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The High Crime of Congress

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The trial of President Trump for charges of high crimes and misdemeanors surprisingly suggests an opportunity to better align the private political interests of members of Congress with those of the public. The crux was that, in handling military aid to Ukraine, he placed personal interest above the public interest by using public powers for private political advantage. Whether he did that or not, many Republican and Democratic members of Congress do put personal advantage above the public interest by framing legislation to mask their responsibility for unpopular consequences. That they frame legislation in this way has long been obvious through history.

Today, however, the impeachment proceedings have shown that such use in Congress of public powers for private political advantage can really be thought of as a high crime. After all, legislators have done this repeatedly and with calculated disregard for the critical promise of the Declaration of Independence of a federal government that is based upon “the consent of the governed.” The Constitution makes no provision for the impeachment of members of Congress, however, the odor of criminal conduct provides an opportunity for candidates and constituents of every political stripe to rally around the reforms that would place the public first in Congress.

To put the public first, the Constitution indeed sought to make members of Congress bear their personal responsibility for both the popular and unpopular consequences of the most important policy decisions. Yet, in recent decades, Congress has devised slick ways to write legislation so that its members can take credit for the popular consequences, but shift blame for the unpopular ones. Until the middle 20th century, lawmakers who took credit for new spending programs or tax cuts also, except in emergencies, took the blame for the measures needed to pay for them. However, starting in the 1960s at a time of great optimism, both parties began to routinely promise benefits or tax cuts but leave paying much of the cost, and therefore the blame, to the future sessions of Congress.

Not just with taxing and spending but with legislative powers in general, members of Congress frame statutes to maximize credit and minimize blame rather than maximize the benefit to constituents. Such statutory designs allow them to evade blame for the harm done to the public when they do favors for special interests and cater to voters of the extreme left and right who wield disproportionate power in the primaries. The use of public powers for private political advantage could explain why nine out of 10 members of the House win reelection, even though only two out of 10 voters tell pollsters that they approve of the job that Congress does.

Candidates could turn the unpopularity of Congress into a strength by running on a platform of forcing its members to once again shoulder full responsibility. Now politicians can get away with failing to pay for their spending programs or tax cuts by claiming the experts of their choosing have found their proposals will indeed collectively pay for themselves.

Such claims, like those of a used car dealer who claims a mechanic of his choosing has found the car to be in tiptop condition, should not be taken seriously at face value. Congress could and should take actions to bring home to voters a much more reliable and meaningful picture of the costs by directing a nonpartisan bureau to regularly mail to every household a solid estimate of how much work of the current session of Congress will ultimately cost the average family in spending cuts or in tax increases.

This and other reforms to make legislators responsible are demonstrably feasible. Voters want reform of Congress as evidenced by it repeatedly enacting reforms, which however turn out to be phony. To supposedly force legislators to do even more than reveal the unpaid costs and to actually pay them, Congress enacted the Gramm Rudman Hollings Act. Since then, however, Congress has pushed that reform aside. To stop legislators from taking credit for benefits but shifting the blame for the costs to states and localities, Congress passed the Unfunded Mandates Reform Act, which promised members would vote on controversial bills.

Since then, however, Congress usually blocks such votes with procedural rules. To stop legislators from taking credit for regulatory protection but shifting to agencies blame for the regulatory burdens. The Congressional Review Act, which promised votes on the most controversial mandates, was passed. But since then, Congress still opts to vote on only a handful of regulations and only those that are easy choices for the majority party.

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To stop elected legislators from taking credit for the wars that turn out to be popular but shift to the president blame for wars that turn out to be unpopular, Congress passed the War Powers Act, which promised votes on whether to go to war. Since then, however, Congress and presidents have conspired to avoid votes on numerous controversial and expensive wars. More than two decades ago, then Senator Joe Biden observed that Congress failed to fix the War Powers Act to deliver what was promised because members “do not have the political courage to take a stand.”

Most voters across the country have much more pressing obligations than sleuthing out how Congress takes credit and shifts blame when it enacts legislation. Nonetheless, many of them do have a sense of being cheated and

so could appreciate candidates who run to enact concrete measures to force members of Congress to shoulder responsibility for their actions.

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