

# 1

---

Lee Hamilton  
"Strengthening  
Congress"

## Why We Need to Restore Power to Congress

**W**E FREQUENTLY see surveys of what Americans think are important challenges facing the country. Their concerns typically include keeping America safe, shoring up the economy, and protecting individual liberties. These are all significant, yet there is one item you can be certain will not be on this list: strengthening Congress. It ought to be.

Why does it belong there? Congress was set up as the "first branch" in our system of government, but it has seen its powers erode significantly over the years, especially in recent decades; its relative stature at the moment would be an unpleasant surprise to James Madison and the other Founders. Whether Congress reasserts itself and lives up to its constitutional responsibilities isn't just a matter for academics to discuss. It matters deeply to all of us.

### The Intent of the Founders

Halfway through George W. Bush's presidency, Vice President Dick Cheney appeared on the History Channel to reflect on

the administration's drive to centralize and expand White House power in Washington. The presidency, he argued, had been hemmed in after the Vietnam War and Watergate, and it had taken years of effort to return it to its rightful prerogatives. "I think there has been over time a restoration, if you will, of the power and authority of the president," he said, and went on to suggest that this was just and proper.<sup>1</sup>

I was struck by his comments, because though the former vice president and I have served in public life over much the same period of time, we have come to opposite conclusions. It was a deeply felt conviction within the Bush administration, and other administrations as well, that the presidency had to be protected and strengthened; the Bush White House frequently approached national policy from that premise. I believe that the nation benefits from a strong presidency, and I would not want to see that office weakened. Yet I've also come to believe that to make democracy work, presidential power must be checked and balanced by an equally strong Congress. To me, the problem is not that the presidency is too hemmed in, but that Congress in recent times has become too weak and timid. The president is now the *de facto* chief legislator—he sets the policy agenda and is by far the most dominant player in establishing the federal budget. If power needs bolstering anywhere in Washington, it's on Capitol Hill.

I'll admit that the course of American history throughout the twentieth century and into the twenty-first has upheld Vice President Cheney's side, as a series of presidents have worked to bulk up White House power. On my side, though, I've got the Founders. With the exception of Alexander Hamilton, they wanted Congress to be the engine of policy and of law in the United States. They devoted the first article of the Constitution to enumerating its powers, and spent most of their time at the Constitutional Convention of 1787 arguing over its shape and reach.

The reasons are straightforward. In part, they were worried about the concentration of power: in the hands of a single person, of a few people, or even of a majority. That is what our system's "checks and balances" were designed to thwart. But they also believed that

in a representative democracy, in which “the people are the only legitimate fountain of power,” as James Madison put it, Congress was the avenue through which the American people would express their wishes.<sup>2</sup> It was inconceivable to them that a single chief executive could represent the priorities and desires of a diverse nation.

They were right. As power shifts from Congress to the president and the executive branch, the federal government inevitably becomes less representative. For all their faults, members of Congress understand their constituents exceedingly well. The president cannot possibly grasp their concerns as intimately or represent as directly the needs of 300 million Americans.

Congress, at its best, brings great strength to the system. The White House and executive agencies are far less accessible to ordinary voters than Congress is, and while I am well aware that Congress can be too easily swayed by powerful or monied interests, at least ordinary citizens have a chance to engage their representatives if they want. When was the last time you went to a community supper with the secretary of defense?

Similarly, the White House cannot reflect the diversity of the American people. It is on Capitol Hill that the regional, class, social, ideological, racial, and ethnic variety of this nation’s residents is manifested and, more important, where it must be taken into account. It is hard work to reconcile the diverse interests that come into play around a particular issue, but that is what Congress is for, and efforts to bypass it in the name of efficiency and speed are in reality little more than shrugging off the democratic process.

Finally, when Congress loses power, the nation loses accountability and transparency in the policy-making process. The executive branch is not open to public view. Congress is—or at least it ought to be. When Congress behaves timidly, the strongest muscle Americans have for getting at the roots of problems—the congressional oversight process—never gets flexed. The field is left open for the White House to put its own spin on public policy.

There is, I must acknowledge, a weak spot in my view. It is that the Congress sometimes cannot get its act together well enough to be a strong, effective, and sustained counterbalance to the power of the

presidency. That is why reforming the Congress, as difficult as that may be, is crucial. Until this happens, the power of the presidency will continue to grow.

I understand the pressures that have led us here: wars and terrorism inevitably call for the exercise of presidential power; chief executives quite naturally place a high value on their own agendas; the complexity of the legislative process makes Congress seem a burdensome part of the policy-making process; and the very diversity that underlies Congress's legitimacy also undercuts its ability to speak with one voice. Yet I remain puzzled by the willingness of the Congress itself to yield power, as it has done when it comes to declaring war. True, Democrats and Republicans both like to bolster presidents of their own party, but they also have a responsibility under the Constitution to ensure that their own institution is at least an equal with the presidency in governing the country.

Indeed, they may not remember it, but they've actually taken an oath to that effect. When a member of Congress is sworn in, he or she vows to support and defend the Constitution, a document that right up top says that "all legislative powers herein granted shall be vested" in Congress. It hardly seems a radical step, or even disrespectful of the presidency, for Congress to turn itself into an equal partner and start behaving as if it took those words seriously.

## Ceding Responsibilities to the President

To the casual observer, Congress can seem unusually pushy—tussling with the White House over the budget, investigating executive agency shortcomings, expanding the number of oversight hearings. Many Americans, who don't much like out-and-out conflict among their political leaders, find themselves wondering whether those politicians on Capitol Hill are going a little overboard.

The short answer is no. Not even close.

This is not a partisan comment about Democrats and Republicans. It's about the relationship between Capitol Hill and the White House, and how important it is to our system that each—the presidency and the Congress—be a strong and vibrant institution.

What the framers of our Constitution sought above all was balance: between large states and small, minority rights and majority rule, executive power and legislative authority. To keep the president from becoming too powerful, they not only created an equally powerful Congress, they explicitly gave it authority to declare war, to enact taxes, and to set the budgetary agenda. They wanted to ensure that consultation, debate, and the voices of the American people would all have a prominent place in the halls of power. Yet they did not want an unchecked Congress either. They believed that the interaction between two powerful branches of government would be broadly responsive to the people, and the balance between each branch would produce more authoritative and better policy.

Yet over the last several decades, on issue after issue, Congress has slowly but inexorably ceded its constitutionally mandated responsibilities to the president. Presidents of both parties have sought and encouraged this trend, although it accelerated under President Bush, who pursued a definition of executive power more all-encompassing than that of any of his immediate predecessors. Congress also faces some loss of power to judicial activism, encroachment by the courts in areas traditionally handled by Congress; yet this has not been nearly as extensive as the loss to presidential encroachment.

Perhaps the most vivid example of this overall shift in power lies in the weightiest decision a government has to make: whether to go to war against another country. The Constitution unequivocally grants this authority to Congress, and it does so for a reason: our founders did not want the decision to be made by one person, but by many. In case after case since the Korean conflict, however, Congress has essentially handed off war-making power to the president, and presidents have been only too eager to accept it. The

Constitutional injunction—that the Congress shall have the power to declare war—has basically become a nullity. In the popular mind as well as in practice, war has become a presidential prerogative.

Similarly, Congress has over the last few decades grown increasingly sluggish when it comes to budgeting—that is, creating the basic blueprint for what our government will do by means of thousands of federal programs, large and small. Not only has it ceded the initiative to the president, who submits the budget to which Congress merely responds, it has repeatedly failed to come up with its own clear vision for government spending; year after year, the president determines the vast majority of the federal budget, while Congress gets to tinker on the margins. And only four times in the last thirty years has Congress passed all its appropriations bills on time.<sup>3</sup> This has forced budgetary decisions into massive omnibus bills, allowing presidents to negotiate with only a handful of congressional leaders—not committee chairs—and making the threat of a veto war more potent.

War and the budget are not the only arenas in which Congress has reduced its role. It is the president who basically sets the agenda for which major issues Congress will take up each year. On everything from the fight against terrorism to international trade to environmental protection, the president and the executive branch have become the driving forces in American governance. Congress, though not entirely supine, has been content to let the president take the political heat for actually leading. When he was president, George Washington made only a few suggestions for legislation, and refrained from commenting on matters before Congress. President Washington would not recognize how we do things today.

While Congress has been handing more power over to the president, it has not at the same time increased its oversight to make sure that power is being used effectively and properly. A *Washington Post* editor recently put it succinctly: “Congress has become less vigilant, less proud and protective of its own prerogatives, and less important to the conduct of American government than at any time in decades.”<sup>4</sup>

To be sure, the world our nation faces is vastly different from the one the Framers confronted or could even envision in 1789. In a difficult world, an increase in presidential power is appropriate. But a weak Congress is not. A Congress that reasserts its prerogatives as a co-equal branch of government, that insists on robust oversight of the executive branch, that sets its own agenda as well as responds to the agenda of the president, that exercises the powers given it by our Constitution when it comes to declaring war and deciding how the government will spend its money—this would not be a Congress that weakens the president, but rather one that strengthens our democracy.

## Why Does Congress Want to Give up Power?

Politicians like power. The more they have, the better they can set public agendas, create policy, help their constituents, and affect the direction of government.

Members of Congress like power just as much as you'd expect of people holding high federal office. That's why they want to gain seniority on their committees, jockey for assignments to powerful committees, and rise in the leadership. If they're in the House of Representatives, they often have their eye on the Senate. If they're in the Senate, they can't help but glance over at a governorship or the White House. This is the nature of the office.

Yet it gives rise to one of the more perplexing and important mysteries of life in Washington right now: Why, if they hunger after power, have members of Congress been so willing to hand it off to the executive branch? Why have they been willing over the last three or four decades to weaken Congress as an institution?

For while many members over the years have sought individual power on Capitol Hill, they have seemed to fall over one another to give Congress's power to the president and his cabinet, or to countenance executive-branch reaches for power. They have effectively ceded to the president the ability to declare war, a responsibility

the Constitution unambiguously lays on Congress's shoulders. They have largely handed to the White House the power to set their own legislative agenda. They have weakened their oversight of the executive branch, too often giving the president and administration officials unchecked authority to implement scores of laws without robust scrutiny. And every so often, they seriously entertain giving the president even more power of the purse—another responsibility vested in Congress by the Constitution—by granting the president an extensive line-item veto.

I can't pretend to understand this development fully. I watched it unfold during my three decades in the U.S. House of Representatives, and I've watched it accelerate since I left office in 1999, and it still perplexes me. Our nation's founders had good reasons for creating a system that balances an energetic executive branch with an equally forceful and powerful legislative branch. Why undo their work?

Part of the reason, I believe, is quite simply that times have changed. As complex as the affairs of state must have seemed in 1789, they are exponentially more complicated now. I fully understand Woodrow Wilson's claim that the presidency is "the vital place of action in the system."<sup>5</sup> Often the cumbersome separation of powers does not work in dealing with the challenges of the day, and the president needs to take the initiative. In addition, on issues from national security to, say, the safety of our food, there is only so much that can be accomplished by passing new legislation. Much of the hard work of carrying out public policy is in the implementation, which is the task of the president and the executive branch, not the Congress. To some extent, members of Congress have had no choice but to allow a vigorous executive branch to stretch its wings.

Yet that does not entirely explain the timidity of Congress over the past few decades. There is more at play here than simply change in the substantive nature of the federal workload. It is, in word, politics.

Congress does not work smoothly. It can be difficult and time-consuming to develop a legislative consensus among 535 representa-



tives and senators who have many competing interests and agendas. This means that Congress works in shades of gray and in long increments of time. Many members, as a result, wonder whether the Congress can be effective or efficient in dealing with the complex issues of the day. Members of Congress could give you a lot of other reasons why they have let slip their institution's responsibilities and best traditions: the need to tend to districts with 650,000 constituents; the constant need to raise money; their hectic schedules and the hundreds of votes they must cast each year. The list goes on and on. They have come to believe, perhaps because of the difficulty of legislating, that the president can do things better. Add to this the media's natural propensity to focus on the president—and, in this sound-bite era, to shy away from reporting on the complexities of congressional policy making—and you get a gradual loss of confidence in Congress.

At the same time, letting the president take the lead makes life much easier for members of Congress. When they are of the same party, the majority has a natural tendency to defer to the president's wishes. But even without that, taking a position on a difficult issue leaves a member of Congress politically exposed and complicates his or her next election. The far easier route is to delegate the tough decisions to the president; if they are handled well, you applaud, and if they are not, you condemn. Either way, you don't have to take political responsibility.

There is a severe cost to this, however, and it is measured in the erosion of the checks and balances and the constitutional structure envisioned by our founders. For our system to work, Congress needs to balance the president. And if it hands him any power with one hand, it needs to exert greater oversight with the other. That has not been happening. As a result, the people's body, the Congress, is a weakened institution, and is no longer playing the role of a separate and co-equal branch of government that our Founders envisioned.

## What It Means When You Take That Oath of Office

Every member of Congress swears an oath at the beginning of each term to "support and defend" the Constitution. And while every member has to decide for himself or herself what this entails, I can't help but think that at least a few of the excesses we've seen in recent years on Capitol Hill might have been avoided if every member set aside a little time every so often to reflect on the meaning of that oath and why the Framers decided to have members swear allegiance to the Constitution.

To begin with, the Constitution asserts a profoundly democratic vision of this nation, a bedrock belief in the sovereignty of the people and a vision of how our structures of government are meant to secure freedom. The Preamble, with its sweeping talk of justice, promoting the general welfare, and securing "the blessings of liberty to ourselves and our posterity," is especially relevant here. Juxtapose this inspiring view of the hope underlying our system against the special favors some members have handed out to well-connected lobbyists, and it's not hard to see that more attention to the ideals of the Founders might have stood Congress in good stead.

But defending the Constitution is not just about giving life to the vision it lays out. That venerable document is also an operating manual for our government, and it strongly emphasizes the separation of powers. When you take the oath of office as a member of Congress, it means that you are swearing to defend the Congress as a strong, independent, and co-equal branch of government. Indeed, the longer one serves in Congress, the more loyalty one often develops to that body when it comes to sorting through the competing claims on its attention. A member's primary loyalty must go not to the president or his or her political party, but to the Constitution itself.

In fact, I would argue that the congressional oath of office requires members of Congress to protect the powers of Congress

especially from encroachment by the executive branch. The Constitution certainly provides for a strong executive. "Energy in the executive," Alexander Hamilton once said, "is a leading character in the definition of good government," and he was right.<sup>6</sup> This does not mean, though, that Congress is free to ignore the careful balancing act embedded in the Constitution and allow its own prerogatives to be eroded. Vigor in the Congress is also, we might remember, a leading characteristic of good government. Better public policy emerges, believed the Founders, if both the president and the Congress are robust.

The administration of the oath of office is such a fleeting thing, a few quick words on the hectic opening day of each new Congress before its members dive into the hurly-burly of legislating, fighting partisan battles, and positioning themselves for the next election. It is easily overlooked. But we live in an era of a timid Congress and presidents who insist on strengthening their hand at the expense of Congress. At such a time, it seems to me, members of Congress need to take their oath of office seriously, and pay close attention to the Constitution they've sworn to protect and defend.

Our system of government is under some stress, but it is not fatally flawed. We do not need a new constitutional convention to right what is wrong with Congress. What needs to be fixed in the Congress demands no changes in the law. Congress simply needs to get its house in order and assert itself as a co-equal branch. Congress need only act as our founders intended it to.