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## CONGRESS IN COMPARATIVE PERSPECTIVE

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### I. UNUSUAL IF NOT UNIQUE

As students of comparative legislatures have noted, legislatures come in many forms.<sup>1</sup> There are the tightly disciplined so-called legislatures of one-party authoritarian states that exist to place a democratic façade on tyranny. There are also rambunctious, fragmented legislatures such as the Knesset in Israel in which any control seems difficult to establish. Even within a single country such as the United Kingdom, there are vivid contrasts between the partisan fireworks of the House of Commons and the somnolent atmosphere of the House of Lords, which has been described as proof of life after death.

Political scientists often compare legislatures in terms of the career patterns of their members by asking how long they serve and what careers they follow before and after election or appointment.<sup>2</sup> Such studies reveal much of interest about political career structure. Perhaps the fundamental questions for students of legislatures concern their role in the policy-making process. Three questions may be particularly relevant to assessing the impact of legislatures. First, does the legislature have authority over the full range of public policy or only over certain subjects? Second, does the legislature have effective policy tools to intervene in a policy issue? Third, does the legislature, both in theory and in practice, have the ability to formulate an independent judgment of a policy proposal?

It is easy to think of instances where the answers to these questions are negative. Some legislatures have been denied the right to debate certain policy

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<sup>1</sup> J. BLONDEL, *COMPARATIVE LEGISLATURES* 2-3 (1973); GERHARD LOEWENBERG & SAMUEL C. PATTERSON, *COMPARING LEGISLATURES*, at v (1979).

<sup>2</sup> See, e.g., Susan E. Scarrow, *Political Career Paths and the European Parliament*, 22 *LEGIS. STUD. Q.* 253, 253-55 (1997).

areas: historically, the Imperial German Parliament could not discuss foreign policy under the Kaisers,<sup>3</sup> and today, religious authorities retain the right to debate certain issues instead of the Iranian parliament. Many legislatures have lacked their own sources of information and analysis and, therefore, have been unable to formulate their own independent judgment of policy choices. Even in long-established democracies, legislatures might lack the ability to intervene in policy-making. At least in the initial decades of the Fifth Republic of France, the Parliament was often sidelined as major policy decisions were made by presidential decree rather than by law passed by the Parliament.<sup>4</sup> In general, the answers to these questions are more likely matters of degree than absolutes. The increase in the number of democracies and therefore legislatures in the late-twentieth century provides increased opportunities for discovering differences and patterns among them.

It is unlikely that further research will disturb our beliefs that, judging by the criteria set out above, Congress is indeed an exceptional legislature. Indeed, the late great Nelson Polsby was fond of remarking that Congress was the only true legislature in the world.<sup>5</sup> Having somewhat startled his audience, Polsby would then go on to argue that only Congress, among all the legislative bodies in stable democracies, possessed in full the strengths noted above. Congress had the opportunity to intervene in every type of public policy question, the power to make crucial decisions about these questions, and the capacity to make independent judgments because it was not dependent on information provided by the President. Thus, Congress is a true legislature in that it can engage in independent deliberation on legislative proposals covering all aspects of public policy. The legislatures of other advanced, industrialized democracies illustrate the saying that the nineteenth century was the age of legislatures, the twentieth the age of executives.<sup>6</sup> In general, no one would doubt the claim that Congress is an exception to that generalization to an impressive degree.

There are those who express doubts, including Barbara Hinckley and Samuel Huntington, about the adequacy of Congress's response to the executive branch's dominance in key areas, most notably, foreign and economic policy.<sup>7</sup> Since Huntington wrote, the creation of the Budget Committees and the Congressional Office of the Budget ("COB") has

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<sup>3</sup> LUCIANO CANFORA, *DEMOCRACY IN EUROPE: A HISTORY* 109-10 (2006).

<sup>4</sup> VINCENT WRIGHT, *THE GOVERNMENT AND POLITICS OF FRANCE* 46-57 (1978).

<sup>5</sup> I am not sure Polsby put this comment into print. Many close friends and associates recall him saying it.

<sup>6</sup> See, e.g., WRIGHT, *supra* note 4, at 107-09 (describing how the French Parliament was strong during the 1800s and early 1900s, but was slowly surpassed by a strong President).

<sup>7</sup> See BARBARA HINCKLEY, *LESS THAN MEETS THE EYE: FOREIGN POLICY MAKING AND THE MYTH OF THE ASSERTIVE CONGRESS* 86 (1994); Samuel P. Huntington, *Congressional Responses to the Twentieth Century*, in *THE CONGRESS AND AMERICA'S FUTURE* 6, 31-32 (David B. Truman ed., 2d ed. 1973).

increased considerably the capacity of Congress to have an impact on economic policy-making.<sup>8</sup> However, Hinckley's doubts about Congress's capacity for independent judgment in foreign policy seem to have been born out in our recent wars. Congress lacked both the knowledge and the political will to stand in the way of President George W. Bush's rush to war with Iraq. Even including foreign policy, however, no American President would think it anything other than a major challenge to secure the passage of the Administration's legislative program through Congress. As President Clinton discovered in 1993-94, having one's own party in control of Congress does not necessarily help to secure the passage of a legislative program when his legislative achievements were few and his national health insurance reforms failed.<sup>9</sup>

Indeed, the key reason for the continued vitality of the U.S. Congress is that the Constitution neither requires nor facilitates party discipline. The key reason why the British House of Commons is seen as a prime example of the decline of legislatures since the golden age of the mid-nineteenth century is strong party discipline. British Members of Parliament ("MPs") have been portrayed as sheep who allow themselves to be herded through the voting lobbies with only the occasional dissenting bleat.<sup>10</sup> Congressional exceptionalism to the law of declining legislatures rests on its immunity to the deadening effects on legislative autonomy of strong party discipline. If we could imagine parties existed in the United States that were so strong that their national leaders controlled the political careers of legislators, perhaps Congress would not retain its exceptional independence and authority. There is an inverse relationship between party strength and the power of legislatures. We might assume that this inverse relationship is self reinforcing; an independent legislature develops practices and power structures that weaken parties. Such an argument would fit easily within the institutionalist paradigm – or rather, paradigms – that have been so influential in political science in recent years. This Essay argues, however, that the strength of party is an independent factor that can reshape legislatures in the face of institutional incentives that they have developed. This argument develops by considering first the familiar logic of how parliamentary systems shape party discipline and then by contrasting trends in the importance of party in Congress and a parliament.

## II. COMPARING PARLIAMENTS AND CONGRESS

As comparative political scientists have often pointed out with a degree of sarcasm, the singularity of American political institutions limits both the opportunities and need for theorizing about them. There is only one United

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<sup>8</sup> 2 U.S.C. §§ 601-688 (2006).

<sup>9</sup> DAVID R. MAYHEW, *PARTIES & POLICIES: HOW THE AMERICAN GOVERNMENT WORKS* 102-36 (2008).

<sup>10</sup> See, e.g., Philip Cowley & Mark Stuart, *When Sheep Bark: The Parliamentary Labour Party Since 2001*, 14 J. ELECTIONS, PUB. OPINION & PARTIES 211, 211 (2004).

States Congress. In contrast, there are many different parliaments. The crucial difference between Congress and all true parliamentary systems is that legislatures in parliamentary systems also have the constitutional responsibility for creating and sustaining the government. While there have been hybrid forms of government in which there are both directly elected chief executives and parliaments (e.g., The French Fifth Republic,<sup>11</sup> at times Nigeria,<sup>12</sup> and unsuccessfully for a time in Israel<sup>13</sup>), the hallmark of the parliamentary system is that no government can exist that is incapable of winning a confidence vote in at least the more powerful chamber.<sup>14</sup> In contrast, United States Presidents commonly face a majority of the other party in Congress and lose key votes on crucial issues. For example, the first bailout proposal during President Bush's Administration was defeated in the House of Representatives in part because of opposition from the President's own party.<sup>15</sup>

Although parliaments have in common the power to dismiss the executive, they also display important differences. It is usually important to distinguish between parliaments elected through some form of proportional representation that results in multi-party systems and coalitions on the one hand, and Westminster-type legislatures elected through plurality highly electoral systems that disadvantage most small parties and make coalitions rare. The character of politics in the more proportional systems is very different from the Westminster model, particularly when legislators are chosen by being placed high on party lists to ensure election, rather than being nominated and elected by distinct geographic districts. Features of Westminster politics such as sharp partisan competition and clear accountability to the electorate, familiar to U.S. viewers through watching Prime Minister's Question Time,<sup>16</sup> are not necessarily features of the multi-party coalitional politics of countries such as the Netherlands, Belgium and Austria.

Politicians in multi-party coalition systems expect the balance of power between the parties and their composition in the legislature to change only slowly; making deals and striking bargains are the normal way of carrying on

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<sup>11</sup> GABRIEL A. ALMOND ET AL., *COMPARATIVE POLITICS TODAY* 207-10 (9th ed. 2008).

<sup>12</sup> DENIS JUDD, *EMPIRE: THE BRITISH IMPERIAL EXPERIENCE FROM 1765 TO THE PRESENT* 391-92 (1997).

<sup>13</sup> Reuven Y. Hazan, *Yes, Institutions Matter: The Impact of Institutional Reform on Parliamentary Members and Leaders in Israel*, in *THE UNEASY RELATIONSHIPS BETWEEN PARLIAMENTARY MEMBERS AND LEADERS* 317-22 (Lawrence D. Longley & Reuven Y. Hazan eds., 2000).

<sup>14</sup> John D. Huber, *The Vote of Confidence in Parliamentary Democracies*, 90 *AM. POL. SCI. REV.* 269, 269 (1996).

<sup>15</sup> Carl Hulse & David M. Herszenhorn, *Defiant House Rejects Huge Bailout: Next Step Is Uncertain*, *N.Y. TIMES*, Sept. 30, 2008, at A1.

<sup>16</sup> For a description of Question Time, see PHILIP NORTON, *PARLIAMENT IN BRITISH POLITICS* 112-16 (2005).

politics.<sup>17</sup> From the perspective of the voter, the link between an election and government formation is tenuous, mediated by complicated and often protracted bargaining over coalition formation. Government accountability to voters is attenuated by the difficulty of determining whether any given policy choice has been made as a result of agreement within the government, by bargaining within the government among coalition partners, or by a party or minister given control over a policy area. Yet more positively, coalitions ensure that a wider range of views and interests are represented. There is also considerable policy stability as the nature of coalitional politics makes major change difficult to achieve.

In contrast, the Westminster-type parliamentary system provides clear accountability at the cost of inclusiveness and possibly policy stability. Single-party government provides the opportunity for clear accountability to the electorate. However, particularly when, as at present in the U.K., the governing party has won on a minority of the vote (thirty-five percent),<sup>18</sup> many (most) voters are not represented in the government and fewer interests or perspectives may be taken into account in policy-making. Untrammelled by the need for bargaining and compromise to sustain a coalition, the Westminster system may result in what Lord Hailsham, a prominent member of late-twentieth-century Conservative governments and one-time candidate for Prime Minister, denounced as “elective dictatorship.”<sup>19</sup>

The natural point of comparison between Congress and parliamentary systems might therefore seem to be with the multi-party, proportional representation-based legislatures of continental Europe. Bargaining, mutual accommodation,<sup>20</sup> and policy-making through compromise with other power-holders are features of both systems. However, the Westminster model has long been the established point of comparison with the U.S. Congress most famously in the writings of Woodrow Wilson.<sup>21</sup> This contrast may be familiar because of the common language, shared values and shared history of the countries. However, the contrast between the U.K. Parliament and the U.S. Congress is, in the language of the discipline of comparative politics, a “most

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<sup>17</sup> ARCO I. TIMMERMANS, *HIGH POLITICS IN THE LOW COUNTRIES: AN EMPIRICAL STUDY OF COALITION AGREEMENTS IN BELGIUM AND THE NETHERLANDS 12-15* (2003).

<sup>18</sup> British Governments and Elections Since 1945, <http://www.psr.keele.ac.uk/area/uk/uktable.htm> (last visited Feb. 16, 2008).

<sup>19</sup> *The Richard Dimbleby Lecture: Lord Hailsham Elective Dictatorship* (BBC television broadcast Oct. 14, 1976).

<sup>20</sup> See CHARLES E. LINDBLOM, *THE INTELLIGENCE OF DEMOCRACY: DECISION MAKING THROUGH MUTUAL ADJUSTMENT 3* (1965) (explaining that mutual adjustment is the idea that “people can coordinate with each other without anyone’s coordinating them, without a dominant common purpose, and without rules that fully prescribe their relations to each other”).

<sup>21</sup> See, e.g., WOODROW WILSON, *CONGRESSIONAL GOVERNMENT: A STUDY IN AMERICAN POLITICS 58-60, 128-30, 223-28* (1885).

different” comparison, not a “most similar.”<sup>22</sup> The concentration of power organized through political parties in the U.K. contrasts not only with the sharing of powers between institutions in the U.S. but with the coalitional politics of most of continental Europe. The sharpness of the contrast makes the trends that are apparent in the relationship between party and legislature all the more surprising. Recent changes seem to be at odds with the fundamental institutional incentive structures of Parliament and Congress. They therefore require an explanation outside the institutionalist emphasis on rules and constitutions that has recently been so influential in political science. In order to make this argument we must first set out the conventional account of the differences.

### III. THE FUNDAMENTAL IMPORTANCE OF PARTY IN THE U.K.

As we have seen, the most important practice in Parliamentary systems (of both the coalitional continental and Westminster type) that limits the independence of the legislature perversely is the greatest power that the parliaments possess – the requirement that governments command a majority within it (or at least within the more powerful lower chamber). In the U.K., the government must be able to win a vote of confidence or else it would have to resign or ask the Queen for dissolution of Parliament and a new election. This is no mere constitutional relic or in the terms of Walter Bagehot, merely a dignified part of the constitution.<sup>23</sup> In 1979, for example, the Labour government of Jim Callaghan lost a vote of confidence and was forced to advise the Queen to hold an election that began its eighteen years in the wilderness. Members of Parliament – or at least those from the governing party – can force out leaders when they wish to do so. This happens or comes close to happening fairly often. Margaret Thatcher was forced out in 1990,<sup>24</sup> Tony Blair jumped before he was pushed out in 2007,<sup>25</sup> and Gordon Brown almost suffered the same fate in September 2008.<sup>26</sup> Most of the time, party members are otherwise constrained to support their leaders.

A second crucial though more ambiguously defined principle is that the government needs to be able to secure a majority in the House of Commons on its major proposals. Although this principle is widely cited, many modern British governments have endured at least one significant defeat in the House of Commons without resigning, and most have had to modify policy proposals

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<sup>22</sup> See TODD LANDMAN, *ISSUES AND METHODS IN COMPARATIVE POLITICS* 70-73 (3d ed. 2008).

<sup>23</sup> See William M. Kuhn, *The Monarchy and the House of Lords: The “Dignified” Parts of the Constitution*, in *A COMPANION TO NINETEENTH-CENTURY BRITAIN* 95, 95-100 (Chris Williams ed., 2004).

<sup>24</sup> ALMOND ET AL., *supra* note 11, at 162.

<sup>25</sup> *Id.* at 163.

<sup>26</sup> John F. Burns, *New Problems and Old Friction Put British Premier in Political Jeopardy*, *N.Y. TIMES*, May 14, 2008, at A6.

in the face of the likelihood of losing a key vote. However, the central responsibility of a member belonging to the governing party in the House of Commons is to sustain the government even if that comes at the price of voting for legislation they dislike.<sup>27</sup> John Major forced through ratification of the Treaty of Maastricht by declaring it a confidence measure.<sup>28</sup> Blair set a higher standard by saying that he would resign if a majority of Labour MPs voted against going to war in Iraq.<sup>29</sup> Conservative support for the war guaranteed a majority in the House of Commons, but Blair also demanded support from a majority of his own party.

There are a number of important consequences of this constitutional requirement to sustain a government. The first is the creation of a norm of party unity that extends beyond the constitutional requirement. Those who know British politics will be familiar with the almost hysterical response to the news that members of the governing party intend to vote against one of its legislative proposals, make the headlines and receive coverage on the evening news, even though rebels may be too few to defeat the legislation let alone endanger the future of the government.<sup>30</sup> Rebellions, as Chief Whips always argue, seem to weaken the standing of governments. John Major's constant struggles with "the bastards," as he termed them, over ratification of the Treaty of Maastricht contributed to the decline of the Conservative Party,<sup>31</sup> from which the Party may only now be recovering. Rather oddly, the British will often claim to admire MPs who show an independent streak and yet punish a party that cannot maintain unity. Party unity has become a norm even when its absence (for example, when a party is in opposition and the government has a clear majority) has no constitutional significance.

Second, the need to have a disciplined party to sustain the government has resulted in the government having decisive control over the legislature's timetable. Admittedly some time is allocated to the opposition parties and even made available for individual MPs to use. What Americans would regard as key social issues have been resolved in the U.K. not by the courts but by legislation – so called private members bills – introduced by backbench (non-leadership position) MPs and voted on without the Whips issuing instructions on how to vote (a so-called free vote).<sup>32</sup> Examples include the abolition of the death penalty, the establishment of abortion rights and the right to consensual

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<sup>27</sup> See ALMOND ET AL., *supra* note 11, at 171.

<sup>28</sup> Walter Goldstein, *Europe After Maastricht*, FOREIGN AFF., Winter 1992-93, at 117, 118-32.

<sup>29</sup> See ANTHONY SELDON ET AL., BLAIR 596-97 (2004).

<sup>30</sup> See ALMOND ET AL., *supra* note 11, at 171.

<sup>31</sup> See Paul Routledge & Simon Hoggart, *Major Hits at Cabinet "Bastards,"* THE OBSERVER (U.K.), July 25, 1993, at 1.

<sup>32</sup> HOUSE OF COMMONS INFO. OFFICE, PRIVATE MEMBERS' BILLS PROCEDURE (2008), <http://www.parliament.uk/documents/upload/102.pdf>.

sex among homosexuals.<sup>33</sup> None of these measures would have passed without the benign neutrality of the government of the day, which included providing extra legislative time from the government's account. The measures were, however, promoted by and associated with individual backbenchers.

Third, governments have been careful to limit the development of institutions that would provide a competing line of power and authority to that created by the legislative party. We shall return to this issue later, but for now it suffices to say that governments of all parties have been careful to set limits on the growth in power of bodies such as the Select Committees of the House of Commons.<sup>34</sup>

Fourth, parliamentary systems limit the opportunity for individual legislators to develop a power base independent of the party. This is particularly true in proportional representation lists systems where the party, not a district, determines the likelihood of a candidate being placed high enough on a list to assure election. Even where the selection of a candidate is in the hands of a local constituency party – as in the U.K. where local parties choose from a national list of candidates – the “personal vote” for MPs is low.<sup>35</sup> The vast majority of voters vote for the party, not the individual. The odds against a single legislator achieving a landmark piece of legislation are high, though as we have just seen, not impossible.<sup>36</sup> Government control of the main legislative agenda means that MPs are limited to campaigning both publicly and privately for constituents and their interests; for better or worse, they cannot insert earmarks into budget measures. Although British MPs devote substantial efforts to helping constituents and constituency interests, only in marginal (i.e., very competitive) constituencies is the personal vote large enough to affect the outcome.<sup>37</sup> Unable to establish much of an independent identity, MPs rise and fall on the basis of their party's fortunes. Meanwhile, their prospects of achieving more power, status and money are in the hands of their party leader. The Prime Minister retains the sole power to choose or dismiss government ministers.<sup>38</sup> In general, although there are exceptions, the pathway to power seems to rest on staying in the good graces of party leaders.

The great authority on British politics, Samuel Beer, argued that the degree of party unity in the House of Commons was so high that there was no point in

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<sup>33</sup> HOUSE OF COMMONS INFO. OFFICE, THE SUCCESS OF PRIVATE MEMBERS' BILLS (2008), <http://www.parliament.uk/documents/upload/L03.pdf>.

<sup>34</sup> MICHAEL JOGERST, REFORM IN THE HOUSE OF COMMONS: THE SELECT COMMITTEE SYSTEM 201-17 (1993).

<sup>35</sup> RICHARD S. KATZ, DEMOCRACY AND ELECTIONS 207 (1997).

<sup>36</sup> See *supra* notes 32-33 and accompanying text.

<sup>37</sup> See Philip Norton, *The Growth of the Constituency Role of the MP*, 47 PARLIAMENTARY AFF. 705, 710-19 (1994).

<sup>38</sup> ALMOND ET AL., *supra* note 11, at 166-68.



measuring it.<sup>39</sup> This was a sensible comment considering that in two years in the 1950s, around the time Beer was writing, not a single Conservative MP voted against the party line.<sup>40</sup> Moreover, the institutional logic of the British system seemed to suggest that little was likely to change.

#### IV. CONGRESS: THE CLASSICAL PICTURE

The factors that kept Congress a truly independent legislature are more or less the mirror image of the factors discussed above. First, the separation of powers minimizes the degree to which legislators need to worry about the survival of the President when they vote on crucial issues. For example, when Bill Clinton became the first Democratic President in twelve years, he was promptly abandoned by a majority of his party on NAFTA, a key piece of economic and foreign policy.<sup>41</sup> Clinton was dependent on the support of the opposing party, the Republicans, to secure approval and implementation of the treaty,<sup>42</sup> contrasting vividly with Blair's insistence on a party majority in the Iraq War vote. As a consequence of the separation of powers, the pressures to respect party discipline are lower. The exception that truly proves the rule is the vote at the beginning of each Congress on organizing the chambers and, in the House, electing the Speaker. Just as the need to maintain unity is apparent in parties in Westminster on confidence votes when the distribution of power is at stake, so too in the votes at the beginning of each Congress; rebellions against party discipline are very rare.

Second, Congress developed an institutional power structure that historically was separated from the power structure of the political parties within it. There are of course party structures – Leaders, Whips, Conferences – that would be familiar in name and function to a British MP; however, there are also committees that to a significant degree, especially in the House, have dominated the flow of legislation in their policy area. These committees have been led by party leaders selected deliberately by the seniority system that ensured party leaders had no control over the selection of those with the most power on the committees. The situation for most of the twentieth century was that the committee chairs, the congressional barons as they were often known, were politically towering presences in the Washington landscape. Presidents came and went, but congressional committee chairs remained. This apparently inequitable distribution of power within Congress was tolerated by representatives and senators because it served their own interests. Legislators were able to join and gain seniority within committees that allowed them to

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<sup>39</sup> Samuel H. Beer, *The British Legislature and the Problem of Mobilizing Consent*, in *LAWMAKERS IN A CHANGING WORLD* 30, 33 (Elke Frank ed., 1966).

<sup>40</sup> SAMUEL H. BEER, *MODERN BRITISH POLITICS: A STUDY OF PARTIES AND PRESSURE GROUPS* 350-51 (2d ed. 1969).

<sup>41</sup> Brit Hume, *NAFTA Endgame: Bill Clinton's Maneuverings to Achieve Passage of NAFTA in the House of Representatives*, *NAT'L REV.*, Nov. 15, 1993, at 25, 25-26.

<sup>42</sup> *Id.*

serve their constituents' interests and their own policy interests. The committee structure allowed Congress to gain additional influence over policy through specialization, thereby extending its collective policy reach. The seniority system, for long manifestly unfair in its distribution of power, guaranteed legislators that they could advance in their congressional careers without the approval of party leaders, thereby guaranteeing the freedom of action of individual members. Indeed, the crucial committees that controlled the allocation of legislators to committees – in the Committee on Committees in the Senate and the Ways and Means Committee in House – and that controlled the flow of legislation – the Rules Committee – were famously independent of the party leadership. These institutional incentives were encouraged by norms including specialization, courtesy, loyalty to the institution and deference to both committees within their policy fields and seniors. These norms were highly developed in the Senate and were captured and lovingly described by Donald Matthews<sup>43</sup> and William White.<sup>44</sup>

The structure of Congress combined with the weakness of party discipline allowed legislators to engage in credit claiming and the development of a record of constituency service, including obtaining federal funding for many bridges to nowhere, which facilitated the development of a political base independent of party. Those disposed to vote for a Republican presidential candidate might still reward a Democrat senator or representative who had served their interests. In the U.S. elections of 1972, Alabama responded to the slogan “Alabama Needs Sparkman Seniority!” by re-electing the Democrat candidate to the Senate while voting heavily for Richard Nixon as a presidential candidate.<sup>45</sup> Ticket splitting was particularly common in the South from the 1960s to the 1980s as the region’s movement into the Republican camp was slowed by the ability of Democratic legislators to retain their seats in congressional elections.<sup>46</sup> No British MP, let alone a continental European legislator on a party list, could hope to withstand a comparable trend against his or her party.

#### V. NOT YOUR PARENTS’ HOUSE

One of the many striking changes in the American political system is the disappearance of the world described above. A series of changes have moved Congress in the direction of what might be termed a more parliamentary body. These changes should not be exaggerated: Washington is not Westminster. However, some of the crucial contrasts between the legislative systems that we have long emphasized to our students have become attenuated.

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<sup>43</sup> DONALD R. MATTHEWS, U.S. SENATORS AND THEIR WORLD 92-117 (1960).

<sup>44</sup> WILLIAM S. WHITE, CITADEL: THE STORY OF THE U.S. SENATE 81-120 (1957).

<sup>45</sup> Jon Nordheimer, *Sparkman Cites Service in Bid for Re-Election*, N.Y. TIMES, Oct. 26, 1972, at 32.

<sup>46</sup> BARRY C. BURDEN & DAVID C. KIMBALL, WHY AMERICANS SPLIT THEIR TICKETS: CAMPAIGNS, COMPETITION, AND DIVIDED GOVERNMENT 74-85 (2004).

The changes can be traced back to at least the New Frontier when the Administration and the House leadership tried to reduce the conservative grip on Congress exerted through the Rules Committee by expanding its membership. Both the administration and Speaker of the House Sam Rayburn believed the New Frontier stood little chance of success without breaking the grip on the House's timetable, which the conservative coalition of Southern Democrats and Republicans exerted through their control of the Rules Committee. This began a process that has ultimately resulted in the Rules Committee becoming an arm of the majority party leadership, instead of a barrier to their influence.<sup>47</sup> The major Democratic changes to the power structure of the House came after the post-Watergate Democratic landslide of 1974. The changes included stripping away from the Democrats on the Ways and Means Committee the power to appoint Democrats to the committees, and most importantly in terms of implications for the future, some modest but deliberate departures from the seniority system including the firing of three committee chairs.<sup>48</sup> Both changes worked to strengthen the party at the expense of other power structures. Given the ideological differences that then existed within the congressional Democratic Party, the consequence was to weaken the power of southern conservatives and benefit the more liberal majority.

This pattern of changing the power structure to strengthen the ideological majority within the party was demonstrated even more by the Republicans after they captured control of Congress in the 1994 midterm elections. The departures from the seniority system were far more dramatic than those made by the Democrats in the 1970s. Committee and subcommittee chairs were subjected to six-year term limits. The Republican leadership did not hesitate to depart from seniority in order to place trusty conservatives in key chairmanships. Appointments and reappointments (even contrary to term limits) to chairs were dependent on the acceptability of the candidate to the party leadership, exactly the outcome the seniority system intended to avoid. The Gingrich (Speaker of the House at the time) reforms amounted to a Parliamentary-like assertion of the party leader power over institutional power centers such as committee chairs.<sup>49</sup>

The impact of these institutional changes was to make the House much more of a parliamentary body in which political party was the key organizing institution. Other developments, such as the ability of party leaders to channel money from their own Political Action Committees (PACs) to loyal followers,

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<sup>47</sup> SEAN J. SAVAGE, *JFK, LBJ, AND THE DEMOCRATIC PARTY* 91-143 (2004).

<sup>48</sup> David W. Rohde, *Committees and Policy Formation*, in *THE LEGISLATIVE BRANCH* 201, 203 (Paul J. Quirk & Sarah A. Binder eds., 2005).

<sup>49</sup> Paul S. Herrnson, *Directing 535 Leading Men and Leading Ladies: Party Leadership in the Modern Congress*, in *GREAT THEATRE, THE AMERICAN CONGRESS IN THE 1990S*, at 109, 117-19 (Herbert F. Weisberg & Samuel C. Patterson eds., 1998).

reinforced the trend.<sup>50</sup> Necessarily, a legislature organized on the basis of party is controlled by the majority party. Yet the character of party government can vary tremendously in terms of its solicitude for the rights of individual legislators, and in particular, of the minority party. In practice, the Republican Party leaders such as Speakers Gingrich and Hastert exercised power with a ruthlessness that would have been foreign to the workings of the House of Commons, the conduct of whose business is generally settled amicably by party leaders in informal agreements “behind the Speaker’s chair.” The prevalence of rules for the discussion of legislation that limited opportunities for the minority party to amend bills increased.<sup>51</sup> There were even starker examples of the use of majority party power. Thomas Mann and Norman Ornstein described one such example in the opening of their book – the successful vote on the bill for prescription drug benefits for seniors.<sup>52</sup> The usual fifteen-minute voting period was unprecedentedly extended for hours while Republican Party leaders worked to pressure enough dissenting party members to change their vote to turn defeat into victory.<sup>53</sup> Similarly, on occasion, House and Senate Republican leaders quietly inserted into legislation text that had not been approved by either Chamber and that the Conference Committee had been assured would not be part of the particular bill.<sup>54</sup> This willingness on the part of majority party leaders not only to exploit the rules to exert power but to go beyond them made the House since 1994 almost a parody of Westminster, by using majority party power with disregard for minority party rights. One might contrast the Republicans’ strategy with what Ronald Butt wrote of how the House of Commons actually works:

If numbers were all that counted, a Government majority could any day silence the minority Opposition, and it is owing less to the formal rules of Parliament than to an acceptance of the spirit of common procedures that it does not do so. Occasionally a government breaks the spirit of common convention that the rights of opponents should be protected, and when it does so, the importance of normal good behaviour in this respect becomes very clear.<sup>55</sup>

Perhaps the most vivid example of parliamentarization was the attempt to remove Clinton from the presidency through impeachment, which seemed more a reflection of the majority party’s dislike for him than the gravity of his

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<sup>50</sup> See Brody Mullins, *Loose Change: Lawmakers Tap PAC Money to Pay Wide Array of Bills*, WALL ST. J., Nov. 2, 2006, at A1.

<sup>51</sup> Rohde, *supra* note 48, at 204.

<sup>52</sup> THOMAS E. MANN & NORMAN J. ORNSTEIN, *THE BROKEN BRANCH: HOW CONGRESS IS FAILING AMERICA AND HOW TO GET IT BACK ON TRACK* 1-5 (2006).

<sup>53</sup> *Id.* at 1.

<sup>54</sup> DAVID R. OBEY, *RAISING HELL FOR JUSTICE* 378 (2007).

<sup>55</sup> RONALD BUTT, *THE POWER OF PARLIAMENT* 302 (1967).

offense.<sup>56</sup> The removal of a leader on grounds of general dislike or disapproval is, of course, familiar and appropriate in a parliamentary system.

The changes in the Senate were less dramatic.<sup>57</sup> Senators remain attached to the seniority system and to procedures such as the filibuster. Indeed the once rarely used filibuster has now become so commonplace that it is assumed that any major legislation must command the support of a supermajority that can overcome it.<sup>58</sup> Modern filibusters are also more easily staged, not requiring the physical feats of endurance as illustrated in the movie *Mr. Smith Goes to Washington*.<sup>59</sup> On the other hand, filibusters are more easily overcome these days, requiring only sixty percent of the Senate, not two-thirds to defeat them.<sup>60</sup> Some tendency toward more party government can be seen in the adroit use of the budget reconciliation to steer through the massive Bush tax cuts with a simple, not a super, majority of senators in support, and in procedures on bills making amendment more difficult. The trend toward party government in the Senate has rested far more on the simple fact that there is much agreement within the parties and less agreement between them than in the past. We may label this partisanship without coercion. Table 1 demonstrates the important increase in party unity in both chambers.

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<sup>56</sup> See James Bennet & John M. Broder, *The President's Acquittal: The White House*, N.Y. TIMES, Feb. 12, 1999, at A1.

<sup>57</sup> Compare Barbara Sinclair, *Parties and Leadership in the House*, in THE LEGISLATIVE BRANCH, *supra* note 48, at 224, 249 (explaining that severe partisanship in the House ensures that the majority party rarely loses and the minority rarely wins), with Steven S. Smith, *Parties and Leadership in the Senate*, in THE LEGISLATIVE BRANCH, *supra* note 48, at 255, 255 (explaining that the structure of the Senate allows a minority of its members to prevent a vote on regular legislation by way of filibuster).

<sup>58</sup> GREGORY J. WAWRO & ERIC SCHICKLER, *FILIBUSTER* 27 (2006).

<sup>59</sup> MR. SMITH GOES TO WASHINGTON (Columbia Pictures 1939) (depicting Senator Jefferson Smith collapsing at the end of a long filibuster).

<sup>60</sup> WAWRO & SCHICKLER, *supra* note 58, at 27.

Table 1: Growth in Party Unity in Congress  
 Percentage of Each Group Voting with a Majority of Their Party on Party  
 Unity Votes<sup>61</sup>

Year	HOUSE			SENATE		
	All Democrats	Southern Democrats	Republicans	All Democrats	Southern Democrats	Republicans
1968	73	48	76	71	57	74
1972	70	44	76	72	43	73
1982	77	62	76	76	62	80
1992	86	79	84	82	70	83
2004	91	83	93	88	76	93
2005	91	84	93	90	81	90
2006	90	82	92	89	77	87

There has been a clear trend in the United States, as shown in Table 1, toward increased importance of party in the legislature. To those who wanted clearer differences between the parties and, in the words of the famous American Political Science Association Report of the 1950s, a more responsible party system,<sup>62</sup> we might say quoting the ambiguously phrased Toyota commercial, “You asked for it, you got it.” This trend toward party unity is not, however, a universal trend among the advanced democracies.

#### VI. NOT YOUR PARENTS’ HOUSE IN WESTMINSTER EITHER

Party has been supremely important in the House of Commons since the late-nineteenth century. Thus, the baseline for studying trends toward or away from partisanship started much higher when compared to Congress. The common way to illustrate degree of party unity has been to emphasize the high levels of discipline within the major parties on contested (whipped) votes.<sup>63</sup> However, we should not generalize the degree of partisanship evident at Prime Minister’s Question Time to Parliament as a whole. Even in the House of Commons, the main opposition party (currently, the Conservatives) frequently does not divide the House on the second or third reading of government bills.<sup>64</sup> In the Parliamentary Session 1997-2001, the Conservatives divided the House

<sup>61</sup> This data is taken from HAROLD W. STANLEY & RICHARD G. NIEMI, VITAL STATISTICS ON AMERICAN POLITICS 2007-2008, at 224-25 (2008).

<sup>62</sup> See generally Am. Political Sci. Ass’n, *Toward a More Responsible Two-Party System: A Report of the Committee of Political Parties*, 44 AM. POL. SCI. REV. 1, 1-14 (Supp. 1950).

<sup>63</sup> See, e.g., Barry Ames, *Party Discipline in the Chamber of Deputies*, in LEGISLATIVE POLITICS IN LATIN AMERICA 197-98 (Scott Morgenstern & Benito Nacif eds., 2002) (studying party unity by looking at congressional votes in contested and uncontested votes, using Brazil as a case study).

<sup>64</sup> See NORTON, *supra* note 16, at 84-87.

on only forty-one percent of government bills with a range from forty-eight percent in 1998-99 to a low of thirty-six percent in 1997-98. In the 2001-05 Session, the proportion of government bills on which the Conservatives forced a division fell to thirty-one percent, with a high of forty-two percent in 2002-03 and a low of twenty-one percent in 2004-05. Thus, most government bills were not opposed by the main opposition party.<sup>65</sup>

The trend in the behavior of individual MPs has been moving away from very high levels of party discipline. Philip Norton documented and attempted to explain the sharp upsurge in backbench revolts in the 1970s, which he attributed to the poor leadership of the Conservative leader and Prime Minister, Edward Heath.<sup>66</sup> As we noted earlier, John Major was afflicted by the dissent of “the bastards” on ratification of the Treaty of Maastricht.<sup>67</sup> Labour, even to use an almost forgotten term, New Labour, has witnessed very high levels of dissent. There were more dissenting votes cast by backbench Labour MPs in the first session of the Parliament elected in 2001 than in the first session of any other Parliament during a Labour government. In the first session of the 2001 Parliament there were 76 backbench rebellions; in the first session of the 1964 Parliament there were none.<sup>68</sup> There were 141 divisions in the first two sessions of the 2001 post-war Parliament in which Labour MPs voted against the wishes of their Whips, some nineteen percent of all divisions.<sup>69</sup> The most famous were two votes on war with Iraq in which 139 Labour MPs and a handful of Conservatives rebelled.<sup>70</sup> The Labour rebellion was the largest since the Conservative Party split on the repeal of the Corn Laws in the 1840s.<sup>71</sup> The topics involved in these votes varied, however, from war to the abolition of Community Health Councils.<sup>72</sup> It is true that the Conservatives have become more united, with rebellions in their ranks during the 2001 Parliament occurring on only 102 occasions, one in twelve divisions compared with one in five for Labour.<sup>73</sup> However, in the recent past, Conservative rebellions have been far more frequent and may easily become so again.

We may reasonably conclude from this that British MPs are noticeably less obedient to party leaders than in the past; Philip Cowley and Mark Stuart

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<sup>65</sup> I am indebted to Professor Philip Cowley of Nottingham University for his help on this paragraph.

<sup>66</sup> NORTON, *supra* note 16, at 27.

<sup>67</sup> See *supra* notes 28, 31 and accompanying text.

<sup>68</sup> Cowley & Stuart, *supra* note 10, at 215.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 216.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 213.

<sup>73</sup> Philip Cowley & Mark Stuart, *Conservatives in Unity Shock: Conservative Voting in the House of Commons, 2001-05*, at 2 (unpublished manuscript, available at <http://www.revolts.co.uk/Conservatives%20in%20Unity%20Shocker.pdf>).

reflected this idea by entitling one of their articles *When Sheep Bark*.<sup>74</sup> Prime Minister Gordon Brown heard particularly loud barking in the fall of 2008.<sup>75</sup> This trend toward independence has been accompanied by modest matching institutional developments that go back to the 1960s. MPs are much more likely to view their positions as full-time jobs than in the past. There is general agreement that MPs are more actively engaged in providing assistance to constituents. The Ombudsman (Parliamentary Commissioner for Administration) provides a means through which complaints of maladministration to MPs by constituents can be investigated more thoroughly than in the past.<sup>76</sup> MPs have much better office accommodations than in the past and some, though still modest, staff support.<sup>77</sup> There has been a steady growth in the stature of the Select Committees that oversee the work of government departments.<sup>78</sup> Select Committees with modest staff support have the capacity to investigate policy questions and the work of departments with a depth that an individual MP could not match. The Committees have developed a less partisan approach to their work than the House of Commons as a whole. In 2002, Tony Blair initiated the practice of the Prime Minister meeting with the Select Committee chairs twice a year to answer questions.<sup>79</sup> In addition, the Public Accounts Committee is the most powerful of four cross-department committees (the others being Environmental Audit, Public Administration and European Scrutiny), because it has the support of the staff of the National Audit Office.<sup>80</sup> The addition of “Westminster Hall” debates to those held in the chamber of the House of Commons itself has provided additional opportunities for MPs to voice their views.<sup>81</sup>

We should also note a trend toward Parliament being more of a genuinely bicameral body. The number of defeats the House of Lords inflicted on government legislation has risen from twenty-six during the 1970-74 Heath government<sup>82</sup> to 245 during the four years from 2001-05 after Blair lead

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<sup>74</sup> Cowley & Stuart, *supra* note 10.

<sup>75</sup> See James Kirkup, *Gordon Brown's Personal Popularity Hits Historic Low, Poll Shows*, TELEGRAPH (U.K.), Aug. 1, 2008, <http://www.telegraph.co.uk/news/2481215/Gordon-Browns-personal-popularity-hits-historic-low-poll-shows.html>.

<sup>76</sup> See generally FRANK STACEY, *THE BRITISH OMBUDSMAN* (1971) (discussing the origins and functions of the British Ombudsman).

<sup>77</sup> STEPHEN D. TANSEY & NIGEL JACKSON, *POLITICS: THE BASICS* 178 (4th ed. 2008).

<sup>78</sup> See NORTON, *supra* note 16, at 121-25.

<sup>79</sup> JOHN DICKIE, *THE NEW MANDARINS: HOW BRITISH FOREIGN POLICY WORKS* 140 (2004).

<sup>80</sup> See David Corner & Gavin Drewry, *The Implications of Public Service Reform for Accountability and Audit – Recent Developments in the UK*, in *CONTRACTS, PERFORMANCE MEASUREMENT AND ACCOUNTABILITY IN THE PUBLIC SECTOR* 59, 59-64 (Gavin Drewry, Carsten Greve & Thierry Tanquerel eds., 2005).

<sup>81</sup> ALMOND ET AL., *supra* note 11, at 171.

<sup>82</sup> Alan Travis, *Peers in Power*, GUARDIAN (U.K.), June 29, 2000, <http://www.guardian.co.uk/politics/2000/jun/29/lords.lordreform>.



Labour to a second election victory.<sup>83</sup> Although under the Parliament Acts the House of Lords has only delaying power, both exigencies of the legislative timetable and the political costs of pushing ahead with highly contested legislation can make a defeat by the Lords in practice final. The October 2008 defeat by the Lords of aspects of the illiberal counter-terrorism proposals of the current Labour government has illustrated the potential value of a livelier reviewing chamber.<sup>84</sup> The government was forced to drop its most authoritarian proposals which would give the police forty-two days, rather than the current twenty-eight, to detain and question terrorist suspects.<sup>85</sup> Why has the House of Lords become relevant? The primary answer is that no party has a majority in it; the days in which there was a vast Conservative majority lurking in the background are over. Reform of the House of Lords has also made its membership more defensible and more assertive. Appointment may not be the ideal way to constitute a legislative body, but it is surely more defensible to have people of great distinction – including political scientists – appointed for life than to have people inherit the position.

These developments have not transformed Westminster into Washington. Party remains the central factor in British politics. The potential for a disciplined party with a majority in the Commons, despite a minority of votes in the country, which allows them to push through controversial legislation, remains high. Governments act to make sure that potential power centers that might rival party control do not develop too far. For example, majority party whips use their presence on the Committee of Selection to make sure that individual Select Committees do not become too great a problem for the government.<sup>86</sup> Select Committees do not review legislation and generally focus on less contentious issues<sup>87</sup> – the inquiries by Select Committees related to the Iraq War being an obvious exception.<sup>88</sup> However, Parliament displayed more vitality than fifty years ago when it seemed to combine the functions of an Electoral College in determining which party was in power with those of a rubber stamp in terms of passing legislation. As MPs have become more independent minded, they have pressed for reforms that have enhanced the opportunity structures for MPs. There is more opportunity for MPs to build a career through Parliamentary institutions than in the past when entering the government was all that an MP could hope for.

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<sup>83</sup> NORTON, *supra* note 16, at 96.

<sup>84</sup> Raymond Bonner, *British Lords Reject Plan to Lengthen Detentions*, N.Y. TIMES, Oct. 14, 2008, at A7.

<sup>85</sup> *Id.*

<sup>86</sup> See HILAIRE BARNETT, CONSTITUTIONAL & ADMINISTRATIVE LAW 507 (4th ed. 2002) (emphasizing the “great influence” that party whips have over the Committee of Selection).

<sup>87</sup> See NORTON, *supra* note 16, at 117-25.

<sup>88</sup> See generally FOREIGN AFFAIRS COMMITTEE, THE DECISION TO GO TO WAR IN IRAQ, REPORT, 2002-3, H.C. 813-I (analyzing the available evidence about a threat in Iraq and making recommendations to Parliament suggesting how to proceed).

## VII. OVERVIEW

Legislators in the U.S. and U.K. started from very different situations, but appear to have been moving in opposite directions. In the United States, party has taken on much more significance in both chambers of Congress, but particularly in the House. The institutions that had provided a power and career structure independent of party have been weakened. Party leaders and party institutions are more important. The words “Nancy Pelosi,” the current Speaker of the House of Representatives, have been used to frighten the Republican faithful into contributing to elections funds. It is doubtful that the words “John McCormack,” former Speaker of the House from 1963-71, would have had similar effects. Party remains a core feature of the life of the British Parliament. However, MPs have become more willing to challenge their leaders and have slowly constructed institutions separated from the party power structure that enhance their ability to develop legislative careers that do not depend on whether the party leadership supports them.

These changes have broader significance for students of political institutions. We passed through a period from roughly the mid-1980s to roughly the middle of this decade in which political scientists were inclined to emphasize the power of institutions in determining behavior. It is only more recently that “institutionalist” scholars took on the challenge of explaining why and how institutions change.<sup>89</sup> Both the U.S. Congress and the U.K. Parliament exhibit signs of developing in ways – opposite ways – that are at odds with the institutional dynamics and characteristics long associated with them. Neither the U.S. House of Representatives nor the U.K. House of Commons are the governmental houses our academic parents knew and often loved. As in any discussion of change, we can question whether the changes are more or less important than continuities. If we grant that the changes are at all significant, we are faced with explaining why the institutional dynamics that were once thought likely to produce stability failed to do so.

The most obvious common factor driving change is the contrasting fate of parties in the two countries. To the dismay of some, American political parties have become unified and more meaningful in the choices they offer the public. It makes sense for an ideologically motivated citizen to vote for a party as opposed to a particular candidate in the U.S. today, to a degree that was not true forty years ago. American parties are more united and cohesive; they have

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<sup>89</sup> See generally BEYOND CONTINUITY: INSTITUTIONAL CHANGE IN ADVANCED POLITICAL ECONOMIES (Wolfgang Streeck & Kathleen Thelen eds., 2005) (compiling empirical case studies that support the assumption that “there is a wide but not infinite variety of modes of institutional change”); KATHLEEN THELEN, HOW INSTITUTIONS EVOLVE (2004) (examining institutional change across nations through case studies of skill formation in Germany, Britain and Japan); Peter Hall, *Historical Institutionalism in Rationalist and Sociological Perspective*, in EXPLAINING INSTITUTIONAL CHANGE: AMBIGUITY, AGENCY, POWER (James Mahoney & Kathleen Thelen eds., forthcoming 2009) (on file with author) (exploring the commonalities between “rational choice and historical institutionalism”).

developed institutionally so that they are better able to recruit, train and assist candidates. Many trends in British parties have gone in the opposite direction. Mass membership in the parties has collapsed; their organizations have suffered in consequence, and British parties have moved in the direction described by Angelo Panebianco as common in many countries – shell like structures that need charismatic figures (such as Blair and Leader of the Conservative Party, David Cameron) who can succeed outside the framework of party organizations.<sup>90</sup> In recent decades one or another of the major parties has been badly divided internally. The Labour Party (never a stranger to internal conflict) was intensely divided from 1974 until some point in the late 1980s; its divisions are reappearing.<sup>91</sup> More remarkable was the tendency of the Conservative Party to behave in a manner from the late 1970s until very recently that was reminiscent of the worst traditions of the Labour Party – including factions, plots and many leadership challenges.<sup>92</sup> Both major parties have lost their ability to dominate the electorate. In the 1950s, the two parties together attracted the votes of ninety percent of the electorate; in 2005 the figure was sixty-seven percent.<sup>93</sup> In several respects, British political parties are decaying, while American political parties – as Leon Epstein predicted – have adapted.<sup>94</sup>

The theoretical implications of these contrasting trends are interesting. The central tenet of institutionalism is that institutions not only provide a forum for politics but also shape politics.<sup>95</sup> This Essay argues, in contrast, that political parties, a factor external to institutions, have shaped behavior within institutions. The growing coherence and significance of party in the United States changed the institutional character of Congress, while the decline of parties in Britain changed the character of the parties in Westminster. In each case the constitution remained more or less unchanged, and changes in rules within the institutions reflected, rather than caused, the increased significance of party. As attention in political science shifts from shaping the role of institutions to explaining institutional change, it is interesting to compare how party dynamics have contributed to institutional change in Congress and Parliament.

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<sup>90</sup> See ANGELO PANEBIANCO, *POLITICAL PARTIES: ORGANIZATION AND POWER* 93-94 (Marc Silver trans., 1982).

<sup>91</sup> *ENCYCLOPEDIA OF CONTEMPORARY BRITISH CULTURE* 294-96 (1999).

<sup>92</sup> *Id.* at 213.

<sup>93</sup> *British Governments and Elections Since 1945*, *supra* note 18.

<sup>94</sup> LEON D. EPSTEIN, *POLITICAL PARTIES IN THE AMERICAN MOLD* 3 (1986).

<sup>95</sup> See Hall, *supra* note 89 (manuscript at 1-4).