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The Unintended Consequences of Increased Transparency in American National Government

Abigail K. Woodruff
Claremont McKenna College

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INTRODUCTION

In the past century, there has been an increasing trend in American government toward opening government procedures to the general public. These “sunshine” measures have taken several forms, such as opening up markup sessions, recording committee votes, keeping records of campaign finance, disclosure of agency reports, decreased anonymous voting, and televised broadcasting of congressional proceedings, among others. The intention of these reforms was to improve government accountability and responsiveness, increase public education and involvement in government, and prevent corruption and undue influence by special interests. Conventional wisdom about open government, however, does not take into consideration many of the repercussions of opening up congressional proceedings to the glare of public scrutiny. American government was not designed with openness as the highest ideal, nor has our government changed in the past two hundred years to become better suited toward open proceedings. Reforms in the 1970’s opened the deliberative process and made members of Congress more vulnerable to constituent and interest group pressure. These effects have had many negative impacts, in both the House Appropriations Committee and the Ways and Means Committees, for deliberative democracy and responsible budgeting.

This paper does not argue that sunshine measures are altogether bad for American government and should be abolished entirely. Instead, it highlights the flaws in open government reforms, showing how these reforms did not fulfill all of their intended goals, how they have had unforeseen detrimental effects, and how they have changed the Appropriations and Ways and Means committees from closed forums for deliberating about the national interest to institutions at the forefront of political strife and group pressure. These negative effects of open government

reforms suggest that Congress could better serve the national interest if it closed some of its proceedings, as the Ways and Means Committee did in 1983.

Since the power of the purse is Congress's fundamental power, the paper focuses on the two committees primarily responsible for raising revenues – Ways and Means – and for spending public funds -- Appropriations. These committees have the most power and importance, and therefore are often the center of political pressure from groups outside and within government. I describe the founders' original intent in regards to open government, then how the political climate in the 1960's led to reforms that changed our political structure and made Congress more open to the general public. The paper then examines changes in the Appropriations and Ways and Means committees before and after the 1970's open government reforms. These shifts include the changing attitudes and motivations of members for joining these committees, and the changing influence of agencies, constituents and interest groups. Finally, the paper shows how these open government reforms have negatively impacted the ability of the members of these committees to deliberate, to legislate in the national interest, and to make responsible budgeting decisions .

CHAPTER I

THE FRAMERS' INTENT REGARDING OPEN GOVERNMENT

To determine whether open government fits within the American government's design, one must establish whether it was one of the principles which the founders held to be of high importance when writing the constitution. The framers' opinions and actions during the constitutional convention show their views toward public access to government deliberation. The decision to keep the constitutional convention private, the general views of the time about public consensus in government, the clause within the constitution that discusses publicity of congressional proceedings, and other decisions about government secrecy are all examples of the framers' beliefs about open government. These four examples show that the founders did not view public access to government proceedings as essential to a republican government.

The American government began in complete secrecy. For over three months, the delegates to the Constitutional Convention deliberated over the new government without any press coverage and without any word to the public about the proceedings. James Madison said that "no Constitution would ever have been adopted by the convention if the debates had been public."¹ There were several reasons to keep the proceedings private. The framers thought that the controversial subject matter might make people object to the constitution in general, they thought opponents might use excerpts from the dialogue to prevent the adoption of the constitution, and they wanted all of the delegates to be free to voice their opinions without concern for political repercussions.

Many of the framers thought the subject matter at the convention to be too controversial and divisive in nature to allow the public to witness. "When Washington arrived in Philadelphia, he perceived a radical, divisive atmosphere that reflected the country's mood at a time when

¹ Clinton Rossiter, *1787: The Grand Convention* (New York: The Macmillan Company, 1966), 167.

dissolution of the Union seemed likely.”² There were disputes between large states and small states, between federalists and anti-federalists, Tories, Whigs and Republicans. The delegates feared that if the public heard any part of the proceedings out of context, it would lead to an uproar and they would reject the constitution altogether.

The delegates also feared that if the proceedings were not secret, opponents of the convention would use some of the content against them. Even on the final day, after the convention had finished, the delegates voted to keep the proceedings secret indefinitely, on the grounds that if they were to make them public, “a bad use would be made of them by those who would wish to prevent the adoption of the Constitution.”³ There were many who opposed the adoption of the Constitution, so there was a legitimate fear that those opponents would either skew the information they received or take one controversial discussion and publish it to shed a bad light on the whole convention.

Another rationale for secrecy was that the delegates wanted to be free to take strong positions, make uninhibited arguments and to compromise without appearing to stray from their constituencies demands.⁴ The delegates knew that they might have to make strong arguments that some parts of the country would object to, or conversely, they might have to compromise for the sake of reaching consensus. In the latter case, their constituencies might condemn them for not adhering to their preferences, or they might reject the constitution outright. Thus, from the very beginning of this nation’s existence, it has been understood that some deliberation must be private so as to allow free discourse among the participants. Allowing the public to intrude on the decision-making might have had a negative impact on the deliberative process, and therefore

² William K. Stevens, “Behind the Scenes in 1787: Secrecy in the Heat,” *New York Times*, 25 May 1987.

³ Edward J. Larson and Michael P. Winship, *The Constitutional Convention: A Narrative History From the Notes of James Madison* (New York: Modern Library, 2005), 159.

⁴ Christopher Collier and James L. Collier, *Decision in Philadelphia: The Constitutional Convention of 1787* (New York: Random House, 1986), 83.

the founders believed the proceedings should remain confidential. While this case applies to the constitutional convention and not congressional proceedings, the framers' rationale for keeping it private shows that they believed that an open deliberative process can be detrimental to good government.

The decision to keep the Constitutional Convention private may stem from general beliefs about democracy and public involvement at the time. Even republican government was a radical notion at the end of the 18th century. Furthermore, at the end of the eighteenth century, most people equated democracy with anarchy. They defined democracy in the classic Greek sense as the entire populace gathering to vote directly. The American intellectuals during revolutionary times strove to distinguish republicanism from democracy, so that the American people would be more agreeable to the idea.⁵ Thus, the notion of having direct access to deliberation in government was not on the forefront of the framers' priorities. Not only did they believe that some government deliberation should be kept completely private, but they also believed in a representative form of government over direct rule by the people.

The Constitution that the framers ratified barely contained any mention of public access to congressional deliberation. The only section of the Constitution that mentions congressional proceedings' openness to the public is Article 1, section 5. It states,

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.⁶

⁵ George W. Carey, *Popular Consent and Popular Control: 1776-1789*. In *Founding Principles of American Government: Two Hundred Years of Democracy on Trial*. Eds. George J. Graham and Scarlett G. Graham, Chatham, New Jersey: Chatham House Publishers, Inc. , 1977

⁶ U.S. Const. art. I § 5

The Constitution does not require any publication of actual deliberation and proceedings; it merely requires that the actual votes be recorded. The journal records vote totals, but it need not contain individual votes. Though recording of individual votes happens at the request of only one-fifth of members, there is still no recording of the debates' contents. Since there was no mention of allowing the public to know the actual arguments presented, the framers did not give high regard to public inclusion in congressional deliberation. The delegates almost omitted this clause altogether, twice rejecting the motion to add it to the constitution before finally including it, as some deemed it to be objectionable and unnecessary.⁷ Some thought that it was unnecessary to demand that congress to publish the journal, as the public would call for its publication if its distribution was not significant. However, the delegates voted to include this section because to omit this requirement might make people suspicious and give opponents of the constitution a reason to criticize it.⁸

There were other matters that the founders believed should be kept closed to the public. For example, John Jay argues in Federalist 64, which is about the President and Senate power to establish treaties, that in some cases it is necessary for the President to keep information secret from the public. He gives two reasons for this. The first is that the public does not benefit from or need to know all of the information regarding treaties. The second is that there are cases in which it is in the national interest for some information to remain private, in order to encourage whoever gives the information.⁹ Though this essay refers to foreign affairs, the former rationale for allowing secrecy could also apply to general matters in the legislature. There are many situations, in the legislature, in which the public need not be informed of- and does not benefit from knowing about- the contents of the debates.

⁷ Saul K Padover, *To Secure These Blessings* (New York: Washington Square Press, 1970), 263.

⁸ Padover. *To Secure These Blessings*, 263.

⁹ John Jay, "Federalist #64," in *The Federalist Papers*, ed. Isaac Kramnick (New York: Penguin Books, 1987), 377.

There is a great deal of similarity between the reasoning behind the founders' decisions and writings condemning government openness and all of the problems with open government today. The concern that the people might take one part of a deliberation out of context and it would lead to disapproval of the entire piece of legislation, that opponents might also use some part of a speech out of context and use it against the legislative effort, that members might not speak freely out of fear of alienating their constituents -- these are all concerns that kept the founding fathers from publicizing the constitutional conventions. Yet these problems remained even when Congress enacted the open government laws of the 1970s, and continue to affect the current Congress. The framers also did not believe that keeping the public informed about the content of congressional deliberations was necessary. As evident from Article 1, they believed that to simply publish the individual votes on a piece of legislation was sufficient. `

The fact that the Senate operated in secrecy during Congress' early years is also evidence that American government was designed to allow separation between the public and their representatives. Though the House met in public sessions from the beginning, the Senate conducted all of its proceedings in private until 1794.¹⁰ If the original government thought it was sufficient to have only one branch of Congress open to the public, one can infer that prevailing attitudes of that time did not hold closed proceedings to be contrary to representative democracy.

American national government was not designed with openness as a primary objective. The Constitution itself does not require that the public have access to the actual deliberations of the members of Congress. The founders foresaw problems in opening up the deliberative

¹⁰ Mildred Amer. 2008. "Secret Sessions of Congress: A Brief Historical Overview." *Congressional Research Service*, Government and Finance Division. CRS Report for Congress (October)
<http://www.senate.gov/reference/resources/pdf/RS20145.pdf>

process. These problems continued onto the next two centuries, and are evident in the negative consequences of the 1970's Government in the Sunshine laws.

CHAPTER II

THE OPEN GOVERNMENT LAWS OF THE 1970's

Throughout the 1950's and 1960's, many considered Congress to be disconnected from the public, unresponsive to the public interest, slow to achieve policy gains, and generally inaccessible. In addition, people criticized Congress for being more responsive to lobbyists and special interests than to their own constituents. These criticisms, compounded by several scandals in the 1960's and early 70s, led to Congress's enactment of the Legislative Reorganization Act in 1970, which opened up Congressional procedures to the public.

Many of Congress's critics perceived a disconnect between members of Congress and the general public. This phenomenon, however, is only partially the responsibility of the congressmen. It also has to do with people's general outlook toward politics and technological barriers to access to politics. Very few people at the time were aware of politics, or even who their representative was. Thus, they tended to view Congress as a distant, closed-off institution. Moreover, for the most part, in the 1950's and 1960's, citizens did not have strong views about particular aspects of policy. With the exception of important, controversial issues, people were generally uninformed about issues and tended to vote based on party identification.¹¹ However, in the late sixties and early seventies, crises such as the energy crisis, the Watergate scandal, and controversial issues like school prayer and abortion made the public more attuned to congressional affairs.¹²

The major legislative issues of the time made people more critical toward Congress, accusing Congress of being slow and unresponsive. Congressional activity, by nature, is slow-

¹¹ Leroy Rieselbach, *Congressional Reform: The Changing Modern Congress* (Washington, D.C.: Congressional Quarterly Press, 1994), 36.

¹² Joseph Unekis & Leroy Rieselbach, *Congressional Committee Politics: Continuity and Change* (New York: Praeger Publishers, 1984), 107.

moving. The fact that Congress is decentralized, that a bill must go through multiple stages, and that it has many members with different opinions and different interests that must all come to a consensus means that any legislation happens slowly and gradually.¹³ Congress in the 1950's and early 1960's was especially decentralized, and it was particularly difficult to build enough of a coalition to move legislation through the various stages. Parties were relatively weak and committees had more control, so it was more difficult to reach a unifying consensus.¹⁴ The only major exception came in the mid-1960's when the Democrats were in control of both Houses and the Presidency, and were thus able to enact the Great Society legislation. Political scientist Leroy Rieselbach writes, "Solid legislative majorities make the weakness of party discipline tolerable and provide the dominant party with incentives to advance major legislative program."¹⁵ When government control was divided, however, Congress had much more difficulty enacting legislation. An example of Congress' slow reaction to policy demands was the program that Lyndon Johnson proposed to reduce crime. By the time the bill had passed through both houses, it had turned into a pork barrel project, spread out to serve widely varying constituencies and was largely ineffective.¹⁶ Thus, during most of the 1960's, the public was dissatisfied with Congress' apparent disconnect with the public and its inability to enact policy.

Members of Congress and their relation to lobbyists was another source of discontent and suspicion among the public. Congress in the 1960s was generally more responsive to interest groups and their own constituencies than to their party or to the national interest.¹⁷ This tendency was largely due to the fact that lobbyists had more direct communication with legislators than

¹³ Walter Oleszek, *Congressional Procedures and the Policy Process* (Washington, D.C.: Congressional Quarterly Press, 2007), 17.

¹⁴ Samuel Kernell & Steven Smith, *Principles and Practice of American Politics: Classic and Contemporary Readings* (Washington, D.C.: CQ Press, 2010), 251.

¹⁵ Rieselbach, *Congressional Reform: The Changing Modern Congress*, 29.

¹⁶ Rieselbach, *Congressional Reform: The Changing Modern Congress*, 34.

¹⁷ Leroy Rieselbach, *Congressional Reform in the Seventies* (New Jersey: General Learning Press, 1977), 47.

any average citizen, they were able to develop personal relationships with individual members, and they had the resources to devote more of their time to legislative issues. The public perceived this influence to be corrupt, even though the majority of relations between lobbyists and congressmen were legitimate meetings to discuss a certain group's perspective on an issue. The lobbyist would serve as a liaison between a particular interest group and a legislator working in this area. The lobbyist often provided research and information about a subject that a congressman or his staff would not have the time or resources to acquire.¹⁸

In the skeptics' view, there were two problems with the lobbyist-congressman relationship. The public did not have access to much of congressional proceedings, since House committee hearings could not be televised, and the public did not have access to individual committee votes. As the majority of citizens had limited access to information about congressional proceedings, many citizens perceived lobbying activity to be corrupt and argued that pressure group influence was the decisive factor in legislative policy outcomes. Another criticism was that interest group access to Congress was unequal, and that only the interests that were organized and had enough money could influence congressional decisions. Therefore, congressmen received one-sided information.¹⁹ The perception of corruption in deals with interest groups would contribute to people's desire for more open, accountable government.

Though all of these factors describe the general dissatisfaction with Congress, the scandals in both the executive and legislative branches were possibly the most influential events in the 1960's in evoking reform.²⁰ There were six indictments against members of Congress in the 1950's. Then, in 1963 Thomas Johnson (D-Md.) and Frank Boykin (D-Ala.) were indicted

¹⁸ Lester Milbrath, *The Washington Lobbyists* (Chicago: Rand McNally & Company, 1963), 308.

¹⁹ Rieselbach, *Congressional Reform: The Changing Modern Congress*, 34.

²⁰ Unekis & Rieselbach, *Congressional Committee Politics: Continuity and Change*, 108.

for conflict of interest and conspiracy to defraud the government.²¹ There were multiple scandals involving Adam Clayton Powell, Jr., a Democratic representative from New York. He was indicted in 1958 for tax evasion, and in 1966, he lost his committee chairmanship because of his misuse of public funds for trips abroad and for putting his wife on the payroll.²² There were two other indictments in the 1960's and two in 1970 alone. The Watergate scandal also had a dramatic effect on public faith in government. Even though that scandal mostly involved the executive branch, it contributed to general disillusionment with government among the public.

The increasing perception of Congress as a cloistered, unresponsive body subject to lobbyist influence, combined with the series of government scandals, encouraged Congress to enact the Legislative Reorganization Act of 1970. The act made several reforms to the organizational structure of Congress to make it more responsive and more accountable. The reforms made meetings and floor sessions more open to the general public, affected the way votes were recorded, and allowed for more broadcasting of congressional proceedings.

The Act opened up the House committee sessions to photographing, broadcasting and televising. In 1973, the House adopted rules that required that all committee hearings, markup sessions and floor debates be open to the public, unless a majority of the panel voted to close them. The votes to close sessions were also recorded, keeping the pressure on those who wished to close the meetings. In 1975, the Senate adopted similar rules about committee hearings. Also in 1975, both the House and Senate agreed to open conference committee meetings. By 1975, 95% of committee meetings were in public.²³

²¹ John L. Moore, ed. *Congressional Ethics: History, Facts, and Controversy* (Washington, D.C.: Congressional Quarterly Inc, 1992), 71.

²² Charles Hamilton, *Adam Clayton Powell, Jr.: The Political Biography of an American Dilemma*(New York: Atheneum Macmillan Publishing Company, 1991), 447.

²³ Leroy Rieselbach, *Congressional Reform in the Seventies*, 48.

The Legislative Reorganization Act also made members' votes more public. Individual legislators' committee votes were now recorded, whereas before only the total votes were recorded, or none were recorded at all. In addition, teller votes were also listed at the request of at least twenty House members. Previously, voice, standing, and unrecorded teller votes allowed members to vote anonymously. Anonymous voting also became more difficult with the advent of electronic voting in 1973.²⁴ These provisions aimed to make lawmakers more accountable by making it more difficult for members to take a position contrary to their constituents' views or make contradictory votes in the committee meetings and in floor sessions.

Congress, in enacting these "sunshine" laws in the 1970's, intended to improve their public image. They sought to reduce the hostility that had amounted due to perceived undue influence by lobbyists, and lack of accountability, responsiveness, and ethics. These laws made lasting changes that had some of the intended effects, but also exacerbated some of the problems that the laws intended to rectify. These reforms had a major effect on the Congress's overall ability to deliberate and produce legislation in the national interest.

²⁴ Kenneth Shepsle, "The Changing Textbook Congress," in *Can the Government Govern?*, eds. John Chubb & Paul Peterson (Washington, D.C.: The Brookings Institution, 1989), 253.

CHAPTER 3
GOALS AND MOTIVATIONS FOR APPROPRIATIONS AND WAYS AND MEANS
COMMITTEE MEMBERS

The 1970's open government laws changed the nature of the House Appropriations Committee and the Ways and Means Committee. Committee members' shifting attitudes and motivations for serving on these committees reflect the way the two committees have changed over time. The Legislative Reorganization Act's changes to committee structure and its provisions about open government affected the power of the House Ways and Means and Appropriations committees. The shift in power changed the committee members' allegiance and rationales for joining these committees, which shifted the committee members' primary influences. Before 1970, most of the members' goals for joining these two committees were power and prestige, creating responsible fiscal policy, and benefitting their constituents. While these goals still remained after the reforms, the degree of influence of each of these goals and the relationships between all of these goals changed.

The primary reason that House members joined the House Appropriations and Ways and Means committees, before the 1970's reforms, was the power and prestige associated with membership on those committees. Both committees, in charge of the taxing and spending policies in Congress, make up the "purse string" component of congressional activity. Since the power of the purse is Congress's principal function, members of these two committees see themselves as part of the vital power of Congress. Their work affects all other legislation and other members' work. Congressional scholar Richard Fenno interviewed members of the Appropriations and Ways and Means committees about their motivations for joining their

particular committee. A new member of the Appropriations committee said, when asked about his committee membership, “If you are one of those whose consent must be obtained, then you are a more important person in the House. When you are on the Appropriations Committee you are that kind of person. That’s all. It’s a question of power.”²⁵ Members felt a sense of pride and importance at being a member of the most sought after, fundamental committees of Congress.

The feeling of power and prestige did not disappear after the 1970’s reforms. Rather, the manner in which members directed their power changed. First, the power of the Ways and Means Committee changed as a result of the Legislative Reorganization Act’s addition of subcommittees, which introduced more powerful subcommittee leadership positions. The Act created other positions for members seeking power, thus reducing the hierarchy and Ways and Means Committee’s dominance. Second, opening markup sessions, televising House committee hearings and floor sessions, and recording individual committee votes, shifted the norms and allegiance of committee members, so that members viewed their power differently and shifted their power to fulfilling different goals.

Before the reforms, members’ pride in their Appropriations and Ways and Means committee membership manifested itself in their allegiance to the committee. Members’ primary goal was power, but power was not simply as an end unto itself in their attraction to the Appropriations and Ways and Means committees. Congressional scholar John Manley argues that members’ attraction to those two committees made them more likely to respond to the demands of the group.²⁶ The prestige that attracted them was mostly within Congress, and made them more dedicated to service on this committee. Moreover, members on the Appropriations

²⁵ Richard Fenno, Jr. *Congressmen in Committees* (Boston: Little, Brown and Company, 1973), 3.

²⁶ John Manley. *The Politics of Finance: The House Committee on Ways and Means* (Boston: Little, Brown and Company, 1970), 53.

and Ways and Means committees usually did not serve on any other committees.²⁷ Their pride in committee membership made them conform to the rules and norms of the group, and also kept their allegiance to the committee over other influential groups.

Committee members felt primary allegiance to their fellow committee members, as opposed to their party or other members of the house. Committee members enhance their prestige through legislative successes on the House floor. The Appropriations Committee's "floor success depends on its ability to present a united front in its confrontations with "the House."²⁸ Members knew they had more power if they were united and loyal to each other rather than to other interests within the House. The Ways and Means Committee was somewhat more influenced by the House, in the sense that committee members knew what would and would not be popular among other members and would legislate accordingly.²⁹ Committee members' desire to maintain power and prestige resulted in primary allegiance to the committee.

This dedication to the committee also meant diminished adherence to party influence. "We try to write the best legislation we can in a non-partisan way," said one Republican member of the Ways and Means Committee.³⁰ A restrained sense of partisanship prevailed throughout both committees. This tendency has to do in part with the fact that committees were generally stronger than party leadership at that time, but also because members knew that they would have more influence and power on the Appropriations and Ways and Means committees if they were unified. There were also strong norms, among all committees, of reciprocity, of compromise in order to achieve policy goals, and of deference to committee expertise.³¹ Members generally

²⁷ Allen Schick. *The Federal Budget: Politics, Policy, Process* (Washington, D.C.: Brookings Institution, 2007), 219.

²⁸ Richard Fenno, Jr. *The Power of the Purse: Appropriations Politics in Congress* (Boston: Little, Brown and Company, 1966), 460.

²⁹ Manley. *The Politics of Finance*, 212.

³⁰ Manley. *The Politics of Finance*, 59.

³¹ Leroy Rieselbach. *Congressional Reform: The Changing Modern Congress* (Washington, D.C.: CQ Press, 1994), 28.

looked out for one another and deferred to committee members in their specialties. These norms, during the period shortly before the 1970's reforms, were stronger than party influence.

Legislators' sense of prestige and conformity to their committee also resulted in a greater tendency to put national goals ahead of mere constituency goals. Members of the Appropriations and Ways and Means committees in the pre-reform era still spent a great deal of time and consideration on doing favorable things for their districts. Indeed, one of the other common reasons for joining the Appropriations Committee was that members could bring projects to their districts.³² However, both committees' private voting and closed markup sessions allowed members to pursue projects in the national interests that may have conflicted with the goals of interest groups in their districts. They could, and often did, advocate for one policy during committee markup sessions and take a different stance on the floor.³³ Members still had an interest in serving their constituencies, but the fact that members were closed off from the public during markup sessions meant that they would be safe from political repercussions if they chose to take a controversial stance.

This overall trend toward putting committee loyalty over other influences gave freedom to members who wished to legislate in favor of the national interest, rather than specific geographic interests. A secondary goal to power and prestige -- "protecting the nation against ill-advised expenditures" -- was also an important ideal for Appropriations members. While that was not necessarily their primary rationale for joining the committee, it was still the primary function of the committee as a whole. Allen Schick also refers to the pre-reform Appropriations Committee as "the guardian of the treasury," harkening back to when the committee was

³² Fenno. *The Power of the Purse: Appropriations Politics in Congress*, 108.

³³ Rieselbach. *Congressional Reform: The Changing Modern Congress*, 27.

consisted of fiscal conservatives from safe districts who wished to rein in spending.³⁴ The Appropriation Committee's belief in its role as guardians of the treasury strengthened committee members' solidarity. Ways and Means Committee members also enjoyed more freedom in the pre-reform years to enact unpopular but responsible legislation. Though it was not particularly common for members seeking a position on the committee to have the primary goal of promoting public policy, the members' sense of pride and allegiance to the committee caused them to value good economic policy as well as policies that benefited their constituents.³⁵

The Legislative Reorganization Act of 1970, along with the other open government reforms in 1973 and 1974, led to a shift in the goals and motivations of the members of the Appropriations and Ways and Means committees. While members still valued power and prestige, the degree and nature of their goals have shifted. Opening up the committee markup sessions intensified reelection pressure and, in combination with other factors, increased partisanship and decreased committee unity. These resulted in an overall shift of members' allegiance from a combination of committee and constituency loyalty, to constituency, party, and interest groups. Members continue to claim a desire for power as their goal in joining the Appropriations and Ways and Means Committees, but the object of the power shifted from internal power to power to provide services to constituents.

Both committees still hold a great deal of power within Congress, but the 1970's reforms changed the nature of their power in Congress. Before the reforms, the power manifested itself both in influence over other members of Congress and ability to benefit constituents. In the case of the Ways and Means Committee, the Legislative Reorganization Act of 1970 resulted in less

³⁴ Allen Schick. *The Federal Budget: Politics, Policy, Process* (Washington, D.C.: Brookings Institution Press, 2007), 218.

³⁵ Randall Strahan. *New Ways and Means: Reform and Change in a Congressional Committee* (Chapel Hill, NC: The University of North Carolina Press, 1990), 55.

power within the House because of its transferring of power to subcommittees. After the reform, members could find powerful positions as subcommittee leaders, and therefore the Ways and Means committee was no longer exceptional in its power and status as a “prestige committee”.³⁶ This diminished power diminished committee members’ sense of pride and allegiance to the Ways and Means Committee. If power and prestige incentivized members to legislate in the national interest, then diminishing this power and prestige would change the members’ incentives and make them less likely to take a responsible national policy stance if such a position would jeopardize their political standing with constituents.

According to the theory that congressmen are motivated primarily by reelection, this diminished power and opening of the committees resulted in increased attention to constituencies’ demands and decreased attention to broader legislative responsibilities.³⁷ Decreasing the institutional power while increasing the access of the public and interest groups shifted members’ incentives. These changes made it more beneficial for members to legislate in their constituents’ interest and left less incentive to “be concerned about overall fiscal or macroeconomic effects of distributing benefits in this way.”³⁸ Not only did reducing institutional prestige reduce members’ motivation to legislate in the national interest, but increasing public access to committee deliberation added to members’ electoral pressure. Members were no longer free to take stances contrary to their constituencies and interest groups’ demands without political repercussions. Thus, if their constituencies’ interest conflicted with the national interest, Appropriations and Ways and Means committee members were more likely to legislate in favor of the former.

³⁶ Strahan. *New Ways and Means: Reform and Change in a Congressional Committee*, 54.

³⁷ Mayhew. *Congress: The Electoral Connection*, 144.

³⁸ Strahan. *New Ways and Means: Reform and Change in a Congressional Committee*, 59.

While maintaining a balanced budget and good economic policy were some of the primary goals of Appropriations and Ways and Means committee members in the pre-reform era, those goals became more difficult to fulfill politically. Motivation for committee membership in the more recent years has been to bring home as much benefit for constituents as possible.³⁹ While there still may be committee members who value fiscal conservatism, it became increasingly difficult to make arguments in favor of decreased spending or increased taxes, particularly when these decisions would impact committee members' constituencies. Thus, insofar as members of Congress value reelection and favoring their constituencies, members that place fiscal responsibility high on their priority list are often at a disadvantage. With an open deliberative process, there is less of an electoral incentive for advocating fixing budget deficits.⁴⁰ Instead, it is better politically to be seen allocating funds to districts and local projects, which appeases constituents and interest groups.

Thus, members' sense of power shifted from influence within Congress to power to benefit those outside of Congress. Members whose goals were to protect against unnecessary spending and tax cuts were at a disadvantage. Overall, committee loyalty diminished and loyalty to interest groups, constituents, and parties took its place. The 1970's open government laws were not the sole causes in these shifts in Appropriations and Ways and Means members' attitudes and motivations. There were also changes as a result of the committee restructuring and the reduced power of the Ways and Means committee that followed. Parties also gained more power relative to committees as a result of the organizational shifts of the Legislative Reorganization Act. However, the open government laws exacerbated the changes that the organizational shifts caused, by increasing the political pressure from constituents. With more

³⁹ Roger Davidson, Walter Oleszek & Frances Lee. *Congress and Its Members* (Washington, D.C.: Congressional Quarterly Press, 2010), 200.

⁴⁰ Mayhew, *Congress: The Electoral Connection*, 144.

access to the deliberative process, constituents and interest groups have more influence on the Appropriations and Ways and Means committees, often at the expense of deliberation and policymaking in the national interest.

CHAPTER 4

THE INFLUENCE OF CONSTITUENCIES, AGENCIES, AND INTEREST GROUPS ON THE HOUSE APPROPRIATIONS AND WAYS AND MEANS COMMITTEES

The goal of enacting open government laws was, in part, to make government more responsive to the public and less responsive to interest groups. The American public perceived a disconnect between Congress and the people and also a suspicious relationship between Congressmen and lobbyists. In some ways, these laws achieved their intended effect in that they did make members more politically vulnerable to their constituents. However, they also had the effect of increasing lobbyist influence and slowing the legislative process. These laws also impacted the relative influence of executive agencies on both committees and on the Appropriations Committee in particular.

Before the 1970's open government laws, agencies and House members had more of the direct influence in the legislative process, compared to constituencies and interest groups. When the majority of Congressional deliberations were open for the public and interest groups to directly observe the legislative process, the influence shifted and these two gained more direct influence compared to the agencies and other House members and committees. This increased influence of interest groups and constituencies has had negative consequences for Congress's ability to deliberate, compromise, and legislate in the national interest.

Constituencies have always had a great deal of influence on their representatives in Congress, long before the legislative reforms in the 1970's. There are several theories as to the extent of and reasons for congressmen's commitment to their constituencies. Some take David Mayhew's stance, which is that members' primary drive is reelection, and therefore they center

their legislative activities on appeasing constituents.⁴¹ Another view is that citizens tend to elect representatives with similar views and preferences, and therefore congressmen's actions tend to reflect their constituents' desires.⁴² Though both may be legitimate, the latter does not account for as many of the congressional decisions as the former. A member may have similar qualities and beliefs as the majority of its constituencies, but when making decisions, he must consider political consequences for making any decision that alienates constituents. This weighing of political consequences is most pronounced when a certain piece of legislation in the national interest conflicts with constituencies' desires. The 1970's legislation that made congressional deliberation more open exacerbated constituency influence by making members more vulnerable to constituency criticism, and conversely, allowing for more opportunities to garner favor from their constituents through posturing.

In the pre-reform Congress, members were concerned about reelection but there was not as much opportunity for constituents to hold them responsible for decisions that they did not favor. With closed markup sessions and anonymous voting, the people could not hold the legislature accountable, so Congress was relatively free from citizen control. Legislatures were free to take one position during meetings and markup sessions and change their position on the House floor.⁴³ There were fewer negative consequences from constituents because constituents had less access to the content of the discussions, or even the votes themselves. Thus, if a member of the Appropriations Committee decided to cut wasteful spending on a useless project in their district, he could do so and avoid major political repercussions from their constituents. Similarly, if a member of the Ways and Means Committee voted to raise taxes in order to balance the

⁴¹ David Mayhew. *Congress: the Electoral Connection* (New Haven: Yale University Press, 1974), 5.

⁴² Roger Davidson, Walter Oleszek & Frances Lee. *Congress and Its Members* (Washington, D.C.: Congressional Quarterly Press, 2010), 290.

⁴³ Leroy Rieselbach. *Congressional Reform: The Changing Modern Congress* (Washington, D.C.: Congressional Quarterly Press, 1994), 36.

budget, he could argue in favor of doing so in a private, closed setting. Members were relatively “insulated from political tides.”⁴⁴

Opening up the committee debates and recording committee votes opened members up to more public scrutiny, thus introducing a need for political caution that they did not have prior to these reforms. With recorded individual committee votes and broadcasted floor sessions, constituents can hold Appropriations and Ways and Means Committee members directly responsible for any spending cut or tax increase in their district, even if the vote was a responsible choice for the nation as a whole. Since opponents have access to recordings from hearings and markup sessions, and use members’ comments out of context to show them in a negative light. With open government reforms, responsible voting or deliberation can lead to negative political consequences, discouraging members from acting in the national interest.

The open government reform movement was a positive development for members seeking reelection, but had negative consequences for Congress as a whole. After the reforms, congressmen in the House Appropriations and Ways and Means committees could use their committee membership as an opportunity to be seen doing favors for their constituents. With recorded votes and televised proceedings, Appropriations and Ways and Means committees began to serve more as public venues for showing constituents how much power one has as a member to do services for them. The members that were primarily concerned with reelection and pleasing their constituents now had more incentive to join the committee after all votes and debates were recorded.

In the post-reform Congress, increased access by the public influenced voting decisions and the content of congressional deliberation. As committee deliberations were increasingly recorded and broadcast to the public beginning in the late 1970’s, and floor sessions were open

⁴⁴ Allen Schick. *The Congressional Budget Process* (Washington, D.C.: The Brookings Institution Press, 2007), 219.

for broadcast in 1978,⁴⁵ members began using these committee sessions and floor debates as forums for impassioned speeches appealing to constituents. Publicizing committee hearings, markup sessions, and floor debates “creates multiple audiences for every question, comment, or speech delivered in a committee room or on the floor.”⁴⁶ Posturing and appealing to the gallery has replaced sound deliberation in many committee hearings. Indeed, one of the reasons the Senate was reluctant to allow televised broadcasting floor debates was because of the fear of this trend of “grandstanding,” which has become commonplace in the House.⁴⁷ The fact that a member of Congress is under constant scrutiny means that committee members constantly have the opportunity to engage in activities that increase their popularity with their constituents, often at the expense of sound deliberation. While the Ways and Means Committee closed their markup sessions for this reason, this phenomenon continues in the Appropriations Committee.

The open government reforms which publicized nearly all committee deliberations did have the intended effect of making Congressional proceedings more accessible to their constituents. Especially with the availability of CSPAN clips online, as well as government watchdog sites that track each member’s votes, members of Congress are constantly under public supervision. This phenomenon has led to negative consequences for members who desire to take a politically unpopular stance for the sake of the national interest, since the footage of their argument can be taken in a negative light. Conversely, there have been positive results for members who use the deliberative process to promote their own image for their constituents.

Agency representatives have historically been the most directly influential groups on the House Appropriations and Ways and Means committees. Agencies exerted the majority of their

⁴⁵ Leroy Rieselbach. *Congressional Reform: The Changing Modern Congress*, 57.

⁴⁶ Joseph Bessette. *The Mild Voice of Reason: Deliberative Democracy & American National Government* (Chicago: University of Chicago Press, 1994), 221.

⁴⁷ Leroy Rieselbach. *Congressional Reform: The Changing Modern Congress*, 57.

influence on the Appropriations Committee as opposed to other committees, since the committee's decisions impacted them the most. Constituents were influential, but did not directly influence the policy proposals that went before the committees. Constituency interest was more of a consideration members made when considering existing legislation, but agencies were more influential in the primary stages of legislation.⁴⁸

Executive agencies had more freedom to influence Congress when congressional proceedings were less publicized and they had a more direct relationship with the committees. Collaborating with the House Appropriations Committee in particular, federal agency heads had direct influence over the policy proposals that the committees introduced, and they did so in relative privacy. The Appropriations committee would not consider any proposals until the president submitted his budget, and would then only invite agency officials to testify at hearings.⁴⁹ Hearings were primarily devoted to communication with agency representatives. Agency officials saw hearings as their chance to share information about and gain support for their programs.⁵⁰ Though there was some degree of competition, for the most part, committee members and agency representatives worked in concert. Members considered their requests before they considered the amount authorized. It was a cooperative environment, with agency members often referring to appropriations as "their committee."⁵¹ The Appropriations committee members and agency representatives were free to work together without as much concern for the desires of authorizing committees, lobbyists or constituents.

After the 1970's open government reforms allowed for public hearings and markup sessions and the broadcasting of hearings and floor debates, executive agencies still held a great

⁴⁸ Richard Fenno, Jr. *The Power of the Purse: Appropriations Politics in Washington* (Boston: Little, Brown and Company, 1966), 265.

⁴⁹ Allen Schick. *The Congressional Budget Process* (Washington, D.C.: Brookings Institution Press, 2007), 218.

⁵⁰ Richard Fenno, Jr. *The Power of the Purse: Appropriations Politics in Washington*, 280.

⁵¹ Fenno. *The Power of the Purse*, 276.

deal of sway over Appropriations policy. However, what suffered was the closed, cooperative relationship between agency officials and members of the Appropriations Committee. The relationship between the two branches became more political and more competitive as their deliberations became exposed and pressure from interest groups and constituents intensified.⁵²

Though there was much continuity in the direct, influential relationship between the executive agencies and the House Appropriations Committee after the open government reforms, these laws brought more publicity and therefore enhanced the political pressure of their proceedings. The committee continued to consider the president's budget before considering any other spending decisions. This increased political pressure coincided with an increase in competition between the two branches. Members of the Appropriations Committee now had to balance pressure from executive agencies with the political demands of constituents, other members, and interest groups. The executive agencies take advantage of positive publicity for their spending promises: "every astute member of Congress knows that the prepared testimony of the cabinet officer is reported by the press while the congressional questioner is largely ignored."⁵³ In light of the political pressure to acquiesce to agencies' spending demands, the appropriations committee has difficulty considering responsible spending decisions. The increased publicity of broadcasted appropriations hearings has given executive agencies the political advantage and thus increased their influence on members of Congress, taking away from the closed, cooperative pre-reform environment.

The House Ways and Means Committee had a similar relationship with executive agencies, but the two did not depend on one another quite as much as in the case of the

⁵² Howard Shuman. *Politics and the Budget: The Struggle Between the President and Congress* (Englewood cliffs, N.J.: Prentice Hall, 1992), 63.

⁵³ Howard Shuman. *Politics and the Budget: The Struggle Between the President and the Congress* (New Jersey: Prentice Hall, 1992), 63.

Appropriations Committee. There was also a great deal of compromise between the two branches. The executive set forth proposals, but in consideration of what the Committee's reaction would be.⁵⁴ While they may not have been in perfect agreement, the most important difference between the pre- and post-reform Ways and Means Committee is that it conducted its proceedings more directly and without as much outside pressure from constituents and interest groups.

Though the open government reforms' purpose was, in part, to reduce the perception that members of Congress receive undue influence from interest groups, these reforms have proven to have the opposite effect. Interest groups, in their ability to attend every part of the deliberation process, now have more sway over congressional procedures than before. Before, members had some freedom in their ability to isolate themselves from interest groups and oppose them, if it was in the nation's interest for them to do so. Opening up the committee hearings and markup sessions in the Appropriations and Ways and Means committees increased lobbyist access and influence.

Interest groups were present and influential in Congressional proceedings before reforms, but their access was different and limited. The pre-reform lobbyists were influential in Congress but did not control policy.⁵⁵ They served as coalition partners, keeping members informed about a group's opinions on an issue, providing them with information, and connecting members to other groups in a given policy area.⁵⁶ In many cases, lobbyists did not influence members directly, but rather they exerted their influence on executive agencies, which in turn, would

⁵⁴ John Manley. *The Politics of Finance: The House Committee on Ways and Means* (Boston, Little, Brown and Company, 1970), 328.

⁵⁵ Leroy Rieselbach. *Congressional Reform: The Changing Modern Congress* (Washington, D.C.: CQ Press, 1994), 34.

⁵⁶ Lester Milbrath, *The Washington Lobbyists* (Chicago: Rand McNally & Company, 1963), 308.

collaborate with Congress.⁵⁷ Perhaps the most important difference between the pre-reform Congress and the post-reform Congress was that members were free to take one stance in a committee session that reflected their better judgment about national interest but did not coincide with the interest group's goals, and the lobbyist or interest group would not be aware.⁵⁸ Thus, all of the benefits of lobbyist involvement may have been served -- providing of information, representation of a particular group, assistance with coalition building -- without undue influence over the deliberative process.

Opening up the legislative process increased interest group access to all aspects of congressional deliberation. After the 1970's reforms, lobbyists could attend committee markup sessions, in addition to committee hearings, and track the votes of individual legislators at every step of the legislative process. According to political scientists Leroy Rieselbach and Joseph Unekis, "These developments meant, in sum, that congresspersons were more exposed to interest groups, executive branch personnel, and the public generally in their activity."⁵⁹ While the open government reforms were successful in their goal of opening government up to the public, their more pronounced effect was make the legislative process more vulnerable to interest groups. These groups, after all, are organized to track congressional activity and have the funds to keep representatives on the Hill, whereas the general public may not have the time, organization, or interest to pay such attention to the legislative process.⁶⁰

⁵⁷ Fenno. *Congressmen in Committees*, 22.

⁵⁸ Joseph Bessette. *The Mild Voice of Reason: Deliberative Democracy & American National Government* (Chicago: University of Chicago Press, 1994), 225.

⁵⁹ Joseph Unekis and Leroy Rieselbach. *Congressional Committee Politics: Continuity and Change* (New York: Praeger, 1984), 109.

⁶⁰ Davidson, Oleszek and Lee, *Congress and Its Members*, 390.

Allowing lobbyists to sit in on committee hearings and meetings gave them more power to influence legislation. Lobbyists make up the majority of attendees of a committee meeting.⁶¹ “Capitol Hill lobbyists regularly fill committee hearings and markups, jam into conference committee rooms, and pack House and Senate galleries.”⁶² New technology allows lobbyists to send out information about proceedings from within the committee meetings. Technology “makes it easier to organize and send a political message across the country at warp speed.”⁶³ Opening congressional proceedings in the 1970’s was the beginning of a process by which interest groups had more access and resources to pursue their policy goals, while members of Congress had less anonymity and autonomy in their deliberative process.

Congress enacted the 1970 Legislative Reorganization act and other reforms in the 1970’s to open up congressional deliberation as a reaction to the accusation that Congress was unresponsive, closed-off, and gave undue attention to interest group demands. These reforms were successful in opening up the deliberative process, but they did not fulfill all of the intended goals. They succeeded in opening Congress up to the public, but at the expense of sound deliberation and legislation in the national interest. The reforms also changed the nature of the agency-committee relationship, making it more political and competitive. Finally, these reforms led to increased access and influence by interest groups: the opposite of the reforms’ intent. All of these shifts in influence and increased pressure from constituents, agencies, and interest groups have led to an increase in irresponsible spending, diminished deliberation, and other negative unintended effects.

⁶¹ James Payne. *The Culture of Spending: Why Congress Lives Beyond Our Means* (San Francisco: ICS Press, 1991), 12.

⁶² Roger Davidson, Walter Oleszek and Frances Lee. *Congress and Its Members* (Washington, D.C.: CQ Press, 2010), 390.

⁶³ Davidson, Oleszek and Lee. *Congress and Its Members*, 401.

CHAPTER 5

THE NEGATIVE CONSEQUENCES OF OPEN GOVERNMENT REFORMS

Opening up government procedures has had several negative consequences for deliberative democracy and the budget process in general. Not only did these reforms fail in many of their intended goals, but they have had other, unforeseen consequences. Increased interest group and constituency influence, as well as a decline in the quality of deliberation, are problematic unto themselves. In addition, they have contributed to other negative trends in the budget process, such as increased earmark spending, recourse to omnibus legislation, and budget deficits. As a result of many of these problems, the Ways and Means committee went back to closed committee markup sessions in 1983, which indicates that open government does not necessarily lead to better government.

One of the most detrimental results of open government reforms is their negative impact on the deliberative process. Opening congressional proceedings, keeping recorded votes and broadcasting hearings and floor debates encourages the self-seeking, reelection-driven members to take advantage of the deliberative process for their own self-interest. Rational deliberation in the national interest suffered at the expense of posturing. The decline of the deliberative process has contributed to other ramifications of the open government reforms, through their creation of a politically charged atmosphere at the expense of an environment of rational debate and judgment in the national interest.

The problems that open government reforms cause become more apparent when one considers what the highest form of lawmaking should be. Congress ought to be a reasoned deliberative body working toward the national interest. If the highest level of congressional activity is improving the nation through sound public policy, then any legislative reform should

work towards that goal. The opposite would be for a member to make decisions based on his own self-interest and reelection.⁶⁴ Considering that these are the basic principles and functions of Congress, any legislation that may improve accountability or responsiveness but at the expense of reasoned legislation in the national interest is undesirable.

Opening up the deliberative process enhances the effects of reelection incentives on candidates' policymaking. Congressional scholar David Mayhew theorizes that all members of Congress are rational, self-interested actors primarily seeking reelection.⁶⁵ While some argue that reelection is the primary goal, the more conventional view is that reelection is a major consideration but not the ultimate one.⁶⁶ The reelection goal often conflicts with the need for unpopular and politically risky but important decisions in the national interest, such as reducing spending or raising taxes. To make such decisions, members must to be free to express their opinions, reason with one another, and make compromises. Opening up the deliberative process and broadcasting congressional debates reduces this possibility, and turns members toward the lower level of policymaking and away from legislation in the national interest.⁶⁷ If members feel as though they are under constant scrutiny by constituencies, interest groups, and opponents, they feel more political pressure and focus their attention to reelection and posturing, rather than sound deliberation.

The increase in posturing is one of the manifestations of the open government laws' diminishing of the deliberative process. Corresponding with televising and broadcasting committee meetings and floor sessions, there has been a rise in partisan, politically divisive

⁶⁴ Joseph Bessette. *The Mild Voice of Reason: Deliberative Democracy and American National Government* (Chicago: University of Chicago Press, 1994), 135.

⁶⁵ Randall Strahan. *New Ways and Means: Reform and Change in a Congressional Committee* (Chapel Hill, NC: The University of North Carolina Press, 1990), 54.

⁶⁶ Douglas Arnold. *The Logic of Congressional Action* (New Haven: Yale University Press, 1990), 9.

⁶⁷ Kenneth Mayer & David Canon. *The Dysfunctional Congress?: The Individual Roots of an Institutional Dilemma* (Boulder, Colo: Westview Press, 1999), 109.

speeches, usually about a minute in length, which allow members to differentiate between their policies and those of the other party, and also to make individual attacks against other members.⁶⁸ This outcome was one of the reasons many members objected to televised proceedings of floor debates. According to Representative David Worth Dennis, they feared fellow members, , “will be spending more time making hay on the television camera than in doing the business that we are sent there to transact.”⁶⁹ In a deliberative process without publicity, the lawmaker who is most knowledgeable or has done the best work on a subject takes precedence over the member who is most adept at promoting his own image.⁷⁰ “By oversimplifying and sensationalizing certain policy controversies, the media discourages rational decision making.”⁷¹ Members view open proceedings as a chance to be seen doing positive work for their constituents, often at the expense of sound deliberation in the national interest.

While not all members of the public may have been attentive to their congressmen’s actions, the advent of televised proceedings and recorded committee and floor votes, combined with new technology, allows the more attentive groups to hold members more responsible by bringing their decisions to a wider audience. Before televised proceedings and recorded votes, there was a greater difference between attentive and inattentive publics’ knowledge of congressional action. Political Scientist Douglas Arnold describes attentive publics consisting of interest groups with a particular policy agenda that they followed, as well as constituents that felt strongly about one issue in particular. Since members could easily gauge these groups’ reactions to their policies, they did not have to proceed with quite as much caution as when considering the

⁶⁸ Donald Wolfensberger. *Congress and the People: Deliberative Democracy on Trial* (Baltimore: Johns Hopkins University Press, 2000), 123.

⁶⁹ Wolfensberger. *Congress and the People*, 99.

⁷⁰ Joseph Bessette. *The Mild Voice of Reason*, 224.

⁷¹ Carl Van Horn, Donald Baumer and William Gormley Jr. *Politics and Public Policy* (Washington, D.C.: Congressional Quarterly Press, 2001), 15.

inattentive publics' reactions.⁷² Even if the latter do not pay close attention to congressional activity, they may still be aware of major legislative decisions. Members must question "whether [their] decision will be defensible if it were to appear on the front pages of major newspapers in [their] district."⁷³ The problem that arises is that members of the attentive public can communicate with the public at large about members' decisions, but do so by taking these decisions out of context and putting them in a negative light. Interest groups and election opponents have, through the internet, access to all the members' votes and video clips from congressional hearings, which they can use against a member of Congress who votes in the national interest at the expense of his constituency. Thus, having televised committee meetings and floor sessions and recorded votes increases the electoral pressure for members of Congress.

Though the open government laws were well intentioned, they had many flaws that negatively impacted deliberation. They achieved some of their goals but at the expense of sound policymaking; in some ways they did nothing to further certain goals; and in other cases, these laws produced the opposite of their intended effects. These laws were intended to make the public more aware of the content of congressional proceedings, improve the general public's perception of Congress, and prevent lawmakers from making illicit deals with interest groups. In many ways, however, they have failed to do all three of these.

If the open government reforms have made the public more educated about Congress, it is only to show the more negative and less substantive aspects of congressional action. Indeed, one of the initial objections to the proposal to televise House and Senate floor sessions was that such an act would not really educate the public because "most coverage is confusing or

⁷² Arnold. *The Logic of Congressional Action*, 66

⁷³ Roger Davidson, Walter Oleszek and Rances Lee. *Congress and Its Members* (Washington, D.C.: Congressional Quarterly Press, 2010), 291.

uninteresting.”⁷⁴ As a result, most broadcasters cover stories about ethical violations and scandals, rather than substantive policy. Television does not expose the public to a balanced, non-partisan, comprehensive view of the policy under debate, but rather, the small fraction of the debate that is most entertaining and/or most controversial.⁷⁵

Another purpose of opened proceedings was to improve public sentiment toward Congress in general. First, the very fact that the goal was to improve perceptions of Congress, rather than the actual effectiveness of Congress, indicates how these reforms were not intended to promote high-level policymaking. Second, that merely allowing the general public more access to congressional activity would improve Congress’ image as a closed institution ignores the fact that the media may exacerbate other criticisms of Congress. In addition to an overall decline in media coverage of policymaking, reporting tends to “cover the horse race in politics; focus on the human impact of government policies; treat bad news more often than good news; and talk to your targeted audience.” Since both televised and printed news tends to report scandals rather than policy achievements, most of the coverage of Congress reinforces the negative stereotypes of congressmen as being corrupt and detached from the public interest.⁷⁶

Perhaps the most important failed goal of the open government movement was to decrease the influence of lobbyists and special interests on members of Congress. Opening up markup sessions to the public necessarily opens these proceedings up to interest groups. “An open, decentralized institution, Congress affords lobbyists multiple opportunities to shape the fate of legislation.”⁷⁷ Whereas before, members had autonomy and privacy when considering their spending decisions, after the reforms, lobbyists were free to attend and participate in all

⁷⁴ Donald Wolfensberger. *Congress and the People: Deliberative Democracy on Trial* (Baltimore: Johns Hopkins University Press, 2000), 106.

⁷⁵ Wolfensberger. *Congress and the People*, 124.

⁷⁶ Davidson, Oleszek, & Lee. *Congress and Its Members*, 493.

⁷⁷ Roger Davidson, Walter Oleszek and Frances Lee. *Congress and Its Members*, 390.

hearings and markup sessions. Even if lobbyists primarily provide information and data for members of Congress, rather than bribe and pressure them to legislate in their favor,⁷⁸ members are still more directly accountable than they were before. Before the open government reforms, members could take a lobbyist's information and still go into meetings as independent actors who could legislate in favor or against the lobbyist's wishes. After the reforms, their decisions were no longer anonymous, and they go into meetings with the lobbyist's facts and information with the added pressure that if they do not vote in the interest group's favor, there could be political repercussions. Even with public deliberation, there is still the possibility of side deals and corrupt influence of lobbyists.⁷⁹ Not only do these laws increase lobbyist influence, but they also fail to prevent members from meeting with lobbyists in secret.

There are three reasons why this increased interest group access is detrimental to good policymaking. First, interest groups can have a great deal of influence in a member's re-election: either positively, through campaign finance and advocacy, or negatively, through negative advertisements. The second issue is that since only a certain subset of the nation's interests has the resources and organization to have government advocacy, the spending pressure that congressmen are exposed to is uneven and unrepresentative of the general population's interest. Finally, since the vast majority of lobbyist pressure is for spending increases and rarely for spending cuts, increased lobbyist access has led to increased pressure for fiscally irresponsible budgeting.

While lobbyists have increased access to congressional proceedings, they have also become increasingly influential in congressional campaigns. Their increased involvement in campaigns did not result from open government laws, but this trend has made their direct

⁷⁸ Carl Van Horn, Donald Baumer, and William Gormley. *Politics and Public Policy* (Washington, D.C.: Congressional Quarterly Press, 2001), 14.

⁷⁹ Bessette, *The Mild Voice of Reason*, 226.

influence policymaking more problematic for sound deliberation. In the past, interest groups waited until after elections to influence those who had been elected. Now, through PACs and other methods, interest groups have increasingly been directly involving themselves in elections by providing campaign funding and positive advertising for friendly legislators, and negative advertising for legislators that work against their goals. According to congressional scholar Morris Fiorina, “between the mid-1970’s and mid-1980’s PACs increased more than sevenfold,” from approximately 608 in 1974 to over 4,140 in 1986.⁸⁰ Between 1997 and 1999 alone, the number of registered lobbyists increased by 37%.⁸¹ With the increasing cost of campaigns, members rely more and more on interest groups to provide funding.⁸² Interest groups fund campaigns directly, and they often host fundraisers. This phenomenon raises the electoral incentive for members to conform to interest group pressures. Conversely, there are increasing negative consequences for going against interest group demands. Lobbyists can quickly and effectively report on the contents of hearings and markup sessions and broadcast members’ decisions to their constituents from within the meeting.⁸³ Interest groups act as the attentive publics, tracking members’ votes and broadcasting clips from committee meetings. If a member makes a statement or votes against the interest group, he runs the risk of having that vote or that statement distributed to his constituents.⁸⁴ Although the decision may be a responsible one, the affected interest group could take it out of context and show the lawmaker in a negative light.

Even if one argues that lobbyist influence is not necessarily a problem because lobbyists represent legitimate constituent interests, the groups that lobby members of Congress do not

⁸⁰ Morris Fiorina. *Congress: Keystone of the Washington Establishment* (New Haven, CT: Yale University Press, 1989), 125.

⁸¹ Van Horn, Baumer, and Gormley, *Politics and Public Policy*, 13.

⁸² Van Horn, Baumer, and Gormley. *Politics and Public Policy*, 14.

⁸³ Davidson, Oleszek and Lee. *Congress and Its Members*, 390.

⁸⁴ Douglas Arnold. *The Logic of Congressional Action*, 68.

reflect all public interests. It takes a great deal of money to hire a lobbyist to establish relationships with members of Congress, conduct research and attend committee meetings. Therefore, the majority of interests represented on the Hill are wealthier, more educated groups.⁸⁵ The top industries represented in Congress are insurance, pharmaceuticals, health products, telephone utilities and tobacco.⁸⁶ Seventy-two percent of interest groups are businesses.⁸⁷ Not only do interest groups need money, but they need to be organized enough to focus on specific policy agendas. Economist Mancur Olson theorized that for this reason, small groups with a very specific interest in policy will have the most success on the Hill.⁸⁸ Thus, interest group influence brings an imbalanced set of pressures on members of Congress. Poor, less-educated groups do not have as much access to Congress and therefore their interests are not represented as much as those of businesses and other, wealthier groups. If Congress is to be a nationally representative body, the strong influence of one subset of the population is problematic.

One of the major problems with increased lobbyist access to congressional proceedings is that lobbyists overwhelmingly impose pressure to increase spending, which adds to the difficulty of producing a balanced budget. Political scientist James Payne argues that Congress chronically overspends because of the tremendous pressure from lobbyists, which only encourages spending and hardly calls for fiscal responsibility. He argues that there is a direct correlation between the opening up of committee markups to the public and the growth of the deficit. “The more you

⁸⁵ Kenneth Mayer and David Canon. *The Dysfunctional Congress?: The Individual Roots of an Institutional Dilemma*, 109.

⁸⁶ Van Horn, Baumer, and Gormley. *Politics and Public Policy*, 38.

⁸⁷ Davidson, Oleszek, & Lee. *Congress and Its Members*, 391.

⁸⁸ Davidson, Oleszek, & Lee. *Congress and Its Members*, 391.

open up the process, the more people are paid to come here and increase spending.”⁸⁹ The vast majority of interest groups come to Congress with spending requests. For every member of Congress, there are 38 lobbyists and approximately \$2.7 million spent on lobbying.⁹⁰ Payne also argues that “people are against spending in general, but not against it in particular.”⁹¹ Even if a member of Appropriations or Ways and Means has the goal of reducing the deficit, he will always have someone present during every step of the deliberative process who advocates for a spending increase or opposes a tax increase. Whereas before, members could propose spending cuts during markup sessions without being politically accountable, the Appropriations Committee now conducts all of its proceedings surrounded by groups with a vested interest in increased government spending. Moreover, there are no individual incentives for members to vote to reduce spending or raise taxes. Not only do these groups have a great interest in spending, but they also have power over members’ reelection prospects, giving them leverage in the decision-making process.

There are several manifestations within the budget process of the problems that open government reforms have caused. The past few decades have seen a trend of increased earmark spending, recourse to omnibus legislation, and increased deficit. While there are additional reasons for these phenomena, the fact that committee proceedings are all open to the public and all votes are recorded and open enhances the political necessity or attractiveness of these actions.

There has been a steadily rising trend of recourse to omnibus legislation in the post-reform Appropriations and Ways and Means committees. Many congressional scholars see

⁸⁹ James Payne. *The Culture of Spending: Why Congress Lives Beyond Our Means* (San Francisco: ICS Press, 1991), 15.

⁹⁰ Van Horn, Baumer, & Gormley. *Politics and Public Policy*, 13.

⁹¹ James Payne. *The Culture of Spending: Why Congress Lives Beyond Our Means*, 16.

recourse to omnibus measures as a breakdown in the regular appropriations process.⁹² They give members the advantage of passing legislation what would have otherwise hurt them politically. Either the general public doesn't know about specific unpopular provisions because the omnibus bill is so massive, or they have the excuse of having to pass something because it contained so many other necessary provisions. In the case of omnibus continuing resolutions, members do not have much of a choice but to vote in favor of them because to vote against them would be to close down the government.⁹³ Omnibus measures present a problem, however, since their massive size prevents sound deliberation over every provision. It is often the case that hardly anyone in Congress knows about all of the contents, let alone has a solid grasp on the policy effects of every provision. With closed government and without recorded, published votes, members would not have to resort to omnibus measures to enact controversial but responsible legislation. Members were safer from public scrutiny so they did not have to resort to all-or-nothing legislative decisions.

The increase in earmark spending is another example of constituency and lobbyist influence affecting the regular appropriations process. There were as many as three times more earmarks in 2004 as ten years earlier. Congressional scholar Allen Schick describes three reasons for this increase. First, members are more individualistic and it is harder to convince them to support appropriations bills otherwise. Second, earmarks help members in reelection campaigns by channeling funds to interest groups and projects in their district. Third, lobbyists are becoming increasingly more organized to demand favors.⁹⁴ This trend has to do, in part, with the fact that members are under closer scrutiny of lobbyists and constituents. As we have seen,

⁹² Allen Schick. *The Federal Budget: Politics, Policy, Process* (Washington, D.C.: Brookings Institution Press, 2007), 235.

⁹³ Aaron Wildavsky. *The New Politics of the Budgetary Process* (New York: HarperCollins Publishers, 1992), 235.

⁹⁴ Allen Schick, *The Federal Budget Process: Politics, Policy, Process*, 248.

lobbyists are physically present for all of the deliberative process, advocating their demands and putting pressure on members.⁹⁵ Earmarks also give members of Congress an opportunity to show their constituents that they are serving the districts. Though some see earmarks as a relatively harmless way of gaining bipartisan support for a bill, earmarks also detract from rational decisionmaking.⁹⁶ Members should agree to a bill because it is sound policy that benefits the general interest, and not because they can curry favor with their constituents.

Another argument against open government proceedings is that it encourages irresponsible, excessive spending. Budget deficits have been an increasing concern for Congress since the early 1980's.⁹⁷ Before the reform, the Appropriations and Ways and Means committees had certain norms of fiscal responsibility and autonomy. With deliberation and cooperation, they could produce a neutral budget without endangering themselves politically. Now, for virtually every spending decision, there is a lobbyist, an agency official, or a constituency group with a vested interest in Congress allocating the maximum amount of funding. James Payne argues that these individual pressures are responsible for Congress' tendency toward irresponsible spending. The requests that these groups make are overwhelmingly for increased spending, with no one on the other side arguing against spending. The intensified access of lobbyists that resulted from open government reforms continues to influence spending decisions. "The ethos of 'open' government requires that these lobbyists be given a hearing." Members, overwhelmed by pro-spending messages, are converted into spending advocates.⁹⁸

A very telling measure of these negative consequences of open deliberation is the fact that the Ways and Means Committee, in 1983, voted to return to closed markup sessions. They

⁹⁵ Payne. *The Culture of Spending: Why Congress Lives Beyond Our Means*,

⁹⁶ Schick. *The Federal Budget Process*,

⁹⁷ Davidson, Oleszek & Lee. *Congress and Its Members*, 441.

⁹⁸ Payne. *The Culture of Spending: Why Congress Lives Beyond Our Means*, 16-22.

also developed a closed rule procedure for House floor debates on tax legislation and returned to the practice of recruiting members from safe districts. “The post-reform committee couldn’t manage the function of balancing interests of members and clientele groups with broader policy goals.”⁹⁹ The committee closed its markup sessions because of the same causes that have diminished the Appropriations Committee’s ability to deliberate reasonably and legislate in the national interest: because “enhanced accountability to interest groups and constituents undermined deliberations about tax policy.”¹⁰⁰ Members said that having representatives of clientele groups and constituency interests present during markup sessions made it difficult for them to vote for policies that introduced or raised costs for those groups that had supported them. Closing the deliberative process helps members consider broader issues that affect the nation as a whole, rather than focusing on posturing and serving local interests that are present at the meeting.¹⁰¹ All of this testimony from members of the Ways and Means Committee shows how the opening of the deliberative process negatively impacts legislation in the national interest, and that returning to closed rules helped foster cooperation and responsible lawmaking.

⁹⁹ Randall Strahan. *New Ways and Means*, 144.

¹⁰⁰ Bessette. *The Mild Voice of Reason: Deliberative Democracy & American National Government*, 225.

¹⁰¹ Strahan. *New Ways and Means*, 145.

CONCLUSION

The impact of the open government reforms of the 1970s shows how increased transparency does not necessarily lead to better government. While the conventional belief is that increased transparency and accountability is always a positive quality in government, the impact that transparency has had on the House Appropriations and Ways and Means committees suggests otherwise. These reforms have negatively impacted Congress's ability to deliberate and legislate in the national interest by changing the attitudes and motivations of the members of the House Appropriations and Ways and Means committees and also by changing the influences on their behavior. These reforms made lobbyists and constituents more dominant in congressional proceedings, which shifted members' focus from guarding the treasury toward pleasing these groups and improving their chances of reelection.

Though people tend to revere transparency as essential for democratic government, excessive accountability does not fit within American representative government. Republican government, and not direct democracy, was the original structure designed by the founding fathers. In a republican government, elected members of Congress can refine public opinion, using rational argument and deliberation to make policy that enhances the public good. Opening up the deliberative process to external pressures hinders members' freedom to express their opinions, reason with their colleagues, and compromise on public issues.

Congress enacted these "sunshine" measures as a response to public criticism that Congress had become unresponsive, corrupt, and beholden to special interest groups. In some respects, these laws were successful. They did make members more accountable to their constituents and, to a certain extent, they raised public awareness of congressional action. However, these successes came at a cost to responsible legislation. Making members more

accountable to the public also makes them equally more accountable to special interest groups and their lobbyists. This combination of lobbyist and constituent pressure leads to increased posturing, decreased deliberation, and acquiescence to spending demands. Thus, transparency made members more accountable, but at the expense of sound deliberation and fiscal responsibility.

The early stages of legislation that occur within the committees and subcommittees should be sheltered from outside influences. These parts of the process should consist of less politics and posturing in exchange for more reasoned discussion about the substance of the legislation. Legislators have been elected to represent their constituents and refine public interest in order to make sound national policy. Therefore, the legislative stages should be left up to lawmakers, and they should be protected from the glare of public scrutiny. The public should be aware of final debates and votes, but the formulation of legislation should be left to members of Congress.

For all of these reasons, the House Ways and Means Committee returned to closed markup sessions in 1983. The committee had experienced a decline in its ability to produce responsible national legislation, and went back to closed proceedings which would give them more freedom to make politically difficult decisions. Since many of these problems remain, both committees should close some of their processes in order to foster good public policy.

First, the Appropriations Committee should return to closed markup sessions. Since the same negative consequences of open government reforms that affect the Ways and Means Committee also apply to the House Appropriations Committee, that committee should adopt similar rules to close their markup sessions. In addition, both committees should be able to exclude television cameras from committee hearings. Hearings can be open to the public, and

print journalists should be welcome to attend committee hearings, but members should be able to exclude television cameras. Moreover, committee votes should be kept private at the request of a small percentage of members. The floor should remain almost entirely open to the public; all votes should continue to be recorded and all forms of recording and broadcasting should be permitted. The public should have access to information about the legislative process once the legislation has been formulated and is put to a vote to the committee as a whole. However, members should be able to exclude television cameras from floor debates for particularly divisive or controversial legislation that has a time constraint. This provision would prevent the delays caused by political speeches aimed at the public rather than for other legislators.

Especially in the 111th Congress, greater protection from outside influence is necessary to reduce the growing deficit. The American people cannot afford to have politics stall legislation that would raise revenues or decrease spending: two actions that are politically difficult but very necessary for fiscal responsibility.

Bibliography

- Arnold, Douglas R. *The Logic of Congressional Action*. New Haven: Yale University Press, 1990.
- Banfield, Edward C. *Here the People Rule*. New York: Plenum Press, 1985.
- Bernstein, Robert A. *Elections, Representation, and Congressional Voting Behavior: The Myth of Constituency Control*. Englewood cliffs, N.J.: Prentice-Hall, 1989.
- Birnbaum, Jeffrey H. and Alan S. Murray. *Showdown at Gucci Gulch: Lawmakers, Lobbyists, and the Unlikely Triumph of Tax Reform*. New York: Vintage Books, 1988.
- Benson, George C., Steven A. Maaranen and Alan Heslop. *Political Corruption in America*. Lexington, Mass: Lexington Books, 1978.
- Bessette, Joseph M. *The Mild Voice of Reason: Deliberative Democracy & American National Government*. Chicago: University of Chicago Press, 1994.
- Bowen, Catherine D. *Miracle at Philadelphia: The Story of the Constitutional Convention: May to September 1787*. Boston: Little, Brown and Company, 1966.
- Cain, Bruce, John Ferejohn, and Morris Fiorina. *The Personal Vote: Constituency Service and Electoral Independence*. Cambridge, Mass.: Harvard University Press, 1987.
- Chubb, John E. and Peterson, Paul E., eds. *Can the Government Govern?* Washington, D.C.: Brookings Institution Press, 1989.
- Collier, Christopher and Collier, James L. *Decision in Philadelphia: The Constitutional Convention of 1787*. New York: Random House, 1986.
- Conlan, Timothy J., Margaret T. Wrightson and David R. Beam. *Taxing Choices: The Politics of Tax Reform*. Washington, D.C.: Congressional Quarterly Press, 1990.
- Davidson, Roger H., Walter J. Oleszek and Frances E. Lee. *Congress and Its Members*. Washington, D.C.: CQ Press, 2010.
- Dexter, Lewis A. *How Organizations are Represented in Washington*. Indianapolis, Bobbs-Merrill, 1969.
- Donald S. Lutz, "Popular Consent and Popular Control: 1776-1789," in *Founding Principles of American Government: Two Hundred Years of Democracy on Trial*, ed. George J. Graham, Jr. and Scarlett G. Graham (Chatham, New Jersey: Chatham House Publishers, Inc., 1984), 60.
- Fenno, Richard F., Jr. *Congressmen in Committees*. Boston: Little, Brown and Company, 1973.

- Fenno, Richard F., Jr. *The Power of the Purse: Appropriations Politics in Congress*. Boston: Little, Brown and Company, 1966.
- Fiorina, Morris P. *Congress: Keystone of the Washington Establishment*. New Haven: Yale University Press, 1989.
- Galloway, George B. *History of the House of Representatives*. New York: Crowell, 1962.
- Graham, George J., Jr. and Scarlett G. Graham, eds. *Founding Principles of American Government: Two Hundred Years of Democracy on Trial*. Chatham, N.J.: Chatham House, 1984.
- Hamilton, Charles V. *Adam Clayton Powell, Jr.: The Political Biography of an American Dilemma*. New York: Atheneum, 1991.
- Hibbing, John R. *Congress as Public Enemy: Public Attitudes Toward American Political Institutions*. Cambridge; New York: Cambridge University Press, 1995.
- Johannes, John R. *To Serve the People: Congress and Constituency Service*. Lincoln: University of Nebraska Press, 1984.
- Kernell, Samuel and Steven S. Smith. *Principles and Practice of American Politics: Classic and Contemporary Readings*. Washington, D.C.: Congressional Quarterly Press, 2010.
- LeLoup, Lance T. *Budgetary Politics: Dollars, Deficits, Decisions*. Brunswick, Ohio: King's Court Communications, 1977.
- Madison, James, Alexander Hamilton and John Jay. *The Federalist Papers*. Ed. Isaac Kramnick. Harmondsworth: Penguin, 1987.
- Manley, John F. *The Politics of Finance: The House Committee on Ways and Means*. Boston: Little, Brown and Company, 1970.
- Mayer, Kenneth R. and David T. Canon. *The Dysfunctional Congress? : the individual roots of an institutional dilemma*. Boulder, Colo: Westview Press, 1999.
- Mayhew, David R. *Divided We Govern: Party Control, Lawmaking and Investigations, 1946-2002*. New Haven: Yale University Press, 2005.
- Mayhew, David R. *Congress: the Electoral Connection*. New Haven: Yale University Press, 1974.
- Mee, Charles L., Jr. *The Genius of the People*. New York: Harper & Row, Publishers, 1987.
- Milbrath, Lester W. *The Washington Lobbyists*. Chicago, Rand McNally, 1963.

- Oleszek, Walter J. *Congressional Procedures and the Policy Process*. Washington, D.C.: CQ Press, 2007.
- Padover, Saul K. *To Secure These Blessings*. New York: Washington Square Press/Ridge Press, 1970.
- Payne, James L. *The Culture of Spending: Why Congress Lives Beyond Our Means*. San Francisco, CA: ICS Press, 1991.
- Rieselbach, Leroy N. *Congressional Reform in the Seventies*. Morristown, N.J.: General Learning Press, 1977.
- Rieselbach, Leroy N. *Congressional Reform: The Changing Modern Congress*. Washington, D.C.: CQ Press, 1994.
- Rossiter, Clinton. *1787: The Grand Convention*. New York: The MacMillan Company, 1966.
- Schick, Allen F. *Budget Innovation in the States*. Washington, D.C.: The Brookings Institution Press, 1971.
- Schick, Allen T. *Crisis in the Budget Process: Exercising Political Choice*. Washington, D.C.: American Enterprise Institute for Public Policy Research, 1986.
- Schick, Allen F. *The Federal Budget: Politics, Policy, Process*. Washington, D.C.: The Brookings Institution Press, 2007.
- Shuman, Howard E. *Politics and the Budget: The Struggle Between the President and the Congress*. Englewood Cliffs, N.J.: Prentice Hall, 1992.
- Strahan, Randall. *New Ways and Means: Reform and Change in a Congressional Committee*. Chapel Hill, NC: The University of North Carolina Press, 1990.
- Unekis, Joseph K. and Leroy N. Rieselbach. *Congressional Committee Politics: Continuity and Change*. New York: Praeger, 1984.
- Van Horn, Carl E., Donald Baumer and William Gormley. *Politics and Public Policy*. Washington, D.C.: CQ Press, 2001.
- Wildavsky, Aaron B. *The New Politics of the Budgetary Process*. New York: HarperCollins Publishers, 1992.
- Wolfensberger, Donald R. *Congress and the People: Deliberative Democracy on Trial*. Baltimore: Johns Hopkins University Press, 2000.
- Wright, Gerald C., Jr., Leroy N. Rieselbach and Lawrence C. Dodd. *Congress and Policy Change*. New York: Agathon Press, 1986.