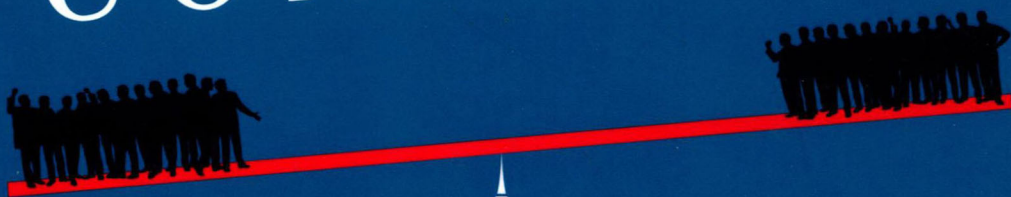


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CONGRESS



HOW AMERICA'S ESSENTIAL INSTITUTION
WORKS, AND HOW IT DOESN'T

Robert G. Kaiser

Act of Congress

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AND HOW IT DOESN'T.



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Act of Congress

This book is for
Hannah Jopling

Preface

Work on this book began in early December 2008 with an appointment in the cavernous office of Congressman Barney Frank of Massachusetts—Room 2252 of the Rayburn House Office Building on Independence Avenue in Washington, D.C., my hometown. I have an unlikely connection to the Rayburn Building, one that came to mind that day, my first visit in several years. In the summer of 1960, just before I started college, I had a construction job helping to lay the Rayburn Building's elaborate foundations.

Just a year later, after my freshman year, I was a delegate to the National Student Congress in Madison, Wisconsin. One of the most formidable student politicians I met there was a Harvard delegate who talked too fast in a thick, New Yorkish accent, who had mastered *Robert's Rules of Order*, who seemed to know everything about any topic that came up, and who loved to make wisecracks. That was Barney Frank of Bayonne, New Jersey, then twenty-one years old.

I was just eighteen, but I already knew I wanted to be a reporter. I had spent the previous semester working on my college newspaper, where I discovered that this was the life for me. Frank wanted to somehow participate in politics and public life. We both got what we hoped for, and over the years our paths crossed from time to time. We maintained friendly relations.

A few weeks before I visited him in Rayburn 2252, Frank and I had spoken on the phone about the Great Crash that had just shaken the foundations of the global economic system. As chairman of the House Financial Services Committee, Frank was more than a casual observer.

"Your next book should be about this stuff," he had said on the phone. He knew that I had recently finished a book on lobbying and money in Washington, but he didn't realize how timely his suggestion was. At that moment I was eagerly looking for a new project, and this phone call got me thinking.

I did not want to write a book about the Great Crash, an event centered on Wall Street in New York, beyond the world I know best. My subject is Washington and the politicians who inhabit it. That phone call led to the thought that with cooperation from Frank and other members, I might be able to write an interesting book based on Congress's response to this catastrophe. I had long thought Congress was America's least understood important institution. I had been trying to figure it out for four decades. Maybe I could finally get to the bottom of its mysteries.

When I saw Frank in his office, I proposed that I become the historian of the congressional response to the Great Crash, specifically of the effort I knew Frank and his Senate counterpart, Christopher Dodd of Connecticut, were planning—a new rulebook for American high finance. I'd heard Frank speak of "a new New Deal," a reference to the legislation enacted in Franklin D. Roosevelt's first term that helped save American capitalism in the Great Depression. Frank's ambitions sounded big, even historic. And a new president shared this goal, so it might actually be achieved. Would Frank talk to me as this story unfolded? Would he allow his staff to tell me what was going on backstage? My ambition, I said, would be to use the story of what he and Dodd did as a kind of case study that would explain the modern Congress.

Frank agreed. More important, he asked nothing in return—no assurances, no right to read drafts of what I would write or to approve the way I used the material he provided. The idea that a reporter he knew would record his effort to make some history evidently appealed to him.

Next I needed to convince Dodd that he should help too. I had first met Dodd in the late 1970s, when he was a popular junior congressman from Connecticut. At the time I was *The Washington Post's* reporter in the Senate, so did not have a lot to do with the House. I got to know

Dodd better in the early 1980s, when he became an active critic of the Ronald Reagan administration's Central American policy. We were just a year apart in age, and had both grown up in the Washington area in the 1950s, when his father was a congressman and senator.

Dodd had given me a revealing interview for my book on lobbying. I realized then that he was an astute student of the Senate. I hoped he would see the merit of helping with this project. I confess it also occurred to me that he might feel a little competitive about Barney Frank, as House and Senate committee chairmen with overlapping jurisdiction tend to do, and would want to make sure that his side of the story was well covered in this book.

We first discussed all this in his "hideaway" in the Capitol, Room S-236. The room was part of the original Capitol building, built between 1796 and 1800. Room S-236 was a fine space about thirty feet by twenty feet with a high ceiling and a large window that looked west across the Mall toward the Washington Monument and Lincoln Memorial. There were several dozen hideaways in the Capitol for senior senators (and none for members of the House); this was one of the finest, as befit a committee chairman with twenty-eight years of service in the Senate.

Dodd, in his own words, was "a believer in symbols." On this occasion he was eager to explain the oil portraits on his walls. "This is Samuel Morse," inventor of the telegraph. In 1844, Morse sent one of the earliest telegraph messages from this very room to a convention in Baltimore, about thirty-five miles away. "That is the original senator from Connecticut, Roger Sherman, the only one of the founders who signed the Articles of Confederation, the Declaration of Independence, the Constitution, and the Bill of Rights. And that one is Oliver Ellsworth," coauthor of the Connecticut compromise at the Constitutional Convention that created the Senate as an upper house of the legislative branch. Dodd obviously loved this history, and loved the fact that he was a part of it.

He too agreed to be interviewed periodically, and to share information about his maneuverings as the story unfolded. Dodd was somewhat more circumspect than Frank; he wanted to be able to approve quotations attributed to him from our interviews. I agreed, hoping this would prove to be an insignificant condition. It did. Dodd never tried to withhold or alter a quotation that I wanted to use in this book.

Both men also did something that proved critical to my research: They told their staffs that they could cooperate with me. In the mod-

ern Congress, staff members tend to disappear from public view. Many talk to reporters, but usually anonymously, and nearly always with a purpose: to advance the political interests of their bosses. Dodd and Frank gave me an unusual kind of access to the staffs of the Senate Banking and House Financial Services committees, which vastly improved my ability to understand the legislative saga recounted here.

So I would have the chance to follow an important piece of legislation from first conception to final passage through both houses of Congress—if Dodd and Frank could fulfill their shared ambition to pass a regulatory reform bill. I hoped that this story would illuminate the culture of Congress, an institution that can appear mighty strange from afar, but ought not seem foreign.

That was a lesson I had learned over nearly half a century of exposure to the House and Senate. The Congress of the United States is a typically American institution. Its charter, the U.S. Constitution, is an inspirational document that persistently summons to service what Abraham Lincoln called “the better angels of our nature.” But—also typically—what the Constitution describes and what humankind creates are often just rough approximations of one another. From its inception in 1789, Congress has been razed and ridiculed by skeptical citizens who, in a typically American way, expect the worst from their elected officials, and get it just often enough to confirm their prejudices. Will Rogers, the early-twentieth-century humorist, made a pretty good living ridiculing Congress with quips: “This country has come to feel the same when Congress is in session as when the baby gets hold of a hammer,” for example.

Also typically, though the founders expected that Congress would become the principal engine of American democracy and the venue for working out the country’s most difficult problems, they provided few tools to assure this outcome. Instead they hoped and expected that intelligent citizens would pay attention to Congress, run for Congress, and take Congress seriously. Many of the founders themselves decided to participate in the House and Senate, suggesting that they anticipated similar interest on the part of future generations of the nation’s best and brightest.

But, typically, those high-minded thoughts clashed with the cruder realities of a republic whose governmental institutions could

make some men rich and others poor, could favor one section over another, could reward and punish for reasons that were decidedly not high-minded. Exchanges of favors and petty corruption became congressional reflexes, as did the flight from responsibility in the face of large national problems. In the modern age the task that requires the most time and energy for a typical member of Congress is raising money to run for reelection. Legislative statesmen and -women are few. Occasionally a career in Congress has appealed to the best and brightest citizens, but in our time that has not been common. We may get a representative Congress, but we don't get a distinguished one.

By the early twenty-first century, Americans had lost touch with the institution in which the founders had invested such hope. In surveys of civic knowledge, both the population at large and America's students regularly embarrass themselves with their ignorance about their Congress. A *Newsweek* poll in 2011 found that less than 40 percent of Americans knew the term of office of a U.S. senator (six years). When the same question was posed to Arizona high school students, just 15 percent knew the right answer. How Congress does its many jobs remains a mystery to most Americans. This of course doesn't mean Americans can't judge the House and Senate. Voters hold overwhelmingly negative views of their Congress; its approval ratings in public opinion polls have been dreadful year after year.

Yet Congress has always attracted enthusiasts, people intrigued by the congressional circus and the individuals who perform in it. I am one of them. I grew up in a Washington household consumed by politics (my father was a government official of modest importance), and learned the basics at an early age. In my first job in journalism I was a copyboy for the Associated Press in the Press Gallery of the House of Representatives. That was in 1962, when I was a nineteen-year-old college student. Whenever I could sneak away from the Press Gallery at noon, I'd exploit my press credential to go down to the speaker's office on the second floor of the Capitol for his almost daily press conference. The speaker was John W. McCormack, an Irish pol from Boston with a serious dandruff problem. McCormack favored dark, pin-striped suits that highlighted the dandruff. His noon press conference began with a ceremonial brushing away of the flakes by William "Fishbait" Miller of Pascagoula, Mississippi, a then famous congressional character who had the title of doorkeeper of the House of Representatives. When Miller had finished the cleanup, McCormack would answer reporters' questions, usually about pend-

ing House business, with a Boston accent thick enough to slice. The room was full of tobacco smoke, much of it from McCormack's cigar. I found the spectacle irresistible.

A year later I went to work for *The Washington Post* and was further exposed to Congress, one of the *Post's* most important subjects. In 1967 *Esquire* magazine asked me to write a profile of one of the most powerful members of Congress at the time, Wilbur Mills of Kensett, Arkansas. Seven years later Mills became notorious for a drunken escapade with a stripper named Fanne Foxe, a passenger in the congressman's car when it was stopped near the Lincoln Memorial by a park policeman. Ms. Foxe tried to flee by splashing through the reflecting pool in front of the memorial. She and Mills were arrested. Mills eventually admitted he was an alcoholic, a frailty I had missed.

The Mills I knew was the self-contained and self-controlled chairman of the most powerful committee in the House, Ways and Means, which is responsible for everything related to the raising of government revenue—taxes, and much else besides. When I trailed him around the Capitol, everyone he met greeted him as “Mister Chairman.” At home in Kensett and Searcy, Arkansas, he was the fortunate son, a hero in his own time. He enjoyed strolling down Wilbur D. Mills Avenue in Kensett, a one- and two-story town fifty-five miles northeast of Little Rock. Mills was small and mousy, which was deceptive, because he was so smart. He graduated second in his class from Hendrix College in Conway, Arkansas, then made the leap to Harvard Law School. He knew the tax code better than any other member of Congress. And he had big political ambitions, which led him in 1972 to run for president.

It was a quickly forgotten candidacy with one enduring consequence. As a way to position himself as a friend of the elderly on the eve of his presidential campaign, Mills sponsored a change in the law providing for an annual cost-of-living adjustment in Social Security benefits. Benefits have kept up with inflation ever since, preventing millions of senior citizens from falling into poverty in their retirement years.

Chairmen of House committees can wield considerable power.

In 1977 I became the *Post's* Senate correspondent, a job that gave me a wonderful education. My most memorable experience was a trip to

Louisiana in 1979 with Senator Russell B. Long, the son of Huey (“The Kingfish”) Long, one of the most gifted American politicians of the New Deal era. Huey Long was a faker and demagogue but also a talented exploiter of the populist sentiments provoked by the Great Depression. He was a genuine radical who served as governor of Louisiana and then as a senator for three years, until he was assassinated by a relative of a political opponent in 1935. Russell was seventeen at the time.

When we traveled together in July 1979, Russell Long was chairman of the Senate Finance Committee, the Senate’s equivalent of Ways and Means. He was famous for his brainpower and his aphorisms. One of the best was his definition of tax reform: “Don’t tax you, don’t tax me, tax that fellow behind the tree!” I had covered Long extensively, but never had the chance to talk to him at length until that trip. We spent several days together—Long and I and Henry Heltz, a retired Louisiana policeman who drove the senator around the state in a white Mercury sedan.

The high point of our travels was a visit to the town of Tioga in the center of the state. Tioga is home to the summer encampment of the United Pentecostal Church. Thousands of the faithful gather every summer in a giant tabernacle, the size of two football fields, tucked among groves of towering pines. They worship, sing, pray, often speaking in tongues, and listen to the exhortations of many preachers. The worshippers seemed intent on spiritual redemption, but Long’s interest was political. These people vote as a bloc, he told me, and vote the way their leaders tell them to.

Soon after we had joined the throng, the Reverend T. F. Tenney, the church’s leader, announced that “the featured ones here tonight are Jesus Christ and then Russell Long.” Murmurs of approval followed.

Now it was Long’s turn to speak from the pulpit: “Many of you knew my father. I’ve tried to follow along in his tradition. But I regret to say there’s been a lot of mistakes made in Washington. . . . Some of those decisions of that Supreme Court have been very misguided decisions. It leads me to wonder whether those justices start their sessions the way we do in the United States Senate—with a prayer.” Now the murmurs became loud amens, punctuated with applause. “I want to make a little contribution,” Long continued, “so there won’t be any doubt how I feel about the matter—the fine job you’re doing here. It may not be much, but it’s the largest contribution I’ve made at any one time.”

He handed a check to the bespectacled, round-cheeked Reverend

Tenney, who was obviously delighted. He held it up to the crowd. "I have a check here signed by Russell B. Long on the American Bank in Baton Rouge for \$5,000," he announced. The tabernacle filled with high-pitched groans of appreciation. "Praise the Lord!" Reverend Tenney said. Then, after a theatrical pause, he turned to Long and asked, "When are you running again?" Reverend Tenney led the crowd in laughter at his own joke. But it wasn't a joke. Long would be on the ballot a year later. The last time he'd visited the tabernacle had been six years earlier, a year before his previous campaign, in 1974. These Pentecostalists were his faithful supporters. He visited them as just another pandering politician.

And yet Russell Long was a serious legislator. He was notorious for the favors he did for the oil and gas industries, both important to the Louisiana economy, but he was also the author and principal defender of the Earned Income Tax Credit, one of the government's least appreciated and most important programs to help the working poor, supported by both parties. Thanks to Long, low-income workers in the United States don't pay any income tax, and can receive money back from the Treasury through this tax credit—today about \$6,000 a year for a family with three children. Benefits from the program add up to tens of billions a year. Huey Long would have approved.

It was easy to poke fun at Russell Long, and at Wilbur Mills; easy too to be cynical about their motives and behavior. But they taught a more complicated lesson: The same politician can combine admirable qualities with dreadful ones, can demonstrate both pathetic human frailty and a keen interest in helping ordinary people, sometimes courageously, in the course of a career, or even the course of a week on Capitol Hill.

Congress is more than its colorful characters, who in fact have always represented a small minority of the membership. Congress is a system and a culture. It is a wonderful laboratory in which to pursue one of the reporter's favorite questions: How does it work?

I realized this during the biggest story I covered during my years assigned to the Senate—the ratification of the Panama Canal treaties. Now largely forgotten, for a few years in the 1970s there was no bigger political issue in America than the Panama Canal. The two treaties, negotiated over six months in 1977, would slowly relinquish American control of the canal, built by the United States in the early twentieth century, to Panama, while committing Panama to remain neutral forever and guarantee access to the canal to ships of all nations.

The treaties provoked sharp controversy. Conservative Republicans saw giving up the canal as a sign of American weakness. Senator Jesse Helms of North Carolina and Ronald Reagan, who first ran for president in 1976, were leaders of a popular movement to hold on to the canal, a symbol of Yankee imperialism throughout Latin America, but to those conservatives a proud American accomplishment and asset. Proponents of the treaties argued that they were a proper acknowledgment that the United States had no right to claim Panamanian territory—which we had done, in effect, by ruling the Panama Canal Zone unilaterally for seventy-five years. Returning the canal to Panama would help our diplomacy in Latin America, treaty supporters said, and put the United States on the right side of history.

Ratifying treaties, the founders decided long ago, requires two-thirds approval in the Senate—sixty-seven votes. The first head counts taken by Senate leaders early in 1978 showed at least thirty strong no votes, and perhaps more. The outcome would be close.

The Senate debate on the treaties dragged on for two months. Many members behaved like buffoons—no surprise, but startling to see at close range in such an important debate. But some also showed signs of nobility. The best, I thought, was Senator Howard Baker of Tennessee, the Republican leader, who led a deeply divided Republican caucus. At least two dozen of the thirty-eight Senate Republicans were die-hard opponents of ratification. Baker had presidential ambitions for 1980 and knew conservatives viewed him warily, but nevertheless decided to support the treaties, provided they were modified slightly. This, Baker told me privately, was the right thing to do, though he knew it could cost him dearly in the political arena. In fact it probably ended his career.

Sixty-eight senators—one more than needed—voted to ratify each of the two treaties. Just enough members of both parties were afraid to take responsibility for sabotaging a treaty that President Jimmy Carter and his senior diplomats said was of vital importance to the United States in its Latin American backyard. Courage—particularly Baker's courage—was a necessary ingredient, but fear probably influenced more votes.

These stories and others like them had fed my fascination with the Congress, and taught me that on Capitol Hill reality was elusive. I hoped that this time, with the unusual access I had been granted, I might

finally get inside the legislative process and explain the reality—explain how the modern Congress works. I spent two years reporting this story, and conducted hundreds of interviews. Besides Dodd and Frank, a dozen key members of both houses, from both parties, agreed to talk with me repeatedly while the legislation was pending.

Ultimately, Dodd and Frank were able to construct and pass one of the most ambitious pieces of legislation that Congress has enacted in many years, a bill now named for both of them—“Dodd-Frank.” But its final contents were uncertain for months, and important matters were resolved only in the wee hours of June 25, 2010, by the senators and House members who took part in the special conference committee empowered to reconcile differences between the similar bills passed earlier by House and Senate. Many years of experience had not prepared me for the intricacy, the improvisations, the difficulty, or the drama involved in passing this big bill.

Dodd-Frank is full of imperfections—“no bill is ever perfect,” as Senator Dodd put it. Its principal authors revealed their own imperfections as they steered their versions of regulatory reform toward final passage. Their huge “piece of legislation,” as new laws are called on Capitol Hill, will have unintended consequences—every big bill does. The effects of many of its provisions won’t be known until regulatory agencies write and apply “rules” under which they will enforce the law. Those rules will be challenged in court and altered in practice. Eventually Dodd-Frank will be amended by additional legislation. Only the next big financial crisis will fully test the new law, if it remains in effect when that crisis arrives. In Washington, nothing is forever, no argument is ever finally resolved.

This book is about the process that produced the bill. My hope is that these pages will explain the essence of a vitally important American institution.

Key Participants

SPENCER BACHUS, Republican of Alabama, the senior or “ranking” Republican on the House Financial Services Committee, 2009–11.

MICHAEL BARR, assistant secretary of the treasury for financial institutions.

MELISSA BEAN, Democrat of Illinois, active member of the House Financial Services Committee and of the New Democrat Coalition of centrist Democrats.

MICHAEL BERESIK, Democratic staff member of the House Financial Services Committee.

MARIA CANTWELL, Democratic senator from Washington state.

JULIE CHON, Democratic staff member of the Senate Banking Committee who made herself an expert on derivatives.

WILLIAM LACY CLAY JR., Democratic member of the House of Representatives from Missouri, whose father held the same seat in Congress.

RODGIN COHEN, chairman of the New York law firm of Sullivan & Cromwell, one of the country’s leading banking lawyers and a Democrat.

BOB CORKER, Republican member of the Senate Banking Committee from Tennessee.

CHRIS DODD, Democratic senator from Connecticut and chairman of the Senate Banking Committee, 2007–11.

ANTHONY DOWD, former investment banker who served as an informal aide to Paul Volcker during negotiations with Congress on financial regulatory reform.

WILLIAM D. DUHNKE III, minority (Republican) staff director of the Senate Banking Committee.

DIANA FARRELL, deputy director of the National Economic Council in the White House and one of the authors of the Obama administration’s regulatory reform proposals.

CAMDEN FINE, president of the Independent Community Bankers of America.