

THIS FEDERAL SHUTDOWN IS MUCH MORE SERIOUS THAN THE OTHERS

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This month's government shutdown is more serious than earlier budget impasses. The two sides are unusually adamant. The rhetoric, especially that of President Obama and his aides, has been astonishingly nasty. And we are just warming up for riskier brinksmanship over the debt limit.

It is tempting to fix blame on the deficiencies of our political leaders (I could do so with gusto) and to assure ourselves that this too shall pass. But the increasing frequency and gravity of our budget and debt imbroglios suggests more fundamental causes. I believe that today's turmoil is the culmination of three institutional problems that have been building for several decades.

The first is the unprecedented concentration of power in the executive branch. The president and the executive agencies have acquired the ability to act unilaterally across broad swaths of national policy, making law by regulation, administration, and sheer declaration. The Obama administration's resort to several extra-legal maneuvers in feathering out the Affordable Care Act is only the most recent example; the President's bold position that Congress may not even match him in revising the statute's requirements was a key incitement to last week's shutdown. Another example is the administration's pursuit of greenhouse gas controls by regulation after Congress declined to do so after extended consideration. The IRS scandals are a conspicuous instance of the outright corruption that invariably accompanies the concentration of power.

Second is the transformation of Congress from a representative legislature into a palace of intriguing courtiers. Day to day, every executive move is greeted by cheers and boos from congressional partisans—media messaging to bolster or weaken the president's popular standing. Once a year or so, Congress (or one chamber) throws down the gauntlet on some matter of constitutional prerogative, typically generating more immediate drama than lasting policy result. When Congress acts as an actual legislature—that is, by

statute—it usually accedes to the new executive direction. Our system has become, in the words of George Mason Law School’s F. H. Buckley, “crown government.”

Third is the accumulation of enormous public debt. Large annual deficits have become routine and are no longer confined to their traditional purposes of making public investments, responding to emergencies, and moderating economic fluctuations. Rather, deficit spending has become a means for sustaining (for the time being) private consumption through entitlements and other transfer programs. That the government should provide benefits in excess of the taxes it levies to pay for those benefits has become deeply embedded in public expectations and, therefore, in the actions of political officials. Our intermittent debt-ceiling battles, for all of their fervor, do not come close to addressing this problem; they are best understood as *cris de coeur* from congressional budget hawks over their inability to resist the momentum of the debt-for-consumption machine.

The immediate cause of these problems is the disestablishment of Congress as an effective legislative institution, beginning the early 1970s. American politics was becoming more democratic and “atomized” (James Q. Wilson’s term). Innumerable new causes were forming and asserting claims to government action; dispersed consumer interests were achieving parity with concentrated producer interests; old hierarchies—the political parties and local bosses, the Dixiecrat seniority system in the Congress—were being displaced by unmediated mass-market politicking and policy entrepreneurship.

Congress’s first response was to democratize its internal organization. The purpose and effect was to undermine the authority of the committee chairmen who had been powerful gatekeepers of taxes and appropriations—and were now standing in the way of the profusion of new policy initiatives clamoring for attention. Following their demotion, fiscal discipline began to slip and spending became something of a free-for-all.

But Congress remained the cumbersome, conflict-riven, consensus-dependent institution it was designed to be—while the executive branch was flexible and scalable, capable of continuous expansion, specialization, and innovation. In the early 1970s, just as it was

relaxing its fiscal grip, Congress also created a host of health, safety, environmental, and consumer-protection agencies with unprecedented powers (far beyond those of the New Deal regulators) to enact major, often highly costly national policies.

Delegating lawmaking to the executive made it possible to satisfy demands for new government interventions that had grown too numerous and specialized for a legislature to handle directly. Moreover, the benefits of consumer and environmental regulation were tax-free—financed insensibly through higher prices for private goods and services. This complemented deficit spending, which “delegated” the costs of direct spending to future generations.

Both regulation (measured by pages of rules and their estimated costs) and deficits (as percentages of spending and of GDP) grew mightily and fairly continuously over subsequent decades, with a regulatory pause in the early Reagan administration, a deficit pause in the late Clinton administration, and new highs on both scores in recent years. At the same time, our increasingly populist politics, animated by new communications technologies and the 24/7 news cycle, worked strongly to the advantage of the executive, with its capacity for decisive action and declarative, un-muddled policymaking.

Now, borrowing and regulating are important, indeed essential, government functions, and regulation and program administration inevitably require substantial discretion. The problem is that they have come to be used for avoiding political transparency and legislative accountability. As evidence that these developments are essentially institutional rather than partisan, consider the events surrounding the financial crisis of 2008 in the waning days of the Bush administration:

First, in the late 1990s and early 2000s, federal regulators obliged banks to degrade traditional mortgage-lending standards, and Fannie Mae and Freddie Mac to support and securitize the resulting flood of “nonprime” mortgages. The result was off-budget borrowing-for-consumption far beyond what Congress could have engineered through outright taxing, borrowing, and spending.

Then, when the housing collapse of 2007-2008 metastasized into a grave financial crisis, the Treasury and Federal Reserve responded with extemporaneous, extra-legal regulatory actions and unilateral appropriations (through targeted Fed commitments) of hundreds of billions of dollars. And, when Congress finally got into the act with its TARP legislation, the administration immediately redirected the hundreds of billions of new appropriations to purposes dramatically different from those that had justified the statute's enactment.

That prompted howls of bi-partisan congressional protest—but soon after, through the Dodd-Frank Act and related statutes, Congress effectively ratified the executive actions while providing the agencies with breathtaking new unilateral powers to be exercised in normal times. For good measure, Congress even surrendered its power of the purse—the lynchpin of its constitutional position—in establishing the Financial Consumer Protection Bureau. Funded by the profits of the Federal Reserve banks, the FCPB has remained open and unperturbed during the government shutdown.

Through these and other episodes, executive government and debt-ridden government have grown beyond anything in our national experience outside periods of total war—when they were emergency expedients, eventually rebalanced in peacetime, rather than secular trends. Today, as the new normal, they have left us with an enervating combination of extreme partisanship and flaccid impotence: our political energies are consumed by high-stakes battles over executive prerogatives, yet the government's freedom of action has been seriously weakened by its enormous debts and increasingly fragile day-to-day operations.

Many proposals for regaining our political equipoise are circulating in Congress and the think tanks. Some would subject executive discretion to more robust oversight by Congress and the courts. Others would require explicit public accounting for the enormous unfunded obligations of Social Security and Medicare (which dwarf the formal public debt) and, most ambitious of all, abolish the “entitlement” status of those and other programs in exchange for multi-year appropriations.

There are several good ideas in this bunch, but none of them confront the essential task, which is to resuscitate Congress itself as a co-equal constitutional branch. Our presidents speak for the nation and are fond of high aspiration—for remaking education, health care, social relations, the energy and financial sectors, global government, and even the global climate. Our executive agencies are repositories of expert knowledge on many exigent questions. Aspiration and expertise are valuable attributes in government, but left to themselves they are prone to excess and abuse, and they are invariably expensive. They need to be balanced by the sort of humdrum, pragmatic, parochial concerns that emerge from a representative legislature. For this purpose, Congress needs to regain its ability to act with routine, undramatic, day-to-day authority. Its partisan hierarchies need to make room for legislative hierarchies—committee elites with awe-inspiring powers over taxing, spending, borrowing, and regulating, whose powers are accompanied by inescapable political accountability.

In both the House and Senate, the chairmen of the tax and appropriations committees have lately been growing rebellious. Their skirmishes with party leaders just might signal the beginning of institutional renewal. Party and presidential loyalty will always be, and should be, important factors in the Congress. But they need to be joined to loyalty to the place itself—to Congress’s separate constitutional responsibilities, to the democratic legitimacy of representing state and local electorates, and to the special calling of legislative deliberation and compromise. That would not be a panacea for all of our political ills, but in the perhaps-sobering aftermath of our latest fiscal crisis, it would be a good place to start.

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