Congressional Opposition to the American Presidency

David R Mayhew
CONGRESSIONAL OPPOSITION TO THE AMERICAN PRESIDENCY

An Inaugural Lecture
delivered before
the University of Oxford
on 27 November 2000
by
DAVID MAYHEW
John M. Olin Visiting Professor in American Government

OXFORD UNIVERSITY PRESS
CONGRESSIONAL OPPORTION TO THE AMERICAN PRESIDENCY

In the British political system, the terms 'the government' and 'the opposition' have readily available meanings. The government is the cabinet arising from the majority party in the House of Commons. The opposition, often referred to as 'Her [or His] Majesty's Loyal Opposition', is the minority party in the House of Commons.

In the American context of constitutional separation of powers, both terms are more problematic in meaning. All in all, a presidential administration is probably the best forum for 'the government'. The White House coordinates the federal bureaucracy and it is ordinarily the country's centre of power, energy, initiative, and public attention.

Significant opposition to presidential administrations, however, has rested in a variety of institutional locations—in the Supreme Court, for example, as Franklin Roosevelt experienced in 1935 when his New Deal measures were struck down; in the state governments, as when South Carolina brought on the Nullification Crisis of 1832 or when Alabama and Mississippi challenged the Kennedy administration's civil rights moves in the early 1960s; in the cabinet, as during the presidencies of Washington (when Jefferson did his best to undermine Treasury Secretary Hamilton's economic policies and helped found an opposition party while he was a cabinet member during 1790-9); Madison, Monroe, and Andrew Johnson; and even in the Office of Independent Counsel, as Bill Clinton would no doubt agree.
Ital, the main location of opposition to the White House is unquestionably the US Congress. Hence my subject today: 'Congressional Opposition to the American Presidency'. I will present an empirical treatment of congressional opposition taken from a recent book of mine, America's Congress: Acting in the Public Sphere, James Madison through Nancy Reagan.¹ My approach is heavily historical, and it proceeds from three premises.

First, one important aspect of a nation's politics is its 'public sphere'. By that term, borrowed from Jurgen Habermas, I mean a context in which politically relevant sequences of moves are made, reflected with, and reacted to by political actors and others before an ascendant public of substantial size.² Consider President Clinton's year-long, ultimately unsuccessful drive for health-care reform during 1993-4. Novable public moves were made by, among others, Senator Majority Leader George Mitchell, Senate Minority Leader Bob Dole, Senator Daniel Patrick Moynihan, House Majority Leader Dick Gephardt, House Republican Whip Newt Gingrich, Congressman John Dingell, and Congressman Dan Rostenkowski.

Second, to a substantial degree members of Congress II will call them 'MCs' in the fashion of 'MPs' are autonomous and consequential actors within the American public sphere.² Interest groups, home constituencies, or public opinion may civilian, influence, or constrain the activities of MCs as they go about their tasks, but those external factors cannot be said to determine those activities. There is ample room for experiments of personal initiative, which I will call 'actions'. To cite two of the most prominent MCs 'actions' of American history, Senator Joseph McCarthy assailed the Truman administration around 1950 for being soft on Communism, and Senator William Fulbright held televised hearings in 1966 criticizing the Johnson administration's pursuit of the Vietnam War.

Third, there exists a plausible way to document MC 'actions' across the roughly two centuries of American national history. In a familiar genre of writing that might be called 'public affairs history', historians, whatever the aims, have done their best to work with titles like The Federal Era and The Jacksonian Era to

In preparing America's Congress, I canvassed thirty-eight suitably chosen works of "public affairs history" in search of "actions" performed by members of Congress.³ In practice, that meant anything any MC did in public life that made it into a relevant history book. The MC could belong to either the Senate or the House. The result was a data universe of 2,304 'actions' performed by MCs during the two centuries, 1789 to 1988.⁴ The dataset had to end in 1988 because notable history books have not yet been written covering the time span since then, although events from the Clinton era can be added to the discussion through a modest exercise of imagination.

Of these 2,304 'actions', 311, or 22 per cent, were coded as 'opposition' actions.³ These I defined as: any effort by a member of Congress to thwart the aims or impair the standing of a presidential administration.⁵ Note that this definition goes beyond policy disagreements to include attacks on executive personnel in the world of real American politics, it can be a winning move to show that a president or his top officials are crooked, unethical, incompetent, traitorous, or otherwise questionable. Thus in the 1990s, congressional Republicans moved smoothly from disagreeing with President Andrew Johnson to impeaching him. For Capitol Hill Republicans in 1998, it was the health-care issue one day, the Whitewater scandal the next. For purposes here, the effect of this definition of 'opposition' is to make, say, Senator Sam Ervin as much of an 'opposition' actor for exposing Watergate in 1973 as was Senator Henry Cabot Lodge for blocking the League of Nations in 1919. Nor least given the dynamics of President Clinton's impeachment in 1998-9, this seems to be a realistic way to approach the American presidential system. In British terms, there is Vidler or Stuart flavour in it—back from times when the Crown and Parliament contested as separate powerful institutions.⁶

As for tactics, MC opposition to a presidential administration might in principle be conducted in any of a variety of ways.⁷

have reflected these ways in various coding categories of the dataset. A member of Congress might, for example, conduct a hostile investigation, as did Senator Ervin during Watergate; call for an impeachment, as did Congressman Henry Hyde as he targeted President Clinton in 1998; take a hostile stand, as did Speaker Thomas O'Neal in dozens of television appearances as chief assailant of the Reagan administration in the 1980s; undertake to block a presidential appointment, as did Senator Edward Kennedy in opposing Robert Bork's nomination to the Supreme Court in 1987; oppose a president's legislative agenda, as did Congressmen James Madison in opposing Treasury Secretary Alexander Hamilton's banking and credit policies around 1790; promote legislation not wanted by the White House, as did Thaddeus Stevens during Reconstruction in the 1860s; or even run against an incumbent president in an election, as did Senator Eugene McCarthy in the New Hampshire Democratic primary against President Lyndon Johnson in 1968. All these kinds of "actions" and more are accommodated in the dataset.8

To get to the heart of the analysis in this address, I sorted just over half of the 511 opposition "actions" into clusters of "actions."11 The criterion here was whether historians have in fact treated items as parts of a cluster—that is, discussed them as parts of a single, interrelated effort, as they typically do, for example, the various moves made by individual "isolationist" senators around 1940. The deposit of this set of calculations is a number of eighteen clusters of MC opposition during the two-century span.

Although these eighteen clusters vary considerably in the number of "actions" they embrace, as will be discussed, all of them capture important episodes in American political history. They are, among other things, a universe of the major "public sphere" challenges by MCs to presidential administration during American history, at least as measured here to 1988. My strategy for presenting and analyzing this material is as follows. I will start by simply listing the eighteen clusters in chronological order. That does not satisfy the audience, but you will at least gain a sense of the kind of thing I mean. The clusters will probably become more familiar as I approach the present. After this listing, I will proceed to discuss several properties of these opposition clusters. They are interesting ones, in my view, and they are revealing about the American regime. Then I will offer some closing comments. Here are the eighteen opposition clusters:12

- 1790-93: The House opposition led by James Madison to the credit and banking policies advanced by the George Washington administration—more specifically, by Treasury Secretary Alexander Hamilton.
- 1793-94: The opposition led by James Madison to the Washington administration's allegedly pro-England foreign policy, notably in the controversy over the Jay Treaty.
- 1803-04: The "Quasi" opposition led by purist Republican Congressmen John Randolph to various policies and practices of the Thomas Jefferson administration.
- 1832-35: The Senate Whig opposition led by Henry Clay, Daniel Webster, and John C. Calhoun to the banking and foreign policies of the Andrew Jackson administration.
- 1857-60: The opposition mounted by Senator Stephen Douglas to the pro-slavery stance of the James Buchanan administration, chiefly concerning the fate of slavery in the Kansas territory.
- 1864-68: The Radical Republican legislative programme to "Reconstruct" the post-Civil War South led by Congressman Thaddeus Stevens, Senator Charles Sumner, Senator Benjamin Wade, and others, among other things, an opposition to the Andrew Johnson administration, ending in the impeachment of Johnson.
- 1869-72: The Liberal Republican opposition led by Senators Charles Sumner, Carl Schurz, Lyman Trumbull, and others to the Ulysses Grant administration over various foreign and domestic policies including Grant's move to annex Santo Domingo.
CONGRESSIONAL OPPOSITION

- 1877-81: The challenge staged by Senator Roscoe Conkling to the Rutherford Hayes and James Garfield administrations over control of Republican patronage jobs.

- 1906-12: The Progressive opposition led by Senators Robert La Follette, Jonathan Dolliver, and others to the William Howard Taft administration over tariff policy, regulation of business, and other matters.

- 1917-20: The anti-war and then anti-League of Nations opposition led by Senators Robert La Follette, William Borah, Henry Cabot Lodge (in the case of the League), and others to the Woodrow Wilson administration.

- 1922-4: The Progressive opposition led by Senators Robert La Follette, George Norris, Thomas Walsh, and others to the practices and policies of the Warren Harding and Calvin Coolidge administrations; one focus was the Teapot Dome scandal.

- 1934-5: The ‘Share Our Wealth’ challenge by Senator Huey Long to the Franklin D. Roosevelt administration.

- 1937-8: The conservative opposition led by Senators Josiah Bailey and Burton Wheeler, Congressman John J. O’Connor, and others to the court-packing, executive reorganization, pro-union, pro-minimum wage, and other policies of the Franklin D. Roosevelt administration.

- 1939-41: The isolationist opposition led by Senators Gerald Nye, Arthur Vandenberg, Burton Wheeler, and others to the building cross-Atlantic interventionism of the Franklin D. Roosevelt administration.

- 1938-44: The conservative investigative assault staged by Congressmen Martin Dies and Howard Smith, Senators Harry F. Byrd and Kenneth McKellar, and others to the New Deal and Second World War agencies of the Franklin D. Roosevelt administration.


In a statistical sense, going by the number of ‘opposition’ actions in each cluster, the most prominent of the eighteen clusters by a good margin were the Reconstruction challenge to Andrew Johnson, the anti-war and then anti-League challenge to Wilson, the anti-disloyalty and Asia-First challenge to Truman and Eisenhower, and the anti-Vietnam War challenge to Johnson and Nixon. Yet even an opposition challenge that includes just a few actions, such as those featuring Stephen Douglas in 1857-60 and Huey Long in 1934-5, can make a significant political impact, as those two challenges did.

The decade of the 1990s remains uncharted since the dataset stops in 1988. Yet two plausible candidates exist for opposition clusters during the Clinton era—the prominent opposition staged by Congressman Newt Gingrich, Senator Bob Dole, and others to the Clinton administration over health-care reform, regulation of business, and budgetary policy during 1993-6; and the impeachment of Clinton launched by the House Republican party under the leadership of Congressmen Henry Hyde and Tom DeLay in 1998-9. In addition, the professional history written about the decade of the 1980s is not very deep yet, and future works may validate an opposition cluster featuring Speaker O’Neill as leader of the opposition to the domestic and foreign policies of the Reagan administration during Reagan’s first term.

That is the list of eighteen clusters, with three plausible candidates for more recent add-ons. What can we learn from the list? Of the seven properties that will take us here, the first three have to do with political parties.

First, these congressional oppositions used to be, although they do not seem to be any longer, powerful patrons of political parties. The opposition led by Madison (along with non-MC Jefferson) around 1790 evolved into the Democratic Republican
CONGRESSIONAL OPPOSITION

Party, as did the one led by Clay in the 1830s into the Whig Party. Senator Douglas's break with fellow Democrat Buchanan in 1857 carried through to 1860 when their party itself broke apart into southern and northern factions during this crisis election year. The Liberal Republicans' challenge to Grant, the Progressive insurgency under Taft, and yet another Progressive uprising in the early 1920s all carried over into breakaway third-party moves in the following presidential elections of 1872, 1912, and 1924 respectively. If he had lived, Huey Long might have added another major instance in 1936.

Since the 1930s, however, no third party worthy of mention has emerged from a Congress-based opposition. One reason for this may be changes in the rules for nominating presidential candidates. Consider the options available to Senate Democrats opposing the Vietnam War—Fairbank, Church, McGovern, Eugene McCarthy, Robert F. Kennedy, and the rest in 1967-8. In previous eras, a dissident faction like that might have generated a third party; but this 1960s faction could target the Lyndon Johnson administration in the Democratic Party's presidential primaries—which is exactly what McCarthy and Kennedy did. The primaries were there as an option—a legacy of early twentieth-century reforms in many states. Senator Eugene McCarthy, in his challenge to President Truman in the 1948 primaries, had shown what kind of damage could be done to an incumbent administration.15

A second property of these congressional oppositions is: They have centered as often in the president's own party as in the other party.16 From the British vantage point this pattern may seem strange, but it is there. Some clear instances are: the Quixotic opposition to the Jefferson administration, Senator Douglas against Buchanan, the Liberal Republicans against Grant, Conkling's patronage challenge to Hayes and Garfield, the Progressives' challenge to Taft, Huey Long's challenge to Franklin Roosevelt, and the conservative Democratic opposition to FDR over court-packing and other matters in 1937-8. More of a mixed case although still largely abiding by the generalization are the Progressives' challenge to Harding and Coolidge in 1922-4 (the challenges were dominantly Republican yet included some Democrats), the conserva-

16. Ibid. 115-16.
CONGRESSIONAL OPPOSITION

Joseph McCarthy, during the years of unified Democratic control in 1949-52 taken alone.

This last pattern highlights the importance of being a member of a congressional majority party. Majority status brings with it procedural advantages as well as ordinary enough allies to win victories. Accordingly, it is easier for MGs in the majority party to mounted initiatives that achieve public notice and thus score "actions." The pattern also says something about the American separation of powers system. Again, presidents often encounter spirited challenges from Capitol Hill even if their own parties formally control Congress. That conclusion would be no surprise to Presidents John Adams, Jefferson, Madison, Buchanan, Andrew Johnson, Grant, Taft, Coolidge, Franklin D. Roosevelt, Truman, Eisenhower (within the McCarthy-Army hearings in 1954), Lyndon Johnson, or Carter to cite some good examples (not all of which register among the eighteen listed clusters). Between elections in the American system, branch versus branch has competed with party versus party as a basic axis of antagonism. 18

A fourth property of the opposition clusters is: foreign policy emerges as a prominent policy ingredient in them. It dominates five of the eighteen clusters and enters into another four—excluding, during the twentieth century every cluster from isolationism in the late 1930s to the anti-Vietnam War challenge and the Watergate inquiry which had foreign-policy currents and implications) in the 1960s and 1970s. This provenance of foreign policy in Capitol Hill undertakings may come as a surprise, but it derives from accommodating the variety of kinds of "actions" that MGs engage in—they can investigate and take stands, for instance, as well as, in their more familiar role, endeavor to enact or block legislation. No history of American foreign policy could be written without addressing, for example, the House opposition to the Jay Treaty in the 1790s, Senator Sumner's showdown with President Grant about Santo Domingo, the Senate opposition toWilson in 1917-19, Senate isolationism in 1939-41, McCarthyism around 1950, or the Senate-led anti-Vietnam War challenge in the late 1960s and early 1970s.19


CONGRESSIONAL OPPOSITION

Fifth, these congressional oppositions have been nonsegmental. On balance, they have not been grudging exercises. Many of them have altered the course of American public life in significant ways. A natural question to ask, given an encounter between a presidential administration and a Congress-based opposition, is: Who won? Many of the eighteen instances do not admit to a neat answer, but on balance the congressional side has probably come out roughly even. For cases of undoubted congressional influence, if not always clear-cut victory, consider the Reconstruction program of the 1860s, the defeat of the League of Nations in 1919, the defeat of FDR's court-packing plan in 1937, the anti-Vietnam War challenge to Johnson and Nixon, and the Watergate inquiry. Moreover, notwithstanding the general strengthening of the presidency during the twentieth century, there is no sign of a trend during the full two centuries toward a higher incidence of presidential as opposed to congressional victories. George Washington's administration fared better than Bill Clinton's against congressional opposition.20

Such, these congressional oppositions, taken in the aggregate over time, have been ubiquitous—at least between or among the politically mobilized sectors of American society. At various times, Whigs as well as Democrats, Republicans as well as Democrats, southerners as well as northerners, progressives as well as conservatives, and hawks as well as doves have staged the oppositions. To put it another way, Congress, in the various contexts across American history between mobilized sectors of the society, has not permanently identified itself in its opposition role with any particular sector. At times, Congress has seemed to possess such an identification—as when the conservative-thinking Congresses of the eighteenth century opposed the liberal New Deal and Fair Deal presidencies of those days. But all such identifications have been transient.21

Seventh, these congressional oppositions have been dynamic in political science, that is an underexamined quality. High-stakes congressional confrontations with the White House are, among other things, sequences of well-reported, interconnected moves by political actors that the public can watch, appreciate, an

20 Ibid. 219-21. 21 Ibid. 222-3.
Congressional Opposition

appraise. They tend to have a beginning, a dynamic, and an end. For system purposes, it probably matters that they have an end. It's been a fair fight, it's gone on long enough, and it's over. I don't want to hear about it any more."

For any conclusion to be accepted by actors and audiences alike to many of these encounters of the past. By the time of the 1920 election, little time was left for questioning about the League of Nations. A year after the Army-McCarthy hearings of 1954, the anti-Communist loyalty investigations that had convulsed the country for years were a receding memory. In August 1974, Nixon returned to California, and that was that for Watergate. San Clemente was not to be an Elba. Thus also in early 1999, once the Senate had voted not to convict President Clinton after his House impeachment, the subject of his sexual and grand-jury escapades dropped from public affairs. There was no audience for it any more.25

So much for the seven properties. In general, what are we to make of this American tradition of congressional opposition? One lesson, I believe, is the following. In actual operation, a separation of powers system can be awkward and precarious. An ebb of veto points can bring on deadlock, discontent, and a resort to unconstitutional devices. Yet in the American case, the pattern of congressional opposition engendered by the system has arguably been a force for regime stability.26 Some of the properties I have outlined have contributed to that argument. For one thing, the system's openness in opposition within as well as between the parties lends a certain flexibility. In this vein, members of Congress offer a service that might be called 'defector signalling' when, for example, Senator Stephen Douglas challenges fellow Democrat James Buchanan over slavery in Kansas, Senator Warren Buffalo challenges fellow Democrat Franklin Roosevelt over packing the Supreme Court, or Senator Fulbright challenges fellow Democrat Lyndon Johnson over Vietnam. In instances like these, the public can come to see that more is at stake in Washington, D.C., than the usual party-versus-party wrangling.27

In addition, the potential unconsummation of congressional opposition has been a plus side for stability. In encounters like those

25 Mayhew, America's Congress, 223-4.
27 Ibid, 221-2.