ETHICS IN CONGRESS

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Thesis submitted to the Graduate Faculty

of the Virginia Polytechnic Institute and State University

in partial fulfillment

of the requirements for the degree of

MASTER OF ARTS

in

POLITICAL SCIENCE

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ABSTRACT

Public confidence in Congress has dropped to an all-time low, and yet the notion that Congress is full of "crooks" does not seem to bear close scrutiny. Instances of ethical impropriety that were significant either for setting constitutional precedent or for providing the impetus for reform are reviewed individually. This is followed by a discussion of the attempts at reform and of the ethics codes that were established. Information about documented offenses and the members involved are then analyzed in an attempt to examine potential explanations for and influences of the types of offense committed, by whom, and to what outcome. Finally, this thesis closes with conclusions regarding the direction of, the need for, and the efficacy of the ethics reforms that have been undertaken. This research shows that much of the opportunity for gross misbehavior has been limited by changes occurring in the latter part of the twentieth century. A review of these incidents and of reform attempts indicates a relatively small proportion of misdeeds and some fairly strong efforts to eliminate the most egregious forms of misbehavior. Even though Congress has often been accused of doing little to police itself unless forced, the fact that it does act in the more extreme cases sits well with a desire to prevent legislative paralysis-inducing witch hunts. The data collected on those who have had their misdeeds brought to light fail to show significant effects of party membership or offense type on whether the member remained in Congress. Small but statistically significant effects were found for election year and institution served. These data seem to indicate that while the system may not be perfect, it does work. Almost eighty percent of those accused of improper conduct left Congress soon thereafter. The overall negative perception of the American public toward Congress tends to perpetuate the notion that Congress is corrupt, when it actually seems to be a small proportion that engage in unethical behavior.

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INTRODUCTION

0.1 Ethics in Congress

This thesis focuses on the ethics of Congress. It examines the public's pervasive lack of confidence in the integrity of the institution and seeks to demonstrate that the notion of widespread corruption and ethical deficiency is a misplaced aspect of this lack of confidence. A recent group of surveys asked, among many questions, several that support these negative perceptions of Congress:[1]

> -Eighty-three percent of those surveyed agreed that members of Congress care more about keeping power than they do about the best interests of the nation.
>
> -Eighty-three percent of those surveyed agreed that members of Congress care more about special interests than about people "like you."
>
> -Seventy-eight percent of those surveyed agreed once elected, members of Congress quickly lose touch with the people.
>
> -Only forty-three percent of those surveyed agreed that "Congress is not so bad as it's made out to be."
>
> -Only thirty percent of those surveyed agreed that most members of Congress have a "high moral code."

This thesis also seeks to demonstrate that substantive reforms have been implemented over the years, and that Congress, even in its historically continuous state of imperfection, has usually managed to weed out the truly "bad apples."

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[1]*The Washington Post*-(7/3/94).

Throughout this thesis, the term *ethics* is used to cover a somewhat broad category of behavioral expectations. The core definition of ethics is readily defined by using the violation of criminal statutes such as those prohibiting drunk driving, prostitution, or receiving bribes. The next layer of this definition includes the internal rules of conduct in each house of Congress. The outermost layer — and most difficult to quantify — would be societal standards that might best be summed up through the evolving civil rights laws in the United States. This outer layer is most difficult to work with due to the traditional self-exemption of Congress from many of these types of laws. Though the rationale for this may be theoretically sensible (e.g., to prevent interference in the ability of a member to carry out his or her legislative duties), in practice, it is becoming unacceptable in the eyes of society for Congress to appear to hide behind these exemptions in order to perpetuate unfair practices towards women and minorities. These evolving societal expectations of conduct are rousing Congress toward changes in the treatment of women and minorities. Given, however, that this third element of ethics is only beginning to become standards of behavior, the focus of this thesis will be on the criminal violations and the violations of internal standards set by each house of Congress.

As part of the introduction to this thesis, Figure 0.1 displays the distribution of ethical offense types. Most of these offenses involve corruption (36%), followed by financial misconduct and Civil War-related offenses (17% and 13%, respectively). The "other" category is a grouping of offenses too small in number to analyze individually, but which are given in the Appendix. Figure 0.2 displays the frequency of offenses over time. Aside from the offenses during the Civil War, the most striking feature of this chart is the dramatic increase in offenses in the latter part of the twentieth century. In Chapter Three, these offenses will be examined in more detail.

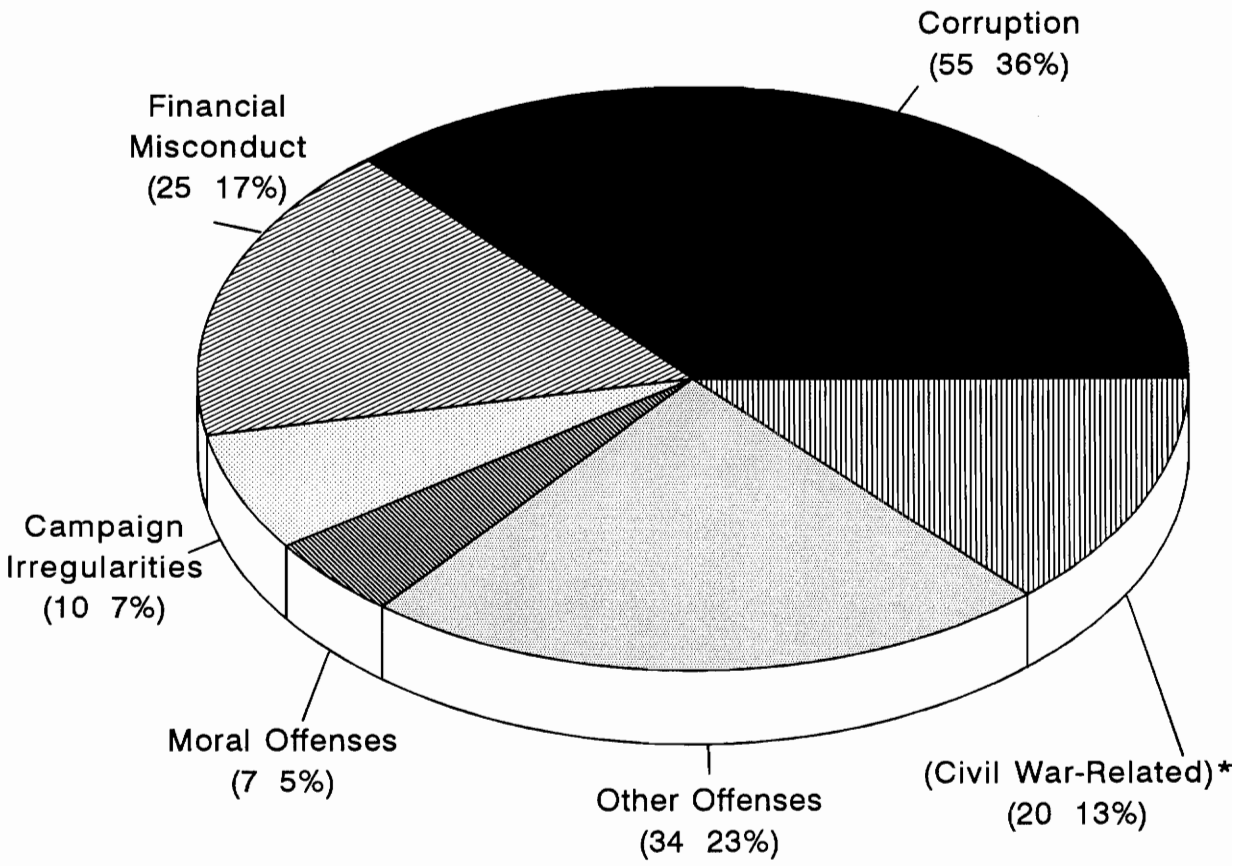

Figure 0.1
Distribution of Offense Types

*These incidents are not included in the data analysis, and are shown for reference only.
NOTE: See Appendix for a full classification of these categories.

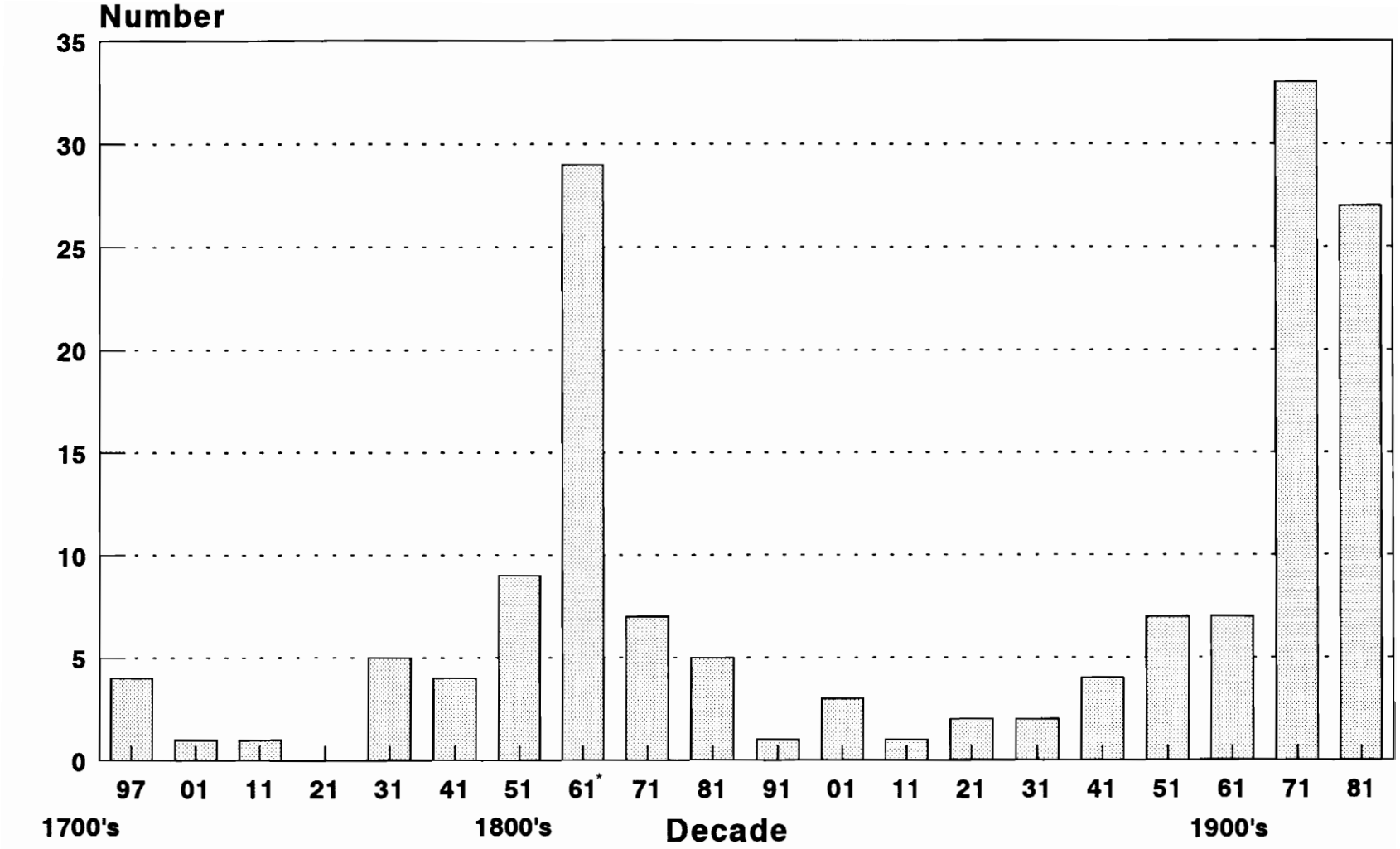

Figure 0.2 Frequency of Offenses by Decade (1797-1990)

*20 of the 29 instances in the 1860's were Civil War-related.

Note: Decade 1=1797-1800, others=01-x0

In Chapter One, the important incidents of ethical breaches in the history of the institution are examined. This essentially historical review serves two purposes: The first is to give a sense that ethical problems are not new and not uniquely endemic to the current crowd of "bums." Ethical problems have indeed existed since the infancy of the republic — and were arguably more severe than they are now. This review may then serve to lessen an existing notion of "moral" decline and thus aid in reasonable analysis of congressional ethics. The second purpose of Chapter One will be to update the historical review with some current issues before Congress. Overall, the chapter will focus not on every incidence of ethical impropriety, but rather those that contributed to the evolution of ethics in Congress by setting precedent or prompting reform efforts. In Chapter Two, developments in legislation will be discussed. This chapter will review the periodic attempts at reform — which often appear as the offspring of a particular scandal, or sometimes as an expression of the sentiment of a particular time period. Legislation inspired by the former was usually to prevent the trickle of electoral retribution from exploding into a tidal wave of revenge by satiating a demanding public's appetite for justice and fairness. Legislation inspired by the latter was often a result of gradual recognition of systemic problems and attempts to fine-tune the process. The ethics codes that were established as a product of these developments will then be examined.

In Chapter Three, different aspects of offenses committed throughout the history of Congress are examined. Information collected on each of these cases is analyzed to help break away from common perceptions and to look for alternative explanations and influences. This chapter seeks answers to several questions. The first question concerns the types of offenses committed. Are

they limited in nature or type, or do they run the gamut of improper behavior? The second question revolves around the member who commits an offense. Is there a relationship between the type of offense and House served or party affiliation? The third question to be examined deals with issues of partisan influences and electoral retribution. Are opposition party members treated more harshly than majority members? Finally, do members who get into trouble stay in the institution? Of those who leave, is it the result of elections or by other means?

Chapter Four will close this thesis with conclusions drawn from this research.

0.2 Literature Review

In researching the aspects of Congressional behavior of interest here, the material is limited and for the most part, dated. While this would seem to make scholarly work based on the collected writings of others more difficult, it also indicates a topic due for more extensive treatment. Perhaps this is even more the case as popular political writers are beginning to comment on a heightened public awareness of Congressional behavior (especially in light of the recent Savings and Loan quagmire) and the beginnings of anti-incumbent rumblings in the electorate.

Jennings and Callahan edited *Representation and Responsibility* (1985) with the aim of "exploring legislative ethics." This collection of articles covers many areas of ethics in an informative but largely descriptive manner. Congressional Quarterly publishes *Congressional Ethics* yearly and it is purely informational. Beard and Horn's 1975 work *Congressional Ethics* focused on the aftermath of the Watergate affair, and its age and limited scope of member surveys weakened its

usefulness for this work.

The more commonly known Congressional scholars have generally not dealt with ethics except in passing. Polsby, Ornstein, and Rieselbach have all honed in primarily on institutional and procedural reform. These authors help with an understanding of the system as it is and the changes it has undergone. Rieselbach's *Congressional Reform* (1986) gives useful insights to the reforms in Congress in the 1970's and their impact. Polsby compiled (and wrote several) articles for *Congressional Behavior* (1971). These pieces provide the backdrop to some of the challenges facing the institution and the reforms of the 1970's. Ornstein edited and wrote for *Congress in Change* (1975). Overall, the writings of these scholars were useful in laying out the difficulties facing the institution and some of the changes that occurred to address some of them.

Some have written on electoral participation as a method for maintaining integrity (Berelson, 1952). Others have written that citizens will sometimes overlook unethical behavior (Rundquist and Hansen, 1976). Often, voters may truly be unaware of allegations of improper conduct (Levin, 1960). This literature, while still pertinent in some aspects, lacks consideration of the more recent developments of heightened media scrutiny, changing societal standards, and growing public expectations of ethical behavior. Peters and Welsh (1980) looked at the effects of charges of corruption on voting behavior in Congressional elections. Their work provided insight to one aspect of this thesis topic by examining the behavior of voters toward members of Congress charged with corruption. The Hastings Center published two reports that gave some perspective on the general notions of legislative ethics and on the role of the media in ethics: *The Ethics of Legislative Life* (1985) and *Congress and the Media: The Ethical Connection* (1985).

The most useful sources for this work tended to be the "raw" ones. The compilations of information provided by Congressional Quarterly and the biographical dictionary of all individuals who have served in Congress were helpful in compiling these data. Additionally, the Ethics Committees in both the House of Representatives and in the Senate provided generous amounts of information. Finally, for the most recent information, materials provided by the Congress and especially the national media were used extensively.

CHAPTER ONE

A Troublesome Few

1.0 Introduction

This chapter will seek to provide a more specific view of the ethical issues facing the institution, focusing in particular on specific cases that established precedent for future action, as well as cases which provided the impetus for creating or tightening ethics rules. The second part of this chapter will examine more recent ethics problems, both as singular events and as elements of systemic problems.

1.1 History of Congressional Ethics

The history of the United States Congress is both colorful and complex. Throughout its history — particularly since the American Civil War — Congress has been faced with behavior of its members ranging from absurd, passing through corrupt, and winding up at idiotic. A good starting point for reviewing these incidents and their ramifications is a description of the relevant aspects of the U.S. Constitution.

1.1.1 Constitutional Provisions

Two clauses of the U.S. Constitution deal with relevant aspects of Congress.[2] The first clause of Article I, Section 5 gives Congress the power to determine the qualifications and eligibility of its members. It reads in part, "Each House shall be the Judge of the Elections, Returns and Qualifications of its own members..." While this may appear to give Congress free rein over

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[2]Congressional Quarterly. *Congressional Ethics* p147.

these matters, the election of members is regulated elsewhere in Article I and by the seventeenth amendment.[3] The constitution also prescribes qualifications for membership; hence the discretion of Congress in these matters is limited to deciding whether a member meets these requirements. (see Figure 1.1)

Requirements for membership in the House of Representatives:
-At least 25 years of age
-A U.S. citizen not less than seven years

Requirements for membership in the Senate:
-At least 30 years of age
-A U.S. citizen not less than nine years

For both houses:
-Must be, when elected, an inhabitant in state he or she is elected to serve
-May not be currently holding another office of the United States
-May not serve if, as a member previously (who has thereby sworn to uphold the Constitution) who has engaged in rebellion or treason against the U.S. unless Congress votes by a two-thirds majority of both houses to remove such disability

Figure 1.1 Constitutional Qualifications for Membership

The second clause of Article I, Section 5 reads: "Each House may determine the Rules of its Proceedings, punish its members for disorderly behavior, and with the Concurrence of two thirds, expel a Member." This portion of the Constitution explicitly endows Congress with the power and the duty to set its own rules and to punish its own members.

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[3] The 17th Amendment provides for election of Senators by the people of each state, ending the practice of appointment by state legislature.

1.1.2 Judicial Issues

Issues have arisen from time to time which have fallen to the courts for resolution. Court decisions have dealt with matters ranging from Congress's right to subpoena ballot boxes to its right to compel testimony. Several of these issues merit attention here as they relate to the evolution of ethics rules. The Constitutional clause on judging qualifications of members-elect has raised more questions before the Court than the Constitutional provisions concerning the rights of Congress to punish its own members.

Perhaps the most serious issue is that of denying a seat to a member-elect. By denying a seat to member-elect, Congress in effect denies constitutionally guaranteed representation to that state or district. As a result of a contested election to the Senate in 1926, the U.S. Supreme Court ruled in 1929 that denying the seat to William Vare of Pennsylvania did not violate states' rights. In the opinion of the Court, the clause of the Constitution[4] protecting against loss of representation without the states' approval dealt with amendment issues. The Court held that temporary denial of a seat was not protected by this Article and was no different than the temporary denial of representation created by the constitutionally authorized exercise of the powers of expulsion.[5,6]

In 1864, Congress approved an act that created a provision for automatic expulsion of a member.

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[4]Article 5

[5]Barry et al. v. United States ex rel. Cunningham (279 U.S. 597).

[6]Congressional Quarterly. *Congressional Ethics* pp149-150.

It provided that any member of Congress found guilty of accepting a bribe would be automatically expelled and forever barred from holding office under the government of the United States. Senator Joseph R. Burton (R-Kansas), who had been convicted of illegally receiving compensation, challenged the law denying him the right to retain his seat. In 1906, the Court ruled (as Burton's lawyers had contended) that the act violated the constitution by abdicating expulsion proceedings to an automatic procedure.[7] The Senate then began preliminary expulsion hearings and Senator Burton resigned his seat.[8]

In 1897, the Court affirmed the expulsion powers of Congress. In the opinion given by Chief Justice Fuller, the Court held that "...The right to expel extends to all cases where the offense is such as in the judgement of the Senate is inconsistent with the duty and trust of a member."[9]

In 1918, Truman H. Newberry and 16 others were found guilty of violating the Tillman Act (which prohibited campaign contributions from corporations and banks, provided for some spending disclosure, and set spending ceilings for elections). The issue was whether the right of Congress to judge the qualifications of members-elect extended to primary elections. The Court held that Congress had no constitutional authority over primaries and thus could do nothing.[10] However, in 1941, the Court reversed itself and held that the constitutional power of Congress

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[7]Burton v. United States (202 U.S. 344).

[8]Congressional Quarterly. *Congressional Ethics* p148.

[9]*In re Chapman* (166 U.S. 661).

[10]Newberry v. United States (256 U.S. 232).

to regulate national elections extended to primaries.[11]

Representative Adam C. Powell (D-NY) was denied his seat after being reelected to Congress in 1966. The House ruled that Powell's misappropriation of public funds was sufficient grounds for exclusion. The Court held in 1969 that Congress could judge no further on exclusion matters than the qualifications for membership set forth in the constitution.[12] In the opinion of the Court, Congress could expel Powell if they so desired, but as Powell met the three conditions for membership, they could not exclude him.[13] At the same time, the House had been taking its own actions. In 1966, frustrated by Powell's erratic behavior and attendance, his Education and Labor Committee voted 27 to 1 to allow a Subcommittee Chair to bring legislation to the floor if the Committee Chair neglected to do so. Following this action by his Committee, the House Democratic Caucus voted in January of 1967 to strip Powell of his Chairmanship, an action not taken since 1925.[14]

1.1.3 Noteworthy Cases

In 1797 the Senate first exercised its power of expulsion in dealing with unacceptable member behavior. At the behest of President John Adams, the Senate looked into the behavior of Tennessee Senator William Blount. The evidence indicated that the Senator had been involved

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[11]United States v. Classic (313 U.S. 299).

[12](Age, citizenship, and residency).

[13]Adam Clayton Powell, Jr v. John W. McCormack et al. (395 U.S. 486).

[14]Congressional Quarterly. *Congressional Ethics* p154.

in a plan to shift control of Florida and Louisiana from the Spanish to the British. As the Senate considered expulsion, the House voted to impeach Senator Blount. When the House presented its impeachment to the Senate, the Senate voted to expel Senator Blount, who never returned to answer these charges.[15] Seventeen months later, after failing to obtain the Senator's return to the capital, the Senate convened an impeachment hearing. Eventually it was decided that the Senate lacked jurisdiction, and it therefore dismissed the proceedings. It was not made clear, however, whether the issue was dismissed because the Senate had decided that a Senator was not an impeachable officer, or that one who no longer held civil office was not impeachable.[16]

Less than a decade later, the Senate faced another expulsion case when Ohio Senator John Smith (along with Aaron Burr) was indicted for trying to lead western territories out of the Union. Even though the indictment was dropped for technical reasons, the Senate decided to take its own action to determine Smith's fitness to serve. The Senate decided that it had the authority to consider a member's behavior whether or not criminal behavior had been proven in the courts. The political damage done to Smith's career was enough to force him to resign; thus, the importance of the case lay in the precedent it established. The upper house decided that becoming a member had attendant responsibilities, and that it had the right to ensure the integrity of the institution regardless of the outcome outside the chamber.[17]

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[15]*Senate Election, Expulsion and Censure Cases from 1793 to 1972* p3.

[16]"History of Congressional Ethics" pp5-6.

[17]*Senate Election, Expulsion and Censure Cases from 1793 to 1972* pp4-5.

In 1810, the Senate censured its first member. When Massachusetts Federalist Timothy Pickering sought to embarrass former President Jefferson by reading aloud a letter from French minister Tallyrand (disputing parts of Louisiana territorial claims), the Senate was faced with its first case involving a violation of Senate rules. Henry Clay introduced a resolution charging that Pickering's reading of a secret document had violated Senate rules and jeopardized the Senate's advice and consent role. The Senate voted 20 to 7 on the censure motion, and later that year Pickering was not returned to the Senate by the Massachusetts legislature.[18]

During the first year of the Civil War, the Senate moved to expel Rhode Island Senator James Simmons for corruption. In July of 1862, a resolution was submitted charging that he had misused his office in receiving payments for securing war contracts for two Rhode Island rifle manufacturers. The Senator did not contest the charges and stated his amazement that anyone would question his assistance to constituents. The Senate adjourned a few days after the investigating committee recommended expulsion, but the Senator resigned his seat shortly thereafter rather than face expulsion.[19]

In the early 1870's, two Senators were accused of having bought their seats from their respective state legislatures. Kansas Senator Samuel Pomeroy was accused of bribing a single legislator in return for his vote in the state legislature. The Senate deemed the witnesses against Pomeroy

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[18]"History of Congressional Ethics" pp6-7.

[19]*Senate Election, Expulsion and Censure Cases from 1793 to 1972* p34.

unreliable; however, the state body chose not to reelect Pomeroy.[20]

Kansas Senator Alexander Caldwell boasted that he had purchased his Senate seat for sixty thousand dollars (after offering $250,000). When he was questioned in the Senate, he claimed that bribing state officials was not a federal offense and that conduct prior to election was not in the Senate's jurisdiction. However, the Senator noted the momentum this case was gaining and resigned his seat rather than face expulsion proceedings.[21]

Along with these Senate examples, the case of Bobby Baker stands out for its effect on the Senate by a non-member. Baker was a young page who rose to become secretary to the Senate majority leader Lyndon Johnson. Baker became embroiled in controversy over using his influence for personal profit (Baker was worth two million dollars, most of it from illegal and improper activities). The Baker case and his resignation in 1963 is credited as being one of the final pushes toward the establishment of an ethics committee.[22]

In 1832, the House of Representatives first censured a member. William Stanbery (D-Ohio) was censured for saying, "The eyes of the Speaker are too frequently turned from the chair you occupy toward the White House."[23] Censure was imposed in this case for unacceptable

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[20]*Senate Election, Expulsion and Censure Cases from 1793 to 1972* pp52-53.

[21]*Senate Election, Expulsion and Censure Cases from 1793 to 1972* pp52-53.

[22]Congressional Quarterly. *Congressional Ethics* p163.

[23]*Precedents of the House of Representatives of the United States*, vol. 2 p799.

language on the House floor. The House has expelled only three members in its history, all for Civil War-related activities.

Credit Mobilier— In addition to the problems of individual members of Congress, scandals occasionally enveloped many members at once. In the 1870's, Congress (along with others in the Executive branch) became embroiled in a huge scandal over the Credit Mobilier stock company. This company was the chief promoter of the Union Pacific Railroad, and its stock was used to bribe members of Congress to keep the federal subsidies flowing to the railroad. A member of Congress (Rep. Oakes Ames, R-Mass) was found to be the bribe-giver. The Speaker of the House and the Vice-President of the United States were both investigated, along with several other members (including future-president James A. Garfield, who escaped censure even though he admitted to taking money from the stock company). Two lesser known participants were punished, but Speaker Blaine and Vice-President Colfax escaped punishment (although the Vice-President's career was ruined).[24]

Gulf Oil— A century later, big business and Congress were again seen to be *in flagrante delicto*. In 1975, dozens of members were caught up in a scandal involving the Gulf Oil Company. The scandal focused on Gulf's lobbyist and his illegal contributions to Senate Minority Leader Hugh Scott (R-Penn). Scott admitted taking the money, but told the ethics committee that he had passed all the money on to other Senators for their campaigns. The committee struggled to reach a decision as to how to proceed against Scott, but decided to do nothing. Scott retired at the end

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[24]Congressional Quarterly. *Congressional Ethics* p87.

of his term in 1976. Several of the dozens implicated were questioned, including the Vice-Presidential candidate, Senator Bob Dole (R-Kan), who told the committee that he had not received any of the money.[25]

Defense Trips— Seventeen members of the House and Senate admitted taking trips to hunting lodges as guests of major defense contractors between 1970 and 1975. All members involved denied any impropriety and stated that the companies involved had plants or offices in their states and districts. These trips were a violation of House rules against accepting gifts from those with an interest in pending legislation. The Senate had no such rule, but in 1977 both Houses passed restrictions against accepting gifts from lobbyists (see Chapter Two). The Defense Department sent letters to dozens of officers and a few civilian employees in 1975 admonishing them for poor judgment.[26]

"Koreagate"— In 1976, reports surfaced claiming that over 100 members of Congress had taken money illegally from South Korean "agents." The Washington Post released a story claiming that South Korean rice dealer Tongsun Park had been dispensing between $500,000 and one million dollars per year to members of Congress in order to maintain a favorable legislative climate for South Korea. Park had been circulating widely in Washington social circles with a great deal of money to throw about, all from unknown sources. The eventual investigation concluded that all Korean purchases of U.S. rice went through Park, and the profit he made was used to influence

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[25]Congressional Quarterly. *Congressional Ethics* pp22-23.

[26]Congressional Quarterly. *Congressional Ethics* p23.

members of Congress. One member (Otto Passman-D,La) was indicted in federal court for taking illegal gratuities, and several others were mentioned as recipients of large sums of money (Rep Richard Hanna-D,Ca and Cornelius Gallagher-D,NJ). Many members were listed in the indictment, but none were listed for reasons other than having received small campaign contributions. When the ethics committee investigation was wrapped up 18 months later, three members who were found to have lied to the committee about receiving money from Park were reprimanded. None of the major players in this incident remained in Congress following this scandal, even though the House concluded its investigation with no other action. The focus of the scandal then shifted from Park to former Korean Ambassador Kim Dong Jo. Witnesses told House investigators that Kim had delivered cash to congressional offices. Special counsel for the Ethics Committee, Leon Jaworski, attempted to have Kim testify, but political considerations from the administration prevented further investigation. The Carter administration was purportedly concerned with issues of diplomatic immunity (which Korea invoked for Ambassador Kim) and the potential for stories of U.S. Ambassadorial influence-buying abroad to surface. Jaworski withdrew from participation in the investigation in late 1978, remarking that more was left uncovered than had been brought to light.[27]

Abscam— An undercover FBI investigation into stolen artwork ended up trapping one Senator and eight Representatives in a sting operation known as "Arab Scam" or Abscam. In 1980, FBI agents posing as wealthy businessmen and Arab sheiks approached members in search of residency visas, gambling licenses, and assistance in arranging real estate deals. Five of the eight

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[27]Congressional Quarterly. *Congressional Ethics* p37.

members were even videotaped allegedly accepting large sums of cash. As all but one of the members were Democrats, heavily partisan calls by the Republicans for investigations and expulsions resounded. The Republicans pressured the one member involved from their party to resign, creating "open season" on the Democrats in an election year. While the Republicans' press for an internal investigation was met by the ethics committee, the fact that these incidents had originated from an FBI investigation left most of the action in the hands of the Justice department. Little action resulted from the ethics committee's investigation. However, the members involved in the scandal retired or were defeated soon thereafter.[28] Indictments were initially brought against two of the eight members involved, and eventually the probe widened and claimed an additional four victims. By the end of the investigation, all twelve involved were indicted and convicted.[29]

The "Keating Five"— In October of 1989, the public-interest lobby Common Cause urged the Senate ethics committee to probe the conduct of five Senators. The group claimed that these members violated ethical standards by exerting undue influence on bank regulators investigating Lincoln Federal Savings and Loan and its owner Charles Keating. The failure of this bank at a cost of 2.5 billion dollars coupled with the fact that these Senators were trying to intervene during an investigation and had received over 1.3 million dollars from Keating laid the foundation for the group's request.[30] The involvement of these five Senators is discussed in more detail below.

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[28]Congressional Quarterly. *Congressional Ethics* p5.

[29]American Political Dictionary p171.

[30]*The Washington Post*-(10/14/89).

Donald Riegle (D-Mich)

Senator Riegle is said to have interceded with federal regulators on behalf of Charles Keating and his Lincoln Savings and Loan. Riegle kept a low profile until coming out against Timothy Ryan as new chief regulator of the S&L industry. He is said to have lost a battle when clearance from his own Banking committee came over his strenuous objections and then the Senate confirmed. Riegle says ex-regulators have exonerated him by their testimony, but S&L head regulator Danny Wall was said to have been approached by the Senators attempting to influence him. Michael Patriarca, another top regulator, said, "I think this is an extraordinary example of political influence, the likes of which I've never seen before."[31] Senator Riegle was exonerated by the ethics committee after being informed that he exercised poor judgment in the matter.[32]

John Glenn (D-Ohio)

Senator Glenn met with regulators on behalf of Keating (who gave $200,000 to Glenn's PAC — his largest contributor). Glenn stated that he went to the meetings because a prominent accounting firm had substantiated Keating's claim that the regulator's examination of his books was taking too long. He maintained that he did nothing improper and ended all contacts as soon as he sensed that Keating wanted improper influence exerted. Glenn maintained that the donations got Keating no special favors and pointed out that he rejected other Keating requests (such as voting for a controversial judicial nominee and supporting the nomination of Lee Henkel

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[31]*The Washington Post*-(11/27/89).

[32]*The Washington Post*-(4/20/92).

to the Federal Home Loan Bank Board).[33] Senator Glenn was exonerated by the ethics committee after being informed that he exercised poor judgment in the matter.[34]

John McCain (R-Ariz)

Senator McCain was being investigated for similar attempts at influencing bank regulators. While McCain had attended several meetings with Keating and other meetings with bank regulators, the committee concluded that he ended all interest in the matter when he was told that criminal charges were going to be filed against officers of Keating's bank.[35] The ethics committee's special counsel, Robert Bennett, had recommended on two occasions that both Glenn and McCain be dropped from continued investigation. On both occasions, the six-member bipartisan panel split along party lines in rejecting this proposal. Bennett had concluded that there was no credible evidence to warrant further review of these two Senators, but the committee wanted all to be treated the same. Many critics charged that the panel was holding the only Republican of the five "hostage" so that the "Keating Five" wouldn't become the "Keating Four Democrats."[36] The committee concluded that Senator McCain exercised poor judgment in intervening with the regulators but cleared the Senator of any wrongdoing.[37]

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[33]*The Washington Post*-(12/2/89).

[34]Published decision of the Senate ethics committee on the "Keating Five."

[35]Published decision of the Senate ethics committee on the "Keating Five".

[36]*The Washington Post*-(2/10/91).

[37]Published decision of the Senate ethics committee on the "Keating Five."

Dennis DeConcini (D-Ariz)

The ethics committee stated that "while aggressive conduct by Senators in dealing with regulatory agencies is sometimes appropriate and necessary, the Committee concludes that the actions of Senator DeConcini after the April 9, 1987, meeting where he learned of the criminal referral, were not improper in and of themselves." The committee informed Senator DeConcini of his poor judgment in the matter and took no further action.[38] Senators DeConcini and Riegle were also both found to have engaged in activities that "gave an appearance of being improper."[39]

Alan Cranston (D-Calif)

From April of 1987 through April of 1989, Senator Cranston personally, or through his staff, contacted the Federal Home Loan Bank Board several times on behalf of Keating's Lincoln Savings and Loan. At least four of these occasions were in close proximity to Senator Cranston's soliciting or accepting large contributions from Keating. The committee concluded that Senator Cranston's activities were in violation of the Senate ethics code. His linking of official duties and fund-raising activities was also considered improper.[40] Though the committee concluded that punishment was warranted, Senator Cranston announced that he would retire at the end of his term (1992) due to illness. The ethics committee report was accepted by the full Senate, and Cranston was rebuked in front of the body for engaging in an "impermissible pattern of conduct

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[38]Published decision of the Senate ethics committee on the "Keating Five."

[39]*The Washington Post*-(4/20/92).

[40]Published decision of the Senate ethics committee on the "Keating Five."

in which fund-rasing and official activities were substantially linked."[41]

House Bank—A new scandal in Congress reared its proverbial head as it became public knowledge that many Representatives had bounced checks at the House bank. The bank, a $50 million per year convenience, served as a place to hold members' pay and to write and cash checks. The facility paid no interest and charged no fees for the "rubber" checks. A General Accounting Office report indicated that hundreds of House members had bounced 8,331 checks between July of 1989 and June of 1990. The GAO also reported that 581 checks had been for $1,000 or more and that 24 members bounced $1,000 checks every month for the first six months of 1990. There were even some indications that a few abusers were doing it intentionally to acquire interest-free loans that they could re-invest (which would be a felony). A few days after the scandal surfaced, Speaker Foley and Minority Leader Michel both took the House floor and stated that the practice was ended and that these type of checks were no longer going to be honored.[42] On October fourth, the House voted to shut the bank down and have the ethics committee conduct a review of the allegations of abuse.[43] Eventually, the names and dollar amounts of all the abusers was released, and while the House leadership pointed out that no taxpayer money was involved and that no checks actually "bounced" (the House merely covered overdrafts on member accounts until the next paycheck was deposited), the issue still angered taxpayers. Outside of the House — and likely fueled by the "bounced" check angle pursued by

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[41]*The Washington Post*-(4/20/92).

[42]*The Washington Post*-(9/25/91).

[43]*The Washington Post*-(10/4/91).

the media — people felt that this abuse showed the elitism and arrogance of Congress. Figure 1.2 displays approval ratings of various institutions and shows that Congress as an institution had a 41% rating of high confidence. However, a Gallup poll that same year indicated only a 16% high approval rating for those in the Congress.[44]

[44] *American Public Opinion* p16.

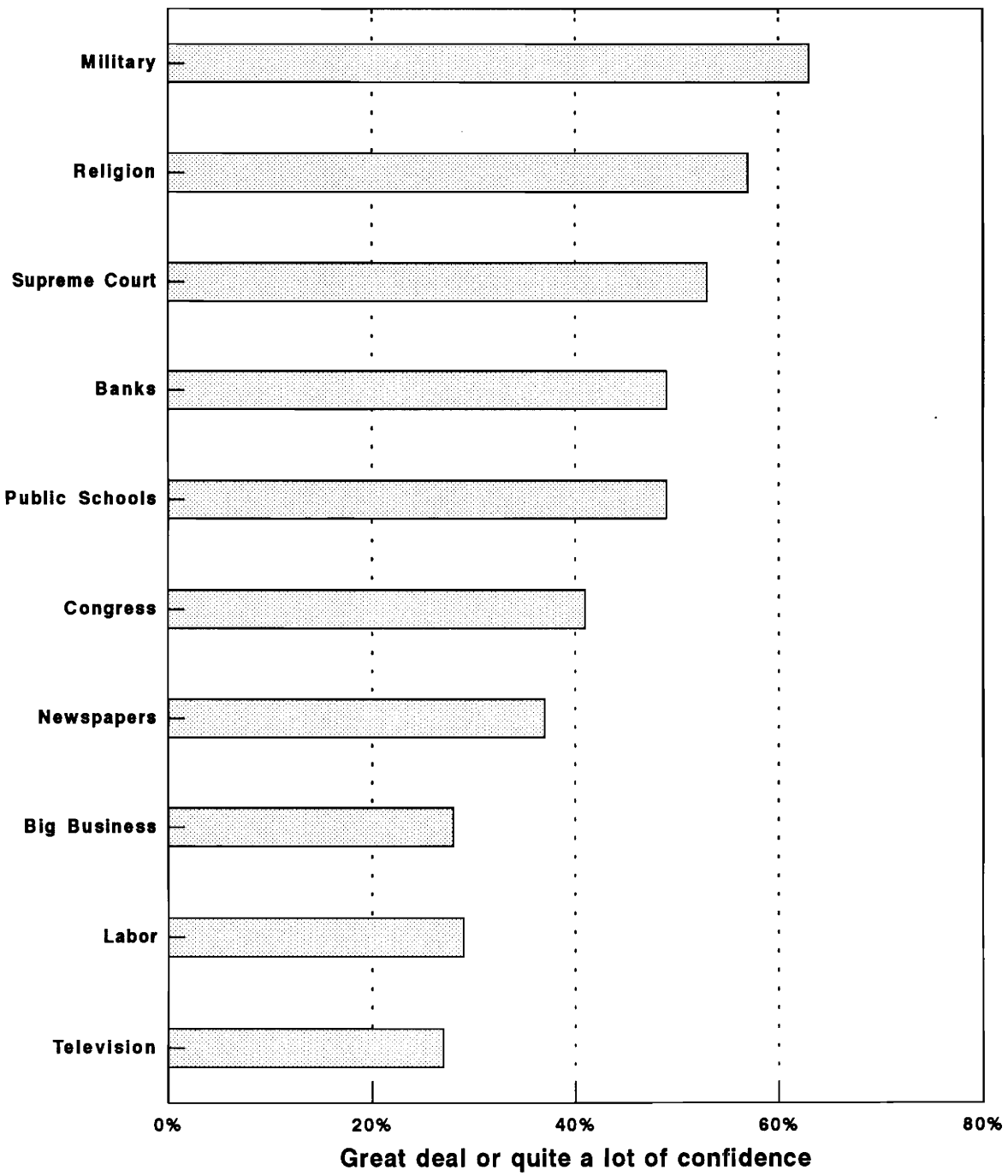

Figure 1.2
APPROVAL RATINGS OF VARIOUS INSTITUTIONS
(1986)

SOURCE: American Public Opinion (p20)

Dining Facilities—Another cloud descended over the House of Representatives when information was released indicating that current and former House members owed $667,416 in unpaid dining bills. Members merely had to sign the check at any of the House dining facilities and then were billed later. In January of 1987, a private company took over operations of the House dining facilities and claimed a $47,339 existing unpaid debt. Members then ran up their tab with the new company to the tune of $620,077. After two "Dear Colleague" letters from the House Administration Committee, many members paid their bills. The $300,000 figure bandied about by the press actually consisted of the $47,000 left over from when the House ran the facilities itself (which would make it a taxpayer liability if not paid) and $255,000 still owed to the private company. Seventeen thousand dollars of the unpaid amount was owed by former members (including two who are now Senators) according to Personnel and Police subcommittee Chairwoman Okar. While the problem had been around for several years, Congresswoman Okar said she aired the problem in the press to take advantage of the controversy generated by the problems with the House bank.[45]

To round out a highlight of important cases in the House and Senate, the scandals of Jim Wright (D-Tex) and Tony Coelho (D-Cal) are especially interesting. The fall of one of the most powerful men in the country and his second-in-command marked a new era in ethics and politics. While there is little question that these two engaged in conduct that brought disrepute upon the House (shady savings and loan and junk bond deals), two aspects of this matter stand out. The first is the intense political battle waged by Rep. Newt Gingrich (R-Ga, House Minority Whip).

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[45]*The Washington Post*-(10/3/91).

Gingrich was able to bring enough pressure to bear through the House floor and the media to hasten Speaker Wright's resignation (and eventually Rep. Coelho's).[46] The second aspect of this affair that merits attention is consideration of this issue as an example of the changing times echoed throughout this paper. In the late 1800's, an affair at least as unethical surrounded Speaker of the House James G. Blaine. The Credit Mobilier scandal was not enough to bring down a Speaker then, but a hundred years later, a similar issue was.

As another example, the indictment of Representative Dan Rostenkowski (D-Ill.) on Federal charges of defrauding the government of over $500,000 provides an insight into not only the changing times, but also issues of behavior, and differing types of "hometown" support. Like Speaker Wright (and Rep. Coelho), Rostenkowski's troubles are similar to practices engaged in by many members of Congress in the past, making this case interesting as an example of changing times and societal standards, rather than as one of a particularly egregious offense. As an issue of behavior, Rostenkowski's alleged habits of paying some workers for no work, using the administrative system for financial gain (such as exchanging unused postage for cash), or routinely charging gifts from the House gift shop to his administrative allowances and then spreading these gifts around back in his district for political gain[47], all appear to indicate an arrogance of power mindset. These types of behaviors also imply a way of thought that more closely represents acceptable (or at least not illegal) corporate behavior, and perhaps even the same types of petty pilfering (from their workplace) that many Americans engage in — merely

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[46]Business Week, April 16, 1990 p54-60.

[47]*The Washington Post*-(6/2/94).

on a larger scale. Finally, Rostenkowski's actions — and his subsequent decision to stand for re-election — raise the issue of the differing standards and priorities of constituencies. The historical "political machines" in places like Chicago (and Boston and New York), were full of patronage, petty corruption and graft. A politician from one of these political cultures may simply continue some of these types of behaviors without much of a realization that these behaviors are unethical. Similarly, the voters in these political cultures may inclined to overlook or tolerate these types of behaviors after becoming accustomed to them in their local politics. Like the case of Adam Clayton Powell, there may also be issues of popularity involved that are strong enough to see members like Rostenkowski returned to Congress in spite of criminal charges.

1.2 Problems with Current Ethics System

The ethics codes passed by both houses of Congress stand as examples of laudable and necessary goals. They were to serve both a public demand for accountable representatives and as a guide for managing a complex legislative system loaded with lobbyists and money. These codes of conduct attempt to address all areas of potential problems; however, they still seem to come up short in some important ways.

Financial Disclosure—In the area of financial disclosure, the rules have evolved toward a system of greater disclosure and accountability — though in the eyes of most scholars of reform and interest groups such as Common Cause and Public Citizen — still more needs to be done. They have provided voters with a great deal of previously unavailable information by which more

informed assessments can be made of members financial backers and interests, but disclosure rules may also have served to distort the true picture of members' finances. The monetary ranges that are employed in disclosing the value of assets and liabilities were designed to provide the public with useful information while still preserving some privacy for the member. These ranges become rather broad as they get larger and even the small ranges can present distortions in the aggregate. Most members say that the largest distortion comes from the $15,001-$50,000 category.

A good example of this distortion can be found in one of Senator Russell Long's (D-La) disclosure statements. Senator Long voluntarily disclosed his finances to the dollar in one statement. By using the ranges, however, his declared worth of $2.8 million could have been anywhere from $2.1 to $4.7 million.[48] Another problem with the categories lies in their upper limits. The Senate's upper limit of $5 million covers most Senators for single sources of assets, but the upper limit of $250,000 for House members can add distortion to the financial picture of a member. For example, Representative Fred Richmond (D-NY) listed his holdings in a corporation as "over $250,000" when his actual holdings were valued at over $16 million.[49]

The value of property is another shortcoming of the financial disclosure rules. The Ethics in Government Act required members to list the value of their real property at current market value unless obtaining such figures would require an appraisal. In this case, members could employ

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[48]Congressional Quarterly. *Congressional Ethics* p83.

[49]Congressional Quarterly. *Congressional Ethics* p83.

different methods to value their property. The Senate forms provide a column for members to indicate the method used for valuation. In one statement, Senator Long reported a holding of 133 acres of timberland worth not more than $5,000 at the 1935 purchase price. The local assessor indicated that it would actually be worth between $60,000 and $200,000 depending on timber quality.[50]

Another weakness in the current disclosure requirements can be seen in how they are used. It is a requirement that the statements be filed with the house of the member and with the Secretary of State in the member's home state. The forms are open for public inspection in both locations, but the problem lies in getting this information out. Most citizens are not going to travel to Washington or their state capital to examine the statements of their legislators. It is also likely that if citizens chose to do so, many would have difficulty in assessing the significance of various aspects of the forms. This system of financial disclosure was designed with the intention that the media would perform the task of condensing, highlighting, and disseminating this information. However, the fact that the media may be uninterested in the disclosed information unless something scandalous can be found, or simply lack the resources to devote to such a large undertaking, can effectively prevent the public from benefitting from these disclosure rules.

Earned and Unearned Income

Income that is derived from a member's occupation (e.g., lawyer, farmer, small business owner) is considered earned income. Income that is derived from profits on stocks and other investments

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[50]Congressional Quarterly. *Congressional Ethics* p83.

is unearned income. In the last two decades, Congress has steadily moved toward discouraging and prohibiting earned income. It is widely held that occupations which generate earned income require more of the members' time than can be spared from their legislative duties. Both houses of Congress have moved to limit outside earned income to 15% of annual congressional salary as part of the overall effort to discourage members from spending their time on other matters. A special case has been the practice of law, as this profession is believed to hold particularly high potential for unintentional abuse. When attorneys are also members of Congress, it is generally held that their status lends an unavoidable and implied weight to their practice. In light of this, most of Congress believes that members should not practice law. This issue of earned income seems to have been mostly satisfied by the limits on amount and by the restrictions on the practice of law. However, the issues surrounding unearned income remain complex.

Unearned income essentially amounts to a list of exclusions from what is considered earned income. Types of income not considered earned include:[51]

—Royalties from books

—Income from family enterprises if the members' participation is managerial or supervisory in nature and does not require substantial time commitments when the Congress is in session. This time commitment must be necessary to protect family interests.

—Gains from dealing in property or investments, interests, rents, dividends, alimony, and annuities.

—Gains from discharge of indebtedness

—Income from estates or trusts

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[51]Congressional Quarterly *Congressional Ethics* p84.

—Proceeds from the sale of artistic or creative endeavors

—Buyouts from any holdings.

Many members of Congress felt that these exceptions favored the wealthy members (particularly the Senators). They felt that they would have to cease their work endeavors while the wealthy could essentially continue to receive almost all forms of income. To get around this limit, some members incorporated their business and started drawing dividends instead of salaries.[52]

Travel Issues— The source of the funds for Congressional travel is typical of the potential problems for the current ethics code. It is common for an organization that has asked a member to make a speech to pick up the tab for travel and other expenses. Even after the latest changes in the ethics code, these expenses may still be paid by the sponsor and are not counted as part of the honoraria. This practice allows three types of activities that invite improper appearances.

Organizations will often schedule the appearance in a warm or exotic location, thereby giving the member a *de facto* all-expenses-paid vacation. It is not unusual for members to string together several paid speeches for which the travel expenses are covered and turn them into a paid vacation. The second practice occurs when organizations cover the expenses for the member's spouse. This is not regulated by the ethics code and the spouse gets free travel. The third practice involves travel back to members' home districts or states, as it is typical that much of the free travel they accept is to their homes.

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[52]Congressional Quarterly *Congressional Ethics* p84.

1.3 Conclusion

In the House of Representatives, there have been a few dozen cases that, along with the misdeeds of Senators, led to various attempts at reform. These examples from the early days of the Republic serve as background in understanding growing public resentment over the conduct of their representatives. One outgrowth of this resentment was the passage of the Seventeenth Amendment to the Constitution in 1913, which provided for direct election of Senators.

The examination of pertinent ethics cases in the history of Congress leads to two conclusions. Decisions on these and related cases during the nineteenth century made it clear that both houses of Congress had determined the scope of their authority on these issues. On matters such as corruption and bribery, Congress had asserted its standing to judge, both before and after elections.[53]

The second point of this review demonstrates a similarity of problems over time. Many of the ethics problems that have surfaced reflect problems with money. Legislators have typically been fouled by the receipt of monies by way of illegal campaign contributions, illegal use of campaign monies, or the receipt of monies for promises of performance.

Chapter Two will examine more thoroughly the Congressional response to the problem of ethics, while Chapter Three will examine variations in the offenses and the characteristics of the offenders.

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[53]"History of Congressional Ethics" p15.

CHAPTER TWO

Ethics Code

2.0 Introduction

The aim of the first part of this thesis was to provide an understanding of the issues and precedents that led to the modern notions and rules of ethics in Congress. Congress established its right to judge and punish members, and many of the examples given helped to shape the contemporary view of ethical propriety. In this second chapter, the evolution and codification of the ethics codes will be reviewed, as will the salient points of the formal codes. The tie-in between historical events and legal precedent in Chapter One with the codes themselves in Chapter Two will provide a basis for conducting empirical analysis of congressional ethics in the next chapter.

As an element of a century and a half of Congressional maturation, the ethics codes that were formalized in both houses of Congress represented significant moves toward a system that provides accountability and checks on the most slippery slopes of legislative life. Aside from the duties and responsibilities of members laid out in the Constitution, the origins of these codes can be found in the writings of Thomas Jefferson. As Vice-President and presiding officer in the Senate in 1801, he penned in "Jefferson's Manual:"[54]

> Where the private interests of a Member are concerned in a bill or question he is to withdraw. And where such an interest has appeared, his voice has been disallowed...In a case so contrary, not only to the laws of decency, but to the

[54]Congressional Quarterly. *Congressional Ethics* p84.

fundamental principle of the social compact, which denies to any man to be a judge in his own cause, it is the honor of the House that this rule of immemorial observance should be strictly adhered to.

The first major expansion of Jefferson's writing and the predecessor of the establishment of ethics committees and formal codes in the 1960's[55] is worth noting at this point. In 1958, a concurrent resolution on ethics was adopted expressing the "sense of Congress."[56] This resolution was the vehicle for adopting the "Code of Ethics for Government Service." As a non-binding resolution that technically expired at the end of the session, this Code nevertheless remained the standard to be sought by members and their employees.

This resolution defined broad and general guidelines which are summarized as follows:

Members should —

-adhere to the highest moral standards;

-give a full day's labor for a full day's pay;

-never discriminate by dispensing special favors;

-never accept benefits or favors that might be construed as influencing the performance of governmental duties;

-make no private promises binding on the duties of office;

-engage in no business with the Government inconsistent with the performance of governmental duties;

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[55]Most notably, the ethics act of 1968, discussed later in this chapter.

[56]House Resolution 175, 85th Congress. (in *Ethics Manual for Members, Officers, and Employees of the U.S. House of Representatives*. p195).

-never use information received confidentially in the performance of governmental duties for making private profit.

Had these guidelines been observed by all of the members included in this study and by the ones never caught in their wrongdoing, it is likely that we would have no "bad" ones. However, these rules would have little effect on many of the members of Congress involved in ethical problems. To illustrate this point, one could imagine two general types of unethical members of Congress. The type A member is essentially one who lives on the edge, who bends rules for convenience, and who makes deals on the fuzzy side of propriety. The type A member is eventually likely to trip up and have misdeeds spread across the newspaper, and finally, slink away in ignominious "retirement" or stand fast and fall in electoral defeat. Members of this type will usually remain in Congress only if they come from a district or state that cherishes the image of the member more than reality — or has differing standards for judging elected officials. Occasionally, these often charismatic and flamboyant members are re-elected following federal indictments and convictions.[57] Usually, the member re-elected under these circumstances does not last long. An indicted member who has been re-elected will usually resign after a conviction. Members can also be worn down by continuous and negative media treatment of their shady activities.

The type B member of Congress is essentially one who is basically "good" and tries to do "good." An ethical problem for a type B member is the result of a complex society and a system of legislation and campaigning that has an often indistinct line between the selling of influence

[57]Peters and Welsh. pp697-698.

and legitimate financial support of like-minded interests. The type B member of Congress is tripped up by hazy disclosure requirements and unclear conflict of interest rules. This type of member will typically mend their ways and be more wary around the next bend of legislative life. They will usually sustain minor damage to their credibility — and the next margin of victory — but will survive in office unless they become the target of an intensely partisan drive to push them from office.

The representation of unethical members by these simple types is an artifice created for the purposes of theoretical clarity. Reality would better be represented by a continuum with these two types as the endpoints. The type A member of Congress would not be helped by the principles embraced in the 1958 resolution because they would not be taken to heart (but merely espoused on the campaign trail). The type B member of Congress would not need the principles because he or she already knows these common-sense notions of right and wrong. The main benefit of these general principles can be found in the moral value of expressing these notions. They represent an implied covenant with the electorate to behave in a manner consistent with sensible and moral living and hence serve as a reminder of what is expected of a member of Congress by the public and by fellow members.

With the understanding that these general principles would do little to actually prevent most unethical behavior, the next logical step was to provide the best practical solution for both of these needs. The development of an ethics code and the committees to provide a forum for resolution of ethical problems became that step. While the code was probably not adopted only for logical reasons, that it was adopted at all formed a basis for the some of the answers to the

questions generated by both types of member of Congress.

Type A members of Congress need the strict rules of financial disclosure, campaign finance restrictions and limits on outside earned income to control their penchant for unethical behavior. This control would work indirectly by attempting to convince an amoral pragmatist that unethical behavior would result in disclosure and punishment, and would not be worth the potential benefit. Essentially, these rules would not change the type A member, but they would help to limit the propensity for both the tempters and the tempted to engage in these activities if the potential for exposure and the resultant political cost was very high.

The type B member would be able to use these new provisions in two ways. First, they would have the ethics code as a map to avoid the shoals of legislative life. Second, they would be encouraged to use the committee for confidential advisory opinions on difficult matters prior to their consummation.

2.1 Reform Attempts

In most of its history, Congress has been slow to punish its members unless overwhelming evidence of wrongdoing was present. It has also been reluctant to enact ethics legislation, preferring to deal with problems on a case by case basis. This attitude was partially a result of Congressional desire to let each electorate be the judge of the fitness of its legislators. It was also partially a result of a philosophy that, in general, members were neither better nor worse than the electorate they served.

While both of these notions are conceptually compatible with the idea of an independent and representative democracy, two other plausible notions cast a less favorable light on the sluggish attitude toward punishment of a fellow member. It can be argued that the Congress functions as a club whose members are reluctant to punish fellow members and that members of Congress are simply out to protect their own. This notion might be characterized in a slightly different manner if viewed as if all members of Congress, realizing at some level that they all have the potential for the same sorts of ethical dilemmas, are hesitant to throw stones from their own glass house. The second plausible concept for explaining slow behavior toward punishment involves a belief that aggressively pushing punishment might cause larger damage to the credibility and respectability of the institution than would allowing the individual (and presumably aberrant) bad apple stand in judgment by the electorate.

The Constitution provided that each house would determine the qualifications and fitness of its members and that they could punish members for disorderly behavior, with the harshest penalty being expulsion by a two-thirds vote.[58] For almost two centuries, it was not the Constitution that defined ethical behavior; rather it was an informal code of conduct based on general principles of decency and moral behavior.

In the early years of the republic, there were few conflicts or rules. Except for the Constitutional prohibition from serving in two branches of the Government at once, Representatives were free to conduct their affairs as they saw fit. One problem that continually arose revolved around

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[58]U.S. Constitution, Article I, Section 5, Clause 2.

members representing, as attorneys, issues in which they had a legislative interest. Another such area dealt with legislators serving as lawyers in front of military tribunals (as the promotion of officers is subject to Congressional approval). Yet another area involved legislators serving as attorneys arguing cases in front of the Supreme Court, since justices are subject to Senate confirmation. While these practices led to scandals in 1853 involving Senators Daniel Webster and Thomas Corwin — Senator Webster wanted his retainer renewed by the president of the Bank of the United States before he would vote to renew its charter, while Senator Corwin represented a client before a government commission for what turned out to be a fraudulent claim — they did not lead to Congressional punishment. These issues, however, were deemed serious enough to warrant the prohibition in Congressional rules of members (acting as lawyers) from representing clients in front in Federal agencies.[59]

While to this point Congress typically dealt with each situation as it arose, changing times brought an increasing number of problems in Congress that the members deemed in need of legislative action. The Civil War and its aftermath marked the beginning of an enormous expansion of the country's financial and industrial dealings. The post-war period of reconstruction saw the industrial and financial segment of the economy become dominant over the agrarian. This period also saw the demise of the notion that the government rested on a foundation of states' rights and the emergence of the federal government as the fundamental power in the country.[60] In 1864, as a result of the Simmons case, Congress expanded an 1853

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[59]"History of Congressional Ethics" p9.

[60]*Civil War and Reconstruction* p535.

law that provided a maximum two-year prison term and $10,000 fine for any Senator or Representative found guilty of receiving compensation for services before a federal agency. The statute also provided that convicted members would be forever prohibited from holding federal office.[61]

Also out of the aftermath of the war — and the rise of populist and progressive movements — came an increased awareness of the appropriate role of money in campaigns. Money had always been important in elections and campaigns,[62] and as such, this awareness derived not from new behavior but from new societal attitudes about acceptable behavior. At the end of the naval appropriations bill submitted in 1867, language was inserted that barred requests or requirements for contributions from navy yard employees. The Civil Service Reform Act of 1883 extended this ban to all federal employees.[63]

In 1907, Congress passed the Tillman Act which made it illegal for a corporation or national bank to give monetary contribution in connection with an election to federal office.[64] In 1910 and 1911, this statute was broadened to require public disclosure of receipts and spending. It also put spending limits of $10,000 for Senate elections, and $5,000 for the House (though these

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[61]*Senate Election, Expulsion and Censure Cases from 1793 to 1972* p34.

[62]See *Financing Politics*, p5.

[63]Congressional Quarterly. *Congressional Ethics* p193.

[64]*Politics and Money: The New Road to Corruption* pp7-10.

limits were later altered to limits on the size of individual donations).[65] The impetus for these changes stemmed from wide public dissatisfaction with indirect election of Senators (which led to the 17th Amendment) and a popular series of articles entitled "The Treason of the Senate."[66] These articles pled for a return to "old-fashioned values" and an end to the "boss-ridden, money-dominated political practices" of the times.[67]

As a result of the Newberry[68] case and the scandals during the Harding presidency, Congress passed the Federal Corrupt Practices Act in 1925. This statute provided more extensive reporting requirements, prohibited solicitation of contributions from federal employees, and extended the ban on corporate contributions to include "a gift, subscription, loan, advance, or deposit of money, or anything of value."[69]

Following the enactment of the Hatch Act in 1939 that restricted participation of federal employees in partisan politics, three 1940 amendments to this Act impacted campaigns. These amendments prohibited individuals and groups with federal contracts from contributing to political committees or candidates, extended to Congress the right to regulate primaries for federal office, and put a $5,000 cap on contributions to one candidate standing for any elected federal office in

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[65]"History of Congressional Ethics" p19.

[66]The articles appeared in Cosmopolitan Magazine beginning in March of 1906.

[67]"History of Congressional Ethics" p18.

[68](see Chapter One)

[69]Congressional Quarterly. *Congressional Ethics* p194.

any calendar year.[70]

From these early attempts at ensuring ethical campaign practices until a flurry of campaign-related reforms in the late 1960's and 1970's, the Tillman, Federal Corrupt Practices, and the Hatch Acts were essentially the only regulatory devices to keep congressional elections above board. In *The Cost of Democracy* (1960), Charles Heard wrote that these provisions of the law were largely ignored. The media had been continually uncovering incidents of false reporting or failure to report, among other violations of Corrupt Practices Act. In 1954, the Justice Department stated that the responsibility for action on these matters rested with the Secretary of the Senate and the Clerk of the House. These administrators were said to routinely wink at these violations until former Rep. W.P. Jennings was elected clerk of the House in 1967. Jennings began sending these violations to the Justice Department for prosecution, but the Department refused to act.[71]

The loopholes and the propensity to ignore the Corrupt Practices Act led to the next push for reform. The largest changes for campaign financing came with the Federal Election Campaign Act of 1971. This act, coupled with several rounds of amendments throughout the 1970s, created a definitive set of rules for maintaining election propriety. In contrast to election oversight, regulation of the ethical behavior of members began to emerge as an issue following the changes in Congress as an institution following World War II.

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[70]Congressional Quarterly. *Congressional Ethics* p194.

[71]Congressional Quarterly. *Congressional Ethics* p195.

Frustrated by Executive branch domination (and an ever-growing executive branch — see Figure 2.1), Congress passed the Legislative Reorganization Act of 1946. This provided expanded staff resources and improved mechanisms for formulating legislative policy. But accompanying this great growth came a realization that the sheer size of the institution demanded mechanisms for ensuring adherence to standards and to maintain accountability. Figure 2.2 provides a graphical representation of this expansion.

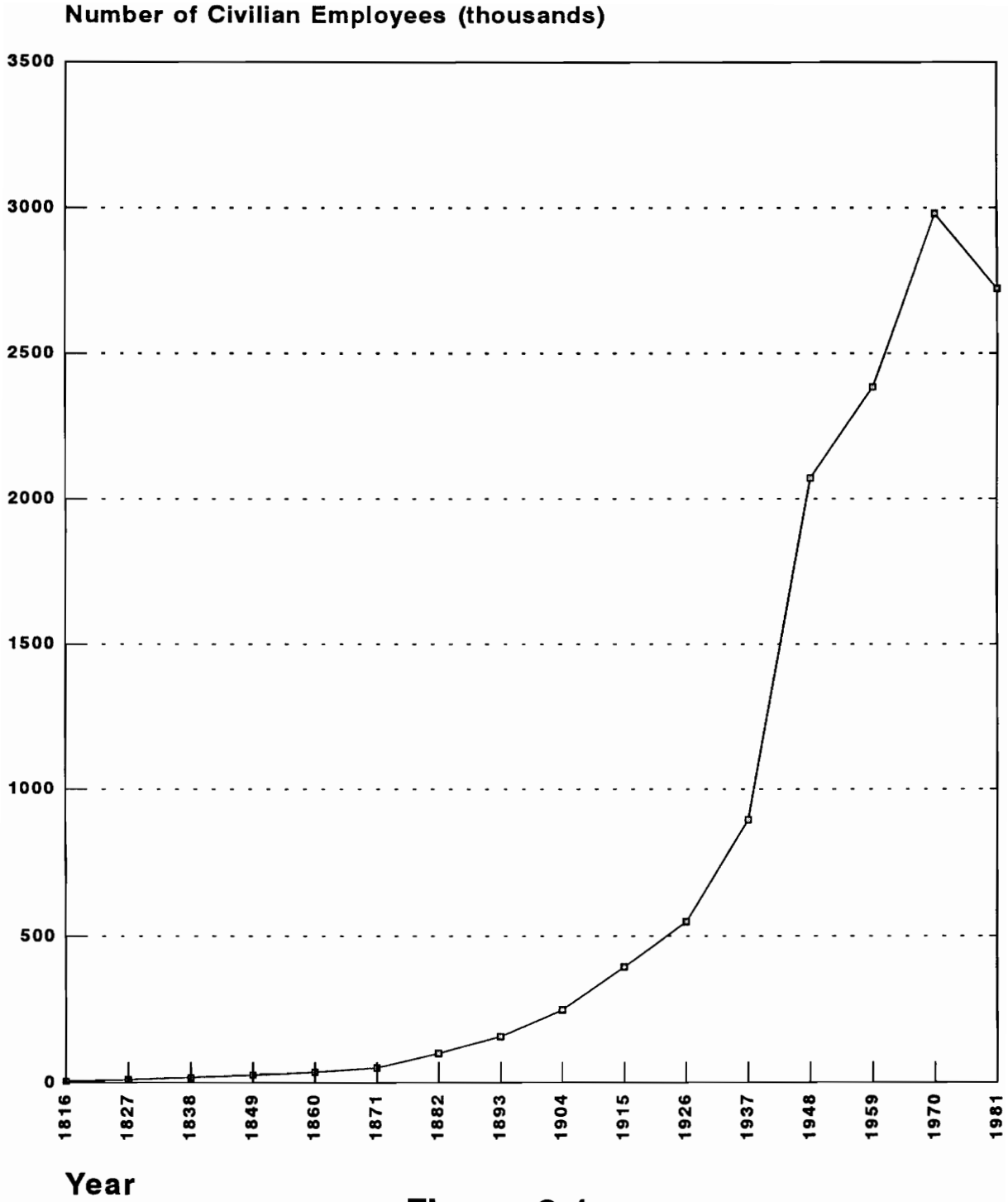

Figure 2.1
GROWTH OF FEDERAL GOVERNMENT
(1816-1981)

SOURCE: Vital Statistics on American Politics (p218).

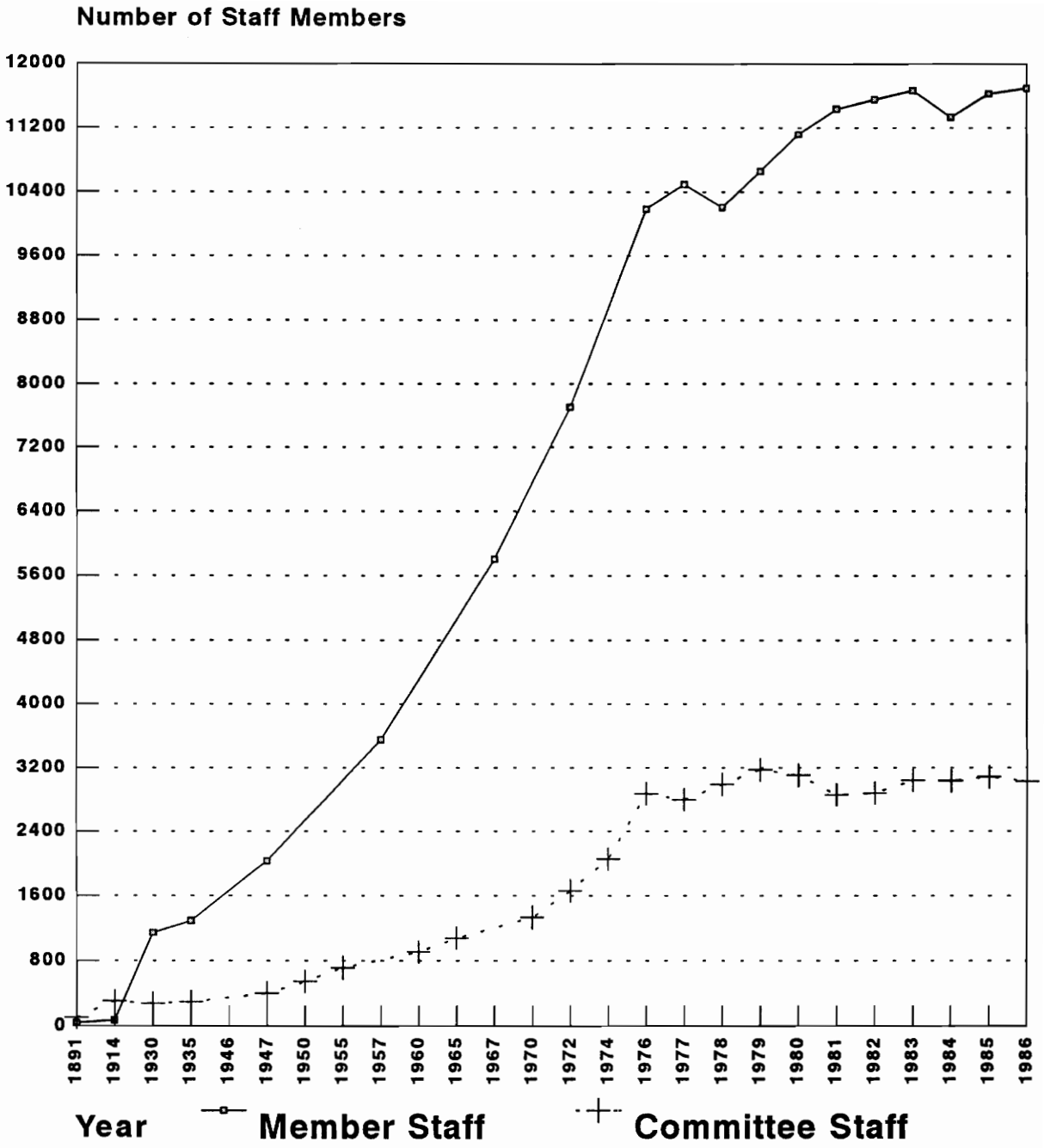

Figure 2.2
GROWTH OF CONGRESSIONAL STAFF
HOUSE AND SENATE (1891-1986)

SOURCE: Vital Statistics on Congress (pp142-149)

The Senate moved on these concerns and established a subcommittee of ethical standards in 1951. While its scope was the entire federal government, it focused mainly on the Congress. Its strongest recommendation was that both houses should develop formal but voluntary codes of conduct. It was thought that these codes would aid in clarifying new and complex situations, especially where norms of general morality would not be obvious guides.[72]

From Joseph McCarthy's unsavory debacles in Congress and scandals in the Truman and Eisenhower administrations came growing concern over the confidence of the electorate in the ethics of its Representatives. These concerns led to the writing of a formal government-wide code of ethics in 1958. This code was identical to the one prepared by Representative Charles Bennett in 1951. Although it was hopeful in its tone and without legal force, it made way for the codes of the 1960's.[73]

By 1963 powerful voices in the Senate were calling for the creation of a joint Congressional committee on ethics. Senator Jacob Javits noted that it was "completely incongruous for Senate committees to question executive appointees vigorously on their financial affairs when those of us in Congress and our staffs are not subject to similar standards and requirements."[74] Following the scandal involving top staff aide Bobby Baker, the Senate created in 1964 the

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[72]"History of Congressional Ethics" p36.

[73]HR 175, 85th Cong 2nd session 1958.

[74]"History of Congressional Ethics" p24.

bipartisan Select Committee on Standards and Conduct.[75]

In the aftermath of the Powell case, the House established a standing bipartisan ethics committee. In the decade that followed, one President, two Senators, and fifteen Representatives were subject to congressional or judicial investigation for misconduct. Hostile public reaction to these widely publicized cases led to the strengthening of the codes by both houses in 1977.[76]

2.2 Establishment of Formal Codes

Due in part to the Baker and Powell cases, both bodies moved to formalize the general principles of ethics set forth in the 1958 resolution. In 1968, both houses adopted their first ethics codes. The Senate code was comprised of four rules, but provided no specific penalties other than the implied threat of censure or expulsion. The code set limits on outside employment, required disclosure of campaign contributions, and set restrictions on their use. Additionally, it prohibited anyone other than designated Senate employees from dealing with such monies, and required members and senior staff to file annual financial disclosure statements.[77]

The brevity of the code reflects the philosophy of the Senate at the time. It would seem to support the logic of the two types of member of Congress in that a type A member would not

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[75]"History of Congressional Ethics" p24.

[76]"History of Congressional Ethics" p24.

[77]"History of Congressional Ethics" p25.

be helped by any code whether short or long, and a type B member needs only general guidance at most. This philosophy is well reflected in the words of the first committee chair, John Stennis (D-Miss):[78]

> First, we resolved to deal with practical and actual situations, not with theoretical or imagined ones, and to provide workable procedures to head off trouble. Second, we did not want to interfere with a Senator's constitutional and legal duties, nor did we want to displace the electorate in judging his performance. It seemed unwise to treat Senators like adolescents by imposing long lists of do's and don'ts.

The House established a twelve-member bipartisan standing Committee on Standards of Official Conduct. In 1968, they also adopted a code of ethics which had three main provisions. First, no member was to accept anything of substantial value from any individual or organization with an interest in legislation before the House. Second, members could not accept honoraria in excess of "the usual and customary value of such services." Members were also required to disclose financial interests greater than $5,000 and income greater than $1,000 from companies having business with the government.[79]

Over the next decade, more than a dozen members of the House and two Senators faced serious ethics charges. In 1977, a more aggressive media and a public less tolerant of such behavior led

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[78]"History of Congressional Ethics" p25.

[79]"History of Congressional Ethics" p26.

to the creation of the modern ethics code.[80] Chairman Stennis observed that while he understood the need and the public demand for tighter restrictions, he was equally concerned with the codes becoming "...a list of precepts and admonitions that will begin to resemble the Internal Revenue Code in length and complexity."[81] One of the keys to success for the 1977 bill was to tie the new restrictions to a long overdue pay increase — designed to ease members' concerns on limits to outside income.

2.3 Provisions of House and Senate Ethics Codes

A review of the codes adopted in both Houses will show that there are myriad areas that warranted consideration. The transition from general principles of right and wrong as the guidepost for members was not a smooth one. Once it was decided that formal codes rather than general principles were needed, the Pandora's box was forever opened. Every avenue of potential problem had to be considered, and Senator Stennis' fear of the Congressional code becoming like that of the Internal Revenue Service would be realized.

2.3.1 House Code Provisions[82]

Financial disclosure-Members, officers, senior member staff and senior committee staff are all

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[80]See *Congress and the Media: The Ethical Connection* for an in-depth treatment of this relationship.

[81]"History of Congressional Ethics" p27.

[82]This review of the House ethics code has been gathered from the *Ethics Manual for Members, Officers, and Employees of the U.S. House of Representatives*. (U.S. Govt Printing Office, 1987).

required to file annual financial disclosure statements. These are to include the same information for spouses when the member has some material control over these assets. This statement must include information on the following items:

- Source and amount of income of over $100 from any single source.
- Source and value of gifts worth over $100 ($180 from foreign governments) from any single source. Exempted are gifts from relatives and gifts worth less than $35.
- Source and amount of reimbursements of more than $250 from a single source.
- Source and amount of financial holdings in businesses or investments valued at over $1,000. These figures are to be given in categories of ranges ($1,001-$5,000; $5,001-$15,000; $15,001-$50,000; $50,001-$100,000; $100,001-$250,000; and over $250,000).
- Identity and range of each liability that exceeds $2,500. Exempted are mortgages held on members' primary residences in Washington and home districts.
- Identity, date and range of any securities or commodities transaction valued at over $1,000.
- Identity, date and range of any real estate transaction exceeding $1,000. Excepted are members' personal residences.

These reports are to be filed with the ethics committee (Committee on Standards of Official Conduct) and kept open for public inspection. A copy is also to be sent to the Secretary of State in the members' home state.

Gifts-Members must report all gifts as noted above, and are additionally prohibited from accepting anything exceeding $100 in value from any party with an interest in pending legislation.

Office accounts-These rules prohibited unofficial office accounts after January, 1978.[83] They also prohibited members from converting campaign funds to personal use.

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[83]These unofficial accounts were better known as "slush funds" and were used by members for activities not covered by regular allowances. They typically consisted of leftover campaign contributions, donations from corporations or part of the member's personal wealth. They were used for things like constituent lunches, newsletters, flowers for constituent funerals, family travel, etc...

Franked Mail-The codes required that franked mail be sent in the most economical manner (usually 3rd class bulk rates). They limited the amount of mail sent under the frank to six times the number of addresses in the member's district and provided that the content of the mailing must be cleared with the House advisory commission on mailing practices. They ended use of frank for matter not printed at government expense and forbade franked mail sent less than sixty days prior to a primary or general election in which the member is a candidate.

Foreign Travel-This section of the code prohibited members or staff traveling abroad from claiming per diem reimbursements if such expenses were met by other sources. It also prohibited members from receiving reimbursement for travel unless the member actually paid for travel with his or her own money. The code also forbade "lame duck" members from traveling at government expense.

Outside Earned Income-Limited outside earned income to 15% of official salary.[84]

2.3.2 Senate Code Provisions[85]

Financial disclosure-Required members, officers, senior staff, and staff designated to handle campaign funds to file financial disclosure statements annually. This provision also required candidates for the Senate to file financial disclosure statements. The categories of ranges and the types of items for which disclosure is required is similar to the House code (the top category is "over 5 million" for Senators, as opposed to "over $250,000" for House members).

Gifts-Members may not accept gifts worth over $100 from any party with an interest in pending legislation. Exempted are gifts from relatives, gifts worth less than $35, and gifts of personal hospitality.

Office accounts-Prohibited unofficial office accounts after January, 1978.[86] Also prohibited members from converting campaign funds to personal use. Directed that members' personal expenses be paid from their personal monies, from PAC monies, or from official monies slated for such uses.

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[84]See Chapter One for a discussion of income related issues.

[85]This review has been gathered from the *Senate Manual* Senate Document number 95-1 U.S. Govt Printing Office. Washington, 1977 pp68-109.

[86]These unofficial accounts were better known as "slush funds" and were used by members for activities not covered by regular allowances. They typically consisted of leftover campaign contributions, donations from corporations or part of the member's personal wealth. They were used for things like constituent lunches, newsletters, flowers for constituent funerals, family travel, etc...

Franked Mail- Provided that all franked mail must be registered with the Secretary of the Senate. Ended use of frank for matter not printed at government expense. Forbade franked mail sent less than sixty days prior to a primary or general election in which the member is a candidate. Prohibited use of Senate computer facilities for maintaining campaign related mailing lists. Provided that Senate television and radio studios not be used less than sixty days from a primary or general election.

Foreign Travel-Prohibited members or staff traveling abroad from claiming per diem reimbursements if such expenses were met by other sources. Also prohibited a member from receiving reimbursement for travel unless the member actually paid for travel with his or her own money. Forbade "lame duck" members from traveling at government expense. Permitted foreign travel paid for by foreign private educational or charitable organizations if approved by the ethics committee.

Outside Earned Income-Limited outside earned income to 15% of members salary.[87]

Conflict of Interest-Prohibited members, officers and staff from receiving compensation from any source that could lend an appearance of undue influence on the part of the member, officer or staff member. Prohibited outside employment that is inconsistent with the performance of a Senator and dictated that any employment be made known to the committee. Banned former members from lobbying the Senate for one year after leaving office. Also banned staff from lobbying their Senator or staff for one year after leaving, as well as committee staff from lobbying the committee or staff by which they were employed for one year after leaving the Senate. Forbade any Senator or employee from advancing or promoting legislation in which the member had a direct financial interest.[88]

Political Fund Activity-Limited the handlers of campaign monies to two staff members in Washington and one in the members' home state. Such employees must be full time and be paid reasonable salaries and must file disclosure statements. Provided that members could not use the services for more than 90 days of any individual who was not an employee of the Senate unless such individual agreed in writing to be bound by the ethics code.

Employment Practices-Barred discrimination in employment on the basis of race, color, religion, sex, national origin, or physical handicap.

2.4 Other changes

In additional to the formal codes established in 1977 and given the force of law in 1978, other

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[87]See Chapter One for a discussion of income-related issues.

[88]This provision was clarified in both houses to exclude benefits that the member might derive as one of a general group of those who would benefit.

changes were made to legislative life.

2.4.1 Members' Benefits

In 1976, the House Administration Committee adopted a series of changes in House rules, none of which required approval by the full House. These actions included: Lowering the mileage reimbursement to match the amount the General Services Administration had deemed appropriate for federal employees; requiring members and committees to report monthly staffing lists and their salaries and giving the committee the power to adjust the salary funds based on the federal cost of living adjustments; providing that disbursements would be made only on the presentation of legitimate vouchers; eliminating the postage stamp allowance and the "cash-out" practice in which members converted their unused stationery funds to their personal use at the end of the year.[89]

2.4.2 Honoraria

In 1974, Congress first limited honoraria. Beginning in 1975, Senators and Representatives could receive no more than $15,000 per year for speeches and articles and were limited to $1,000 per occasion. Under pressure from the senate, this ceiling was raised to $2,000 per event and $25,000 per year. Members could deduct expenses from the total, making this limit a net amount[90] — until the practice was banned in January of 1990 (late 1991 in the Senate).

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[89]Congressional Quarterly. *Congressional Ethics* p92.

[90]Congressional Quarterly. *Congressional Ethics* p186.

2.4.3 Nepotism

The hiring of relatives by members was an easy target in the media and in campaigns. Members would often be accused of padding the payroll with spouses or other relatives who did little or no work. In 1967, Congress voted to ban nepotism by all federal employees, including members of Congress. While this bill was designed by its sponsor to stop the tendency of local postmasters from hiring their wives, the ban for all federal employees was a polite and painless way to remove a thorn from the side of Congress.[91]

2.4.4 Vote Ban

The ethics committee voted in 1972 to have members convicted of serious crimes, defined as punishable by two or more years in prison, refrain from voting. The committee felt that "the preservation of public confidence in the legislative process" demanded no less. The measure was not adopted, but the full House amended its rules in 1975 to include a voluntary voting ban.[92]

2.5 Recent Ethics Developments

After a stormy battle over a proposed 51% pay raise that was rejected after outcry from the public, the House attempted to make another pass at the issue. This time around, the proposal to raise member pay was attached to proposed rule changes that would tighten the ethics codes. The pay raise was also designed to work in conjunction with ending the acceptance of honoraria for personal use. These proposals had the dual effect of answering some of the public outcry

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[91]Congressional Quarterly. *Congressional Ethics* p179.

[92]Congressional Quarterly. *Congressional Ethics* p179.

over recent ethics problems in the House and to give legislators the large pay raise they felt they needed.

Some of the changes in the proposal from the bipartisan task force charged with examining the issue included:

A recommendation to tie the proposed 35% pay hike to ending the acceptance of honoraria for personal use. The task force also suggested expanding the bipartisan ethics committee to 14 members from 10 and having four members hear charges and decide whether to proceed. The group also endorsed a proposal to limit travel paid for by outside groups to four days domestic, seven days foreign (in an attempt to limit tendency to string a few speeches together and create a vacation paid for by others). The group also suggested more stringent disclosure rules including time, date, place, and length of travel, who paid for it, and the cost. The proposal would also require disclosure of how much honorarium was paid and how much, if any, was donated to charity.

Members would also be restricted from accepting outside income from sources that they can now accept, including that from practicing professions such as law and from serving on the boards of corporations. They also urged that political action committees (PACs) controlled by candidates would be limited to those specifically benefiting the candidate (this would eliminate member PACs where members raise funds to give to other candidates or members). Members would also have to certify each month that their employees were working at a level commensurate with their

pay.[93]

Many of these provisions were adopted by the House and some took effect January 1, 1990, including the salary increase, a ban on honoraria, and new limits on the receipt of gifts. The rest of the provisions were delayed until January, 1991.[94] The Senate did not take the pay raise or ban the practice of accepting honoraria, but opted for a cost of living salary adjustment. Later in 1991, the Senate did sneak in a pay raise for themselves to equalize their salaries with that of the House in exchange for a ban on honoraria.[95]

2.6 Conclusion

The trend toward formalization of ethics codes is in part a result of decades of societal and institutional growth. It is also due to increasing public awareness of Congressional behavior as a result of the heightened scrutiny of the modern media. The importance of these first two chapters lies in providing the framework within which to proceed with the quantitative analysis of the recorded offenses and their outcomes over the history of the Republic.

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[93]*The Washington Post*-(9/19/89).

[94]*The Washington Post*-(12/22/89).

[95]P.L. 102-90 (August 14, 1991).

CHAPTER THREE

Data Analysis

3.0 Introduction

Public perception of member misconduct suffers from a basic bias. In the United States there seems to be a common feeling that, at some level, the government and its elected representatives are corrupt. From articles in newspapers, reports on television news and investigative shows, to polls on political attitudes, a tone of cynicism, mistrust, and lack of confidence can readily be seen. In relation to this thesis, two general notions can be expressed from this concept of the public attitude toward government.

This chapter will attempt to wade through this bias by examining the cases as aggregate data, rather than as individual incidents plastered across splashy news headlines. It begins first by dismissing the notion of widespread corruption. The rationale for this is found in stressing the small number of serious incidents throughout the history of the Congress relative to the number of members who have served over the last two centuries. To accomplish this dismissal of widespread corruption this analysis will work under an operational assumption that those who commit serious offenses are eventually discovered.

This operational assumption is necessary to explain the use of these data as representative of the amount of serious corruption in the U.S. Congress and is justified in two ways. The first is that changes in technology and the post-Watergate rise of an investigative and skeptical media have made exposure of misdeeds even more likely than in the past. Thus, a rational, self-interested

member — even if immoral — would be expected to be less inclined to misbehave. Additionally, even if technology presents more sophisticated methods or a greater potential for members of Congress to engage in unethical behavior, then the increased ability and propensity for exposure would logically, at a minimum, keep the levels relatively constant. A second notion, as described in Chapter Two, reflects the decreased public tolerance of the more egregious practices of the nineteenth and early twentieth centuries.

In either scenario delineated in point one, these data would reflect either 1) an increase in the frequency of getting caught to an increasing level of corruption, 2) an increase in the frequency of getting caught to a stable level of corruption, 3) an increase in the frequency of getting caught to an declining level of corruption, or 4) a stable level of getting caught to a stable or a declining level of corruption. It is not seen as a likely scenario that the level of corruption is stable or increasing while the chance of getting caught is decreasing.

For this work, the point revolves around the impossibility of knowing with certainty the ratio of known corruption to that which remains unknown. However, for this analysis, the assumptions underlying the operational definition are not intuitively uncomfortable and hence the notion that the known amount of corruption may vary somewhat to the unknown is not viewed as incompatible with useful analysis of the questions examined.

The second notion will be explored in the following hypothesis that seeks to explore the effects of corruption and the changes in the Congress as an institution toward ethical issues.

3.1 Dependent Variable

The dependent variable in this analysis is the probability that those members who were found to have engaged in unethical conduct do not remain in Congress. The variable constructed to represent this was done by creating a cut-off point within the elapsed time between the ethics event and the departure from the House or Senate. If the member left within three years, the variable was coded to indicate that the member left the institution because of the ethics violation. Otherwise, the variable was coded to indicate that the member did not leave the institution (or did not leave because of the ethics problem).

3.2 Major Hypothesis

The underlying assumption that the ethics violation contributed heavily to the member's departure if the events were within three years seems intuitively reasonable. Also, the tendency for members of Congress in general to not leave (i.e. members generally intend to run for re-election) lends additional support. Lastly, in these data over half of those who left did so by resignation or defeat — something that is also less common among members of Congress in general.

A departure within three years was chosen as the actual length of time for two reasons. First, it would encompass one full House term (with "padding" on either or both ends). Secondly, it would be likely to capture many of the departures in the Senate without spanning two House terms. Two different standards could have been employed (e.g., less than six years for senators and less than three for members of the House); however, the time frame seemed too long for this

analysis and the loss of data was only three cases.

3.3 Independent Variables and Further Hypotheses

Five factors are considered as influences on the dependent variable.

Type of Offense - Those members who commit offenses more common to the public (e.g., adultery, drunk driving) are more likely to stay than those who commit more removed offenses like misuse of offense or campaign finance irregularities. This is expected because it is assumed that voters will relate to "common" offenses and be more tolerant of them in their representatives than they would be for the distant "inside-the-beltway" offense types.

Party of Member and Party in Power - Opposition members are more likely to leave than majority party members. This is expected because partisanship is assumed to have a potentially magnified effect through the control of the system that the majority party may exercise.

Institution served - Senators are more likely to leave following accusations of wrongdoing than Representatives. This is expected because of the greater visibility of Senators and the concomitant increase in the attention paid to them. First, Senators are better known and there are fewer of them; thus they would presumably be more likely to get extensive media coverage. Second, the Senate has less seat security than the House, and it would thus be more likely that a Senator would lose enough support over such charges to be defeated (while this same amount of loss might not be enough to defeat a Representative).

Election Year - Members are more likely to leave if their offense occurs or is uncovered in an election year. This is expected as a result of increased election-year activity and interest on the part of the media, interest groups, the political opposition, and the electorate. During an election year, attention from the media and the opposing candidate attention would be focused and loud on these charges of misconduct. Additionally, members would be expected to be defeated or to retire at this point.

3.4 The Data Base

In order to thoroughly test the dimensions of Congressional ethics, data would be required from all instances of misconduct. This research, however, is limited to those instances which became a matter of public record. As such, biases in assessing the levels of corruption and other influences cannot be ruled out. However, by collecting and analyzing all known instances of Congressional misconduct, useful conclusions may still be drawn.

These data are comprised of known instances of Congressional misconduct.[96] Instances that were pressed by the media, the courts, or the Congress itself are included. The time period dates from 1797 through 1990, and raises two issues. The first is that while most research on this and similar topics is limited to the twentieth century, and often limited even to the post World War II era, the types of information collected here and the importance of a historical perspective made

[96]Several main sources were used to gather this information: Articles and books on congressional ethics and/or reform, current and microfilm versions of The Washington Post, Publications of Congressional Quarterly, reports of the House and Senate ethics committees, and the Library of Congress' biographical volumes on every member who served in either house of Congress.

relying on sometimes dated material a necessary risk. The second point to note is that instances involving Civil War offenses have been excluded from these data. From a theoretical standpoint, it was decided that these offenses were of a unique nature and essentially unrelated to the topic at hand.[97]

These data are comprised of 152 cases (20 of which were Civil War-related and provided only for descriptive purposes). Collected for each case were the following variables: house of membership, party affiliation, party in power, offense type, election year, year of offense, year member left, and reason member left. A new variable measuring whether a member left Congress or not was derived from year of offense and year left. As noted above, if a member left within three calendar years of the offense, the working assumption was made that the offense substantially contributed to his departure. Offense type was originally collected using over a dozen categories (essentially, each unique type of offense). In preparation for analysis, this variable was collapsed into categories of similar offense types. This collapsing yielded categories of: campaign irregularities, financial misconduct, moral offenses, corruption, and "other."[98] The variable for party membership was kept to three categories: Democrat, Republican, and

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[97]It is argued here that members of Congress sanctioned (including expulsions) for being from a Confederate State, did not commit an offense of ethics, rather, they engaged in an act of conscience that was determined to be improper by virtue of the outcome and by history. From a practical standpoint, these cases would have been a unique offense type, and as they were expelled from Congress, strong statistical influences would have appeared without adding to the strength (and perhaps even confounding) the arguments made here.

[98]A complete listing of offense types is provided in the Appendix.

"other."[99] In tables where party is used, the "other" category is excluded from analysis.

3.5 Methodology

Since the dependent variable used is dichotomous, the probit method of analysis was selected as more appropriate than standard regression techniques. The probit model is given by:[100]

$$P(Y=1|X) = \phi(\Sigma b_k X_k) = \int_{-\infty}^{\Sigma b_k X_k} \exp(-u^2/2)/\sqrt{2\pi}\, du$$

The dependent variable, Y, is assumed to be dichotomous. The analysis revolves around the value of P, the probability that Y equals one.[101] Y is assumed to depend on K variables X_k, $k=1,\ldots,K$. These variables are assumed to account for the variation in P. This relationship is indicated here by $P=P(Y=1|X_1,\ldots,X_k)$, or $P=P(Y|X)$, where X denotes the set of K independent variables. The remaining unknowns are the parameters b_k, $k=1,\ldots,K$.

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[99]Of the 132 non-civil war-related cases used the analyses, 18 were excluded due to "other" party identification.

[100]Aldrich and Nelson, 1987.

[101]Although the equations are essentially the same, the statistical software package used (SAS) models the probability that $Y=0$ in the probit procedure.

The variables used are summarized by:

Y = *whether the member left the institution within three years of offense.*

X_1 = *OFFENSE TYPE*

X_2 = *PARTY OF MEMBER*

X_3 = *INSTITUTION SERVED*

X_4 = *PARTY IN POWER*

X_5 = *ELECTION YEAR*

In order to assist with the interpretation of the parameter estimates, a measure of a pseudo-R^2 will be employed. This measure is given by:

$$R^2 = \frac{C}{(N+C)}$$

where c is the chi-square statistic and N is the total sample size.[102]

3.6 Findings

In Table 3.1, results of the probit procedure are given. The estimated pseudo-R^2 shows an overall influence of the modeled variables at .32. While this may be considered a reasonable amount of influence, only two of the parameter estimates are statistically significant at the .05

[102]For a discussion of this measure, see "Linear Probability, Logit, and Probit Models" especially pp56-58.

level (election year and institution served).[103] Additionally, the estimated correlation matrix yielded correlations of .35 or less between the independent variables (except between party in power and party of member, in which the correlation was .57). This was used to confirm the relatively low levels of multicollinearity that is assumed by the model.

[103]Because the parameter estimates of the other theorized influences are statistically insignificant, the probit model was re-run using only the two independent variables noted above. The log-likelihood chi-square — and hence the estimated pseudo-R^2 — changed little. Additionally, the parameter estimates and their significance tests remained consistent with the full model analyzed here.

Table 3.1 Results of Probit Model

Probit Procedure

Variable	DF	Estimate	Std Err	ChiSquare	Pr>Chi
INTERCEPT	1	-0.9780763	0.636474	2.361476	0.124
OFFENSE TYPE	1	0.19102535	0.119781	2.54333	0.110
PARTY OF MEMBER	1	-0.1785136	0.408544	0.190926	0.662
PARTY IN POWER	1	0.37278826	0.392816	0.90063	0.342
INSTITUTION SERVED	1	-1.0834925	0.411009	6.949421	0.008**
ELECTION YEAR	1	0.6742387	0.341407	3.900163	0.048*

N =	132
Number of observations used =	91
Log Likelihood for NORMAL	-43.9679212
(chi-square, 5 degrees of freedom)	
Estimated Pseudo R^2	.32

Hosmer and Lemeshow Goodness-of-Fit Test

		STAYWENT = **Stay**		STAYWENT = **Leave**	
Group	Total	Observed	Expected	Observed	Expected
1	9	0	0.49	9	8.51
2	9	0	0.70	9	8.30
3	9	4	1.11	5	7.89
4	9	2	1.39	7	7.61
5	9	1	1.68	8	7.32
6	9	1	1.88	8	7.12
7	9	2	2.34	7	6.66
8	9	2	2.74	7	6.26
9	9	4	3.88	5	5.12
10	10	6	5.78	4	4.22

Goodness-of-fit Statistic = 11.362 with 8 DF (p=0.1820)

**Indicates significance at the .01 level

*Indicates significance at the .05 level

The parameter estimates of the statistically significant variables indicate interesting associations. The independent variable of institution served (b=-1.08) indicates that membership in the House of Representatives is associated with a higher probability of leaving the institution. This runs contrary to the hypothesized relationship and may be affected by the construction of the dependent variable and differences in term lengths. Also, as displayed in Table 3.2, 80 percent of House members versus 64 percent of Senators were considered to have left the institution because of their ethics problems.

The independent variable of election year (b=.67) indicates that the coincidence of election year and ethical problems is actually less associated with the departure of a member. In Table 3.2 the coincidence of election year and ethical problems is less likely to be associated with leaving — 84 percent leaving in non-election years versus 70 percent during an election cycle. It was expected that a greater proportion of members accused of unethical conduct would leave in an election year. However, these data show that members are more likely to leave in a non-election year. This puzzling result was originally thought to be caused by the fact that in a technical sense, a member's term does not expire until January of the following (and non-election) year. However, in collecting these data, members were coded as having left the year of the election if their biographical information stated that they were defeated or chose not to stand for re-election.

It is possible that such a situation occurred in cases where this scenario was not clearly identifiable (and thus their departure date was not moved back to the year of election). If future

study[104] does not bear this out, then one would have to search for alternative explanations. For the purposes of this hypothesis, however, this relationship offers little support. However, due to the confusing nature of the relationship, the influence of election year should perhaps not be entirely discounted.[105]

The remaining variables displayed in Table 3.2 yielded statistically insignificant relationships in both the probit model and as measured by the chi-square statistic for these cross-tabulations. The two significant variables from the probit show the same relationship in a cross-tabular form and could be considered statistically significant at the $p < .10$ level (.053 for institution served and .078 for election year).

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[104]For additional study of this and other aspects of congressional behavior in general and ethics in particular, the next logical step might be to examine these issues in the additional context of all members contemporary to each member in the data.

[105]This may be especially so if it lends support to the notion that the public may discount the seriousness of ethics issues during a campaign cycle. If voters are subjected to steady doses of negative campaigning, they may not lend credence to these types of charges unless they surface in a non-election year.

Table 3.2 Characteristics of Congressional Ethics Matters

Characteristics	TOTAL (col %)	OUTCOME			
		Member Left Institution		Member Stayed in Institution	
		Number	Percent	Number	Percent
ELECTION YEAR					
No	*51(44.4)*	43	84.3	8	15.7
Yes	*64(55.6)*	45	70.3	19	29.7
total	*115(100.0)*	*88*	*76.5*	*27*	*23.5*
PARTY OF MEMBER					
Democrat	*74(69.2)*	55	74.3	19	25.7
Republican	*33(30.8)*	25	75.8	8	24.2
total	*107(100.0)*	*80*	*74.8*	*27*	*25.2*
PARTY IN POWER STATUS					
Majority member	*66(58.9)*	51	77.3	15	22.7
Minority Member	*46(41.1)*	34	73.9	12	26.1
total	*112(100.0)*	*85*	*75.9*	*27*	*24.1*
INSTITUTION SERVED					
Senate	*33(26.4)*	21	63.6	12	36.4
House of Representatives	*92(73.6)*	74	80.4	18	19.6
total	*125(100.0)*	*95*	*76.0*	*30*	*24.0*
OFFENSE TYPE					
Corruption	*54(43.6)*	44	81.5	10	18.5
Financial misconduct	*22(17.7)*	17	77.3	5	22.7
Campaign irregularities	*10(8.1)*	7	70.0	3	30.0
Moral offenses	*6(4.8)*	4	66.7	2	33.3
Other offenses	*32(25.8)*	23	71.9	9	28.1
total	*124(100.0)*	*95*	*76.6*	*29*	*23.4*

Table 3.3 Offense Type by Institution Served*

Offense Type	TOTAL (col %)	INSTITUTION SERVED			
		House		Senate	
		Number	Percent	Number	Percent
Corruption	*55(42.0)*	35	35.7	20	60.6
Financial misconduct	*25(19.1)*	19	19.4	6	18.2
Campaign irregularities	*10(7.6)*	10	10.2	0	0.0
Moral offenses	*7(5.3)*	7	7.1	0	0.0
Other offenses	*34(26.0)*	27	27.6	7	21.2
total	*131(100.0)*	*98*	*100.0*	*33*	*100.0*

*statistically significant at the .05 level.

This relationship indicates that Senators are much more likely to be involved in charges of corruption than House members (61% to 36%). House members are more likely to be involved in charges of campaign irregularities and in charges of moral misconduct than Senators (10% to 0% and 7% to 0%, respectively).

Table 3.4 Offense Type by Party of Member

Offense Type	TOTAL (col %)	PARTY OF MEMBER			
		Democrat		Republican	
		Number	Percent	Number	Percent
Corruption	*49(43.4)*	31	39.2	18	52.9
Financial misconduct	*25(22.1)*	19	24.1	6	17.7
Campaign irregularities	*10(8.8)*	8	10.1	2	5.9
Moral offenses	*7(6.2)*	5	6.3	2	5.9
Other offenses	*22(19.5)*	16	20.3	6	17.7
total	*113(100.0)*	*79*	*100.0*	*34*	*100.0*

Table 3.4 shows some differences between party affiliation and offense type. Republicans are more likely than Democrats to be involved in charges of corruption and less likely to be involved in financial misconduct or campaign irregularities. However, the relationships depicted on this table did not prove to be statistically significant and, as such, these differences should be viewed with caution. Spurious effects of party categorization may contribute to the weak performance of this variable, especially given that at different periods in history, the labels "Democrat" and "Republican" had different meanings than the current ones. Additionally, in the past, other party identifications than the two of today were more common. However, an attempt to account for these potential influences was decided to be unwise in this context given the relatively small number of cases.

Table 3.5 Offense Type by Reason for Leaving Institution

Offense Type	TOTAL	REASON LEFT							
		Resigned		Defeated		Retired		Other[106]	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
Corruption	*49(100.0)*	16	32.7	9	18.4	13	26.5	11	22.5
Financial misconduct	*19(100.0)*	5	26.3	7	36.8	5	26.3	2	10.5
Campaign irregularities	*10(100.0)*	2	20.0	4	40.0	2	20.0	2	20.0
Moral offenses	*5(100.0)*	2	40.0	2	40.0	0	0.0	1	20.0
Other offenses	*32(100.0)*	9	28.1	8	25.0	11	34.4	4	12.5
TOTAL	*115(100.0)*	*34*	*29.6*	*30*	*26.1*	*31*	*27.0*	*20*	*17.4*

[106]The other category includes those who left for reasons unknown (8) and those who died in office (12). Of the eighteen expelled, only two remain on the table after the civil war related cases were excluded. Because of this small number, the two expulsion cases were included in the resigned category. Both are in the corruption category for offense type.

Table 3.5 also offers relatively little information of interest here. The relationship displayed on this table is statistically insignificant but seems to indicate that those involved in charges of corruption were more likely to resign. The other categories (except for the "other" category) seem to indicate a greater tendency for electoral defeat.

Overall, the major hypothesis advanced in this chapter seems to be supported by these data. The overall departure rate of members charged with unethical conduct is about 80%. This would seem to affirm the hypothesis that members who engage in unethical conduct tend not to stay in office. The associations of the variables party of member, party in power, and offense type with the dependent variable seem weak. The other two theorized influences (institution served and election year) appear supported by these data — but not in the expected manner.

The final portion of the analysis examined the general predictive power of the independent variables by using the Hosmer and Lemeshow[107] method of assessing model fit. This method divides the data records into ten nearly equal groups and compares the predicted values of the outcome variable against the actual values of the outcome variable. These figures are shown as the second half of Table 3.1 and indicate (by visual review and by failing to reject the null hypothesis that the predicted and expected values are similar) a good model fit. In general, however, the strongest support is for the expectation that members with ethics problems leave.

[107]See Hosmer and Lemeshow pp140-145.

CHAPTER FOUR

4.0 Conclusions

The focus of this thesis has been the ethics of Congress. It reviewed the incidence of ethical breaches in the history of the institution and found instances of improper behavior covering a broad spectrum of misconduct. Looking at the proportion of offenses committed over time and the total number of individuals who have served, one finds that the numbers are comparatively small. Although these offenses are not insignificant because they are proportionately infrequent, the numbers alone do not make a case for pervasive corruption. That most of the members involved in ethical problems leave Congress shortly thereafter provides a positive indication that the system functions with at least some level of success.

The Constitution of the United States provides Congress with the authority to deal with unethical members. Either house of Congress may reprimand, censure, or expel a member for any offense for which it deems such punishment warranted. Taken from another perspective, it was not that the institution lacked the mechanism for policing itself, but rather that these acts of improper behavior provided the impetus for the evolution and formalization of ethics codes. These codes formally spelled out what had previously been informal notions of propriety and were designed to help guide members in their legislative and personal activities.

The perception of weak ethical standards is thought to be one of the key ingredients in the public's low esteem for Congress. The method of analysis used here on this aspect of Congressional behavior removes public opinion and then attempts to quantify and examine certain

empirical indicators. To help look at these incidents, information about instances of unethical behavior by members of Congress were collected for examination. Different facets of these offenses were analyzed to seek explanations and influences as to the types of offense committed, by whom, and with what outcome. The main purpose of this analysis was to explore the various potential influences behind these occurrences and the outcome for the member involved. In addition to the hypothesis that those caught up in ethical problems do not remain in Congress, it was also hypothesized that the outcomes of these incidents were the product of partisan politics.

Several conditions surrounding these cases were examined to demonstrate support for these ideas. The status of each member involved in an ethical breach was examined. It was thought that whether the member was in the majority or minority would indicate partisan tactics potentially unrelated to the concept of "just desserts." The occurrence of each offense relative to the proximity of the next election was also examined as a potential proxy for these partisan influences. Neither of these measures lent significant support to the idea that charges of corruption in Congress was motivated by politics.

Other conditions were examined to look for demographic patterns in the type of member that was found to engage in unethical behavior. The institution and party affiliation of each of these members were analyzed. While such analysis provided little support for reasoning that membership in one party was a significant influence, there was some indication that membership in the House was associated with a higher probability of leaving the institution. The information collected was also used to examine the possibility of electoral retribution. Other research has

found relatively small amounts of electoral retribution[108] for corrupt members and these data indicated similar results.[109] More importantly, however, is the simple statistic that of all the members caught up in charges of corruption, nearly 80% did not remain in Congress long after.

Additionally, much of the opportunity for misbehavior has been limited by changes occurring in the latter part of the twentieth century. Disclosure rules on the members' personal finances have made information available to the public by which they can judge the members' ability to legislate without bias. These rules have probably also served to inhibit improper conduct by members having advance knowledge that improper or conflict-of-interest types of financial dealings will in all probability become public knowledge. In conjunction with disclosure rules, modern restrictions on staffing and spending practices have also helped to limit the opportunity for improper conduct. Bans on nepotism, honoraria, and improper spending activities have virtually eliminated many of the most flagrant types of misconduct that reached the voters back home.

Finally, the emergence of a more professional and investigation-oriented media has made significant contributions in bringing these types of conduct to light and thus providing some of the impetus for reform. Scandals in the government such as the Watergate affair in the 1970's helped move the media into areas previously left generally untouched. These types of scandals left the public and the media with less trust in the institutions of government and provided the public with an appetite for the information that a skeptical and aggressive media could provide.

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[108]See Peters and Welsh (1980).

[109]As noted in Chapter Three; however, this indicator may have been distorted by other influences.

All of these modern developments have aided in decreasing the potential for the old-fashioned "shady deal." Interestingly, it is these very changes in society that could arguably have also created a potential for large increases in ethical lapses. Modern creations such as PACs, "soft money," and paid corporate travel could all add to the potential for ethics abuses. However, a review of the incidents collected here does not show an increase in the frequency of unethical conduct — beyond those in the post-Watergate era that are likely attributable to the formalization of ethics codes, changes in the media, and the level of public trust and tolerance.

Congress has often been accused of doing little to police itself unless forced to, but the fact that it does act in the more extreme cases serves both a desire to punish behavior detrimental to the institution while concurrently allowing caution to help prevent an atmosphere of "witch-hunting" that could lead to legislative over-caution or paralysis. Looking at the reform attempts, one finds that there seems to be an indication of a relatively small proportion of misdeeds and some fairly strong efforts to eliminate the most egregious forms. The notion that Congress is full of corrupt individuals does not seem to hold up under scrutiny, and from the research done here, other avenues would seem appropriate for explanations.

One such avenue might be to view the issue as one of perception, especially if one looks at the levels of confidence in the institution (and the even lower levels for the members and their leaders). The public appears to see a group of individuals who do not have to play by the same rules as "ordinary" citizens, and who in fact get to make the rules as well. From large expense accounts, personal staffs and salaries, to self-granted exemptions from certain federal regulations (such as equal opportunity policies), people generally view the institution as an elitist playground

for the privileged. When the public views splashy media examples of members of Congress behaving poorly through lenses of resentment and frustration, it is not surprising that the incidence of improper behavior is much lower than the people seem to think. More specifically, this issue of perception seems to be a central element of the results found here. While little support is found for pervasive corruption, a pervasive *perception* of corruption might be a more satisfactory explanation for the incongruity between the public notion of the institution and the reality depicted in this work. This may suggest that while reform is still necessary, the more appropriate items for addressing the public's low esteem for the U.S. Congress are those involving campaign finance and procedural reform.

Notions of elitist and self-serving behavior, over-influence of "special interests," and pork-barrel project legislation seem to be the real issues. The infrequency of serious ethical problems and grossly illegal behavior seems to become confused with this larger issue of institutional behavior. The public, the media, and academics focus more on campaign finance, the influence of interest groups, the problems of entrenched incumbency, time-demand difficulties, and the magnification of empty rhetoric and image-voting through the rise of sound-bite politics.

The efforts of public interest groups, academics, and journalists are most focused on reform. This buzzword of late manifests itself through notions such as term-limits, more complete financial disclosure, and limits or even bans on certain types of donations. From another direction, reform is pushed from within the institution with an eye toward "making the legislative process work." Many new members, especially in the House of Representatives, seem focused on getting the institutional operations to a more efficient and manageable level. They see

overwhelming and unacceptable demands on their time to the extreme of accomplishing little. Analogies such as being a fire-fighter containing many blazes but extinguishing none, or barely keeping one's head above water but doing no swimming, etc., describe a feeling of having too much to do and a concomitant lack of time to pay serious attention to any one issue.

Figure 4.1 displays the growth of the United States (in population) and the growth of Congress. These growth rates show similarities that perhaps undercut the perceptual notion that Congress is unwieldy and overgrown due only to its own self-aggrandizing desires. Figure 4.2 provides a comparison of congressional growth with increases in workload. When workload is measured in hours per session rather than total hours or staff, it also appears that Congress is working more. This additional workload brought on substantially by the growth in technology and population provides a possible cause for sympathy for the difficulties in functioning at all — much less the ability to run an orderly, clean, and efficient institution.

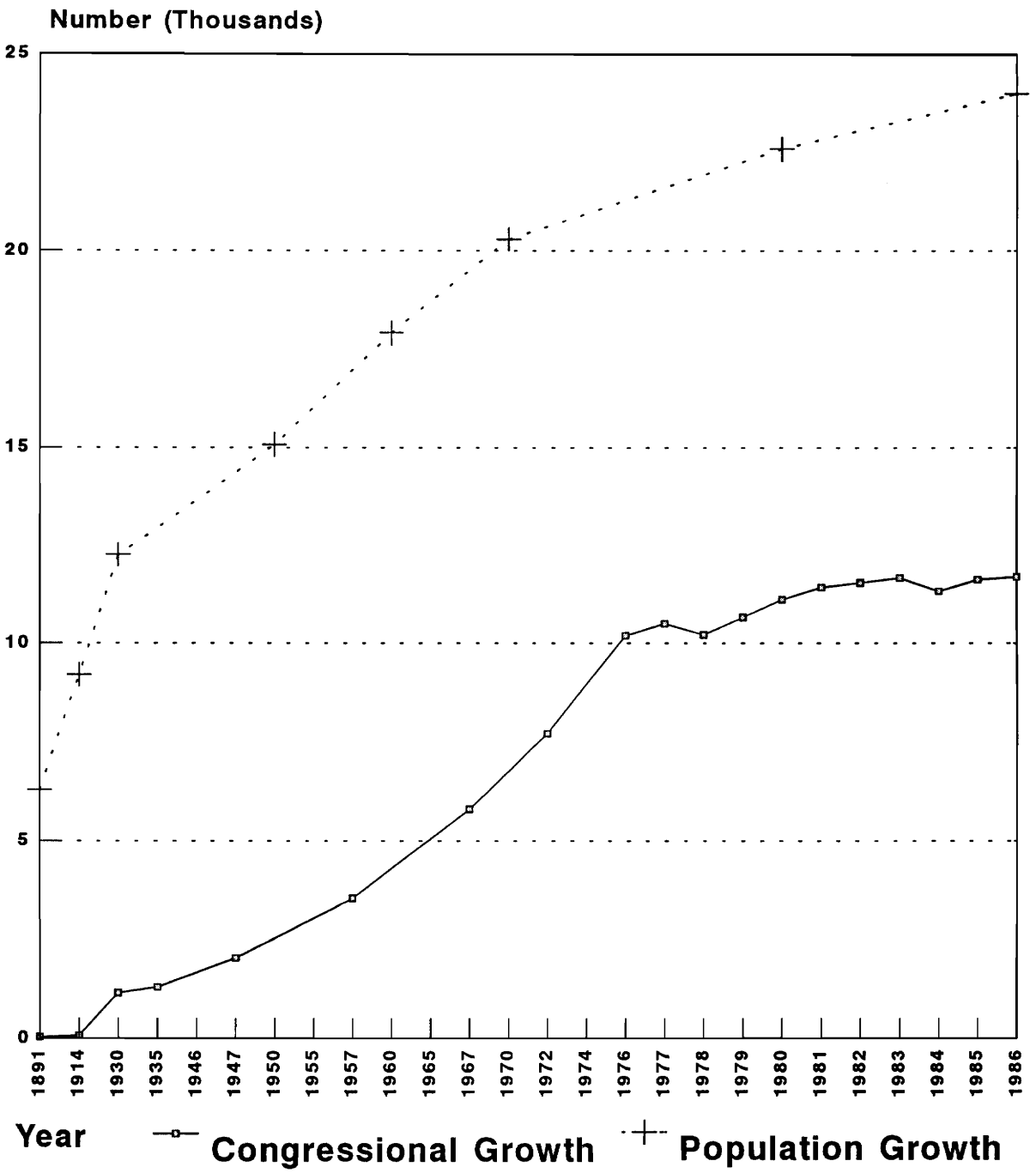

Figure 4.1
GROWTH OF CONGRESS vs GENERAL POPULATION
HOUSE AND SENATE (1891-1986)

SOURCE: Vital Statistics on Congress (pp142-149) and Statistical Abstract of the U.S. (p7).

NOTE: Population figures are in tens of millions.

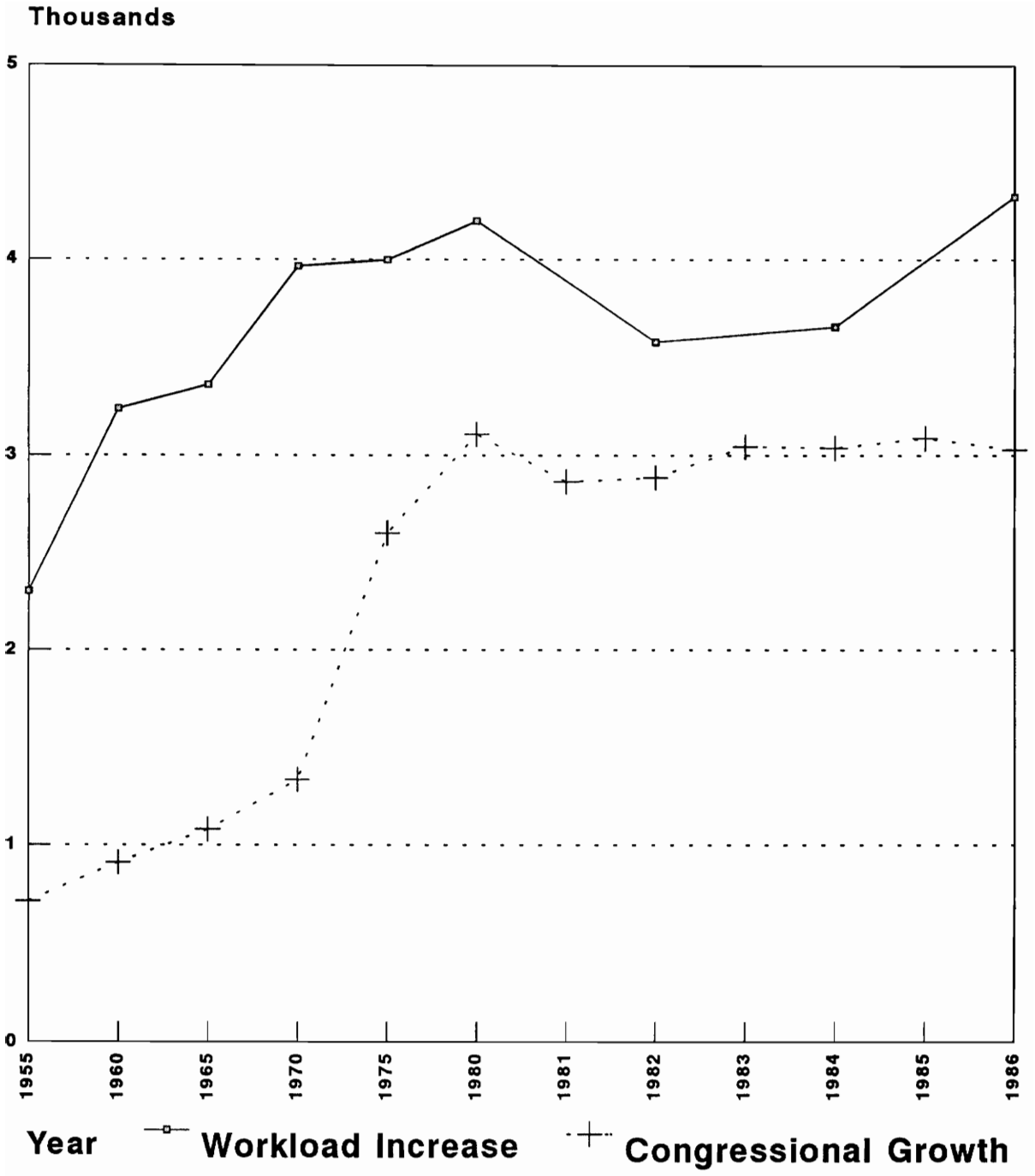

Figure 4.2
CONGRESSIONAL GROWTH
vs INCREASED WORKLOAD (1955-1986)

NOTE: Workload proxy is hours per session; Congressional growth is in total staff.
SOURCE: Vital Statistics on Congress (p168)

From many of these institutional problems came the Joint Committee on the Organization of Congress.[110] This panel (created in 1992) was only the second major review of institutional functions since Legislative Reform Act of 1946. While the focus of this panel is not the primary issue of this thesis, the existence of the panel lends support to this notion of larger perceptual and institutional problems than ethical ones.

At the outset, these efforts focused largely on institutional reform; however, this focus has of late shifted towards addressing perceptual issues. The initial work began with issues such as:[111]

- Bringing Congress into compliance with civil rights and other related laws from which it has traditionally exempted itself.
- More strict limitations in the number of committees on which a member can serve and reduce the existing number of subcommittees.
- A change to a two-year budget cycle.
- Use of a panel of outsiders (such as judges) to serve as an investigative panel with grand jury-like functions for the ethics committees.
- Cuts in staffing levels and consolidation of duplicative functions in the General Accounting Office, the Congressional Research Service, the Government Printing Office, and the Architect of the Capitol.

Different factors played into the creation and evolution of this committee. These ideas were the beginning notions fueled by 110 new members of the House following the 1992 elections. Conflicting pressures came from both new members (and some veterans) looking to make fundamental changes and from committee chairs who were less interested in enacting changes that might decrease their power. These ideas came from both a conviction that fundamental reform is needed, as well as the realization that their constituents back home were becoming increasingly

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[110]Congressional Quarterly *Weekly Report*, 10/2/93

[111]*The Washington Post*-(10/21/93).

restless and displeased with Congress and its perks and privileges. Compounding the task further were difficult issues of financing proposed changes and making changes without interfering too much in each other's house.[112]

In November of 1993, the Senate half of the reform panel decided to press ahead without waiting for the House. Urging publicly the reforms outlined above, the Senate did not want to hold while the House worked through disputes and while the panel itself struggled with leadership issues among the four heads (one from each party and house).[113]

Six months later, the Senate began floor debate on a proposal that would prohibit members (of both houses) from receiving gifts (valued at more than $20) — except for home state products and gifts from relatives. The proposal would also ban privately-funded travel for recreational purposes and was particularly aimed at lobbyist-financed charity golf and tennis events. Such events had been used on television news shows to portray the Congress in an unfavorable light. Additionally, the proposal would prohibit special interests from financing congressional retreats or from contributing to charities in lieu of honoraria.[114]

This legislation was passed by the Senate during May of 1994, fueled by concerns over the institution's image. Members felt a desire to correct practices that might actually taint the

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[112]Congressional Quarterly *Weekly Report*, 10/2/93

[113]*The Washington Post*-(11/5/93).

[114]*The Washington Post*-(5/5/94).

legislative process, but perhaps even more so, they felt compelled to do something to satiate a *real* public desire to "clean-up" the Congress whether or not the need to do so was critical. Though the proposal passed 95 to 4[115] in the Senate, that an amendment that would have largely gutted the bill garnered 39[116] votes perhaps highlights the ambivalence of some members about fixing problems that they believe are more perceptual and less real. It may also highlight the mixed feelings of some members as to whether any changes will ever sway public opinion of Congress to a positive one.[117]

On another front, Congress is finding its traditions at odds with modern expectations toward the treatment of women. Divided into two general categories of treatment and harassment, the treatment of both female members and issues of greater concern to women may become slowly and steadily acceptable on its own. Simply stated, the increasing prevalence of women in Congress over time will likely alter the atmosphere on a range of issues from the practical (such as fewer or inferior facilities in the institution) to the fair (the day-to-day treatment of female colleagues and staff without condescension or even denying the opportunity to be heard or advance) to the "hot-button" issues of the late twentieth century (such as child support, cancer research, domestic violence, and education).

As a specific case, Senator Packwood illustrates the difficulties surrounding the issues of sexual

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[115]*The Washington Post*-(5/12/94).

[116]*The Washington Post*-(5/13/94).

[117]*The Washington Post*-(5/9/94).

harassment. As a longtime public servant and a supporter of issues of special concern to women, Senator Packwood stands accused of generally being a pawing and drunken leacher for the last twenty years. The Senator has apologized for his behavior and blamed it on alcohol and the application of 1990 standards to 1970 behavior. Critics claim that Senator Packwood used the power of his office to entice or intimidate women into his grasp, while the Senator claims that being amorous is no crime — even if carried out in a drunken and boorish manner. The truth behind this case and ultimate outcome may be less relevant than the forced attention to the problem it has caused and that perhaps it will jolt society along toward its own conclusions on the more difficult issues of harassment. Before the stages of guilt or innocence, resign or stay, disgrace or treatable illness are decided, societal norms must first become settled on what is harassment and what is loutish behavior. Additionally, those like Senator Packwood must be treated with caution — balancing complex issues such as hearings and suits and investigations with the ability to allow the Senator's constituents to judge his fitness for office. Society must also balance the power of modern television and print to display different realities, or the existence of certain types of people willing to pretty much say or do anything for money and power against the reality and existence of sexual harassment and the societal cost of allowing problems such as this to continue without action.

This issue of sexual harassment and of gender equality in general ties in with other elements of the ethics in Congress issue — particularly with those involving changing societal standards. Another aspect of the public notion of Congressional ethics is one of expectation. It may be that those outside the institution expect members that are "pure as the driven snow." However, the wisdom of this expectation should not be taken as a given.

There were intentions on the part of the founders of our government that members of Congress, and particularly of the House, be ordinary citizens who serve in government for a few years and return home. From this concept flows two ideas. The first is that given the current cost of winning an election, and the commitment required to function as a member, it is no longer practical for this "ideal" notion of a member of Congress. As long as the system remains as it is, people who fault members for the way they currently campaign and conduct legislative affairs are faulting the person when the process is at fault. The more legitimate complaint could fall on the people themselves for not demanding and working toward institutional changes that would decrease their dissatisfaction with the members and the current system.

The second revolves around the standard to which we hold our representatives. For example, petty pilfering of the average employee in the public and private sectors (e.g., writing a personal letter on a work computer, or using the copy machine to make a copy of a tax return, or even grabbing a pad of paper that ends up at home with grocery lists on it) is arguably the same behavior in which members of Congress engage, though on a larger scale. In fact, it may be this scale that fuels resentment and cynicism. Alexander Hamilton said members ought to be representative of the "common man." However, we seem to expect them to better than we are. Perhaps that is somewhat unfair, and to some extent, they do behave better than we do — at least in the sense that they don't seem to "pilfer" at a rate commensurate with the level of temptation.

APPENDIX

The original categories of the offense type variable:

1 = Payoff, bribe-taking
2 = Sex offenses
3 = Election fraud
4 = Tax offenses
5 = Financial misconduct
6 = Assault
8 = Corruption
10= Campaign finance irregularities
11= Perjury
12= Misuse of office for personal gain
13= Improper legislative conduct
14= Civil war related
15= Other
99= Missing

These categories were collapsed for analysis as follows:

1 = **Corruption** from 1, 8, 12 & 13
2 = **Financial Misconduct** from 4 & 5
3 = **Campaign Irregularities** from 3 & 10
4 = **Moral** from 2
5 = **Other** from 6, 11 & 15

Note: value 14, Civil War related, was collected in these data (20 of 152 cases), but excluded from all analysis. Missing values were also excluded from analysis.

The construction of the "stayed or went" variable was based on reason left and the amount of time passing between offense and departure. The values of the reason left variable:

1 = Expelled
2 = Resigned
3 = Defeated
4 = Retired
5 = Died in office
6 = Left, reason unknown
7 = Still in office

REFERENCES

Alexander, H.E. *Financing Politics* Washington: Congressional Quarterly Press, 1984

Aldrich, J.H. and Nelson, F.D. *Linear Probability, Logit and Probit Models* Newbury Park, California: SAGE Publications, 1987

Alexander, H.E. and Haggerty, B.A. *The Federal Election Campaign Act* Los Angeles: Citizens' Research Foundation, 1981

Baker, R.A. "The History of Congressional Ethics" in *Representation and Responsibility* ed. by Jennings and Callahan. New York: Plenum Press, 1985

Beard, E. and Horn, S. *Congressional Ethics* Washington, D.C.: Brookings Institution, 1975.

Berry, J.M. *The Interest Group Society* Boston: Little, Brown, and Co. 1984

Chambers, W.N. and Salisbury, R.H. eds. *Democracy in the Mid-Twentieth Century* Freeport, NY: Books for Library Press. 1960

Congressional Quarterly. *Congressional Ethics* Washington, D.C.: CQ Press, 1980

Congressional Quarterly. *Weekly Report* v51 No.39 Washington, D.C.: CQ Press, 1993

Cooper, J. and Mackenzie, G. eds. *The House at Work* Austin, TX: University of Texas Press, 1981.

Ethics Manual for Members, Officers, and Employees of the U.S. House of Representatives prepared by the Committee on Standards of Official Conduct, 100th congress-first session Washington: U.S. Govt Printing Office, 1987.

Getz, R.S. *Congressional Ethics* Princeton: Norstrand, Inc. 1966.

Gilbert, D.A. *Compendium of American Public Opinion* New York: Facts on File Publications 1988.

Hastings Institute Report *The Ethics of Legislative Life* ed. by Jennings and Callahan. New York: Hastings Center, 1985

Hastings Institute Report *Congress and the Media: The Ethical Connection* ed. by Jennings and Callahan. New York: Hastings Center, 1985

Hedlund, J.H. "Lobbying and Legislative Ethics" in *Representation and Responsibility* ed. by Jennings and Callahan. New York: Plenum Press, 1985

Hosmer, D.W. and Lemeshow, S. *Applied Logistic Regression* New York: John Wiley & Sons, 1989

Jacobson, G.C. *Money in Congressional Elections* New Haven: Yale University Press, 1980

Malbin, M.J. "Of Mountains and Molehills: PAC's, Campaigns, and Public Policy" in *Parties, Interest Groups, and Campaign Finance Laws* Washington D.C.: A.E.I. 1980

Milbrath, L.W. *The Washington Lobbyists* Chicago: Rand McNally. 1963

Ornstein, N.J. and Elder, S. *Interest Groups Lobbying, and Policymaking* Washington, DC: CQ Press. 1978

Ornstein, N.J. ed. *Congress in Change* New York: Praeger Publishers, 1975.

Parker, G.R. *Homeward Bound* Pittsburgh: Univ. of Pittsburgh Press. 1986

Peters, J.G. and Welch, S. "The Effects of Charges of Corruption on Voting Behavior in Congressional Elections" in APSR v74, p697-708, 1980.

Polsby, N.W. ed. *Congressional Behavior* New York: Random House, 1971.

Randall, J.G. and Donald, D.H. *Civil War and Reconstruction* Lexington, Massachusetts: D.C. Heath and Co., 1969.

Rieselbach, L.N. *Congressional Reform* Washington: CQ Press, 1986.

Sabato, L.J. *Feeding Frenzy* New York: The Free Press, 1991.

Salisbury, R.H. *Interest Group Politics in America* New York: Harper and Row. 1970

Salisbury, R.H. "Washington Lobbyists: A Collective Portrait" in *Interest Group Politics* ed. by Ciglar and Loomis. Washington, D.C.: CQ Press, 1986

Schlozman, K.L. and Tierney, J.T. *Organized Interests and American Democracy* New York: Harper and Row. 1986

Simon, R.J. *Public Opinion in America: 1936-1970* Chicago: Rand McNally, 1974

Slann, M. and Duffy, S. eds. *Morality and Conviction in American Politics* Englewood Cliffs, NJ: Prentice Hall, 1990

Smith, H. *The Power Game* New York: Ballantine Books, 1988.

Smith, S.S. and Deering C.J. *Committees in Congress* Washington: CQ Press, 1984.

Statistical Abstract of the United States prepared by the U.S. Dept. of Commerce, Bureau of the Census Washington: U.S. Govt Printing Office, 1989.

Stanley, H.W. and Niemi, R.G. *Vital Statistics on American Politics* Washington: CQ Press, 1988.

Tobin, M.B. *Hidden Power* Westport, Conn: Greenwood Press, 1986

Walker, J.L. "The Origins and Maintenance of Interest Groups in America" in APSR v77 no.2, June 1983. p390-406

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