

A Congress that reasserts its power

By George F. Will
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Unlike most of the 111 that preceded it, the 112th Congress must begin the process of restoring the national regime and civic culture the Founders bequeathed. This will require reviving the rule of law, reasserting the relevance of the Constitution and affirming the reality of American exceptionalism.

Many congressional Republicans, and surely some Democrats with institutional pride, think Congress is being derogated and marginalized by two developments. One is the apotheosis of the presidency as the mainspring of the government and the custodian of the nation's soul. The second is the growing autonomy of the regulatory state, an apparatus responsive to presidents.

The eclipse of Congress by the executive branch and other agencies is Congress's fault. It is the result of lazy legislating and lax oversight. Too many "laws" actually are little more than pious sentiments endorsing social goals - environmental, educational, etc. - the meanings of which are later defined by executive-branch rule-making. In creating faux laws, the national legislature often creates legislators in the executive branch, making a mockery of the separation of powers. And Congress makes a mockery of itself when the Federal Register, a compilation of the regulatory state's activities, is a more important guide to governance than the Congressional Record.

Unfortunately, courts long ago made clear that they will not seriously inhibit Congress's scandalous delegation of its lawmaking function to others. So Congress should stop whining about the actions of the EPA (emissions controls), the FCC ("net neutrality"), the Interior Department (reclassifications of public lands) and other agencies and should start rereading Shakespeare: "The fault, dear Brutus, is not in our stars, but in ourselves, that we are underlings."

Conservative senators passing through the Capitol reception room should ponder the portrait of Ohio's Robert Taft (d. 1953), who was conservatism when it stressed congressional supremacy. America was born in recoil against an overbearing executive's "repeated injuries and usurpations" (the Declaration of Independence); modern conservatism was born in reaction against executive aggrandizement, first by Franklin Roosevelt, then by his acolyte Lyndon Johnson.

But beginning in 1968, Republicans won five of six and then seven of 10 presidential elections, and experienced rapture with Ronald Reagan. Then they lost their wholesome wariness of executive power. Today, conservatives should curl up with a good book by a founding editor of National Review - James Burnham's "Congress and the American Tradition."

Regarding the relevance of the Constitution, you must remember this: Rep. Nancy Pelosi, asked about the constitutionality of the health-care legislation - a subject now being seriously litigated - said, "Are you serious? Are you serious?" She was serious.

She seriously cannot comprehend that anyone seriously thinks James Madison was serious when he wrote (Federalist 45), "The powers delegated by the proposed Constitution to the federal government are few and defined." Unfortunately, for too long too many supine courts have flinched from enforcing the doctrine of enumerated powers, and too many Congresses have enjoyed emancipation from that doctrine. So restraint by the judiciary must be replaced by congressional self-restraint.

The idea of American exceptionalism is obnoxious to progressives, who, evidently unaware of the idea's long pedigree (it traces to Alexis de Tocqueville) and the rich scholarship concerning the idea, assume it is a crude strain of patriotism. America, Tocqueville said, is unique because it was born free - free of a feudal past, free from an entrenched aristocracy and established religion.

The American Revolution was a political, not a social, revolution; it was about emancipating individuals for the pursuit of happiness, not about the state allocating wealth and opportunity. Hence our exceptional Constitution, which says not what government must do for Americans but what it cannot do to them.

Americans are exceptionally committed to limited government because they are exceptionally confident of social mobility through personal striving. And they are exceptionally immune to a distinctively modern pessimism: It holds that individuals are powerless to assert their autonomy against society's vast impersonal forces, so people must become wards of government, which supposedly is the locus and engine of society's creativity.

Two years into Barack Obama's presidency, we now know what he meant about "hope" and "change" - he and other progressives hope to change our national character. Three weeks into his presidency, Newsweek, unhinged by adoration of him and allowing its wishes to father its thoughts, announced that "we are all socialists now" and that America "is moving toward a modern European state." The electorate emphatically disagreed and created the 112th Congress, with its exceptionally important agenda.