

# Exporting Congress?



THE INFLUENCE OF  
THE U.S. CONGRESS ON  
WORLD LEGISLATURES

Edited by Timothy J. Power and Nicol C. Rae

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## Legislative Diffusion: Can the U.S. Congress Be a Source?

*Timothy J. Power and Nicol C. Rae*

CAPITOL HILL may be a modest elevation in Washington, D.C., but in the comparative study of legislatures it looms as a veritable Mount Everest. A recent assessment of legislative research begins by noting that “for the bulk of political scientists today, the study of legislatures is the study of the U.S. Congress” (Gamm and Huber 2002:313). Another, similar review argues that “in the prodigious amount of research that has been devoted to the U.S. Congress, scholars have rarely investigated whether their findings [are] generalizable to legislative institutions outside the United States, or, conversely, whether research on other legislatures [has] implications for the understanding of Congress” (Kiewiet, Loewenberg, and Squire 2002:3). As descriptions of academic reality, these observations are incontrovertible, if lamentable. Moreover, the disconnect between congressional research and the burgeoning field of comparative legislative studies is all the more disheartening if we consider the present dynamism within each stream of literature. Exciting and sophisticated work continues to appear on the U.S. Congress, while the comparative study of legislatures has been reinvigorated—and in fact has grown exponentially—due to the astonishing advance of democratization around the globe over the past two decades. If both avenues of research are flourishing, and both examine the same genus of political institution (legislative assemblies), why have they not intersected? Could not both congressional studies and comparative legislative studies benefit from a direct exchange of ideas, data, and models?

The present volume aims to challenge this state of affairs by erecting a conceptual and analytical bridge between studies of the U.S. Congress and comparative legislative studies. Conceptually, this bridge is built on the notion of "legislative diffusion"—the notion that legislative institutions in one political system *may* influence those of another. Analytically, this bridge places the U.S. Congress at the heart of the analysis. Taken together, these complementary theoretical and empirical foci lead to several simple questions that orient the analyses in this volume. To what extent is the U.S. Congress a model for other legislatures around the world? To what extent have congressional innovations influenced the decisions and practices of other legislative assemblies around the world, and what, if any, have been the results of diffusion outward from Capitol Hill? In terms of institutional design, should Congress be a model for the architects of new legislatures or for the reformers of old ones? Is Congress a dominant force in legislative diffusion, or is Capitol Hill less central to the thinking of political practitioners than it seems to be to the thinking of political scientists?

## Legislative Diffusion

Thirty years ago, Arend Lijphart introduced comparative political scientists to "Galton's problem," a phenomenon long familiar to anthropologists (Lijphart 1975; see also Ross and Homer 1976). Mainstream political science research methods, especially the statistical method, normally assume the independence of cases. As anthropologists are well aware, however, human societies are not truly independent of another, and their traits tend to be intercorrelated due to common ancestry or to repeated interactions between societies. An empirical relationship observed across several cases may be spurious, resulting not from the hypotheses directly under consideration but rather from a process of learning or contagion across national boundaries (Ebbinghaus 2003). For example, imagine a comparative legislative researcher who hypothesizes that "strong committees" are a function of two variables: a country's electoral system and the size and complexity of its state. She conducts a cross-national statistical study of fifty parliaments and finds significant support for both hypotheses. The assumption is that the fifty parliaments represent truly independent cases. If, however, the parliaments with the "stronger committees" have in fact fashioned their committee systems after their influential counterparts on Capitol Hill, then both the assumptions and results of the model are flawed. The cases



are not truly independent, and the statistical model suffers from omitted variable bias. The researcher has fallen victim to Galton's problem, a special subtype of spurious correlation.

The ongoing danger posed by Galton's problem has led political scientists, like anthropologists before them (Naroll 1965), to test for the presence of diffusion effects. Strong evidence of contagion has come from the study of the American states. For example, in their study of taxation policies, Berry and Berry (1992) found that for the adoption of a given tax in a given U.S. state, the presence of a neighboring state that has already adopted an analogous tax is a strong conditioning factor. Mintrom (1997) found similar patterns in his study of school-choice policies in the forty-eight contiguous states. At the level of the international system, Blais, Dobrzynska, and Indridason (2005) showed how proportional representation spread from the first adopter (Belgium) in 1899 to a dozen other European democracies by the 1930s. Starr (1991) uncovered a similar "domino effect" in the global Third Wave of democratization, and authors such as Whitehead (1986), Huntington (1991), and Diamond (1999) offered persuasive theoretical accounts of how and why democracy is contagious. In comparative political economy, the burgeoning literature on neoliberalism is now advancing various diffusion-based arguments about the adoption of market-friendly reforms in developing countries (e.g., Simmons and Elkins 2004; Weyland 2004). Globalization implies that these "learning models" will become more, not less, relevant in the days ahead. As Stephen Walt (2000:34) puts it: "The spread of political ideas and practices is not new. . . . But as the flow of goods, money, people, and information renders national borders increasingly porous, many experts believe the potential for contagion is greater than ever."

Though scholars are aware of contagion effects and have found ample evidence of their ongoing presence, they have not always been so careful in defining the term "diffusion." The most exhaustive literature review on diffusion as used in political science (Elkins and Simmons 2005) found many competing meanings, leading to some conceptual confusion. Elkins and Simmons identified a critical distinction between "diffusion-as-outcome" and "diffusion-as-process." For example, diffusion-as-outcome might refer to the isomorphism that exists between the Spanish and German parliamentary constitutions: both contain the constructive vote of no confidence. Diffusion-as-process, in contrast, might refer to the specific mechanisms by which the Spanish framers of 1977 acquainted themselves with the German Basic Law of 1949, often credited as the source of this particular institution. Diffusion-as-outcome refers to an empirically verifiable convergence on "best practices," while diffusion-as-process identifies the

mechanisms by which this might occur: for example, contagion, learning, imitation, and demonstration effects. According to Elkins and Simmons (2005:4), in political science “some refer to diffusion as an outcome and imply a process, while others (a majority) define diffusion as a process and imply an outcome.”

For Elkins and Simmons, diffusion is best approached from the process perspective. Moreover, they make a powerful case that diffusion should be understood as “a set of processes characterized by interdependent, but uncoordinated, decision making. . . . Under this conception, governments are independent in the sense that they make their own decisions without cooperation or coercion but interdependent in the sense that they factor in the choices of other governments” (Elkins and Simmons 2005:3). This notion of uncoordinated interdependence automatically excludes “exportation” in the proactive, marketing sense of the term: for Elkins and Simmons, dissemination is not diffusion, and the two concepts are best understood separately. Therefore, the efforts of the U.S. Agency for International Development (USAID) to promote “legislative assistance” through the exportation of a Washington-centric model of legislative organization—criticized by Thomas Carothers (1999) and also by several contributors to this volume—would fall outside the Elkins and Simmons definition of diffusion, because it is coordinated by a central actor. However, voluntary imitation of a foreign model—similar to what Hibbing and Patterson (this volume) call “multifaceted diffusion”—would meet the conditions of uncoordinated interdependence.

Is there uncoordinated emulation of the U.S. Congress among the world’s parliaments? Diffusion is certainly a possibility; whether it really happens is an empirical question. But before we ask it, we have to justify why anyone would think Congress might be a model in the first place.

## Congress as a Model

There is little dispute among political scientists that the U.S. Congress is a uniquely powerful legislature by comparison with those in other contemporary democracies. And to the extent that a powerful and independent legislature is regarded as a positive attribute for modern democracies, Capitol Hill is surely the most compelling model.

For a start, Congress is a genuinely bicameral legislature. The U.S. second chamber, the Senate, is as powerful, if not more so (due to its veto over federal

executive and judicial nominations and its foreign policy prerogatives), than the House of Representatives. Among other second chambers examined in this volume, perhaps only the Italian and Brazilian senates (and to some extent the German Bundesrat) approach the coequal strength of the U.S. Senate. Moreover, unlike other second chambers, such as the British House of Lords and the Canadian Senate, the U.S. second chamber does not suffer from a “legitimacy issue” that undermines its authority. The Senate has been directly elected for nearly a century, and although it grossly overrepresents the smaller states (Lee and Oppenheimer 1999), there is no imminent or likely threat to its authority within the U.S. constitutional system.

The U.S. House of Representatives is also highly unusual by modern democratic standards. The term of office—two years—is the shortest among polyarchies today. The U.S. House is also peculiar in that the presiding officer—the Speaker—is simultaneously the leader of the majority party. In most other modern democracies, the chamber presidency or speakership is a neutral and largely nonpartisan office confined to arbitrating floor debate.

Both chambers of the U.S. Congress possess conspicuously powerful permanent committees with significant legislative power, covering the entire spectrum of government activity. These committees also have important oversight and investigative power, including the power to subpoena witnesses. By international standards, Congress is also superbly staffed at all levels: research staff (the Congressional Research Service, the Congressional Budget Office), committee staff, and personal staff, with generous office, mailing, and travel allowances. In 2006, members of Congress earned an annual salary of \$165,200, meaning that their wages are also well above the international average for parliamentarians.

The relative weakness of American parties also means that individual members enjoy much more freedom in lawmaking and can make a mark much earlier in their legislative careers than in most other democratic systems. The fact that the U.S. executive, the president, is not electorally dependent on the assembly also allows legislators to challenge the executive to a far greater degree than in other advanced industrial democracies, almost all of which are parliamentary systems. While most democratic legislative chambers today are in a weak position vis-à-vis their governments, U.S. presidents have to fight for their proposals every inch of the way in Congress and rarely get everything they want, even when their own party is nominally in the majority. Individual members of the executive are also compelled to appear regularly before committees

and explain themselves. No other contemporary executive has to undergo anything like this degree of day-to-day scrutiny.

Of course, all of these judgments are relative. By comparison with a century ago, Congress has lost a great deal of power to the presidency and the rest of the executive branch—particularly in the area of war-making and national security—as government has expanded and the United States has become a world power (Fisher 1995; Sundquist 1981). In this respect, the American experience partially mirrors the twentieth-century tendency for executives in democracies to gain power at the expense of legislatures in parallel with the expansion of government and the development of mass political parties (Duverger 1954). In the House of Representatives today, the committees and their chairs are but poor shadows of the bastions of power that they were in the middle decades of the twentieth century. The party leadership has become much stronger in the last quarter century, and Congress is more partisan today than it has been since the 1890s (Rohde 1991; Sinclair 1995), although party unity and discipline are still at nothing like the levels seen in other advanced industrial democracies. Part of this is due to the peculiarity of most House districts being drawn to be “safe” for one party or the other, but the trend has also affected the Senate, although to a somewhat lesser degree (Rae and Campbell 2001). The role of like-minded interest groups associated with the major parties in congressional campaigns, as well as the tendency of the ideologically minded to participate disproportionately in congressional elections, has probably been more significant here (Schier 2000).

Thus the U.S. Congress has remained a uniquely powerful legislature in comparative terms. The chapters in this volume suggest, however, that there has been a recent impulse toward a partial legislative resurgence in many democratic systems of government. For such innovations Congress is an obvious model, although our authors also demonstrate the formidable constraints posed by regime type, party and electoral systems, and political culture on the imitation of congressional practices elsewhere.

### Congress as a Source of Diffusion

We have claimed that Congress may be an “obvious model” for legislatures elsewhere—but diffusion has to be demonstrated, not assumed. The question mark that appears in the title of this volume is meaningful and cautionary. The

contributors to this collection approach the concept of legislative diffusion in various ways. Following Elkins and Simmons's notion of "uncoordinated interdependence," many of the chapters emphasize demonstration effects and voluntary imitation of Congress, but not all do. For example, the essays by Morgenstern, Norris, and Kreppel emphasize domestic structural factors and explain legislative development as a function of these. Context is important. It is possible that two legislatures in two different countries could develop isomorphic features independently, purely as a response to their macroenvironments: the biological analogy would be the parallel evolution of similar species on different continents. Kreppel's comparison of the European Parliament (EP) with the U.S. House of Representatives tends in this direction. But most of the contributions engage the issues of learning and imitation, emphasizing the indirect demonstration effects of congressional institutions such as committees (Rae's chapter on Britain and Massicotte's chapter on Canada) or roll call voting (Carey's chapter on Latin America). Loewenberg's essay ventures further into diffusion-as-process, showing that the hearings procedure in the Bundestag owes much to a visit to Washington by West German parliamentarians in the early days of the Federal Republic. Hibbing and Patterson, who advance the debate on legislative diffusion by innovating several subtypes of the phenomenon, test for congressional influence on the new parliaments of Eastern and Central Europe—but their findings are largely negative.

The diversity of approaches to legislative diffusion in this volume is a result of two factors. First, despite the admirable efforts of Elkins and Simmons (2005) and others, there is still little consensus on what diffusion means in political science. The concept remains slippery and contested. Second, this collaborative project emerged out of inductive curiosity: we left the influence of the U.S. Congress on world legislatures as an open-ended question. Contributors were encouraged to explore the question from a diversity of perspectives and on a wide range of parliaments. Where imitation of Congress was detected, contributors were urged to explain why it occurred; when emulation was not found, contributors endeavored to explain that as well. One contributor, Pippa Norris, chose to take a different tack, emphasizing not Congress *per se* but rather the specific electoral system (single-member district plurality, or SMDP) that is traditionally viewed as the driving force behind much congressional behavior (Mayhew 1974; Fenno 1978). In doing so, she speculates whether an extraparliamentary institution (the electoral system) can be manipulated to generate certain forms of legislative behavior, in this case congressional-style

constituency service. Like Morgenstern and Kreppel, Norris addresses a fundamental question in comparative legislative research: whether the determinants of legislative behavior lie inside or outside of the assembly itself. This issue is highly relevant to agents of diffusion-as-dissemination, and particularly so to the USAID-funded legislative assistance programs, which typically take an intramural approach to "capacity building" within legislatures. If the "quality" of legislative representation is largely a function of the electoral system, then intramural reform efforts are (literally) misplaced.

Although we deliberately posed the concept of "congressional diffusion" as an open-ended empirical question, both theoretically and methodologically the editors and contributors did converge on one important point. If diffusion is broadly conceived as "uncoordinated interdependence," then we leave aside voluntaristic, centrally directed mechanisms of diffusion such as "legislative strengthening" (e.g., USAID 2000a; for a critique, see Carothers 1999). Early on in this project, we agreed that legislative assistance programs, whether state-sponsored or multilateral, would not be part of our collective inquiry—these policies are better understood within the context of democracy promotion efforts rather than within the domain of legislative diffusion as we approach it herein. But we agreed that even when diffusion is decentralized and uncoordinated, we should still be able to identify conditions under which contagion is more likely or less likely to occur. The majority of our contributors reflect directly or indirectly on these probabilistic assumptions. Before we proceed to their findings, however, a useful thought experiment is to conceive of the decentralized equilibriums under which diffusion outward from Capitol Hill would be most likely. What variables or permissive conditions might favor congressional imitation?

One cluster of variables would refer broadly to history, culture, and tradition. The United States is today the leading nation of the English-speaking world and is endowed with what is arguably the world's most powerful legislature. Ties of language and culture should open up obvious avenues for congressional diffusion to the English-speaking countries. However, the impact of these ties is challenged by the presence of a rival English-speaking model, that of the British Parliament. We should recall that Congress itself was originally influenced by Westminster, although structural and institutional variables caused the two legislatures to take sharply diverging paths beginning in the eighteenth century. The adoption of Westminster-style parliamentarism in many former British colonies clearly limits the appeal of the congressional model to these

democracies. This limitation, in turn, can at times be overridden by geographic proximity, as Massicotte shows in the case of Canada. Today, due to the intensity of interactions within the English-speaking world, not even Westminster—the “mother of all parliaments”—is fully immune to foreign influences. Rae’s chapter examines how the congressional model loomed large in the Commons committee reforms of the 1960s and 1970s. If this was a “feedback effect” from Capitol Hill to Westminster, it is one that took two centuries to complete—and understandably so, given the objective success of British parliamentary democracy, and given the fact that old, consolidated democracies should be slower to import ideas than new democracies starting from scratch.

The choice of presidential or parliamentary government would be an obvious intervening variable in shaping how historical ties to the United States would affect legislative development. But the two countries that have close historical ties to the United States, presidential systems, and widespread use of English—the Philippines and Liberia—have had uneven experience with democracy, making it difficult to assess legislative development independently of regime change. Although South Korea and Taiwan are not part of the English-speaking world, their ties to the United States have been strong in other ways—notably in their constitutional frameworks, which should favor attention to the congressional model. These two Asian cases, strongly influenced by the United States during the cold war, demonstrate that the potential for institutional diffusion is independent of cultural or linguistic factors.

Latin America is an even better illustration of a disjunction between culture and institutions. Although the cultural roots of Latin America are in Iberia, the institutional roots of Latin America are in Philadelphia. Constitutionalism in Latin America is path dependent. The influence of the U.S. Constitution on the new republics of the Western Hemisphere is easily one of the best-documented cases of institutional diffusion in modern history—all of the former Spanish colonies adopted presidentialism, and nearly all opted for bicameralism as well, in the 1820s and 1830s when the United States stood as the model New World republic. To the extent that Latin American legislators are committed to the separation of powers system, they should also be likely candidates to emulate the model of Capitol Hill. But the broad similarities between the U.S. and Latin American constitutional frameworks, so compelling on paper, can be misleading in practice. Morgenstern’s chapter argues that most Latin American legislators are not subject to the same electoral and institutional incentives as U.S. legislators, thus reducing the likelihood that they will construct legislative

bodies along the lines of the U.S. House or Senate. On the other hand, the sharply different incentive structures do not rule out the possibility of piecemeal importation of certain congressional rules and practices. For example, Carey's contribution to this volume illustrates how several Latin American assemblies have adopted the longstanding U.S. practice of recorded voting.

Presidentialism is clearly a promising clue when we search for "most likely" environments for congressional diffusion. But we should be cautious about attributing too much explanatory power to this variable. The United States itself is in fact an outlier among presidential systems. The U.S. presidency was designed to be weak, and continues to be one of the weakest executives among contemporary separation of powers systems (Shugart and Carey 1992). In comparative perspective, surely one of the most important reasons for Congress's immense influence is that the U.S. president possesses few legislative powers. Legislatures elsewhere—for example, in Russia (Remington 2005) or Brazil (Pereira, Power, and Rennó 2005)—must compete with presidents equipped with significant decree and emergency powers. In short, the potential for congressional diffusion may not be a function of presidentialism *per se* but rather of the interior design of specific separation of powers systems.

Moreover, presidentialism is not the only institutional variable that should condition the possibility of congressional diffusion. Other institutional variables include federalism, the electoral system, and the party system. Other things being equal, the potential for congressional influence should be higher in authentically federal systems, for two reasons. One is that the U.S. Senate, as we noted above, is not a decorative second chamber—it has impressive legislative powers. The Senate has real legislative powers because the U.S. states also have real powers, and had even more of them at the moment of constitutional design. Federalism in the United States is robust, which is not the case in many nominally federal systems. A second reason is that robust federalism in the United States has led to the creation of ninety-nine subnational legislative chambers, many (but not all) of which are also powerful in their respective political systems. In American federalism, independent legislatures thrive at all levels of government, leading to a virtuous ladder of recruitment, socialization, and professionalization of legislators.

The chapter by Pippa Norris shows that role orientations in Congress are not simply a function of socialization and recruitment, but also of the incentives built into the electoral system. Her essay makes a powerful argument that one of the principal behaviors we associate with U.S. legislators—constituency



service—is causally related to the single-member-district method of electing representatives to Capitol Hill. Not surprisingly, this particular role orientation is present to some degree wherever we find SMDP, even when the system of government is parliamentary (Britain, Canada) or the electoral system is mixed (Germany, Mexico). As Fenno (1978) memorably showed, U.S. legislators have evolved a scientific devotion to constituency service, and their dedication to it is conditioned by certain internal congressional rules, most notably the seniority system that drives much of Mayhew's "electoral connection" (Mayhew 1974). Given the long and gradual development of U.S. legislative institutions in a context of uninterrupted democracy (Polsby 1968), we should not expect legislators elsewhere to morph instantly into U.S. House members. But Norris, and also Morgenstern, suggests that a key institutional lever—the electoral system—is fundamental to changing legislative behavior.

The electoral system also shapes yet another institutional variable, that of the party system. One might be tempted to hypothesize that the two-party system used in Washington might also be causally related to congressional ascendance. But it is often difficult to disentangle the effects of the electoral system from the number of parties represented in a legislature, since the two tend to be closely correlated. As an explanatory variable for legislative development, the raw number of parties is probably less important than the internal organization and nature of the parties, particularly their tendency toward discipline and fidelity (again, this is often a function of whether the electoral system favors party-centric or personalized candidacies). Rae's analysis of the United Kingdom shows that the growth of disciplined mass-based parties in the mid-twentieth century reduced the autonomous role of the national legislature. Parties instrumentalized the House of Commons, weakening it vis-à-vis the cabinet. The recent rise of partisanship in Washington may portend a similar instrumentalization of the House of Representatives by robotic ideologues in leadership positions, although the twenty-first-century U.S. parties appear woefully deracinated compared to their twentieth-century British counterparts.

The British case suggests that an excessively strong two-party system can sometimes impede legislative autonomy. However, Kreppel shows that the effectively two-bloc system of the European Parliament has had the opposite effect, leading to considerable advances in institution building. This quasi-bipartism is all the more interesting given that all twenty-five members of the European Union (EU) now use proportional representation to elect their members of the European Parliament (MEPs). But in the EP the two large party groups overlay