

HYPER-PARTISANSHIP AND THE UNITED STATES CONGRESS: A STUDY IN  
VALUES AND LEGISLATING

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ABSTRACT

This thesis examines the problem of hyper-partisanship in the United States Congress: how this political atmosphere evolved, its consequences on lawmaking, and current public reaction to this state of affairs. The underlying premise is that values, specifically conflicting values, are responsible for the rise in partisanship throughout American history.

Three works provide a framework for analysis. John Tropman's, *American Values and Social Welfare: Cultural Contradictions in the Welfare State* establishes an overview of values, their structure and significance in society. Tropman's work allows for identification and analysis of values and value conflicts in legislating. Milton Friedman's *Capitalism and Freedom* represents the values of modern-day Republicans and is a frame of reference when examining specific inter-party conflicts. Walter Trattner's *From Poor Law to Welfare State* serves as a counterpart to *Capitalism and Freedom*, representing modern-day values of the Democratic Party. Friedman and Trattner are tools to identify partisan value conflicts and their impact on the legislative process.

The thesis first examines the present-day hyper-partisan Congress, prior to tracing how Congress evolved to this state. A case study of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 is used to demonstrate hyper-partisan

legislating in recent history. Across each period of time reviewed in the evolution of partisanship, and in the case study, the value conflicts between the two political parties are identified and tied to the partisan actions of each party. Findings confirmed that partisanship has increased over time and has had a significant impact on the legislative process. The conclusion of the thesis suggests future implications and consequences of a “hyper-partisan” Congress.

Statements made by Members of Congress are used extensively in this work. Many are not available in official congressional hearing transcripts or The Congressional Record. Many were taken from congressional websites. All websites used to obtain statements made by Members of Congress as well as the news stories quoting them are included in the Reference List.

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## CHAPTER 1

### INTRODUCTION

This thesis examines the evolution of partisanship in the United States. This examination is approached within the context of the values and value conflicts underlying American political discourse, past and present. Value conflicts are an underlying cause of the increase in partisan behavior that has, over time, brought the United States Congress to its present “hyper-partisan” state. A hyper-partisan Congress largely legislates in reflection of the majority party’s values only. It often finds itself in gridlock when the House of Representatives and the Senate are under different majorities. It does not seek to reach consensus in the legislative process by compromise and negotiation. This work demonstrates how value conflicts have given rise to a “hyper-partisan” Congress and how they dominate the present hyper-partisan Congress. It also discusses the impact hyper-partisanship has had on Congress as an institution, and the citizenry it represents.

The work begins by presenting an introduction to the nature and structure of values and value conflicts. It defines values and their importance within culture and examines one dominant American value in that light. Two works are then introduced that are demonstrative of the values espoused by the modern day Democratic and Republican parties. These works are the framework used to evaluate value-conflicts put forth in the remainder of the thesis.

Prior to answering the question of “how did we get here?” in terms of the hyper-partisan Congress, the present state of Congress is reviewed to provide examples of “hyper-partisanship.” The chapter identifies and analyzes four tactics typical of the

hyper-partisan Congress, citing specific examples of each and relating each to conflicting values between the Democrats and Republicans. After establishing the current state of affairs, the work then traces how political parties and Congress evolved to their hyper-partisan states. This is accomplished by highlighting critical events and time periods in American history. In each defining moment or period of time, value conflicts were an underlying motivation for behaviors. From the founding of the nation to the House Speakership of Newt Gingrich, Congress has become increasingly partisan and more driven by uncompromising values.

To demonstrate how hyper-partisanship has impacted the legislative process, a case study examining the legislative history of the Dodd-Frank Financial Reform and Consumer Protection Act of 2010 is presented. The case study demonstrates a number of the very specific means by which the majority party in Congress can systematically exclude the Minority from legislative proceedings, ensuring their values are dominant in final legislation. There is also examination of the repercussions of such action.

Lastly, consequences and implications of the hyper-partisan Congress are presented in the final chapter. Specifically, it addresses how hyper-partisanship has impacted the reputation of the institution, and public participation in the political process. Additionally, future consequences are proposed as partisanship continues to evolve in the American Congress.

## CHAPTER 2

### INTRODUCTION TO AMERICAN VALUES AND VALUE CONFLICTS

This chapter provides an overview of the nature and structure of values and value conflicts. It uses the work of John Tropman, *American Values and Social Welfare: Cultural Contradictions in the Welfare State*, as the framework to evaluate the values and value conflicts underpinning partisanship's evolution. Partisan behaviors, tactics and incidents are examined in light of their motivating values. The chapter then examines "American Exceptionalism" as a "dominant" American value, held by citizens consistently throughout history. American exceptionalism is a critical value because of its omnipresence in American political discourse. It is also relatable to a number of specific policies examined in this thesis. Finally, two works are presented that denote values held by the two main American political parties, Republicans and Democrats, which often conflict with one another. *Capitalism and Freedom* by Milton Friedman represents the values held by the modern day Republican Party. *From Poor Law to Welfare State* by Walter Trattner is representative of the values of the Democratic Party. They are used in the analysis of conflicting values during key times in the evolution of partisanship. Both are also used to analyze the policy positions and values underpinning both political parties in the case study presented in Chapter 5.

## John Tropman: Framing the Nature and Structure of Values

### Value Structure and Value Conflict

John E. Tropman's *American Values & Social Welfare: Cultural Contradictions in the Welfare State* establishes a framework for examining value systems. Tropman defines a value as "an element of a shared symbolic system which serves as a criterion or standard for selection among the alternatives or orientations which are intrinsically open" (Tropman 1989, xiv). As such, values are a key feature of cultures, and every culture has its own system of values. The values held by a culture form a "dictionary" and can be ranked hierarchically; with the most dominant values ranked at the top (Tropman 1989, 1). Tropman specifically notes that while "overall" American values may be discussed, there should be recognition that not all groups of individuals in a society hold the exact same values in the precisely the same hierarchy (Tropman 1989, 15). As a result, values included in each "dictionary" will inevitably conflict with one another, due to individual value prioritization (Tropman 1989, 1). Gender, religion, race, socioeconomic status and political affiliation may impact how values are prioritized.

Tropman lists seven dimensions of values as the basis for his work.<sup>1</sup> The list is not intended to be comprehensive of all American values, but provides a base to evaluate the influence values have on a society. Values have implications for thought and action related to any aspect of American society (Tropman 1989, 15). One can conclude that values influence governing and policymaking.

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<sup>1</sup> Tropman's seven value dimensions are: Work, Mobility, Status, Independence, Individualism, Moralism and Ascription.

Tropman also discusses the structure of values and conflicts. He notes:

It is useful to think of it (value structure) as being made up of a plurality of dimensions, with conflict between and among dimensions with conflicting value pairs within each dimension. Furthermore, both the dimensions and values within dimensions may be of different weights. Values may have broad or deep commitments from individuals and subcultures. Value conflict, then, leads to uncertainty about which value should be applied in what situation and how often or how much it should be implemented. (Tropman 1989, 20)

Nearly any value can have an opposing value, embraced just as strongly as the first (Tropman 1989, 22). The conflicting values are not necessarily of the same level of influence in a society, and therefore one value often “wins out.” This is true in the United States Congress. Dominant values in the legislature at a given time can be linked to the majority political party in Congress. Generally, the majority party is able to pass laws that they deem important. Those laws demonstrate the values which that party consider important.<sup>2</sup>

#### Examples of Policy Dilemmas Resulting From Value Conflicts

Tropman uses specific social welfare policy to illustrate how values conflict. He points to “policy values dilemmas,” which drive policy preferences. Those include: “work versus leisure,” “struggle versus entitlement,” “equity versus adequacy,” “independence versus interdependence,” “personal versus family,” “secular versus sectarian auspices,” and “private versus public auspices” (Tropman 1989, 96-97). Each pair of conflicting values impacts one’s view on policy. Social welfare policy, including

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<sup>2</sup> While Tropman notes that empirical research would be required to assign appropriate “weights” to conflicting values, the concept of certain values dominating at certain periods of time is utilized in this thesis.

the creation of government sponsored aid programs, invoke value conflicts that may be particularly controversial.

For example, within the “struggle versus entitlement” dilemma, entitlement is the belief that people have “basic rights” that ought to be met without question. An individual falling on the “entitlement” side of this conflict likely believes that every individual is entitled to certain benefits to be provided by society, and therefore, the government. On the opposite side of this conflict, “struggle” highly values competition and work in order to earn certain benefits, rather than receiving them by right (Tropman 1989, 98-99). Struggle is seen as beneficial to society and the government should not coopt this with “handouts.” This value conflict is present in the social welfare policy when public funds are used to ensure that people receive services from the government to assist them.

Though conflicting, the values discussed above may result in compromises within Congress. For example, Social Security programs are entitlement programs that require contributions. Compromise is indicated by the notion that a person is guaranteed a pension from the U.S. government during retirement, however, that pension must be earned by contributing (in addition to one’s employer) while in the workforce (Tropman 1989, 99). Opposing value-motivated positions, are present and defensible in each of Tropman’s dilemmas. These dilemmas are present across policy arenas, and are not specific to social welfare policy.

This work uses Tropman's assertions on value structure, conflict, and policy dilemmas as inherent to a culture and influencing individual actions as the basis for

denoting that value conflicts drive hyper-partisan lawmaking in the United States. Values are a key component of any culture, and influence the actions taken by a culture and the individuals that comprise it. Within a culture, individuals and groups prioritize values differently, and therefore, value conflicts are inherent to society. These conflicts spill over into the policymaking arena, often causing partisan clashes between Democrats and Republicans.

### **American Exceptionalism: A Dominant American Value**

There are some values that can be viewed as dominant in and specific to American political discourse. One such value is American “exceptionalism,” which has been consistently prevalent in American society, from the nation’s founding to its present. American exceptionalism is the belief that America is inherently unique and morally superior to other countries. The concept of Americans possessing certain “inalienable rights,” lends itself the view that America is superior and unique by its citizens and leaders. This concept was unique to government at the time of founding. It can be attributed to the belief by Americans that the nation is fit to act as a “world leader” in a broad range of instances; including but not limited to military conflicts, economic issues and protection of human rights. Many notable Americans have spoken of this value, rooted first in religious beliefs in the country’s founders.

## Historical Roots of American Exceptionalism

The concept of "America as Exceptional" can be traced to John Winthrop, a Puritan leader who served as Governor of the Massachusetts Bay Colony in Salem in the mid-1600s (Baldwin 2005, 7, 19-21). Winthrop, who has been called the "first citizen of early New England" was an attorney who viewed politics as a calling "equal to ascending to the Christian pulpit" (Baldwin 2005, 9-10). Puritans were a sector of the Protestant Church that believed that the Church of England should rid itself of hierarchical strictures, ceremonies and rituals that remained from the Catholic Church of Rome (Baldwin 2005, 10). A desire to practice his religion freely and the opportunity for employment prompted Winthrop to move to the colony in New England, where he would serve as Governor of the Massachusetts Bay Colony (Baldwin 2005, 16-17).

Winthrop regularly gave Puritan-rooted sermons. His most famous was delivered aboard the *Arabella*, the ship on which Winthrop sailed to the Massachusetts Bay Colony in 1630. This speech is generally accepted as the foundation for "American Exceptionalism." Winthrop, taking from Bible Scripture, referred to the new land, which would become America, as a "city on a hill." The phrase was taken from Matthew 5: 14-16,<sup>3</sup> which states: "You are the light of the world. A city built on a hill cannot be hid. No one after lighting a lamp puts it under the bushel basket, but on the lampstand, and it gives light to all in the house. In the same way, let your light shine before others, so that they may see your good works and give glory to your father in heaven" (NRSV 1989).

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<sup>3</sup> Quote of Scripture taken from Matthew Chapter 5, lines 14-16 in the New Revised Standard Version of the Holy Bible.

Using that Matthew 5: 14-16 as his base text, Winthrop said to those aboard the ship, “Men shall say of succeeding plantations: the Lord make it like that of New England. We must consider that we shall be as a city on a hill, the eyes of all people are upon us.” This statement indicated that Winthrop saw the colony as an opportunity to create an ideal community, embracing the Protestant values with political and community life (Baldwin 2005, 17). Winthrop saw membership in such a society as a privilege because of the rights and freedoms, initially religious, if afforded. Living in a privileged society fostered the belief by Winthrop that its citizens should “give back” or contribute to society for the privilege in living in such an exceptional community (Baldwin 2005, 21). Because of the circumstances in the colony, Winthrop saw those who were living there with him as special.

Winthrop’s perspective on America as exceptional is also evident in the Declaration of Independence,<sup>4</sup> written over a century later. It states:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their powers from the consent of the governed.

Further affirming the belief in American Exceptionalism was Thomas Jefferson, who in an address given in 1801 referred to America as “the world’s best hope” (Burstein and Isenberg 2011). References to American Exceptionalism appear in nationalistic speech throughout American history. Even today, Winthrop’s beliefs about citizenry are

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<sup>4</sup> Commonly referred to as the Declaration of Independence, the title of the document is “The unanimous Declaration of the thirteen united States of America,” and is listed in References as such.

important to American political discourse. When President Ronald Reagan was in the White House, he said regarding Exceptionalism, “It is used to justify involvement in foreign conflict, in policymaking regarding civil rights of citizens, and a variety of other policymaking decisions. If America is exceptional, then it possesses an unmatched authority. This has been seen as positive and negative over time, but its prevalence is undeniable” (Burstein and Isenberg 2011).

In recent years, politicians accuse one another of not subscribing to American Exceptionalism, implying a lack of patriotism. This has become a partisan tactic, mainly employed by Republicans. The *Washington Post* devoted an article on American Exceptionalism and its association with the Republican Party, published on November 29, 2010 (Tumulty 2010).

### **Republicans and Democrats: Premises and Underlying Values**

#### A Present-Day Republican Value: Limited Government

John Stewart Mill in “On Liberty,” published in 1859, questioned the nature and limits of power which can be legitimately exercised by society over the individual (Mill 1859, 1). Mill held that even in a democracy, there is a risk of “tyranny of the majority,” whereby the will of those in power (even if elected democratically) stifle individualism and liberty (Mill 1859, 3). Mill believed that there should be protection against society’s propensity to impose its will, both through government and through social means in order to maintain individualism (Mill 1859, 4-6).

In *Capitalism and Freedom*, published in 1962, over a century after *On Liberty*, Milton Friedman expanded Mill's concepts in his assertion that a largely unfettered market place should be permitted to exist, and manage a broad range of activities. Such a scenario is preferable to having the government manage the marketplace. The premise conveyed by Friedman in this seminal work is a tenet of the present-day Republican Party. As such, Friedman's school of thought is used in the analysis of events related to partisanship's evolution, representative of the values motivating Republican positions.

Friedman states that while the government should be both a "rule maker" and an "umpire" for society, it should be involved in its day to day activities as little as possible. The government should be largely "hands off" on issues related to the economy, allowing capitalistic forces to manage its activities and much of its regulation. This implies that the government should be small in size and narrow in the scope of its activities. Friedman also asserts that economic freedom in and of itself is a key component of freedom overall (Friedman 1962, 9). Moreover, he contends that competitive capitalism promotes political freedom because it separates economic power from political power (Friedman 1962, 9). That is, when individuals are able to function independently and manage their own affairs within the marketplace, they are empowered as masters of their own destiny. As such, government becomes less important when it does not have power within the economy. This provides citizens greater independence and therefore political power.

Friedman's views are particularly relevant to this thesis because the scope and role of government in the markets and in society is omnipresent in partisan conflict. According to Friedman, the government should work to maintain freedom both to

combine and compete, protecting the concept of capitalism and free enterprise (Friedman 1962, 25-26).

The constitutional provision that gave Congress the right to “coin money, regulate the value thereof and of the foreign coin” allowed for it to expand into wider economic involvement, increasing the danger of enhancing the scope of government to cover activities that are not appropriate in a free society. Friedman specifically notes that detailed regulation of the banking system and regulation of industries are unacceptable (Friedman 1962, 35). Friedman also opposed establishing a “federal budget” and government spending to “prop up” an ailing economy. The creation of government programs to combat economic recession is also problematic, because in Friedman’s view these programs are difficult to eliminate once they’ve been created, and often do not come to fruition until an economic downturn has passed (Friedman, 1962, 6-7). Friedman felt these expand the government’s size and scope to the detriment of its citizens (Friedman 1962, 33). This type of “over involvement leads government officials to adopt a self-righteous tone of the schoolmaster keeping unruly pupils in line” (Friedman 1962, 77).

In his conclusion to *Capitalism and Freedom*, Friedman underscores that the threat of an ever-expanding government is real stating that “there is still tendency to regard any existing government intervention as desirable, to attribute all evils to the market and to evaluate new proposals for government control in their ideal form. There is a gap between the effects of government intervention and their intended effects” (Friedman 1962, 197).

In summary, Friedman contends that government in free society should have clearly limited functions and would refrain from a host of activities that are now undertaken by federal and state governments, in the U.S. and elsewhere (Friedman, p.34-35). The values of Friedman are particularly relevant in analyzing the Republican position on economic policymaking, as Republicans tend to favor a self-regulatory economy with limited government oversight.

#### A Present Day Democratic Value: Government Intervention

Walter Trattner's work, *From Poor Law to Welfare State*, is the basis for evaluating positions opposite those of Friedman. It is used as representative of values typically associated with the Democratic Party. Trattner speaks to the benefit of government involvement in social programs, and therefore in policies intended to assist citizens in a variety of ways.

#### *Review of U.S. Welfare Policy*

Prior to the economic crisis of the 1930s, local agencies undertook and managed charity and aid to the poor (Trattner 1999, 273). These institutions were funded and implemented by private agencies and citizens. When the stock market crashed in 1929, they rapidly became overwhelmed with the increased need for services by those impacted by the economic crisis (Trattner 1999, 273). Trattner characterizes private philanthropy at that time as “about as useless as trying to put out a forest fire with a garden hose” (Trattner 1999, 273). Because of the Depression's widespread impact, between 1929 and

1932 one third of the nation's private agencies who traditionally provided services to those in need ceased to exist because of a lack of funding.

According to Trattner, the Depression answered the question as to whether private or public agencies should be responsible for "relief giving." The message was clear: public, or government funded agencies should manage relief for its citizens (Trattner 1999, 274). The creation and funding of aid programs was an appropriate role for the government to fill. Unlike Friedman, Trattner did not view such an undertaking as inappropriate or undemocratic. The government, in Trattner's view, was compelled to aid its citizens (Trattner 1999, 277).

A number of key inroads to the United States government overtaking social aid programs were borne during the Depression and New Deal. The State Unemployment Relief Act of New York or the "Wicks Act," enacted September 23, 1931 is seen as the first major step the toward public charity. The Act designated significant government funds to assisting the poor as a result of Depression, through monetary unemployment benefits. Trattner says, "The Act was of major significance. Among other things, it helped establish the constructive social value of adequate public relief and thus helped to break down the notion that such aid tended to pauperize and demoralize its recipients (Trattner 1999, 279). The Wicks Act was copied by twenty-four additional states by the end of the same year, demonstrating a widespread need for government aid for the unemployed (Trattner 1999, 280).

A large number of programs were created as a result of the New Deal, spanning a number of industries and vehicles for aid. For example, the Civilian Conservation Corps

(C.C.C.) put thousands of young unemployed men from rural areas and employed them to work on reforestation and flood and fire control projects. The U.S. Housing Authority provided low-interest loans to allow local governments to build public housing for the poor. Though the means of assistance were wide-ranging, two programs stand apart as pivotal in the evolution of government sponsored social aid: the Federal Emergency Relief Act and the Social Security Act of 1935.

The Federal Emergency Relief Act of 1933 (F.E.R.A.) “opened up an era of federal aid that had momentous consequences for the social welfare, made \$500 million at the outset for emergency unemployment relief, and transferring responsibility for the relief of US citizens in need to the federal government” (Trattner 19991, 284). The Act distributed grants to states to be used for unemployment relief, including emergency work programs, housing, and surplus commodities program for rural families (Trattner 1999, 285). This was a large step in transferring responsibility for social welfare programs to the federal government.

The second key program resulting from the Depression and New Deal was the Social Security Act of 1935 (S.S.A.) The Act established a system of social insurance, specifically aimed at curbing poverty among the non-working elderly. It established pensions, public assistance for the elderly, unemployment insurance for jobless, and public assistance to dependent children in single-parent families, as well as to handicapped children and the blind. “Old Age” insurance was the most significant component of the program. Through taxes on wages and on an employer’s payroll, workers were to receive retirement funds at age 65. This Act is critical because its scope

has repeatedly been a vehicle for further expanding government responsibility for the welfare of its citizens.

Trattner asserts that it is the government's duty to aid its citizens, and that federal inaction to help citizens leads to discontent and can result in an uprising of citizens. He notes, "as a result of federal inaction, by the fall of 1932, the nation faced serious threat. "Disorder spread, and talk of revolution was heard" (Trattner 1999, 280). The Depression was not the only time period in which lack of government aid has led to discontent. Trattner uses the riots in the mid-60s as an example of government inaction to curb economic exploitation and unemployment resulting in discontent (Trattner 1999, 281).<sup>5</sup> As such, it can be inferred that there is a certain amount of social control associated with federal social aid programs, in that the action of the government can prevent citizens from uprising. When viewed from a social control perspective, government aid can be seen as controversial.

According to Trattner, the economy was revived in the wake of the Depression by government spending, which restored confidence in the nation's basic institutions and avoided further disaster (Trattner 1999, 281-283). Public assistance was not a matter of charity, of justice related to an individual's right to a minimum standard of living in a civilized society. Present day-Democrats largely subscribe to this line of thinking, and therefore hold that the government has a responsibility for the well-being of citizens, upon whom its existence rests. This value has been significant in shaping partisanship

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<sup>5</sup> A recent example of this is the "Occupy Wall Street" protests, which began in New York and spread throughout cities the United States in the fall of 2011. Those are disenfranchised by a government they feel favors the wealthy.

and party positions throughout history. It stands in opposition to the Republican held view of a "hands-off" government under which citizens are expected to largely fend for themselves.

The works of Friedman and Trattner are representative of the divergent perspectives on the role of government held by Republicans and Democrats, and the values underpinning them. Because Republicans associate with Friedman's view that government should have a limited role in society, they often take policy positions which promote individual independence, freedom and competition. Democrats tend to orient themselves with Trattner. They are regularly of the opinion that government can expand the size and scope of its activities if in doing so they are providing services and aid to citizens. As such, they tend to support policy positions that promote community, regulation and government protection. Over time, these values have become more sharply divergent, and less capable of compromising in order to create bipartisan legislation. Uncompromising values encourage increasingly partisan behaviors. These differing views on the role of government by Democrats and Republicans help in understanding why hyper-partisanship often drives the legislative process.

## CHAPTER 3

### GOVERNING IN THE EAR OF HYPER-PARTISANSHIP: 2000-PRESENT

This chapter reviews some of the key characteristics and tactics of a “hyper-partisan” Congress before examining how Congress arrived at this point. Given that Congress is made up of representatives from different states, with the number of representatives per state based on population, one can expect the body to be diverse and differing in its values and priorities. As such, this body would be expected to create and pass legislation that has resulted from some amount of consensus-building. Traditionally, Congress has functioned with generally agreed upon and known procedures and practices dictated by the rules of the House and Senate, and behaving in as civil a manner as one could reasonably expect in a professional environment.<sup>1</sup> A hyper-partisan Congress is not closely aligned with of these premises.

Governing in the hyper-partisan era involves various and ever evolving tactics to exclude the opposing party from the governing process. Four features are integral to a hyper-partisan Congress, and appear time and again when examining the actions of the Congress from 2000 to the present. They are a lack of civility and respect that was historically present in the Congress, refusal to negotiate with members of the opposing party to reach consensus, manipulation of congressional processes to serve the legislative aims of a party, and adhering to what we will call a “pass-repeal” or “pass-defund” mentality regarding legislation. That is, the minority party is either excluded from or

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<sup>1</sup> Mann and Orenstein review the “traditional” Congress in the first several Chapters of *Broken Branch*, as source utilized in this thesis for more specific information and included in the reference list.

refuses to participate in the legislative process on a particular bill, and attempts to repeal it or deprive it the necessary funding for implementation when they regain the majority. While these tactics have occasionally appeared in the history of Congress pre-2000, they have become dominant features of a hyper-partisan environment. They can at least in part be attributable to the uncompromising values and value conflicts between Democrats and Republicans that are pervasive in the hyper-partisan era.

### **Lack of Civility and Respect for Tradition in Congress**

Historically, Congress has functioned by and large with respect for fellow lawmakers and respect for the Executive Branch. Conduct in the chambers of Congress reflected respect for the institution of government and its members. Mann and Orenstein review the traditional or historical Congress throughout their work, and in doing so highlight how it has changed. What was once an institution in which Members were civil to each other, if not in agreement, has changed dramatically as hyper-partisanship and value conflicts have become more influential. The way Members now behave contributes to an environment in which compromise, consensus building, and cooperative legislating is unachievable. Examples of this can be found almost daily in the *Congressional Record* and in the press. Below are several examples of such behavior.

Comprehensive healthcare reform legislation was passed during President Obama's first term. The process that yielded the legislation was demonstrative of many hyper-partisan tactics, and highlighted the lack of civility that can prevail in a hyper-partisan Congress. Outside of the legislative process itself, one incident highlighting the

lack of respect and civility in the government occurred when President Obama addressed a joint session of Congress in a televised, prime-time event. His intent was to explain the Administration's plan for health care reform and to clarify disinformation being spread by opponents of the legislation. During the September 2009 address, Congress Joe Wilson (R-SC), a conservative Republican and previously low-profile Member yelled 'You Lie!' at the president in the middle of his speech. Wilson did this when Obama stated that illegal immigrants would not benefit under the then-proposed healthcare reform plan (Scherer 2009). The incident was covered by media outlets across the nation.

*Time Magazine* reported that "the House chamber took a collective gasp. Nancy Pelosi, sitting behind Obama, tensed and scowled as if she had just witnessed a crime, her disgust unhidden. Democratic Senator Patrick Leahy (VT) was beside himself as he walked out of the House chamber. "I've been here for 35 years. I've been here for seven presidents. I've never heard anything like that" (Scherer 2009). The breach in protocol received widespread condemnation, and resulted in an apology from Wilson, who blamed the emotional nature of the debate for his outburst (Scherer 2009). The damage was however done, given the outburst occurred on live television.

Another example of a change that is demonstrative of the hyper-partisan era is the treatment of Supreme Court Justice Nominees by Congress. Traditionally, nominees to the Court were confirmed by both parties. This practice demonstrated respect for the Executive branch in its appointment of justices that would interpret the Constitution largely without partisan bias. That changed noticeably with Justice Samuel Alito, nominated by President George W. Bush in October of 2005. Alito was confirmed in a

58-42 vote, with only four Democratic Senators voting in favor of his confirmation.

Reciprocating, Obama's Supreme Court nominee Elena Kagan was confirmed in August of 2010 in another largely partisan vote of 63-37, with only five Republicans voting in support of Kagan (Hulse 2010). This break from tradition demonstrates a diminishing respect for Presidents of the opposing party. It also demonstrates that partisan bickering becomes a "tit-for-tat" situation in that one party seeks to reciprocate any wrongs they feel were done to them.

Finally, the vitriol present on the campaign trail for Congressional and Presidential elections is arguably unmatched in its demonstration of the lack of respect between government officials and aspiring government officials. It has become an arena in which anything goes. One demonstration of this behavior occurred when former Republican House Speaker Newt Gingrich was debating running for the White House in 2012. When discussing the reasons for running, he referred to the Obama Administration as "representing as great a threat to America as Nazi Germany of the Soviet Union once did" (Avlon 2011). To discuss a sitting President in such a manner, and invoking two of the most controversial and maligned periods in world history indicates that all boundaries have been broken in terms of respect for elected officials.

The lack of civility between Democrats and Republicans that is consistently a feature of U.S. politics demonstrates how value conflicts and partisanship influence the day-to-day functioning of the U.S. government. If compromise and consensus were encouraged in the Congress, it would seem unlikely that such vitriolic speech would be resorted to in order to convey the values of a party.

## **Refusal to Negotiate and Engage in Consensus-Building**

Refusal to negotiate is a key feature of a hyper-partisan legislature. This occurs when one or both political parties take a position on a legislative issue and refuse to alter it in any way during the legislative process in order to reach a compromise with the other party. In one iteration of the situation, the majority party does not require any or many minority votes to pass legislation. In this situation neither party is required to negotiate at any point in the process in order to pass a proposed law. However, this may also occur when Minority votes are needed to pass a proposed law. In such a situation, members of the minority party can refuse to negotiate with the Majority throughout the legislative process, until such time passage of legislation becomes of critical importance to the Congress, the public or the Presidency. In such cases the Minority may demand provisions that represent their values be included in the legislation by holding out until the “last moment” and trading legislative gains for their votes. This does not represent negotiation or compromise in a traditional sense, and is referred to as “political brinksmanship” (Goldfarb 2011). An example of this which has occurred and will be undertaken by the Congress again is the issue of the “debt ceiling.”

### **The Debt Ceiling “Negotiation”**

In August of 2011, Congress was required to pass legislation that would raise the so-called “debt ceiling,” that is, the legal limit above which the United States Treasury

cannot borrow funds.<sup>2</sup> Raising the debt ceiling becomes necessary when the current borrowing limit is nearly reached. A result of increased borrowing ability is a growing national debt. The national debt, and therefore debt ceiling, are consistently the source of controversy. Republicans particularly oppose raising the debt ceiling, as it represents excessive government spending, characteristic, in their view, of an overly expansive government.<sup>3</sup> If the U.S. can no longer borrow funds, it could then default on its loans. A default by the United States could potentially have global economic implications, given the influence of the U.S. economy on world markets. These factors make the debt ceiling a controversial endeavor, but one seen as a necessary evil. In 2011, Republicans took the position that they would not raise the debt ceiling without significant cuts to government spending to offset the raise in limit (Tumulty and Bacon 2011). Additionally, Republicans opposed tax increases as a source of revenue to offset the debt ceiling increase, also in line with the Republican value of less government involvement and individual economic independence (Cooper and Thee-Brenan 2011).

The limit was set to be reached on August 2<sup>nd</sup> 2011 (Goldfarb, 2011). As the deadline for raising the debt ceiling without default neared, Republican Speaker of the House John Boehner (OH) and Republican Majority Lead Eric Cantor (VA) gave the appearance of refusing to negotiate with President Obama and Democrats in Congress to reach a workable compromise on the debt ceiling (Cooper and Thee-Brenan, 2011). Republicans were offering a short-term solution in order to push for more spending cuts in the future, while Obama and Democrats wanted a long-term solution for the debt

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<sup>2</sup>Forbes.com and numerous other publications describe the debt ceiling as such.

ceiling issue, so that this battle would not have to be undertaken again in the near future. During a particularly contentious meeting between Congressional Leadership and the President, President Obama said to Cantor, "Eric, don't call my bluff. I'm going to the American people on this," the President said, according to both Cantor and another attendee. "This process is confirming what the American people think is the worst about Washington: that everyone is more interested in posturing, political positioning, and protecting their base, than in resolving real problems." Obama then stormed out of the meeting (Stein 2011).

The debt ceiling was eventually passed, with a last minute compromise being worked out on the eve of default. Among other components, the deal included a short term fix raise to the debt ceiling to pay immediate bills, and raised the ceiling by an additional \$500 billion to last through February 2012. The deal put in place measures that would cut the U.S. spending deficit by \$2.1 trillion over ten years. A special joint Committee comprised of twelve Representatives and Senators from both parties must recommend \$1.5 trillion in deficit reduction actions. These recommendations must be voted on by December of 2011 by the full Congress, with no amendments to the plan permitted. In the end, it could be said that by holding out, Republicans made gains in getting a short-term fix, forcing another debate on the issue at the end of 2011, and were able to demand additional cuts. In the view of Democrats who were searching for a longer term fix, this deal simply delayed the inevitable need for a bipartisan, long-term solution for the debt ceiling.

The public did not react favorably to how the negotiation, or lack thereof, had taken place. In a poll taken by the New York Times and CBS News, four out of five Americans surveyed saw the debt ceiling negotiation as more about political advantage rather than the good of the economy, and the country. Three quarters said the entire debate damaged the image of the United States in the world (Cooper and Thee-Brenan, 2011). There was a 72% disapproval rate regarding the way Republicans, who held a majority in the House but not the Senate at that time, handled the negotiations and 66% disapproved of Democrat's handling of the negotiations. Democrats held the majority in the Senate and the White House. (Cooper and Thee-Brenan, 2011). Chris Lehane, a former White House official under President Clinton, was quoted as saying regarding the debt ceiling debate that "most people in these offices want to do the right thing for the country, but you have a structural system in place that's counter to the two parties finding the sweet spot of common ground" (Tumulty and Bacon, 2011). This occurred because the bill would have to pass out of a Republican House and a Democratic Senate, and be signed by the Democratic President to become law. As a result of what was viewed as an unsuccessful negotiation, Standard and Poors, or S&P, downgraded the credit rating of the United States, an action never previously undertaken.<sup>3</sup> In its announcement, S&P representatives said that "political brinkmanship" in the debate over the debt had made the U.S. government's ability to manage its finances "less stable, less effective and less predictable" (Goldfarb August 2011).

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<sup>3</sup> S&P, a renowned and respected financial credit rating agency downgraded the U.S. credit rating from AAA, the highest rating possible, to AA+ in the wake of the debt ceiling negotiation.

The hyper-partisan tactic of refusing to engage in negotiation and compromise until the last possible moment has a clear impact on not only the legislative product yielded, but also, as indicated by the debt ceiling example, can have further reaching consequences. In this case, the inability of Democrats and Republicans to compromise the values of taxation, spending, and the size and scope of government led to a tangible impact on its economy and reputation.

## CHAPTER 4

### HYPER-PARTISANSHIP: HOW DID WE GET HERE?

To contextually understand how one-party lawmaking, such as the process that produced the Dodd-Frank Act, has largely replaced consensus legislating in the U.S. Congress, this chapter examines time periods critical to the evolution of partisanship. Inextricable to the evolution of partisanship to its current “hyper-partisan” state are the values espoused by political parties. Values play a critical role in driving partisan behavior and tactics, both historically and at present.

The phenomenon of hyper-partisanship is relatively new. As recently as the 1970’s, conflicts and alignments in Congress regularly crossed party lines. The legislative process was driven more by ideological and regional priorities than those dictated by national political party leadership. Seniority and status also played a large role in the manner in which Congress functioned. For example, the relationship between Chairmen and Ranking Members of House and Senate committees tended to be closer than those between the Chairman and his or her colleagues of the same party (Mann and Orenstein 2006, 50). National party leadership and agendas were not firmly centralized until the 1990’s (Mann and Orenstein 2006, 11). Despite a tradition of cross-party cooperation, a number of events influenced the evolution of partisanship, leading to the hyper-partisan behavior and lack of cross-party cooperation between that exists today. Though not always a dominant force in the political landscape, partisanship has been present since the nation’s founding.

## **Roots of American Partisanship**

Political parties are not mentioned in the Constitution of the United States. The danger of “factions” within government was raised by delegates to the Constitutional Convention and in debates to ratify the document (Mann and Ornstein 2006, 24). Despite concerns regarding the impact like-minded, organized groups of individuals could have on the political process, the ratification concluded without formalizing guidelines regarding political parties.

Additionally, the Constitution does not dictate many specific rules with regard to how the Congress should function on a day-to-day basis. Such omission left many rules and procedures to execute the duties of the legislative branch to institutional discretion. This implies that rules may be changed over time, as the members of the legislature change. Both of these facts are significant in the evolution of political parties and their ability to influence the manner in which Congress operates.

The fear of “factions” within government was also raised by the first American President, George Washington, in his 1796 farewell address. Washington said:

All obstructions to the execution of Laws, all combinations and associations under whatever plausible character, with the real design to direct, control, counteract or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle, and of fatal tendency. They serve to organize faction, to give it an artificial and extraordinary force, to put, in place of the delegated will of the nation, the will of a party, often a small but artful and enterprising minority of the community; and, according to the alternate triumphs of different parties, to make the public administration the mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans digested by common counsels, and modified by mutual interests... associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent

engines, by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people, and usurp it for themselves the reins of government; destroying afterwards the very engines, which have lifted them to unjust domination.

Washington's message was clear: organized political parties were a detriment to the United States of America. Despite Washington's misgivings, loose coalitions within the new government soon formed into more solid alliances, eventually separating into two groups; the "Federalists" and the Opposition, or "Republicans." Federalists supported the Administration and favored a strong federal government. Federalists supported commerce and manufacturing as a means of economic growth. Republicans supported state's rights, individual liberties and freedoms. Republicans favored agriculture as a means for commerce.<sup>1</sup> The different priorities between the two parties and the impact these "factions" could have on the political process became glaringly evident in the election of 1800.

### **The Election of 1800**

In the Presidential election of 1800, Thomas Jefferson, a Republican, defeated incumbent President John Adams, a Federalist. Jefferson and Adams espoused the values of their respective parties. This was the first election in which the candidates had clear, nationally defined party affiliations that voters associated.

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<sup>1</sup> John Ferling's book, *Adams vs. Jefferson: The Tumultuous Election of 1800* describes the values and priorities of both the Republican and Federalist parties throughout the text. Complete information on the book is included in the Reference List.

Adams believed that government had the potential to foster a great amount of good and that a strong executive branch should be “nothing less than the father and protector of the nation and its citizens” (Ferling 2004, 26 30). Adams saw the President, and behind him the federal government as responsible for national security. He viewed the government as a guardian of the people (Ferling 2004, 120). As the election of 1800 neared, members of the Federalist Party were viewed by some of the working class as the party of the wealthy. The working class held the perception that Federalists were those who did not work with their hands, but rather owned property and participated in financial speculation in order to earn wealth. They represented, at that time “the advantaged few” and were perceived as keeping tight control on the money supply (Ferling 2004, 128).

On the contrary, Jefferson was of the view that individuals should be as liberated from government involvement in everyday life as possible. Jefferson held an inherent distrust in centralized government. This was typical of the Republican Party at that time. Jefferson held that a government with significant powers would inevitably become corrupted (Ferling 2004, 26). Republicans oft viewed Europe’s governments as examples of oppression and corruption, and some were supportive of elements of the French Revolution as a result. Jefferson once said with regard to the two political parties that “one which fears the people most (Federalists) and the other the government (Republicans) (Ferling 2004, 33). Other specific initiatives embraced by Jefferson and his party were reducing taxes and eliminating the existence of a national army. Finally, Republicans were supportive of freedom of religion.

As the election of 1800 approached, the parties became more organized, and both used media to purvey their messages to the public as well as to attack one another. Republicans were particularly effective in their use of newspaper and media. They developed Republican clubs and societies in many states to aid in the distribution of party literature and make their positions known (Ferling 2004, 144). Both parties engaged in negative campaigning and rumor spreading about the candidates (Ferling 2004, 151).

Eventually, Thomas Jefferson and the Republican Party won the Presidency. The participation of urban workers is seen as a contributing factor in Jefferson's victory (Ferling 2004, 166). As previously noted, the working class disconnected with the ruling party and opted for change. The election of President Thomas Jefferson demonstrated a number of themes that have recurred since that time, specifically, the appropriate size and scope of government, different perspectives on the economy, and differing values between classes. The election of 1800 set the stage for a two-party system, with highly partisan elections. In this instance, Adams and the Federalists valued strong central government that appeared to favor the wealthy. Jefferson and the Republicans represented the working, rural class, who valued personal liberty and individual freedom over a strong central government. The tendency to use media and propaganda, and to exploit disenfranchisement with a ruling party is something seen time and again throughout the evolution of partisanship. The election of 1800 was a watershed moment in the evolution of partisanship in firmly entrenching a two-party, partisan political system. Though the specific values and priorities espoused by the two parties have changed over time, the tendency to organize two parties around shared values and goals

was prevalent from the birth of the United States. With a two-party system firmly in place after the election of 1800, the shift in political affiliation in the American South as a result of the Civil Rights movement is the next phase examined in the evolution of partisanship.

### **Changes in the American South: Voting Rights Act and the Disappearance of the Southern Democrat**

#### Background and Context

A defining issue in U.S. history, and one critical to partisanship's evolution, was slavery and its aftermath. Slavery was an issue that very much shaped the U.S. Constitution and governance design and is a key component in the development of the political landscape and partisanship in the American South. When the U.S. Constitution was being debated, the issue of slavery was raised for reasons of taxation and representation, as well as for other humanitarian reasons related to the treatment of fellow human beings. States with large populations of slaves, generally in the South, argued that slaves should count toward their populations, in terms of the number of elected Representatives each state would have in the House of Representatives. Southern slave owners did not however want to pay taxes for their slaves. Northern states were of the opinion that if slaves were counted toward governmental representation, then they should also yield tax income from those states. Out of this dispute, the so-called "Three-Fifths Clause" was born (Ohline 1971, 563-564). For every five slaves, three would be counted as "people" for purposes of taxation and representation in Congress.

Beyond the three-fifths compromise, whether slavery should remain legal, who should determine laws relating to slaves, and other issues of state's rights were divisive during the creation of the U.S. Constitution. Regional differences eclipsed partisanship at that time, but issues of Civil Rights eventually caused partisanship and regional disputes to align. Eventually, the Southern states realigned themselves with the Republican Party.

Not surprisingly, slavery made for sharp regional divides beyond the Constitutional Convention. Slavery caused deep divisions within parties and most importantly, prompted the Civil War. The War, abolition, segregation, and the Civil Rights movement that followed were incredibly divisive issues in American history. This section does not focus on the Civil War itself, but rather policies and events that impacted the partisan makeup of the south and its contribution to the hyper-partisan present. With a Northern victory, slavery was abolished in the mid-1800s. Almost exactly one century later, the practice of segregating blacks and whites in public and private places, and discouraging blacks from voting by a variety of practices was increasingly seen as unacceptable.

By the 1960's, the Democratic Party was dominant in the southern region of the United States; however, southern Democrats were considered "conservatives" within the party (Bond and Fleisher 2004, 432). In spite of voting Democratic, their more conservative values caused the group to vacillate between party alignments on an issue by issue basis. In the post-Civil War and New Deal era, such party overlap on issues was common, as were coalitions and bipartisan cooperation. However, the 1960's brought forth a number of social movements, including the Civil Rights movement, which

realigned Republican and Democratic values at that time. This caused a sharp divide between the two parties. It was during this time that Republicans became a more formidable party in the South, resisting Civil Rights initiatives, and the Democrats became the more socially liberal party, supportive of initiatives to give blacks more rights. The Presidential nomination of Republican Senator Barry Goldwater in 1964 highlighted the changing tide of partisan affiliations in the South and is a critical point in partisanship's evolution.

### The Goldwater Campaign

Goldwater was a five term Senator from Arizona. He ran for President on a platform of issues that included opposing racial integration and other Civil Rights related legislation as unconstitutional. As reported by the *Washington Post* upon Goldwater's death in 1998, he also espoused the traditional, and previously identified Republican values of standing in opposition to high taxes, unbalanced budgets and "anything else he thought threatened individuals or free enterprise" (Barnes 1998). Senator Goldwater was an "avowed spokesman for traditional Republican views" (Crespi 1965, 530). He was more popular in the South than in the Northern and Eastern states as a result.

Goldwater did not win his bid for the presidency. Despite being defeated by Lyndon Johnson, the candidacy of Goldwater and his selection as the Republican nominee was very significant in the partisan makeup of the South, where he enjoyed support from whites and vehement opposition from blacks (Barnes 1998). With his unwavering positions on the aforementioned topics, Goldwater "consciously sought to

clarify and widen ideological differences between the parties” (Castle 1990, 103). In the race between Johnson and Goldwater, voters could see very clear divides on policy issues between the Democratic and Republican parties, and as a result aligned their own “partisan loyalties” according to who they agreed with on the issues of most importance to them.

At the time of Goldwater’s bid against Democrat Lyndon B Johnson, bills relating to Civil Right were being debated by Congress. These bills would afford blacks more rights and protections under the law. As a result, Civil Rights were a key issue for voters. Legislation regarding Civil Rights was far reaching, with the intent of expediting desegregation, enforcing the right to vote by banning discriminatory practices by federal state and local governments, ending discrimination in the workplace, and secure equal access to public accommodations and public facilities. These laws were very controversial in their challenge to the status quo (Castle 1990, 106). The Civil Rights movement deeply divided the Congress and the electorate, arguably as much as slavery itself had.

How did Goldwater’s candidacy and the issues of the day impact the partisan makeup of the country? From 1945-1964, Democrats scored lower than Republicans on issues of favoring racial liberalism. This was at a time in which Southern representatives to Congress were predominantly Democratic. During the election of 1964, Republicans gained influence, which increased voter turnout in the South. There was a 24.2% increase in voter turnout as compared to the election of 1960 in the Southern United States. Particularly remarkable was the increase in voter turnout in Mississippi, which had a

125%, increase, as were the 55% increase in Georgia, and the 40% increases in Arkansas and Louisiana. The rest of the nation saw a drop in voter turnout during that time period (Castle 1990, 109). In 1964 and beyond, competitive races for Representatives increased with conservative Republicans challenging Democratic incumbents in the southern states. Alabama, Georgia, Louisiana, Mississippi, and South Carolina all had conservative Republican challengers to congressional seats in 1964 (Castle 1990, 108). This is significant given that from 1946-1962 only 35.9% of House elections in the 11 southern states were two-party races, and from 1964-1984, 68.9% were two-party competitions (Castle 1990, 109).

It cannot be said for certain that it was Goldwater, Johnson, or a combination of factors that spurred Southern political alignment. However, it is undeniable that the values of maintaining the status quo among segregated states and Republican fiscal values were incompatible with support of Civil Rights legislation. This effectively eliminated the South as a stronghold for Democrats, and deepened partisanship between the parties and regions in which they were favored.

With a loss of strongholds in the South, the Democratic Party focused its efforts on the more socially liberal sectors of the Northeast and West. As noted above, the number of Republicans elected to office in the South increased significantly post-1965 (Bond and Fleisher 2004, 432). The Republicanism that took over in the South was indicative of a more value-driven partisanship (Nivola and Brady 2006, 20) in that it focused on preventing government intervention to aid the black population, arguing, like Goldwater, that it was unconstitutional for the government to involve itself in such

matters. The Southern United States remains a Republican stronghold to this day. The deterioration of Democratic dominance in the South can be attributed to the Civil Rights movement. It was exacerbated by the candidacy of Senator Goldwater and the election of 1964. This was critical in the evolution of American partisanship. Democrats and Republicans strongly opposed one another on the issues most important to voters at that time. As a result, voters supported the Party that represented their view on a divisive issue. This has continued as a trend driving hyper-partisanship. Though Democrats lost their stronghold in the southern United States, they were able to attain the Majority in Congress for decades, which further entrenched partisan practices in the Congress.

### **Decades of Democratic Majority in Congress**

Another critical factor in encouraging partisanship to increase to its present hyper-partisan state was the decade's long majority held by the Democratic Party in Congress. From 1955-1981 and from 1987-1994, Democrats held a majority in the United States Senate. The Democratic Party also held a majority in the United States House of Representatives from 1955-1994. Democrats became accustomed to setting the agenda and largely controlling the activities of Congress because they controlled of at least one house of Congress for nearly forty years. As a result, this period fostered practices in Congress that marginalized the minority party, Republicans, in order for Democrats to pursue a legislative agenda advanced their values. Without change in control for decades, the majority and minority status of each party likely seemed permanent.

As previously noted in this chapter, the rules under which Congress functions are largely determined by the leaders of the institution itself. Given their long-term majority, Democrats had time to enact procedural rules in Congress which facilitated the movement of their legislative agenda. Tactics utilized by the Democratic congressional leadership included the promulgation of rules that limited debate and amendments on the House floor, so that the Majority could move more quickly to pass legislation, stunting the ability for the Republican opposition to state their views. Democrats frequently created and passed enormous “omnibus” bills,<sup>2</sup> which were effective in burying provisions that Republicans could oppose. Such practice inhibited transparency in the legislative process (Mann and Orenstein 2006, 7). During this time there was little discernable motivation on the part of Democrats to engage or compromise with their Republican counterparts. In retrospect, one can infer that the Democratic Party at that time did not consider the long-term implications of such practices, particularly if they were to lose their majority to the Republicans.

The Democratic majority in the House became significantly narrower after the 1980 elections, with a loss of over thirty seats to Republicans. The Senate majority was lost to Republicans that year, but was later regained by Democrats. Rather than working in a bipartisan fashion with growing Republican representation in Congress, Democrats increasingly took advantage of House procedures to advance the Democratic agenda. For example, Democratic leaders manipulated House rules to increase their numbers on key congressional committees. They did this in order to maintain a workable majority so that

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<sup>2</sup> Omnibus bills are defined by dictionary.com as including or dealing with numerous items at once.

important legislative initiatives would pass a vote in those committees without Republican support. This ensured their ability to pass bills out of committees even if there were some Democrats who strayed from official Democratic position on legislation (Mann & Ornstein 2006, 69). The longstanding Democratic majority was critical in the development of hyper-partisan behavior because of the tactics employed by the Majority. It highlights the growing aversion to bipartisan work, even when representation of parties was becoming more balanced. This period arguably set the stage for Republicans to behave in a similar manner once they regained a majority in Congress.

#### Democratic Initiatives and Values in the Majority

During the time of Democratic control of Congress, government spending grew consistently in order to create a variety of new government sponsored programs intended to assist and protect its citizenry in a variety of manners. The Democratic Party subscribed to the belief that government should be responsible for the welfare of its citizens, and should ensure they are provided through the government.<sup>3</sup> Though government spending does not necessarily indicate mal-intent, this practice created a significant spending deficit and national debt during their tenure in the majority. Working toward protectionist values and support of public welfare created as a bi-product, a central issue for Republicans to campaign against the Democrats with: too much government spending, and too much government involvement in the lives of everyday citizens,

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<sup>3</sup> This is in line with Walter Trattner's view on the role of government, reviewed in Chapter 1.

hallmarks of the Republican value system. Republicans tend to favor smaller government, self-sufficient population, and lower taxes.<sup>4</sup>

The size and scope of government is viewed very differently between differently citizens, and in particular between the accepted political discourse of the Democratic and Republican parties. During a time of extended majority, Democrats had the opportunity to pursue their values, while the Republicans were sidelined. When Republicans gained the majority, they practiced many of the same tactics as Democrats, yet with different values underpinning their legislative agenda. As a result of increasing partisanship, moderates in the Democrat and Republican parties began to disappear around the 1980's, constituting the next critical period in hyper-partisanship's emergence.

### **The Disappearing Middle**

The 1980s were a time when moderates within the two main political parties, commonly referred to as the “middle,” began to disappear. This period coincided with the last decade of the longstanding Democratic majority in Congress. Moderates, or “the middle,” are those who belong to a party, but don't strictly adhere to partisan policy positions. They are generally less extreme in their views and less rigid in their voting behavior. Republican gains in Congress during the 1980s threatened the Democratic majority, and as such, the Democratic legislative agenda. There became increasingly less room for diverging views within the Democratic Party because of a narrower majority. If Democrats were to vote against key democratic initiatives, a bill could fail to pass,

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<sup>4</sup> These are the values represented in Milton Friedman's work reviewed in Chapter 1.

whereas when they held a large majority, some dissent was possible without losing a vote. So too was the case with Republicans. If Republicans voted as a united block to oppose Democratic measures, and were fortunate enough to have a few Democrats join their side, they could achieve the outcome they desired on a particular vote, whereas in the past they had very little chance of doing so. As control of the Congress became less secure, party unity became more important.

Also during the 1980's congressional districts produced more homogenous constituencies (Bond and Fleisher 2004, 431). Majority one-party districts ensured that the Representatives from those districts could espouse partisan values and policy agenda while adequately representing their constituents. Research by Richard Fleischer and John Bond indicates that moderates were increasingly replaced by more partisan members of their party rather than becoming more partisan themselves. They also assert that during the 1980s and 1990s, the probability of another moderate winning an open House seat was cut nearly in half to 36% for Democrats and 21% for Republicans. In the Senate, the number of moderates elected to open seats fell to 8 percent for Democrats and 25 percent for Republicans. Also, moderates became less likely to lose elections to other moderates, and more likely to lose to partisans (Bond and Fleisher 2004, 445). Reasons for this trend toward extremism include some change in the way parties selected their candidates, attracting more partisan candidates. It is also indicative of a change in voter preferences for candidates, as they elected more partisan representatives to Congress. Regardless of the reason, more complete alignment with party views became an increasing priority.

Polarization assuredly exacerbated value tensions already present between the two parties. The disappearing middle signified values becoming more extreme, uncompromising, and conflicting after decades of Democratic rule. The values embraced by Republicans and Democrats held less room for consensus and compromise. Had the Democrats attempted to work in a bipartisan fashion with Republicans when in the majority, hyper-partisanship may not have evolved as it did. The Democratic majority and disappearing middle set the stage for the last major event to bring the United States Congress to its present hyper-partisan state: the rise of Newt Gingrich and the congressional elections of 1994.

### **Newt Gingrich – The Hyper-Partisan Speaker**

Gingrich and his supporters ushered in the modern era of hyper-partisanship, in which Republicans and Democrats legislate independently of one another, refusing to compromise and form consensus. The values underpinning Gingrich's agenda remain critical to the Republican Party.<sup>5</sup> Gingrich's campaign tactics were those of a hyper-partisan. The legislative agenda he represented and values underpinning them were quintessentially Republican, and made him a key figure in value-conflict driven lawmaking.

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<sup>5</sup> Gingrich's rhetoric and policy objectives also mirror those demonstrated by Friedman in *Capitalism and Freedom*.

## Gingrich on the Campaign Trail: The Contract with America and the Republican Political Action Committee

Gingrich became Speaker of the House of Representatives in 1995, attaining the highest leadership position for a Member of the House. Gingrich held a number of leadership positions within the Republican Party prior to becoming Speaker. As Minority Whip<sup>6</sup> and leader of the National Republican Congressional Committee (NRCC), he gained a foothold within the party, and used his position to push the concept that Republicans should have a united message of policy goals and values. His efforts to achieve this and gain a Republican majority in the House are as notable as his actions as Speaker, and demonstrate the work of a true hyper-partisan. One of the major initiatives Gingrich employed to achieve party unity prior to the election of 1994 was the famous "Contract with America."

The Contract with America was a written statement crafted by Gingrich listing the policy goals of House Republicans. The Contract also clearly delineated the values underpinning the Republican agenda. Gingrich made the Contract public in a ceremony held on September 27, 1994 on the steps of the Capitol building, at which Gingrich introduced the initiative as over 300 members of his party looked on. The Contract was signed by 367 Republicans (Gillespie and Schellhas 1994, 6). There were specific policy goals included in the Contract, such as balancing the budget, cutting taxes and strengthening the U.S. military. Additionally, Republican values were clearly denoted in

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<sup>6</sup> Republican Whips assist the Minority Leader or Speaker in counting and obtaining votes and generally managing the Party's legislative agenda on the House Floor, per the House of Representatives website

the document, and were a critical component demonstrating Republican Party unity. The introduction to the Contract stated that it was intended to "restore the bonds of trust between people and their elected officials" and "end government that is too big, too intrusive, and too easy with the public's money." The introduction goes on to say that the Contract "begins with Congress and respects the values and shares the faith of the American family."

When the National Republican Congressional Committee (NRCC) eventually published the Contract, it added the introductory note said that the Contract was based on a number of key tenets of American civilization that House Republicans agreed upon at a retreat they had held. They were: individual liberty, economic opportunity, limited government, personal responsibility, and security at home and abroad (Gillespie and Schellhas 1994, 4). The Contract introduction further notes that the purpose of the document was as follows:

Renew the American Dream by promoting individual liberty, economic opportunity, and personal responsibility, through limited and effective government, high standards of performance, and an America strong enough to defend all her citizens against violence at home or abroad.<sup>7</sup>

The Contract is important because it demonstrative of how values are invoked in the political process. In addition to making public a unified message on Republican values and political goals, it served as a morale booster for candidates as the 1994 congressional elections approached. Then-Congressman J.D. Hayworth (R-AZ) said, "The Contract was

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<sup>7</sup> Many of those goals are key tenets of Friedman's *Capitalism and Freedom*, again demonstrating his alignment with the present-day Republican Party. The Contract is a strong example of how Friedman's assertions appear in Republican rhetoric

a great high, we were coming in with a unity of purpose, and I can't begin to explain how gratifying and emotionally satisfying that is" (Gillon 2008, 125).

The Contract was not Gingrich's only means of nationalizing the Republican agenda and congressional races. Gingrich had been planning a Republican takeover of Congress for years before the Contract was signed. In addition to his position as Whip and his involvement with the NRCC, Gingrich began leading the Republican Political Action Committee, called GOPAC. He transformed GOPAC into an apparatus critical to the training of Republican candidates on partisan messaging, speech, tactics and strategy. Though GOPAC existed before Gingrich took control of it in 1986, he greatly expanded its reach. Gingrich utilized GOPAC's funds to travel the country recruiting, training, and campaigning for candidates. In advance of the 1994 elections, GOPAC hired marketing professionals to determine the types of tactics and speech that would resonate the most with the voting public (Gillon 2008, 58). Gingrich, through GOPAC, sent candidates videos and cassettes monthly to reinforce their training. It was described as "like subscribing to a motivational course" (Gillon 2008, 59 Mann & Orenstein 2006, 100). The tapes were used to develop a vocabulary of positive words for candidate's to describe Republican initiatives, and encouraged the use of words like liberty, truth, freedom, and opportunity. The tapes also included negative words for Republican candidates to use when discussing Democratic initiatives on the campaign trail, including decay, corrupt, permissive, and pathetic (Gingrich, 1996) Gingrich spent more than \$8 million of GOPAC's funds identifying the strongest potential Republican challengers and ensuring

that they were trained on GOPAC's messaging and tactics to be used against Democratic opponents (Gillon 2008, 125).

In addition to his other efforts, Gingrich also engaged interest groups, think tanks and corporate sponsors who supported the Republican agenda, and leveraged their networks and influence to gain additional support for Republican candidates in advance of the 1994 election (Gillon 2008, 58).

### Election of 1994: Results and Implications

The congressional election of 1994 was an undeniable success for Gingrich and partisan campaigning. Voters gave the Republican Party extremely large gains in Congress, with an unprecedented seventy four new Republican members of the House. Republicans held a majority of Members of the House of Representatives for the first time in 40 years. They also held the majority in the United States Senate. From the Republican perspective, and as noted in the introduction to the published Contract for America, "Voters sent a clear and undeniable message. It wasn't just about throwing out incumbents; it was about throwing out Democrats. Not a single incumbent Republican Congressman, Senator or Governor lost their elections" (Gillespie and Schellhaus 1994 3). As a result, Republicans felt they had been given a "mandate" to lead the legislative process. This is often the situation in landslide elections (Jones 1999, 95).

As a result of Gingrich's devotion to the congressional elections and all of his work to get Republicans elected to the House, Gingrich had strong relationships with many of the freshman members of Congress. The Republican majority was a "new" one,

with 53% of Republican Members in their first or second term. They were called Gingrich's children or Gingrich's army. These loyal allies would help Gingrich implement the promises of the Contract and promulgate laws in line with Republican values (Gillon 2008, 129 and Jones 1999, 113). As expected, they elected their campaign leader as Speaker of the House for the start of the 104<sup>th</sup> Congress.

The first hundred days of Gingrich's speakership were critical in the evolution of partisanship. Gingrich had pledged to pass an enormous amount of legislation as promised by the Contract with America within the first 100 days. As Congress began, Gingrich's feelings on consensus building with the minority party became clear. Gingrich was quoted as saying regarding the Contract, "We're open to working with everyone... We will cooperate with anyone, and we'll compromise with no one" "Cooperation, yes, compromise, no" (Jones 1999, 114). With that statement, Gingrich ushered in an era of flagrant hyper-partisanship, where policy and the values they represented would be dictated by the Majority. Gingrich used the media extensively during his first hundred days to convey his initiatives and the values they represented to the public. Gingrich was not afraid to speak to the issue of partisanship.

Addressing the partisanship issue head on, Gingrich was quoted in an article written by David Broder in the *Washington Post*:

Our government operates on the party system. We are a team. And we're offering you a contract on what our team will do. This is sound proposition. People need to be reminded that Congress writes the laws in a partisan setting... in which the opposing parties divide, not just for spite, but on philosophy, program and principle. (Jones 1999, 108)

With the Republican majority, Gingrich was able to pass all but one of the initiatives he had promised in the first 100 days of Congress with little or no help needed from the Democratic minority (Jones 1999, 119). Gingrich then turned to the key focus of his agenda, which was largely fiscal in nature, focusing on balancing the budget and cutting taxes (Mann and Orenstein 2006, 96). These were quintessential Republican agenda items. From a values perspective, initiatives related to balancing the budget and cutting taxes imply limiting government's role, and giving individuals more control over their finances. With less tax revenue and an inability to spend beyond a predetermined budget, Republicans sent the message that government should be limited in its size and its involvement in the lives of citizens. This agenda signaled that the "market place" could handle a broader range of activities that are not appropriate for the government.

Gingrich was able to achieve such significant legislation due to his nearly unwavering partisan support. After some legislative success with smaller legislative items, Gingrich announced that Republicans would introduce a budget proposal that would have the national budget balanced by 2002 (Mann & Ornstein p. 104). The House voted 238 "yay" and 193 "nay" on the budget resolution to pass, with just eight Democrats voting for the budget. Next, Gingrich turned to his second major partisan project, cutting taxes. Tax cuts are seen as another "signature political issue for the Republican Party," once again falling in line with the promises of the Contract (Strahan and Palazzolo 2004, 98). Gingrich pursued tax cuts knowing that it would garner limited Democratic support. When the tax cuts were passed by the House, only 11 Republicans

voted against the package. Party unity behind the Republican agenda and values were critical in passing these two legislative packages.

In addition to using his own party to promote Republican values, Gingrich used the media in an unprecedented fashion to make public his agenda as Speaker, taking the spotlight from President Clinton in some cases. "He was everywhere. The president had to search for his place in the politics of the day" (Jones 1994, 94) CSPAN, which broadcasted House floor proceedings, also came into existence during Gingrich's tenure, giving him a platform to reach the public nearly twenty four hours a day, seven days a week.

Given the manner in which Gingrich led his party through the election of 1994, and the large number of new Members as a result, it is not surprising that party unity and partisanship were extremely strong during Gingrich's speakership. In the 104<sup>th</sup> Congress, House Republican Party unity reached unprecedented levels, averaging 91% during the 104<sup>th</sup> Congress (Strahan Palazzolo 2004, 99). Consensus was not valued and compromise not sought during this Congress. There was a dramatic shift in agenda setting from the White House to the Congress. Gingrich promoted party responsibility, "eschewing the compromise that is ordinary and essential to the workings of the separated system" (Jones 1999, 95).

In sum, the tactics Gingrich employed both during the campaign for the 1994 congressional elections and his tenure as Speaker of the 104<sup>th</sup> Congress, demonstrated an era of promoting Republican initiatives and values in an uncompromising fashion. Smaller government, lower taxes, and more personal responsibility are key tenets of

modern Republican values,<sup>8</sup> and prevailed during this period of Republican majority. Little value was placed upon input from the Democratic Party, marginalized during this period. These factors combined make the era of Gingrich critical to the evolution of partisanship, by institutionalizing hyper-partisan legislative practices in order to promote party values.

## Conclusion

As demonstrated by this chapter, partisanship is not a new feature of the U.S. political system. It has, however, evolved over time in such a way that at present a hyper-partisan state is in place, in which Democrats and Republicans are unwilling or unable to compromise their policy positions and the values they represent. From the founding through the Speakership of Newt Gingrich, key periods of time and events have driven partisanship in this direction. With each event, the beliefs of each political party became more firmly entrenched, and legislators less able to build consensus to legislate in a bipartisan manner. Both parties are guilty of engaging in hyper-partisan behavior, and many of the events reviewed in this chapter have underlying conflicts regarding the appropriate size, scope and role of government as related to its citizens.

Time and again, Republicans have stood behind Friedman's assertions of limited government, and Democrats have sought to protect and aid citizens through the work of its government. The next chapter presents a case study in hyper-partisan legislating,

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<sup>8</sup> And key tenets of Milton Friedman's work, as discussed in Chapter 2.

where this value conflict is once again raised, and plays a significant role in driving the legislative process, precluding bipartisan and consensus-driven lawmaking.

## CHAPTER 5

### THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT: A CASE STUDY IN HYPER-PARTISAN LEGISLATING

This chapter provides a descriptive analysis of the legislative history of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”), to be used as a case study in hyper-partisan lawmaking. The underlying values motivating action taken during the bill’s creation are denoted, and represent a broader value conflict present in American political discourse. Specifically, this case study highlights value conflicts that exist between Democrats and Republicans regarding the appropriate size and scope of government, which propagates hyper-partisanship and one-party legislating. This was the case in Dodd-Frank’s legislative history. When the Dodd-Frank bill was passed by the Congress, it was a partisan bill; meaning the bill was authored and supported almost solely by the Democratic Members of Congress. The conflict regarding the appropriate role of government in the U.S. economy is largely responsible for the lack of Republican support for the bill. It is important to clarify that Republican support was not necessary to pass legislation due to the large majority held by Democrats in the House of Representatives and the Senate during the 111<sup>th</sup> Congress.

## **Background and Context**

### The Financial Crisis of 2008

The Dodd-Frank Wall Street Reform and Consumer Protection Act, or Dodd-Frank Act, was created and passed as a reaction to crisis. This is common practice in legislating. In this case, a series of destabilizing economic events in 2008 prompted Congress to enact legislation reforming regulation of the U.S. financial markets. Had the crisis not taken place, this legislation may not have been prioritized by the Congress and the Bush and Obama Administrations. The “2008 Financial Crisis” is referred to consistently in statements by relevant players during the Dodd-Frank legislative process. It is commonly held that the crisis prompted regulatory reform legislation to become a national priority.

In March 2008, Bear Stearns, a world-renowned investment bank and securities brokerage house, was on the brink of filing for bankruptcy. The *New York Times* reported that after internal deliberation and consultation with government officials and industry representatives, Bear Stearns announced it would be sold to JP Morgan Chase for \$2 a share on Sunday, March 17. The decision was apparently at the urging of both the U.S. Federal Reserve and U.S. Treasury Department, in order to avoid further crisis in the global financial system (Sorkin and Thomas 2008). The sale price of \$2 per share represented a 93% discount to the closing stock price on Friday, March 15 on the New York Stock Exchange, demonstrating how serious Bear Stearns’ troubles were. Bear Stearns had been in existence for 85 years, during which time it endured the Great

Depression and periodic economic recessions. The failure of Bear Stearns was significant, and demonstrated a deepening credit crisis in the U.S.

On March 30, 2008, the U.S. Department of Treasury released a “Blueprint for a Modernized Financial Regulatory Structure;” a project that had been undertaken over a year before it was released (Lajara Hoffman 2008). The “Blueprint” was released in the last year of the Bush Administration, at which time the Department was under the leadership of Secretary Henry Paulson, a Republican. The plan proposed a broad overhaul of the domestic financial regulatory structure. It was criticized immediately by consumer groups, Wall Street institutions, and in the press (Cho, Irwin, and Johnson 2008). In Congress, legislators leading the committees of jurisdiction from both parties opted not to take strong positions publicly on the Blueprint.<sup>1</sup>

In the fall after the Blueprint was released, another wave of economic events occurred. Lehman Brothers, a renowned Wall Street institution, filed for bankruptcy on September 15, 2008. At nearly the same time, Merrill Lynch, a third Wall Street brokerage house, agreed to be sold to Bank of America for a discounted price due to its financial woes. Arguably the most significant failure associated with the 2008 crisis was the failure of AIG (American Insurance Group). This failure was so remarkable because

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<sup>1</sup> House Financial Services Chairman Barney Frank (D-MA) said “you’ve got the Secretary of the Treasury, the former head of Goldman Sachs, acknowledging that regulation is good for financial markets and it’s not going to kill them. That’s very significant.” Senate Banking Chairman Chris Dodd (D-CT) stated that its earlier inaction under Republican leadership was responsible for the problems of the time “regrettably, the Administration’s Blueprint, while deserving of careful consideration, would do little, if anything to alleviate the current crisis which was brought on by a failure of will.” House Financial Services Ranking Member Spencer Bachus (R-AL) said “I commend the Administration and Secretary Paulson for regulatory restructuring and reform that is very comprehensive in its potential impact,” but stopped short of outright support for a proposal that would give the government significant new powers over Wall Street. Senator Shelby declined to comment.

AIG sought and received \$40 billion dollars from the Federal Reserve to cover its losses, as *Bloomberg* reported on September 14, 2008 (Son 2008). These events brought fears that both the U.S. and global economy were on the brink of collapse. In remarks given in Miami and reported by *Washington Post* on September 18, 2008, then-candidate and Senator Obama said:

We are facing one of the most serious financial crises in this nation's history. The events of the last week – from the failure of Lehman to the bailout of AIG to the continued volatility of the market – have not just threatened the trading floors and high-rises of Wall Street, but the stability and security of our entire global economy.

Congress convened for an emergency weekend session to author and pass the Emergency Economic Stabilization Act of 2008 (EESA), which included the Troubled Asset Relief Program, or “TARP,” among other provisions. Per factsheets posted on the websites of both the Federal Reserve and the U.S. Treasury, TARP provided government funds to support entities also experiencing credit crises as a result of the AIG, Lehman, and other bank failures. The goal of the EESA overall was immediate economic stabilization and prevention of further institutional failures in the near-term. Because of the state of emergency caused by the string of failures the vote to pass EESA was supported by members of both parties.<sup>2</sup>

The events of 2008 prompted a reaction from the public and the Congress. The government and therefore taxpayer funded bailout of “Wall Street” became maligned by

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<sup>2</sup> EESA passed with a 74 to 25 vote in the Senate, and a 263 to 171 vote in the House of Representatives.

the American public. As such, it was in the interest of elected officials to avoid taking comparable action in the future. Perhaps more significantly, there remained the larger issue of how these institutions, critical to the financial stability of the nation, were able to reach the point of failure unnoticed by regulators. It was clear that the markets, regulators, or both, were not functioning properly as the failures of Lehman Brothers, Bear Stearns, Merrill Lynch and AIG occurred with little to no warning. With these factors combined, the time was optimal for Congress to undertake regulatory reform of the financial markets.

In November of 2008, Barack Obama was elected to the United States presidency. During his candidacy, Obama blamed Republican policy for the crisis. In a statement released on September 16 of 2008, while he was on the campaign trail, Obama said, “eight years of policies that have shredded consumer protections, loosened oversight and regulation, and encouraged outsized bonuses for CEO’s while ignoring middle-class Americans have brought us to the most serious financial crisis since the Great Depression” (Hunt 2008). Once in office, it was common practice among the Administration and other Democrats to depict the “2008 Crisis” and its aftermath as something inherited from the Bush Administration and therefore, Republicans. *The Washington Post* reported that the Obama Administration spoke about the “inherited fiscal disaster” frequently during his first months as President. The article quoted Lawrence Jacobs, a political scientist at University of Minnesota as saying, “the trick (for Obama) is how do you shift blame to George Bush and retain any credibility on the idea that you are looking past partisan warfare. This looks like doubling down on a very

partisan approach” (Wilson 2009). Democrats pointed to the Republican value of less interference and regulation in the marketplace as responsible for the crisis. With this assertion, the seeds of hyper-partisan behavior were planted before the legislative process began.

The newly inaugurated Obama Administration was heavily engaged in financial regulatory reform from its inception to its completion, demonstrating the belief that government is obligated to protect its citizens. Under the leadership of Treasury Secretary Timothy Geithner, the Obama Administration released its own revised draft regulatory reform bill that was published in June of 2009. The draft served as a basis for drafting the bill in Congress. Given the Administration’s views on Republican economic policy, this further encouraged hyper-partisan behavior during the legislative process.

### **Congressional Leadership During Regulatory Reform**

As the leaders of the two main committees of jurisdiction, the Senate Banking Committee Chairman Chris Dodd (D-CT), and the House Financial Services Committee Chairman Barney Frank (D-MA), were logical choices for sponsoring the legislation. The Obama Administration made clear that completing this legislation was a top priority, and tasked the Chairmen with leading the process. Dodd and Frank had an enormous amount of influence on the legislative process. The Chairmen possessed the authority to call and lead hearings on topics related to the bill, invite various guests to present to the committees, and conduct “markups” amending draft legislation within the committees. They would also oversee the conference committee proceedings that produced the final

version of the bill. During the legislative process, both embraced the value of governmental protection of its citizens. Expanding its regulatory powers to restore public faith in the economy was a desired outcome of the process. The Democratic prioritization of protecting citizens is demonstrated consistently throughout the legislative history of Dodd-Frank, and by the widespread support the final bill received from members of the Democratic Party.

Both Chairman Dodd and Chairman Frank demonstrated specific objectives in support of that value from the outset of the legislative process. They conveyed these priorities in media interviews, opening statements at congressional hearings, and statements made on the floor of the Senate and House of Representatives, respectively.<sup>3</sup> In their efforts to reform and expand government oversight of the financial markets, the Chairmen placed high priority on protection of consumers and restoring trust in the economy by the creation of a consumer protection-focused agency. They favored increased accountability by way of increased capital requirements for market participants and a requirement that large financial institutions have in place orderly liquidation, or “funeral” plans in case of a future failure to ensure a crisis would not impact the average American taxpayer. Dodd and Frank also supported increased reporting requirements, so that the government could have an eye into the markets and warn against future crises. Expansion of government and its involvement in the lives and citizens was an acceptable outcome in achieving that goal.

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<sup>3</sup> Statements can be found on the Committee websites, Congressional Record, and various media outlets, listed in References.

Chairman Dodd's view on the legislation can be summarized in a statement he released and posted on the Senate Banking Committee website at the opening of conference committee proceedings in June of 2010: "The central question that we must address in this bill is how we restore the faith of the American consumer. The core strength of the American economy is that people have faith in the system. That faith was shattered in this crisis, and we must do our best to bring it back" (Dodd, 2010). Earlier in the process, Chairman Frank said in letter to constituents posted on his House of Representatives website on October 11, 2008, "the major factor (in the crisis) is the lack of regulation. It led to the crisis, and that is why I am determined to fight for increased regulation going forward." Restoring public faith via increased government regulation of the financial markets was the legislative objective of both Dodd and Frank. As such, the Chairmen favored a larger, more prescriptive regulatory overhaul bill than their Republican counterparts, who favored a more self-regulatory approach to overseeing the financial markets.

Senator Richard Shelby (R-AL) and Congressman Spencer Bachus (R-AL) were the Republican leaders, or "Ranking Members" of the Senate Banking and House Financial Services Committees, respectively. They were not sponsors of the bill, nor did they vote for its passage, however, as the counterparts to Mr. Dodd and Mr. Frank, they were equally as engaged and extremely influential within their own party throughout the bill's legislative history. While not able to control the legislative process as Dodd and Frank were, Bachus and Shelby were opposed to many aspects of the processes and policy positions undertaken by Chairmen Dodd and Frank. The values underpinning their

opposition included support for free markets, a belief in limited government, and a fear of stifling America's competitive edge and ability to innovate as a result of additional regulation. The belief that innovation in the United States could be stifled by regulation is also demonstrative of belief in American exceptionalism. Republicans proposed legislative language throughout the process were in support of those values and opposed proposals by Democrats. Specifically, Republicans opposed the creation of a new government agency to protect consumers, the institutionalization of any process by which the government can provide funds to failing institutions (called "bailouts"), and repeated calls for a more deliberative, due process in creating the bill to avoid unintended consequences in the future.

On May 6, 2010, Senator Shelby said in a statement posted on his House of Representatives website, "perhaps the most troubling aspect of their (Democrats) approach is that it assumes that consumers need benevolent bureaucrats to make decisions for them. In another statement Shelby made and posted on his website on July 15<sup>th</sup> 2010, he said "this bill serves only to expand federal bureaucracy and government control of private sector activities...it will lower availability of credit, raise its cost, and hinder economic growth." Both statements speak to Republican values.

Ranking Member Bachus, at the opening of the conference committee for Dodd-Frank, on May 10, 2010, said in a statement that was posted on the Republican House Financial Services Committee website:

The legislation we are considering is not based on the tradition of opportunity, innovation, competition and personal responsibility that made this the strongest

and most resilient economy in the world.” He went on to say “Republicans oppose these bills because we want to stand up for Main Street and American values that made this country a pillar of economic strength.

These statements are all indicative of the values underpinning Republican participation in the Dodd-Frank process.

In sum, these four individuals were critical in the process that yielded Dodd-Frank. The values motivating their actions resulted in value-conflict driven, hyper-partisan, legislating. The root value conflict throughout the Dodd-Frank legislative process is the size, scope and role of government in the lives of its citizens. All of the specific conflicts between the parties during the process can be traced back to that root value conflict.

### **Overview of Hearings on Financial Regulatory Reform**

The process that eventually yielded Dodd-Frank began with a series of hearings held by committees of jurisdiction. Dozens of hearings were held between the House Financial Services and Senate Banking Committees, with topics covering a wide berth of issues related to the financial system. Hearings were held on consumer protection, derivatives regulation, systemic risk, bankruptcy, and the role of the Federal Reserve. The types of guests, called witnesses in the *Congressional Record*, asked to present at the Committee were telling. Obama Administration officials, including Federal Reserve Chairman Ben Bernanke, Secretary of Treasury Timothy Geithner, Securities and Exchange Commission Chairman Mary Schapiro and Commodity Futures Trading Commission Chairman Gary Gensler appeared on multiple occasions to present, and were

all generally in favor of the regulatory reform bill. By and large, the regulators favored an expanded role for their agencies to protect citizens from future financial crises. New regulatory duties would entail additional staff and additional funds to execute them, assuring an expansion in government. Association representatives and academics and many others testified to the need for regulatory reform. Witnesses in opposition regulatory reform were far fewer.<sup>4</sup>

In addition to selecting witnesses for the hearings, the manner in which the hearings were conducted by Chairman Dodd and Chairman Frank, and the type of participation by Ranking Member Shelby and Ranking Member Bachus are representative of party values. Congressional hearing proceedings traditionally begin with the Chairman and Ranking Member delivering opening statements. After the statements are made, the witnesses read their presentations. A question and answer period between committee members and the presenters typically follows the presentations. The opening statement portion of hearings held during Dodd-Frank were critical in expressing the values of the leaders from both parties. So consuming was the desire to make known their opinion on what should or shouldn't be included in the legislation, the opening statement period became expanded. Debates between Dodd and Shelby or Frank and Bachus were commonplace. This practice truncated the other components of the hearing. In the House, Ranking Member Bachus used his opening statements to rail against Republicans being left out of the process. He attacked the specific policy positions taken by Frank, and how he led the committee procedurally. Chairman Frank often used

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<sup>4</sup> Witness lists can be found on committee websites, listed in References.

opening statements to debate Bachus, with the two sparring on specific issues. One such incident occurred between Frank and Bachus at a hearing held in the House Financial Services Committee on October 1, 2009 at which Federal Reserve Chairman Ben Bernanke was testifying on *“Federal Reserve Perspectives on Financial Regulatory Reform Proposals.”* Bachus said after an argument between himself and Chairman Frank, “I guess you didn’t know you were being invited to a debate between the Chairman and me. I would like to get back to your testimony.” The debates demonstrated increasingly disparate values and priorities between the two Parties. Frank consistently favored more prescriptive and far reaching legislation and Bachus continuously warned of the potential negative impacts regulatory reform legislation could have on the economy.

The Senate hearings were less vitriolic than those in the House, but the conflicting goals and values no less significant in its proceedings. In the fall of 2009 a stalemate was reached between the Majority and Minority members of the Committee. To keep the process moving forward, bipartisan working groups were designated by Dodd to draft different titles, or sections, of the legislation.<sup>5</sup> The concept was in the spirit of consensus and bipartisanship. However, it did not turn out to be a practicable solution. All but one of the teams all reached an impasse, and in the end, Democratic team members authored their assigned titles with little agreement or input from their Republican counterparts. The value of consumer protection and restoring faith in the economic system through increased regulation with those defending innovation, competition and keeping

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<sup>5</sup> *Politico* reported that Senator Bob Corker (R-TN) and Mark Warner (D-VA) were tasked with “systemic risk and resolution authority for failing banks,” Senator Chuck Schumer (D-NY) and Senator Mike Crapo (R-ID) took on “executive compensation and corporate governance,” Senator Jack Reed and Judd Gregg was tasked with the “regulation of the derivatives markets,” and Dodd and Shelby worked on the “consumer protection and prudential regulation of banks” (McGrane 2009).

government out of the economy were in this case irreconcilable. Consensus could not be reached in order to jointly author the bill. Shelby offered his own version of the legislation to the Banking Committee, which represented Republican values of self-regulation and eliminating the prospect of government bailouts of financial firms. The Republican version was not expected to, nor did it pass by the Committee.

### **Markups and Passage**

After hearings are held on a legislative initiative, the next phase of the process is for the committees of jurisdiction to hold “markups” of draft legislation. This is a time in which the bill can be amended within the committees. A committee then will typically hold a vote on the bill, and if passed, the bill moves to a full vote by the Senate or House of Representatives, depending on where it originated. Both houses of Congress must pass a version of the same or similar legislation in order for it to move forward in the legislative process. The manner in which draft legislation was distributed within the House and Senate committees of jurisdiction was demonstrative of one-party, hyper-partisan legislation. The drafts were, in the view of Republican leadership, authored by Democratic committee staff in consultation with Democratic regulators. Time and again in statements released to the press and on his website, Ranking Member Shelby complained that Republicans did not sufficiently participate in the conference (Shelby 2010). The drafts, all more than two thousand pages, were released to Republican members of the committee hours or less prior to “markups” to debate and amend the draft legislation prior to putting it up for a vote. Proceeding in this fashion provided

Republican members of the committees and their staff minimal time to read and analyze the drafts before markups of the legislation. Both Dodd and Frank stood by the practice, demonstrating their commitment to move expeditiously to complete the legislation within the timeframe dictated by the Obama Administration.

This timeframe limited Republican's ability to effectively participate in debating and amending the legislation. The legislative process was in their view, truncated by Democrats. Republicans did not feel they were afforded due process in creating the legislation. To that point, Bachus asked in a letter he sent to congressional leaders on May 6, 2010 that the legislation be made public and available for 30 days prior to its consideration by the full House of Representatives, allowing Members and constituents sufficient time to review it and convey their thoughts. This did not occur. Strikingly few Republican amendments were included in the version of regulatory reform legislation that passed in the House with a 223 – 202 vote (Sorkin 2010). No Republicans voted for the House bill and just over 20 Democrats joined them. The Senate version of the same legislation was authored by the Democratic majority given the breakdown of bipartisan working groups. The bill passed with a 59 - 39 vote. Four Republicans voted for the bill and all but two Democrats voted for the bill.

The bills passed by both houses of Congress mandated the creation of a Consumer Financial Protection Agency, and an Office of Financial Research. Both bills vastly expanded the powers of existing regulators including the Securities and Exchange Commission (SEC), the Commodities Futures Trading Commission (CFTC), the Federal Depository and Insurance Corporation (FDIC) and Federal Reserve, among others. The

bill required market users and banks meet higher capital standards and increase reporting to regulators in order to participate in financial markets as well as a host of other new regulatory requirements. In the view of Democrats, the legislation would restore public faith in the financial system and the regulators overseeing it. The law would achieve their goal from the outset of protecting consumers from harm with more oversight of and increased transparency for the financial markets. From the Republican perspective, the bills passed would hinder U.S. competitiveness in global financial markets, and harm the U.S. economy. The bills would, from a Republican perspective, inappropriately increase the role of government in the lives of citizens and expand the size and scope of the government through new regulations. Finally, Republicans feared that a final bill that resembled the House or Senate versions would result in unintended consequences due to a lack of due process in its creation.

### **Conference and Final Bill**

The bicameral conference is the next step in the legislative process. It is at this phase that a selected group of members of the House and Senate committees of jurisdiction meet to reconcile disputes, correct any technical errors, and agree upon a final piece of legislation. In this case the committee members were taken from the House Financial Services Committee, the Senate Banking as well as the leadership of the Senate and House Agriculture Committees from both houses of Congress. The full Congress must pass the so-called “conference report,” reflecting those changes. Once this is passed, the bill is sent to the President for signature. In theory, the result is a bill that combines

the Senate and House versions through debate, compromise and consensus. Legislation is not amendable once it goes to the full Congress for a vote, making this was last chance for a bipartisan bill with Republican support. As a result, the conference was highly contentious (Leonatti 2010). The conference committee for Dodd-Frank engaged in two weeks of committee sessions before completing their work.

From the outset, Ranking Member Bachus was adamant about procedures for the conference, making numerous public statements and sending formal letters to leadership of the House and Senate as well as Chairman Dodd and Chairman Frank. One such letter, dated June 10 2010 and posted on his House of Representatives website, included specific requests regarding the conference proceedings to ensure Republicans were able to influence the process despite being the minority party. Among Bachus' specific requests were:

1. A written set of procedures for the committee, and asked that CPSAN cover the conference committee's meetings
2. That the committee consider how costs of the Senate bill, which per Bachus' estimation would cost \$19.7 billion over ten years, would be offset
3. That the conferees be told what the procedure for deciding between the House and Senate language on specific issues
4. That the Minority be given at least 48 hours in which to review the proposed House position and draft amendments to it before debated by conference
5. A specific process for amendments process and time limits on deliberation
6. That the Minority be told if and when Republican non-conferees would be able to address the conference, since Frank had said that Democratic non-conferees would be able to address the conference.

Fourteen Republican members of the committee signed the letter with Bachus. In the end, few of the demands were met. Congressman Frank, who served as the conference chair, dictated the process. Republican votes were not necessary to pass the legislation. Resolving issues within the Democratic Party to ensure they could pass the legislation likely took priority over gaining Republican support.

On the Senate side, Ranking Member Shelby said at the opening of the conference in a statement that was later posted on his Senate website that the House and Senate versions of the bill required significant changes, but noted:

Unfortunately Chairman, it (the conference) appears that we are off to a rocky start because the base text before the conference was negotiated and compiled behind closed doors without any Republican participation. In fact, we only received it about 2 ½ hours ago...I suspect there have been a number of private meetings where legislative language has been coordinated and drafted without any public access or Republican input. At this point that only facet of this conference what will be public is when the Republicans get our one and only chance to amend what has already been decided by our Democrat colleagues behind closed doors.

Whereas a joint hearing of the House and Senate committees is traditional during prior to final deliberation by the conference committee and vote, no such hearing took place. Bachus said in a statement released to the press and posted on his congressional website in July of 2010 that “the American people are sick and tired of back room deals and secret manipulations of the economy to benefit political cronies at the expense of taxpayers.”

On June 30, the House voted on the conference report. The report passed with 237 yea votes and 192 nay votes. Three Republicans voted for the bill and 19 Democrats voted against it. On July 15, the full Senate voted on the conference report. The vote was

split 60 in favor and 39 against. Three Republicans voted for the bill and one Democrat voted against. The bill was signed into law by President Obama on July 16. At the time of the final vote, Frank reportedly did not expect any Republican support for the bill (Leonatti, 2010). Ranking Member Bachus made a statement released to the press and posted on his website immediately following the Senate passage of the conference report, saying that the Democrats “had institutionalized “too big to fail,” hurt Main Street, and killed jobs.” He asserted that Republican legislation would have ended bailouts, protected investors, taxpayers and consumers and made Wall Street responsible. With passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Democratic values of consumer protection and expansion of regulatory oversight of the financial markets prevailed. Additionally, the priority of passing legislation as soon as possible won over due process in how the legislation was created and passed. Republicans felt marginalized, and that Democrats truncated the legislative process in an effort to push their own agenda.

### **The Aftermath: The Attempted Undoing of Dodd-Frank**

Despite being enacted into law, Republicans continued efforts to undercut the Dodd-Frank Act. Because they felt that they did not participate in the legislative process, once passed, a number of Republicans turned their efforts to repealing the entire Act, repealing sections of the Act, amending the Act, or to delaying its implementation. In both the House and the Senate, Republicans proposed legislation that would, if passed, achieve those goals. Senator Jim DeMint (R-SC) introduced a bill on March 31, 2011

that would repeal Dodd-Frank, S. 712, or “The Financial Takeover Repeal Act of 2011.”<sup>6</sup> DeMint was able to secure co-sponsorship of the bill by eighteen fellow Republicans in the Senate, including Senate Minority Leader Mitch McConnell (KY), Minority Whip Jon Kyl (AZ), Republican Conference Chairman Lamar Alexander (TN) Policy Committee Chair John Thune (SD) and National Republican Senatorial Committee Chairman John Cornyn (TX). Support by Republican leadership in the Senate was demonstrative of their united opposition to the bill. In a statement released by DeMint and reported by the *Wall St. Journal* said the bill would:

Stop burdensome regulations, spur job growth and ensure that ‘too big to fail’ bailout policies are not permanent...we must repeal the Democrats’ takeover of the financial markets that favors Wall Street corporations, over-regulates small business with massive new bureaucracy that hurts consumers. The financial takeover will strangle our economy and move jobs overseas unless it’s repealed.

DeMint’s statement echoed Republican sentiment and values throughout the process.

In April of 2011, Senate Banking Ranking Member Richard Shelby (R-AL) also proposed to repeal Dodd-Frank with the introduction of S. 756 called “The Dodd-Frank repeal Act.” This bill had twenty five Republican cosponsors in the Senate. The Senate remained in Democratic control after the 2011 election, and therefore the bill had little hope of passage. The bill was a statement of their discontent, and could be revisited if Republicans won a Senate majority in an upcoming election.

The House of Representatives evolved into a different situation than the Senate. After the congressional election of 2010, Republicans regained a significant majority in

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<sup>6</sup> The bill text can be found on <http://www.opencongress.org/bill/112-s712/text>

the House, with 242 Members. Democrats held 193 seats. This gave Republicans the option of passing legislation without Democratic support. Specifically, Republicans could pass legislation impacting the Dodd-Frank Act, and did so. The House focused less on full repeal bills but considered delays in implementation, bills that would mandate cost-benefit analyses and bills that would significantly alter portions of the bill. Seven such bills were passed out of the House Financial Services committee (North 2011, 3-4).

The problem remained the Democrat-controlled Senate, which was unable to pass such legislation without Democratic support. Such legislation would need passage by both chambers of Congress to be considered by the President. If Republicans gained a majority in the Senate, and the House remained Republican, it could be passed by Congress and sent to President Obama or his Republican opponent, after the 2012 elections. As a result, the fate of Dodd-Frank as passed remains uncertain, with partisan efforts ongoing. It is important to note that a significant amount of time and effort spent on Dodd-Frank related Republican bills with knowledge that there was little to no hope that they would be passed in the 112<sup>th</sup> Congress. Hyper-partisanship impacts how Members of Congress are spending their time and efforts during their tenure, rather than working on consensus-driven legislation that had hope of becoming law. This is one of the impacts hyper-partisanship has on the legislative process in the United States.

## Conclusion

The value-conflict regarding the appropriate role of government in the economy dominated debate between Democrats and Republicans during the legislative history of

Dodd-Frank. Republicans lost the day due to their minority status in both Houses of Congress. Since consensus was not necessary to pass legislation, the Democratic majority did not make it a priority. As a result, the Dodd-Frank bill was partisan and representative of Democratic values solely. The legislative history of the Dodd-Frank Wall Street Reform and Consumer Protection Act is an example of how conflicting values can impact the legislative process, by truncating certain aspects of it, and marginalizing the minority party. The result was a bill created and passed by one party, and therefore representative of that party's values alone.

## CHAPTER 6

### CONSEQUENCES AND IMPLICATIONS OF A HYPER-PARTISAN CONGRESS

#### Introduction

This chapter examines the consequences, implications, and potential future impact of a hyper-partisan Congress. First, the chapter examines the impact the hyper-partisan Congress has had on the public. It asserts that the public has become more cognizant of and involved in the political process. Specifically, increased partisan ties and partisan voting tendencies are presented as indicators that the public is indeed more involved and more aware of the political dynamics of Congress. The next section looks at public opinion of Congress in light of its increased awareness of the institution. The last section of the chapter presents several possible long-term consequences of hyper-partisanship that may arise in the future.

#### **Political Awareness: An Implication of the Hyper-Partisan Congress**

##### Increased Visibility of Congress

What, if any, impact does a hyper-partisan Congress have on the American public? Hyper-partisanship is representative of underlying value conflicts between political parties that one can presume are present in the public at large. A polarized Congress, due to their vastly differing views on the role of government and persistent conflict on specific legislative issues, raises its visibility with the public in a number of ways.

Beyond activities within congressional proceedings, parties self-promote in order to entice voters to support them. Parties are likely to contact potential voters in a number of ways, including email, phone calls, and increasingly through use of social media platforms such as Facebook and Twitter (Dodson 2010, 447). Third parties such as print and online media can also raise political awareness in their coverage of partisan battles in Congress (Ramirez 684, 2009 and Kimball 73, 2005). They also raise awareness on the specific issues of the day in Congress. A Congress wrought with conflict and drama is certainly more newsworthy than a Congress that deliberates, compromises, and builds consensus legislation.

If issues brought to the public's attention are interpreted as important to the values they espouse, and sharply divergent positions exist between Republicans and Democrats on those issues, the stakes are raised. This may encourage voters to "pick a side," and increase public awareness of and involvement in politics (Dodson 2010, 444-447). An increase in the public's awareness of and attention to politics leads to the next point demonstrating a consequence of hyper-partisanship and value conflict driven lawmaking: increased partisan loyalties and identification.

#### Increased Partisan Loyalties and Identification

In his research regarding partisanship and voting behavior, Larry Bartels indicates that "partisan loyalties in the American public have rebounded significantly since the mid-1970s, particularly among those individuals who vote in elections(Bartels 2000,

35).<sup>1</sup> As previously established, conflicting values and policy positions between Democrats and Republicans prevail in Congress. The public can identify with the conflicts between parties, compare with their own value prioritization, and select a party with which to become affiliated.

A clear delineation of values between Democrats and Republicans combined with more readily available information on candidates and parties allows for less involved and politically sophisticated individuals to become knowledgeable of the political agenda and the beliefs of each party. This could motivate individuals to associate themselves with a party. In the past, learning about legislative objectives and underlying values of political parties required further investment in time and energy on the part of the citizen (Hetherington 2001, 623-642 and 629).

#### Increased Voter Turnout

The most traditional manner in which the public can participate in the political process is by voting in elections. Eligible individuals can have a say in what values are advocated for by their Members of Congress through voting. With lines more clearly drawn between the policy priorities of each party, it would seem logical that voters would increasingly go to the polls to ensure their values are being advocated.

Statistical evidence does not presently demonstrate that increased turnout is a consistent outcome. Recent elections suggest that when either party feels it may have

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<sup>1</sup> Kyle Dodson, in his paper published in *Sociological Perspectives* regarding Party Polarization and the Voting Behavior concludes much of the same as Bartels. Dodson's worked is included in "References".

something to gain, be it the Presidency or a majority in the House and/or Senate, the party's supporters show up at the polls. For example, *Bloomberg* reported that in 2008, 9 million more Democratic voters came out to support Barack Obama for President after eight years of George W. Bush's Republican presidency than in the previous election, whereas Republicans saw a 3 million drop in voter turnout in 2008 (Prybyla 2008). The same article reported that 130 million people voted in the election, up from 122 million when Senator John Kerry ran against President George Bush in 2004 (Prybyla, 2008). Democrats likely believed their party had a chance to ensure an Obama presidency. They turned out at the polls to help reach that goal. As a result, those same individuals largely voted for Democratic congressional candidates while at the voting booth, resulting in a strong Majority in Congress as well.

Just two years later, in the midterm congressional elections of 2010, Republicans saw an opportunity to make gains in both houses of Congress, largely as a result of dissatisfaction with the economic situation that prevailed during that period. Democrats were not nearly as motivated to vote, having secured the presidency for four years (Nichols, 2010). A study conducted by Curtis Gans of American University shortly after the election indicated that Republicans had a 2.1 % increase in turnout, whereas Democrats saw a nearly 5% drop in turnout for the midterm election (Gans 2010). The Republican base of support was likely more motivated to come out and vote for Republican candidates to serve as a counterbalance to the Democratic values being advocated for by the Obama Administration as well as the Democratic House and Senate.

Even with this modest shift in turnout, the result was a historic 63 seat gain in the House, and a 5 seat gain in the Senate.

### **Public Opinion of Congress as an Institution**

With increased visibility of political parties, identification of individuals with a party, and voter turnout reflecting partisan motivation for participation in elections, what opinion does a more involved public hold of the hyper-partisan Congress? Research consistently indicates that the American public views partisan fighting as counterproductive to the nation's well-being, irrespective of which side of the political spectrum they might fall. Ramirez notes in his article in the *American Journal of Political Science* on "The Dynamics of Partisan Conflict on Congressional Approval" that, "public cynicism toward government and Congress is partly a function of their dislike for partisan behavior and conflict" (Ramirez 2009, 682). His research also indicates that the American public associates partisanship with biases, rather than thoughtful evaluation of policy positions with respect to the best interest of the nation and their constituents. To that point, the public believed that political parties yield a disproportionate amount of power with Members and demand too high a loyalty from them (Ramirez 2009, 683).

After the debt ceiling debate, a poll indicated that because of the manner in which the debate and negotiation were held, overall approval ratings for the Congress reached an all-time low. As of August of 2011, the New York Times reported that congressional disapproval was at 82% (Cooper and Thee-Brendan, 2011). Additionally, in a poll jointly conducted by the *Washington Post* and *Pew Research Center*, respondents were asked to

use a single word to describe the debt ceiling negotiation between Democrats and Republicans. Nearly two thirds of the respondents answered with derisive words such as “ridiculous, disgusting and stupid”.<sup>2</sup> Though congressional visibility has increased, and the public is more engaged in politics, Congress is a widely unpopular institution in the hyper-partisan era.

### **Implications for the Future of Congress**

The hyper-partisan era in Congress has already yielded a reaction from the American public, and consequences have emerged. What could consequences of hyper-partisanship mean for the future of the institution, assuming hyper-partisanship remains the dominant feature of the institution?

#### **High Turnover**

One logical possibility is that high turnover of the individuals making up the United States Congress may be a likely result of disenfranchisement with the institution. With low popularity, Members of Congress may not opt to run for reelection and endure a grueling campaign, spending time and money only to lose their seat or continue in a job where they are viewed as part of a dysfunctional and maligned institution. To that point, those Members who run for reelection may be increasingly “voted out” either in the primary election challenges within their own party or replaced by a member of the other

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<sup>2</sup> The Washington Post-Pew Research Poll can be found at: <http://www.people-press.org/2011/08/01/public-sees-budget-negotiations-as-%E2%80%9Cridiculous%E2%80%9D-%E2%80%9Cdisgusting%E2%80%9D-%E2%80%9Cstupid/>.

party in general election. The more unpopular the Congress, the more likely voters are to seek changes to it (Ramirez 2009, 692).

One implication of high congressional turnover is a Congress in which there are few or no senior Members. With a loss of senior Members, who have been part of the Congress for a significant period of time, there would be a loss of institutional knowledge. This would certainly impact the manner in which Congress functions, as deference is given to senior Members of each party in terms of leading congressional committees and designating other positions of importance within the institution. Senior Members are also legislative experts on subject matter related to their Committee assignments and constituents. While new Members may come from different backgrounds, careers, and experience, few come to Congress possessing expertise in the workings of the Congress itself, nor in the legislation they must consider and vote on.

From another perspective, a constant replacing of Members of Congress could bring fresh perspectives and ideas to an institution that has clearly become dysfunctional. While new ideas may permeate a consistently “freshman” or Junior Congress, certainly legislative expertise and institutional knowledge that is ostensibly of value would be lost as a result. Diverse experience is certainly desirable in an institution as diverse as Congress. This helps provide new perspectives on issues. However, if the all senior Members are removed from the institution as a reaction to hyper-partisanship, who would bring a Congress of new Members “up to speed?” Certainly the institution would change significantly given this situation.

## The End of the Two-Party System

Another possibility for the future of congressional politics is the emergence of alternatives to the two-party system. As Democrats and Republicans are increasingly extreme in their positions and value-representation, less people may identify with one party or the other. If increased political cognizance and desire for participation continues, individuals finding themselves without a party to identify their own values with may seek other options for representation in the legislature. When parties are as divided and polarized as they are on the current hyper-partisan state, it is unlikely that every citizen will fall within one of the two categories provided by the current system. This combined with the knowledge that neither side will compromise on their positions to provide for legislation that represents a cross section of values lessens the impetus to choose one of the two dominant political parties with which to affiliate. There is a possibility that additional parties or political affiliations may emerge. This is already occurring in several ways.

First, the Tea Party movement emerged around the 2008 presidential and congressional elections. As noted on one of the Tea Party websites<sup>3</sup>, the Tea Party favors an extremely hands off government, devoted to cutting spending and reducing the deficit by what others may consider drastic means (Brill 2011). In the 2008 election, the Tea Party was an affiliate of the Republican Party. However, unlike more traditional Republicans, they do not favor a traditional capitalist society in which free market principles rule and allow for a wide gap between the rich and the poor. In the 2010

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<sup>3</sup> [www.teapartypatriots.org](http://www.teapartypatriots.org)

election, a number of Republican candidates who affiliated themselves with the Tea Party were elected to Congress. As the 2012 presidential election approaches, Michelle Bachman (R-MN), a member of the House of Representatives and Tea Party-supported candidate, is running for the Republican nomination. The Tea Party is not expected to have its candidate receive the Republican nomination. This new faction of the Republican Party has emerged and has become prevalent in a short number of years. As Tea Party members continue to be divided with the Republican party-line, they could decide to officially break off into their own third party.

Even more parties could emerge as hyper-partisanship between the two parties continues and approval ratings remain low. Though not a political figure in the traditional sense, television personality Jon Stewart sponsored a rally in Washington DC in October of 2010. T,<sup>4</sup> he so-called “Rally to Restore Sanity” was a mockery of some of the conservative rallies that had taken place that same year.<sup>5</sup> The message of the rally was essentially that politics, and the media coverage of them, had gotten completely out of control and out of touch with the average citizen. Stewart asserted in remarks made at the rally that most citizens are not rabid partisans who fear and vilify people with views different than their own.<sup>6</sup> Estimates of attendance were at 250,000 people, as reported by the *Huffington Post*, citing CBS news as a source. Both the emergence of the Tea Party

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<sup>4</sup> Jon Stewart is the host of “The Daily Show”, a program on *Comedy Central* that frequently satirizes American politics and media coverage of it.

<sup>5</sup> Particularly, Conservative media personality Glenn Beck held a “Rally to Restore Honor” on the Washington Mall earlier in the year that was the subject of Jon Stewart’s derision.

<sup>6</sup> Stewart’s remarks at the rally can be viewed at:  
<http://www.comedycentral.com/videos/index.jhtml?videoId=363864>

and the wide attendance for the Stewart rally demonstrate that a considerable segment of the population do not fit into the hyper-partisan two-party model.

Campaign contributions are another manner in which people may increasingly exhibit dissatisfaction with the hyper-partisan Congress. In an article published by the *Financial Times* in 2011, it was reported that the CEO of Caterpillar, which according to its website is a “manufacturer of construction and mining equipment, diesel and natural gas engines, industrial gas turbines, and a wide offering of related services,” led a campaign to withhold reelection funds from corporate political action committees and individual campaign contributions from industry leaders due to frustrations with the “widening gap between Republicans and Democrats” and their inability to agree on debt reduction measures. Caterpillar is an extremely significant entity in the American manufacturing sector. Over 100 business leaders joined the campaign, including Duncan Niederauer of NYSE Euronext, Walter Robb of Whole Foods, and Myron Ullman of JC Penney. While the focus was on the debt reduction negotiation, this particular campaign also cited fear that consensus would not be reached on trade agreements and measures to build infrastructure in the United States. Fear among business elites is that Congress will not be able to pass legislation critical to the U.S. economy due to the uncompromising values of the hyper-partisan Congress (Weitzman, 2011). If this trend continues, the impact to congressional campaign funding could be significant.

## Conclusion and Final Thoughts

The hyper-partisan Congress has not gone unnoticed by the public. Increased partisan affiliation, partisan voting, and historical disapproval ratings of Congress and its conduct make this clear. Reactions to hyper-partisanship have begun, and barring a change in the status quo, will likely continue. High turnover in Congress with few senior Members increasingly becomes possible as the public continues its disenfranchisement with the institutions. Campaign finance could evolve as a tool to decrease hyper-partisanship as demonstrated by the effort undertaken by American business elites. Finally, the emergence of alternative political affiliations by the public have begun and have been successful. The end of the two-party system for a more parliamentary system could be the long term result of hyper-partisanship.

It is important to note that hyper-partisanship would not garner such a reaction from the public if its values were not such a significant component of human nature. As examined throughout this work, values are a critical component to society, and as such, play an integral role in the governance of nations. Events and periods of time throughout American history have brought us to the present, in which polarized values are associated with Democrats and Republicans. These values are largely uncompromising within the legislative process, and individuals and their value systems are increasingly unlikely to mesh completely with Republican or Democratic values given their inflexibility.

Though the “hyper-partisan” era has been in place just over a decade, reactions to it are increasingly emerging. Hyper-partisanship’s hold on the Congress is likely to either slacken in response to a dissatisfied public, or the two-party system that has

dominated American politics for hundreds or years may be altered in favor of a system in which a broader range of value priorities are represented in Congress.

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