A Trump-Ryan Constitutional Revival

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A central purpose of the American scheme of checks and balances is to draw out the distinctive strengths of the two political branches, executive and the legislature, while containing their distinctive weaknesses.

The scheme has not been working well of late. The consequences are unbridled executive growth into every cranny of commerce and society, and a bystander Congress. We have lapsed into autopilot government, rife with corruption and seemingly immune to incremental electoral correction.

These pathologies were a significant cause of the Trumpian political earthquake. And one of the many astonishing results of Donald Trump's presidential campaign and the Republican sweep on Election Day is that they have set the stage for a constitutional revival.

No, not by President Trump's nominating and the Senate's confirming Scalia-worthy constitutionalists to the Supreme Court and lower federal courts. That prospect was widely understood and apparently on the minds of many voters. Rather, the new president and Congress are poised to revive constitutional practices in their own branches.

One of these practices is results-oriented policy making—so-called transactional politics—an approximation of what the Founders meant by "deliberation." Another, "checks and balances," is vigorous policy competition between the executive branch and Congress. Both practices have fallen into disuse in what had seemed, until now, to be a continuing downward spiral of dysfunctional government.

A standard complaint about Washington politics is that it has become hyperpartisan and gridlocked. The complaint is lodged by Democrats and Republicans when they are not getting their way, and they are right. The federal government is frequently hostage to ideological posturing in both parties and pre-emptive rejection of compromise with the evildoers in the other party. Recent examples include ObamaCare—a huge (in the pre-Trump sense of the term) expansion of the welfare state enacted on strictly partisan lines; the collapse of the 2011 Obama-Boehner debt-reduction deal following a White House stab at new tax increases; the Ted Cruz-inspired 2013 government shutdown; and the constant Tea Party sabotaging of the Republican leadership at the least hint of legislative compromise.

Spectacles such as these have given rise to a new school of political realism, led by Jonathan Rauch, Richard H. Pildes, Frances E. Lee, and other scholars. Their essential argument, in Mr. Rauch's words, is "that transactional politics—the everyday give-and-take of dickering and compromise—is the essential work of governing and that government, and thus democracy, won't work if leaders can't make deals and make them stick."

The realists vary in their personal politics. They are united in understanding that, in a nation of diverse and conflicting views, civil peace and productive government require more than trumpeting one's own positions and seeking to defeat one's opponents at the ballot box. They also require accommodation through dialogue, negotiation, and practical compromise.

The Trump insurgency was long on trumpeting. The president-elect fought his way to victory with unorthodox, fiercely controversial policy positions, insulting criticism of his opponents and the Washington establishment, brazen defiance of every canon of political correctness, and a taste for overstatement and talent for entertainment.

All of this was, however, accompanied by a strong *basso continuo*: the candidate's business experience, financial independence, and fabled prowess at negotiation and "the art of the deal." Office seekers always say that their particular experience is what the times require, but Mr. Trump was doing more. When reporters complained that his brief, broadly worded tax-reform proposal lacked specifics, he replied dismissively that detailed campaign position papers are media fodder of little interest to voters. If he were elected, the specifics would depend on negotiations among "me and lots of congressmen and lots of senators." For now, the best he could do was to convey the essentials of his tax reform ambitions—lower, simpler, fairer, pro-growth—and his determination to pursue them aggressively.

In combination, candidate Trump's audacious policy positions, belligerent rhetoric, and zest for deal-making seem designed to establish his bona fides as the people's very own Washington wheeler-dealer. The postelection reports on his "backing off" or "reneging" on some of his campaign commitments miss the larger dynamic. The *Washington Examiner*'s Salena Zito reports that many Trump voters are themselves thorough political realists who trust their man. The president-elect, in his election night remarks, insisted that his victory would be as "historic" as everyone was proclaiming only if he did a "great job" parlaying it into practical results.

In attempting to make great on his electoral triumph, President Trump will not have the reflexive support of party stalwarts on Capitol Hill that his recent predecessors have enjoyed. His triumph in the Republican primaries was a hostile takeover. He treated congressional Republicans and their leaders with contempt throughout the campaign. Many of them made clear the feeling was mutual, and some refused to support him.

The bruises will heal to some extent—and practicing politicians have to be impressed at how the outsider's bold proposals and roughhouse style attracted millions of new voters. Yet sharp differences will remain. While some of the president-elect's positions are solidly Republican (ObamaCare replacement, tax reduction, deregulation), others are nervous-making departures (immigration) and some are outright heresies (trade protectionism, antitrust activism, public-works projects). And Mr. Trump's aversion to entitlements reform has undercut House Speaker Paul Ryan's long and careful preparations for finally facing up to the problem.

Under the circumstances, Congress is bound to recover and assert many of its long-neglected legislative prerogatives. In recent decades, our scheme of separated powers has been supplanted by party solidarity between presidents and their congressional co-partisans. ("Separation of

Parties, Not Powers" is the title of an influential 2006 study of this development by Daryl J. Levinson and Richard H. Pildes.)

Members of Congress have increasingly acted out of loyalty to party rather than to Congress as an independent constitutional branch. They support or obstruct administration initiatives along partisan lines, and when in support they receive fundraising and bureaucratic favors from the president in return. During periods of party-unified government, congressional majorities delegate broad lawmaking powers to the executive, as in the Affordable Care and Dodd-Frank acts, that are almost impossible to recover when divided government returns. Congressional minorities allied with the president, employing the Senate filibuster and other supermajority rules, ensure that Congress turns a blind eye to executive abuses, as in the recent IRS and Veterans hospital scandals.

Party partisanship is one (not the only) cause of the emergence of unilateral executive government. That's where the president and the hundreds of agencies reporting to him exercise legislative powers that previously required congressional action. But our new president is more populist than partisan, and the Republican Party has suddenly become, thanks to him, a true big-tent party, as heterogeneous and raucous as the Democratic Party of the mid-20th century.

If the congressional Republicans want to be full players in this new dispensation, they are going to have to reinstitute annual budgeting and appropriations for executive-branch agencies. This is essential for calibrating how the funds are spent, and also for using "budget reconciliation" to begin reforming the Senate's incapacitating supermajority rules.

If they want to participate in charting new courses for health-care, tax, and immigration policy and financial regulation, they are going to have to give up lazy policy delegation to the executive and relearn the arts of legislating and collective choice. And if President Trump should try to settle these and similarly momentous matters through Obama-style executive decrees, they are going to have to cry foul and make it stick.

The hard intraparty contention of the 2016 campaign has prepared the congressional Republicans for this. President-elect Trump's obvious relish for transactional politics, and the largeness of his ambitions, suggests that he is prepared as well. The likely evanescence of Barack Obama's Congress-free domestic and foreign initiatives—the already voided immigration policies, the Clean Power Plan, the Iran deal, national rules for bathroom etiquette—should inspire everyone to stay at the table. It is true that candidate Trump expressed admiration for President Obama's executive unilateralism. But it is also true that Congress often resorts to equally dubious micromanagement of executive-branch operations. Herein are the makings for a mutually productive entente.

These would be healthy developments for our constitutional order. Presidents have the strengths of action, decisiveness, high aspiration, and a national political mandate—along with the weaknesses of overreaching, insularity, and concentration of power. They oversee a bureaucratic empire too vast for any one man to keep track of, and so powerful that abuse and corruption are commonplace.

Congresses have the strengths of full-spectrum political representation, 535 state and local mandates, responsiveness to shifting popular concerns, and a soft spot for human-rights minorities at home and abroad—along with the weaknesses of parochialism, irresolution, decision-by-committee, and herd mentality.

We need more of the strengths and less of the weaknesses. But transactional politics and interbranch rivalry are no guarantee of happy outcomes, which depend ultimately on the constitution of the participants. The record of tough-guy political outsiders is less than great. Businessman Silvio Berlusconi in Italy, and muscleman Arnold Schwarzenegger in California, came to office promising to upend the status quo. But when they discovered just how entrenched and hard-bitten the status quo really was, they promptly folded, contented themselves with mere celebrity, and accomplished nothing.

A separate risk is from the bipartisan innovation, going back to the 1970s, of continuous borrowing and increasing debt to sustain popular entitlement spending for the time being. Relaxing the fiscal constraint—the need to match spending on current consumption with current tax revenues—can make results-oriented political bargaining all too easy. With these and other temptations abundant in modern politics, we may say that constitutional government is a necessary but not sufficient condition of democratic recovery.

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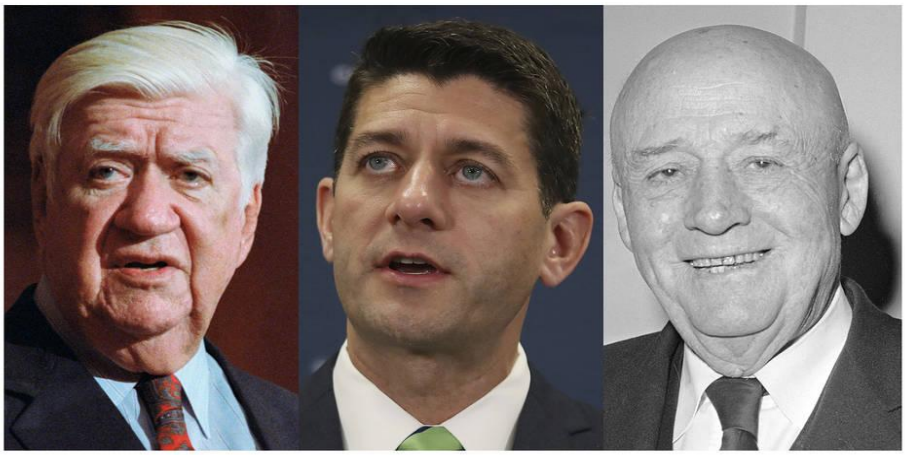

THREE SPEAKERS: TIP O'NEILL IN 1986; PAUL RYAN EARLIER THIS YEAR; SAM RAYBURN IN 1961