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The Gentleman from New York: Congressional Discipline in the Light of Powell v McCormack

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INTRODUCTION:

The opening session of the 90th Congress set events into motion which would result in significant changes to the way that Congress disciplined its members. In his first Congressional act, newly-elected Representative Lionel Van Deerlin of California, who himself had not yet received the oath of office, made his voice heard in the House Chambers, saying “Mr. Speaker…I object to the oath being administered at this time to the gentleman from New York” (113 Congressional Record 14, January 10, 1967). Thus began the disciplinary proceedings against Adam Clayton Powell Jr., a widely popular Representative from New York’s 18th District for more than 20 years (Ray 1994, 396). These disciplinary proceedings began a legal battle that would not conclude for more than two years’ time, and would result in Powell’s de facto exclusion for the entire 90th Session of Congress.

Fifty-two years later, another Congressman faced animosity toward his appointment. This time it was Raymond Burris of Illinois, who had been accused of attempting to bribe Governor Blagojevich in order to obtain the United States Senate Seat vacated by President-elect Barack Obama. This serious accusation was corroborated by FBI evidence including wiretaps and witness testimony (Fox 2009); yet despite the difficult circumstances raised by the accusations, Senator Burris was confirmed just ten days later, a delay precipitated by a paperwork problem at the state level (Hulse 2012).

The landmark event which changed Congress’ perspective about their right to refuse to admit a newly-elected or appointed member was the case of Powell v. McCormack. The Supreme Court’s verdict in Powell v. McCormack stopped Congress from engaging in lengthy battles in which it attempts to prevent duly-elected\(^1\) congressmen from receiving their appointments.

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\(^1\) The duly-elected standard prevents us from considering the 1974 legal battle between Louis Wyman and John Durkin, in which differing vote-counts awarded each candidate at least one declared victory.
Adam Clayton Powell Jr. was famous long before he achieved his position in the US House of Representatives. As the Senior Pastor for the Abyssinian Baptist Church, a church famous for its activism in support of the Civil Rights Movement (Capeci 1977), he was a prominent figure in Harlem, New York. When seven black churches were bombed in Montgomery, Rev. Powell personally mailed over 500 letters to members of Congress in search of justice and relief. Only two members of Congress even responded to Powell’s request (Powell Jr. 1971, 39). Powell also fought for reform at Harlem Hospital (the local public hospital which had a de facto ban on black employees), built work-camps to provide employment for struggling African Americans, and led picket lines protesting high prices and high unemployment (Powell Jr. 1971, 40-63).

It was this notoriety, especially among African Americans, that helped propel him into public service. Rep. Powell noticed that New York had almost 500,000 African Americans, yet there were no black elected officials – due largely to Republican gerrymandering (Powell Jr. 1971, 68). Despite the difficult odds, Powell achieved a spot on the New York City Council. Four years later, Powell was elected to the US House of Representatives to represent a newly-created district in Harlem.

Once in the House, Rep. Powell gained a reputation for unorthodox and bold actions – even earning the title “Congressional Irritant” (Hamilton 1991, 1390). When he found out that a Congressman refused to sit next to a “negro,” Powell mercilessly followed him “sitting next to him, or as close as I could. [Until] finally…he had to shut up” (Powell Jr. 1971, 73). Powell boldly declared to President Eisenhower, “There must be no second class citizenship in this country” (Hamilton 1991, 203) as he crusaded for Civil Rights. He lambasted Congress by saying:
Two years ago, this Capital was a cesspool of democracy where not only I, as a Negro congressman, was banned from all public places but also visiting chiefs of state and their representatives, if their skin happened to be dark. For 10 years, my colleagues and I have introduced civil rights amendment after amendment, civil rights bill after bill, pleading, praying that you good ladies and gentlemen, would give to this body the glory of dynamic leadership that it should have. But you failed and history has recorded it (Hamilton 1991, 209).

Yet despite his fiery rhetoric and “flaming tongue” (Powell Jr. 1971, 57), Powell’s legacy seemed to fade as he furthered his political career. He became famous for a larger-than-life attitude and frequent vacations to exotic islands. Powell had been embroiled in tax problems since 1950 and was convicted of libel in 1960 (Weeks 1971, 6-12). This libel case epitomized his legal problems; it took six and one-half years to resolve and, even after its conclusion, Powell used every possible tactic (including extra-legal measures) to avoid payment (Weeks 1971, 7-8). Powell refused to appear at a large percentage of these cases, and was found in contempt of court on numerous occasions (Weeks 1971, 8). These legal issues forced Powell to stay out of New York State or be arrested (Weeks 1971, 11).

CONGRESSIONAL DISCIPLINE:

When Rep. Powell returned to Washington DC from an extended stay in Bimini Island in 1967, he found that his congressional counterparts had been eagerly awaiting his arrival. News of Powell’s widely-publicized legal problems had enraged members of the House of Representatives, and they took measures to ensure he was not sworn in to begin the new session.

California’s Representative-elect, Lionel Van Deerlin, rose and objected to the administration of the office to Rep. Powell. A proposal to seat him while a committee discussed his future in Congress was defeated by a large margin (126-305), but an amended version, submitted by Rep. Gerald Ford of Michigan, easily passed. In its amended form, House Resolution 1 held that Rep. Powell could not receive the oath and be seated as a member of Congress until a nine-member
House Committee cleared him to do so (U.S. Congress 1973, 104). When Rep. Powell heard the results of the vote, he stated “Today marks, in my opinion, the end of the United States of America as the land of the free and the home of the brave.” Pointing his cigar toward the Capitol, he continued, “This building houses the biggest bunch of elected hypocrites in the world” (Weeks 1971, 47). Having been excluded from the 90th Congress, Powell began to seek a remedy from the Courts. Although the Courts had traditionally stayed away from so-called “political questions,” the timing and method of this exclusion raised important constitutional issues that were eventually considered by the US Supreme Court.

CONSTITUTIONAL ISSUES:

As the House debated the constitutionality of excluding Powell, they touched on the important Constitutional arguments both for and against seating Powell.

Rep. Gerald Ford of Michigan stated, “The issue, as I see it, is exclusively the question of the qualifications of one of our numbers elected…to sit as a member of the House of Representatives” (Weeks 1971, 38). This speaks to the congressional powers enumerated in Article I, Section 5, clause 1 of the Constitution – allowing each house of Congress to judge the elections, returns, and qualifications of its members. Congress used this language to assert that they had the power to deny admission to Rep. Powell based on his fitness to serve (Chicago 1967, 151).

However, not all Representatives agreed with Ford’s broad interpretation of the congressional qualifications. Rep. James C. Corman from California articulated this point when he stated from the House Floor,

Those of us who vote for the seating of the gentleman (Rep. Powell) conclude merely that he is over 25 years of age, a citizen of the United States, and an inhabitant of the State of New York. To imply…that the right of the gentleman to be seated raises [questions of the image of the House] goes clearly beyond our jurisdiction today and shows little regard for the Constitution of the United States (Weeks 1971, 39).
This definition of the qualifications for congressional office, enumerated in Article I, Section 2 states that members must: be at least twenty-five years old, have US Citizenship for at least seven years, and must be an inhabitant of the state which he will represent. Rep. Powell met these standards, and argued that Congress cannot impose extra-constitutional standards for congressional service.

Rep. Powell also sought protection through Article I, Section 6, clause 1 of the Constitution, the so-called “Speech or Debate Clause,” which asserts that Representatives should not be questioned in any place except their House. Many in Congress disapproved of this logic, as articulated by Sen. Udall of Arizona who stated “If Article 1, Section 6 is to be so twisted as to…provide a haven for fugitives then… I say “God help the Congress of the United States” (Weeks 1971, 39). But Congress also sought Speech or Debate protections when served with the summons that required their attendance in court to testify about their exclusion of Rep. Powell.

Congress also argued that their decision was a “political question,” which the Court could not review. Justice William Brennan’s opinion in Baker v. Carr was cited, including the six factors for defining political questions. This was, in the minds of Congress, proof that the Courts must stay out of this problem. Powell’s attorney countered by saying,

Whatever question of justiciability might be raised by the presence of ‘political factors’… is disposed of by the claim that the acts here involved transgress the Constitution. And Constitutional exegesis is the Court’s domain (Weeks 1971, 120).

A broad consideration of these factors results in the following main questions posed to the Courts: Did the Court have jurisdiction to rule in this case? Did the Speech or Debate Clause protect the House, or Rep. Powell, from judicial inquiry? Was this case simply a “political question” that should be avoided by the Court? Did the House violate the Constitution? Did the Court have power to issue an injunction or writ of mandamus to Congress?
JUDICIAL INTERVENTION:

Powell’s attorneys filed suit in the District Court for the District of Columbia just one week after his exclusion. The suit was brought against Speaker John McCormack, Majority Leader Carl Albert, Minority Leader Gerald Ford, and six other Congressional employees including the House Sergeant-at-Arms and Doorkeeper. Thirteen of Powell’s constituents joined with him in a suit asserting that their vote was not being honored by the House based on its refusal to seat Rep. Powell (Weeks 1971, 108). The first judge to hear the case, the Hon. George L. Hart, Jr. of the US District Court for the District of Columbia, dismissed Rep. Powell’s case, citing a clear conflict of the separation of powers (Weeks 1971, 122). This rapid dismissal did not stop Powell’s pursuit.

Rep. Powell’s lawyers filed for an appeal immediately, and five months later they found themselves arguing before the Court of Appeals for the District of Columbia. Future Supreme Court Chief Justice Warren Burger was one of the three judges who heard the appeal. Each of the three judges ruled against Powell’s petition and Powell’s only remaining option was to appeal to the US Supreme Court. He had previously predicted his case would eventually end there, “when [the Supreme Court] get enough guts to rule one way or another” (Weeks 1971, 146).

It was during the intermission between the Appeals Court verdict and the Supreme Court’s grant of certiorari that Powell was finally seated, though this time it was as a member of the 91st Congress. He won a landslide reelection in 1968, and was admitted to the House with a fine of $25,000 and a loss of seniority. Many have argued that this admittance was made by strategy within the House of Representatives, because they believed it would render the case moot before the Supreme Court issued a ruling (Weeks, 1971).

The Supreme Court heard the case in 1969, in what would be one of the final cases heard by Chief Justice Earl Warren who retired one week after the decision was written. The Court was also without Associate Justice Abe Fortas, who resigned one month before the case was decided. The
Warren Court had built a reputation based on the dramatic increase in constitutional liberties it asserted (Burns 2009, 193), yet it had internal divisions with regards to the separation of powers and federalism (Mason, 1966 544). Justices Harlan and Black, who both heard Powell’s case, were openly critical of “[writing] into the Constitution [The Court’s] notions of what it thinks is good governmental policy” (Mason 1966, 548).

However, despite their internal division, a surprisingly unified Court ruled 7-1 that Powell had been denied his Constitutional rights. The majority opinion, written by Chief Justice Warren, was complimented by a concurring opinion written by Justice Douglas. Justice Stewart wrote the only dissenting opinion.

Chief Justice Warren’s opinion stated that the protections of Speech or Debate were “to prevent intimidation [of legislators] by the executive and accountability before a possibly hostile judiciary” (Powell v. McCormack at 502), and that “Legislative immunity does not… bar all judicial review of legislative acts” (Powell v. McCormack 1969, 503). He further argued that the House has constitutionally enumerated powers to expel a Representative (with 2/3 vote), but not to exclude a Representative – as the House had done.

The Court asserted their jurisdiction over the case by cited Article III Section 2, which states that the Supreme Court shall have “Judicial Power shall extend to all Cases arising under this Constitution” (Powell v. McCormack 1969, 512), rejecting the idea that this was purely a “political question.”

Chief Justice Warren, citing Alexander Hamilton, stated the fundamental principle of democracy is that the people should be able to choose who governs them, not the Congress, executive, or anyone else (Powell v. McCormack 1969, 547). Because Rep. Powell had been duly-elected by his constituency he was entitled to have a seat within the House. He could be disciplined to the extent that his conduct was offensive to the House, but he should still be allowed to sit.
In Justice Douglas’ concurring opinion, he describes the precedent the Court would set by allowing the House to bar Rep. Powell from admittance.

A man is not seated because he is a Socialist or a Communist. Another is not seated because in his district members of a minority are systematically excluded from voting. Another is not seated because he has spoken out in opposition to the war in Vietnam. The possible list is long. Some cases will have the racist overtones of the present one. Others may reflect religious or ideological clashes. (*Powell v. McCormack* 1969, 553).

Succinctly put, the Court ruled that, “…the House is without power to exclude any member-elect who meets the Constitution’s requirements for membership” (*Powell v. McCormack* 1969, 547).

Justice Stewart argued in his dissent that the suit was moot because the 90th Session of the House had come to a close. He dismissed the idea that the back Congressional pay not received by Powell saved the case from mootness because the constitutionality of Congressional act is “entirely distinct” from what punishment Congress chose to impose (*Powell v. McCormack* 1969, 564).

This powerful case further-established judicial enforcement of the Constitution upon the Congress, and provided the Congress with new precedent to consider when deciding how to discipline their membership. However, the Court did not rule on Powell’s back pay, they did not create substantial jurisprudence about the Speech or Debate Clause, and they did not rule on whether or not Congress could *expel* a member before he was sworn in, only that they could not *exclude* a member (Weeks 1971, 202). Many of these questions have yet to be answered conclusively.

**CONTEMPORARY APPLICATION:**

The Supreme Court’s verdict asserting that Congress could not refuse to seat a duly-elected member regained its national prominence in late 2007, in the midst of an appointment scandal. Illinois Governor Rod Blagojevich attempted to exercise his authority under the Seventeenth
Amendment to make a Senate appointment due to the departure of President-elect Barak Obama. This was complicated, however, by Gov. Blagojevich’s recent arrest on federal corruption charges which asserted that he sought bribes to influence who he would appoint to the seat (Shedd 2011, 962).

As the criminal prosecution intensified against Governor Blagojevich, the Senate’s Democratic Caucus asked the embattled Governor not to appoint a Senator and to instead step down and allow the Lieutenant Governor to make the appointment (Reid et al. 2008). Undeterred, Gov. Blagojevich made the appointment anyway, selecting Roland Burris. Gov. Blagojevich argued that:

> The people of Illinois are entitled to have two United States Senators represent them in Washington, DC. As governor, I am required to make this appointment. If I don’t…the people of Illinois will be deprived of their appropriate voice and vote in the United States Senate (Shedd 2011, 975).

Initially, this appointment was not well received. The Illinois Secretary of State, Jesse White, refused to sign Burris’ certificate of appointment in protest of the corrupted appointment (Burris v. White 2009, 896). This intrastate conflict caused the Secretary of the Senate to question the legal legitimacy of the appointment, which resulted in a refusal to seat Burris. The Illinois Supreme Court, which had original jurisdiction in the case, quickly ruled that Secretary White’s signature was not needed in order to validate the appointment (Burris v. White 2009, 892).

Despite the initial hesitancy to accept Gov. Blagojevich’s appointment, the Senate did not provide resistance to appointing Burris after the act was certified by the court. As stated by a Washington reporter, “…opposition to Burris quickly melted away, as Senate Democrats realized that …they [did not have] any legal basis to deny him the seat” (Oliphant 2009). Roland Burris was officially sworn in as the Junior-senator from Illinois on January 15, 2009 (Johnson 2008). Senate Majority Leader Harry Reid demonstrated his approval of Burris’ appointment when he said,
There are many paths to the United States Senate. It is fair to say that the path that brought our new colleague from Illinois to us was unique. Whatever complications surrounded his appointment, we made it clear from the beginning – both publicly and privately – that our concern was never with him (Reid 2009).

This approval, in the midst of a Congressional Investigation that would later call Burris’ actions “incorrect, inconsistent, misleading, or incomplete” (Boxer et al. 2009), was unprecedented. It is clear that Congress was leery of an outright refusal to seat Burris based on his behavior, thus validating the premise that the *Powell v. McCormack* decision deeply changed Congressional disciplinary procedures.

**CONCLUSION:**

Powell and Burris share the unique distinction of being the only duly-elected (or selected, as the case may be) Congressman barred from receiving their seat since 1919 (Chicago 1967). Yet the widespread confusion that took place on the House floor in 1967 was almost nothing like the ten day intrastate standoff of 2009. This is due, in large part, to the landmark Supreme Court’s verdict in *Powell v. McCormack*. This decision boldly declared that Congress did not have the authority to alter the Constitution’s qualifications for congressional service, and barred Congress from refusing to seat a member who had been elected in accordance with recognized standards. Based on that standard, Congress knew that the Supreme Court was not afraid to correct Congressional disciplinary actions. This stopped Congress from fighting long and arduous seating battles, and instead encouraged them to take disciplinary action *after* the congressman-elect had been sworn in.

This Supreme Court verdict strengthened the role of voters in the democratic process, and sent a message that constituent votes are respected by the Government. It also tempered the fiery feelings of Congress and mandated that they provide a higher level of diligence in carrying out the wishes of the voters than they may have previously given.
Yet despite the eventual success of their political battles, Powell and Burris did not emerge unscathed. Rep. Powell lost his next reelection campaign for the 92nd Congress by a mere 150 votes (Hamilton 1991, 474), ending his career in public service. Powell died just two years later. Senator Burris chose not to pursue reelection after being unable to raise enough money to continue. His association to Gov. Blagojevich had tarnished his reputation beyond repair, despite the fact that he was not convicted of any crime (Johnson 2009).

Powell would likely be happy knowing that his legal battle helped another Congressman achieve acceptance. Just before Powell’s death, he said, “[I fight] to prove what will end only as a principle, since the wrong it was meant to correct is long forgotten by the time the battle is ended.” This statement epitomizes the Supreme Court’s verdict in Powell v. McCormack.
WORKS CITED:


