each party for the purpose of cheating the other. It is sustained by one party upon grounds that are absolutely adverse to those on which it is supported by the other, and it will end by defrauding both."<sup>119</sup> Mr. Hawley, responded criticizing Mr. Ingalls' imputation of bad motives. He argued

I forebear to make anything in the nature of extended remarks concerning the very petulant and exceedingly offensive observations of the gentleman from Kansas—or the Senator from Kansas at least; but he did say that this was a bill designed by each party to cheat and defraud the other that he does not want to juggle and he does not want to indulge in cant. I said it was offensive sir, as everyone perceives. He is not justified in it by anything within his knowledge, by anything upon the record, by any shadow of evidence. The supporters of this bill are his equals in honor, his equals in devotion to the public service. I commend him, I advise him, I take the liberty of advising him, to keep such remarks for some place outside of this chamber.<sup>120</sup>

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<sup>119</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 16, 1882): S 354.

<sup>120</sup> *Ibid.*, S 355.

Notice that, because of Mr. Ingalls' accusation of bad motives, Mr. Hawley called Mr. Ingalls' status as a gentleman into question. Mr. Hawley rightly pointed to the problem with imputing motives to a fellow member: it is almost impossible to *know* another's motives.

Challenging motives again became an issue in the last few days of debate as tensions started to rise about the final form and passage of the bill. Democrat Butler defended his support of the bill on December 23<sup>rd</sup>. At this point a fellow Democrat, Senator Voorhies attacked him for his support of the bill. Voorhies believed that the bill called for too much sacrifice on the part of the Democrats and that it did not go far enough in reforming civil service. At times his criticism of Butler was extreme. Butler, whether correctly or not, felt that his motives were being questioned. He responded,

The Senator [Voorhies] says I am sensitive. I am sensitive. When I have tried with earnestness and sincerity, as has the honorable Senator from Ohio [Mr. Pendleton] and the honorable Senator from Connecticut [Mr. Hawley] and other Senators of the committee, to get before the Senate a measure of which might relieve the civil service, I am sensitive when Senators arise in their seats and apply the terms "jugglery," "humbuggery," and "pretense" to that legislation; and I submit, Mr. President that no Senator has a right to impugn the motives of other Senators in that way. I might retort, but I will not retort because it would not be kind.<sup>121</sup>

On December 27<sup>th</sup> the Blair Amendment, which wanted to preclude those who abused alcohol from taking jobs in the civil service, was being debated. Senator Edmunds offered a perfecting amendment which would add to the Blair Amendment the words "or guilty of any other evil habit."<sup>122</sup> The effect of this would be to weaken the focus on alcohol abuse and allow discretion on the part of government employers to

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<sup>121</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 23, 1882): S 614.

<sup>122</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 27, 1882): S 647.

terminate or deny employment to individuals for many vices. Blair believed this was a masked attempt to destroy the strength of his bill. He accused Edmunds stating, "he [Edmunds] will hardly find that those whom he addresses, however dull they may be, will lack sufficient acuteness to see that his purpose is to destroy my proposition rather than to incorporate with it his own."<sup>123</sup> Edmunds responded, not with a general criticism of attacks on motives, but with a defense of his motives holding, "I moved it [his amendment] in perfect good faith in order not to handicap these commissioners in the doing of their duty."<sup>124</sup> Senator Hawley also censured attacks on his motives. Democrat Beck accused Hawley stating, "you have been very skillful in your pretenses, but you have carefully avoided the real point."<sup>125</sup> To which Hawley responded, "the words 'pretenses' is one the gentleman would not like to have applied to himself. That is not a pleasant word."<sup>126</sup>

Citing these instances of the censure of attacks on motives is not to say that those who did so were always consistent. There is a chance, like any principled argument, that it was being used inconsistently. In fact, Hawley may have provided the perfect example of this possibility. For on the previous legislative day he attacked a proposed amendment by Senator Brown (an opponent of the bill) by stating, "it is hardly worthwhile to say that amendments that come from determined and bitter and sarcastic enemies of this bill are not entitled to a great deal of debate here."<sup>127</sup> Granted, Hawley's characterization of

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<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

Brown may have been correct and may have been supported by Brown's own previous arguments and rhetoric. However, a specific amendment ought to have been, according to Hawley's own standard, judged according to its merit rather than the character or motives of its proposer. However, hypocrisy did not necessarily make void the criticism that attacks on motivation had no place on the floor. For, even if one made this criticism hypocritically, it might have shown that such a criticism would be *received well*, which points to a common rhetorical standard held by members at the time.

The final statement on rhetoric was less of a censure than the rest. It concerned the providing adequate time for debate. While relatively straightforward, this is not unimportant, for we will see differing attitudes towards allowing time for debate in coming debates. Both a major Democrat and Republican made statements calling for adequate time for debate. Pendleton, the floor manager of the bill stated on December 22<sup>nd</sup> that he "[does] not wish to obstruct the wish of the majority of the Senate by insisting upon any particular hour for the closing of the debate."<sup>128</sup> Edmunds, on the same day, added, " I do not like the idea of closing the mouth of any Senator. I said a minute ago that I wanted to make a speech. That was stated perhaps too largely. I do wish to have the right and I wish every other Senator to have the right, subject to his own sense of duty to his fellows and to his country, to state shortly and precisely the points I have to present."<sup>129</sup>

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<sup>128</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 22, 1882): S 571.

<sup>129</sup> *Ibid.*

#### *Standard #4: Masculine Rhetoric*

Throughout the course of this debate there was little to no use of the types of feminine rhetoric used in the modern televised responses to the State of the Union Address or in the later reform debates. As the other sections of this chapter (especially sections 1-3) illustrate, this debate contained a great deal of masculine rhetoric. The debates often called for evidence. This can be seen in the arguments over Jefferson's real position on the spoils system. Members offered documents and speeches of Jefferson to support their point. The debates were also competitive, without being overly emotional. The presidential removal debate in section one sees members offering competing constitutional interpretations. Section three illustrates members offering competing interpretations of a possible mandate. Often the language was more legalistic and precise than the vague platitudes seen in later chapters. As the rhetoric described in the other sections illustrates the masculine tone of these debates, a separate section citing examples of this is not necessary.

#### *Standard #5: A More Restrained Crisis Rhetoric*

In the debate on the Pendleton Act, the sense of a crisis was far less than in the later debates discussed. Overall, it was more restrained than in future debates. This does not mean that the debaters did not use strong language to describe the issues raised in the debate. For example, the civil service system was described as, "evil," "corrupt," "debauched," and "demoralizing." However, unlike the revolt against Speaker Cannon discussed in the next chapter, and even more unlike the 1946 and 1961 reforms, crisis rhetoric was less dominant. There are three important ways that the crisis rhetoric in the Pendleton Act was less problematic. The first is that, unlike the 1946 and 1961 reforms,

this debate was not framed or introduced by its sponsors/leaders as a crisis. The second is that crisis rhetoric was rarely used. The third is that moderate “anti-crisis” rhetoric was used often.

In both the 1946 and 1961 debates, the floor leader of the bill or resolution stated that the United States had reached a crisis that could only be solved by the passing of this bill. In both of these debates the leaders often repeatedly used crisis rhetoric to push their measure forward. Mr. Pendleton’s introduction to the bill was a bit more balanced. There was a part of his speech where he used crisis rhetoric. He argued,

I believed then, and I believe now, that the existing system which, for want of a better name, I call the “spoils system,” *must be killed or it will kill the Republic*. I believe that it is impossible to maintain free institutions in the country upon any basis of that sort. I am no prophet of evil, I am not a pessimist in any sense of the word, but I do believe that if the present system goes on until 50,000,000 people have grown into 100,000,000 and 140,000 officers shall have grown into 300,000, with their compensation in proportion, and shall depend upon the accession of one party or the other to the Presidency and to the executive functions, the Presidency and the country, if it shall last in name so long, will be put up to the highest bidder, even as in Rome the imperial crown was put up to those who could raise the largest fund.<sup>130</sup>

Indeed, talking about the killing of the Republic fits in with the crisis rhetoric discussed in later chapters. Yet, the crisis was particularized. The Republic was threatened by corrupt elections, and a bloated civil service was imminent. Later debates would often simply state that if the measure in question failed, the government would fall. In addition to restraining this crisis rhetoric by pointing to a particular problem, Pendleton was willing to give praise where praise was due. This was another type of restraint. The following part of his opening speech was more moderate:

I do not say that the civil service of the Government is *wholly bad*. I can not honestly do so. I do not say that the men who are employed in it are all corrupt or

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<sup>130</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 12, 1882): S 206.

inefficient or unworthy. That would do very great injustice to a great number of faithful, honest, and intelligent public servants. But I do say that the civil service is inefficient; that it is expensive; that it is extravagant; that it is in *many* cases and in *some* sense corrupt; that it has welded the whole body of its employees into a great political machine; that it has converted them into an army of officers and men, veterans in political warfare, disciplined and trained, whose salaries, whose time, whose exertions at least twice within a very short period in the history of our country have robbed the people of the fair results of Presidential Elections.<sup>131</sup>

Here he limited his description of the problem to the particular issue of this reform. He did argue that civil service corruption did overflow into presidential elections. This was discussed in the earlier quote as well as when he made the Roman analogy.

There were a few others who used crisis rhetoric during the debate. However, in the one hundred and ninety pages that the Congressional Record reported of this debate, there were very few times where senators argued that there was a full-blown crisis in our government or system. One example would be when Mr. Cockrell, an avid reformer, argued

Mr. President, the greatest danger to our republican institutions is not from foreign foes or internal dissensions or revolutions, but from the corruption of the source of political power... *Corruption kills honor, virtue, and patriotism, and saps the very foundations of society and brings down the structures of States and nations in ruins and in disorder.*<sup>132</sup>

He then argued that without this reform such a sapping would occur. The statements by Cockrell and Pendleton were the most extreme crisis rhetoric in the course of the entire debate. In later debates, especially in 1961, such rhetoric became the norm.

In addition to the sparse use of crisis rhetoric, this debate contained more “anti-crisis” rhetoric than later debates. Anti-crisis rhetoric is either rhetoric that criticizes the use of crisis rhetoric in general or claims that the current situation is mischaracterized as

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<sup>131</sup> Ibid., S 204.

<sup>132</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 21, 1882): S 526.

a crisis. Mr. Hawley, who was actually in favor of the Pendleton Act, called into question the critical nature of the current situation. He observed

Now, do not let us indulge in any ideal views on this subject—ideal in the direction of optimism or otherwise. You hear some of the ardent and enthusiastic friends of this measure, just as you will hear in *all cases of change or reform*, believing that all the evils of the civil service will vanish the moment you shall have put an iron framework of some description upon the statute-book. This is not to be so. *There are to be evils, there are to be misfortunes, there are to be, if you choose weaknesses and corruptions, no matter what system you may adopt. But I protest a great deal more vigorously against an extreme denunciation of the existing system of the country.*<sup>133</sup>

Later he described these denouncers as those who made “constant reference to the ruinous condition of this country and to the corrupt state of the whole public service, to the degradation of politics.”<sup>134</sup> Hawley rightly observed that in all efforts of reform there tended to be idealists. Idealists often over-emphasize the evil against which they are fighting. For Hawley, political ills always existed in a manner of degree. He agreed that the current civil service was corrupt and supports made it *less* so. Along similar lines, Mr. Jones, also a supporter of the bill, argued that current problems were manners of degree and that this called for a more gradual reform approach. He argued,

I am not one of those reformers who are disposed to *clamor and complain* about everything in connection with the practical administration of government...I say this bill is a step in the right direction, and although it may not come up to that standard of radical reformation that some would have us inaugurate at a single step, I believe the principle of it, if made effective and carried out in good faith, will tend very greatly to improve the civil service of the country.<sup>135</sup>

He criticized those who clamored and complained. While complaining would not necessarily constitute crisis rhetoric, clamoring might. Regardless, he seemed to be

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<sup>133</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 13, 1882): S 242. Emphasis added.

<sup>134</sup> *Ibid.*

<sup>135</sup> *The Civil Service*, S 133, 47th Cong., 2nd sess., *Congressional Record* (December 16, 1882): S 360.

critical of the heightened sense of the problem presented by some reformers. Additionally, the fact that he was content with small steps to simply improve the situation did not seem to indicate that he believed that there was a crisis at that time.

One final example of anti-crisis rhetoric makes an argument that the more one uses crisis rhetoric, the less likely one is to be taken seriously. Mr. Windom, a supporter of the bill, made the following argument:

I have heard a great many very broad charges against the Executive Departments in the speeches by gentlemen on the other side of the Chamber, but I was amazed when I read in the morning papers the statement made by the Senator from New Jersey. When Senators confine themselves to such statements as that made by the Senator from Indiana, to wit, that the Departments are reeking with corruption, it is simply the ordinary Democratic declamation, and nobody cares anything about it or pays any attention to it.<sup>136</sup>

To be sure this was a partisan attack. Windom called out the Democrats for using crisis rhetoric. Yet, partisan motivations can still bring about true observations. Indeed the more one uses the crisis rhetoric, the less believable a crisis is.

All of the above factors: 1) the balanced approach of the bill's sponsor, 2) the relative rareness of the use of crisis rhetoric, and 3) the presence of anti-crisis rhetoric, made crisis rhetoric less problematic than it was in later debates. As Mr. Hawley rightly observed, reform efforts tend to employ this type of rhetoric. Yet, within a more substantive debate, the excesses of such rhetoric can be restrained or at least challenged.

### *Summary*

The debate on the Pendleton Act contained the most deliberative rhetoric of all the debates discussed in Part II. This may be for a number of reasons. First, this debate was the furthest time-wise from developments in the mass-media, the permanent

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<sup>136</sup> Ibid., S 365.

campaign, and the “rhetorical presidency.” Second, it was carried on in the Senate and dealt with a less partisan and more institutional reform than the debates in 1910 and 1961. Thus, while the next chapter will also examine a debate with a great deal of deliberative rhetoric, the debate on the Pendleton Act contained slightly more so.

Given the close to two hundred pages of debate on this reform, plenty of time was afforded for actual debate and questions. While some of the speeches, especially early in the debate, might have been prepared beforehand, a good number of the speeches were on the spot responses to opposing arguments and questions. Thus, members must have been able to defend and understand the arguments they were making. Surprisingly, for a rather technical bill, the rhetoric of this debate often rose to the level of discussing constitutional principles. In fact, as the length of the analysis of constitutional tradition in this chapter might suggest, constitutional questions were never far from the debate. This debate had far more substantive debate on these principles as well as on the thought of the American founders and other political ancestors than any other debate. The use of constitutional principles did not seem to always have been simply a mask for partisan reasons, as at times those who agreed on policy or who belonged to the same party would articulate different understandings of these principles.

There was also more of a sense of rhetorical awareness and rhetorical standards in this debate than in any other discussed. Members were not reluctant to criticize the way in which other members *spoke*, not just the substance of their arguments. Here, masculine rhetoric was far more prevalent than feminine rhetoric. Finally, crisis rhetoric was somewhat inevitable since this was a major reform; it is difficult to achieve an institutional overhaul without some such rhetoric appearing. However, the crisis rhetoric

used in this debate was less likely to undermine deliberation for a number of reasons. It was restrained to the issue at hand, it was often challenged by other speakers, and it was not used as a justification to shut down debate.

To be sure, there were speeches made during this debate that fell short of the ideal of deliberative rhetoric. Yet, the Pendleton Act debate is a shining example of the potential for congressional rhetoric.

## CHAPTER FIVE

### The Revolt Against Speaker Cannon

#### *Introduction*

Speaker of the House Joseph Gurney Cannon, perhaps the most powerful single Congressman in American History, held enormous control over public policy, House rules, and committee assignments from 1903-1911. While a shrewd politician, by 1910 Cannon had pushed his power too far, at least as far as a “majority” of the House of Representatives was concerned. Beginning on March 17<sup>th</sup>, 1910 this “majority” led a revolt against the Speaker by voting on a resolution to strip the Speaker of a great deal of his powers. The resolution read:

House resolution 502.

*Resolved*, That the rules of House be amended as follows:

"The Committee on Rules shall consist of 15 members, 9 of whom shall be members of the majority party and 6 of whom shall be members of the minority party, to be selected as follows:

"The States of the Union shall be divided by a committee of three, elected by the House for that purpose, into nine groups, each group containing as near as may be, an equal number of Members belonging to the majority party. The States of the Union shall likewise be divided into six groups, each containing, as near as may be an equal number of members belonging to the minority party."

"At 10 o'clock a.m. Of the day following the adoption of the report of said committee each of said groups shall meet and select one of its number a member of the Committee on Rules. The place of meeting for each of said groups shall be designated by the said committee of three in its report. Each of said groups shall be designated by the said committee of three in its report. Each of said groups shall report to the House the name of the Member selected for membership on the Committee on Rules.

"The Committee on Rules shall select its own chairman.

"The Speaker shall not be eligible to membership on said committee.

"All rules or parts thereof inconsistent with the foregoing resolution are hereby repealed.<sup>1</sup>

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<sup>1</sup> *The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 17, 1910): H

Before the resolution, the Rules Committee consisted of five members, three of whom were members of the majority party. The Speaker of the House was one of the members of the committee, and he chose the other two members of the majority party who would sit on the committee. It was through these means that Cannon controlled the legislative calendar and a great deal of the action on the floor. This chapter will examine the four day debate concerning this resolution.

Many histories and textbooks on Congress refer to this event as the “revolt” against Cannon. Indeed Cannon's political overreach made the time ripe for a resolution like this to pass. However, the revolt was also against a system that allowed, in the minds of opponents, too much centralized power in office of the Speaker. In fact, during this debate many of the members of Congress used terms of fighting a system rather than a man. Scholars Joseph Cooper and David Brady argued that

it was with good reason that Speakers of the House in the years between 1890 and 1910 were often referred to as czars. The Speaker appointed the committees. He served as chairman of and had unchallengeable control over the Rules Committee. He had great, though not unlimited, discretion over the recognition of members desiring to call business off the calendars, to make motions, or to Address the House, and absolute discretion over the recognition of motions for unanimous consent and suspension of the rules.<sup>2</sup>

While Cannon may have been the epitome of this system, he was also the culmination of a twenty year historical development toward centralization. Thus, the following debates fit in with our other debates as an institutional reform and not just an attack on a particular leader.

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<sup>2</sup> Joseph Cooper and David W. Brady “Institutional Contact and Leadership Style: The House from Cannon to Rayburn,” *American Political Science Review*, Vol. 75, No. 2 (Jun., 1981): 411-12.

*A Bit on Uncle Joe and his Foes*

Joseph “Uncle Joe” Cannon from Illinois, was a member of the House of Representatives from 1873-1891, 1893-1913, and 1915-1923. By 1889, Cannon had become a major Republican player and had even run against the famous Thomas Reed for the Speakership. After losing, Cannon became chairman of the Appropriations and Rules Committee, two of the most influential committees in the House. By 1903, Cannon was able to win the Speakership and to centralize a great deal of power behind the office. To maintain party discipline he had a hands-on involvement in committee assignments and running the Republican Caucus.<sup>3</sup> Richard Bolling in his work *Power in the House* argued,

in institutional terms, therefore Cannon, like Reed and Clay, believed that power and responsibility were different sides of the same coin. A blurring of one affects the value of the overall piece. Cannon thought it unpardonable error not to use the authority of the Speakership to the fullest...Cannon admired Clay and Reed for organizing the House so that legislation of the majority could be acted on.<sup>4</sup>

His opponents, however, did not see it this way. Rather than viewing Cannon’s actions in terms of responsibility, they tended to view his leadership as unfairly denying his opponents access to even having their measures considered. His opponents were Democrats and what came to be known as “insurgent” Republicans. These men had made moves against Cannon before the revolt examined here. Former Vice-President, Richard Cheney, in his history of congressional leadership *Kings of the Hill*, recounts an earlier attempt to undermine Cannon:

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<sup>3</sup>For a more detailed account of Cannon’s use of the appointment power see Eric D. Lawrence, Forrest Maltzman, and Paul J. Wahlbeck, “The Politics of Speaker Cannon’s Committee Assignments,” *American Journal of Political Science*, Vol. 45, No. 3 (Jul., 2001), 551-562. The authors argue, “Cannon was a strategic leader who systematically employed different assignment criteria at different stages of his speakership. Whereas during his first term in office (the 58<sup>th</sup> Congress, 1903-1905) Cannon used his powers to promote party loyalty, at the start of the 61<sup>st</sup> Congress (1909-1911), Cannon used his power to punish members who he viewed as personally disloyal.”551.

<sup>4</sup>Richard Bolling, *Power in the House; A History of the Leadership of the House of Representatives*,. (New York: Dutton, 1968), 61.

In the spring of 1909, when the Sixty-first Congress gathered in special session to consider the tariff, Cannon was elected to a third term as Speaker by a comfortable margin. But Champ Clark, the new Democratic leader suspected there were a number of Republicans who, though unwilling to join the Democrats in electing a Speaker, would be happy to vote with them to reform procedures. He gave them their chance by demanding a roll call when the customary motion was made to adopt the rules of the previous House. Clark's instincts were right; the motion was defeated by four votes, and the way was open to amend the rules. He promptly offered a resolution that would enlarge the Rules Committee, remove the Speaker from it, and drastically curtail his power to make committee appointments. Clark listened intently as the clerk called the roll. The insurgent Republicans were holding with him, but what was happening to the Democrats? A block of them voted with the regular Republicans and his resolution lost.... Why had his Democratic ranks crumbled?

As it turned out, Cannon and his lieutenants had not been waiting idly by to see power stripped from the speakership. They had been on the telephones doing some horse-trading and the fact that the tariff would be revised gave them the wherewithal to trade.<sup>5</sup>

This brief account reveals two important things for the following chapter. First it shows that a measure like the resolution introduced on March 17<sup>th</sup>, 1910 had already been attempted and that certain Republicans had defected from Cannon's ranks. Second, it illustrates that Cannon was adept at political maneuvering.

In addition to prior attempts to weaken the power of the Speaker directly, another reform had been passed in 1909 that played an important role in the debate. The reform, known as Calendar Wednesday, "was designed to provide each committee with the opportunity to bring to the floor nonprivileged legislation that was blocked in the Rules Committee."<sup>6</sup> This was an indirect attack on Cannon as he used the Rules Committee to keep legislation that he disagreed with from the floor. Indeed, "Cannon himself was wary about Calendar Wednesday. During the first session of the Sixty-first Congress, he had been able to avoid having one, either by adjourning the House from Tuesday to

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<sup>5</sup>Richard B. Cheney and Lynne V. Cheney. *Kings of the Hill: Power and Personality in the House of Representatives*, (New York: Continuum, 1983),129-130.

<sup>6</sup> Bolling, 70.

Thursday or by making certain his lieutenants brought up such privileged matters on tariffs on Wednesday.”<sup>7</sup> It was just such a maneuver by Cannon on March 16th that sparked the “revolt” on the 17<sup>th</sup>.

Before moving on to the different rhetorical issues touched on in this debate, a basic outline of the events that took place over the four days of debate is necessary, as there was a great deal of complicated parliamentary jostling that went on. The following is a daily outline that proceeds chronologically through the events over the four days. It does not have the times (they are unrecorded in the Congressional Record) of the events, just the order.

### *Outline of Legislative Debate*

#### I. Wednesday March 16<sup>th</sup> 1910 (Calendar Wednesday)

A. Representative Crumpacker raised the House Joint Resolution 172 on the census. He claimed that this was a matter of constitutional privilege as the Constitution states that, “The actual Enumeration *shall* be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct.” The word “shall” made consideration of the measure mandatory.

B. Representatives Fitzgerald and Mann raised the point of order that it was “Calendar Wednesday,” and thus no other business could come before the House besides committee reports, unless there was a two-thirds majority vote to suspend Calendar Wednesday. Thus, there arose the question of whether the census, which was claimed to be a matter of constitutional privilege, outweighed the rules of the House.

C. Speaker of the House Joseph Cannon ruled against Fitzgerald and Mann's point of order. This meant that the census bill over-rode the regular order for Calendar Wednesday.

D. Representative Fitzgerald appealed the decision of the Chair, and debate on the appeal ensued.

E. Representative Crumpacker made a motion to postpone debate and decision on the appeal of the Chair's ruling until the next day. The motion failed 121-153. Debate resumed.

F. The appeal was then put to a vote on the question “shall the ruling of the Chair stand as the judgment of the house?” The question failed 112-163. Thus, Cannon

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<sup>7</sup> Ibid.

G. was overruled and Calendar Wednesday proceeded instead of the resolution on the census.

II. Thursday March 17<sup>th</sup> (Saint Patrick's Day)

A. Representative Crumpacker again raised Joint Resolution 172 on the census. Again he argued that the bill was privileged under the Constitution.

B. Representative Butler raised a point of order that under the rules of the House Resolution 172 was not privileged.

C. Cannon decided not to rule on the point of order but to submit the point to a vote by the House.

D. Representative Butler moved to the previous question on the point of order. His motion failed and debate on the point of order ensued.

E. Representative Butler again moved to a previous question. This motion was agreed to and then the question of the point of order was voted on.

F. The question of whether the census bill was now in order was raised. It passed 201-72.

G. Amendments to Joint Resolution 172 were then taken up and voted on. It was then passed by the House.

H. Representative Norris then raised Resolution 502 to change the rules (the Resolution mentioned above on changing the Rules Committee). He claimed that under the House's previous ruling it was constitutionally privileged because the Constitution allowed the House to make its own rules.

I. Representative Dalzell (a member of the Rules Committee) made the point of order that this is not privileged under the Constitution. Cannon then allowed debate on Dalzell's point of order.

J. Representative Tawney moved that the House adjourn until the next day. His motion failed 142-147. Debate on Dalzell's point of order resumed.

K. Representative Roberts moved that a call of the House be made to compel members to return to the body. The motion failed 108-117. Other motions were made that there was no quorum, but it was shown that a quorum was present. Debate on the point of order resumed.

L. Again Representative Tawney moved that the House adjourn. Again his motion failed, 137-146. He then moved for a recess until the next day; this also failed 141-142. Debate continued.

III. Friday March 18<sup>th</sup> (continuation of the previous legislative day.)

A. Representative Tawney moved to recess until later that morning. The motion failed 134-141.

B. Representative Underwood moved for a call of the House. This motion passed, and it was determined that there was no quorum. Underwood then moved that the Sergeant at Arms be instructed to arrest absentee members present.

C. A debate then ensued (without a quorum) about whether the minority party could deputize other Sergeant at Arms to compel member attendance (this was because the normal Sergeant at Arms was accused of intentionally not compelling members to return to the House). The reasoning here was that the current Sergeant at Arms was under the control of the Cannon faction and was thus not faithfully carrying out his duty of bringing absent Republicans back to the House.

D. Much confusion followed. At one point the Speaker pro tempore held that there was not a quorum when a call had just shown that there was. Members claimed that the House was in a state of anarchy.

E. Eventually a call was made and a quorum was established. Debate resumed on the point of order.

F. Representative Martin made a motion to recess until 4pm that day. This finally passed 160-152.

G. The House then reconvened at 4pm, voted to postpone the business of the point of order until the next day, and took up other business.

#### IV. Saturday March 19<sup>th</sup> (St. Joseph's Day)

A. Speaker Joseph Cannon began the legislative day by ruling on the point of order raised by Representative Dalzell on the 17<sup>th</sup>. He ruled in favor of the point of order and thus held that Resolution 502 was not in order.

B. Representative Norris then appealed the decision of the chair and moved to a previous question. Representative Gaines then made a motion to adjourn which had precedence over Norris' motion to appeal the decision of the chair. Gaines' motion failed 164-182. Norris' motion to move to previous question passed 183-160.

C. A vote was then taken on the question "Shall the decision of the Chair stand as the judgment of the House?" This question failed 162-182. This meant that Resolution 502 was now considered a matter of privilege and could be taken up on the floor.

D. Resolution 502 was then debated. Representatives Norris and Dalzell controlled the floor debate for their respective sides.

E. Representative Norris moved to the previous question and this passed 180-159.

F. An amendment to Resolution 502 was passed 193-153.

G. Resolution 502 as a whole was passed 191-156

H. Cannon addressed the floor and claimed that he no longer represented the majority and would entertain a motion to declare the Speakership vacant. There was great confusion in the House.

I. Representative Burleson moved to the previous question regarding that the office of the Speaker be declared vacant. This failed by a vote of 155-192.

This outline is important for two reasons. The first, as mentioned above, is that it helps to bring a better understanding to the arguments being made by representatives at a particular time. A snapshot of the progression of the story helps to illuminate the characters' roles.

The second is that this outline could allow one to make a legitimate objection to what this study seeks to do. One can see clearly from the major events and votes that

took place during the debate, that it involved a great deal of partisan tactical moves. The most prominent example would be Cannon's men motioning to adjourn repeatedly in order to get the votes they needed to defeat the Norris resolution. Indeed, for the most part, it was known how most members would vote on a particular question. One could then say that the arguments here were a sham, that they did not really matter, and that they were not going to persuade anyone. This may have been true. It is difficult to determine whether the floor debate influenced members to vote a particular way. However, rather than making the study of the arguments unimportant, I believe this makes them even more interesting. For as will be shown below, this debate, like the debate on the Pendleton Act, turned on complicated institutional and constitutional questions. Members looked to the Constitution, precedent, tradition, and foundational American principles to fashion their arguments. Why do this if there was little possibility of moving members to change their positions? As will be seen in the coming chapter on the expansion of the Rules Committee in 1961, the situation was very similar politically, yet the debate was much shorter and involved far less argument and fewer appeals to principle. Perhaps the difference can be attributed to earlier rhetorical norms. It seems that, earlier in congressional history, members felt the need to justify their actions rhetorically, even if they had a good idea of how the vote would turn out. They were not content simply to exercise their will, but felt the need to give their reasons for doing so.

### *The Rhetorical Development Time Frame*

The revolt against Speaker Cannon took place in a rhetorical time-frame that was very similar to that of the Pendleton Act, at least so far as our three main variables are concerned. Between 1883 and 1910, there were no new major developments in the

technology of mass political communication. Like the Pendleton Act it took place far earlier than the development of the permanent campaign by almost any account. As Mary Stuckey observes in her discussion of rhetoric during the early 20th Century,

Even as the presidency assumed a more legitimating than strictly administrative role, electioneering was still kept largely separate from issues of governance. The president was rhetorically more limited in this respect than was the presidential candidate. The candidate has something to prove. She is competent, or he is tough. The president had nothing to prove, but the polity to represent. These are still seen as separate activities requiring separate tactics and adaptations.<sup>8</sup>

Finally, according to Tulis and others, this debate would have happened before the “rhetorical presidency.” While President Theodore Roosevelt was a transitional figure for Tulis, the major change in presidential rhetoric came with Wilson.

*Standard #1: The Marriage of Speech and Thought*

This debate was filled with lengthy substantive question and answer exchanges between opponents. Speakers were consistently asked to yield for questions and for the most part were willing to do so. On the first day of debate, March 16<sup>th</sup>, there were a number of exchanges. In the first few pages of debate representatives took up the argument of whether calendar Wednesday or a resolution on the census ought to take precedent. Speaker Cannon had ruled that the resolution on the census was constitutionally privileged and thus was in order. Representative Fitzgerald appealed the decision and was then forced to defend his position. He was questioned repeatedly by Representative Mann about other actions that might have taken precedence over calendar Wednesday, such as swearing in a new member. Fitzgerald answered that the cases were not similar and that the current case called for upholding calendar Wednesday.

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<sup>8</sup> Stuckey, 25.

Directly after this, one of the best exchanges in the debate occurred on the question of constitutional privilege. Representative Kiefer made an argument responding to Fitzgerald that matters of constitutional privilege ought to take precedent over “mere” rules of the House such as Calendar Wednesday. Other members took on Kiefer's argument by proposing that *any* action taken by Congress in relationship to its enumerated powers could be considered constitutionally privileged. If this was the case then calendar Wednesday was absurd because it could always be trumped by some other matter. This is a condition they hoped to avoid. For the sake of illustrating a typical question and answer exchange in this debate, the following section of debate is quoted

Mr. Hull of Iowa. I would like a little information, if the gentleman will yield for a question.

Mr. Keifer. Certainly.

The Speaker. The time of the gentleman from Ohio [Mr. Keifer] has expired.

Mr. Keifer. I would like it if the gentleman from New York Would give me five minutes more.

Mr. Fitzgerald. I will yield five minutes more to the gentleman from Ohio.

Mr. Hull of Iowa. The Constitution provides that Congress must raise revenue. The Ways and Means Committee is the committee charged with that duty. Under the Constitution, would a report from the Ways and Means Committee set aside calendar Wednesday?

Mr. Keifer. Not at all. That has nothing to do with the question at all. Generally the Ways and Means and the Appropriations committees have, under our rules, the right to take up business reported to them as privileged.

Mr. Hull of Iowa. They are both constitutional.

Mr. Kiefer. The Constitution says that revenue measures shall originate in the House.

Mr. Mann. The Constitution does not say that the Constitution shall raise revenue. It provides the power for raising revenue. In one case it shall do a thing, and in another case it shall have the power to do it.

Mr. Hull of Iowa. That's practically the same.

Mr. Keifer. The Constitution and the whole organic power of the Government are vested in the Congress, and there are various things that are essential to its life that Congress may do. But the Constitution does not direct that they shall do all these things, as it does on this particular matter of the census.<sup>9</sup>

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<sup>9</sup> *The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 16, 1910): H 3243.

This short example illustrates well the conventional practice that dominates during this debate. One sees here that, not only was Keifer willing to yield for question from his opponent, but Fitzgerald who had initially granted Keifer time to speak was willing to *extend* Keifer's time to answer questions. Yielding for questions was the default position during the debate. When a member refused to yield it was usually because they were in the middle of making a point and wished to finish or because the other member was not actually asking a question.

Additionally, one sees that while the members here disagreed and are using questions and responses to attack one another, that the tone was civil. Thus, one can see here “manly” rhetoric that did not necessarily have a harsh tone. Most other exchanges followed the same pattern. A representative would ask another “gentleman” to yield and the response was often “certainly” or “with pleasure.”

Even when members were reluctant to answer a question, they typically ended up answering it eventually. For example, on the 17<sup>th</sup> Representatives Douglas and Madison had an exchange about whether the current debate was centered around considering if the rules resolution was in order or on the merits of the rules resolution itself. Douglas, an opponent of the resolution wanted to push the debate back to the question of whether it was in order.

Mr. Douglas. Will the gentleman yield?

Mr. Madison. Not now; I will later.

Mr. Douglas. I was simply going to ask the gentleman a question as to what was before the House, and ask the gentleman to define it.

Mr. Madison. All right.

Mr. Douglas. Is the question before the House a question of order or is it a question on the merits of the resolution?

Mr. Madison. Ah, my friend, we have been discussing the merits too much for you to ask me that question now.

Mr. Douglas. What is the question before the House? Is it a question of the orderly procedure of the business of this House or is it a question concerning the merits?

Mr. Madison. Answering my friend, who knows it to be true in the final analysis it must come to a question of the reform of the rules of the House of Representatives. [Applause].

Mr. Douglas. After the Democratic applause has subsided, I would like to ask the gentleman whether or not he believes that this is a privileged resolution under the rules of this House or not?

Mr. Madison. I will answer the gentleman by saying, as did my friend who replied to him some time ago, and I answer it with all sincerity and fairness, that under the rules as they have been qualified and modified by the action of this House to-day, yes.<sup>10</sup>

Madison was obviously trying to avoid Douglas' question here as he first said he would not yield, and then, after yielding, commented that Douglas' question was not appropriate at this point in the debate. Yet, he did entertain the questions of his opponent.

There were many more exchanges like this throughout the debate. Members challenged each other's positions and responded to challenges. Unlike even the Pendleton Act, very few speeches seemed to be prepared in advanced. Even if members expected little movement in votes, this debate was largely an actual conversation between members.

### *Standard #2: Constitutional Rhetoric*

This debate, like the Pendleton Act before it, dealt with a number of issues that could be considered part of the constitutional tradition. While the discussion of these issues was not as lengthy as in the Pendleton Act, it is still impressive for a debate that was shorter and more openly partisan. If compared with later debates, one can see that the rhetorical focus on the constitutional tradition was far more substantive. As will be

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<sup>10</sup>*The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 17, 1910): H 3306.

seen, the question of majoritarian rule and the role of parties was also raised in the 1961 debate. However, the discussion of that issue was far more nuanced and lengthy here.

### *The Census, Rules, Enumerated Powers, and Privileged Status*

As seen in the outline of the debate above, early on March 16<sup>th</sup>, calendar Wednesday, Representative Crumpacker moved that the House consider an amendment to section 8 of the Census Act. As the year was 1910, Congress had been legislating on the decennial census. The amendment offered was one that dealt with how to *classify* respondents, not *authorizing* the taking of the census. Debate over whether the amendment ought to be considered was both a question of constitutionality and of institutional rules, for the main question hinged on how to rule in the conflict between the House rule establishing Calendar Wednesday and the House tradition of allowing the consideration of “constitutionally privileged” matters to take precedence over normal business on a particular legislative day. This question was difficult because the Constitution itself does not mandate that Congress consider matters of constitutional privilege before any others. Rather, it had become a precedent through past congressional action. Thus, some argue that there was simply a conflict between two House rules here. Others would say that while recognizing constitutional privilege was a tradition, it is *implied* by the constitution itself. We turn then to the arguments.

In this debate, like in the constitutional debates on the Pendleton Act, there tended to be more positions on a question than there were alternatives for action. While there were two options for what the House could actually do in this situation (either consider the Crumpacker resolution privileged and consider it before the normal Calendar Wednesday committee reports or proceed with Calendar Wednesday), there were many

different arguments as to why either of these courses of action should have been taken. First then, we turn to Speaker Cannon's initial ruling on the matter which preceded the debate. He ruled:

This joint resolution is called up by the gentleman from Indian [Mr. Crumpacker], and upon its face it provides an amendment to the law for taking the census and especially for the enumeration of the inhabitants of the United States, and that in the opinion of the Chair is a question of privilege that arises under the Constitution. The fixed law of the land- the Constitution-of course overrides any rule that the House might make for its procedure, although it is true that the Constitution empowers the House to make rules for the conduct of its business. The Chair, however, finds that questions similar to this have frequently been brought to the attention of the House, when business has arisen where the rules of the House touching the order of business conflict with the demands of the Constitution, and the Chair will have the Clerk read from a decision by Mr. Speaker Henderson.<sup>11</sup>

After allowing a lengthy precedent to be read Cannon continued:

The examination of the precedents shows that a certain class of business, like election cases, like matters arising in impeachment, and like legislation relating to apportionment or the taking of the census as to the population, have invariably been admitted as involving constitutional privilege, presenting a privilege higher than any rule of the House would give. Therefore the chair overrules the point of order.<sup>12</sup>

Cannon's position here is interesting. For while he held that certain matters ought to trump all other House rules because of their foundation in the Constitution, their privileged status must ultimately rely on how the House has decided this question before. That is, it relies on precedent. Thus, while the House ought to rule certain matters privileged, it seems that they could legitimately do otherwise. The force of precedent supports Cannon's position here, but what if it had not? Right before a vote is taken on the appeal of Cannon's decision he spoke again on the issue stating, "If the House sees proper to overrule the precedents and to make this precedent that may come to plague the

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<sup>11</sup> *Amendment 8 to the Census Act*, H.R. 172, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 16, 1910): H 3240.

<sup>12</sup> *Ibid.*, H 3241.

House in the future, well and good. The *House has the power to do it* and the Chair has no feeling of pride or vanity in the premises.”<sup>13</sup> Ultimately the House has the power to enact its will through a vote, regardless of precedent or the Constitution. This points to a certain majoritarianism on Cannon's part.<sup>14</sup> While he exerted strong control over the House in the capacities he was able to as Speaker, he seemed to admit that power ultimately resides in the majority.

After Cannon made his initial ruling, the House debated an appeal of the decision. A number of interesting arguments were made by both pro and anti-Cannon speakers. First, we turn to those who sought to overturn Cannon's ruling on the point of order. The main speakers were Representatives Gardener, Underwood, Fitzgerald, and Garrett. Gardener took a more pragmatic approach to the question. He said, “I am putting the case as a practical question.”<sup>15</sup> In doing so, he took a minimalist position (much like Republican Hoar in the Pendleton Act debate). For while in this particular case Gardener would have elevated the House rule of Calendar Wednesday over the census resolution, it was not clear that he would always elevate Calendar Wednesday over a matter of constitutional privilege. Rather than making a decision based simply on the status of constitutional privileged matters and House rules, Gardener turned to the intent of the tradition of constitutional privileged matters in the House. He observed,

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<sup>13</sup>Ibid., H 3251.

<sup>14</sup>See Keith Krehbiel and Alan Wiseman, “Joseph G. Cannon: Majoritarian from Illinois,” *Legislative Studies Quarterly*, Vol. 26, No. 3 (August 2001) pp. 357-389. These authors findings, “fail to corroborate the notion of majority party power and Cannon as a tyrant, and, if anything, support a new portrait of Cannon as a majoritarian.” The above quoted passage made by Cannon does seem to support such a claim. Cannon, if reluctantly, admits that the true power in the House comes from the majority.

<sup>15</sup>*The Rules*, H.R. 172, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 16, 1910): H 3241.

In all those rulings which accord privilege to bills presented as the result of a constitutional mandate, the basis on which they were given privilege has invariably been this, that if they were held to be unprivileged it might be impossible at the end of a session, for instance for the House to perform its constitutional duty, owing to the fact that other bills had the right of way...such rulings are predicated on the existence of a very different condition. The denial of Calendar Wednesday would result in no situation such that the House would be prohibited from performing its constitutional duty, unless perchance, we were to adjourn sine die to-morrow.<sup>16</sup>

Gardener was obviously pro-Calendar Wednesday, yet, according to his logic, there could be a situation where the census or some other constitutionally privileged matter would trump it. If it were the last Wednesday of the session, for instance, and a census bill had yet to be passed, Calendar Wednesday might be suspended. On the other hand, he also left room for other measures besides Calendar Wednesday to trump measures of constitutional privilege, so long as there was no danger that the constitutional issue might not be addressed.

Three other pro-Calendar Wednesday speakers took a moderate approach. They based their moderation on a different basis than Gardener, however. Representatives Townshend, Scott, and Martin based their arguments on the precise nature of Crumpacker's resolution.

### *The Role of Political Parties*

The debate on the resolution to change the Rules Committee, like the Pendleton Act, involved an in-depth discussion of the role of political parties. As in the Pendleton Act debate, specific concerns in the matter at hand raised more general questions about the role of parties in our system. In the Pendleton Act debate, the specific concern was the party practice of patronage. The primary issue in this debate was whether it was

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<sup>16</sup> Ibid.

legitimate for Republicans to join with Democrats to pass through changes to the rules. This particular question raised more general questions about party government, the caucus, and majority rule.

For the most part, there tended to be two rhetorical camps in the debate: 1) the Pro-Cannon Republicans who argued for strict party loyalty and 2) Republican insurgents and Democrats who argued that there were exceptions to strict party loyalty. Both sides seemed to acknowledge that majority-rule was an important principle in the American Republic. There was disagreement as to just what this meant, however. Some argued that it meant rule by the majority party. Others held that it meant whatever a majority of House members held on a particular issue. Pro-Cannon Republican Fassett during a lengthy speech about party government articulated the first position. He argued that if the Insurgents and Democrats carried the vote on the resolution, that it would destroy majority rule. He observed, “in my judgment, the place to adjust differences of opinion on unimportant questions and important questions of public policy and party policy is not in public where *one minority uniting with another minority may make a temporary majority.*”<sup>17</sup> The “majority” was something more permanent than the coalition on this issue. Further Fassett argued that, as the majority, the Republicans had almost absolute control over the government. He continued, “apart from courteous treatment, apart from reasonable consideration to the minority, the majority ought to control absolutely what the House does, everything that emanates from the House. We Republicans were put here by the American people for that purpose.”<sup>18</sup>

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<sup>17</sup>*The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 17, 1910): H 3302.

<sup>18</sup> *Ibid.*

Fellow Cannon loyalist Parker also emphasized the importance of having a permanent party majority. For without one, he argued, business cannot get done. He argued,

If a man chooses to consider it important enough to move to amend the rules, *he can nullify any majority*, as the majority has been nullified today, not only for four hours, but by successive motions for the two hundred and fifty hours that are all we have in a short session. There are 150 Members in the minority ready to bring forward such motions and have such roll calls. No such system of anarchy and chaos can be allowed in any deliberative body.<sup>19</sup>

Like Fassett, Parker believed that a permanent party majority must remain present in the House and control the agenda in order for the House to run properly.

Shortly after Parkers' statements Republican Reeder attempted to educate his insurgent party members about true majority rule. He opened his remarks, "I have some desire to do some good as I go through the world, and I want to now try to help these insurgents to a just conclusion as to the value of our foundational principle, 'the majority shall rule'"<sup>20</sup> For Reeder, this meant that a majority of the majority party shall rule. This was not the case in the current proposed rule change. He argued, "I insist that only a small minority of the majority party that do desire such a change in the rules have not sufficient reason to use foul means to accomplish their wish in this matter. They insist that they will rule the majority or they will ruin it-a very unfair process, a striking at the foundation principle of our Government; a very sacred principle to all patriotic people."<sup>21</sup> He concluded, "The fact is, the Republican party is in the majority, and if there is a

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<sup>19</sup> Ibid., H 3314.

<sup>20</sup> Ibid., H 3316.

<sup>21</sup> Ibid.

minority in that party who have convictions as to certain matters, they ought to go to the caucus and have the matter thrashed out there.”<sup>22</sup>

Joseph Cannon himself endorsed this view of majority rule, not through arguments like those above, but through his offering to entertain motions to declare the speakership vacant after the rules change resolution passed. He was not willing to accept that the insurgents could simply vote against the party on this important issue, then rejoin a Republican majority. He argued that after this vote, there appeared to be a new permanent majority with which he was out of line. He observed

The Speaker can not be unmindful of the fact, as evidenced by three previous elections to the Speakership, that in the past he has enjoyed the confidence of the Republican party of the country and of the Republican Members of the House; but the assault upon the Speaker of the House by the minority, supplemented by the efforts of the so-called insurgents, shows that the Democratic minority, aided by a number of so-called insurgents, consisting of 15 per cent of the majority party in the House is now in the majority, and that the Speaker of the House is not in harmony with the actual majority of the House, as evidenced by the vote just taken.<sup>23</sup>

Cannon, Parker, and Fassett, regarded “the majority” to be something permanent, something more than how a majority of the House voted at any particular time. They held that for majority-rule to remain in-tact that new majorities ought not to be created at the whim of members.

On the other hand, those in favor of the resolution to change the rules offered a different understanding of majority rule. Insurgent Nelson took on the argument that the insurgents represented a minority within the majority by throwing the same argument

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<sup>22</sup> Ibid.

<sup>23</sup> *The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 19, 1910): H, 3427.

back in the face of Cannon and his supporters. If the insurgents did not represent a true majority, certainly the Cannon faction within the House did not either. He argued,

Why should the subject of the rules be a party matter? At what convention did the Republican party adopt the present rules of the House? The Speaker says he represents a majority. But how? He and his chief lieutenants--favorites or personal friends, a small minority within the majority—call themselves the party and then pass the word on to the rank and file of the Republican membership to line up or be punished. What is the controlling force? Party principles? No. The Speaker's power under the rules—his patronage.<sup>24</sup>

He went on to compare the current rule of the small majority of Cannon-men to a form of autocracy. Thus, both pro and anti-Cannon speakers contrasted the principle of majority rule with another form of rule or lack of rule. The pro-Cannon speakers compared their idea of majority rule with anarchy, and the insurgents compared their understanding rule with autocracy.

A second question related to political parties in this debate was what the role and scope of the party caucus ought to have been. Many pro-Cannon men offered the caucus as the proper channel through which issues such as changes in the rules ought to be discussed. Cannon loyalist Reeder argued that the current method being pursued by the insurgents was illegitimate. He argued, “the fact is, the Republican party is in the majority, and if there is a minority in that party who have convictions as to certain matters, they ought to go into the caucus and have the matter thrashed out there, and if they can not convince the majority they ought to then abide by the will of the majority.”<sup>25</sup> Republican Townsend, while not using the word caucus, made a similar argument. He urged the insurgents, “I want to say to you, Mr. Speaker, and to you, my Republican

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<sup>24</sup> *The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 17, 1910): H 3304.

<sup>25</sup> *Ibid.*, 3316.

colleagues, that the question before us is one which we can settle in our own party. I am in favor of the best rules possible. And the majority must or ought to make and amend its rules.”<sup>26</sup> Townsend was actually open to the possibility of rules reform (more so than Reeder), but believed that it ought to have been done in the caucus.

Insurgent Cooper, on the other hand, held that he had no moral or political obligation to go through the caucus on the matter of rules. Certainly Cooper, like other insurgents, was aware that the proposed rules change would not successfully pass through the Republican caucus. In order to defend his position to go outside the caucus, Cooper argued that there were certain matters that the caucus could not bind a member on and that ought to be discussed outside the caucus. He argued, “Mr. Speaker, I have only one word more to say, and that is concerning the alleged binding power of the caucus. The Speaker in his remarks...criticized certain Republican Members because they did not obey the mandate of the caucus on the rules. I asset that no caucus has a right to bind a Member to vote for a set of rules.”<sup>27</sup> He was actually referring to a different rules incident than the current resolution, but his argument was made to justify the current action of the insurgents. He went on to discuss another incident where he crossed the caucus, the investigation of the use of public lands. Since he believed that public lands were the property of the American people, not of a particular department or party, he felt that he was not bound by the caucus in the matter. He observed, “that was one question on which the caucus had no right bind the vote of a Representative. Another such question is that of the rules. There are some subjects which have no business in a party caucus. I

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<sup>26</sup> *The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 18, 1910): H 3414.

<sup>27</sup> *The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 17, 1910): H 3322.

can not consent that a party caucus shall absolutely bind my judgment and control my vote on the vastly important question of what rules shall govern the House of Representatives.”<sup>28</sup>

### *Appeals to Political Ancestors*

In this category, the revolt against Speaker Cannon represents a transition between the Pendleton Act and the reforms to follow. It is a transition in a number of ways. First, while having significantly fewer appeals to political ancestors than the Pendleton Act, it did have more than most of the reforms to come. Second, while appealing to political ancestors at times, there was less substantive debate about the thought of these men than in the Pendleton Act, but more than in later debates. Past political figures were appealed to, not for discerning American or party principles, but to rally support and prove one's party credentials.

On March 17<sup>th</sup>, Insurgent Nelson gave a lengthy speech defending his resolution to make changes to the Rules Committee. Repeatedly, Nelson and others argued that changing the rules would bring the institution back to being a truly representative body, the type of body created by the Constitution. Yet, hardly any of the speakers talked about a particular founder's understanding of the Congress. Nelson, only briefly, in this speech appealed to the founders. He urged his colleagues, “if you pass this resolution, and we can go before the country and say we have applied the proper check upon the power of the Speaker and that the House of Representatives is what the fathers of the Constitution designed it to be—a truly representative body.”<sup>29</sup> The Congressional Record states that

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<sup>28</sup> Ibid., H 3323.

<sup>29</sup> Ibid., H 3306.

Nelson received applause after this statement. This may speak to the character of the appeal. While during the Pendleton Act speakers tried to unpack what exactly the founders (mostly Jefferson) thought about the practice of patronage, this appeal took on the characteristic of a simplistic assertion, a truism. Both sides of the debate agreed that Congress ought to be representative. The appeal to the founders here did not add much to the debate, as it often did in the Pendleton Act debate. Rather, it seems to have been used simply to rally support.

Nelson, in the same speech discussed above, provided a reference that was a bit more substantive. As an insurgent, he and others had been attacked throughout the debate as betraying their party. At times the insurgents defended themselves as being truer to the party or having the party's best long term interest in mind. Other times, insurgents made an argument for non-partisanship. Nelson supported this approach through an appeal to Washington's Farewell Address. He responded to a Republican attacker, "the gentleman appealed to the spirit of party. I appeal to the spirit of country. Let me call the gentleman's attention to that part of George Washington's Farewell Address, in which he speaks of the spirit of party and the despotism it may lead to if unchecked."<sup>30</sup> He then went on to quote passages from the speech and concluded, "these words of Washington make it clear that party spirit and not patriotism sustains the Speaker's autocracy. Love of party is good; love of country is better."<sup>31</sup>

The use of Washington here was certainly less nuanced than the use of Jefferson in the Pendleton Act. While both were appeals to authority, the appeals to Jefferson seemed to grapple with what he was saying and how to apply it to the particulars in the

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<sup>30</sup> Ibid., H 3304

<sup>31</sup> Ibid., H 3305.

debate. There was not much of an attempt in this speech to apply the general principles laid out by Washington in his address to the particulars in this situation. Argument here was replaced with assertion. Stating that the words of Washington made it clear that the Speaker was animated by party spirit and not patriotism is a large logical jump from a major premise to a conclusion. It is also interesting that no counter-examples were given of founders who thought parties were acceptable.

Since the debate between insurgents and Cannon loyalists took on the question of who was being true to the Republican party, famous Republican politicians were often appealed to. Republican Reeder, who disapproved of the insurgents, accused them of betraying the great men who established their party. He argued, “They [the insurgents] came here pretending to be Republicans, and the people sent them here supposing they would act with the Republicans. They seem to think it proper to join hands with the enemies of republicans, to strike down the grand old party of Lincoln, McKinley, Roosevelt, and Taft.”<sup>32</sup> Republican Cooper, an insurgent responded by claiming that he had always been loyal to the party of Lincoln. He lamented that his loyalty was in question observing,

As if anyone who undertook rationally and candidly to discuss this question of the reformation of the rules of the House of Representative, was for some reason to be branded as a traitor to his party. I became a party man as long ago as I can remember.

I began to hurrah for Abraham Lincoln when I was a very small boy. I did it because I thought he was on the right side, and because practically all-not all, not all, I want to say to my friends across the aisle-practically all of the respectable people of my acquaintance were doing the same thing.<sup>33</sup>

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<sup>32</sup> Ibid., H 3316.

<sup>33</sup> Ibid., H 3318.

Another pro-Cannon man simply appealed to Theodore Roosevelt to make an argument in favor of Cannon. Representative Fassett, on the 17<sup>th</sup> read a letter by Roosevelt that praised Cannon. Before doing so, he spoke of Roosevelt as follows, “but the eyes of the world are not centered upon the hunter returning from Africa, the great Republican [applause on the Republican side] the man who will go down in history.”<sup>34</sup> Republican Foelker, also an insurgent, discussed his love for the greats of Republican history observing,

That with the retirement of the Buchanan administration chaos and war were precipitated, which almost permanently disrupted the Union, costing hundreds of thousands of lives, millions of treasure, and left many sorrowing hearts for those who would never return. The Republican party took over the country in these conditions and we find it led by Lincoln until the cause of the trouble was removed in the abolition of slavery, upon the consummation of which he yielded up his life a martyr to the cause which he had so espoused. Then came Grant, Hayes, Garfield, Harrison, McKinley, Roosevelt, and last though not least, President Taft, all of whom believed in the destiny of the Republic.<sup>35</sup>

Finally, Lincoln was quoted by Cannon loyalist Kiefer urging his colleagues to vote against the privileged status of the Norris resolution. He argued, “the better plan will be to stand square on our feet and uphold the principles of the Constitution and the greater principles upon which this Government shall stand, a Government of the people, by the people, and for the people worked out through their Representatives.”<sup>36</sup> The audience would have obviously gotten his reference to the Gettysburg Address.

While the debate on the revolt against Cannon, like the debate on the Pendleton Act, contained speakers appealing to political ancestors, it was done in a less deliberative manner. Rather than crafting arguments that applied the general principles of the

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<sup>34</sup> Ibid., H 3303

<sup>35</sup> *The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 18, 1910): H 3430.

<sup>36</sup> Ibid.

founders or other past politicians to the particulars of this situation, the names of Washington, Lincoln, and other recent Republican figures were used to make simple assertions. These assertions either rallied support, as seen by the applause in two of the situations or established one's credentials as a loyal party member. Certainly there was no lack of material that could be found among the American founders and great politicians that would shed light on the questions in this debate. Yet, this debate, for the most part, abandoned any attempt to do so. In fact, perhaps the best *argument* made in the debate about past great political figures was that they could not be turned to at all.

On March 17 Republican insurgent Cooper spoke of the changes in the American regime since the founding. He observed,

There is here a power over the voters of the country and over the legislatures of the country which they never imagined. This is a new age. The world has all been made over since they were on earth. I revere their memory but I am not always bound by what they said. The gentleman, or some other speaker, called them the "fathers." There is no greater fallacy in argument than to say that a man 40 years old- some of them who framed the Constitution and some who debated the early rules of the House were not over 35 years old is one of the "fathers," so far as being able to instruct us in our duties as legislators to-day upon the issues that confront us. The fallacy consists in this.

If they were abler in their generation and possessed of more experience than the men who lived with them, then they had a right to instruct their contemporaries. But we have had one hundred and twenty years of history and of experience and a multitude after multitude of facts of which they were utterly ignorant. Are they, in any proper sense of the word, "fathers," so far as being able to teach us as to our duties at this hour, when there are conditions of which they never dreamed, problems of which they never heard?<sup>37</sup>

Without assessing the validity of Cooper's argument, one can see that he attempted an argument. He took a general practice, that of appealing to the "fathers" and showed why this did not shed much light on the particular job of legislators today.

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<sup>37</sup>*The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 17, 1910): H 3319.

To conclude, this debate shows a weakening of intellectual appeals to the founders and other political figures in two ways: 1) through the changing of the purpose of the appeals from discerning American principles to assertions made to garner support and 2) through the appearance of an argument that argued for the uselessness of appealing to the founders.

*Standard #3: Rhetorical Self-Restraint*

*Defining the Mandate: Anti-Cannon, Anti-Cannonism, or Be True to your Party?*

The attempt to define a mandate during the debate on the resolution concerning the Speaker had a slightly different context than during the debate on the Pendleton Act. The main difference was that during this debate there were not recent election results to interpret. Thus, the character of the mandate took on a more hypothetical tone. While in the Pendleton Act the rhetoric on mandates tried to give meaning to what the people had said, the speakers in this debate spoke about the people judging their current actions. Rather than speaking about the past, they talked about the present and the future.

Like the mandate debate of the Pendleton Act, those on both sides of the resolution turned to the people for rhetorical support of their cause. Also, like the debate on the Pendleton Act, not all those on the same side of the question offered the same definition of the mandate. Here, as in the case of the Pendleton Act, the offering of different interpretations of the mandate, rather than the acceptance of just one, may have led to a moderate result at the end of debate. Even though Cannon lost a great deal of power by the end of the debate, he remained the Speaker of the House.

While each side of the question offered more than one definition of the mandate, there was a unifying theme or idea behind each side's appeal to the people. Both sides

tended to focus on representative government as the principle that would satisfy the people. Those who supported the resolution argued that the people were not satisfied with the current power structure of the House of Representatives because they did not believe it was truly a representative body any longer. On the other side, those who were against the resolution appealed to the people against the insurgent Republicans. They argued that since the insurgents were elected by their constituents as Republicans, that, by voting against the majority of their party, they were not representing the people as they ought to have.

The first two insurgent speakers used the rhetoric of a mandate in order to elevate the debate to a higher level of generality. They wanted the decision to take up the issue of changing the rules to be based primarily on a national consensus that the House of Representative was currently in a state of disorder, *not* on whether or not the issue was privileged according to the Constitution or precedent. *On* March 17<sup>th</sup> Republican insurgent Poindexter offered the first real definition of a mandate for those who were supporting the Norris resolution. He argued that what was going on in the House at the time was the response to a national consensus that the House of Representatives was not in order. He observed, “that a great issue has developed in this country during the last few months as to the mode of conducting business in this House. It in some respects is the most important question which is before the people, and undoubtedly will be an issue in the forthcoming elections.”<sup>38</sup> Poindexter turned to the past to argue that House mismanagement had become a problem. However, the full judgment of the people would be in the coming elections.

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<sup>38</sup> Ibid., H 3297.

Later he continued to examine how the people understood the current problem and how they were going to react to the outcome of this debate. He argued,

Now I think there is no sophistry, there is not any kind of technical argument about whether this matter is privileged or is not privileged that can deceive the people of this country as to the issue. The merits of the question, the merits of this rule, have been put in issue here by the leader of the Republican party in his speech a few moments ago upon the floor.

And that is what is going to be accepted by the country. That is the interpretation, and the proper interpretation, to be put upon the vote which is taken here to-day, of , of whether or not the man who is voting is in favor of limiting the inordinate, tyrannical power of the Speaker of the House of Representatives or whether he is in favor of continuing it.<sup>39</sup>

Poindexter's appeal to the people performed at least three important functions. First, in arguing that it was something the people cared about, it made the debate about a larger question than the smaller parliamentary questions along the way. For, at the time he was speaking, the question was still on the floor as to whether the Norris Resolution was in order at the time. While the people might not have cared about House precedents on matters of privilege, they may have cared about tyranny in their representative body.

Second, Poindexter reminded his fellow members on the floor that they would be judged in the coming elections according to their vote on this issue. Finally, Poindexter's appeal seemed to invoke the vision of Cannon himself as a tyrant, something that not all of the insurgents were willing to do. Referring specifically to the "leader of the Republican party" in such close proximity to the "tyrannical power of the Speaker of the House of Representatives," seemed to move beyond an attack on the office alone and became an attack on Joseph Cannon.

Republican Fowler, like Poindexter, used mandate rhetoric to elevate the debate above the parliamentary minutiae. He warned his fellow members, "I want to say to you

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<sup>39</sup> Ibid., H 3298.

that the reports that will go out over this country will carry with them no fine distinctions or differentials, but it will be simply whether we will reform the rules of this House and liberate it. The people will make no fine distinctions. They will simply ask you whether you are in favor of the reform of the rules of this House.”<sup>40</sup>

Later, the same day Republican Insurgent Fish appealed to the people against the current rules of the House. He, like Poindexter, held that the situation in the House had become a national issue that must be dealt with. He stated, “Mr. Speaker, I believe that the public attention of this country at the present time is more centered on the rules of this House than on any one questions. I believe that this is the burning issue of the hour and now is the time for us to act.”<sup>41</sup> Not only were the people concerned about the rules, according to Fish, but they had an opinion on what should be done concerning the rules. Fish added, “I believe the people of this country, without regard to politics, believe in changing the rules. There has been no representative form of government under the rules. I would like to debate the question of changing the rules in every congressional district in this country and I will undertake to say that the Republicans of nine out of ten of those districts would vote to change the rules.”<sup>42</sup>

Insurgent Republican Nelson, used mandate rhetoric for a different purpose. Rather than using it to elevate the debate above parliamentary issues, he appealed to the people against the arguments being made for strict party discipline. However, he did believe that once the people were satisfied with the new rules change, it would save the Republican party. He responded to Cannon loyalist Fassett on the 17th, “the gentleman

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<sup>40</sup> Ibid., H 3315.

<sup>41</sup> Ibid., H 3301.

<sup>42</sup> Ibid., H 3301.

eloquently appealed to the spirit of party. I appeal to the spirit of the country.”<sup>43</sup> Later in the speech he more specifically touched on something like a mandate. He continued,

the House machine is not the Republican party. We have no cause to fear. The people are with us. Now that the issue has been presented; now that the opportunity is at hand to amend these rules in one vital respect, let us do so, and perhaps help save the Republican party. If we go home to our constituents and tell them that these rules are still in force and that they are to stay in force, what will be their verdict? If we eliminate these rules now...we eliminate this issue from the campaign; and what is vastly more important, we make it easier to secure progressive legislation in the House, redeem our platform pledges, and prove our party faithful to its high trust.<sup>44</sup>

On the 19<sup>th</sup>, right before the vote was taken, Republican Martin, also appealed to the people stating, “this is the day of popular government. The people are demanding that a portion of the power that has been by custom centered in the Speaker shall be resorted to the Representatives themselves.”<sup>45</sup> Moments later, Democratic Representative Clayton made a similar statement: “the whole country has forced the minority of this House and a minority of the majority of this House to strike hands with each other in order that this power of the Speaker may be curbed.”<sup>46</sup>

Having examined those who used the mandate to support the revolt, we turn to those who appealed to the people against the insurgents. On the 17<sup>th</sup>, Republican Payne addressed the insurgent and Democrat argument that the matter of changing the rules was constitutionally privileged and assured his opponents, “that there is no logic in that

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<sup>43</sup> Ibid., H 3304.

<sup>44</sup> Ibid., H 3305.

<sup>45</sup> *The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 19, 1910): H 3431.

<sup>46</sup> Ibid., H 3432.

situation. You can not hide behind it in the presence of the American people.”<sup>47</sup> Likewise, Republican Dalzell, a member of the rules committee at the time assured insurgent Republicans that they “will be compelled to answer to their constituents for their action to-day, whatever the result of that action may be.”<sup>48</sup> The implication was that people who elected their representatives as Republicans expected them to be loyal to the Republican cause.

Republican Reeder, who believed that the rules *should* be changed, but within the Republican caucus, made a similar argument. He observed,

surely, I am safe in saying that there is no good reason to expect good to accrue to the party in power from such methods or a reasonable hope that by this process the wishes of the people in sending a Republican majority here to do business of the people will thus be met. It can not be that any man will say that such an effort as is made here by a small minority of the dominant party to discredit and prevent that majority from doing business is wise, right, or according to the wish of those who sent us here. Such methods can not be in the interests of the people.<sup>49</sup>

The people, for Reeder, could express their political will through the placing of a majority party in power. For certain members of that majority party to “defect” would be a breach of the people's trust. He argued his case more aggressively moments later stating, “Every move that the Democrats help the insurgents to make which is contrary to the judgment of a majority of Republicans of this House betrays the people's will that the Republicans shall rule during this term of Congress.” Republican Keifer, used the idea of a mandate to attack the Democrats rather than the insurgents. Attributing intelligence to the people, he warned his opponents that the people would uncover this revolt for what it was, a Democrat plot. He observed:

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<sup>47</sup>*The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 17, 1910): H 3296.

<sup>48</sup>*Ibid.*, H 3299.

<sup>49</sup> *Ibid.*, H 3316.

They will understand that under cover of what might be said if I were outside the House, false pretense under the guise of a resolution to take away the power of the majority. My people are intelligent enough to understand the question, and the great patriotic intelligent people of this country will understand that it is not a question of power that is being sought, but that it is a question of discord that is trying to be brought about, with the hope that the Democratic party will get into power again; and if they do, the same thing will happen that has happened before-it will fail...

You can fool the people by some sort of pretense here and there, but you can not fool them when you come to the period of dealing with great moral, material, and political questions of concern to this country which have been brought from time to time to the people on the final appeal

There is not period in the history of the country when the people were more intelligent and able to understand the real questions than now. They are listening and they comprehend.<sup>50</sup>

These are not the only mentions of a mandate during the course of the debate. However, these should be enough to illustrate, that like the Pendleton Act debate, there were a number of rhetorical alternatives for a mandate presented. There was no simple understanding of the mandate which seemed to be accepted by all the members.

### *Rhetoric on Rhetoric*

In this debate, there were often times when the rhetoric became heated, hyperbolic, and even uncivil. Yet, like the debate on the Pendleton Act, there were often times when members made statements about the proper use of rhetoric. Not only did members criticize each other's arguments, but also the *way* in which they made these arguments. The mere fact that these statements occurred pointed to at least some sense of rhetorical norms. These norms were typically articulated as statements of particular types of rhetoric that were off limits, rather than statements of what proper rhetoric should look like.

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<sup>50</sup> Ibid., H 3327.

Like the Pendleton Act debate, there were a few examples where speakers argued that calling into question one's motives and name-calling was not acceptable during debate. Mr. Cooper, a leader of the revolt against Cannon discussed how Cannon mistreated him in this way, but that he would not do the same. Early in the speech he recounted the following story about Cannon, "Gentlemen will recall that the Speaker came down on the floor a little less than a year ago, while the tariff debate was on, stood within a few feet of me, and, although I had not said a word concerning him, branded me a demagogue. Why? Why? Simply because I did not agree with him that there ought to be a high tariff on Standard oil."<sup>51</sup> He then gave an example where he could have called the Speaker a name back during another legislative matter in the past. He recalled,

Well, the speaker voted against the resumption act, and every Populist in the United States voted against the resumption act. Was the Speaker a Populist...I do not call the Speaker a Populist—he thought he was right—I do not question his motives, although my own have been questioned here today. But he voted to pass the greenback inflation law over the President's veto, and he voted also for free silver. But I am not going to call him a Populist. I long ago got above the childish habit of calling names. I am not going to use any bad names about anybody. Why? Because I was bred in a school of politics which taught that any man anywhere in this Republic had a right to his honest opinion and a right to be heard when he wished to express it.<sup>52</sup>

In another instance, Mr. Keifer, who was a Cannon ally responded to an attack made on his motives during the debate. Mr. Clayton, a leader of the revolt, had stated that he believed that Mr. Keifer was only speaking as a delay tactic. Keifer responded saying the following about Clayton, "Now I have great respect for him, and I think I ought to withdraw all that class of remarks, but he seems to think that I am not in earnest

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<sup>51</sup> Ibid., H 3318

<sup>52</sup> Ibid.

when I talk on this question, and that irritated me a little.”<sup>53</sup> By saying that Clayton accused him of not speaking “in earnest,” he was claiming that Clayton had accused him of having ulterior motives.

*Standard #4: Masculine Rhetoric*

Like the Pendleton Act debate before it, this debate did not contain much noticeable feminine rhetoric. Members did not tell stories, nor did they use excessively ornate or self-disclosing language. They did not ask members to search their hearts or refer to other members as family members as seen in the following debates. Additionally, as can be seen in the other sections of this chapter, there were many exchanges of analytical, evidence-driven, competitive arguments.

*Standard #5: A More Restrained Crisis Rhetoric*

The Revolt against Speaker of the House Cannon debate certainly had a sense of urgency. There was a belief by some of those revolting that they were resisting a tyrant. Those who were against the revolt argued that chaos would ensue if a coalition of the minority party and insurgents could over-rule the majority party’s leadership. Due to this nature of the debate, there were times when the rhetoric used fell under what we have termed crisis rhetoric. There were a number of times where the crisis rhetoric was extreme and unrestrained. At these times, this debate looked like the 1946 and 1961 debates. For example, Mr. Keifer, a Cannon ally argued that the way the resolution to change the Rules Committee was being offered would lead to anarchy. By holding it as a privileged measure, it would over-ride the current rules. He stated, “you are doing that which leads to anarchy and the overthrow of the Power of the House to do the business

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<sup>53</sup> Ibid., H 3328.

we are sent here to do.”<sup>54</sup> Certainly, there were questions about how such a change affects order, but using the word “anarchy” raised the issue to the level of a crisis. There was no one at this particular point in the debate who challenged Keifer’s characterization of a crisis.

On March 18th, when there was no quorum, and the Republican Sergeant at Arms appeared to be unwilling to compel members to come to the floor, another crisis speech was made. Mr. Shackleford got up and criticized the Speaker pro tempore for not forcing the Sergeant at Arms to perform his duty. During the course of the speech a number of pieces of crisis rhetoric were used. He stated, “Mr. Speaker I make the point of order that the Speaker of this House having willfully, deliberately, and contemptuously abdicated his functions, a state of anarchy reigns in the great legislative body of this country,” and, “he is bringing anarchy into this body.” Further, he urges the Speaker to perform his duty, “in order that free government may *survive*.”<sup>55</sup> In fact, during the course of his half page speech (which was interrupted at one point for a question) he used the word anarchy six times. No member challenged his characterization of the situation as anarchic. However, this was likely because none of his opponents were in the chamber as part of a strategy to avoid a quorum.

However, many other examples illustrate a crisis rhetoric that was more restrained than that used in the following debates. This restraint shows itself in at least two ways. The first is that the crisis being discussed was often limited to the particular issue at hand rather than being linked to a crisis of the entire American system or way of life. Second,

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<sup>54</sup> Ibid.

<sup>55</sup> *The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 18, 1910): H 3405.

when certain members of Congress argued that there was a crisis, they were more likely to have another member challenge their use of crisis rhetoric than in later debates. Since the crisis rhetoric in this debate was restrained and challenged in debate, this discussion could fit under the other headings such as rhetorical restraint and the relationship between speech and thought. However, since in later debates the use of crisis rhetoric was prevalent enough to be treated on its own, we do so in this chapter for easier comparison.

The first type of restraint, the limitation of crisis rhetoric to a particular problem rather than to the regime as a whole, can be seen on March 16<sup>th</sup> (Calendar Wednesday) when the privileged status of the census bill comes up. Mr. Crumpacker, the member who made the motion to consider the census bill used crisis rhetoric. He stated to the rest of the House, “I want to say this, that this is an *emergency* bill.”<sup>56</sup> He was then interrupted by a question but continued, “I want to say to the House that this is *emergency* legislation. This is an amendment to the population schedule that is ready now for distribution, and this legislation must go through the House and the Senate without *delay* or it will be too late to accomplish what it is intended to accomplish.”<sup>57</sup> This crisis rhetoric, like crisis rhetoric in later debates, shared at least one thing in common. It urged that quick action be taken because of the importance of the issue. However, notice what Crumpacker posed as the consequences for failure to take action. He said that the bill would not be able to accomplish what it was meant to, not that failure in this particular measure would lead to a breakdown of democracy or national security. Speaking about the same resolution, Crumpacker, ally Mr. Sabath, observed, “the

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<sup>56</sup> Ibid.

<sup>57</sup> *Amendment 8 to the Census Act*, H.R. 172, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 17, 1910): H 3246. Emphasis added.

Resolution has be properly explained, and I want to say that it is of *vital importance* to many millions of our people, who, though good and loyal Americans now, yet adhere to traditional sentiments of their nationalities and mother tongues.”<sup>58</sup> Again, while of “vital importance,” the measure was not so critical that the nation would stand or fall based on whether it was passed.

The above examples are about a less crucial matter (the census) than the actual “revolt” against Cannon, so it might be expected that their use of crisis rhetoric would be more restrained. However, even the crisis rhetoric used during the “revolt” debate was often more restrained. Mr. Clayton, a leader of the revolt, argued, “Mr. Speaker this is a crisis in *the legislative history* of our country. Those of us who favor the proposition advanced by the gentleman from Nebraska, [Mr. Norris] recognize that it may be denominated revolutionary. *So far as the parliamentary propositions* are concerned, I am willing to concede that it is revolutionary, but it is necessary to overcome this *arbitrary power of the Speaker*.”<sup>59</sup> The crisis was not in the *country’s* history, but only its *legislative history*. The problem was the power of the Speaker. If this could be fixed, a crisis could be averted. Certainly, Clayton, along with others in revolt, believed that the current situation and its resolution had important implications for the nation as a whole. Yet, he seemed to rhetorically limit the crisis to the issue at hand, rather than unnecessarily raising the stakes.

There were also a number of examples of the second type of restraint, the rhetorical challenge of crisis rhetoric. Some use of crisis rhetoric was not as restrained as

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<sup>58</sup> *The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 17, 1910): H 3290.

<sup>59</sup> *The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 19, 1910): H 3432.

the uses above. It looked more like the unrestrained use we saw in later chapters. However, in this debate, unlike future debates, there were often responses by opponents challenging this use of rhetoric. For example, Mr. Poindexter, a Democrat leading the charge against Cannon at one point exclaimed, “Now is the day and hour of your salvation.”<sup>60</sup> While not explicit, to proclaim salvation certainly implies that some type of crisis has been reached. Mr. Douglas, an opponent of Mr. Poindexter’s responded, “I do not desire the gentleman from Washington to tell me the hour of my salvation. I think I will discover it for myself.”<sup>61</sup>

Right before the exchange discussed above, Mr. Poindexter and Mr. Douglas had another exchange. The question before the House was whether the resolution to change the Rules Committee was privileged and could thus trump the regular legislative calendar for the day. Again, crisis rhetoric was used when discussing this question. In this case it came in the form of arguing whether holding the resolution as privileged would lead to “chaos” in the House. The exchange was as follows:

Mr. Douglas. I would inquire of the gentleman if he considers as a line of demarcation, a criterion, between a man who calls himself an insurgent and one who calls himself a Republican, whether that man will vote to make or not to make *chaos* of the rules of this House?

Mr. Poindexter. I deny that it would made chaos of the rules of the House.

Mr. Douglas. I say that to hold this resolution privileged would make chaos of the rules of this House.

Mr. Poindexter. I beg leave to differ with the gentleman from Ohio. There never can be chaos arising from a regular rule which is regular and universal in its operation.<sup>62</sup>

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<sup>60</sup> *The Rules*, H.R. 502, 61st Cong., 2nd Sess., *Congressional Record* 45 (March 17, 1910): H 3297.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*, H 3297.

Later, on the same legislative day, March 17th, a similar exchange took place. This time the discussion touched on both the privileged status of the resolution and the merits of the resolution itself. Mr. Parker, an opponent of the resolution, stated the following about the question being debated:

It goes to the *very existence* of this House as a legislative body and I appeal to every patriot of every party to support the power of the House to do business and to determine, as it should be determined, that no change of rules can be attempted without a previous reference of that change to a properly constituted Committee on Rules. Any man who supports any other doctrine *destroys the greatest legislative body in the world.*<sup>63</sup>

These claims, that the “very existence” of the House would be “destroyed,” would certainly qualify as crisis rhetoric. Rhetoric like this will be seen in the coming debates. However, in this debate, there was an immediate challenge to the characterization as a crisis. Mr. Fowler, a proponent of the bill described what would actually take place if the resolution were passed

If we should agree tonight that there should be a Committee on Rules of 15 members, of whom 9 are to be Republicans and 6 are to be Democrats, I will unite and meet with the Republicans of the House in a caucus and we will select our 9 members. The Democrats will meet in a caucus and they will select their 6 members. *That is all there is to the proposition.* I do not care what form it takes, but it is a simple, plain proposition of having a Rules Committee elected in the same proportion as that we have it today—9 Republicans to 6 Democrats. We not have 3 Republicans and 2 Democrats.

Now, would there be any chaos if the 9 members should take up any measure for consideration that may be included in the programme the President approves? Will any Member on this side of the House have the hardihood to say we would have any more chaos when our 9 members discussed any proposition and passed upon it than we have now with 3?<sup>64</sup>

Mr. Fowler, by giving a detailed account of what the change would actually entail, called into question Mr. Parker’s claim that the House would be destroyed. By emphasizing

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<sup>63</sup> Ibid., H 3315.

<sup>64</sup> Ibid., H 3315.

that both parties would still meet in their caucuses to decide who would be on the committee, he argued that order has not broken down. Only the number of the committee had been changed. Whether Parker or Fowler was correct on this particular question is debatable. However, the mere giving of an alternative account of the situation, forces crisis rhetoric to be questioned, rather than simply accepted.

### *Summary*

Like the debate on the Pendleton Act before it, the debate surrounding the Revolt against Speaker Cannon, illustrates deliberative rhetoric during floor debate. In fact, the deliberative character of this debate is even more interesting for this study because of two factors which have the potential to undermine or lessen deliberation. First, unlike the Pendleton Act, this debate took place primarily in the House rather than the Senate. This shows that, even in the chamber traditionally known as being less deliberative, there is a possibility for deliberative rhetoric. Second, this debate centered on an arguably more partisan issue than the Pendleton Act. Clearly, this reform of the Rules Committee was motivated by Democrats' and insurgent Republicans' dissatisfaction with the Republican Party leadership. This indicates that even partisan reforms can contain deliberative rhetoric. This is important, as the 1961 debate was also a partisan reform that took place in the House.

There were some areas where this debate seems to be slightly less deliberative than the Pendleton Act, according to our standards. This may be accounted for by its having taken place in the House and its more partisan nature. Specifically, its appeals to the founders and other political ancestors were less substantive. Additionally, while

present to some extent, there seemed to have been less discussion of the proper role of rhetoric.

Yet, according to most of the other standards, this debate stands with the Pendleton Act as a good example of deliberative rhetoric. While shorter in length than the Pendleton Act debate, it is longer than the House debates in the following two chapters. In this lengthy debate, speakers actually questioned each other and argued with one another. In the course of these arguments, the rhetoric touched often but more importantly deeply and substantively on a number of areas within the constitutional tradition. It involved lengthy discussions of the text of the Constitution itself and the role of political parties in the system. Again, like the Pendleton Act, there was at least some measure of rhetorical restraint in this debate: members called each other out for rhetoric that was inappropriate for the floor of the House. The debate contained a great deal of what Jamieson called masculine rhetoric. That is, there were many exchanges where speakers challenged each other's assertions and called for evidence. Finally, while there was some use of crisis rhetoric, which has the potential to undermine deliberative rhetoric, it was often more restrained, and its use was challenged by other members. In later debates, crisis rhetoric was more intense, was used to frame the entire debate, and was often used to stop debate.

## CHAPTER SIX

### The Legislative Reorganization Act of 1946

#### *Introduction*

So far, we have examined two early debates on institutional reform within the Congress. The first, the Pendleton Act, involved what might be called comprehensive institutional reform. That is, it attempted to change the civil service system, which would have broad effects on the relationship between the Congress and the president and the Congress' role in patronage. There were, of course, some partisan reasons for the reform, and the reform certainly changed the power structure of the institution. Additionally, the reform was broadly systematic. In the Revolt against Speaker Cannon, the change was more openly partisan and more particular. Democrats and insurgent Republicans tried to weaken Joseph Cannon and his "Old Guard" Republican allies. They did this primarily through weakening Cannon's hold on the Rules Committee. Of course, while this reform was primarily motivated by partisanship, it dealt with the perceived institutional problem of over-centralization of power in the hands of the Speaker of the House. The Legislative Reorganization Act of 1946, which will be covered in this chapter, is more similar to the Pendleton Act than the Revolt against Cannon. It was a comprehensive reform that sought to strengthen Congress' position in the constitutional system. While it certainly affected the power structure in Congress, it did not primarily *target* certain members, committees, or party factions.

Before turning to the debate it is helpful to briefly outline the major goals of the bill. George B. Galloway, a political scientist who was an architect of the bill, summarized the objectives in the *American Political Science Review* as follows:

1. To streamline and simplify the congressional committee structure.
2. To eliminate the use of special or select committees.
3. To clarify committee duties and reduce jurisdictional disputes.
4. To regularize and publicize committee procedures.
5. To improve congressional staff aids.
6. To reduce the work load on Congress.
7. To strengthen legislative oversight of administration.
8. To reinforce the power of the purse.
9. To regulate lobbying.
10. To increase the compensation of Members of Congress and provide them with retirement pay.<sup>1</sup>

This list of goals was quite comprehensive and the goals were serious matters. The changes made by this bill were so comprehensive that congressional scholar Roger Davidson observed, “The modern era on Capitol Hill is widely thought to have begun with the passage of the Legislative Reorganization Act of 1946.”<sup>2</sup> While the bill addressed all of the above goals in some way, the focus of the bill might fairly be said to be on three areas: committee restructuring, congressional staffing, and fiscal reform. Of the first Davidson noted, “The 1946 act was the first (and still most ambitious effort to bring order and balance to Congress’s committee system.”<sup>3</sup> Further

From the beginning, congressional committees had been established, and occasionally abolished or consolidated, to deal with external or internal pressures. As Monroney [the House sponsor of the bill explained, “This overlapping, duplicating, crazy-quilt system had, like Topsy just ‘grewed’. Committees were added to committees, and the structure grew without plan or program.” Under the Reorganization Act, this haphazard structure was to be transformed into a simple,

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<sup>1</sup> George B. Galloway, “The Operation of the Legislative Reorganization Act of 1946,” *American Political Science Review* 45, no. 1(1951): 41.

<sup>2</sup> Roger H. Davidson, “The Advent of the Modern Congress: The Legislative Reorganization Act of 1946,” *Legislative Studies Quarterly*, 15 (1990): 357.

<sup>3</sup> Ibid.

symmetrical design. In the process, the 48 House committees were reduced to 19, the 33 Senate committees to 15.<sup>4</sup>

In reference to congressional staffing Davidson added the following:

The second objective of the Legislative Act—providing members and committees with decently paid, expert staff aides—was addressed by several provisions. Each of the reorganized committees was authorized four expert staff members, at higher salaries than previously offered. The act also provided for a greatly enlarged Legislative Reference Service and an expanded bill-drafting service. These innovations, which have proved critical in helping Congress meet contemporary legislative challenges, are perhaps the most notable legacy of the 1946 act.<sup>5</sup>

The last objective was to establish a legislative budget which would be binding on the chambers' appropriation committees.

In the Senate a good number of these topics were discussed. Yet, when it came to the floor debate in the House, hardly any of these issues were debated. In fact, only three are even really touched upon. The first is number ten on the above list. There were many members of the House who get up to speak against the raises and retirement given to Congress. Throughout the debate, however, speakers on this issue seemed more concerned with going on record as being against increased compensation than discussing the merits of the increase. This is seen especially when Mr. Monroney, the major House sponsor of the bill moved that members have permission to extend their marks in the record. Members who chose to do this have speeches they did not actually give on the floor added to the written record. In the House debate, two pages out of seventy were devoted to these extended remarks. All of the fourteen speakers who added remarks in this case were opposing either the salary increase or the addition of a congressional pension. While added remarks to the record could charitably be viewed as a way for a

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<sup>4</sup> Ibid., 365.

<sup>5</sup> Ibid., 367.

member to make a longer speech for which there was no time during floor debate, the fact that no other issue was discussed in these added remarks, leads one to believe that posturing rather than concern for a better bill motivated most of these speakers.

The other two issues discussed in the House are the power of the purse and the streamlining of committees. However, the debate on these issues was far shorter than in the Senate. The fiscal debate turned on whether improving the congressional budget *procedure* would actually lead to better budget outcomes (reduced deficits). There were some who argued that only a commitment by members to spend less would reduce deficits. Simply changing the procedure would not have any major effect. Others thought that the proposed fiscal reforms would restore budget powers, which had been ceded to the executive, back to Congress. This would give Congress more accountability and ultimately would lead to better results. Unfortunately, this topic was debated very briefly.

The topic of the streamlining and the jurisdiction of committee might have been a fruitful area for deliberation. However, the idea of changing the committee system as a whole was never really debated. The long-term comprehensive consequences were not discussed. Rather, the opposition to changes in the committee structure that had been proposed by the bill came primarily from those who were defending the status quo of a particular committee because they were on it. In this chapter, the Committee on the Post Office and the Committee on Bridges come up in this context.

This reform was more open to the public than the previous two reforms examined. Davidson, rather skeptical of the act's success, stated that the "reformers activities took place against a backdrop of mounting criticism of Congress from *scholars, reporters,*

*commentators and editorial writers.*”<sup>6</sup> Of course, in previous reform efforts there was some outside pressure for reform, especially after the assassination of Garfield by a disgruntled civil servant. However, non-members of Congress were involved to a much greater extent in this reform. Davidson observed, “although the committee’s efforts to consult members of the Congress were laudable, it is questionable whether they tapped a truly representative sample of lawmakers: reform-minded members were presumably more eager to talk with political scientists than were others.”<sup>7</sup> From the above observations it seems that the reforms were both prompted by and discussed with outsiders a great deal. It is this working with external players rather than consulting Congress itself that led to the act’s lack of success in Davidson’s mind. He argued, “although the 1946 reforms appeared to resolve external pressures upon the institution, they were only partially successful because they ran counter to firm internal power arrangements.”<sup>8</sup> It should be noted that there was evidence within the debate itself that the supporters of the bill had chosen an outside strategy. For example, Mr. Jones, an opponent of a particular part of the bill which would have changed the appropriations process stated, “They [the bills’ supporters] yell to the public some distance away from the appropriations debate. The way to cut the appropriations or take people off the pay rolls is not to *write magazine articles* or *get out brochures* under the joint committee on Federal Expenditures; the only way to do it is to get people in both Houses of Congress who want to cut expenditures to vote against the increases.”<sup>9</sup>

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<sup>6</sup> Ibid., 361.

<sup>7</sup> Ibid., 362.

<sup>8</sup> Ibid., 358.

<sup>9</sup> *Legislative Reorganization Act of 1946*, H.R. 717, 79th Cong., 2nd sess., *Congressional Record*

The chosen “outside” strategy of the reformers had rhetorical implications. Primarily, this meant that a great deal of time was spent dealing with the bill in committee and very little time was spent on floor debate. For in the LaFollete-Monroney Joint Committee, so named for its co-chairs from the Senate and House, those members who wished for reform could spend a great deal of time talking with *outside* witness who “uniformly supported innovations of the type advocated by the political science group.”<sup>10</sup> The “political science group” was a committee set-up by the American Political Science Association in 1941 which made most of the recommendations that were implemented in the act. While members of Congress were called in to testify at these meetings, there was little time where the entire body debated the bill.

Due to the more public nature of the debate, it serves as a transitional debate. There were some rhetorical elements that contributed to deliberation like the previous two debates. However, there seems to be less of them. Additionally, there was a rise of other rhetorical elements that undermined debate. However, the rhetorical elements that actually undermined debate were not nearly as prevalent and as intense as in the following chapter. Unlike the previous two chapters, the following chapter involves the examination of rhetoric in both the House and the Senate with the rhetoric in the House being less deliberative. This is perhaps most obviously seen in the fact that the House of Representatives only discussed the bill for one day. Its discussion only took up 67 pages in the written Congressional Record. Included in these 67 pages are extended remarks of speakers, who did not actually speak during the floor debate, as well as the text of the bill. The Senate, on the other hand, debated the bill for five days and its proceedings took

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92, (July 25, 1946): H 10078. Emphasis added.

<sup>10</sup> Davidson, 363.

up over one hundred and twenty pages. In the Senate there was actual debate on important parts of the bill as well as amendments made. In the House, there was very little substantive debate. Rather, it mostly passed quickly through a series of amendments offered by Mr. Monroney. While there was a difference between the two Houses, there is still a decline in both. The Pendleton Act provided an example of a more deliberative debate in the Senate. While the House of Representatives, all things being equal, might be less deliberative than the Senate, the revolt against Speaker Cannon debate shows that the House was certainly capable of deliberative rhetoric on substantive issues. Thus, it was possible for the House to be more deliberative than it was in this debate.

### *The Rhetorical Time-Frame*

As discussed directly above, this debate took place in a more public context than the previous two debates. If we turn back to the three developments that led to increasingly popular congressional speeches, it is easy to understand why. To begin with, modern mass media had undergone more significant changes between the last debate in 1910 and this debate in 1946, then between 1883 and 1910. Primarily, radio had become a force in bringing about more popular political communication. Bruce E. Gronbeck makes a number of observations about the development of radio from the 1920's-1940's. While the "electric presidency" is said to have begun in 1924 with the coverage of the party conventions, the 1930's and 1940's are when radio really became a dominant force in American politics. Gronbeck observes, "the first real stars of political radio, however, were Franklin Roosevelt and the social reformers of the 1930's...Hot political radio

however, was promoted by the social reformers of the right and the left.”<sup>11</sup> By the 1940’s, “radio was a dominating medium of political communication.”<sup>12</sup>

While radio was the obvious development in mass media between 1910 and 1946, an increasingly close connection between newspapers and other print media and the political process developed. Mary Stuckey points to this development in her treatment of FDR. Speaking of his press conferences with newspaper reporters she observes, “Because he was so keenly tuned to the advantages of his relationship with the press, FDR held an enormous number of press conferences. He met with the press on an average of twice a week. He can therefore be credited with institutionalizing the ‘symbiotic relationship between the White House and the Media.’”<sup>13</sup>

By 1946, there had also been major changes in presidential rhetoric. According to Tulis’ formulation, the “rhetorical presidency” began with a deliberate shift in the theory of presidential leadership by Woodrow Wilson. Both of the debates in the previous chapters took place before the presidency of Woodrow Wilson which began in 1912. By the 1946 debate, the rhetorical presidency or popular presidential rhetoric was developed even further through the presidency of FDR. Speaking of Roosevelt, Mary Stuckey observes:

Nearly all scholars agree that “the Roosevelt presidency was distinguished by the variety of ways in which speech making was effectively employed. Speeches were used to inform, to persuade to motivate, and to inspire.” Using the media as he did gave FDR several advantages, all associated with “the rhetorical presidency.” His Fireside Chats, for example were used to maintain and enhance presidential power by persuading the people to move Congress, and his press

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<sup>11</sup> Gronbeck, 32.

<sup>12</sup> Gronbeck, 32.

<sup>13</sup> Stuckey, 32.

conferences enabled him to control the flow of information, manage the news, and use the press as a scapegoat in times of trouble.<sup>14</sup>

The Stuckey assessment of Roosevelt points to his adoption and mastery of “popular” rhetoric. He used rhetoric to inform and inspire. This is in line with Tulis’ characterization of the rhetorical presidency adopting an abstract moralistic style while also promoting specific policies. Additionally, appealing to the people to move Congress is characteristic of the rhetorical presidency.

The changing role of the press and the development of the popular rhetoric had a great deal to do with FDR’s personal attributes, and was centered on the presidency. Yet, these developments continued after Roosevelt. As Stuckey observes,

For while Roosevelt did many things associated with the modern presidency, such as hold regular press conferences, Truman may have been able to reverse those procedures, and they would have become Rooseveltian idiosyncrasies. In continuing many of Roosevelt’s innovations, Truman institutionalized them and made them aspects of the office, rather than the individual who occupied it.<sup>15</sup>

As these developments became institutionalized and thus a normal part of presidential politics, it seems likely that Congress might have attempted to use the media and popular rhetoric to gain some of the advantages it gave to presidents.

While there were major developments in the media and presidential rhetoric between the previous two debates and this debate, this was not true for the permanent campaign. Even with Woodrow Wilson’s new conception of rhetorical leadership, campaigning and governing were seen as different activities. Mary Stuckey observes of the Wilson era:

Even as the presidency assumed a more legitimating than strictly administrative role, electioneering was still kept largely separate from issues of governance. The

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<sup>14</sup> Stuckey, 31.

<sup>15</sup> Stuckey, 40.

president was rhetorically more limited in this respect than was the presidential candidate. The candidate had something to prove...The president had nothing to prove, but the polity to represent. *These are still seen as separate activities requiring separate tactics and adaptations.*<sup>16</sup>

This division between the functions of campaigning and governing held by most accounts until at least the early 1960's.<sup>17</sup>

The fact that there were changes in only two of the three factors may be the reason that this debate was, as described above, a transitional debate. The debate in the next chapter approached the beginning of the era of the permanent campaign. Once all three developments had taken place, congressional rhetoric became the least deliberative.

*Standard #1: The Divorce of Speech from Thought—Real Debate in the Senate, Softball and Rhetorical Questions in the House*

*The Senate*

There was slightly less time spent debating this bill by the Senate than done by the Senate in the Pendleton Act. In the Congressional Record the debate here takes up one hundred pages compared with one hundred ninety in the Pendleton Act. Yet, arguably one might expect more Senate debate here than in the Pendleton Act, as the 1946 Act covered many more issues than did the Pendleton Act. Yet, like the two previous debates, the Senate debate here involved a good deal of real questions and actual debating. As discussed in previous chapters, these exchanges served different functions. At times, they were between debaters who were seeking clarifications. At other times, they were between debaters on opposing sides who were trying to win a particular

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<sup>16</sup> Stuckey, 25.

<sup>17</sup> See Norman Ornstein and Thomas Mann, *The Permanent Campaign and Its Future*, 2000.

argument. These can both be seen regularly throughout the hundred pages of debate. Below is an example of both types of exchanges.

One of the main things this bill hoped to accomplish was to provide better staffing for committees. As will be discussed in section two below, there was a question as to who would have control over the new staffers created by this bill, the committee itself or a newly created “Director of Personnel.” Eventually the creation of this position was eliminated from the bill, but there were many questions asked about the position by members trying to figure out exactly what his powers would be. One June 8th, an exchange between Mr. Overton and Mr. La Follette illustrated this concern:

Mr. Overton. I may point out, however, that four experts are to be assigned to each committee. That provision still remains in the bill does it not?

Mr. La Follette. Yes.

Mr. Overton. And each committee will have the right to select the experts without consulting the Director of Personnel.

Mr. La Follette. The Senator is correct.

Mr. Overton. May each committee reduce the number of experts which it has if the committee does not need all of them, or must the committee retain all four?

Mr. La Follette. The provision in the bill is to the effect that the committee may discharge them, and I assume it will have control over the number which it may wish to employ.

Mr. Overton. The committee has the right to discharge any of the experts, but it does not have the right to reduce the number.

Mr. La Follette. The power, as I conceive it to be, is completely within the discretion of the committee.

Mr. Overton. Very well.<sup>18</sup>

While, Mr. Overton, as other parts of the debate illustrate, was skeptical of the bill as a whole and especially the idea of a Director of Personnel, here he was simply asking for clarification for what the bill actually said. Mr. La Follette, as the main reporting senator, was consistently asked to clarify both the bill and how proposed amendments would alter the bill throughout the debate. He was asked these questions both by those who

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<sup>18</sup>*Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 8, 1946): S 6523.

supported the bill and by those who opposed the bill. The presence of these questions seems to indicate that members desired to come to know what the bill was actually doing. Thus, their speech was connected to a desire for knowledge. La Follette and other supporters of the bill were forced to think about the bill. They were unable to simply give pre-written speeches supporting it.

On December 6th, the first debate where two members disagreed about an issue and engaged in a lengthy, substantive debate occurred. In this case it was between the floor leader of the bill Mr. La Follette and Mr. George. Mr. George was very suspicious of the new power that would be given to a proposed “personnel director” who would be involved in the selection of staff for committees. At the beginning of the debate, George asked La Follette a number of questions to clarify exactly what it was that this new officer would do. Eventually, the two members disagreed about what the future implications of this position would be. This debate also represents a good example of masculine rhetoric, at least on the part of Mr. George. Mr. George stated, “I also notice...that all the special assistants...are to be appointed by the director of personnel, that neither the chairmen of the committee not the committee itself had anything to do with the selection of the experts who will serve the committee.”<sup>19</sup> Mr. La Follette responded that this was not quite right: “the appointments are to made *by the chairman* on the basis of merit, qualification, *and the recommendations of the director of personnel*. That official *will not* make the appointments however.”<sup>20</sup> This distinction was not meaningful to George. He responded again stating, “but the personnel is not to be

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<sup>19</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 6, 1946): S 6372.

<sup>20</sup> *Ibid.*, Emphasis mine.

appointed *without* the recommendation of the director of personnel. Therefore, I think it is equivalent to saying that the director of personnel *will have control* of the appointments.”<sup>21</sup> Mr. La Follette did not think this was the intent of the language in the bill, and he argued,

We are not interfering with the clerical service of the chairmen...The way *we envision* the operation of the plan is that, first of all, the director of personnel will be selected by the majority and minority leaders of the Senate and House of Representatives. *We felt* that in placing such responsibility upon them we would obtain a man who was qualified in personnel matters, who would devote his efforts to providing the proper type of personnel for the service of Congress.<sup>22</sup>

Notice how La Follette’s response focused more on the good results *intended* rather than addressing George’s concern about the power of this officer. George called La Follette out for this. George replied, “I am not questioning the motive; I am trying to ascertain the facts.”<sup>23</sup> Here one can see George’s preference for masculine rhetoric over La Follette’s use of more feminine rhetoric. While La Follette spoke of intentions using words like “we felt” and “we envision”, George was interested in facts not motive. After this, La Follette tried several more times over the course of another page of debate to convince George that the director of personnel would not take power away from the House and Senate in choosing staff. Unfortunately for him, he was unable to convince George who concluded at one point, “I am not complaining particularly. I am trying to find out what kind of strong man we are building up as a personnel director. My opinion

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<sup>21</sup> Ibid., Emphasis mine.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

is that very steadily he will reach the point where he will overshadow both Houses of Congress.”<sup>24</sup>

This debate discussed above was one of many substantive lengthy debates in the Senate on this bill. On June 7th, the following day, La Follette debated with Mr. Donnell for three pages on the personnel director, with Mr. Barkley for three pages on certain budget provisions, as well as repeatedly with Mr. Keller, an opponent of the bill in its entirety. On June 8th, La Follette debated with Mr. Overton on the restructuring of committees for six pages in the Record. There were many other examples of real questions and answers and actual debate throughout the debate.

While the debate of the 1946 Legislative Reorganization Act in the Senate was rather substantive and encouraged the link between speech and thought, there were some noticeable examples when members used language that discouraged this link. Particularly, the debate saw more uses of rhetorical questions and softball questions, both of which discouraged or avoided actual exchange. We have already discussed the use of rhetorical questions in the modern televised responses to the State of the Union Address. By “softball” questions I mean questions asked by one’s ally in a debate. Again while these two types of speech were seen more often in the House debate discussed below, they also appeared in the Senate debate.

On June 6th, there was an excellent example of a “soft-ball” question thrown by bill supporter Mr. Fulbright to Mr. La Follette. La Follette had just explained a provision that would give Congress members administrative assistants which would have “a great effect in relieving Members of the House and Senate of many departmental chores, which I personally do not resent...but certainly a large part of that responsibility could be

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<sup>24</sup> Ibid.

passed on to the administrative assistant.”<sup>25</sup> This description of the provision perhaps made the current work of members sound like it was not worth doing. Mr. Fulbright jumped in to make sure that this was not the case by asking La Follette a leading question. He asked, “Is it not a fact that it is not because Senators do not want to do these chores, as the Senator calls them, but they have to make a choice between them and their duties here on the floor of a legislative nature which cannot be delegated? That is the real justification for the provision, is it not?”<sup>26</sup> Mr. Follette responded, “That is the justification for it. But the point I was trying to make—and I think perhaps I did not make myself very clear—was that I do not believe this provision would mean that the constituents would get less service.”<sup>27</sup>

The following day, La Follette was thrown another series of softball questions, this time by his ally Mr. Vandenberg. Vandenberg asked a number of questions to Mr. La Follette which were aimed primarily at making the bill look less objectionable. The main concern during this line of questioning was whether the Senate would be bound in the future by certain provisions of the bill. Mr. Vandenberg began, “As I understand, it is the Senator’s point of view that at any time the Senate might conclude that it was advisable to create a special committee, the Senate itself could suspend this rule which is being created by joint action, and it would not require joint action to suspend the rule?”<sup>28</sup> La Follette responded that it would not. Mr. Vandenberg repeated the question in a different way, “So that in the Senator’s judgment in the operation of the new system the

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<sup>25</sup> Ibid., 6369.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 8, 1946): S 6439.

constitutional authority of the Senate, to which the able Senator from Missouri referred yesterday, would be fully protected through the retention of the right of individual Senate action in respect to section 126?”<sup>29</sup> La Follette again responded, “Not only in respect to section 126, but with respect to every single change proposed by this bill to be made in the rules.” Vandenberg then makes a statement rather than a question, “In other words, then, section 126 is really an admonition, not a straight-jacket.”<sup>30</sup> La Follette, in a long reply, responded that Mr. Vandenberg’s observations were correct.

One might argue that the above examples of “soft-ball” questions were not damaging to debate in this case. In fact, one could argue further that by shedding light on the particulars of the bill, it actually improved deliberation. To be sure, sometimes these questions can be used well. However, if these questions are used repeatedly to replace actual debate, there might be a problem. These questions, in effect, can be used to make a presentation look like debate. Since, as mentioned above, the Senate debate of this bill actually had a good amount of real debate, the soft-ball questions were not extremely problematic. This was not as much the case in the House debate.

The Senate debate also contained a number of examples where members asked a number of rhetorical questions during a long speech. On June 7<sup>th</sup>, Mr. McKellar who was against the bill in its entirety spoke up against the personnel director proposed by the bill. He remarked,

Any other government in the world would like to swap its government for a government like our, under which we have reached so high a degree of prosperity and happiness. Why should we want to kill half of it—and I believe the scheme is to kill the other half, too, at some time—why should we want to kill half of that government through the workings of a Director General? Is it the

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

purpose to keep up with some other governments which have officials with high-sounding titles? I never thought much of high sounding titles. Governor and Senator are not high sounding titles. Even the title of President is not a high-sounding one. But we have gotten along very well under our present form of government. Why should we want to change it? Why should we want a one-man government? Why should we want to abolish that form of government under which we have succeeded and become so happy and so prosperous as a people?<sup>31</sup>

Mr. Overton, another opponent of the bill asked a series of rhetorical questions on the following day. He was also concerned about the director. He asked, “Who is to rule this Government? Are we to be under the dictatorship of a director, or is the Government to be ruled as the people contemplated it should be ruled, as the Constitution provides it shall be ruled, as the founding father contemplated it should be ruled, by the elected Representatives of the people in the House and in the Senate?”<sup>32</sup>

Overall, the Senate debate contained a mixture of real debate and rhetorical and soft-ball questions. Due to the former being so prevalent, the latter were not as noticeable. This was not the case in the House debate.

### *The House*

While the previous two debates and the Senate debate here involved a great deal of questions and answers between debate opponents, the House debate involved hardly any of these exchanges. While perhaps understandable that there would be fewer exchanges in the House than in the Senate in a particular debate, this debate had hardly any exchanges at all. If one compares this with the 1910 House debate, one see a clear decline here. Since, from the beginning, it seemed clear that this bill was going to pass, most of the speeches were simply members getting on record as either supporting or

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<sup>31</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 7, 1946): S 6459.

<sup>32</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 8, 1946): S 6529.

opposing the bill in its entirety or a particular section of the bill. In doing so, they often turned to rhetorical and soft-ball questions to get their point across. Neither of these types of questions called on the speaker to think through his reasoning in order to defend his position.

We turn first to some examples of rhetorical questions. In a section of the debate where a comprehensive budget committee created by the bill was being debated, Mr. Keefe, a proponent of the new committee, got up to defend it. He began by summarizing the arguments of his opponents who held that the new committee would not really look at the budget and would ultimately do nothing. He then responded to what he had setup as their arguments with a series of rhetorical questions.

Why not? I ask you. Why should they not examine that budget? Why should they not raise the question as to whether or not it is possible to adopt a legislative budget—a legislative mark, if you please—that the committees of Congress may shoot at in an attempt to balance the budget...

Why should not the Congress through this committee, have up-to-the-minute estimates of the Treasury Department as to the revenues? Why should not they have up-to-the minute figures of these departments submitted so that we can have an up-to-date budget?<sup>33</sup>

Mr. Celler, a supporter of the bill as a whole, offered an amendment later in the debate. The amendment returned the bill to its original version, which gave *both* the House and Senate standing committees the subpoena power as opposed to just the Senate standing committee. Arguing for his amendment he asked, “why are we being treated like step-children? Why should the Senate standing committees have the right of subpoena and that right be denied to the House? Is not out work just as important as the

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<sup>33</sup> *Legislative Reorganization Act of 1946*, H.R. 717, 79th Cong., 2nd sess., *Congressional Record* 92, (July 25, 1946): H 10061

work of the Senate? Is not our work just as painstaking? Should we not have the concomitant right with the Senate to subpoena?"<sup>34</sup>

Mr. Dirksen, a major supporter of the bill, used a long series of rhetorical questions when supporting a provision of the bill that would turn over all bridge building inquests to the Department of War. He argued:

When a bill like that [a bridge bill] is introduced, It has to go to the War Department...First of all the Department engineers must determine whether the location is suitable and whether or not it will obstruct navigation. IF some dredges and pile drivers are to be brought in to pick up spoils where the caissons are to be sunk, will it constitute an obstruction to navigation in the stream? Who determines that? The War Department. What is the nature of the bridge that is to be built? Does it run at right angles with the stream? Or does it run diagonally? Is it a traffic hazard? IS the clearance sufficient to take care of the stacks of the inland streamers and other boats and smaller river craft? When they have made the determination they send it up and the committee considers it and sends in the committee report. Is not that a very sensible thing to do? Very well. Let us give the War Department blanket authority to consider this question of bridge bills.<sup>35</sup>

This debate also contained what I have termed “soft-ball” questions. One example of this was an exchange between the major Democrat and Republican sponsors of the bill, Mr. Monroney and Mr. Dirksen, respectively. After Mr. Celler’s criticism about the House being treated differently from the Senate, Mr. Dirksen interrupted Mr. Monroney’s defense of the difference. The exchange was as follows:

Mr. Dirksen. Mr. Chairman, will the gentleman yield?

Mr. Monroney. I will yield to the gentleman from Illinois.

Mr. Dirksen. In view of the fact that it is still possible to set up select committees in the House where the subpoena power can be lodged, it is a pretty broad power to grant to all of the standing committees is it not?

Mr. Monroney. I thank the gentleman. It is also possible to give subpoena power

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<sup>34</sup> Ibid., H 10073

<sup>35</sup> Ibid., H 10049

to any of the standing committees if they go to the Committee on Rules and ask for that power.<sup>36</sup>

An even more obvious exchange where two members work together through questions and answers to make their point was between Miss Sumner and Mr. Smith. Both of these members were skeptical about the changes that would come about as a result of the bill. Specifically, they did not believe that changes in the budget process would automatically assure a reduction of the deficit as promised. After Mr. Smith yielded to Miss Sumner, the following exchange occurred:

Miss Sumner of Illinois. Does not the gentlemen think it is absolutely futile to pass a law like this to reform Congressmen's uneconomical habits? To reform Congress you have to reform Congressmen; is that right?

Mr. Smith of Ohio. I am reminded again of the statement made by a prominent historian who spoke about the great elusion, faith in the sovereign power of political machinery. Let the people of this country understand that there is nothing in this bill whatsoever that promises them any more statesmanship than they have been receiving in recent years.

Miss Sumner of Illinois. This bill just give Congress a face-lifting?

Mr. Smith of Ohio. Take out the measure pensions and the increase of salary for Congressmen and I fear there will be left little interest in it. The gentleman from Virginia [Mr. Smith] was unable to get the attention of the committee until he mentioned pensions and salary raise for Congressmen. Then he got some attention.

Miss Sumner of Illinois. Does not the gentleman think this bill could be defeated easily if it were not being log-rolled through.

Mr. Smith of Ohio. Certainly.<sup>37</sup>

Another exchange, while not exactly a softball question, involved a similar exchange. Mr. Dirksen responded to an amendment proposed by Mr. Lea that would keep more congressional control over bridge building (as opposed to turning over more power to the executive War Department). Mr. Dirksen believed that, since all bridges must go through

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<sup>36</sup> Ibid., H 10073.

<sup>37</sup> Ibid., 10078.

the War Department's engineers anyway, it would help the legislative process if this bill ceded the power to the executive, as written.

Mr. Dirksen: I hope that the amendment offered by the gentleman from California will be voted down by a resounding vote.

Mr. Wadsworth: Mr. Chairman, will the gentleman yield?

Mr. Dirksen: I yield to the gentleman from New York who has a great deal to do with this bridge business.

Mr. Wadsworth: I used to be on the bridge subcommittee of the Committee on Interstate and Foreign Commerce; and it was a nuisance.

Mr. Dirksen: Did you hear that? The gentleman was a member of the subcommittee on Interstate Commerce dealing with bridges; and the distinguished gentleman from New York says it is a nuisance. Now let us eliminate this nuisance by voting down this amendment by a good vote.<sup>38</sup>

Dirksen's response to the request to yield, where he acknowledged a man who "had a great deal to do with this bridge business," suggests a tandem attack, rather than debate.

As one can see, there were more examples of rhetorical and soft-ball questions in the House than in the Senate. This, combined with the lack of real questions in the House, makes the decline, according to this standard, far more noticeable in the House.

### *Standard #2: A More Simplified Constitutional Rhetoric*

The rhetoric of the constitutional tradition discussed in previous chapter was not completely absent in the debate over the Legislative Reorganization Act of 1946. However, it was certainly used less. Additionally, when it was used, it was done in a far simpler way and usually only in passing. Unlike previous debates, there were not lengthy discussions of constitutional questions. Like the other sections in this chapter, the debate in the Senate was slightly better on this standard.

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<sup>38</sup> Ibid., H 10095.

## *The Senate*

In the debate in the Senate at least three important constitutional issues were raised: 1) whether this law was the proper constitutional means for affecting Senate rules, 2) to what extent the legislature should “oversee” the executive branch, and 3) was it constitutional for a director of personnel to be appointed to oversee certain staffing issues. While these issues were not a major portion of the debate as they were in the previous two debates, they were discussed at some length. This was not the case in the House.

The first question raised was concerned primarily with whether the Legislative Reorganization Act of 1946 was a necessary or proper means for the Senate to change its rules. As stated in the introduction, much of this bill changed the internal structure of both Houses of Congress. According to Article I, Section 5 of the Constitution, each House of Congress has the ability to make its own rules. This means that each House has final authority over its rules and is not required to consult the other House or the president. However, the Legislative Reorganization Act, as a bill, must be passed by both Houses and signed by the president. This created a tension that was discussed a number of times during the debate. Towards the beginning of the second day of debate, June 6th, Mr. Donnell raised the question of the appropriateness of this bill:

Mr. Donnell. Mr. President, I may have the Senator's ear for one further question, as I read the provision on page 5 of the bill, there is a full recognition of the constitutional right of either House to change its rules. The point which I make, however, is that section 126 of the bill is not the creation of rule but the creation of a law. The mere power to change rules would not, it would seem to me, give the Senate the right to set aside a specific statutory provision that –

No bill or resolution, and no amendment to any bill or resolution to establish or to continue a special or select committee, including a joint committee, shall be received or considered in either the Senate or the House of Representatives.

Mr. La Follette Mr. President, I cannot agree with the Senators; interpretation.

Mr. Donnell. I understand the Senator's idea to be that section 126, by provision of section 101 is merely one of the rules of the Senate?

Mr. La Follette. Certainly; because it is a part of that title, and section 101 expressly states the fact to be that these sections are included as a part of the rules of the respective Houses of Congress and merely preserve the right to each of them jointly to suspend or change any rule.

Mr. Donnell. I thank the Senator.<sup>39</sup>

The question being debated was whether or not Congress could bind each House in the future to certain rules by passing this law. Mr. Donnell was worried that the passage he quoted from the bill bound future actions by the Senate. Mr. La Follette indicated that this was not the case, that each House would continue to be free to make its own rules. Mr. Donnell seemed to accept Mr. La Follette's explanation at this time. Yet, later on that same day, he made a lengthy speech arguing that this bill was unconstitutional. The following short excerpts from his speech show the main points of his argument. He stated,

it is obvious, as I see it, from the portions of the bill to which I have referred, that the bill undertakes to amend certain specific rules of the Standing Rules of the Senate. The question I have in my mind is whether or not this is at all a matter for legislation, or whether it is a matter solely for determination, as to the Senate, by the Senate itself, and as to the House, by the House itself. I should like to address myself briefly to that proposition.<sup>40</sup>

He then went on to discuss the powers granted by the Constitution to Congress. He was skeptical about whether the Constitution allows what this bill did. He continued, "But I undertake to say that the doubt which arises in my mind comes from the fact that the determination of rules for each respective House of Congress has not been vested, either

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<sup>39</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 6, 1946): S 6367.

<sup>40</sup> *Ibid.*, 6391.

directly or by necessary implication, by and portion of the Constitution in Congress itself.”<sup>41</sup>

While Donnell’s speech on this issue was the longest, a few other Senators weigh in on the debate. Mr. McKeller, an opponent of the bill, made a similar argument to Donnell’s. He observed,

I have noticed that a number of the rules of the Senate have been incorporated in this bill, some of which seem to have been amended and some of which are in their original form. Those inclusions are wholly immaterial, I may say to the Senator, because on the authority of the Senate of the United States—if it still had any authority, and I believe it has—the Senate may set the language aside. Listen to this:

Each House may determine the rules of its proceedings.

I have read from the Constitution. We have determined the rules of our proceedings, and in this bill it is undertaken to establish by law that the House and the President must agree to a portion of the former rules of the Senate, or some additions to those rules, as the author of the bill feels should be done. I think the language is entirely out of place. I doubt very much whether it will stand the test of the Constitution.<sup>42</sup>

On the other side, joining Mr. La Follette, Mr. Vandenberg argued that this bill still allowed each House to determine its own rules. Responding to La Follette’s explanation of the bill, he summarized, “In other words, then, section 126 is really an admonition rather than a straight-jacket.”<sup>43</sup>

The second constitutional issue, the extent of congressional oversight of the executive, was also raised by Mr. Donnell. On June 7th, Donnell pointed to a part of the bill that said that it hoped to help the standing committees of Congress to “exercise continuous surveillance of the execution by the administrative agency concerned of any

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<sup>41</sup> Ibid.

<sup>42</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 7, 1946): S 6457.

<sup>43</sup> Ibid., 6440.

laws, the subject matter of which is within the jurisdiction of such committee.”<sup>44</sup> Mr. Donnell was willing to accept oversight as a proper end for this legislation. However, he indicated that this bill might violate the separation of powers set out in the Constitution. Particularly, he was worried about the bill’s use of the word surveillance. He asked Mr. La Follette what exactly the bill meant by this word. Mr. La Follette responded, “we used the word in the sense of watchfulness, and I have explained how I think it will work.”<sup>45</sup> He then described exactly how he saw oversight happening under this bill. Mr. Donnell then responded stating,

I am very favorably impressed with the general theory which is enunciated by the distinguished Senator. I do, however, have in mind this point: It seems to me that we clearly have in our type of Government three distinct divisions, the judicial, the executive, and the legislative. It appears to me that when the legislative has enacted legislation, the function of administering the legislation thereupon rests with the executive department of the Government. I do not deem it advisable that the legislative department shall undertake either to make itself an adjunct to the executive department or that it shall have upon itself the responsibility of seeing that there is a proper administration of the law which it had itself passed and the administration of which it has cast upon specific persons or agencies.<sup>46</sup>

Donnell believed that the legislation, as written, would imply that the legislature had a role in the *administration* of the law, something which he believed was purely an executive function. In order to avoid this, he proposed an amendment that the word “surveillance” be replaced by “watchfulness.” La Follette made a counter proposition that “surveillance” be replaced by “general inspection and review.” However, Donnell objected to the word “review.” La Follette then yielded and were along with Donnell’s

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<sup>44</sup> Ibid., 6445.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

original amendment. Here, the discussion of the constitutional tradition led to an amendment in bill.

The third constitutional issue discussed in the debate examined the new position of the Director of Personnel which the bill proposed. This director would have the power to approve the professional qualifications for certain committee staff members. While the ultimate decision of who to select for the committee staff would be left open to the committee leadership, the staff would also have to be approved by the Director of Personnel. Mr. McKellar, who was against this bill in its entirety, was particularly worried about the constitutionality of such an officer. Primarily he was worried that in creating such an officer, Congress was delegating authority to an officer who was not part of the three branches of government in the Constitution. He observed,

If this bill is passed the Director will run the Senate. We may think we are Senators, but under this bill, I may be mistaken about it, and I hope to heaven I am; but as I read the bill the Senators from the various States will become sub-Senators. The high and overruling Senator not provided for by the Constitution of the United States at all will be the man who runs the Senate. He will appoint everyone connected with it, whether fitted or unfitted for the place, whether he knows anything about the position to which he is assigned or not.<sup>47</sup>

Later in the speech he continued,

The Director General will appoint a committee such as he wants to run the show as he sees it, not as we see it, not as the Constitution framed is to be, not as the Constitution provided it to be, not as it has been managed so long, over a period of more than 150 years, nearly 158 years; not as it has operated in the past, but here is the great overlord who is going to take charge of the Senate.<sup>48</sup>

While La Follette and others defended the Director of Personnel, they did not address the constitutional issue raised by McKellar here. Rather, they tried to emphasize that the director would not take away discretion from committees. This made this debate unlike

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<sup>47</sup> Ibid.,6453.

<sup>48</sup> Ibid.

the Pendleton Act where the constitutionality of the civil service commission was discussed in great depth. Whether such an office would be an unconstitutional delegation of legislative power was open for debate, however it was not debated here.

The Senate debate also contained some passing references to the Constitution and to the American Founders that were not expanded on at length. On June 10th, Mr. Bridges, who saw this bill as restoring the original equality of the branches in the Constitution, observed,

Mr. President, when our Government was founded and the Constitution was adopted there was provision made for three separate and distinct branches...When they were created they were more or less equal. But the executive branch of the Government has mushroomed into the greatest governmental bureaucracy not only this country but any other country in the world has known.<sup>49</sup>

Mr. La Follette echoed this concern in his speech introducing the bill stating, “It has been evident to all those interested in and concerned about efficient Government, that because of the separation of powers in our Constitution that gap between the executive and the legislative arms of the Government has been growing and widening throughout the years.”<sup>50</sup> Arguing later that Congress was actually intended to be the *most* important branch, Mr. La Follette argued, “Mr. President, in the last analysis the Congress is the center of political gravity under the Constitution, because it reflects and expresses the popular will in the making of national policy.”<sup>51</sup>

Overall, the Senate debate contained more discussion of constitutional issues than the House debate. Not only did it make passing references to the document itself and the

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<sup>49</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 10, 1946): S 6558.

<sup>50</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 6, 1946): S 6365.

<sup>51</sup> *Ibid.*, 6367.

founders, it raised a number of substantive constitutional issues. However, these issues were discussed in less depth than constitutional issues in the previous two debates.

### *The House*

The debate in the House examined constitutional questions in a far less substantive way than in the Senate. In fact only two constitutional questions were raised. There was some additional use of constitutional rhetoric, including references to the Constitution itself, the Founders, and other constitutional language.

The first serious constitutional question in this debate was raised very early in the floor debate. It was raised by a member who did not seem to think there was a constitutional problem with the bill but wished to head off any possible constitutional objections. I quote it in its entirety to emphasize the fact that this was the *most* substantive constitutional rhetoric. The exchange was as follows:

Mr. Spence. The Constitution provides that each House will make its own rules of procedure. I wonder if there is any question as to the constitutionality of this legislation.

Mr. Monroney. That is a very important question. It was raised in the Senate, may I say to my distinguished chairman. The provisions of the Constitution are that each House shall be the judge of its own rules. It does not prohibit us from acting in concert with the Senate in the exercise of our rule-making powers. We are not touching the Senate rules, we are changing our rules. The Senate changes its rules at the same time.

At points where the two rules come together we must provide by joint legislation for their assimilation. The most distinguished lawyers on the other side proved conclusively in the debate that this is well within the constitutional limitation on the two houses as to changing the rules. When we meet in January the House can wipe out everything we are doing today if it so desires.

Mr. Spence: In other words, you do not derogate any power from the House? The House still has the power to change its rules?

Mr. Monroney. The House has the power to change at any minute the authority it has.<sup>52</sup>

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<sup>52</sup> *Legislative Reorganization Act of 1946*, H.R. 717, 79th Cong., 2nd sess., *Congressional Record* 92, (July 25, 1946): H 10040.

This exchange seems to be merely a set-up, which was discussed in the section above on “softball” questions. The rather brief raising and solving of the constitutional question indicates a reform that was far less concerned with the constitutional tradition than the reforms of earlier debates.

A second constitutional question was raised later in the debate by at least two speakers. While this issue had potential for raising interesting debate, it was again only mentioned in passing. The rhetoric centered on the alternatives of a citizen Congress (whose primary purpose was to be representative), or a more professional or managerial Congress. As mentioned above, the provisions of this bill would grant members of Congress certain retirement benefits. Arguing against such a provision, Mr. Rizley made the following observation,

I think it is wrong in principle. I do not believe it was ever contemplated that the legislative branches of government which must pass upon retirement laws and retirement benefits for ordinary civil-service employees and many others should ever be placed in the same category of should ever place themselves in the same category as those appointed officials or appointed employees who become a part of the Federal Government. It was intended by the founding fathers when they so wisely set up this system of government that the Congress itself would not be a professional Congress, if you please by a citizens Congress of independent individuals.<sup>53</sup>

This sentiment was also echoed by Mr. Lane, although he was arguing in support of the bill as a whole. He argued that the bill, by lightening the work load of Congress would refute the thesis that representative government was impossible in a complex modern world.

Like earlier debates, this debate made reference to the American Founders. Again, these references seem far less substantive or detailed than in the above debate. No specific founder was named at any point during the debate, nor was any specific guiding

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<sup>53</sup> Ibid., H 10057.

principle ascribed to the founders. Take the opening speech of Mr. Michener, a supporter of the bill. He observed, “the Congress is inadequately organized or equipped to perform the duties which the framers of the Constitution anticipated it would perform. The framers of the Constitution thought in prospect and showed marvelous vision in what they wrought. It was impossible, however, for them to visualize, much less contemplate, the duties of the legislative branch of the Government in the year 1946. The provided for changes in the Constitution and in the law of the land.”<sup>54</sup>

Clearly there was not much said about the founders. They had some intent for how Congress would perform. Although, it was never stated what that was. The founders also allowed for change when things did not work. Rather reverting to the constitutional tradition, this statement seems to indicate that the good thing about the founders was that they allowed for evolution. A similar observation was made by Mr. Monroney: “I believe anyone will say that we simply cannot struggle along under this type of work load unless we equip ourselves to answer the challenge that the Constitutional framers intended Congress to carry...but Mr. Chairman, they were not dealing with the complex problems that we are dealing with in this Congress.”<sup>55</sup>

Another brief praise of the Constitution was made in passing by Mr. Dirksen. In describing why the Senate version of this bill did not make appropriations for a suggested Legislative Reference Service, he argued that this was because a revenue bill must begin in the Constitution. He stated, “when you examine that very fresh and virile Constitution

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<sup>54</sup> Ibid., H 10046.

<sup>55</sup> Ibid., H 10039.

of the United States you will find that all revenue proposals must originate in the House of Representatives.”<sup>56</sup>

To conclude this section, although in the Senate there were number of constitutional issues and principles discussed, the discussion was still less substantive than both of the earlier debates. The House hardly discussed constitutional issues at all. Both Houses made passing references to the political ancestors and the Constitution. However, in both cases these references seem to be throw away lines. Even in the 1910 debate where the discussions of the political ancestors were less substantive than in the Pendleton Act, they were more substantive than in this debate. Here no particular individuals were mentioned, nor were they linked to any particular tradition.

*Standard #3: Lack of Rhetorical Self-Restraint—Mandates and Time for Debate*

*The Senate*

*Importance of debate emphasized.* In the Senate debate, one can see examples of both rhetorical restraint and lack of restraint. One way that the importance of rhetoric can be seen is through the leadership of Mr. La Follette. La Follette consistently commented that having enough time for debate was important. While he did use crisis rhetoric, as discussed in section 5, he rarely used it to speed the bill through the Senate without debate. For example, on June 6<sup>th</sup>, Mr. George was worried that since he had only recently read the bill and was just then coming to understand it, it would be too late to offer any amendments. Mr. La Follette responded to George’s worries twice stating, “Certainly; I think the Senator should have that time,” and, “it would certainly be the

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<sup>56</sup> Ibid., H 10050.

furthest from my thought to attempt to preclude any Senator from offering any amendment he might desire to offer to the bill.”<sup>57</sup> On the following day, Mr. Barkely remarked that he was worried that in going through this large bill quickly, certain provisions might not be properly examined. La Follette again reassured the Senate: “I am ready, willing and anxious that the bill be discussed from every angle, and I hope we can continue the illuminating debate on it.”<sup>58</sup>

In addition to La Follette emphasizing that he desired enough time for debate, other members expressed their desire for more debate time. While La Follette was usually fair in extending debate time, at times other members thought he had not allowed enough time. On June 7<sup>th</sup> Mr. Radcliffe made a lengthy speech calling for more debate time. He opened observing, “Mr. President, I am informed that there is some possibility that the pending bill will reach the point of final passage today.”<sup>59</sup> He went on to say that he thought that the bill was a good one. However, he remarked, “But I am appalled at the prospect that a bill of such tremendous magnitude, which would change vitally the structure of Congress, should be passed without more consideration by us,”<sup>60</sup> and, “I do not think it would be in the cause of good administration or sound legislative procedure to permit a bill of colossal magnitude to be passed without having it receive more consideration and deliberation.”<sup>61</sup> He then went on to propose a delay in the vote on the

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<sup>57</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 6, 1946): S 6391.

<sup>58</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 7, 1946): S 6443.

<sup>59</sup> *Ibid.*, 6451.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

final bill. He justified this proposal adding, “Such a delay would give to Members of the Senate who perhaps are not present today or who have not already studied the measure carefully, and opportunity to study it as it should be studied.”<sup>62</sup> La Follette allowed for the delay that Radcliffe asked for. However, he La Follette did remark that he did not feel that the committee was unfairly pushing this bill through and that members should have had enough time to read through it already. On the final day of debate, June 10<sup>th</sup>, Mr. Barkley asked La Follette for extended debate time. Since there were a few more amendments which needed to be considered he stated, “Mr. President, I suggest that what the Senator from Wisconsin is seeking to do is to bring to a close the debate so that we may vote on the bill today. I think that he might well extend the time which he has suggested to 5 o’clock.”<sup>63</sup> La Follette agreed to the extension.

Shortly after Radcliffe’s remarks discussed above, Mr. McKellar made similar remarks. McKellar was somewhat different than Radcliffe and Barkley because he was against the bill in its entirety, while they were not. This may raise questions as to whether or not he was urging more debate for the sake of improved deliberation or merely as a dilatory tactic. Nevertheless he criticized La Follette for rushing the bill through stating, “My good friend the Senator from Wisconsin has stated that we would be delayed by the OPA bill, and for that reason he wants to hurry this bill through. I believe that his is the kind of bill which ought not to be hurried through.”<sup>64</sup> While criticized by McKellar, La Follette rarely tried to push debate along. Only once did he criticize

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<sup>62</sup> Ibid.

<sup>63</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 10, 1946): S 6562.

<sup>64</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 7, 1946): S 6454.

members for speaking too much. On June 7th he stated, “Mr. President, I wish to make an appeal to my colleagues to refrain, insofar as possible, from the injection of extraneous debate or other matters not related to this bill...That is all I ask, Mr. President, but I ask it in all sincerity and earnestness.”<sup>65</sup> The request was a modest one that sought only to avoid unnecessary debate. That fact that he allowed debate to go on for three more days suggests that he was not trying to prematurely shut debate down.

While the above examples touch on the importance of debate for this particular bill, another argument was made which claimed that this bill would improve the quality of debate in future debates. Mr. Fulbright posed the following questions to Mr. White about the current rhetorical practice of the Senate:

In view of his long experience in connection with the great volume of work which the Senate has performed, would he not agree that there should be better attendance of Senators in the Chamber when debates are taking place with regard to important matters? Within the short time I have been a Member of the Senate, I have been greatly disappointed in the small attendance of Senators which I have observed from time to time. I believe that a small attendance of Senators in the Chamber creates very unfavorable impressions throughout the country. Does not the Senator believe that enactment of the pending bill might result in a greater attendance of Senators at sessions of the Senate?<sup>66</sup>

Mr. White responded, “<sup>67</sup>I believe that the enactment of this bill would improve the situation very greatly.”The fact that members talked about the importance of adequate time for debate is a positive example of rhetorical restraint. Rather than pushing through a bill which was widely supported, the Senate leaders of this bill encouraged discussion.

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<sup>65</sup> Ibid., 6440.

<sup>66</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 8, 1946): S 6531.

<sup>67</sup> Ibid.

*The mandate.* Both of the previous debates examined involved lengthy discussions of what, if any, possible mandate the people had given for various reform alternatives. In both of these debates at least three different possible interpretations of the mandate for reform were given. This was not the case in the debate on the Legislative Reorganization Act of 1946. In both Houses, there was little to no debate about how to understand the mandate behind this bill. It was simply asserted by some who supported the bill that the people were behind it. Like most of the other sections in this chapter, the Senate discussion of a mandate was slightly more substantive than in the House. However, compared to the Senate's discussion of the mandate in the Pendleton Act debate, it was far less substantive.

During the final days of debate a couple of Senators in favor of the bill appealed to the people for support. On June 8<sup>th</sup>, Mr. White remarked, "I say to Senators in all solemnity that unless we now make an effort to increase the efficiency of Senators individually, as well as the Senate as a whole, we will continue to lose out prestige with the people of the United States."<sup>68</sup> On the same day Mr. Barkly, a proponent of the bill, stated the following in a lengthy speech:

For these reasons I am for the bill, and shall vote for it, even with what may be regarded as its imperfections, because I think we must make a start. The country expects us to do so. The whole country has approved our effort during the past year to bring the legislative process more up to date, and to remove from it the petty annoyances which distract all of us from our legislative duties.<sup>69</sup>

Barkly did not explicitly come out and say that the people supported this bill in particular. The people wanted a modernized legislature. However, by arguing that the

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<sup>68</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 8, 1946): S 6531.

<sup>69</sup> *Ibid.*, 6537.

people approved the “effort during the past year,” by which he meant the work of the committee that prepared the bill, he implied that the people supported this bill. On the following page of the Record, Mr. Connally, an opponent of the bill, challenged Barkley’s characterization. The exchange was as follows:

Mr. Connally. The country does not know anything about the bill.

Mr. Barkley. Mr. President will the Senator yield?

Mr. Connally. I yield.

Mr. Barkley. I did not say that the country expected the bill to pass. I said that the country expects us to make some improvement in the procedure of the Senate, whether through this bill or by some other means.

Mr. Connally. I accept the correction of the Senator. Everyone hopes for improvement in every line. But, of course, the people of the country generally do not know what is in the bill. Even members of the Senate are not entirely familiar with everything contained in the bill.<sup>70</sup>

Another member, Mr. McClellan, who was somewhat skeptical of what this bill would do, also challenged whether or not there was a mandate for action. Of the current system he observed, “I dare say there has been no complaint. Without complaint, in my judgment there can be no justification for the proposed change.”<sup>71</sup>

### *The House*

*Time for debate.* At no point during the House debate did leaders call for or even say that they would allow extended debate time. Nor did many members call on the floor leaders to allow more debate time. On the contrary, debate was discouraged. This is discussed in section 5 on the House’s use of crisis rhetoric.

*The mandate.* In this debate, one simple understanding of the mandate was offered, and it was never challenged. Since the time for floor debate was very limited,

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<sup>70</sup> Ibid., 6538.

<sup>71</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 10, 1946): S 6548.

the description of the mandate was simply that the people supported this bill. No real evidence was provided either for or against this claim.

Early in the debate, Mr. Plumley, a member of the joint committee, promoting the bill on the floor stated, “we certainly should have the courage of our convictions and pass this bill. The people demand it.”<sup>72</sup> As far as a mandate was concerned this was really all that was offered rhetorically. At a few points, various members argued that particular parts of the bill would find favor with the “taxpayer.” However, these comments were often mentioned in passing and were never debated. Perhaps a discussion of what, if anything, the people demanded as far as reform, may have led to a more successful piece of legislation. As the observation by Roger Davidson pointed out, this reform effort failed to take into account the input of the majority of members of Congress. By failing to discuss the idea of a mandate on the floor, this debate also failed to take into account what type of popular support this bill had.

Another area where a failure of rhetorical restraint can be seen was the lack of a call for adequate debate time. In the Pendleton Act debate discussed in chapter 4, leaders from both parties, including those who were pushing the bill, called for extended debate due to the importance of the matter. However, in the debate here, as can be seen more in section 5 on crisis rhetoric, there was a sense that debate and amendments were not important but rather that the measure should be pushed through.

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<sup>72</sup> *Legislative Reorganization Act of 1946*, H.R. 717, 79th Cong., 2nd sess., *Congressional Record* 92, (July 25, 1946): H 10041.

#### *Standard #4: Feminine Rhetoric*

##### *The Senate*

The Senate debate contained a number of exchanges that were competitive and evidence driven. These can be seen in the other sections of this chapter. Due to this, one could claim that there was far more masculine rhetoric in the Senate debate than in the House debate. Consequently, there was very little use of what one might call feminine rhetoric. There was however, one story told by a Senator, which fits in with our characterization of feminine rhetoric. On the final day of debate, June 10<sup>th</sup>, the subject of whether or not Senators should continue to have a role in the selection of pageboys who would serve the Senate was discussed. There was a possibility that the personnel director (discussed in other sections) would select the pageboys and that only boys living in D.C would be eligible. Mr. McClellan was in favor of individual Senators retaining the privilege of selecting these boys from their home states. In support of his position he told a story. He recalled:

Mr. President, I recall when I was a mere boy I had the ambition to serve as a page in the legislature of my State. I did not have the opportunity for some reason to serve as a page. But also, Mr. President, from my earliest days I had a desire and ambition to some day serve in the United States Congress. My father was a farmer. I had no more opportunity afforded me than thousands upon thousands of young boys in my State whose fathers were in a situation comparative to that of my own father. My father named me for a member of Congress. All through the years that in itself inspired in me the ambition to become a member of Congress. When I was 8 years old I wrote a letter to that Member of Congress for whom I was named, John S. Little, from the Second Congressional District of my State, and told him of my labors for that week in the fields, told him how much cotton I had picked during that time. I received a reply from him. I still have that letter and I cherish it. He wrote me of course as he might write to any other boy and commended me for my labors and predicted that some day I might aspire to fill a high position in the Government.

Mr. President, that was an inspiration to me. Is it not an inspiration to these boys? Every one of them will say that it is. If it is, why do we wish to limit appointments to boys in the District of Columbia?<sup>73</sup>

This was the only story of note during the course of the Senate debate. Of all the places one could tell a story, it is probably the most appropriate. After all, the topic of pageboys is not a crucial matter of legislative procedure. It is about giving the nations youth a positive experience with the government. At the same time, stories like this did not occur in the earlier debates. Here, like in the other sections, the Senate debate was less problematic than the House debate.

### *The House*

Other sections of this chapter have discussed how this House floor “debate” actually lacked much real debate. That is, there were not many actual exchanges between opponents. Evidence was not called for and challenged. Those trying to disprove the assertions of their opponents did not provide counter-evidence. Since the logical, competitive presentation of evidence is characteristic of the masculine style, one could say that this style was not as prevalent in this debate.

On the other hand, feminine rhetoric did not appear with great consistency. The use of ornamental, emotive narratives did not occur frequently. However, since the last two debates did not really involve any uses of this rhetoric and since this debate is a “transitional” debate, the instances where feminine rhetoric did occur are important to note. As discussed in earlier chapters, one obvious type of feminine rhetoric is the use of story-telling. Mr. Lyle, a member of the Committee on the Post Office and Post Roads, who opposed the power being stripped from the committee, told the following story

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<sup>73</sup>*Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 10, 1946): S 6556.

When I was in the Texas Legislature, every year just as soon as they could, they used to try to do away with some of the district courts down there. There was an old judge who had had his court for a long time. This situation reminds me of this story and I am going to tell it.

One of the Senators called on him and said, "Judge, we are going to do away with your court."

He said, "My goodness, who is doing that?"

The Senator said, "Well, there is an old lawyers who came down and testified against your court."

He said, "He came down to testify against your Honor." The Judge said, "I knew he would." He said, "I have known him for 30 years and he has hated me ever since I beat him for county attorney. He is no good. He said, "Who else is down there?" He named another lawyer. He said, "He don't like me either. I caught him stealing money from a widow one times and he has never liked me since."

The Senator said, "Wait a minute. Nobody is down here to try to tear up your court." And the old judge said, "Senator, you have made me say awful things, awful things, about two of the best friends I ever had."

I thought the gentleman handling this measure was going to agree to this amendment, so he has made me say some nice things about one of the worst enemies of the Post Office Committee has ever had.<sup>74</sup>

This "story" may have be offered more as a joke than as a serious recounting of Texas politics. However, Lyle did choose the narrative style to make a point. In this case he was calling Mr. Monroney out because he felt that Monroney had tricked him. Lyle offered his support and praise of the bill based on the assumption that Monroney would go along with his amendment to save the Post Office Committee, just as the man in the story only spoke ill of his friends because he thought they were there to tear up his court.

Mr. Dirksen, a leading proponent of the bill, told a story that used the disclosing language

characteristic of feminine rhetoric. He stated,

Mr. Chairman, open confession is *good for the soul* and I do not mind indicating to the House that the particular measure before you today has been of extremely high interest to me for a great many years, *I have never felt*, and I came here nearly 14 years ago, that I should permit myself to become so inert in my thinking that the old-time religion of congressional procedure was good enough for me if it

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<sup>74</sup> *Legislative Reorganization Act of 1946*, H.R. 717, 79th Cong., 2nd sess., *Congressional Record* 92, (July 25, 1946): H 10068.

was good enough for those who antedated me to service...*I felt* I should lend what feeble talent and zeal I might have to that cause.<sup>75</sup>

Not only was Dirksen telling a story, but the language he used in the story (“felt,” “good for the soul”) was feminine.

Another example of feminine rhetoric involved an analogy made by Mr. Rich who was in favor of the changes made to the budgetary process under this bill. As noted in the introductory chapter, feminine rhetoric often attempts to use private life examples in public discourse. It also attempts to simplify complex situations with simple narratives. Mr. Rich’s analogy seems to fit both of these descriptions. He observed,

The situation is like this. Let us take the home as an example. In any home the father and mother know what the earning power of the home is. Then from that they know just exactly what they can spend in the home. If they spend more than they take in, when they have to in debt for it they know that it is a burden on the family in future days to get rid of that debt. The only way to get rid of it is to pay it off. That is the only honest and honorable thing to do, to pay it off.<sup>76</sup>

Other than these, there were not many other stories offered by members. Thus, feminine rhetoric was not used excessively. However, in the House debate, there were both more stories and less masculine rhetoric than in the Senate. Thus, the balance shifted more in the direction of feminine rhetoric.

#### *Standard #5: Crisis Rhetoric*

Both the Pendleton Act and the Revolt against Speaker Cannon used crisis rhetoric at times. However, as seen in these previous debates, crisis rhetoric was often more restrained, challenged by other speakers, and not always the dominant rhetoric of the leaders of the reform. This is strange, as the Pendleton Act was in some ways a

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<sup>75</sup> Ibid., H 10049.

<sup>76</sup> Ibid., H 10060.

response to a the assassination of President Garfield and the revolt against Speaker Canon was framed by some as stripping a tyrant of his powers. The Legislative Reorganization Act dealt primarily with the restructuring of committees, an arguably less dramatic measure than that of the previous two debates. Yet, in the floor debate of 1946, the crisis rhetoric seems to have taken a more prominent place in the debate. Again, there was a difference between the debate in the House and the debate in the Senate with regards to this standard. Crisis rhetoric was used more in the House. However, the debates in both Houses shared the fact that the major sponsors of the bill, in introducing it, used crisis rhetoric to frame the debate.

### *The Senate*

Mr. La Follette, the major sponsor of this bill in the Senate, basically led the entire floor discussion of the bill. He proposed amendments, answered questions, and clarified the intent of the bill. In many ways, he did an excellent job of leading the debate. However, he consistently used crisis rhetoric to advocate for the bill. In his opening speech presenting this bill to the Senate for discussion, he justified the committee's work as follows: "The committee was created in the response to a widespread congressional and public belief that a grave constitutional crisis exists in which the fate of representative government itself is at stake."<sup>77</sup> This statement seems to indicate that the committee, not La Follette himself. However, towards the end of the speech, he admitted that he joined the committee in this belief. He argued, "I am convinced, Mr. President, that if this proposal becomes a law and is put into effect, it will go far in helping to mitigate the periodic deadlocks which occur between the Executive

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<sup>77</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 5, 1946): S 6345

and Congress, and which have caused dangerous *crises* in the conducts of the Federal Government.”<sup>78</sup>

On the following day, which was the first full day of debate on the bill, he again stressed the importance of the bill using crisis rhetoric. He made the following statements:

Literally, Mr. President, in this post-war world a tidal wave of complex, difficult, and intricate problems is threatening to *engulf* the legislative arm of the Government and ultimately submerge it...

I *gravely fear* the consequences should we fail to seize this opportunity for the first time in our history thoroughly to reorganize the legislative arm of the Government and to give it, in this modern age, the tools and machinery which are essential to the efficient transaction of its business. The result might be *tragic* for our representative form of Government. Those who have studied the history of the fall of democratic governments abroad in recent years know that one of the contributing factors to their *disintegration and ultimate overthrow* was the fact that the legislative branches of government dialed to transact the public business, failed to carry out of the will of the people.

So I weigh my words when I say that I think the *ultimate fate of democracy* is bound up in this first step forward in the reorganization and modernization of our National Legislature...

The *fate of democracy* will depend upon whether we make the legislative arm of the Government efficient and responsive to the will of the people.<sup>79</sup>

Two days later on June 8th, La Follette again got up to support the bill. In one speech he claimed that with this bill, “it will be possibility to bring some order out of the chaos which now prevails so far as the committee structure of this body is concerned until it *threatens the existence of the representative government in the United States*.”<sup>80</sup> In another speech on the same day he reported that the committee that prepared the bill had,

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<sup>78</sup> Ibid.

<sup>79</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 6, 1946): S 6370-1.

<sup>80</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 8, 1946): S 6533.

“come to the conclusion that something had to be done on that subject in order to *save representative Government in America*.<sup>81</sup>

To La Follette’s credit, while using crisis rhetoric to urge support for the bill, he did not use this to rush debate or shut down amendments. Monroney, as will be seen below, did do this in the House. Thus, the crisis rhetoric in the House seems to undermine deliberation more than in the Senate.

While there were other uses of crisis rhetoric, there were far less here than in the House debate. Mr. Bridges offered a somewhat dark observation that unless this bill was passed more Senators would die. He observed,

Since I have been a Member of the Senate—and I have been here rather a brief period of time, but about 10 years—I have seen man after man in the United States Senate whom I highly respected *die from overwork*. Overwork has been the *primary cause of death* of most of the Senators I have in mind.<sup>82</sup>

He then went on to list about ten recent Senators who he believed died from overwork. Perhaps there was some truth to the fact that the stress experienced by these men led to a decline in their health; however, to link the success or failure of this bill to the death of Senators might have been an unwarranted use of crisis rhetoric.

### *The House*

Crisis rhetoric in the House of Representatives was more prominent, both because it was used more and because it was used explicitly as a justification for limiting debate. Many who were in favor of the bill seemed to want the bill passed with little debate or even amendment. Mr. Monroney, the House leader of the joint committee that

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<sup>81</sup> Ibid.

<sup>82</sup> *Organization of Congress*, S 2177, 79th Cong., 2nd sess., *Congressional Record* 92, (June 10, 1946): S 6559.

developed, when introducing this bill on the floor, framed it as responding to a crisis. He stated,

Gentlemen, representative democracy is on trial. We must make it work and make it work well. Around the world the lights of democracy have gone out. They burn here alone, bright enough to rekindle the fires of freedom and democracy. If we fail, we fail the world which looks to us for leadership in this *perilous hour*.

Remember gentlemen, that in other countries overseas, where dictators have taken over, they took over when the legislative branches of those nations disintegrated and failed.<sup>83</sup>

The linking of this Act with dictatorship and describing it as a “perilous hour,” set the tone for many in favor of passing the bill. On the same page of the congressional record, Mr. Plumley, another proponent of the bill, urged, “Congress should act. The time for talking is passed.”<sup>84</sup> Plumely was one of the first speakers to speak on the bill, yet he was discouraging any debate on one of the most comprehensive reforms in congressional history. Later, Mr. Lane, a member of the committee, also stressed the urgency of this bill. While emphasizing that the *committee* “devoted a full year’s study to this vital question,”<sup>85</sup> he did not think much time should be devoted to examining the bill on the floor. He stated that the committee’s report was a “trumpet call to positive and *immediate* action.”<sup>86</sup> Lane, like Monroney, also argued that failure to fix the legislature now could lead to dictatorship. He stated, “the decay of national vigor or the surrender of all power to the dictator have been the product of the impotence of the legislature in

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<sup>83</sup> *Legislative Reorganization Act of 1946*, H.R. 717, 79th Cong., 2nd sess., *Congressional Record* 92, (July 25, 1946): H 10041

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*, H 10053.

<sup>86</sup> *Ibid.*

modern times.”<sup>87</sup> It may be because of these urgings that the debate on this bill was so short. Due to the perceived urgency of this bill, there was no longer time for talk. Floor deliberation was thereby discouraged.

The rhetorical response to the proposed amendments also emphasized the critical nature of the bill. Towards the middle of the debate Monroney spoke against amendments to committee restructuring. This time the crisis rhetoric he used was so strong, that one might even accuse it of presenting a false dichotomy. Responding to an opponent who did not like what this bill did to the post office committee, Monroney stated,

Mr. Chairman, this is not just an amendment to reestablish the Post Office Committee. This is an amendment to decide whether you want a sprawling, overlapping, crazy-quilt of 48 standing committees or whether you want to do a job of reorganizing these committees as proposed.

You vote this amendment up and the House will be here until next week establishing other committees, giving back old jurisdictions, and we will find ourselves in the same hopeless morass of legislative difficulties that we are no certainly under.<sup>88</sup>

A few pages later in the debate record, Monroney made a similar dichotomous argument. He observed, “I think we are either going to have to maintain the integrity of this House bill on the floor or *tear up* the carefully planned and considerate judgment given it by all.”<sup>89</sup> If the bill was not passed almost exactly the way it came out of committee, Monroney believed that it was useless. Monroney was also over-emphasizing the extent to which judgment had been “given by all.” While technically all members of Congress had some access to the committee that developed the bill, the committee, as mentioned

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<sup>87</sup> Ibid., H 10070

<sup>88</sup> Ibid.

<sup>89</sup> Ibid., H 10073.

above, primarily involved outside expert testimony. This rather brief floor debate was the first time the House as an institution had been given time to judge the bill.

Crisis rhetoric was not limited to those who supported the bill in all of its particulars. Mr. Taber, for example, offered an amendment to the changes the bill made to the budget procedure. In introducing his amendment he stated, “I am offering this amendment from a deep sense of public duty. It [the changes] will *absolutely destroy* the operations of the Appropriations Committee in the House of Representatives.”<sup>90</sup> Later in the speech he observed, “The question here is whether we want to do the right thing and do a constructive thing or whether we want to do something that will *destroy* the legislative process.”<sup>91</sup> Here, the bill was not responding to, but causing a crisis.

Besides these explicit references, there was other evidence that rhetorical situation was one of crisis. This was indicated primarily by a certain “anti-crisis” response that also appeared throughout the debate. Speaking early in the debate, Mr. Jarman, somewhat skeptical of the bill, stated,

I cannot refrain from confessing my inability to agree with the pessimism which seems to prevail about Congress. I do not agree, for instance, with this sentence on the first page of the report accompanying this bill. After referring to the legislative machinery and procedure, the report says: “They must be must be modernized if we are to avoid and imminent breakdown of the legislative branch of the National Government.”

My colleagues, I cannot bring myself to agree with that. I do not believe that the legislative branch of this Government is going to break down if this bill does not pass.<sup>92</sup>

Mr. Patman, an opponent of some of the committee changes made under this bill, tried to speak in support of a particular amendment. Mr. Dirksen, a member of the joint

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<sup>90</sup> Ibid., H 10075.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid., H 10043.

committee, objected to him speaking as he believed it was getting too late. Mr. Patman responded, "I do not think that it was very kind of the gentleman to have objected. We have not objected to anybody having an extension of time. It does seem that on a bill of this importance we should have just a little time to discuss it."<sup>93</sup> The fact that he was having to defend his desire to speak to a member of the committee illustrates the urgent atmosphere of the debate. Once given the ability to speak, Mr. Patman criticized the critical portrayal of the current condition of the house. He stated, "I am not joining this anvil chorus proclaiming that our House rules are so obsolete and unworkable that we should absolutely make every radical change that is proposed."<sup>94</sup> Mr. Reed, also skeptical of the current crisis, stated, "the reason I am taking the floor now is simply that I do not like to head the members, although they have a perfect right to do so, take the floor and speak as if this bill was going to bring in a new civilization. As a matter of fact, this old country of ours for more than 150 years has met every crisis that our country has had to meet and it has met each crisis under the system by which we legislated for a century and a half."<sup>95</sup> He continued, "I think the committees of Congress have functioned very well. To get up here and call the rules and procedure a 'crazy' quilt is something of which I do not approve."<sup>96</sup> Not only was Congress not in crisis, but it had been able to address real crises under that status quo.

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<sup>93</sup> Ibid., H 10075

<sup>94</sup> Ibid.

<sup>95</sup> Ibid., H 10071.

<sup>96</sup> Ibid.

### *Summary*

This debate took place after a number of major developments in mass media and in presidential rhetoric. However, it did not take place close to the beginning of the so-called permanent campaign. Thus, this debate saw a marked decline in deliberative rhetoric. However, the decline was not as dramatic as seen in the next chapter. It can rightly be described as a transitional debate. The debate in the Senate was less deliberative than in the Senate debate of the Pendleton Act. It was markedly shorter, taking up about one hundred pages of the Congressional Record as opposed to approximately one hundred and ninety in the case of the Pendleton Act. Though shorter, it retained a good amount of actual debate. Mr. La Follette, the main sponsor of the bill, supported adequate time for debate and was willing to answer all questions posed to him. There were numerous examples of members actually responding on the spot to arguments made by their opponents. This was not the case in the House debate. In fact, the main House sponsor, Mr. Monroney, often tried to hurry the debate through. The House debate involved very little questions and actual debate. As far as the constitutional tradition is concerned, both Houses still made passing references to the American Founders. However, neither treated the thought of these political ancestors with the substance of the Pendleton Act or even the less substantive Revolt Against Cannon debate. Thus, the Founders were appealed to for support of a position, but no speakers talked about what Jefferson or Lincoln, for example, actually thought. More general constitutional principles and parts of the Constitution itself were discussed at some length. Again, this happened more in the Senate than in the House debate, but less than in the previous two debates. While the first two debates had numerous examples of

members criticizing the rhetoric of other members, that was not the case here. However, there did seem to be a sense that argument was important in the Senate debate, as many members, including La Follette, called for substantive debate. This debate was also transitional in the area of masculine and feminine rhetoric. While the Senate did maintain some of the analytic, evidence-driven speeches associated with masculine rhetoric, the House largely abandoned this. Both Houses incorporated stories characteristic of feminine rhetoric, but the House more so. Finally, both chambers of this debate used a more intense crisis rhetoric than in the past two debates.

## CHAPTER SEVEN

### The 1961 Changes to the Committee on Rules

#### *Introduction*

In the first month of the Kennedy Administration, the House of Representatives decided to make a change to the Rules Committee. Before this change the committee, which was responsible for the legislative calendar and debate rules of the House, had twelve members; eight of whom belonged to the majority Democrats and four who belonged to the minority Republicans. However, due to the so-called “conservative coalition” between Republicans and Southern Democrats votes on the committee were often split 6-6, with 2 Southern Democrats voting with the Republicans. This frequently made it impossible for the Democratic Caucus to get its proposed measures reported out of the committee for floor debate, thereby effectively killing the bill. In order to remedy this situation, the Speaker of the House, Sam Rayburn pushed that the Committee on Rules be enlarged to fifteen members. This would allow the addition of Democrats who were in line with the caucus, thus breaking the tie and making the Committee on Rules more responsible to the majority party.

This reform, then, is analogous to the 1910 revolt against Speaker of the House Cannon, though the circumstances are different. In 1910 the majority of the party, or at least a majority of Congress, saw the Rules Committee as reflecting only the will of Speaker Cannon and the faction surrounding him, and not of the majority. The revolt involved a coalition of members from both parties who were trying to break the Rules Committee’s power to block popular legislation. In 1961, however, the Speaker Sam

Rayburn was actually leading the “revolt” against the Rules Committee rather than controlling it. It was Howard Smith, a Democratic member of the conservative coalition who chaired the committee. Due to seniority, Smith and one other southern conservative Democrat could not be removed by either the Speaker or the Democratic Caucus. Additionally, in 1961, a two-party coalition was being used in the committee to block legislation. Thus, in this case, the majority of the Democratic party was trying to break the power that was made up of a minority of the Democratic Party and the Republicans. In 1910, a two-party coalition was trying to break the power of the majority of the majority Republican party. Even though the role of the Speaker and the two-party coalition were different in both of the reforms, they still have a great deal in common. Fundamentally, the reforms were trying to bring about a Committee on Rules that was more responsive to the majority. The majority in 1910 consisted of the majority of all House members and the 1961 majority was made up of the majority party.

Due to shared concern about the power of the Committee on Rules, both in 1910 and 1961, other similarities follow. Both of these reforms were more openly partisan than the other reforms discussed. While these reforms are often framed as measures undertaken for institutional maintenance, they more directly involve the clashing of parties and factions than the comprehensive reforms discussed in previous chapters. Thus, just as comparing the similar Pendleton Act debate with the 1946 Legislative Reorganization Act debate supports the argument for a historical development, so too does comparing the 1910 and 1961 reforms.

Both of these reforms tended to use more combative rhetoric than the other reforms. Both discussed what majority rule should mean in the American system. Yet,

the rhetoric of the 1961 debate is significantly different than the 1910 revolt. It is far less deliberative. In fact, of all the reform debates discussed, it is the least so. In this debate, the types of rhetoric that contributed to deliberation are seen less than in any of the other debates. The types of rhetoric that undermined deliberation are seen more, and are more intense.

### *Rhetorical Time-Frame*

The causal variables have changed slightly in this debate from the last debate. As far as mass media is concerned, by the time of this debate, television was a new phenomenon in American politics. This may account for some of the further decline of this debate. Mary Stuckey describes the Eisenhower and Kennedy eras as “the beginning of televised politics. The old style of politics has not been replaced by the new style, but the new style is augmenting the old. The public aided by television, is beginning to turn more and more to the president, whose voice is becoming privileged above other voices in the national government.”<sup>1</sup> Thus, television was having an effect on politics, but the transformation from old to new was not complete.

Only two presidents had passed since the 1946 debate. However the new media of television magnified changes in the rhetorical presidency brought about by Kennedy. Stuckey adds, “Eisenhower used the media to project images that calmed and deemphasized emotion, which allowed him room to maneuver. Kennedy used the same media to arouse and channel popular emotion to provide justification for his actions.”<sup>2</sup> If this was true, one can clearly see that Congress followed the president. This debate was

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<sup>1</sup> Stuckey, 51.

<sup>2</sup> Stuckey, 52.

certainly the most emotional of all five debates discussed. Also members associated this action with Kennedy's popularity. There were rhetorical appeals to a president who appealed rhetorically to the people.

As for the permanent campaign, most literature seems to argue that it began with or after Lyndon Johnson's presidency. However, as this debate was closer to the beginning of the permanent campaign, perhaps this had an effect. Even without the beginning of the permanent campaign, the other two variables had changed significantly.

*Standard #1: Divorce of Speech from Thought: Lack of Debate but many Rhetorical Questions*

If the 1946 Legislative Reorganization Act saw a small movement away from substantive debate and an increase in rhetorical questions; the 1961 floor "debate" saw this development taken to its extreme. In fact, one can really only call this a debate because that is the word used for floor speeches that are given before the entire House on a legislative measure. However, there were absolutely no questions and response exchanges between members. Only indirectly and in the most general terms did members even address the arguments posed by the other side. Rather, most of the speeches given in this debate were lengthy and self-contained. Almost any one of them could have been given at any point of the debate regardless of what had been said before. One gets the sense that each member was merely speaking so as to say his piece and get on the record, rather than actually trying to convince any other member.

Additionally, in the place of honest questions and debate, this reform saw an explosion of rhetorical questions. There was no use of softball questions, which were discussed last chapter, as there was really no sense of conversation in this debate as there was in the last. It might be going a bit far to say that the *majority* of the speeches given

included at least some use of rhetorical questions. However, it was certainly very common. There seem to be two ways that rhetorical questions were used in member speeches. First, some speakers used these questions as a way to move their speech along. They posed a question, answered it, then moved on to another question.

Mr. Kilday, a supporter of the changes to the committee, used this tactic in his speech. Early in his speech he observed, “There is a situation existing which no one can deny. We have reached a stalemate in our Committee on Rules, a stalemate produced because of tie votes of 6 to 6. What is the basic cause of our difficulty? Reflect for only a second. The basic cause is self-evident—it is very simple, and that is that the Committee on Rules is composed of an even number of Members.”<sup>3</sup> He then went on to say that as the Senate, according to the Constitution, had the vice-president break all ties, they avoided the difficulties of an even split on votes. However, the House of Representatives did not have such a safe-guard. Here he posed his second question, “Why? Because the House is presided over by a member of this body; and in addition, because it was always contemplated that the House would consist of an odd number.”<sup>4</sup> He continued on by discussing how this number had changed historically. Then, he explained that while the number of the Committee on Rules is set in the House regulations, the distribution between the two parties is not. So he posed a third question, “What happens? At the beginning of each Congress, the Speaker of the House and the minority leader agree upon the ratio of the representation of the two parties in the House

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<sup>3</sup> *Committee on Rules*, H.R. 127, 87th Cong., 1st sess., *Congressional Record* 107, (January 31, 1961): H 1574.

<sup>4</sup> *Ibid.*

of Representatives as nearly as it has been possible to do.”<sup>5</sup> The ratio had typically been set at eight members on the committee from the majority party and four from the minority party. Again he asked, “Why?” He answered, “For the simple and all important reason that the Committee on Rules is an arm of the leadership of the majority party. The majority party has the responsibility of the legislative program of the House.”<sup>6</sup>

Mr. Judd, an opponent of the measure, in a speech that is over a page long, did the same as Mr. Kilday. In fact, there were even more rhetorical questions posed over the course of his speech than had been in Kilday’s. Almost every one of his paragraphs begins with a question, and then he proceeds to answer it. For example in the third paragraph of the speech he asked,

will somebody please spell out just what important legislation desired by the Democratic leadership of this House has been blocked by the Rules Committee? In the last Congress, bills reported out by the appropriate committees in the five fields that President Kennedy says are the essentials of his program, were also brought out by the Rules Committee and acted upon by the House.”<sup>7</sup>

In the sixth paragraph of the speech he asked, “What important legislation has been held up the so-called coalition of Republicans and reactionary southerners?”<sup>8</sup> In the seventh paragraph he answered the question by stating, “If and when legislation desired by a majority of the Members of the House should be blocked by the Rules Committee, there are remedies and everybody here knows that.”<sup>9</sup> This pattern continues throughout the rest of the speech. There are other speeches that follow this same format.

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid., H 1578

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

The second way that rhetorical questions are used is when the speakers fire off a number of questions in a row for emphasis. The length of these series of questions cannot be seen in any of the previous debates. But in this instance, both sides of the issue engaged in this tactic. In the same speech by Mr. Judd he has a long series of rhetorical questions that compose half of a paragraph in his speech. He asked,

are the Members of Congress to be Representatives? Or are we to be mere delegates of the largest and most powerful groups at home? Are we to be just like the flag on a cash register, registering whatever button is pushed by someone else? If they push the 10-cent button, the 10-cent flag goes up, without any thought or judgment on our part? If they push the “aye” button, the “aye” flag goes up?<sup>10</sup>

Mr. Judd finished his speech with another long set of questions:

Should this House be intimidated into abandoning sound committee procedures developed and tested through more than 170 years—and giving the stablest and best government the world has ever known? Just what are the good ends that justify such bad means? Furthermore a packed Rules Committee can be expected to bring out bulls under gag rules, making it impossible for Members to propose, debate, and act on amendments. Is that democratic? Is that the proper protection of rights of the minority?<sup>11</sup>

Mr. Miller, an opponent of the changes, argued that sometimes it is good for the House of Representatives to have members of opposing parties vote together. Thus, when Republicans and Southern Democrats on the Rules Committee vote together, this is not anti-majoritarian. Miller admitted that sometimes there was a coalition on the Rules Committee, but then he asked,

What is wrong with that? Is there a pending charge that any Member of this House or any group of Members do not vote their convictions or the aspirations of the people they represent? Is there a pending charge that any Member or group of

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

Members are inimical to the best interests of America, or that they are un-American? Of course there is not.<sup>12</sup>

Mr. Blatnik, a supporter of the changes to the committee argued that it is absurd that the Rules Committee be able to stop the action taken by the majority party in other committees and the House as a whole. He posed the following questions about the Rules Committee:

Does their judgment supersede the cumulative judgment of the legislative committees? Do they have some inherent right not afforded the other 431 Members to determine the course of legislation and in that way the Nation's future in the troubled times?

It would appear that they at least think so. Who else would have the audacity and arrogance to even suggest that in exchange for our agreeing to the status quo they would permit us to consider five pieces of legislation said to be the cornerstone of the new administration's domestic program?<sup>13</sup>

Mr. Conte, another supporter of the changes to the Rules Committee also points to the absurdity of allowing six members of the committee to stop popular legislation. He observed,

[t]he committee system is the only way this great legislative body could accomplish its work and I say the committee system makes good sense. But does it make good sense to give just 6 men out of this body of 437 the power to prevent every one of the bills recommended by the other 19 standing committees from reaching the floor? Does it make good sense to require a committee of experts to tear the heart out of a legislative proposal, framed only after days or weeks of hearings and committee debate, as a condition for getting the proposal to the floor? Does it make good sense to give any group the power, after imposing its own amendments on a bill to report it under a closed rule limiting further amendment? Of course it does not make sense.<sup>14</sup>

Unlike the 1946 debates, there were not "soft-ball" questions. While "soft-ball" questions are designed to avoid deliberation and are thus described negatively in the previous chapter, their absence here was not necessarily a positive development. The

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<sup>12</sup> Ibid., H1577.

<sup>13</sup> Ibid., H 1583.

<sup>14</sup> Ibid., H1588.

likely reason for their absence here was, as mentioned above, members were not talking to each other *at all*. In order to ask even “soft-ball” questions, you must listen to other speakers while they are speaking. “Soft-ball” questions may not constitute ideal debate, but they are at least some form of exchange.

*Standard #2: Lack of Constitutional Rhetoric*

Since this debate was about issues that are similar to the 1910 revolt against Cannon, there were similar constitutional questions and issues raised. However, constitutional questions were discussed far less than in the 1910 debate. Indeed, they were discussed far less than in any of the debates examined so far. Before comparing some of the constitutional issues that this debate shares with the 1910 debate, we turn to more general uses of the constitutional tradition.

In the previous three debates, particular parts of the text of the Constitution were referenced, if not regularly, at least repeatedly. In the Pendleton Act debate, the sections on Article II about presidential removal were debated. In the 1910 revolt, the enumerated powers of Congress in Article I, section 8 were examined to decide the question of whether or not a measure is privileged. In 1946, Article I section 5 was examined so as to shed light on whether legislation can bind either House of Congress to rules in the bill. In the 1961 debate, the Constitution itself was hardly mentioned at all. The text itself was quoted once. Article II, section 3, which refers to the State of the Union address, was mentioned briefly by a Mr. Kilday, supporter of the changes to the Rules Committee. He mentioned this part of the constitution because Mr. Smith, the southern conservative Democrat who chaired the Rules Committee had stated that he would allow five of President Kennedy’s recommendations from his State of the Union Address to be

reported by the committee. Mr. Kilday claimed that by limiting the committees consideration to only five measures “the Committee on Rules attempts to impinge upon the constitutional mandate placed upon the President.”<sup>15</sup> The constitutional argument (besides being arguably a bad one) is short and not discussed further by any other speaker.

The Constitution itself was mentioned in passing only a couple of other times. Mr. Scott, a supporter of the changes, mentioned the Constitution while describing the functions of the House of Representatives by stating, “Its [the House’s] functions are not merely partisan or political but reach much farther than that to the objectives set forth in the Constitution itself, among them, the promotion of the general welfare of Americans.”<sup>16</sup> Mr. Miller pointed to the Constitution in order to argue that the Rules Committee ought not to change simply because it would make it easier for the president to push through his legislative agenda. When quoting President Kennedy’s State of the Union Speech that was given the day before, Miller recounted

Mr. Speaker, the President of the United States said in this Chamber on yesterday, and I quote:

“Our Constitution wisely assigns both joint and separate roles to each branch of the Government, and a President and a Congress who hold each other in mutual respect will not permit not attempt any trespass.”<sup>17</sup>

Mr. Broyhill, an opponent of the changes, referenced the Constitution’s principle of the separation of powers to argue that the Rules Committee ought not to be changed to make the House more in line with the president’s will. He stated,

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<sup>15</sup> Ibid., H 1574.

<sup>16</sup> Ibid., H 1586.

<sup>17</sup> Ibid., H 1577.

Mr. Speaker, the Constitution of the United States carefully provided for three branches of the Federal Government, each with its own job to do and a sufficient degree of autonomy to do it. We the members of this Congress, are charged with a high responsibility, and not the least part of this responsibility is to keep inviolate the right of this and future Congresses to administer its internal affairs and to do its assigned job without unwarranted interference from the other branches of the Government.<sup>18</sup>

Mr. Scott's, Mr. Miller's, and Mr. Broyhill's constitutional references, like Mr. Kilday's were neither discussed further by the speakers themselves, nor were they debated by other speakers. Thus, compared to the three previous debates, the text of the Constitution was discussed far less.

In the first two reform debates, the rhetoric of the constitutional tradition was also expressed by thorough discussions of the thoughts and actions of American political ancestors. In this debate, there was almost no discussion of great political actors of the past. The closest to this would probably be the mention of the FDR's court-packing scheme during the 1930s. Some opponents of the enlargement of the Rules Committee saw the proposed changes as similarly illegitimate. This reference however, was more of an historical analogy than a turning to political ancestors for guidance. To be fair, the Founders were mentioned twice in the course of the debate. Mr. Kilday when arguing for an increase in the Rules Committee from 12 to 15 members stated, "Our Founding Fathers realizing the danger of tie votes in a deliberative body, and as the Senate must always be composed of an even number, two from each State, provided a mechanism in the other body breaking a tie vote and permitted the Vice President ...to vote in order to

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<sup>18</sup> Ibid., H 1585.

break a tie.”<sup>19</sup> This statement about the Founders was pretty straightforward, and not highly debatable, at least in principle. Providing for someone to break a tie is not that controversial. Mr. Pucinski, when arguing for the changes to the Rules Committee stated, “If the Founding Fathers had intended for a super board of individuals to control the working of this Congress, I am sure they would have so provided in the Constitution.”<sup>20</sup> Again, like the above references to the Constitution itself, this mention of the Founders was not discussed further by the speaker or by other speakers after him.

With the more obvious expressions of the constitutional tradition having been discussed, we turn to the more subtle discussion of constitutional principles. This debate did have some discussion of republican or constitutional principles. However, unlike the previous three debates, it really only examined two such questions. The first, which has already been discussed in examining the references to the Constitution above, was the separation of powers argument. Some of those who opposed the changes to the Rules Committee believed that the change was motivated by the more liberal wing of the Democratic party so as to fall in line with President Kennedy’s legislative agenda. While it is not, strictly speaking, unconstitutional for members in Congress to follow the president’s legislative lead, some believe that too much influence on his part violates the principles of the separation of powers. The only other real constitutional issue, which will be discussed in more depth below, was the relationship between political parties and majority rule. This discussion, not surprisingly, also occurred in the 1910 debate, as both dealt with similar practical questions. However, the discussion of the question in this debate was less substantive than in 1910.

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<sup>19</sup> Ibid., H 1574.

<sup>20</sup> Ibid., H 1584.

The argument about majority rule was made primarily by Democrats who were in favor of enlarging the Rules Committee. Many members believed that the small committee was thwarting the will of the majority. By “majority” some members might mean the will of the entire House. Mr. Yates, for example, argued that “By this resolution the responsibility for passing upon legislation will be transferred to the body where it rightfully belongs, namely in the membership of the House.”<sup>21</sup> However, many argued that by following the will of the majority party, they were depicting a healthy majority government. Mr. Kilday, an early speaker in favor of the Rules Committee explained why it needed more majority party members. He stated that this must be the case, “for the simple and all important reason that the Committee on Rules is an *arm of the leadership of the majority party*. The majority party has the responsibility of the legislative program of the House. The majority part has the right to bring to the floor of the House the legislative proposals of the committees.”<sup>22</sup> Mr. Pucinski, also argued that majority rule and rule by the majority party and its leadership are the same thing. He contended that this issue would decide, “whether the Democratic leadership of the House will be under the direction of our beloved Speaker, duly elected both in the Democratic caucus and by the House itself on the day this Congress convened, or whether a coalition party led by the gentleman from Virginia [Mr. Smith] and the gentlemen from Indiana [Mr. Halleck] is to take over the legislative process of in the House of Representatives.”<sup>23</sup> This contrast between the majority party acting as the legislative majority and a coalition acting as s legislative majority was quite similar to the argument made by the pro-Cannon

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<sup>21</sup> Ibid., H 1581.

<sup>22</sup> Ibid., H 1574. Emphasis added.

<sup>23</sup> Ibid., H 1584.

forces in the 1910 debate, who did not think that a coalition of Democrats and “insurgent” Republicans was a legitimate form of majority rule. A few other Democrats made this argument, but these statements are the clearest examples.

Unlike, the 1910 debate, those who were part of the coalition, tended not to make the argument that their coalition government was a legitimate alternative to majority rule. Rather, the argument against the changes in the Rules Committee tended to come from Democrats who argued that the current Rules Committee was not as obstructionist as it was made out to be and that those who argued for changing the Rules Committee in order to achieve political ends were setting a dangerous precedent. However, at least one member pushed back against these arguments about majority government. Republican member Mr. Broyhill argued,

If the supporters of this motion held a *true majority* in this Congress, they would have every right to hold a majority in this, and in every other committee in this House. But the fact that there is no certainty how the vote will go, despite the tremendous pressures that have brought to bear by the administration and by the Speaker himself, is ample evidence that they do not hold a majority.<sup>24</sup>

Broyhill’s use of the term “true majority” seems to indicate that by saying “majority government” one did not simply mean what the majority party’s caucus or leadership desired. Rather, there were, on different issues, shifting majorities. Not only was this acceptable for Broyhill, but it was encouraged. For later in this speech he argued that each member should feel free to vote his true convictions, regardless of party affiliation. Thus, a true majority is what a majority of the members, voting their consciences, decide. Another member, Mr. Lennon, opposing the changes observed, “Moderates at times have been known to take liberal or even conservative positions. Even liberals sometimes turn

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<sup>24</sup> Ibid., H 1585. Emphasis added.

conservative, or vice versa. Shall we increase or decrease the membership of the Rules Committee or any standing committee from time to time to meet what appears to be purely political expediency?”<sup>25</sup> While not arguing, like Broyhill, that the Democrats did not actually have a true majority, he pointed to the fact that majorities were constantly changing. Thus, those who claimed to act on behalf of the majority, ought perhaps to be a bit more restrained in their claims.

To conclude, the rhetoric of the constitutional tradition was used far less in this debate than in any previous debate. While there were passing references of the Constitution and the Founders, these were not expanded upon by the speaker, nor did they raise interesting debate on constitutional principles. While there was some brief discussion of what majority rule consists of, it was far less substantive than in the 1910 revolt against Speaker Cannon.

### *Standard #3: Lack of Rhetorical Self-Restraint*

While the previous debates saw efforts by members of Congress to criticize and call for restraint in the use of rhetoric by other members, hardly any of that is seen in this debate. While it is difficult to describe something that does not appear in the debate, the lack of restraint can be illustrated in two ways. First, it can be seen by turning to a few examples of where an attempt at restraint is raised, but ultimately dropped. Second, one can point to rhetoric that ought to be restrained, and may have been restrained in earlier debates, but went completely unchallenged here.

In the first category, there are a few examples. In earlier debates often speakers emphasized the need for adequate amount of time needed for discussion. Again, this was

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<sup>25</sup> Ibid., H 1588.

the shortest of all the debates examined. Yet, one would think that there would have been more calls to deliberate such a serious change. One could argue that since this was primarily a political battle, and since most were reasonably sure how everyone would vote, there was no need to have any discussion. However, the situation was very similar to the revolt against Speaker Cannon in 1910. Despite this similarity, a lengthy and substantive debate was still held in the 1910 debate. In 1961, only one mention was made of the fact that there was not enough time to discuss the issue at hand. Mr. Smith, the chair of the Rules Committee, opened his speech by saying, "I am very sorry that I am not given what I consider a fair amount of time in which to discuss this matter."<sup>26</sup> Nobody responded to this charge. No one was willing to step in to allow Smith more time. Even in 1946, where the House leaders were reluctant to give more time for debate on the Legislative Reorganization Act, they were willing to do it. While the House debate was rushed in 1946, it was more so in this debate.

Not only did none of the members get up to argue for the need for adequate debate time, but one member actually spoke in order to disparage debate on this topic. Mr. Curtis, an opponent of this measure argued, "I doubt very much if anything said here is going to change many views on the subject."<sup>27</sup> Again, this might have been true. It is even possible that this could be a criticism of rhetoric, or a call for restraint. To point out that no one was listening to one another points towards a problem that could be fixed. However, even if that were so, there was no added call to fix this issue. To simply say these speeches do not really matter, might encourage further apathy and less debate in the future.

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<sup>26</sup> Ibid., H 1576.

<sup>27</sup> Ibid., H 1575.

Another possibility for rhetorical restraint that is raised, but ultimately dropped, is discussion of a mandate. There is a sense in this debate, that because President Kennedy had just been elected, that the people were behind the changes in the Rules Committee. Like the 1946 debate, there were few statements that referred to the “people’s” position on this matter. However, the nuance seen in the earlier two debates was not seen here.. Mr. Yates, a supporter of the rules change argued,

Mr. Speaker, public opinion throughout the country supports the resolution. The *Chicago Sun-Times* in its very perceptive editorial of January 29, 1961 entitled, “Let the House Vote,” points out that although it supported Republican candidates for President, U.S. Senator, and a number of Republican Candidates for the U.S. House of Representatives, it believes that the Republican leadership in the House is doing the wrong thing in opposing this resolution.<sup>28</sup>

This assertion presented an easily challengeable mandate statement. To claim that the people were behind this measure and then turn to an editorial in a Chicago newspaper as evidence for this was problematic.

The other side offered its own version of a mandate. Mr. Halleck reported,

I have an avalanche of mail, most of it handwritten, from people opposed to this resolution. And why are they opposed to it? They are concerned about rash and reckless platform promises repeated in the campaign, some of it added to by some of the task force reports.

As I read that mail from the people of this country, right-thinking people by the millions, I am convinced they are afraid that this effort signals a collapse of the opposition to such unwise measures. They are afraid the floodgates will be let down and we will be overwhelmed with bad legislation.<sup>29</sup>

These are the only real statements that argued for a mandate from the people. Since there were no exchanges between speakers in this debate, competing versions of the mandate were never put into conversation with one another. Since both sides, at different points during the debate, claimed to be on the side of the majority, or to be the

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<sup>28</sup> Ibid., H 1582.

<sup>29</sup> Ibid., H 1579.

truly representative side, perhaps a greater more substantive discussion of the mandate would have led to a more deliberate consideration of the measure.

Perhaps more interesting than the lack of rhetoric on debate time and mandate, is the type of rhetoric that was allowed to go unchallenged in this debate. This debate contains more examples of name-calling, labeling, and assigning maleficent motives to opponents, more than any other debate discussed thus far. But more importantly, no members were called out for their use of such rhetoric. Such rhetoric is problematic for two important reasons. First, and most obvious, is that it undermines deliberation. Labels are at best an over-simplification of an opponent's position, and at worst, ignore the position entirely in favor of an ad hominem attack. Second, lack of restraint in these areas undermines what Ornstein and Man call "institutional identity." Our introductory chapter discussed how a breakdown in deliberation and rhetoric, both directly and indirectly, affects Congress' ability to function well. It does so directly by not allowing reasoned conversation on important matters of public policy. And it does so indirectly by undermining other important means to a functioning Congress, such as institutional identity. The more that partisan rhetoric is allowed on the floor, the more members are going to identify themselves as primarily partisan and only secondarily as members of Congress. There are obviously many factors that lead to a decline of institutional identity, but keeping certain rhetorical norms could help to slow or reverse such a decline.

This 1961 debate involved a heightened use of name-calling and labeling of opponents. In past debates, however, this rarely happened. Mr. Blatnik, a proponent of the rules changes, described the sitting Rules Committee as follows:

No one knew that the *forces of reaction* of both parties would join together in an *unholy alliance* dedicated to thwarting the will of the majority of the Members of this House and the Nation itself. If nothing else, this debate has forced into the open for all to see the fact that a coalition does exist between southern conservative Democrats and the minority Republican party.<sup>30</sup>

“Forces of reaction” seems to be another way of saying “reactionaries.” Such rhetoric reinforces an identity divide between reactionaries and progressives. The language of an “unholy coalition,” must have been used off the floor before this debate, because Mr. Brown a member of the Rules Committee, responded to this accusation before Blatnik, or any other member, even mentioned it. He argued:

Charges have been made that an unholy coalition or coalitions, have existed in the Rules Committee. This may have been true in some instance, for I personally coalesced with my good friend and out well-known liberal colleague on the Rules Committee, Mr. Bolling, of Missouri, as well as with other liberals, when I moved to report the civil rights bill.<sup>31</sup>

To call a group of one’s colleagues “an unholy coalition” certainly seems to indicate a lack of restraint. Interestingly, Mr. Brown did not say that this type of language ought to stop, that it was uncharitable, uncivil, or that it undermined institutional identity. Rather, he pointed out that he had voted with the liberals on the committee in the past, and thus the idea of a lasting conservative coalition was unreasonable. His defense was his willingness to work within the labels used by his opponent. Notice the use of the term “liberal” and “conservative” in both the above quotes. This debate was the first debate where these terms were used to attack one’s opponents. To be sure, in previous debates party membership had been fair game for discussion. However, calling someone a Democrat or a Republic was usually descriptive, not pejorative. Take the following

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<sup>30</sup> Ibid., H 1582, Emphasis added.

<sup>31</sup> Ibid.

statements by Mr. Scherer, who attacked the proposed changes to the committee. He argued that

[t]he public has been bombarded with the propaganda that the present Rules Committee bottles up so-called progressive, leftwing legislation. So it is proposed that we pack the Rules Committee with leftwingers to break the bottleneck and open the spending floodgates. Has anyone stopped to think what this new leftwing Rules Committee will do with some so-called conservative, constructive legislation.<sup>32</sup>

Later he observed:

All of us are aware of the movement afoot to abolish the House Committee on Un-American Activities. Since the American people at the crossroads are behind this committee, there is no chance of getting rid of it, but you can destroy its effectiveness by packing it with a few Roosevelts and Cellars. Let these *liberals* get their foot in the door by packing this rules committee and then just watch them move against the Committee on Un-American Activities.<sup>33</sup>

Another opponent of the measure, Mr. Scott, made a similar assessment of the measure, “The proposal to change the House rules was not initiated by the Speaker, President Kennedy, or by the Democratic leadership. It was originated by a small group of ultraliberals who are always in the forefront in pressing for more and more extreme legislation.”<sup>34</sup> Later Mr. Scott referred to this group as “northern left-wing Democrats.”<sup>35</sup>

Attributing labels and name-calling are problematic for the reasons mentioned above. Perhaps even worse is the attacking of one’s opponents motives. This, like the labels above, is more prominent in this debate than in others. Mr. Brown, a member of the rules committee and opponent of the change, argued, “So actually it is only *power* which is being sought by this resolution—*power* to prevent any individual Member, as

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<sup>32</sup> Ibid., H 1585.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid., H 1587.

<sup>35</sup> Ibid.

well as any minority, from a vote or free expression on a legislative bill.”<sup>36</sup> In other words, those who offered the changes to the rules were not motivated by a particular understanding of majority rule or concern for the institution, but rather a desire to silence their opponents. Mr. Arends, argued that those who promoted the changes were acting, “purely for political expedience.”<sup>37</sup> Mr. Broyhill, another opponent of the changes, stated, “Those who argue in support of the measure make emotional appeals to democracy, fair play, and the like, but underneath it is nothing but a cynical political grab.”<sup>38</sup>

Again, like labeling, assigning bad motives was done by both sides. Mr. Blatnik, whose speech has already been quoted above, also attacked the motives of the, at that time, current House Republicans. He observed, “No one knew then that reasonable men of good faith from the other side of the aisle, interested mainly in the orderly process of Government and legislation in the House, would be replaced by others, motivated largely by partisan, political objectives and their own self-interests.”<sup>39</sup> When compared with the Pendelton Act debate, where questioning another members motives is highly criticized, this debate is clearly different.

#### *Standard #4: Feminine Rhetoric*

This debate has plenty of angry and attack rhetoric. However, this ought not to be confused with masculine rhetoric which— as described in the opening chapter—is competitive, factual, organized, and involves the analysis of evidence. As mentioned in

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<sup>36</sup> Ibid., H 1575. Emphasis added.

<sup>37</sup> Ibid., H 1577.

<sup>38</sup> Ibid., H 1584.

<sup>39</sup> Ibid., H 1582.

the section above, this debate involved no actual exchanges between members, merely speeches. It is the only debate thus far where this holds true. If there are no exchanges, there can then be no competition or analysis of one opponent's arguments and evidence. If this is the case, Masculine rhetoric takes a major hit.

Of course, certain speeches were organized and factual, which, according to Jamieson, are manly characteristics. Take for example Mr. Flynt's speech that opposed the rules change. In the speech, he argued that the Rules Committee cannot completely block popular legislation. To prove this he discussed four methods that could be used to by-pass the Rules Committee: 1) Calendar Wednesday, 2) a suspension of rules, 3) a discharge petition, 4) and a bypass by the Speaker of the House.<sup>40</sup> By explaining these methods, he presented a serious argument against those who claimed that the Rules Committee had absolutely blocked the majorities will. Masculine rhetoric is not completely absent from these speeches. However, the lack of actual debate and exchange does lessen it.

With the decrease of manly rhetoric, this debate sees an increase in feminine rhetoric. Feminine rhetoric is self-disclosing, personal, and emotive. Perhaps the primary example would be the main speech given by Mr. Smith, who felt that this proposed change was really an attack on him as chair of the Rules Committee. He seemed to plead with the opposition as well as talk about how he felt. In his speech he began by trying to tell the House that he would not block popular legislation in the Rules Committee, but that if he did they could *then* offer the resolution to increase the number Rules Committee members. He did not understand why this guarantee was not enough for his opponents. He argued

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<sup>40</sup> Ibid., H 1580.

What better position would you want to be in than that? If that committee refused to give a rule, they could bring the resolution up. Now I wish someone would answer that. What do they want? Is it an effort merely to humiliate one chairman of one committee in this House? Well, if it is, nobody can humiliate me except the people who have elected me to Congress 16 consecutive times.

This is a very unhappy thing; it is very unhappy for me. I have tried to be fair in every way I know. But when I am asked to pledge aid to the passage of any resolution or bill in this House that I am conscientiously opposed to, I would not yield my conscience and my right to vote in this House to any person or any member or under any conditions.<sup>41</sup>

Notice how the subject of the speech is really Smith himself, rather than the resolution.

He talked about how this measure made him feel. While not humiliated, he was saddened. The speech is emotive and self-disclosing.

There are other, shorter examples of this self-disclosing style in these speeches. Mr. Flynt, an opponent of the rules changes opened his speech by stating, “This is neither the time nor the place for dogmatism or exhortation. I intend neither of these. Rather, I earnestly and briefly wish to express some *personal convictions* concerning this particular question.”<sup>42</sup> He went on to give a number of reasons (discussed above) for why this measure should be voted against. Yet, he called them personal convictions rather than reasons. Mr. Broyhill, also against the measure, appealed to personal conviction. He argued, “If every Member here could vote his true *personal* conviction free from administrative pressure and fear of retribution, this motion would be emphatically defeated.” The appeal to personal convictions was even further feminized in Mr. Miller’s appeal. He argued, “In the absence of threats, promises, coercions, and distortions, I

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<sup>41</sup> Ibid., H 1576.

<sup>42</sup> Ibid., H 1580.

really believe this resolution would today be defeated, if every Member *followed the voice that whispers within him.*”<sup>43</sup>

The opening speech of the debate by Mr. Trimble, in support of the resolution, also contains certain feminine elements. At one point he observed, “another thing, we in this Hall of the House of Representatives and all the people of the United States are brothers and sisters.”<sup>44</sup> Invoking the family relationship as the model for the relationship between members of Congress and between members and their constituents is not something that would be seen in earlier debates.

*Standard #5: Crisis Rhetoric—Tyranny, Communists, and Chaos*

The shortness of this debate and the prevalence of the use of crisis rhetoric make it likely that this debate has the highest proportion of crisis rhetoric of any of the debates. Certainly, more examples can be given in this debate than in any others. Crisis rhetoric was also more problematic in this debate because, like in the 1946 debate, it was used from the beginning by the speaker who introduced the measure. It was also more problematic because for the first time, the fear of communism was used in crisis rhetoric. While the international ramifications of failing to act were raised briefly in the 1946 debate, the communist threat was explicitly linked to the reform in this debate.

The opening speech both framed this reform as a crisis, and used communist crisis rhetoric. Mr. Trimble, when opening the debate observed,

Yes; it is my country. It is your country. It is our country. And it is challenged today as it has never been challenged before by a shrewd, wily, calculating, relentless foe. As we sit here in this Chamber today the Russian Bear has its

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<sup>43</sup> Ibid. Emphasis Added.

<sup>44</sup> Ibid., H 1574.

claws in the front door of our yard, and in the backyard there is a Red dragon as long as the back porch. So the challenge is ours. This is no time for dissension and lack of unity.<sup>45</sup>

After discussing the communist threat, he talked about how America, because of this threat, must renew its “pioneer” spirit and be ready for all challenges. He concluded by saying that he supported the changes on the rules committee. Of course, he did not explicitly say that if this measure was not adopted the communists would have won, but the lack of unity he spoke of would result from a negative vote on the proposed resolution. That lack of unity was dangerous because of the communist threat.

While Mr. Trimble’s connection between the proposed reform and the communist threat was implied, Mr. Walter, another supporter of the measure was far more explicit. He gave a short speech that was almost completely dominated by such a warning. He argued,

It is just about 24 hours ago when we heard in this House the sobering but stirring message of the President of the United States. As of the minute he spoke, the eyes of the world, particularly the hostile eyes that watch us from behind the Iron Curtain, focused on us in the House of Representatives.

Every move we make is going to be watched by our friends and enemies alike. Every mistake we make is going to be magnified by hostile propaganda so as to make even friends believe that the Nation and its representatives do not stand back [sic] of the President of the United States...

The propaganda value of a negative vote on this resolution cannot be overestimated. A negative vote on the resolution will hand our enemies on a silver platter the priceless instrument which will be used in their attempts to destroy us.<sup>46</sup>

The argument was not that the make-up of the Committee on Rules has a direct relationship to the communist threat, but rather that if this resolution was not approved, it would send a message that the government was divided. This would in turn be used as a

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid., H 1578.

weapon against the United States. Speaker of the House Rayburn, a supporter of the change also argued that the outcome here would have a major effect on our foreign policy. While using a less urgent tone, he argued that the House must change the rules in order to support President Kennedy, who was trying to improve our foreign policy position. Referring to Kennedy, Rayburn observed, "I think he demonstrated on yesterday that we are neither in good shape domestically or in the foreign field. He wants to do something about that to improve our situation in the United States of America and the World."<sup>47</sup>

These are the only times that the communist crisis was mentioned explicitly by those who supported the changes to the committee. However, the argument must have held some rhetorical weight because Mr. Smith, the Southern Democrat chair of the Rules Committee, mentioned it in his defense of the status quo. He argued,

I will tell you who started all this. I got into that a little while ago. I do not think Khrushchev started it; I do not think he had anything to do with it. It started here in this House in the last Congress on the 26th day of August when gentlemen exercised their right and took time on the floor to open this assault on the Committee on Rules.<sup>48</sup>

In other words, those who are appealing to an external threat as justification for this change on the Rules Committee have it wrong. The fact that Smith responded to this justification indicates that it seemed to have gained some momentum. Mr. Halleck, another opponent of the measure, also criticized this use of the communist threat for support of the measure. He observed that

[t]here have been pressures exerted in this controversy that perhaps would far exceed argumentative effort on my part. We have even had Mr. Khrushchev dragged into the controversy. I would like to say that if the President really is

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<sup>47</sup> Ibid., H 1579.

<sup>48</sup> Ibid., H 1576.

concerned about his ability, as reported from unknown sources at the White House, to deal with Mr. Khrushchev if this resolution is not adopted, I would like to have word direct from down there.<sup>49</sup>

Halleck's reference to the report from "unknown sources" seems to indicate that not only was the communist threat mentioned explicitly by those discussed above, but that there had been unofficial discussion of the relationship between the Committee on Rules and the threat.

Those who were opposed to the changes offered a crisis rhetoric of their own. Primarily, they argued that allowing a change in the number of the Rules Committee undermined proper procedure so drastically that it would bring about a state of legislative chaos, anarchy, or tyranny. Mr. Brown, an opponent of the measure, argued, "do not be led into voting for this resolution, the adoption of which will establish a most dangerous precedent—one which in future years may greatly injure or *completely wreck* orderly parliamentary procedure in this body."<sup>50</sup> Mr. Halleck, another opponent observed, "I am afraid what we are being asked to do here today under this resolution could signal the *breakdown* of a very vital part of the legislative machinery."<sup>51</sup> Mr. Flynt added, "The Rules Committee in the House and rule XXII in the Senate are the *last* bulwarks and safeguards we have against *tyrannical* and punitive legislation."<sup>52</sup> Mr. Quie concluded his opposition speech by stating, "I vote against this measure now, and if it passes, I believe

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<sup>49</sup> Ibid., H 1579.

<sup>50</sup> Ibid., H 1575. Emphasis added.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid., H 1580. Emphasis added.

we will witness a *stunning blow against the cornerstone of representative government*.<sup>53</sup>

Mr. Alger, adopting the rhetoric of a famous constitutional law test, argued, “Mr. Speaker, my opposition to the enlargement of the Rules Committee is the *clear and present danger* that I see of disruption of the democratic legislative procedure.”<sup>54</sup>

Perhaps what made the crisis rhetoric so problematic in this debate was the disproportionateness between the language and the measure being considered. While this rhetoric was misused in the comprehensive reforms of 1946 and 1970, crisis rhetoric was slightly more fitting in those cases. After all, if a bill is a general overhaul of congressional procedure, one can more credibly argue that he is responding to a crisis. However, in this case, the measure simply enlarged the rules committee from twelve to fifteen members. An obstructionist committee seems less like a crisis and more like typical minority maneuvering that could be overcome by tinkering with the rules.

### *Summary*

This debate clearly used the least deliberative rhetoric of all four of the debates discussed so far. In fact, as stated at the beginning of the chapter, it is a stretch to even call the speeches that were made part of a debate. The total time spent discussing this matter was short and hardly any of the speeches addressed the “arguments” of other speakers. Real questions were almost completely absent while rhetorical questions abounded. While this debate does still contain some rhetoric that falls with the “constitutional tradition,” it is far less substantive than the first two debates and even the 1946 debate. Rhetorical restraint, which is seen in earlier debates by members calling

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<sup>53</sup> Ibid., H 1583, Emphasis added

<sup>54</sup> Ibid., H 1583. Emphasis added.

each other out for using rhetoric inappropriate for a floor debate, is non-existent. In addition to the lack of rhetorical criticism by members, this debate contains the most vitriol, name-calling, and labeling of all the debates. Masculine rhetoric, which is analytical and calls for evidence, is sparse. While feminine rhetoric, which is personal and emotive, is seen more often than in previous debates. Crisis rhetoric dominates this debate more than any other.

## CHAPTER EIGHT

### The Legislative Reorganization Act of 1970

#### *Introduction*

In 1965, a Joint Committee on the Organization of the Congress was formed for the purposes of investigating current institutional problems in Congress and proposing possible solutions. It made a report of its recommendations in 1966. However, no legislation or internal rules changes came about as a result. In 1969, the Rules Committee of the House of Representatives took upon itself the development of a comprehensive reform bill, based heavily on the recommendations of the Joint Committee. In July 1970, the Rules Committee of the House then reported the Legislative Reorganization Act to the floor of the House of Representatives for debate in the Committee of the Whole. It was then debated periodically over two months and approved by the House of Representatives on September 17th. The debate centers primarily on the merit of particular amendments to the bill, rather than the bill itself. It was then considered in the Senate periodically over three days and approved on October 6<sup>th</sup>. The House approved the Senate version on October 8<sup>th</sup> and President Nixon signed it into law on October 26<sup>th</sup>.

When comparing the 1970 Act with previous reforms, one sees that it is most similar to the 1946 Legislative Reorganization Act. They were both comprehensive and sought to address many problems with the internal operations of Congress, as opposed to targeting a particular committee as seen in 1910 or 1961. Also, as in 1946, this act enjoyed relatively broad bi-partisan support. Both the chair of the Rules Committee,

Sisk, and the ranking minority member, Smith, strongly supported the bill, as did the Democratic Speaker of the House McCormack and Minority Leader Gerald Ford. While there was some partisan disagreement on issues, such as minority staffing, for the most part the divide on a particular amendment was not down party lines.

### *Overview of Legislation*

While, as stated above, the Legislative Reorganization Act of 1970 is most similar to the 1946 Act, there are a number of differences. The most important difference is that the 1970 bill did not attempt a major overhaul of the committee system. Rather, it focused more on procedure. Also, unlike the 1946 act, which was debated longer in the Senate, this act was debated at great length in the House, and deals more with House rules. The bill took up a number of proposed changes to the Congress. However, many of these changes were not ultimately adopted. In the way of a brief summary this bill addressed at least the following main areas of concern:

- 1) Curbing the power of committee chairs
- 2) Strengthened the control of full committees over sub-committees
- 3) Anti-secrecy measures
- 4) Increased certain protections for the minority party
- 5) Made legislative and procedural information more available to members
- 6) Changes to the post-Conference procedures
- 7) Changes to some Senate Committees

Other questions, such as seniority were raised, but ultimately dropped. These will be discussed in this chapter when that area of the debate serves the purposes of this rhetorical analysis.

### *Overview of the Debate*

This debate took place primarily in the Committee of the Whole of the House of Representatives. Unlike the 1946 or 1961, the House of Representatives debated this bill

extensively. The Senate debated the bill only for a few days. This further indicates that differences in deliberation seen through the chapters on reform cannot simply be attributed to the House in which the debate took place. While the Pendleton Act and the Senate debate on the 1946 Act were more substantive than the House debate in 1946 and the 1961 Rules change, the revolt against Cannon and the House debate here indicated that the House was capable of substantive debate. Indeed, this debate was more deliberative in some ways than the previous two debates. At the same time, there were new rhetorical developments that posed problems for deliberation and Congress more generally. Both of these claims should be introduced briefly before turning to the debate itself.

The debate was unexpectedly thorough and substantive. There were many actual exchanges on particular amendments to the bill, and many speakers engaged in in-depth, institutional analysis. This seems to complicate our thesis of decline. However, I would argue that it heightens the relevance of this work. If the decline in deliberative rhetoric were a linear decline across all standards of rhetoric, it might suggest that rhetoric is simply a dependent variable. For example, the increase in technology and the access it provides to congressional rhetoric, makes it practically inevitable that the quality of rhetoric decline. If this were the case, a study of rhetoric for the purpose of improving deliberation and Congress might be fruitless. If on the other hand, congressional leaders can use and encourage better rhetoric, even in the face general decline, rhetorical questions are important in assessing the institutional health of Congress.

The Legislative Reorganization Act of 1970 illustrates this possibility. Congressman Bernie Sisk, a Democratic member of the Rules Committee, led the floor

debate in the Committee on Rules. In this role he is comparable with Senators Pendleton, La Follette, and Congressman Monroney in previous chapters. In many ways, he surpasses these other floor leaders. His rhetorical leadership was largely responsible for quality of the debate. Other members of the Rules Committee and congressional leaders also contributed, however, Sisk stands out. The benefits of Sisk's rhetorical leadership will be discussed throughout the chapter.

While Sisk's and others' leadership made this debate more deliberative in some ways, other developments undermined deliberation. Some of these developments were continuations of the decline in the five standards used in the previous chapters. However, others were completely new. While these new developments can and will be discussed under the headings of the five standards, they are unique additions to these standards, not simply changes in degree.

### *Rhetorical Time-Frame*

By the time of the 1970 Legislative Reorganization Act debate, all three of the possible causes for a decline in deliberative rhetoric were in full effect. While the 1961 debate took place right around "the birth of televised politics," the 1970 debate took place after politics had been televised for over a decade. While in 1961 politicians were still figuring out how to exist in a televised environment, in 1970 certain definite patterns started to emerge. Mary Stuckey articulates some of the changes to the presidency brought about by television in chapter 4 of *The President as Interpreter in Chief*. In many ways, these changes are similar to the changes in the 5 standards used here. For example Stuckey notes of presidential rhetoric during the Johnson and Nixon era that "the overall style resembles conversational syntax, not the formal syntax of less recent

presidential discourse.”<sup>1</sup> While referring specifically to syntax, this observation might be applied to style more generally. This would certainly affect the standards of both constitutional rhetoric and masculine and feminine rhetoric. “Formal” rhetoric includes references to institutions and the constitutional tradition. “Conversational” rhetoric includes what Campbell and Jamieson describe as feminine rhetoric. To make a stronger connection between television and feminine rhetoric, Stuckey observes, “Presidents are expected to be human, and to display their human side.”<sup>2</sup> Additionally, television becomes a “means by which a man can conduct a monologue in public and convince himself he is conducting a dialogue with the public.”<sup>3</sup> This makes it, “increasingly possible for a president to convince himself that he has the support of the majority—no matter how silent—of the American polity.”<sup>4</sup> This development might apply to the bold claims that members made for a mandate in section 3 of this chapter, or the fact they spoke for the people against Congress.

By 1970, the permanent campaign had fully emerged as political reality.<sup>5</sup> The effects of the permanent campaign cannot be overlooked in this debate. The section on “Congress bashing” under standard 3, might be a result of the permanent campaign. Members were running for Congress, by running against Congress. Criticizing the institution paid off with voters. It might have also lead to more crisis rhetoric. The modern televised response to the State of the Union Address, as discussed in chapter 2,

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<sup>1</sup> Stuckey, 71.

<sup>2</sup> Ibid., 90.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Blumenthal, *The Permanent Campaign* (New York: Simon and Schuster, 1982).

can be seen as the opposition party campaigning against the president. These speeches were filled with crisis rhetoric.

As far as the rhetorical presidency is concerned, Congress had by this point been able to see the changes in presidential rhetoric for close to 60 years. By the time of this debate, Congress had already begun its televised response to the State of the Union Address, as seen in chapter 2. This seems to indicate that Congress had begun following the president's example in attempting to "go public," in order to lead.

*Standard #1: The Marriage of Speech and Thought: Actual Debate*

During the 1970 Legislative Reorganization Act debate, there was an extensive amount of debate on the bill and the many amendments proposed for the bill. Much of the debate was highly technical and dealt with particular procedures and how they related to efficiency in the House. Members, especially the leaders from the committee such as Sisk, Smith, and Bolling, showed themselves to be very knowledgeable of the particulars of bill and were able to defend their positions. The same was true of most individuals who offered amendments. In fact, perhaps due to the highly technical nature of this debate, it did not have a great deal of rhetorical and soft-ball questions. Such rhetorical devices were usually used for the sake of emphasis or presentation. In the technical detail-oriented speeches of this debate, there was not much room for such rhetoric.

*Standard #2: Constitutional Rhetoric*

*Passing References*

As this debate is quite long, there were perhaps more references to the Constitution and other uses of the constitutional tradition than in the previous two

debates. However, the form of the references was much closer to the previous two debates than the first two debates. That is, they were typically references rather than discussions of constitutional principles. However, this debate, unlike the previous two debates discussed substantively a number of *institutional* questions in a very substantive manner. I believe this is due primarily to the leadership of the committee that presented the bill, primarily Mr. Sisk. First, this section will discuss the way this debate continued the rather superficial use of constitutional rhetoric. Second, it will briefly examine some of the discussions of institutional manner.

On the first day of debate, Mr. Rees gave a comprehensive account of the bill being introduced. Like in the 1946 act he referenced the Constitution and the Founders to point out that Congress no longer functioned as they would have hoped. He stated, “The Founding Fathers intended-arrangement had proven out well and by and large had worked well.”<sup>6</sup> However, because of the nations involvement in war, the executive branch had “intruded into the will and stamina of our people and into the policymaking business of the legislative branch.”<sup>7</sup> Additionally, the courts had, “asserted wide powers of policy making,”<sup>8</sup> through various broad clauses of the Constitution. Having said this, he concluded, “First. The original distribution of Government powers and their checks and balances was basic and tried and true as well as correct.”<sup>9</sup> Also, “Proper balance can

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<sup>6</sup>*Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116, (July 13, 1970): H 23925.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

be restored if we ourselves overcome complacency.”<sup>10</sup> This is perhaps the most substantive discussion of the Constitution during the debate. The Founding Fathers were mentioned occasionally throughout the debates, but usually with far less substance. On July 14<sup>th</sup>, for instance, Mr. Vanik in an opening speech on the bill stated that the bill would “transform the archaic rules of the Congress into true democratic procedures as envisioned by the Founding Fathers.”<sup>11</sup> While not mentioning the Founders directly Mr. Hanna seemed to refer, like Vanik, to their intent by stating, “[t]here are many other needed reforms that must be adopted by Congress before we can again become the vital and sensitive branch of Government intended by the Constitution.”<sup>12</sup> On the 27<sup>th</sup>, Mr. Boggs, speaking on one of the anti-secrecy amendments observed, [w]e hear a great deal of talk these days about the unresponsiveness of our institutions. The founders of this country never intended its institutions to be inflexible and set in their ways.”<sup>13</sup> The following day, Mr. Eckhard made a speech against anti-seniority amendments. During the speech, he argued that having committees elect their chairmen would lead to too strong of an emphasis on the committee at the expense of Congress as a whole. Taking this step would lead to the “next step that will come, and you will never see legislation come back to this body as intended by the Founding Fathers.”<sup>14</sup> On the last day of debate, September 17<sup>th</sup>, Mr. Hall echoed the speech given by Mr. Rees on the first day of debate,

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<sup>10</sup> Ibid.

<sup>11</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 14, 1970): H 24042.

<sup>12</sup> Ibid., H 24061.

<sup>13</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 27, 1970): H 25800.

<sup>14</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116, (July 28, 1970): H 26030.

albeit with less substance. He observed, “We know that it was the intent of the drafters of our own form of government, a representative republic under a limited constitution, that we be the policymaking body.”<sup>15</sup> While, due to the length of this debate, there were a number of references to the Founding Fathers, these references have more in common with the 1946 and 1961 debates than with the Pendleton Act and Revolt against Cannon. That is, rather than discussing the principles of the Founders, debaters tended to make quick appeals to the Founders in order to bolster a point they were making.

In addition to these appeals to the Founders, there are other uses of constitutional rhetoric. Some are slightly more substantive, but few seem to raise in-depth constitutional questions. Mr. Vanik, during the opening speech mentioned above, appealed to the Constitution to make an argument against the seniority system that was currently used in Congress. He made the simple point that seniority “is not part of the Constitution or the Bill of Rights.”<sup>16</sup> Additionally, since “[t]he Constitution and the laws of the land contemplate each Congress as a new and separate entity...the rights of seniority are arbitrary and are usurped at the expense of other Members.”<sup>17</sup> On July 27<sup>th</sup> Vanik, again speaking about seniority, repeated, “Under the Constitution and the laws of the land, the most junior member is presumed to be equal to the most senior.”<sup>18</sup> He made a similar reference on the following day as well. While the Constitution neither

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<sup>15</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (September 17, 1970): H 32301.

<sup>16</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 14, 1970): H 24042.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 27, 1970): H 25834.

encourages nor prohibits the practice of seniority explicitly, Vanik believed that it violates the spirit of the document.

Mr. Bolling, made a similar point during one of the last days of the debate. On September 15<sup>th</sup>, there was a discussion concerning a section of the bill that would require any non-germane amendments to a bill that were made by the Senate, be considered by the House to be subject to a 2/3rds vote in the House upon the request of any member. This section was added because while the House traditionally had a germaneness rule for amendments, the Senate did not. Thus, the House was often forced to accept these Senate amendments in order to get a bill through the Conference Committee. This section was ultimately removed from the bill. Arguing for its removal, Mr. Bolling stated, “I think it is quite clear that any provision that puts a special rule on the treatment of any Senate amendment is in conflict with the intent of the Constitution.”<sup>19</sup> Bolling, did not go on to explain why he believed this practice violated the intent of the Constitution.

Another constitutional issue raised briefly was whether the rules changes made in this bill would bar either House of Congress from changing its rules unilaterally in the future. The same issue was raised in the 1946 debate. On July 13<sup>th</sup> Mr. Hutchinson asked Mr. Smith, the minority leader of the committee reporting the bill, “can he give us the rationale for incorporating in a legislative bill changes to the rules of the House when the Constitution gives the House the power to adopt its own rules?”<sup>20</sup> Like in the 1946 debates, Smith answered that either House could change its rules at any time.<sup>21</sup>

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<sup>19</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (September 15): H 31844.

<sup>20</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 13, 1970): H 23907.

<sup>21</sup> *Ibid.*

### *Substantive Institutional Analysis*

While this debate follows the trend of the previous two debates with its relatively short passing remarks on the Constitution and the Founders, there were a number of lengthy debates concerning substantive institutional issues. During the course of some of these discussions, rhetoric that touched upon things that would be included in the constitutional tradition was employed. While there were a number of examples of this, only one will be discussed below.

An important aspect of America's constitutional tradition that was discussed in other debates is the role of political parties in the political system. On July 15<sup>th</sup>, Mr. Thompson offered an amendment requiring that one-third of the professional and investigative staff of every committee be reserved for the minority party, if they so desired. The amendment itself obviously concerned the role of parties, but the rhetoric on the amendment was not merely technical. Nor was it simply bargaining over the number of staff that should be given to the minority. Rather, the debate was raised to the level of the discussion of constitutional principle.

Those who were in favor of the amendment argued that minority staffing was both a right to which the minority party should be entitled and that it benefited the legislative process as a whole. The second argument could be called the more institutional justification. Thompson, when introducing the amendment, made both arguments. He stated that without his amendment the minority might "be deprived of what I consider a very necessary right, the right to have a reasonable share of the staff."<sup>22</sup> Using the second argument he added that his amendment was "conducive to a close

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<sup>22</sup>*Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 15, 1970): H 24484.

working relationship between the majority and the minority.”<sup>23</sup> Further, “this arrangement has brought about an extremely harmonious relationship between the majority and minority members.”<sup>24</sup> Using the minority rights argument, Thompson’s ally Mr. Schwengel argued, “the minority cannot be an effective minority unless they have the wherewithal. One of the things we have not had is adequate staffing—and we have not had adequate staffing because we have not had adequate funds.”<sup>25</sup> Mr. Cleveland, like Thompson, also made both arguments. Speaking of rights, he observed, “without this type of relief you are stripping the minority of what should be a very important right.”<sup>26</sup> Moving to the institutional argument he argued that minority staffing “is the guts of the two-party system and the guts of the legislative system.”<sup>27</sup> Mr. Fraser, another supporter, made the institutional argument. Speaking of staff members who held the minority’s viewpoint, he observed that they “can be an enormous assistance to Members in suggesting questions and presenting viewpoints, so that I think diversity is of help to the committee.”<sup>28</sup> Mr. Dent echoed these statements claiming, “This House would be surprised if they knew how much easier the work became between the minority and majority leaderships when the staffs were given to the minority on the committees, as well as a staff provided for the minority leadership.”<sup>29</sup>

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid., H 24486.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid., H 24487.

<sup>29</sup> Ibid.

There were two types of responses to these arguments by those who were opposed to the amendment. In a sense, they responded to the two arguments advanced by the proponents of the amendment. The first response came from members who agreed that the minority party should have some rights and protections but were not convinced that a move towards having staffs split along party lines was good for the institution. These members responded to the institutional argument advanced by the amendment's proponents. The crux of this argument was that current staffs were professional rather than partisan and were responsible to the committee rather than the majority party. While the majority party controlled the committee, the staff was not theirs but the committee's. Mr. Albert made this argument stating, "I know we ought to protect the rights of the minority, but I just wonder if...the time has come when we should depart from the principle of a professional staff as against a partisan type staff and go into one where our staffs might be divided into opposing camps."<sup>30</sup> Albert's argument assumed that the staffs as they were, were non-partisan, and served the committee. If this were true, why introduce partisanship to an effective responsible staff? Mr. Sisk, the floor leader for the bill, added to Albert's argument: "this, in my opinion, goes back to the old era of political hacks, and that is exactly what we had in connection with most committee staffs before 1946. If that is what we wish to return to, of course we could go down that road, but I do not believe the Members, either Republicans or Democrats desire to do that."<sup>31</sup>

The argument advanced by Albert and Sisk elicited a response from Mr. Fraser. He challenged their dichotomy between a partisan staff and a professional staff. He observed, "I know that 'professionalism' is sometimes interpreted to be inconsistent with

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<sup>30</sup> Ibid., H 24485.

<sup>31</sup> Ibid.

partisanship. I think that is an erroneous point of view.”<sup>32</sup> Fraser seemed to believe that staffs were currently both professional and partisan. However, they only represented the partisanship of the majority party. If it were inevitable that even the best staff be both professional and partisan, the minority party should be guaranteed some staff.

While Albert and Sisk agreed with some minority rights but saw this amendment as an improper means to securing them, Mr. Holifield made an entirely different argument against the amendment. His argument was centered on the idea of responsibility. He began his speech against the measure:

Mr. Chairman we are faced here today with a very practical question. The question is, Who has the responsibility for the legislative program of the House? The people of this country make their choice when they choose as President a member of one political party for service in the executive branch. He has the responsibility for the program of the executive branch...

In the legislative branch the majority party, whichever it may be, has the responsibility for producing the legislative program which their party stands for and their party platform stands for. In order to do that, they have traditionally been given, whether it was a Republican or a Democratic administration, they have been given the privilege of appointing the staffs of the different committees.<sup>33</sup>

Further, while Holifield agreed that staff members “are hired on the basis of professional competence,” he nonetheless held, “I expect them to serve the committee *and to serve the majority program of the majority party* in putting the emphasis on the legislation which is being developed.”<sup>34</sup> The argument here was simply that the people, by electing a particular party to a majority in Congress, would hold them responsible for whether they succeeded in passing legislation. If this were true, the majority party must be given the proper means to carry out their charge. This argument is similar to the arguments made

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<sup>32</sup> Ibid., H 24487.

<sup>33</sup> Ibid., H 24488.

<sup>34</sup> Ibid.

in favor of the president's ability to remove executive officials without interference. If the president is responsible for the executive branch he must be able to fire those who are not carrying out his program. Neither the legislature nor anyone else should be able to put executive staff beyond the president's reach. In the same way the minority party in Congress ought not to be able to hire staff that is unaccountable to the majority. Holifield used the executive analogy towards the end of his speech. He argued,

I say that the responsibility in the executive branch belongs to the President, and he has the right to fire every political nonclassified employee that he wants to—and there have been many of them who have walked the plank voluntarily or by request. I go along with that. In the legislative branch the majority has the legislative responsibility...

I say when the majority is Republican, they should control the tools to put the program which the people have approved by electing them into effect, and I say when the Democrats are in power that they have to program legislation on the basis of their platform pledges, their programs, and their policies, and they should have the right to have the control of the tools to put their philosophy into effective legislative form.<sup>35</sup>

This legislative-executive analogy was not accepted by proponents of the amendment. Mr. Dellenback in particular disagreed and offered an alternative judicial analogy. While he agreed with Holifield that "it is the responsibility of the majority party in the Congress to take the leadership so far as the pushing of a legislative program is concerned," he disagreed with the staffing implications that followed. Instead he believed that Congress worked best if it followed something more like the adversary system used in the courts. He argued,

But more than half of this body has received at least a portion of its professional training in the law. And any of us who has served in the law and has participated in trial work is aware of the fact that with the goal being justice, the advocacy system calls for the best possible presentation of both sides of the issues which come before the court. With the goal being justice, justice is better achieved if

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<sup>35</sup> Ibid., H 24489.

there be the best possible presentation of the case for the plaintiff as well as the case for the defendant.<sup>36</sup>

He added later it should not be that case that, “merely because of the fact that one side has a certain responsibility, the other side should be deprived of the tools that are necessary to make the best possible presentation in opposition to that which is presented by the one side.”<sup>37</sup> In Dellenback’s account, the majority party was not equivalent to the president, but rather a party in a judicial proceeding; the minority party was the other.

Ultimately, the amendment to guarantee the minority staffing funds was rejected. However, it was a clear example of how this debate allowed for substantive institutional or constitutional debate.

### *Standard #3 Rhetorical Self-Restraint*

#### *Rhetorical Leadership and the Importance of Debate*

When turning to the standard of rhetorical restraint, or rhetoric on rhetoric, this debate sees an improvement in some ways over previous debates. However, there are also new failures in rhetorical restraint that are not seen in previous debates. Perhaps the greatest use of rhetorical restraint in this debate is Congressman Sisk’s management of debate time. He balanced a desire for adequate time for debate with the need to move forward in considering amendments. This makes him unlike Congressman Monroney in 1946, who as shown in chapter 6, pushed the floor debate so quickly that it only took one day to complete. Sisk praised good debate when it occurred and prodded the committee

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

when it needed to move on. He was also praised by many other members for his management of the floor debate.

On July 15<sup>th</sup> for example, Sisk rose in opposition to an amendment that would give one third of every committee's funds to the minority party. In doing so he praised previous debate yet opposed this amendment as one that would hurt the bill. He stated,

I think that the debate has gone very well, and personally I was most impressed with the attendance on the floor yesterday and the interest shown by Members, the tone of the debate, and the discussion. Yesterday some amendments were adopted; some were defeated. Again, I think this was an excellent demonstration of the House working its will.

But we are now coming to some issues that, if I may be permitted to say so, are pretty important issues, and basically depending on how we handle these issues the ultimate status or fate of this legislation could very well be determined.<sup>38</sup>

While he encouraged debate on amendments, there were some amendments that Sisk believed would be dangerous to the success of the bill. On July 27<sup>th</sup>, the House was considering an amendment about the recording of teller votes. Sisk tried to move along the debate on the amendment while allowing everyone who wished, to speak. He avowed, "I wish to make it clear Mr. Chairman, that I am not attempting to cut off debate on the O'Neill amendment or the Smith substitute. I am simply trying to bring about an orderly agreement as to how many Members actually desire to speak on the Cleveland Amendment."<sup>39</sup> Later, while the House was still discussing the same amendment, he gently prodded again by stating, "As I said I am not trying to cut anyone off. I ask unanimous consent that all debate on the O'Neill-Gubster amendment and all

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<sup>38</sup>Ibid., H 24485

<sup>39</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 27): H 25806.

amendments and substitutes thereto close at 4:45 p.m.”<sup>40</sup> Later on the 27<sup>th</sup>, which was the lengthiest day of debate, he praised and encouraged the House for their debating. He observed, “Mr. Chairman, this has been an excellent debate on a very important subject. I wish to commend everyone who has taken part.”<sup>41</sup> Reinforcing the importance of floor debate might counter the tendency for members to view it as a meaningless formality.

Sisk even praised good debate when it concerned a subject he did not even think should be debated. For example, the next day July 28<sup>th</sup>, certain amendments designed at eliminating the customary use of seniority for choosing committee chairs was raised. Of all the major amendments proposed to this bill, its proponents were perhaps most opposed to touching seniority. They were aware that such an amendment might awaken enough resistance that the entire bill could be put into jeopardy. However, Sisk not only allowed debate on seniority amendments to take place, but he praised them simply because they were good debates. He gave a closing speech on seniority saying, “I want to commend the Members of the House. I think they have done an excellent job. So far as I know this is the most extensive debate, at least in the Committee of the Whole, on the subject of seniority in the 16 years I have been here.”<sup>42</sup> Perhaps Sisk was only making these remarks to gain support for his bill. However, there was not a vocal opposition to the bill as a whole. This might indicate that Sisk truly cared about deliberative rhetoric on the floor.

Additionally, as the floor leader presenting this bill, Sisk’s approval or disapproval of a particular amendment went a long way in persuading the committee of

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<sup>40</sup> Ibid., H 25809.

<sup>41</sup> Ibid., H 25817.

<sup>42</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 28, 1970): H 26043.

the whole whether the amendment would pass. There were *some* amendments that passed over Sisk's objection, but they were definitely in the minority. Almost every time Sisk vocally opposed an amendment, however, he used restraint, and gave praise where it was due. On July 28<sup>th</sup>, Congressman White offered an amendment intended to speed up quorum calls in the House in order to improve efficiency. However, some of the language in White's amendment seemed unclear. Sisk rose to point this out arguing, "I see certain merit in connection with the Gentleman's amendment. Again, as our staff people have looked at this amendment, we find a good deal of difficulty with some of the language in the amendment, I should simply like to call to the attention of the gentleman that it is our strong feeling, if the amendment is to be adopted, it should be rewritten."<sup>43</sup> White disagreed about the language and continued to push the passage of his amendment. Other members rose to oppose the amendment later, but were less restrained than Sisk. For example, Mr. Belcher added, "the only comment I would make on all these amendments is this: I think we will find that a lot of them are not reform at all. They are just chaos."<sup>44</sup> Sisk however rose again, gracefully in opposition. Referring to White's work on the amendment he observed, "I want to say that he did about the most complete job of analyzing the amount of time lost in coming over here for quorum calls of any I have seen. And because of the work he has done, and the research and checking on this matter, it is with some hesitancy that I do oppose this."<sup>45</sup>

Sisk's rhetorical leadership was praised on a number of occasions by various members of the House. On July 28<sup>th</sup>, Congressman Jacobs stated,

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<sup>43</sup> Ibid., H 26047.

<sup>44</sup> Ibid., H 26048.

<sup>45</sup> Ibid., H 26049

I take this time to say something which is rather unusual. In the normal case, accolades are normally reserved for the conclusion of debate and the conclusion of the passage of a bill and never in mid-stream, but this has been a pretty long swim, and so I would like to take this opportunity to say how much I admire the way in which the gentleman from California (Mr. Sisk) and the gentleman from California (Mr. Smith) have conducted the deliberations on this bill.<sup>46</sup>

If Jacobs can be taken at his word, that such praise was unusual, this pointed to the fact that while there was not usually deliberative floor debate, Sisk and ranking minority member Smith led a good debate. Speaker of the House McCormack added, “I think we ought also to pay our respects to the distinguished chairman of the subcommittee who has handled this bill on the floor of the House and who has been very patient and who has been very considerate of the feelings and the views of all Members of the House. He has handled in a masterful manner a most sensitive and delicate bill.”<sup>47</sup> On September 17<sup>th</sup>, the last day of debate, a number of speakers commended Sisk. Mr. Albert wished to “take the time to commend the distinguished gentleman from California, for the courtesy, the diligence and the ability with which he has managed this very important and complicated bill.”<sup>48</sup> Minority Leader of the House Ford added, “I desire also to commend the gentleman from California for the outstanding job he has done in handling this very, very important legislation.”<sup>49</sup>

Mr. Sisk’s rhetorical leadership cannot be underestimated. In fact, the praise given by other members to his leadership is not seen in any of the other debates discussed in this chapter. Truly, a good number of substantive topics were treated with

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<sup>46</sup> Ibid., H 26051

<sup>47</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (September 17): H 32276

<sup>48</sup> Ibid., H 32295

<sup>49</sup> Ibid., H 32295

substantively due to his leadership. Unfortunately, while the rhetorical leadership of Sisk is a positive characteristic in this debate, there were a number of new negative developments. Like the 1961 debate, there were many rhetorical practices that were not criticized, but perhaps ought to have been.

### *Congress Bashing*

The 1961 debate contained more intense name-calling, labeling, and personal attack rhetoric than the earlier debates. The 1970 debate did not continue this trend. In fact, there was very little nastiness or vitriol in this debate. However, while milder in tone, there was a new form of attack rhetoric that appeared in this debate. The 1970 debate had an unprecedented amount of rhetoric attacking the institution of Congress itself. Such rhetoric was, for a number of reasons, perhaps more damaging than the attack rhetoric seen in 1961. The first is simply that the prevalence of such rhetoric may have undermined what the rhetoric was trying to achieve. Of course, such rhetoric may be used for re-election purposes. A member might criticize the institution so as to distinguish himself from it for the voters back home. Assuming higher motives however, the purpose of the rhetoric seemed to be to point out that Congress was in low esteem in the nation and that it must change in order to regain the confidence of the people. Yet, by constantly calling attention to how Congress was “out of touch” and broken, this may actually have reinforced that perception in the minds of the American people. Another reason this type of rhetoric was more dangerous than more personal attacks, is that there was less of an interest in responding to such attacks. If one looks at some of the critiques of particular uses of rhetoric in the earlier Pendleton Act Debate and Revolt Against

Cannon debates, they were often made in response to a personal attack. Attacking Congress does not often provoke members to call rhetorical fouls.

Yet, would not all congressional reform efforts use this type of rhetoric to some extent? After all, it is difficult to make the case for reform unless one can point to a problem in the institution. However, the criticisms of Congress in previous debates were different in nature from the rhetoric used here. If one turned back to the Pendleton Act, the main criticism was really that the political parties had become corrupted by the use of patronage. In a sense, an improper relationship between Congress and the public had developed. In 1946, the argument was centered around inefficiency. Congress must be modernized so that it could better handle its business. It must be made efficient so that the executive branch did not overshadow it. Arguments were never really made that the institution had become one that favored the interests of its members over the interest of the public. 1910 and 1961 involved attacks upon particular power blocks that were accused of blocking the will of the majority in the House. Never was it argued that the institution of Congress itself had forgotten its charge of representing the people. The 1970 debate was the first time that it was consistently argued that Congress had intentionally adopted practices to elevate itself at the cost of the public.

Before discussing two particular topics of debate where this rhetoric was used consistently, a lengthy section of a speech given by Mr. Podell on the second day of debate will be quoted. His remarks here are the clearest and lengthiest use of this type of rhetoric. He began,

Mr. Chairman, the time has come for Congress to practice what it preaches. We sit here in the greatest deliberative body in the world, and above our heads lay cobwebs of outworn and old-fashioned practices. We preach that we are legislating for a free and open society, yet many of our practices are shrouded in

secrecy. We proudly claim that our Nation is the model of new technology and new science, yet we in the Congress conduct many of our practices as if we still were living in the Dark Ages. And we justifiably boast that we are at the helm of the world's greatest democracy, but gentleman, many of our practices are simply not democratic. The time to *end this hypocrisy* has come; it has come now.<sup>50</sup>

The beginning of the paragraph would be in line with some of the criticisms raised in 1946. Using language such as “cob-webs,” “old-fashioned,” and “Dark Ages,” points to a Congress that could use some modernization. However, by the end, Podell began to articulate the Congress/public disconnect that will be seen more below. While America is the world's greatest democracy, Congress is not democratic. Finally, he accused the institution of being hypocritical. This goes beyond the types of charges offered in previous debates. While less lengthy, there was another example of this rhetoric on the previous day by Mr. Schwengel. He observed, “Mr. Chairman, we are in a period of history which finds, tragically, our political institutions and policies in disfavor with *far too many people in our country*. This is especially true among our younger citizens.”<sup>51</sup> Further, “the situation which prevails in our time is not one to bring comfort or to give confidence to those who believe in our republican institutions and our system of representative government.”<sup>52</sup>

The two issues where this rhetoric is seen the most are the debates over certain anti-secrecy measures and the debate on seniority. Both of these issues are rather complicated. The amount of “secrecy” or “openness” in Congress is closely related to the two goals of Congress, deliberation and democracy. As the discussion of Bessette's work in the introductory chapter points out, there is often a delicate balance between the

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<sup>50</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 14, 1970): H 24039. Emphasis added.

<sup>51</sup> *Ibid.*, H 23915. Emphasis added.

<sup>52</sup> *Ibid.*

two. Any measure that would alter that balance ought to be considered carefully. Seniority also is a complicated institutional issue. Perhaps length of service is not the best means to determine who should be a committee chair. However, seniority has served a decentralizing function in the House that at times has been desirable. However, those who oppose “secrecy” and seniority often neglect the more complicated questions about their effects on the institution. Instead they simply pit the old system against people. A number of examples will be given to show how prevalent these remarks are.

On July 14<sup>th</sup>, an amendment was discussed concerning making the default position for a committee hearing open to the public. Members repeatedly argued that Congress typically had an interest that was contrary, or at least not responsive, to the public. Mr. Waldie, in favor of the amendment argued,

I think the gentleman’s amendment is a good one. I think it is most interesting with regard to the problems and difficulties *that will be caused the Members—not the public*—which I believe will be considerable, but I think they can be resolved. It will be up to the Members of the House of Representatives to adjust to a course of action they have not been used to, namely, revealing the public’s business to the public as it is being conducted.<sup>53</sup>

By stating that this new openness would cause difficulties for the members but benefit the public, he emphasized a disconnect between the institution and the people. On the next page in the Record, Mr. Hathaway, the proposer of the amendment added, “we are not protecting the *interest of the Members* by this amendment but the *interest of the general public* which we are representing.”<sup>54</sup> Another supporter of the Hathaway Amendment Mr. William D. Ford added, “The interest we seek in support of the Hathaway amendment is *not in the interest of any Member of Congress or any number of Members of Congress,*

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<sup>53</sup>Ibid., H 24045, emphasis added.

<sup>54</sup> Ibid., H 24046, emphasis added.

whether majority Members or minority Members, *but the public interest.*”<sup>55</sup> Speaking again about secrecy, Mr. Waldie admitted that perhaps the Armed Services Committee may need to be closed sometimes, “but it seems to me when we close the other committee meetings because of information that might become available to the people when we are not seeking to protect the *Nation’s interest*, but the *individual Member of Congress* from *the public* knowing what he is saying, knowing what he is talking about and knowing how he arrived at that decision.”<sup>56</sup>

On July 27<sup>th</sup> another amendment that called for the recording of teller vote in the Committee of the Whole was being discussed. During this debate perhaps the strongest statement arguing for the dichotomy between the Congress and the public was articulated. Mr. O’Neill, the proposer of the amendment, stated that “we have a habit here, through our rules and regulations and our habits, of *protecting each other*. But this can be to the *detriment of the Nation*. This amendment seeks to avoid that.”<sup>57</sup> Not only were Members’ interests at odds with the interests of the public, but Members protected each other in their pursuit of these selfish aims. This made Congress look like a corrupt police department dedicated to never crossing the “thin blue line.” O’Neill added in a later speech, “through the years we have *protected ourselves*. Too often that protection has been a disservice to *the public*.”<sup>58</sup>

To be sure, there is some truth in what these speakers were saying. The interests of particular Members of Congress can be at odds with the interest of the public.

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<sup>55</sup> Ibid.

<sup>56</sup> Ibid., H 24056, emphasis added.

<sup>57</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 27, 1970): H 25797, emphasis added.

<sup>58</sup> Ibid., H 25798, emphasis added.

Opening up meetings might remedy this situation. However, one wonders if rhetorically emphasizing the dichotomy of interests between Congress and the public repeatedly, might do more damage than good. Perhaps if this rhetoric were limited to the “secrecy” debate it would not be so damaging, but its use in other areas of the debate make it problematic. The debate on anti-seniority amendments saw this rhetoric used as well.

The seniority debate did not see as much of the dichotomy set up between the interests of Members and the interests of the public. However, the “bad reputation” that Congress had supposedly gained in the public due to the practice of seniority was constantly mentioned. On July 28<sup>th</sup>, Mr. Waldie, who used the public/Member dichotomy in the secrecy debate, used it again in the seniority debate. Rather than argue that seniority was less than ideal, he described the system by stating:

It is the demeaning process we engage in when we describe our colleagues by defending the seniority system—it is never assumed we are describing ourselves—and we seek to protect our colleagues by this peculiar system that is indefensible under any other terms than protecting our colleagues against their weaknesses which in the past were bigotry and prejudice and today consists of an inability to withstand lobbyists.

Those are the types of description of Members of the House that make the public very, very concerned about the House of Representatives.<sup>59</sup>

Again, the “Congress protects its own” rhetoric is employed. Mr. Bell gave a speech the same day stating, “I can also recall a considerable amount of bad publicity and trouble which the Congress received as a result of some mistakes made by a previous chairman. That helped to give the Congress *such a bad image insofar as the public is concerned*. Also why *the American people* are so critical of the seniority system.”<sup>60</sup> Like Mr. Waldie above, Mr. Chisholm argued that the then current practice was indefensible. He

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<sup>59</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 28, 1970): H 26031.

<sup>60</sup> *Ibid.*, H 26027. Emphasis added.

observed, “I think we have to consider the fact that the reason why young people and other people are lashing out today in our country is that they are seeing by virtue of some of the things they hear some the gentlemen here say, that we cannot really defend what we are doing.”<sup>61</sup> Mr. Bingham added, “surely this system is one of the main reasons why the American people, especially young people, have little respect for Congress.”<sup>62</sup>

In the seniority debate, the bad public perceptions of Congress were repeatedly mentioned. While members may have intended to prod Congress towards reform with this rhetoric, it also reinforced these perceptions about Congress, and encouraged members to attack Congress in order to achieve their own ends.

#### *Passing Measures for Rhetorical Reasons Only*

Another new rhetorical development in this debate is the idea, advanced particularly in the context of the seniority debate, that certain measures should be adopted for their rhetorical effect only. In a sense this development reverses the typical order of rhetoric and voting. While on the floor, members made speeches for the sake of getting a certain measure passed. In this case members wanted to pass a measure for the message it sent. Rather than speech for the sake of action, action is for the sake of speech. To be sure, measures and laws passed by Congress have effect both through actual coercion or institutional improvement and rhetoric. For example, some in favor of the 1961 Rules Committee change discussed last chapter thought that it would actually stop the committee from obstructing Kennedy Administration legislation as well as rhetorically reinforce unity with the president against Khrushchev. However, in this case the primary

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<sup>61</sup> Ibid., H 26032.

<sup>62</sup> Ibid.

argument for adopting the measure was the *actual effect* that it would have on the legislative process. By reconstituting the committee, the majority's legislation would no longer be thwarted. In the seniority debate in this case, some in favor of seniority amendments seemed to admit that they would not have any effect but a rhetorical one. This was because seniority is a custom that comes from the party caucuses. Even if a rule were in place to force open elections for chairmen within committees, party custom would maintain pressure on committee members to vote for the senior member. In the first day of debate, Mr. Reuss gave a comprehensive speech on the bill, urging that in the course of the debate his seniority amendment be considered. He argued that "the amendment may indeed be *simply symbolic* of *advisory*, but it is something, and something is better than nothing. To a great many people in this country, congressional reform means changing the seniority system. If we spend a whole week on this bill and do nothing at all about seniority it will do little to increase public confidence in this body."<sup>63</sup> To be sure, non-coercive commitments can through shame or indirect pressure encourage certain actions. Reuss may have believed that making a rhetorical commitment against it would erode the actual seniority system. However, he seemed more concerned with the rhetorical effect on the people. He twice mentioned that the people's confidence in Congress would improve if an amendment, even a merely symbolic one, as adopted. Further evidence pointed to this understanding by Reuss. On July 27<sup>th</sup>, when he actually proposed this amendment, he was asked by Mr. Waldie, "is it fair to assume that the purpose of the gentleman in suggesting this amendment is to indicate his own conviction, and to permit an opportunity for those who share that

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<sup>63</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 13, 1970): H 23911, emphasis mine.

conviction to express themselves that the seniority system is not in the best interests of the organization of the House?”<sup>64</sup> Mr. Reuss responded that this was correct. Others seemed to understand that this was the intent of the amendment as well. Mr. Bolling, who repeatedly showed a deep knowledge of institutional reform issues, observed, “I would suggest that it makes no difference how a Member votes on the Reuss-Vanik amendment. It will accomplish nothing. It may become symbolic. It may have the effect of representing a vote for or against an idea, but it will change nothing.”<sup>65</sup>

If Mr. Bolling was correct, that the effect of this particular amendment was neutral, perhaps no harm was done, other than its consideration wasting debate time. On the other hand, there may have been something more problematic with this practice. Seniority may not be a serious institutional problem that needs to be fixed. However, Reuss and others certainly thought that it was. Thus, in this particular instance a member was urging that Congress address this problem through an amendment that would not actually change the practice. If such a practice becomes the norm, this could have a negative effect on deliberation. This is because, as stated in the introductory chapter, deliberation involves reasoning about means. Good deliberation seeks to find the proper means to a given end. The practice of adopting measures that one knows will not actually accomplish the end, abandons such reasoning. In its place it encourages simply doing *something* instead of *nothing*. To be sure, there is a long history of congressional resolutions passed when Congress wishes to publically praise or censure something, but that is not what is going on here. Here members are voting on actual amendments to

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<sup>64</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 27, 1970): H 25832.

<sup>65</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 28, 1970): H 26024.

legislation, to changes in procedure, simply so that they can say they did something. Instead of rhetoric being used to deliberate on means, rhetoric becomes the means.

### *The Rhetoric of the Mandate*

The 1970 Legislative Reorganization Act used the rhetoric of the mandate far more than any other reform debate. Additionally, unlike the first three reform debates, at no point did any member challenge directly the use of mandate rhetoric or provide an alternative account of the mandate. Most of the mandate language throughout the debate indicated that “the people” strongly desired reform, the bill as a whole, and even particular amendments.

On the July 14<sup>th</sup>, an avid reformer, Mr. Vanik, finished his comprehensive introduction of the bill by stating, “The patience of the American people has been sorely tried. They have come to feel that the processes of Government must be made efficient and responsive. Secrecy, delay, and excuses will not substitute for sound legislative action.”<sup>66</sup> Speaking on the same day, Mr. Podell assured members, “I submit that a complete change, gentlemen, is the only answer we can give to the people who *are demanding a change*.”<sup>67</sup> On July 16<sup>th</sup>, Mrs. Chisholm argued that the Congress must adopt this bill in order to serve the people well. She observed, “As we approach the challenge of modernizing Congress, we must consider our image in the eyes of the American people whom we serve. We can serve the American people effectively only if we command their respect and confidence in us as a legislative body.”<sup>68</sup> To gain this

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<sup>66</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 14, 1970): H 24043.

<sup>67</sup> *Ibid.*, H 24038.

<sup>68</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record*

respect, she added, “thus we must reform ourselves and modernize Congress not only for ourselves, but also for the American people whom we serve.”<sup>69</sup> On July 20<sup>th</sup>, Mr. Donoghue argued that the people were behind the particular measure of televising committee hearings. He stated, “there has now developed, especially among our youth, increasingly widespread public doubt about full openness, fairness, and effectiveness of the legislative process in the Congress.”<sup>70</sup> However, he argued that, “a doubting public can be given reassurance of the integrity of congressional operation by the adoption of this bill.”<sup>71</sup> During the discussion of an amendment that required the recording of teller votes, Mr. Obey argued that the public desired the amendment. He stated, “I believe the public wants its institutions to be more open and candid and honest. If the House hopes to regain the public confidence...it must accept this amendment.”<sup>72</sup>

The above examples point to ideas or practices that the people, if consulted, might have an opinion about. On July 28<sup>th</sup>, Mr. Bell seemed to take the mandate a little further by arguing that the people were actually really interested in congressional *organization*. He explained, “the public *at large*, whether rightly or wrongly, has become increasingly concerned about the organization of the Congress. And what are some of the factors they complain about most? On this I quote: ‘The antiquated seniority system is high on the

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116 (July 16, 1970) 24600.

<sup>69</sup> Ibid.

<sup>70</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 20, 1970): H 24967.

<sup>71</sup> Ibid.

<sup>72</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 27, 1970): H 25810.

list of criticisms.”<sup>73</sup> Mr. Biaggi added on the same day, “The people of this Nation are growing impatient with a Congress whose rules and customs slow its operations to less than a snail’s pace. Let us keep them waiting no longer.”<sup>74</sup> On August 4<sup>th</sup>, in a short speech Mr. Schwengel urged the House to turn back to considering the bill, which it had tabled since late July. In prodding the members, he pointed to the fact that failing to pass the bill would disappoint the people. He explained, “I would expect the American people to lose a great deal of confidence in the Congress if they realized the manner in which their leaders have acted when faced with significant attempts at reorganization and reform of the Congress.”<sup>75</sup>

To conclude, this debate continued and extended the simple use of the mandate from the previous two debates. At no point did any member criticize the use of mandate rhetoric or offer an alternative view of the mandate.

#### *Standard #4 Masculine and Feminine Rhetoric*

This standard sees continuation of certain negative developments from previous chapters as well as some positive developments because of the rhetorical leadership on the floor. Throughout the many pages of debate there are a number of times when self-disclosing or story-telling rhetoric is used. There are perhaps more examples in this debate than in 1946 and 1961. However, this is probably because this debate was far longer. However, we see a continuation of a type of rhetoric that was not evident in the first two reform debates.

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<sup>73</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 28, 1970): H 26027. Emphasis added.

<sup>74</sup> *Ibid.*, H 26041.

<sup>75</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (August 4, 1970): H 27198.

Some of these stories were more emotional than others. On the second day of debate July 14th, Mr. Railsback explained how he became interested in congressional reform stating,

My interest in the subject of reorganization began in earnest with my election to the House of Representatives. I have studied, as have all Members, many of the varied proposals on the subject of reorganization. I have not claimed ultimate wisdom on the subject and I shall be thankful for whatever progress we for whatever progress we are able to make in modernizing Congress.<sup>76</sup>

Certainly, this rhetoric is not excessively emotional here. However, Railsback's use of descriptors like "in earnest" and being "thankful," point to his personal state of mind. On July 27th, while discussing "anti-secrecy" amendments, Mr. O'Neil urged members, "let us examine our consciences and let us look at ourselves."<sup>77</sup> Other members told stories aimed at evoking emotional responses on particular issues. For example, Mr. Boggs, who believed that any amendment on seniority would hurt the bill. One reason Mr. Boggs supported seniority was that he believed it insulated chairman who might not otherwise be chosen due to prejudice. He told a few stories to illustrate this point.

I remember a few years ago in the first years of the late revered John F. Kennedy, we had a proposition here to create a Department of Housing and Urban Affairs, and it was voted down. Do you know why it was voted down? Because it had been rumored that a Negro would head up that Department, that is why it was voted down.

The oldest member of this body is a revered gentleman, our beloved colleague, the gentleman from Illinois Bill Dawson [an African-American]. I can assure my colleagues that there have been times in the history of this body that Bill Dawson could not have been elected chairman of the committee he heads. And I could carry on.<sup>78</sup>

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<sup>76</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 14, 1970): H 24060.

<sup>77</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 27, 1970): H 25798.

<sup>78</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 28, 1970): H 26025.

Mr. Boggs did carry on in a later speech adding,

Let me give you another example. There is the distinguished chairman of the Committee on the Judiciary, the revered Manny Celler. He is 82 years of age, I believe. He happens to be a member of the Jewish faith, a minority faith. There was a time when, believe it or not, in the days of the know-nothings in the country, when a Jew, if he happened to be elected, could not have become chairman of a committee.<sup>79</sup>

After the major reform issues were debated in July and August, a few less important amendments were considered during the floor debate in September. On September 16<sup>th</sup> for example, the House took up the question of whether Capitol Guides, individuals who give tours of the Capitol, ought to be given salaries and benefits. The then current practice was that the guides simply charged a visitor twenty-five cents for a tour. Mr Schwengel got up to speak on behalf of the guides arguing,

Guides here do not have adequate protection and this provides while they are employed that they will get hospital care and all the fringe benefits we give our employees.

Let me cite a very tragic case of a lady who worked for 14 years and she had no hospital benefits. Her friends had to take up a collection to pay her hospital bill for the last 3 weeks before she passed away. The things will be taken care of here and I think these people deserve this kind of protection.<sup>80</sup>

It is unclear by the text of the speech whether this woman was actually a guide or whether she was just an example of someone who did not have health insurance. Regardless, this type of story is very similar to the stories told in the modern televised response to the State of the Union Address in chapter 2. Another smaller amendment, which sought to give the Resident Commissioner from Puerto Rico a voting membership in congressional committees, was taken up on September 15<sup>th</sup>. While, because it is not a state, Puerto Rico cannot have official representation on congressional votes on the floor,

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<sup>79</sup> Ibid.

<sup>80</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (September 16, 1970): H 32222.

some thought that they should have some role in shaping legislation at the committee stage. Much of the rhetoric in favor of this amendment took on a personal, emotional tone. Mr. Biaggi speaking in favor of the amendment observed,

Besides the equities involved—and there are many—I must say in all candor, that I have a personal interest in this matter. I have family living in Puerto Rico. My son-in-law, a native, tells me that he and my daughter are deeply interested in the activities here in Congress and their island's relationship with the United States. *They feel very strongly* that there must be a strengthening on bonds among those Americans living in the States and those living in Puerto Rico.<sup>81</sup>

While this debate did continue the use of feminine rhetoric, on balance it was not as bad as in the previous two debates. It is important to point to the feminine rhetoric above to show that the more recent debates allow for such rhetoric to be used regularly. Yet, due to the length of time given for debate, and the continuous actual exchanges in this debate, there is a sizeable amount of masculine rhetoric as well. Indeed there are probably more examples of masculine than feminine rhetoric. Although there are far too many examples of such rhetoric within this debate, a few should be given. On July 16<sup>th</sup>, an amendment that would secure one third of all staff funding for the minority party was being discussed. Mr. Moss, who was opposed to the amendment, gave a long speech that ended with the following statement:

Then of course, there is the very interesting question, How do you finally divide one-third of one? In some of these sub-committees, you end up with one investigator. How do we give one-third of an investigator to anybody? The problem becomes mighty complicated—or you could require that we cut him up into three—or maybe we can divide it on the basis of time rather than in dollars. I think it is a ridiculous proposal.<sup>82</sup>

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<sup>81</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (September 15, 1970): H 31850. Emphasis added.

<sup>82</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 16, 1970): H 24582.

At this point Mr. Cleveland jumped in to defend the amendment, and pointed to the fact that Mr. Moss had actually misrepresented the amendment. He responded, “It is not ridiculous at all because the language is very clear and precise and addresses itself to one third of the funds. It says nothing about one-third of the people. It says one-third of the funds.”<sup>83</sup> Mr. Moss did not believe that the distinction between splitting the staff members and splitting staff funds saved the amendment. He responded, “I decline to yield further to the gentleman. It says one-third of the funds—and the funds employ people. Now you are going to have to staff a director normally for a committee or a subcommittee. Who is going to pay for the funds that go to staff the director? Are you going to have two staff directors?”<sup>84</sup> This rhetoric is competitive, analytical, and calls for precision.

#### *Standard #5 Crisis Rhetoric*

This debate, like others before it, contains some use of crisis rhetoric. For example, Mr. Bolling, a major reformer urged members to “be aware of how *dangerous* the task on which we are embarked is.”<sup>85</sup> Unless the seniority system was changed, a member argued, “we, in all likelihood will do more to handicap and *destroy* effective self-government than any other force in our society.”<sup>86</sup> At times, those who were in favor of the bill but worried about too many amendments to it, argued that amendments would “kill” the bill. Mrs. Green, who offered an amendment to create a dormitory and school

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<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 14, 1970): H 24038. Emphasis added.

<sup>86</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 28, 1970): H 26040. Emphasis added.

for congressional pages, observed of the current situation, “I think we are living on a powder keg. So far we have been just plain lucky that a major scandal has not occurred.”<sup>87</sup> Yet, compared with earlier debates discussed, the 1970 debate does not have more intense crisis rhetoric. In fact, it certainly has less crisis rhetoric than the 1961 debate. It probably uses it less than in 1946 as well. It did not, as in the House debate in 1946, use crisis rhetoric to shut down debate or speed up floor action. This might again be due to good rhetorical leadership. As seen in the introduction to chapter 6, Davidson argued that one of the reasons for the 1946 Act’s failure was the failure of reform leaders to take into account the concerns of the Members of Congress. The use of crisis rhetoric, especially in the House debate, encouraged quick floor debate without taking into account such concerns. Both Monroney and LaFollette set a tone of crisis early in the debate. This was not the case with the leadership at the beginning of the 1970 debate. In fact, perhaps learning the lessons of the 1946 Act, the leadership opened this debate by emphasizing the moderation of this bill and its expectations.

On July 13<sup>th</sup>, a number of members from the sub-committee that prepared this bill, introduced it. Mr. Colmer was the first to speak. A number of parts of his speech pointed to the moderation of the bill and what it was trying to address. In his opening paragraph he referred to the reform as a “reasonable and meaningful bill.” Later he added,

I guess I am just old-fashioned. *I just do not believe that everything should be changed, that matters that have stood the test of time in this legislative body as well as in other areas, should be changed because someone wants a change.* But there are opportunities, there are *places* here where improvement in the existing

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<sup>87</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (September 17, 1970): H 32278

system could be made. *This was a give-and-take proposition.* Some of us had to do some giving as well as taking, and that goes for the committee.<sup>88</sup>

Still further he urged, “But what I am trying to say, Mr. Speaker, is that those who have been crying the loudest for reorganization and reform if they want it, I would suggest to them they stay pretty well within the lines of reason and not try to revamp the whole Congress and the character of the legislative procedures now in existence.”<sup>89</sup> Finally, referring to the bill he concluded, “therefore, it must be neither too radical nor too conservative.”<sup>90</sup>

Mr. Sisk, whose leadership has already been discussed, also offered an opening speech which emphasized moderation and compromise rather than crisis. Concerning the bill he observed:

I confess that this bill is not all I would like, and I am sure many others feel the same way. There are certain changes which I would like to have seen proposed in this legislation, but the members of the subcommittee put our personal desires aside and took the pragmatic way out, because in the last analysis the noblest and finest ideas in the world for reorganizing the Congress of the United States are of no more lasting importance than yesterday’s weather forecast if you cannot get the votes to pass them on the floor of the House.<sup>91</sup>

Mr. Smith, the minority leader on the sub-committee, also opened with a moderate speech adding, “First of all, with respect to changes in the rules of the House, we have not suggested any radical departure from current practice, but have recommended a number of changes which we believe will improve our committee and

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<sup>88</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 13, 1970): H 23901. Emphasis added.

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*, H 23902.

floor practices.”<sup>92</sup> Mr. Bolling, another reform leader, added, “Mr. Chairman, this is a bill which probably satisfies no one—and which should please everyone...I know of no member of the subcommittee or the full committee who claims perfection for this legislation. I know that there are going to be many, many amendments.”<sup>93</sup>

Almost all of the above speakers, during their introductory remarks mentioned that there needed to be a balanced approach to floor amendments to the bill. They made it clear that serious amendments would be taken seriously, even those not offered by members of the committee. However, for the sake of time, not all could be considered. Overall, the leadership created an atmosphere of prudence and deliberation, rather than presenting a crisis that required immediate action. This contributed greatly to the deliberative atmosphere of the debate.

Yet, there was a new development in crisis rhetoric in this debate. While the style of rhetoric is not as critical or urgent as in the previous two debates, some of the actual arguments made about reform seem to extend the use of crises or at least indicate the normalization of crisis. In all of the previous debates, the reform in question was viewed as a particular solution to a particular problem. This was obviously more so in 1910 and 1961, which were revolts against a particular Rules Committee. However, even in the Pendleton Act and 1946, there was a sense that these measures were the reform and that after they were passed, Congress would go back to business as usual. In 1970, for the first time, a new sense among the leadership seemed to emerge. That sense was that institutional reform ought to become business as usual.

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<sup>92</sup> Ibid., H 23904.

<sup>93</sup> Ibid., H 23907.

A number of reform leaders who gave comprehensive introductory speeches on July 13<sup>th</sup> made the case for virtually perpetual reform. Mr. Reuss concluded his speech by observing, “We can do a good deal this week, but there will always be more to do. The House should not sit still while conditions change all around it. Reform and modernization should be a continuing process, not something which only happens every 20 years.”<sup>94</sup> Mr. McClory, the speaker immediately following Mr. Reuss, made an argument for a joint committee on congressional reform, which is part of the legislation. He stated, “Several of the things which such a continuing joint committee might propose and which we might act upon on a continuing basis without the necessity of waiting another 24 years to vote on constructive changes in the organization of Congress.”<sup>95</sup> Mr. Cleveland, a Republican supporter of reform, emphasized this repeatedly in his speech that introduced the legislation. He argued, “There is a continuing need for congressional reform. It is too bad that we treat this as something we do every 25 years and then forget about,” and, “for that reason it is important to remember the need for congressional reform is continuing and we cannot act on it now and put it aside for another 20 to 25 years. That is what happened for too long and it has happened too often.”<sup>96</sup> Mr. Smith, the minority leader on the sub-committee, when describing this proposed joint committee stated, “Our final conclusion was that an agency of the Congress be created to concern itself *constantly* with Congress as an institution which would examine on this continuing basis, ways in which the Congress can be strengthened or *constantly* updated and/or

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<sup>94</sup>Ibid., H 23912.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid., H 23919.

improved.”<sup>97</sup> On July 16<sup>th</sup>, Mr. Ottinger gave a comprehensive speech on the bill that took up over four pages in the Congressional Record. Towards the end of the speech he argued, “The Legislative Reorganization Act of 1970 is *only the beginning* of a comprehensive effort to free Congress of archaic, outmoded practices. The act itself is a small beginning in the mammoth task of overhauling our legislative machinery.”<sup>98</sup>

Only one member during the entire debate pointed to the problem of making reform, business as usual, in Congress. Mr. Hays, who actually supported this reform, joked,

There are certain areas in Washington where words and slogans become popular. We had the New Deal, the Fair Deal, the Square Deal, the Bull Moose, and right now its *reform*. I told them [an audience in his home state] last night, publicly, I said if you wanted to pass a bill to legalize prostitution, you call it a reform bill and you can get it through the House in 30 minutes.<sup>99</sup>

While joking, Hays seemed to be on to something. Once the language of reform is applied to every bill considered by Congress, it may become difficult for members to resist voting for the measure. Constant reform might lead to everything being considered crisis legislation, which must be passed quickly. This this would probably lead to a decline in deliberation. Unfortunately, Hays was the only one to make this point. Since he did so in a joking manner, which is typical for Hays, the argument was not taken seriously.

If these members were questioned about their statements, they might have responded that, by having more regular or even constant reform, they were hoping to

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<sup>97</sup> *Ibid.*, H 23926.

<sup>98</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 14, 1970): H 24600. Emphasis added.

<sup>99</sup> *Legislative Reorganization Act, 1970*, H.R. 17654, 91st Cong., 2nd sess., *Congressional Record* 116 (July 16, 1970): H 24585.

*avoid* crises. Constant incremental change might avoid the need for radical overhauls in the future. On the other hand, if rhetoric emphasizes constant reform, this suggests that the system is always broken. This might undermine deliberation in a number of ways.

First, even though in the particular instance of the 1970 Reorganization Act, the reform from the beginning was emphasized as being moderate, and the debate was not rushed through, this might have been the exception rather than the rule. Reforms typically employed crisis rhetoric. This can be seen in all of the debates, even the earlier ones. In the two previous debates (1946 and 1961), this crisis rhetoric was more extreme and urged quick action. Quick action is often at odds with deliberation. Not all reform debates will have the benefit of Sisk's leadership. No one during the course of this debate articulated a concern about what type of rhetoric would become normalized in the institution if reform became constant.

Second, constant reform means the framework for deliberation is always changing. If deliberation on public policy is a game played by the Congress, its rules and procedures are the rules of this game. Constantly tinkering with the rules leads to less stability in the deliberative process. It also diverts the attention of members who could be deliberating on public policy issues to the rules. Perhaps a better plan would be shooting for solid rules that need little tinkering in the future. This concern might best be understood as being related to Ornstein and Mann's discussion of "regular order." "Regular" order and constant reform seem to be at odds with one another. The 1970 Legislative Reorganization Act might be setting up a situation where future rhetoric will constantly undermine the idea of regular order.

Finally, if the Congress bashing discussed in section 3 is a problem, constant reform should be a cause for concern. For constant reform, even if it just involves small tinkering as its advocates hope, will regularize anti-Congress rhetoric.

### *Summary*

This final debate illustrates a continued decline in rhetoric, while at the same time pointing to the possibility and importance of rhetorical leadership. In most of the standards, there seems to be a continuation of some of the problems discussed in 1946 and 1961. Like the previous two debates, rhetoric discussing the constitutional tradition was less substantive than in the first two debates discussed. At the same time, Sisk and others' rhetorical leadership allowed for substantive institutional questions to be discussed. In the category of rhetorical restraint, this debate followed 1946 and 1961 in using rather simplified mandate rhetoric. Unlike the Pendleton Act and the revolt against Cannon debates, there were no alternative challenges to moderate the mandate language. It seems to have been assumed by almost all speakers that the people were behind their actions. In this section we also see a new development which had the potential to be even more damaging than previous rhetoric: unchallenged criticism of Congress. This might have been a result of the growing influence of the permanent campaign. This was starkly different from the Pendleton Act, where members actually criticized each other for using campaign language. This debate also introduced the idea of reform measures being passed solely for their rhetorical purposes. This reversed the proper relationship between congressional rhetoric and action. Rhetoric should be used to deliberate about action. While these new developments illustrate a new type of decline, this debate also shows how active rhetorical leadership can improve rhetoric.

Sisk's constant praise of good debate emphasized in the minds of others what proper congressional rhetoric ought to be. As far as feminine rhetoric is concerned, this debate did not see a great increase in its use. However, it seems to show that such rhetoric is at least here to stay. Again, with Sisk's leadership the positive elements of masculine rhetoric were able to be seen. Finally, the section on crisis rhetoric clearly points to both further decline and the possibility for rhetorical leadership. Unlike the 1946 debate, this debate tempered some uses of crisis rhetoric with rhetoric urging caution and moderation. In fact, the dominant tone of the debate was moderate, including the tone of the debate leaders. This shows that even in more modern debates, one can choose whether or not to employ crisis rhetoric. At the same time, the relative agreement that there ought to be constant reform of Congress might make it harder to make this choice in the future.

## CHAPTER NINE:

### Conclusion

#### *Another Story Worth Considering*

This dissertation began by asking whether rhetoric might not be an unexplored cause of congressional decline. While further study is needed to make the case for the link between rhetoric and decline stronger, the development shown here might provide a new narrative for congressional decline worth considering. The new narrative begins with three important dates, 1967, 1970, and 1969. 1969 is the year that Ornstein and Mann claim as the beginning of the “seeds” of the current problem in Congress.<sup>1</sup> Ornstein and Mann attribute this beginning of decline to an increased partisanship in Congress, the failing of a number of reforms, and mistreatment of the minority by the majority, amongst other things. Those who were willing to sacrifice the institution to personal or party ends eclipsed members who cared about the institution. To be sure, institutional decline is complex and has many causes. Ornstein and Mann acknowledge this in their final chapter. Yet, changes in rhetorical practice are never discussed. I believe the fact that the three dates mentioned above are so close in time forces us to take rhetorical problems seriously. Perhaps 1969, Ornstein and Mann’s beginning of the end, can be attributed to the fact that Congress no longer had the rhetorical tools necessary to fix itself.

Part II of the dissertation shows a long rhetorical development from speeches that were deliberative and aimed primarily at other members of Congress to speeches that had

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<sup>1</sup> Ornstein and Mann, 47.

a more popular character. By the 1970 debate, one can clearly see a change in the type of rhetoric used during reform debates. In 1967, members of Congress began offering a televised response to the president's State of the Union Address for the first time. As Part I shows, the rhetoric of this response was clearly designed to be popular and mirror the president's speech to the American people. These two developments when taken together show a new understanding of the role of rhetoric in congressional leadership. Members of Congress, rather than leading by persuading other members through deliberative speech, seem to have adopted the strategy of going public and using the rhetoric that is associated with doing so. When Congress is discussing reform, its rhetoric should be the most inward looking. It is after all examining itself. Unlike normal laws that regulate activity outside of Congress, congressional reform is aimed at the institution. One can understand popular rhetoric in debates concerning taxation and government programs. They directly affect the public. While an overly popular rhetoric concerning these policy areas could still damage deliberation, it might be unavoidable. But when the *most internal* concerns of Congress use the popular rhetoric associated with the changes in presidential rhetoric, this indicates a major transformation in Congress' understanding of rhetorical leadership. If one combines this change with the beginning of Congress openly mirroring the president by responding to his State of the Union Address, it seems clear that members of Congress have fully adopted the strategy of leading Congress by going over the heads of members of Congress. That is they have applied Woodrow Wilson's understanding of presidential leadership to Congress. This is bad for Congress.

It is bad for Congress because such rhetoric undermines deliberation. Abandoning actual debate, abandoning the language of the constitutional tradition, the loss of a sense of rhetorical self-restraint, abandoning the analytical style of masculine rhetoric, and an increased use of crisis rhetoric makes Congress ability to deliberate more difficult. Thus, any attempt to restore Congress' deliberative function must pay attention to rhetoric. Somehow the developments seen in these case studies must be reversed or slowed.

Unfortunately, the changes in rhetorical practice have another, perhaps more dangerous, consequence. They make talking about institutional reforms that could possibly slow or remedy congressional decline extremely difficult. This is not only because the rhetorical environment present during these and future reform debates does not reward deliberation, but because at least some of these rhetorical changes have a special relationship with reform. Let us briefly turn back to some of these developments and see how they make reform difficult. All five developments undermine reform because they undermine deliberation, but three of the five have a special relationship with reform. If Ornstein and Mann hope for a new generation of reformers to come along and fix Congress, the rhetorical changes shown here may mean they will be waiting for a long time.

### *Constitutional Tradition*

Congress is an institution that was created by the framers of the Constitution to serve a deliberative function. It also has a great history of changes in the role of political parties, the role of committees, the power of party leadership, and other rules. Congressional reform, at its core, is concerned with these issues and questions. It is

concerned with proper *function*. By turning to the Constitution itself and the thought and writings of the founders, members of Congress are aided in understanding the proper function and ends of the institution. By talking about the proper role or function of parties, committees, leadership, and the rules, members are examining the means that achieve these ends. Once members of Congress abandon such rhetoric, the proper understanding of Congress' function becomes more difficult.

### *Rhetorical Restraint*

Throughout the case studies there has also been a clear movement away from congressional self-restraint concerning rhetoric. In both debates to the early written responses to the Annual Address and the first two reform debates, questions about and challenges of certain types of rhetoric were constant throughout the debates. In order for institutional reform to take place, rhetoric must focus properly on the institution. At least two types of rhetoric that were not restrained in later debates might undermine such a focus.

The first is rhetoric that focuses on attacking particular members. Partisanship, vitriol, and accusations are not new to politics. One can see them in all of the debates discussed here, even the early ones. However, in earlier debates such rhetoric was frowned upon. In the Pendleton Act members criticized other members for attacking the motives of others and using extreme vitriol. Many of the reformers in 1910, while obviously not fans of Speaker Cannon, defined their opposition in terms of opposing a system rather than Cannon himself. They focused on the institution rather than the man. In 1961, no members criticized the even more extreme attacks. Labels and name-calling

were used regularly without any criticism. The more debates focus on individuals, the less they can focus on the institution.

The second type of rhetoric is rhetoric that shifts focus outside of the institution. This typically takes the form of appealing to the public in some way. While the Pendleton Act debate saw members admonishing other members that campaign rhetoric ought not to be used while in Congress, more modern debates allow campaign rhetoric. This is seen in the increasingly simple use of mandate rhetoric. While in earlier debates the presenting of alternative mandates seemed to cancel each other out or at least moderate any sense of a mandate for reform, modern reforms often paint a simple picture of the people simply demanding reform. This often leads to a sense of urgency and a focus on simply doing *something* rather than a focus on *what* should be done. This is epitomized when in the 1970 debate certain measures on seniority are urged simply because they made a statement to the people that Congress was against seniority rather than actually affecting the practice of seniority. It can also be seen in the Congress-bashing in the same debate. Over and over, members pointed to the dichotomy of interests between Congress and the American people. While such rhetoric might be useful at times to prod Congress into moving, it can, like mandate rhetoric, promote simply doing *something* and discourage the questioning of the particular reform measures at hand. Good reform can only come about after a careful examination of means.

### *Crisis Rhetoric*

Throughout the case studies a clear increase in the use and intensity of crisis rhetoric can be seen. During the early written response to the Annual Address, crisis rhetoric was never used in the response itself and rarely used in the debate surrounding

the response. By the time of the televised response to the State of the Union Address, crisis rhetoric was the norm. If one were to look back to the crisis rhetoric in the modern response, one would see they occurred in years not considered especially critical. In the debates on reform, one sees a relatively steady progression from a more restrained use of crisis rhetoric and rhetorical challenges of the use of crisis rhetoric to a virtually unrestrained use of crisis rhetoric. The crisis rhetoric itself was most intense in 1961. It was somewhat more restrained in 1970, possibly due to the positive influence of certain leaders. However, 1970 did see the rise of the rhetoric of constant reform. Many members supported a committee that would constantly look into reform. As the reform debates show, crisis rhetoric tends to go hand in hand with reform. Even if the 1970 Legislative Reorganization Act did not result in constant reform in the way its supporters envisioned, the fact that the idea of constant reform was never challenged by anyone seems to indicate that reform ought to be the normal state of affairs. If one combines this with the increase in the intensity of crisis rhetoric over time, one sees a constant use of intense crisis rhetoric used in the normal course of congressional speeches. Again, the televised response seems to confirm this.

While this development is bad for deliberation in general, it is particularly bad for reform efforts. At the risk of sounding too simple, this development has led to a Congress that “cries wolf.” By making reform (and the crisis rhetoric that has become associated with it) the norm, the case for serious reform as a response to serious institutional troubles becomes difficult to make. When the congressional tachometer is constantly hitting the red, it is hard to crank up the RPMs any further. This might seem rather ironic. The 1970’s reform era that Ornstein and Mann seem to yearn for combined

with changes in congressional rhetoric may have ultimately led to the inability of bringing about needed reforms now.

*What is to be done?*

Our case studies have shown clearly that rhetoric has become less deliberative. Yet, can anything be done? If members of Congress feel pressured to give “popular” speeches because of the permanent campaign, the modern media and feel pressured to mirror the president’s use of rhetoric, is there any hope for an improvement? At the conclusion of “The Rise of the Rhetorical Presidency” the authors pose this questions about the presidency,

The roots of the rhetorical presidency stretch so deeply into our political structure and national consciousness that talk of change may seem futile; and yet, the evident failures of the current doctrine, together with the growing scholarly debate about the crisis of the presidency, suggest that a moment has arrived for a discussion of alternatives. It should not be forgotten that the foundations of the rhetorical presidency were deliberately laid by Woodrow Wilson and that other presidents might establish new doctrines.<sup>2</sup>

The changes seen in congressional rhetoric cannot be ascribed to one man in the way the authors do above. Nor is there evidence yet, that these changes are the result of a consciously chosen “doctrine” by Congress. However, if one replaced the word “doctrine” with “practice” it could apply to Congress. Like the presidency at the time of the article, there is scholarly debate about a “crisis” in Congress. This dissertation has attempted to make the rhetorical failures more evident. By showing the particular way that rhetoric in Congress has declined, a discussion of alternatives can begin. Just as new presidents might establish new doctrines, new Congresses might establish new practices. Indeed, the rhetorical leadership of Bernie Sisk in the 1970 Legislative Reorganization

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<sup>2</sup> Tulis, *The Rhetorical Presidency*, 169.

Act shows that rhetorical alternatives are possible, even in an environment that is hostile to deliberative rhetoric. While other factors undermined deliberation during this debate, Sisk's leadership helped to curb their effects. The question then is can such good rhetorical leadership and a better rhetorical environment be encouraged? If so, how?

Shaping the way people speak is difficult. One cannot simply change congressional rules to bring about the desired results. However, some effort can be made. The first step is rhetorical awareness. There needs to be more of a discussion of the proper use of rhetoric amongst congressional scholars and members of Congress. Perhaps the best way to begin would be to commission task forces on congressional rhetoric. This has already been done in the field of presidential rhetoric in part II of the edited volume *The Prospect of Presidential Rhetoric*.<sup>3</sup> The six task forces that contributed to this volume were made up five to eight scholars charged with assessing the current state of scholarship in particular areas of presidential rhetoric and providing research agendas for the future. Something similar should be done for Congress. With the lack of current scholarship available on congressional rhetoric, these task forces would primarily serve to lay out a research agenda for this new sub-field. Topics for the task forces could be assigned based on institutional parts of Congress. For example task forces could focus on rhetoric: in the House, in the Senate, in the party caucuses, in committees and sub-committees, and by congressional leaders. Other task forces could look into congressional rhetoric on particular topics. For example: war rhetoric, budget rhetoric, rhetoric on presidential nominees, and ethics rhetoric. Overall scholarship should be aimed at discovering Congress' rich rhetorical history. In doing so it should

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<sup>3</sup> James Arnt Aune and Martin J. Medhurst, eds, *The Prospect of Presidential Rhetoric*, (College Station: Texas A&M University Press, 2008).

seek to find rhetorical problems but also provide models for rhetoric that contribute to deliberation and improve the institution. As mentioned in the introductory chapter, Sunil Ahuja's book *Congress Behaving Badly* shows the incivility of current congressional rhetoric. Unfortunately, since he understands rhetoric as a symptom of other problems, his solution is to shed light on these causes. He does not attempt to provide rhetorical alternatives. To use the language of the Leo Strauss quote in the introduction, Ahuja has shown the rhetorical low and looks for ways to discourage its use through other institutional reforms. However, he does not show the possibility of high rhetoric. Joseph Bessette in *The Mild Voice of Reason* attempts to show that bargaining and reelection theories alone cannot explain the presence of deliberation in Congress, rare as it may be. Bessette hopes to promote deliberation by holding up examples of it actually happening in Congress. The same can and must be done with rhetoric.

These scholars must then bring this awareness to bear on members of Congress. Ornstein and Mann, for example, mention the role that they played in the orientation for incoming freshmen members of Congress.<sup>4</sup> In addition to the typical topics discussed at these orientations (staffing, rules, ethics), a discussion of the proper type of rhetoric to be used in the institution ought to be discussed. Proper rhetoric need not be taught to freshmen only in terms of something that would benefit the institution. Rather it could be presented as strategy. Remember in the Pendleton Act debate members criticized each other's rhetoric for self-interested reasons. However, even self-interested rhetorical criticism reinforces some sense of rhetorical norms. Additionally scholars who are asked to testify in front of committees on congressional reform must be prepared to discuss the role of congressional rhetoric.

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<sup>4</sup> Ornstein and Mann, 147.

One clear measure that could be taken to improve congressional rhetoric would be ending the televised response to the State of the Union Address or at least reserving the response to opposition party Governors or other non-members of Congress. This response reinforces the idea that Congress should lead by mirroring the president. The rhetoric employed undermines deliberation and typically puts members at a rhetorical disadvantage when compared with the president. Of course, the First Amendment would not allow a regulation prohibiting such a response. Since these responses are primarily organized by the party opposing the president, it would be up to this party's congressional caucus and national committee to discourage members of Congress from participating.

Additionally, if the rhetorical developments discussed in the chapters are due at least partially to members aiming their speeches to the public rather than to each other, certain measures to close the legislative process from the public might be taken. This need not mean making proceedings secret. It might simply mean making certain proceedings only available in written form. Cameras could be removed from certain settings. The media has an interest in casting all congressional action in terms of crises. The more access the media has to the parts of the legislative process, the more these parts will see problematic rhetoric. Committees and sub-committees would have the most flexibility to enact these changes.

Another possibility for improvement might be the incorporation of certain clear rhetorical standards into the ethics codes of the two Houses. While the Constitution guarantees that members of Congress cannot be arrested or questioned elsewhere for anything they say in Congress, this does not mean that they are immune from censure.

Either the current ethics committees could take on the role of codifying rhetorical standards, or a new committee could be created.

There may be other cures for congressional rhetoric available. They may become more apparent as congressional rhetoric is studied more. For now, this dissertation has provided at least the beginnings of a diagnosis. It allows those who care about Congress to focus on a new possible cause for its disease.

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