

Saving Congress!

What Happens Next - 01.13.2024

Larry Bernstein:

Welcome to What Happens Next. My name is Larry Bernstein. What Happens Next is a podcast which covers economics, politics, and war.

Today's topic is Saving Congress!

Our speaker today is Philip Wallach who is a senior fellow at the American Enterprise Institute. Philip is the author of the book entitled *Why Congress*, which describes the role of the legislature in the American constitutional framework and why we need to encourage Congress to legislate instead of delegating its responsibility to the executive branch, the bureaucracy, and the courts.

I want to find out why McCarthy was removed as Speaker of the House, whether the House should centralize control in its leadership or decentralize responsibilities to its committees, and what are the best ways to achieve bipartisan legislative compromises.

Buckle up!

Philip can you please begin with your opening six-minute remarks.

Philip Wallach:

America is an incredibly diverse and complex country. Its vast geographic scope makes it unlikely to be a homogenous population. A natural consequence of having lots of different people is that we have disagreement. How are we going to make it work?

James Madison very famously offers this classic argument in the 10th Federalist paper; how can we make this multiplicity an asset? He thinks that an expanded republic can have a better chance of working than a small republic, contrary to the conventional wisdom of his time. His vision is one of a continuous shifting interplay of interests and factions who form broad coalitions for action. It must be fluid by continuously playing groups in our society off against each other and getting them to find opportunities for collective action together.

From early in the Congress's history, we got political parties. Parties reduced complexity to make things tractable. Without parties, things can be a big chaotic mess. Congress is a history of letting our factions rub up against each other. Parties in Congress structure that interplay, and when things are going well, Americans have a sense that their views are represented in the Congress and that this negotiation that is ongoing allows their views to have their place, gives them the respect that they are due, makes them a part of our action that we take together. In the 21st

century, our political landscape is dominated by parties turning everything into a pitched battle all the time.

You hear we live in an unprecedentedly polarized era. What does that mean? Sometimes, they suggest that it is the American people themselves are more divided into a staunchly liberal and a staunchly conservative, and this is deeply ideological, but that's not what data are showing. Congress, our legislators sort themselves into two opposed groups more than ever before, but that happens as much because of things internal to Congress rather than external and in our society. We live in a leadership dominated crisis-based politics.

Folks who would argue that Congress is just a do-nothing body. That is not true. Congress passes huge laws all the time. Think of Covid, we got trillions of dollars out the door within months. Congress can make things happen in a hurry when it wants to, but it does not tend to be particularly good at creating this fluid factional interplay. We do not have a lot of healthy debate on hard topics.

Immigration is the topic that I use as a central example. We know that there is a failed immigration system in our country. Whatever your politics, you cannot really be happy about the way it is operating today. And we have a mutual interest in making things work better, but we somehow cannot allow our factions to work out their differences in a way that they could come to trust each other enough to act.

Congress in the 21st century has become addicted to letting the executive branch act and then complaining about it, second guessing, acting like a peanut gallery. And meanwhile it has become marginalized from the real decision-making in American life.

That is a real mistake because we need Congress to be the place where these factions work out their differences. A presidential election is a horrible substitute. If we are hanging everything on presidential elections, they take on an apocalyptic significance and make everyone crazy.

Congressional failure is not a symptom of broader social problems; it is a cause of our feeling of social disintegration. Congress must be the place where our representatives work through issues and when they fail at that, we question the legitimacy of our government. And it leads to this growing tendency toward escapist fantasies imagining a civil war or a secession, anything but that you need to sit down with people who disagree with you and figure out what to do.

Larry Bernstein:

The House changes its rules on how it operates each Congressional session. Sometimes it invests centralized control with its speaker and at other times power is decentralized to committees. Why does this change in congressional power concentration happen?

Philip Wallach:

My argument in the book is that there is not one right organization for Congress and there is a constant struggle for power in a way that satisfies its members. And at various times that is meant more power to the caucuses. The parties assembled separately out of the chamber and making decisions as parties. Other times it has meant the dominance of committee chairman who got their jobs by seniority. That was the mid-20th century Congress and today it means the dominance of elected party leaders. Mike Johnson is not the most senior Republican at all. He is somebody that his colleagues settled on as somebody who could lead them.

Nancy Pelosi, Harry Reed, Mitch McConnell, these have been the figures dominating 21st century congressional politics because their colleagues have decided to empower them. The reasons that their colleagues have done that is that they are laser focused on winning the next election. They think strong party discipline where framing questions to be maximally advantageous to our side and disadvantageous to the other side. We live in an unusual age of knife edge partisan competition.

What we are seeing in 2024 is that this model is not working for the members of the Republican coalition. They have chucked out a speaker for no particular reason. And they were not willing to show partisan discipline enough to keep him around. Speaker Mike Johnson has been talking about a more decentralized Congress. We do not have a lot of evidence of that in action yet, but my book argues against this leadership dominated model, the exhaustion is palpable amongst the members themselves. I do not think we should expect that Congress as it existed under Nancy Pelosi is going to be the way Congress is for the rest of the 21st century. There are signs that our parties are no longer cohesive enough internally, ideologically to muster discipline that Pelosi managed. There is now a search for a new model going on.

Larry Bernstein:

Why was Speaker McCarthy ousted? And why didn't the Democrats support McCarthy to prevent a more conservative Republican to be elected Speaker?

Philip Wallach:

Kevin McCarthy misjudged that whole situation and probably believed the Democrats were going to save him, and he was wrong. That will eternally stand as an indictment of his political judgment. Why didn't they? Well, the January 6th stuff hung in the air quite heavily. They thought that if you are going to come ask for us to save you, you got to offer us something. And McCarthy refused to do that. He said, what I am offering you is that I am probably better than the

next guy. I am not going to make any single concession to you. And they said, okay, well if your offer is nothing then goodbye.

They just said, no, we are just going to keep voting as Democrats and you Republicans are going to have to decide who you want to vote on as a Republican. So that is the historical norm. It turned out that they just didn't like working with him, that for all of his self-presentation as an affable deal maker, they saw him as somebody who talked out of both sides of his mouth and couldn't deliver much in the end.

Larry Bernstein:

In your congressional history you do not focus on the importance of individual personalities and being well liked. It is policy and power that make the difference.

Philip Wallach:

It is true that people can have a lot of disagreement and dislike each other and still find that they can work with those other people. Ted Kennedy was a remarkably successful legislator. Many of his colleagues thought that he was a sleazeball and that the political rhetoric that he engaged in was despicable. And yet they thought that he was somebody that you could deal with, and he was willing to listen and figure out how to go forward.

Larry Bernstein:

In the 1960s and 1970s the Southern Democrats benefited from the seniority system and headed the most important House committees. In 1974 after Watergate, the Democrats won a landslide victory in the House, and the new freshman Democrats revolted against the Southern committee heads and upended the seniority system. What happened?

Philip Wallach:

Part of what brought down these Southern Chairmen in the mid-20th century is this class of younger liberal members and they thought these guys are not going to listen to us. They think it is their institutional birthright to ignore us and to shut us out, and we do not have to put up with it. We are going to change the way the Congress is organized. It was not that they thought they were nasty people, it's just that they thought that they couldn't ultimately get a fair hearing for the ideas that they cared about.

Larry Bernstein:

In 1910, Republican Speaker Cannon's power as the Speaker and the Chairman of the House Rules Committee was challenged. He was ultimately stripped of his control by Republican progressives. How does that historical example apply to today?

Philip Wallach:

Speaker Cannon was very well-liked. He was a real outsized personality and he had put in many decades of service to the Republican cause. He was known as this Republican dedicated soldier. But at some point, his Republican party progressive members said, this guy just isn't willing to give us a fair hearing when we say that we think railroads are out of control and we need regulatory statutes to get them back in control.

He is not listening to us. He has got this rigid orthodoxy and if we want to get a fair hearing, we have to change the way things are done. So, they found by working with the Democrats and getting him removed as Chairman of the House Rules Committee.

The question today is are there a lot of members who feel like they just cannot get a hearing for the things that really matter to them? Because our top-down leadership today just basically shuts them out. There are a lot of members on both sides of the aisle who just feel like they cannot get anything done at all unless they're working through the speaker's office and that the speaker isn't interested.

Larry Bernstein:

With an all-powerful Speaker of the House, individual congressmen do not have much congressional work to do.

Philip Wallach:

House members today feel like the way things are organized; my job is to be a glorified telemarketer. It is to go raise money for the party, so that we can win the elections. They feel like that is the meat of their job, and they do not really get meaningful power otherwise, and that is not a very good job. And there are a lot of talented, ambitious people in the Congress who wish that they could be solving problems on behalf of the American people, and they feel like the way the Congress is structured today, they just do not have the chances to do that.

Larry Bernstein:

When I speak to congressman who are in the majority, they complain that they cannot influence legislation outside of their committee work. And the minority congressmen feel completely helpless and ignored.

Philip Wallach:

It must be the members themselves who say, this system is not working the way we have it organized today. We must do things differently. I must have a chance to make a more meaningful difference and bring the views of my constituents into the halls of power, not just as an angry voice shouting from the wilderness, but as somebody who has a direct say in making the big choices about where this country is going. What you said about both in the minority and the majority party is absolutely right. Back benchers feel like they have little role to play. They are

just supposed to show up and cast their votes as they are told and their committee work, they feel like does not go anywhere. They may frame up some nice bipartisan bill that everyone works extremely hard on and then it will go into the circular file just nowhere if the speaker is not interested in it.

That is very frustrating to members, and we need to change the rules of the way the House works to ensure that when committees do good work like that, it gets a hearing on the floor. That is something that we could guarantee through the rules, and it is time for members to insist on that as a condition of organizing the next House. Members of the House of Representatives get to set the rules anew. Every time we have a midterm election and start a new Congress, we get new rules. So, it is entirely 100% within the members' power to put in a new package of rules that reorganizes who controls the agenda. It does not just have to be run out of the speaker's hip pocket.

The question is just whether they will avail themselves of that power. The reason that they do not is that there is sincere partisan conviction that winning the next election is more important. And I guess I should be a good foot soldier for the party and leave this congressional organization stuff for another day. So, we need something to come along that makes members say, "no, let us not do that anymore. Let us focus on getting something done for the American people."

The immigration debate playing out right now is an interesting test case because Joe Biden sure has incentives to sign some deal, and there is a widespread sense that we have a crisis on the southern border. It seems like you could say, "let's make a deal." But you have some Republicans in Congress explicitly coming out and saying, "no, I don't want to give Joe Biden anything that he can run on. I am not seriously interested in making a deal. I'm going to be opposed to anything that Joe Biden would sign." And that is not a totally crazy point of view if you just think the next election is the only important thing, but if you care about ending the chaos on the southern border, then there must be legislative opportunities to do something today.

Larry Bernstein:

Can you explain what the substantive issues are in the immigration legislation debate being discussed now?

Philip Wallach:

When we look at why the 2013 push for immigration reform failed, I think it has much more to do with this gap in trust from the conservative opponents of immigration. And that does have to do with the 1986 reform law since they believe that they got played for suckers. That deal was sold as a big compromise that would give an amnesty but also tighten things up going forward. And it did not tighten things up. And so, overcoming that lack of trust, that is a big challenge. In some ways having a more conservative speaker of the House could make that more possible if he

decides that he really wants to get something across the finish line, perhaps his conservative bona fides can be a big asset in selling it as not a sellout.

But it is a risk for him. He would be branded as a traitor by some people, no question. And maybe he does not feel ready to weather that storm and maybe he just thinks it really would be better for Republicans to deny Joe Biden any victory on immigration and get President Trump back and see what deal can pass with President Trump in the White House. That is where we are today.

Larry Bernstein:

The nature of bipartisan legislation is that it is a compromise. But if the administration only enforces what it wants and disregards what the opposition demanded in the legislation, then that is not the deal. Using immigration as the example, the deal could be exchanging increased amnesty for tightening the border. But the 1986 immigration bill was that same compromise, but the Republicans argue that the Democratic Administrations got the amnesty that they wanted, but the Democratic administrations refused to enforce the border or the E-Verify requirements for employment that were part of the immigration legislation compromise. Is it necessary to believe that your opponents will honor the compromise for there to be a deal?

Philip Wallach:

It is a really good question. We have gotten used to a situation where the executive branch gets creative lawyers to read statutes however the president wants them read, and then they justify doing whatever fits the political agenda of the moment. Whereas we could try to make Congress more disciplined in how it writes statutes and then get a little bit more aggressive on saying, "Hey, the President's job is to take care that the laws are faithfully executed, and we have this much greater willingness to use the tool of impeachment today."

Congress can play hardball with the President if they are really frustrated with what he's doing. If everyone is willing to fall back on their partisan instincts, then the president's partisans can just protect him, and we have seen a lot of that. It would be extremely healthy if members of Congress could recover an institutional mindset where they think these are the institutional prerogatives of Congress.

Larry Bernstein:

Fundamental to your constitutional framework is that Congress is the place to make the laws. There are others who believe that the right place is the bureaucracy to make the rules and regulations. The bureaucrats are expert. They can hold public hearings, interpret the broad statutes promulgated by Congress, and then make the detailed regulations.

Conservatives on the Supreme Court think that the executives in the bureaucracy are violating the constitutional framework by doing the work that is supposed to be Congress's responsibility. And that the US has defaulted to the European Union's method of delegating much of their duties to non-elected bureaucrats.

Philip Wallach:

The fundamental question can be put even more sharply, which is people who get elected to Congress, what they are good at is getting people to vote for them and winning partisan primaries and then general elections. Why should they be good at making big decisions about what needs to get done on climate change or asylum policy? They are just dumb generalists, so why should we trust a bunch of dumb generalists to make the right choices? My answer to that is it fundamentally misconceived what politics is all about. If we had a bunch of well-defined questions teed up and the only question is how to answer them to best maximize public welfare, then it is true. We should call in appropriate experts to answer those questions as correctly as we know how and do what they say.

But that's not what politics is like at all. We do not have a bunch of engineering challenges we need to solve. We confront this vast society full of contradictions, full of disagreements about what is important about how to prioritize between competing goods. We do not even know what the right questions are to be asking. And the virtue of congressmen is not that they are geniuses or experts, it is that they are representative. It is the representativeness that must legitimate the body and ultimately legitimate the work of our government. We believe in self-government in America. We do not just believe in saying, well, this problem is hard. We need to call in the expert, and that is the end of the story.

Asking the biggest questions, including what is important to us? What is this country all about? We cannot leave that to any experts. There are no such experts. The people must decide, and we do so through our representatives. That is what Congress is for.

Larry Bernstein:

I saw a play called *All the Way on Broadway* that starred Bryan Cranston. It was about LBJ and passing the Civil Rights Bill of 1964.

Philip Wallach:

I saw the HBO movie.

Larry Bernstein:

The play gives most of the credit to LBJ in passing that landmark legislation. In your book, you take a different perspective. What you argue is that the Civil Rights Bill passage reflects the best

of what Congress can do by working within the committees and finding a bipartisan solution to an intractable problem.

Philip Wallach:

It is very understandable that when we think about American history, we think of presidents, they are compelling figures, they have dramatic arcs. That lends itself to tidy morality plays. And the story of the Civil Rights Act of 1964, we have all these intransigent Southerners. How are we going to get through them? Brave Lyndon Johnson of Texas is willing to put principle above parochial interest, and by virtue of his heart being in the right place and having balls of steel, he can take this vision that Martin Luther King and the civil rights movement have teed up and push it across the line into legislation. It is something we can feel pride in that this happened and something that we can identify with Lyndon Johnson as a protagonist. It is just not a particularly good rendition of what happened.

The push for civil rights was truly bipartisan, and Republicans in many ways took the lead during the Kennedy administration because John F. Kennedy had campaigned saying that he was interested in doing civil rights. But then he found it was a very unpleasant thing to get waist deep on the issue and jeopardize his relationships with these powerful Southern Committee chairs. So, he just mostly wanted to put it on the back burner and a lot of liberal Republicans, and that was not at all a contradiction of terms at the time, pushed very strongly for a civil rights law, and that was part of what got the ball moving in 1963 before Kennedy's assassination. We had some Republicans who decided to make this a priority, one of whom was the Senate minority leader, Everett Dirksen of Illinois, making it a big bipartisan push.

How did the civil rights pass and endure? It is because it had a huge bipartisan coalition behind it that included just about everyone other than Southern Democrats. The work of assembling that coalition is Congress at its best. It involved a lot of persuasion. The civil rights movement did not just say, we are going to take to the streets and assume everything else is going to fall into place. No, they worked the politics; they did the lobbying. They figured out how to appeal to church leaders who in turn shamed a lot of Midwestern Republicans into believing that indifference was not a valid option, and they got things moving.

The Senate majority leader after Johnson became vice president and then president was Mike Mansfield from Montana. He is a fascinating figure. And Mansfield's style was just 180 degrees different from Lyndon Johnson's. He believed in letting people have their say. He believed in working things through, and he sat down with Richard Russell of Georgia, the acknowledged leader of the segregationists, and said, here is how we are going to work this.

Russell thought that Mansfield was giving his side a fair hearing, and that was important. It was not just that the civil rights side steamrolled the opposition. It is that Mansfield and Hubert

Humphrey, who was his ally, made sure that the southern segregationists had their chance and to lose after having had their say. And that is what happened. They eventually lost the cloture vote. The civil rights bill got through, and then Richard Russell could say, I think this is a bad law. I hope we will reverse it. But now it is the law of the land, and everyone should follow it as the law of the land. And I believe we were given our fair hearing and we must move forward. That is an extraordinary thing that we almost have difficulty imagining in our political environment today, that by working through the legislative process, you reconcile the sides to moving forward and getting on with things.

Larry Bernstein:

Notice that in your example Russell and Mansfield sat down and worked things out. They are both Senate Democrats. This is not Ted Cruz sitting down with Bernie Sanders from opposite political parties.

Philip Wallach:

Having these ideologically mixed-up parties in the mid-20th century, which was this peculiar historical artifact, did make the politics of that quite different from ours. Knowing that you are on the same team in the partisan sense does make it easier to cooperate. We are Democrats and we are the governing party, and we have to work things out. That was a powerful engine of cohesion for a long time.

Larry Bernstein:

In the 1960 Presidential Election between JFK and Nixon resulted in a tie in the State of Texas but the Texas Congressional Delegation went 21-1 for the Democrats. Most of them were very conservative politically. This is unimaginable today as partisanship and political ideology are perfectly correlated.

Philip Wallach:

I do want to push back against the idea that our parties are well sorted out today. When you listen to JD Vance talk about what he wants to accomplish, he just does not have a whole lot in common with Mitch McConnell. He has more in common with Elizabeth Warren. There is a huge partisan gap and a whole culture war that separates JD Vance from Elizabeth Warren, but they have a lot to work together on. There is heterogeneity in both parties today.

Larry Bernstein:

JD Vance wrote a book entitled Hillbilly Elegy, and in it he describes growing up on the Ohio border with Kentucky, and that he lived most of time with his grandmother in Kentucky. Mitch McConnell is from Kentucky, and effectively these are two men from the same state. And you are right, parties are fluid. They change, the Republican Party has become more populist, and Vance is more populist than the standard Reagan Republican free market libertarian. That said, if

we look at the voting records, JD Vance and Mitch McConnell have voted together nearly every time, and JD Vance has rarely if ever voted the same way as Elizabeth Warren. That suggests to me that Vance's and McConnell's interests are aligned, even if their rhetoric does not always match.

Philip Wallach:

I think you must go back to how are these congressional votes being framed. Mitch McConnell and Chuck Schumer are both good at their jobs in figuring out how to tee things up to divide the two parties into their respective camps. We have reduced the job of a US senator to showing up and casting the vote that their party expects them to cast. I do not doubt that JD Vance and Elizabeth Warren vote the opposite way on a lot of things. Part of what I'm arguing for and why we need a more open agenda is that if there were given a chance to engage in a more fluid search for the policy alternatives that they might agree on, then they would be able to come to more compromises. And I do not have anything invested in those two figures. Maybe they are both sufficiently committed to partisan warfare that they will never find their way there, but I do think the voting records are deceptive. They are of engineered to create party difference, and the people who engineer those votes know what they are doing. But I really want to push back against looking at the voting records and saying, oh, well, they must not really agree on anything. I just think that is wrong.

Larry Bernstein:

Philip you are a scholar with the American Enterprise Institute which is a center-right think tank. Ideas percolate in institutions like AEI that provide analysis, ideas, working papers on how to solve problems. Then entrepreneurial politicians run with these ideas and win elections and try to implement them in Congress.

Republicans ran on overturning Obamacare. McCain torpedoed repealing Obamacare back during the Trump Era. Was the Republican failure a lack of a health care plan alternative?

Philip Wallach:

The Senate, if you will remember, was voting on skinny repeal. That was what they ended up calling it. It was bare bones repeal that did not touch most of the law because they had already decided that passing a more ambitious repeal law was going nowhere. When push came to shove, they did not know what they were doing. They were trying to get something across the line and McCain said, no, thank you. This is a big mess. I am not going to be a part of it. And that failed. Repealing Obamacare had been such an empty slogan for so many politicians, and it served as a focal point for anti-Obama feeling more than it served as a healthcare policy. And it turns out the American people really care about healthcare policy, and you really want to get it right when you go in and change it. And there was not enough confidence in how legislators approached the problem in 2017 to get us to a major overhaul. Instead, they found some provisions that were

very unpopular, like the individual mandate and pruned them away. And that was all that they were able to accomplish. And the Trump administration changed the way Obamacare worked in lots and lots of ways by using the power of the Secretary of Health and Human Services. So, it is not that no Republican ideas on healthcare ever made it through, or that the Republicans did not have any ideas on healthcare. It is just that they did not manage to coordinate them into a package that was ready to go in 2017 when the moment came.

Larry Bernstein:

I end each episode with a note of optimism. What are you optimistic about with Congress?

Philip Wallach:

My boss always likes to distinguish between optimism and hope. Hope is a virtue, and optimism is just an expression of naivete. I am hopeful about Congress because I believe in James Madison's fundamental insight of ambition, counteracting ambition, and I do believe there are smart, ambitious, courageous people serving in Congress who are dissatisfied with the way things are today, who want to do the work of the American people. There is a decent chance that those people will be able to transcend the current strictures of Congress that are so emasculating for its members, and they will push things in a new direction. I do not think it is going to come from well-meaning outside reformers bringing high-minded ideas about democracy.

I think it is much more likely to come from members who get really energized on a particular issue, and that's why immigration is maybe my best candidate. If we really are serious about fixing the system, if we do believe it is a crisis that has to get fixed and not just used for electoral fodder, then Congress is the place to figure out how to do that. That remains true. That is a feature of our constitutional system. And because that possibility remains latent, and I am hopeful that they will take it. We will see.

Larry Bernstein:

Thanks to Philip for joining us today.

If you missed our previous podcast the topic was Expanding the Republican Tent with More Black, Hispanic, and Young Voters. Our speaker was Patrick Ruffini who is the author of the book entitled Party of the People: Inside the Multiracial Populist Coalition Remaking the GOP. Patrick is the founder of Echelon Insights that uses digital analytics to improve polling and strategy for Republican candidates.

Patrick explained why voter behavior is not entrenched and that Republicans have an opportunity to persuade Black and Hispanic voters who lean conservative to vote like their White Working-Class brethren.

I would now like to make a plug for next week's podcast with Eitan Shamir who is the former head of the National Security Doctrine Department at the Israel Ministry of Strategic Affairs. He is also the co-author of the book entitled *The Art of Military Innovation: Lessons from the Israel Defense Forces*.

I want to learn from Eitan why the IDF is so innovative and why Israel was asleep on 10/7 and how the IDF has adapted to the complex military operation that is ongoing in Gaza.

You can find our previous episodes and transcripts on our website whathappensnextin6minutes.com. Please subscribe to our weekly emails and follow us on Apple Podcasts or Spotify.

Thank you for joining us today, good-bye.