

# CONVERSATIONS

WITH BILL KRISTOL

## Conversations with Bill Kristol

**Guest:** Jeff Bergner,  
Assistant Secretary of State for Legislative Affairs (2005-2008),  
Previously Chief of Staff to Senator Richard Lugar and Staff Director of the Senate Foreign  
Relations Committee

*Taped January 23, 2019*

### Table of Contents

**I: Why Is Congress Dysfunctional? 0:15 – 28:14**

**II: Partisanship and Ideology 28:14 – 1:07:52**

**III: The Executive Branch 1:07:52 – 1:27:33**

### **I: Why Is Congress Dysfunctional? (0:15 – 28:14)**

KRISTOL: Hi, I'm Bill Kristol. Welcome to CONVERSATIONS. I'm pleased to be joined today by my friend Jeff Bergner, a veteran of the academy, Capitol Hill, the private sector, now back teaching again. He came to Washington in 1978 to work for Senator Lugar, became his Chief of Staff, Staff Director of the Senate Foreign Relations Committee, which is a major job in Congress, and then an important government relations firm. So, we're going to talk about Congress.

BERGNER: Okay.

KRISTOL: And explain what's right and what's wrong with Congress.

And you've written a book recently, which I highly recommend, [\*The Vanishing Congress: Reflections on Politics in Washington\*](#), which has wonderful stories and anecdotes from your time there as well as serious reflection about Congress's role in the scheme of the regime. So, why is it vanishing? What's wrong? What's the problem?

BERGNER: Well, where to start is the problem.

KRISTOL: Right.

BERGNER: I think Congress has been in a very bad place for the last four or five decades, more so now than ever probably. And it's interesting, a lot of people come up with different schemes for how to fix Congress. Some of them are schemes like, "we need more transparency in campaign fundraising. We need to fix the gerrymandering problem. We need to have public financing of elections. We need ranked preference voting," the latest fad. I just heard someone talking about that on the way over here. There are term limits –

KRISTOL: I'm sure there are huge numbers of listeners out driving thinking, "Oh, yeah, rank choice voting," whatever it's called [laughter].

BERGNER: "That's what I want to hear about."

KRISTOL: Exactly. [Laughter].

BERGNER: And a lot of folks are very enthusiastic about term limits. About limitations on what members can do when they leave, in terms of lobbying for whom and for how long.

So, there are all kinds of ideas about how to fix Congress. My notion about this is that virtually all of those have nothing to do with the problem. If you think about it, they all have one thing in common and that is they deal with *how* you get to Congress or, in the case of term limits, how long you can stay or what happens when you leave. But none of them really address what happens *in* Congress, which I think is the real problem.

KRISTOL: How Congress works?

BERGNER: How Congress works or doesn't. The institution, what processes, what procedures, what rules has it put in place. Those are the things which I think bedevil the Congress, not so much these matters about coming and going.

Some of those proposals might make perfectly good sense if you're for good government, but I just don't think they have much to do with fixing Congress.

If you look at, for example, the gerrymandering question, some of these districts are drawn in such a way with squiggles that they benefit the majority party. Often, by the way, it benefits incumbents from the minority party as well. Some of this doesn't look like it makes a lot of sense on the face of it. But to think that that would have much to do with making Congress a more hospitable, efficient place, I think, is a mistake.

The same dynamics, I think, take place in the House and Senate, and there's been no gerrymandering in the Senate. Every state line has been exactly the same since whenever that state came into the Union, going back to 1788 or 1789 right up to the present for hundreds of years. And you have the same dynamics in the House as you do in the Senate. So, I think to expect too much from gerrymandering reform would be a mistake. Likewise, term limits.

I have, as I suppose a lot of people do, a certain sympathy for that notion. You see people who are there forever. On the other hand, the framers thought this through very carefully, and they could have put term limits in place if they had wanted to. Decided it was better that people have to repair back to the electorate from time to time and that would keep them close to the electorate.

I come down mildly, I suppose, against term limits for a number of reasons: 1) As a practical matter, I think all it does is strengthens the staff. And, as you will see, when we talk a little further in a minute, I think the staff is already far too strong in the Congress. That's part of the problem. And this would have the effect of making it even stronger.

I can remember so many occasions where you'd see a new Congressman or a new Senator become the Chairman of the Foreign Operations Subcommittee, a field he knew absolutely nothing about. And who ran him around for the first couple of years? Well, the Staff Director for the committee and other folks on the committee, the legal counsels. And in effect, he was more a servant of theirs than vice versa. And ended up not really initiating any new departures at all, but continuing the old, because the people who were actually running the place had been there for 10 or 15 or 20 years. So, if you want to put term limits on staff, that's a different matter.

But I'm not sure that all the marvelous wonders that people attribute to that would take place. We don't have to just be hypothetical about it. We after all put in term limits. The Republicans did in the '50's on the President. Framers had seen no reasons to put term limits on the President. The Republicans, I guess, thought they would take a final whack at FDR in the '50's. You know, if it's good enough for George Washington, it's good enough for whoever's going to run for President now. And so, they put term limits in for the President.

I read all the literature on these things, (I suppose it's a bad sign about being able to read all these things) but I don't think I've ever seen an argument, much less a persuasive argument, that term limits on Presidents have either improved the Presidency or made it worse.

KRISTOL: So, what's the problem with Congress? Let's get to this issue.

BERGNER: I think the problem is this: the framers put a number of restrictions on Congress. They thought it was going to be the strongest branch of government, as they put it in the [\*Federalist Papers\*](#), that would draw all into its vortex. And they saw the need to make it a little less strong, and so they did all the things you read about in *Government 101*: They divided it into two houses of Congress. They put restrictions in on what the Congress could do in terms of treating the states equally, in terms of the Bill of Rights, in terms of all of the restrictions in the basic text, plus the Bill of Rights. On top of that, they put the Presidential veto in. They debated for a long time whether the veto should be absolute or non-existent and they ended up making it conditional so it could be overridden. Those, they thought, were strong enough to balance the efficiency of the government with the protection of liberties, which is the real trick, to make it strong but not too strong.

Congress apparently has not been satisfied with those and has put in place a number of procedures, which I think limit and restrict its own capability of acting, tie its own hands, and in that way, ourselves created problems.

So, those are the things I focus on in this book. There are any number of them. Congressman Gallagher has some ideas about how to fix the House. That's what he knows since he serves in the House. I make a proposal for four different changes in the Congress to make it a more efficient body, two of which affect both the House and Senate, and two of which are Senate specific, because I think there are more problems as a result of how the Senate acts.

KRISTOL: Yeah, I'm struck by how much you focus on the Senate in the book. That's where you worked.

BERGNER: Right.

KRISTOL: And one might say – but the problem, I mean, is it just ineffective governance in a way, lack of deliberation, lack of resolution of problems? How would you sort of characterize it?

BERGNER: Well, let me characterize –

KRISTOL: Or just being nostalgic and hoping for something that never existed –

BERGNER: Look, I think it all has to do with procedures they put in place not to advance legislation, much less good legislation, but procedures that are put in place by members in order to protect themselves and their own imaginary rights. How often do you hear – you don't have to be on the Hill but a week before you hear, "my rights as a member of the House. My rights as a Senator. My rights as a member of the Foreign Relations Committee. My rights as member of the minority." You hear all the time this imaginary plethora of rights these folks think they have. And this, I think, really is the problem.

And to illustrate it, one of the things, which I think they should reform promptly is the Congressional budget process. This is – and I don't think this is an overstatement – a process, which is ridiculous. It is designed in no way to be efficient or successful, but is an accretion of various things over the years ending finally in the Budget Act of 1974.

Just to explain, you have a budget. The first thing you do is you cut 68% or 69% out of it and you never consider that. Those are the so-called Entitlement Programs and the interest payments on the federal debt. You never look at that. It's not as if Congress says –

KRISTOL: Because they're on autopilot and don't require fresh legislation each year.

BERGNER: Yes. It's not as if Congress says, "Well, this year we will spend \$800 billion on Social Security." Social Security and Medicare are the two giant entitlement programs. Rather, Congress never says anything about it and what happens is there is a bunch of formulas that establish how many years you've had to have worked, how many quarters, and what benefits you get. And you multiply that by however many people there are and whatever that ends up to be, that's how much we spend on Social Security.

KRISTOL: Though Congress *could*, and does change entitlements, actually.

BERGNER: Congress has the authority to change anything and everything virtually in the way the federal government operates if it has a two-thirds majority. Its powers are enormous. But the fact that it doesn't, reflects the problem.

So, Congress – I'm not recommending an annual inclusion of that into the budget. But certainly, they ought to, every three years or so, to really look at these programs and see are these affordable? It's not only because these programs are so big, but because they're growing far faster than the rest of the government. They threaten in a way to swallow up the entirety of the federal budget.

KRISTOL: And the default right now is to do nothing.

BERGNER: The default is to do nothing.

KRISTOL: And what you're saying is make them at least *decide* to do nothing or not.

BERGNER: That would be an improvement, if not substantively, but procedurally.

KRISTOL: Right.

BERGNER: And so, that's the first thing you say.

The second thing, they've set up a distinction between authorizations and appropriations. This is a little bit in the weeds for people who aren't Washingtonian-speak people, but in a nutshell the difference is that the authorizing committees are supposed to think "what programs and policies do we need?" To describe those, to put them into place, and then to say, "And they should be funded up to a maximum of X dollars. "We're going to create a new program on housing and fund it for \$200 million."

That provides not a penny to that program. It's the appropriation process. Afterward, the appropriations committees come by at the end theoretically and say, "All right, we now agree to fund this for X dollars." That's where the money goes and really comes from. That's when the Treasury can expend funds and provide them for the department that's running this program.

There is really no justification to my mind for having this radical distinction been authorizations and appropriations. And if I had my druthers, I'd get rid of the appropriations committees altogether and allow

every single authorizing committee to both authorize and appropriate in its area. This, I think, would strengthen those committees immeasurably. Right now, we're at a place where the authorizing committees hardly ever authorize anything. The Armed Services Committees are the only exception. Every year, they make it a point to do an authorizing bill. From time to time, there'll be one in Homeland Security. But, for the most part, it doesn't happen.

In Foreign Relations the last time, there were authorization bills for both the State Department authorization and Foreign Assistance authorization. Where when I was the Staff Director in 1985, which is what, 34 years ago.

KRISTOL: I mean, the theory of the authorizing committees was and to some degree is still, I guess, that this is where you have the substantive debate on "should government do X?" Or "what's the right way to address housing problems? Vouchers or" – I'm making this up – "government building the housing?" And then the appropriating committee says, "Well, this year's budget is X total, and we can appropriate this amount of money." It's not a crazy thing.

BERGNER: It's not.

KRISTOL: But when you're passing Obamacare, you probably want a committee that allegedly has a lot of expertise in healthcare, and has witnesses and testimony and debates about how to structure the program. That's sort of the theory of it.

BERGNER: But in practice it doesn't work. The authorizing committees don't authorize much of anything anymore. There's certainly no annual authorizations. And what happens is that the appropriators then, in effect, both authorize what they feel like, and appropriate what they feel like. And so, we have maybe one too many steps in that process.

KRISTOL: Does that make it easier, do you think – Because what I was struck by – and you discussed this in the book – is how much everything is done by leadership now. It used to be that these committees, either authorize or appropriating, were powerful. The chairman and the ranking member would –

BERGNER: Sure. A legendary chairman, John Dingle, from Michigan, and House Energy and Commerce Committee.

KRISTOL: But now everything is written in the Speaker's Office or the Majority Leader's Office.

BERGNER: Sure. And that's been a trend, which really, I think, was at its absolute height with Harry Reid when he was the Majority Leader. Nothing came to the Senate floor but what was written in Harry Reid's own office. The committees really didn't do anything at that point. And not only that, but it was written in such a way that it couldn't be amended when it came to the floor. So, the only things he was willing to take a chance on putting on the floor were things that he thought would be slam dunks, 100% successes. You can't really hope for that if you're going to have an effective, functioning Congress. You've got to compromise a little around the edges.

When we passed our authorization bills, I would say we had 90% of it was what we wanted, 10% were things that came in that the committee wanted, the chairman didn't, I didn't. We then went to the floor and we maybe got 10% more bad things on the floor, things that we couldn't prevent or talk people out of offering. And so, maybe the bill was then 80% of what we wanted, but then when we had the House Senate Conference, we fixed all the things that we hadn't wanted on the Senate side, the same way the House was busy fixing what it hadn't wanted on the House floor. And it was back to 90% or so of what we wanted in the bill, which it seems to me is pretty much good enough for government work if you can get 90% of what you want.

KRISTOL: You would say that, that reflects more deliberation and more thought than the current system.

BERGNER: Clearly.

KRISTOL: Because otherwise, the fact that it's 90% doesn't prove anything, unless it's 90% of something that reflects greater expertise and greater deliberation.

BERGNER: Sure, which we took upon ourselves to think we had.

KRISTOL: But you did because you had an actual staff of dozens who were foreign policy experts.

BERGNER: Sure.

KRISTOL: And I'm struck with the stuff written in the leaders' offices. It's really often – and you've seen this in Obamacare and some of the Trump era legislation. It's sloppy. It's haphazard. It's done till 2 a.m. because they're on some crazy deadline. It's about rushing stuff through without real debate.

BERGNER: Sure.

KRISTOL: It's not too nostalgic about the old days to say there was much more debate, both in committee and –

BERGNER: There was much more debate in committee.

KRISTOL: – and on the floor.

BERGNER: And on the floor. Why debate on the floor if you have no chance of ever having an amendment that would be accepted?

This, a little bit, is the problem. People ask, "Why are Republicans so manic about wanting to get rid of Obamacare?" Well, the answer is because it was put down their throats with no chance to be amended. Therefore, they're looking for ways to still speak to this. If it had been done in such a way that President Obama had said he wanted to do it originally but decided not to, then it would have been, I think, something which would have had some staying power in the American system because it would have had some support in both parties. Now it has none in one party.

KRISTOL: And so, what rules or processes internally have, I guess, weakened the committees, weakened deliberation, and strengthened this attempt to make it more of a rubber stamp for leadership, or deal that leadership has worked out with the President?

BERGNER: Sure. Let me finish on the budget.

KRISTOL: Yeah, yeah.

BERGNER: First. Because it's not just that we have authorizations and appropriations and the authorizers don't do much. We also have the budget committees that come into the process. These committees were meant to be ones that put the broad outlines together of what should be spent in any given year. Their work is basically ignored by both the authorizing committees and the appropriating committees, and also the leadership, by the way.

Half the time, they never get a bill done. They certainly don't conference it with the Senate and come to a joint House Senate position. There is no particular reason to have the budget committees at all, except one. And that is they have this one part of the budget committee rules that allows them with certain spending things to be able to come forward in a way under a process called reconciliation, which allows the Senate then to consider it with a simple majority vote rather than the 60 votes that every other piece of legislation requires in the Senate.

If, as I proposed or will propose in a minute, the Senate gets rid of that 60-vote requirement for legislation, to my mind there is absolutely no purpose to have budget committees. And so, we have at least one too many if not two too many ways in which people are involved in this leading to no particular good outcome. I would get rid of the budget committees and perhaps put the leadership in the front rather than in the back, and have them and the senior members of powerful committees maybe put some guidelines out for their own house. “Here’s what you have to spend, Armed Services: \$750 billion. Foreign Affairs: \$450 billion,” and so forth. And then let the authorizers do this.

This was supposed to be a process that was so rational, it would end up balancing out somehow spending and taxing and everything else. In the years since 1974, we have had exactly four budgets that are either balanced or in surplus and all of the rest of them not only deficits, but deep, enormous deficits, such that we’re now financing 20% of everything we spend by borrowing.

KRISTOL: It is amazing. We passed this budget, modern, progressive, rationalizing, you might say, Budget Control Act, which I think was done with good motives mostly in the ’70’s, and it doesn’t control. It’s supposed to make you make the tradeoffs and think of it holistically. In the old days, the claim was – I remember this from college even – they just passed one thing here and one thing there. No one’s forcing it all to be kind of reconciled. That’s why it’s called reconciliation, right? And instead, it’s the opposite. It’s allowed the deficits to just –

BERGNER: In theory, you could say there’s a certain formal symmetry and niceness to it all, but it doesn’t work. It’s too complex. And so, what you end up getting is the appropriations committees under this process, don’t even produce appropriations bills like they’re supposed to. The thought of this whole process is there should be 12 appropriation bills, one for each different area of government, each department. And this then should be done, passed, reconciled between the House and Senate and sent to the President.

So, that usually happens with one or two, maybe three appropriations bills out of the 12 in a given year, and the rest don’t. And so, the rest go where? They go into an omnibus bill, which is usually called a continuing resolution because it basically continues the spending at last year’s level plus whatever everybody could agree on. Puerto Rico had a bad year. They need \$5 billion. We’ll give that then too.

But they can’t even do those bills in a timely way. You come to September 30th and it’s still not done. And so, you pass a 60-day one to take you to November 30th. And then you realize you can’t get it done before Christmas so you pass another one till February 15th. Right now as we speak, we’re in the whatever it is, 28th day of the government shutdown in which Congress has not produced a budget that the House and Senate can agree on.

KRISTOL: Yeah, it’s amazing.

BERGNER: Leave aside the President.

KRISTOL: And it really is – it does seem like we’ve got the worst of both worlds, which is in both the budget process and in the broader legislative process, which is sort of they can’t do anything. There’s no deliberation. There’s no reasonable debate. “Why don’t we change this program in this way to make it – this research shows that this part isn’t working?”

On the one hand, so the status quo just stays in place, because you get this continuing resolution. It’s the status quo interrupted by occasional crises, shutdowns, cliffs, deadlines going off the cliffs and so forth. And then it’s crisis and this midnight, all-night negotiations. And then you extend the status quo, I guess. Or occasionally you jam through some piece of legislation without much discussion.

BERGNER: Occasionally, something does happen. The Tax Bill was an example of that.

KRISTOL: But that was jammed through in not a very deliberative way.

BERGNER: Right, right.

KRISTOL: Without too many amendments.

BERGNER: It was the Republican version of Obamacare. It was jammed through on a straight party line vote. And, therefore, it's not found a kind of settled place in our discourse. But the Democrats can't wait to repeal it if they could. And that's where it leaves us.

KRISTOL: I mean, the theory was, and I think in practice when I got here in '85 and you were here a little ahead of me, so I came to Education, which is a good example because it's such a second-tier area honestly. But, you know, we had proposals. The Hill had its favorite – ranking chairman and the appropriating – well, the appropriating committees, as you say, then the authorizing ones. They had their favorite programs they would protect. You'd come to them and say, "Look, this really doesn't work well. We can do more for vocational education by changing this, getting rid of this program and doubling that one." And they would sometimes agree or they wouldn't agree.

But I do remember there were actual substantive discussions, more often with staff than with the members probably. Some members became sort of experts because they were on those committees for a long time. And it was at least something like the way government's supposed to work where there's a kind of reasonable discussion each year or every couple of years about, "Well, should you do it this way or that way? Maybe you shouldn't do this." There'd be a bit of a fight, either a kind of ideological fight or just a fight of experts almost.

But I have the impression – and I've talked to people more from the Executive Branch side – but I think this is true – This just doesn't happen anymore.

BERGNER: It is far more the exception than the rule.

KRISTOL: Yeah. That's why you want the strong committees, I think.

BERGNER: Right. When I was at the State Department, I was Assistant Secretary for Legislative Affairs and my job was to kind of lead our dealings –

KRISTOL: This was '07, '08?

BERGNER: 2005 through '08.

KRISTOL: '05 through '08.

BERGNER: To lead the State Department's dealings with Congress, which is why I'm now so gray.

KRISTOL: Yes.

BERGNER: But I had come out of the authorizing committee world, the Foreign Relations Committee. And so, I was hopeful that this would be a time when we could get them busy authorizing and we could discuss some changes that we needed to make in foreign policy and so forth and bring our people and their people together and so forth.

The two authorizing committees couldn't authorize anything. And I had to deal still with the Foreign Relations Committee for two totally different reasons: 1) they were the committee that handled treaties



that we would send to them. And, secondly, on a daily basis, more importantly, they were the committee that handled nominations we would send to them.

And so, I had to deal with them for those reasons. I had no reason particularly to deal with the House Foreign Affairs at all. Where I had to deal was with the small subcommittees on the appropriations committee, which had our budget, and indeed were likely as not to put some policy restricting riders or restrictions in the appropriations bill with the funding. That was where all the action was.

And so, it wasn't as if this was a reasoned debate anymore. Quite to the contrary, it was a last minute, eleventh hour thing where we're busy trying to prevent them from doing something silly, and they're busy trying to get something done in the dead of night so that nobody could see it and get what they want. It was a very, very bad process.

KRISTOL: And how did the committees lose so much power? That's the thing that strikes me so much over the 30 years I've been here. You know, these committee chairmen who were so powerful when I came. And now, honestly, I follow the stuff fairly closely, I don't even know half the committee chairmen.

BERGNER: Right, and why would you? I mean, they don't do that much anyway.

KRISTOL: Yeah, so how did that really change?

BERGNER: Yeah. Well, I imagine there were a variety of factors. But one was there was a willingness on the part of committee chairmen, at least to take their members seriously and to produce legislation that came out of their committees in a way that it had bipartisan support. It wasn't the 11 to 10 vote, 11 Republicans against 10 Democrats. But they had had relatively more open markups. The chairmen still controlled things without a doubt. But other members on both sides had an opportunity to have some input into the process and, therefore, they weren't dead set against it when it came to the floor.

We did that with our bill. I mean, we had two days of markups and people had all kinds of ideas and, whether we liked them or not, some of them slipped in. And I remember at one point, Senator Sarbanes, who was a very dour character from Maryland, not my favorite senator, came up to me after we just passed the State Department Authorization Bill on the Senate floor by a vote of 75 to 20 or whatever it was. And I thought, "What's coming now?"

And he said, "You know, I don't agree with everything Chairman Lugar is doing or everything you're doing, but I have to say, you've put us back on the map again like we used to be. And so, I think you've done a good job in that way."

I'm not sure I ever valued a compliment as highly as that one because that in a little bit of a way was our intention, to give people enough input that they would be for this project, even if it wasn't perfect. Now, it's got to be perfect or not. It's got to be all one way or all the other.

KRISTOL: Is it the polarization, you think, that led to the weakening of the committees and all the power flowing into leadership? Or is it campaign finance? I've sort of wondered about that.

BERGNER: I think to some degree it is, and I'm going to hedge about that in a minute. But to some degree it is.

We now have a country that's very riven down the middle and it's not just on the basis of whether or not you would like some particular provision about Obamacare or you don't, or you want a 38% tax rate or a 48%. It's not about that. It's about two fundamentally different visions about what government is supposed to be doing, what you might call the "framers' vision" and the "progressive vision." Two very different ways of looking at what government's supposed to be doing. And I think that's made it more

difficult because to some extent the members do reflect what people want, and people right now are very divided about what they want.

At the same time, if you think about it, all the rules that they have in place in the chambers accentuate the partisan differences. So, let's say you win an election 51-49, you in fact then control the Majority Leader's job. You control the chairmanship of every single committee and you have two-thirds of the staff compared to the other party having one-third of the staff. And so, in a way the rules make the parties a little more naturally apart because the people who surface as leaders or chairs are people who've been there for a while.

And how have they been there for a while? Well, they've been there for a while because they get reelected, reelected, reelected. So, for a while you had Southern Democrats who were the chairmen of all the committees. Then you had a period of time where a lot of urban black legislators had become chairman. Charlie Rangel and this one and that one. Why? Because they came from safe seats and they outlasted everybody else. The same reason.

And so, to some extent the rules make it very easy for things to split to the sides, but when it's reinforced by this partisan difference we have now, or philosophical difference even, about government, I think that has contributed to it.

## **II: Partisanship and Ideology (28:14 – 1:07:52)**

KRISTOL: And I suppose the sorting of the parties. There aren't so many conservative Democrats. There aren't so many liberal Republicans.

BERGNER: No.

KRISTOL: Party loyalty does seem to have overwhelmed committee loyalty or regional loyalty or almost your own ideas, your own personal ambition at times. Though I guess there's a fair amount of personal ambition floating around, but that does seem to be part of what's making the system not working the way you would like it to work.

BERGNER: Well, party loyalty certainly overwhelms institutional loyalty.

KRISTOL: Yeah, that's a better way of putting it.

BERGNER: If you look at it, over and over again when Barack Obama was busy signing Executive Orders on immigration issues, whether for the DACA folks or more generally for people who were here in the country, the Democrats weren't saying, "Well, this is clearly an affront. This is an Executive Order. That shouldn't happen. We have our rights."

Former Senator Byrd from West Virginia who had his plusses and minuses, that was certainly one of his plusses. He cared a great deal about the institution in a way that it's not clear to me people care about the institution as much as they do advancing whatever the philosophical/partisan position that they might have. And that tends again to be shaped by the leadership.

KRISTOL: So, I guess ambition, counteracting ambition is supposed to be institutional ambition, right?

BERGNER: It's supposed to be institutional, but it doesn't seem to work that way anymore.

And in a way, I think I would attribute a bit of it to the whole process that people have by which they come to Congress. Once upon a time, we had people that simply ran for office or that afterward were chosen by party bosses. And that's all gone now.

What you have now virtually 100% is the primary process. In both House and Senate and also with the Presidency. And the primary process, people come out of that owing really nothing to anybody at all. They haven't had their hedges rounded off, as it were, by having to deal with people in their district. But rather, you decide one day you're going to run for the House and so you put together a committee. You get some people who are your friends and neighbors to give you some money. That gets you started. Then you hire a staff. You have your *own* press operation, your *own* fundraising operation, your *own* policy operation.

And so, you know, you come to Washington as a kind of an independent figure and the notion of compromising is very far from somebody's mind when they don't owe anybody anything. They come unencumbered, as it were. And that, I think, has made it a little harder for the chamber to act in collegial ways. People are their own entrepreneurs, political entrepreneurs these days, and not really part of what they think of as a larger project.

KRISTOL: And they're political entrepreneurs, but even so, I would say there's been a decline of entrepreneurship in the last 20 years or so, 30 years. And I think that's driven partly – I'm not sure what it's driven by. They have to spend so much time raising money. They don't become experts on particular issues. Fear of being primaried so you don't want to have a heterodox view in your party. I don't know but it seems to me there's fewer Jack Kemp's deciding, "I have views on economic policy. I'm not even on the House Ways and Means Committee in this case, but I'm going to advance them."

BERGNER: I'm not sure that I would agree that there's a decline in political entrepreneurship. In that sense that it seems to me still all kinds of people take it in their mind to run for office these days, and they do without any encumbrance really.

KRISTOL: I agree with that. The *political* entrepreneurship. I guess *issue* entrepreneurship maybe they –

BERGNER: That's a different thing. And I think to some extent this is a cycle in which since the Congress doesn't do much anymore, the currency is not "I'm a great legislator." But the currency is "I'm a fairly popular person."

KRISTOL: That's a good point, actually.

BERGNER: And the currency, the incentive system, the reward system is to get press rather more than to be a careful legislator.

Not to pick somebody out, but if you look at this phenomenon that's Alexandria Ocasio-Cortez, I mean, she's far and away the most well-known member of the House of Representatives almost as much so as Nancy Pelosi. She not only hasn't done anything legislatively, she won't do anything legislatively is perfectly clear, not this term, and probably not the next term, or the next term, or the next term if she's elected and reelected.

But still, she has sort of made her way by virtue of the currency of the press rather than being a careful and thoughtful legislator. There's not much reward for that in a way. People are freelancers and they're there for their own purposes.

KRISTOL: I do think the press people have always cared about getting good press, but the kind of good press they got often was *connected* to a good piece of legislation. So, McCain was campaign finance reform. Something, probably both of us, maybe both of us, don't think worked out terribly well. But, you know, there was actual legislation.

BERGNER: Sure.

KRISTOL: And he and Feingold worked extremely hard on it and built a bipartisan group and they had outside groups in. So, they also wanted the renown of getting it done, and they liked the rhetoric of it too.

That is what strikes me. Now it's sort of just disconnected from – half these members feel free to give speeches and tweet and stuff. This is a trope on Twitter, "Gee, if only you were a Congressman or a Senator, you could do something about that." You know, you sort of keep wondering, where's the amendment that would embody their views that they're expressing?

BERGNER: Absolutely. And I worked for a member who was a legislative craftsman in the sense that he was very much involved in his first term with the Chrysler "bailout," it was called somewhat negatively. But it was structured in a way that Chrysler had to pay it back and it kept the company going and it all worked out fairly well. Or the South African Sanctions legislation, which was an overwhelmingly bipartisan vote in the House and Senate, so much so that it overcame President Reagan's veto. Or the Nunn-Lugar legislation with former Soviet Union's missiles and launchers and so forth.

All of this was legislative craftsmanship, which is not so much in evidence anymore. You don't see somebody coming forward with thoughts about something that might actually happen and working that for months and years in some cases to get it done. It's rather more the currency of the press. You know, you can be famous overnight if you say something outrageous.

KRISTOL: I suppose that's something that's hard to change in terms of the internal workings of Congress. Or even the incentives, do you think, of the senators?

BERGNER: Well, I'll tell you. I have a very outlier view on Congressional staff, which I think are part of the problem. How many pieces of legislation do you suppose are introduced by members of the House and Senate in any given Congress, two years of Congress? And the answer is lately in the past several Congresses, about 12,000.

For openers, if anybody thinks that the Republic needs 12,000 fixes to make it better, they're a bit crazy to start with. But a lot of this legislation is introduced and goes nowhere not because it has failed, but because it was really never intended to go anywhere.

If you look at it, about 2% or so of those 12,000 bills are enacted either on their own or, more likely, as amendments within larger bills, as Congress tends to do fewer and larger bills these days. Why? Well, in some cases, because the process is hard and complex and should be simpler. But in other cases, it's more a question of introducing something to position yourself, or for the purpose of preening, rather than that you have any real hope that this is going to get introduced.

Where do these 12,000 pieces of legislation come from? They don't come out of the members' heads. It's not like members are thinking up 30 or 40 legislative initiatives per member. They come from the staff. The staff has these great ideas. This should be fixed. That should be fixed. This should be done and so forth.

And they talk a member into sponsoring it and then it becomes a big project. You have to go find cosponsors because it has to have a certain gravity to it of 20 cosponsors. Now you're busy trying to find a subcommittee chairman or a committee chairman please to have a hearing on this so you can give it a little credibility. And then that gins up the opposite side who's opposed to whatever this is. And they have to spend hours and weeks trying to prevent this and find people who could prevent it if it ever does go anywhere.

And as a result, 98% of what's introduced in the Congress goes nowhere, which is a very bad sign about an institution. I think it would be far better if Congress introduced a massively less number of bills and actually took them seriously. And my notion about that is that the Congress would be 20% more efficient if it had 20% less staff.

The usual argument is quite to the contrary, usually made by people who have never visited the Congress, I think. “How do you get Congress – how do you make it stronger?” “Well, you get more staff and you hire more staff and you pay them more and you get better people and all that.”

I just don’t see it in this case. It seems to me that the staff has driven the body down into the weeds where it simply churns its wheels constantly without much happening. Members would have a little more of a natural sense, I think, of things that are important or not important. But they allow their staff to talk them into doing all these things because, well, that’s what they’re there for.

KRISTOL: I’m just so struck that they depend on their staff, and then their time gets totally taken up by –

BERGNER: Totally, yeah.

KRISTOL: – the staff, fundraising, constituent business.

BERGNER: And if you really restricted, not restricted, but had a much smaller number of pieces of legislation that were actually things that people thought of to fix, you know. It’s not like there aren’t obvious candidates around.

Immigration reform comes to mind. It’s perfectly obvious no matter what your position on it is that this is something Congress should address. This is not a project for one person, for the President, much less some District Court judge in Washington State who thinks he’s running the country now. It’s something Congress as a whole should address because it’s got a lot of moving parts.

And, nevertheless, there is not really but one or two versions of a comprehensive immigration reform bill, none of which have any chance of passing.

And so, there’s simply not the reward system in place for doing that anymore. It’s rather that you have an outrageously strong position on immigration: that the Wall is immoral. That’s sort of the currency these days rather than actually trying to do something about the immigration system, which is clearly in need of something being done.

KRISTOL: And one of the great things in the textbooks at least, at least when I studied this stuff a little bit, is having a Federal and Congressional system – let’s say as opposed to a national unitary Parliamentary system – there’s a huge amount of opportunity for access for different interest groups, scholars, points of view, through Congress.

And if I were a Congressman or a Senator, you know, people would come to meetings if you asked them to, from town, or from almost anywhere really. And it would be so easy to make yourself, I think, the lead exponent on whatever issue you cared a lot about.

And it’s amazing how few of them do that, I guess. Their days seem totally full, but they never actually take advantage of the fact that they could have the best people in whatever area they care about come to their office and brief them and their staff and – really like they used to do.

BERGNER: How few of them care about it. But even more so, how few of them care about something that they actually are in a position to address, like an issue that is from the committee they’re on or the committee they chair.

I mean, it’s one thing to have a great idea about immigration reform, but if you’re not on the committees that are for immigration reform, it’s going to be a hard project to do. Or if you’re not somehow connected with the leader, you might as well not waste your time with that. It could be a perfectly crafted bill, but it’s probably not going anywhere.

KRISTOL: Right.

BERGNER: And so, the incentive structure, again, is not very good. Let me mention two other things.

KRISTOL: Yeah, mention the reforms. No, no, go ahead.

BERGNER: Then I'll be done with those. I think and I've come to this one very slowly and very grudgingly, that the Senate should change its rules and allow all legislation to pass by simple majority votes. The legislation itself always passes by a majority vote. But it gets held up by a 60-vote requirement to cut off debate. And I don't see any reason for that to be in place any longer.

We've been in a period of long decline of that. It's gone from 67 members to 67 present and voting. Now to 60. And that reflects the fact that the system is not working. I think it should be taken down to 51.

I once asked Judge Bork about this at a conference. I said, "Do you think there's something a little, if not anti-Constitutional at least semi-unconstitutional about putting a 60-vote requirement to get something done when it's not in the Constitution? I mean, the Constitution could have done that. They did do it with treaties and amendments to the Constitution and so forth."

And he thought about it and he said, "Well, you know, they are both the judges of their own rules," which is true. But the Framers thought about this question and you can see this in the [Federalist Papers](#) very clearly. They debated the notion. Madison talked about it particularly. "Should we have a system in which things pass by simple majorities or should we require more?" And, ultimately, they decided in this effort to balance some minimal efficiency of the institutions with protection of liberties, that a 50 simple majority vote was fine. That was plenty.

So, Congress now has 60 and what do we see? Well, tactically, you can't do things without 60 votes and so nothing is brought up on the floor unless you know in advance it has 60 votes. And that means a lot of things aren't brought up on the floor at all.

I have to come to it very gradually and very slowly and, again, somewhat haltingly because I worked in the Minority and I worked in the Majority. And when you're in the Minority, you can see the virtues of this. You know, it helps you stop things.

KRISTOL: But it was supposed to preserve the kind of majority rights against big legislation just being slammed down by 51 votes. I know it happens on reconciliation anyway. But it wasn't supposed to routinely stop everything.

BERGNER: Everything. No, it does.

KRISTOL: When I came, appropriations bills routinely were passed 54-45, or whatever, and we didn't think anything of it. No one thought you would stop the regular appropriations bill. The way we are currently having with the shutdown, just because — Of course you needed to have a majority vote because otherwise you couldn't function.

BERGNER: Right.

KRISTOL: Now if it's a huge bill, Civil Rights, Social Security, then you go to the 60 vote.

BERGNER: You would want to have a consensus around some of those things like the Social Security program.

But it's even worse than we're saying at the moment, because you not only need 60 votes to pass something, to end the filibuster to allow it to be voted on. You need 60 votes, if the majority wants something and the minority is in a bad mood about it, you need 60 votes to proceed to the motion to consider it in the first place. Before you even get to the debate. Now, why the Senate should be prevented even from debating something, as opposed to passing it, by a minority is very hard for me to understand.

And so, I'd be in favor of changing this and going to simple majorities. And I think that would be something which might end up passing some pieces of legislation, which you might otherwise not like. You might pass some pieces of legislation you like, but other people might not like.

But wherever it falls out for the two parties, I think it's better for the country to have an institution like Congress that can actually effectively do things.

KRISTOL: Yeah. Okay, well, that's one reform.

BERGNER: And then the next has to do with nominations.

KRISTOL: So, that's a Senate reform, just to be –

BERGNER: Yeah.

KRISTOL: Yeah.

BERGNER: And so is my proposal with nominations. We've made some progress on nominations. Harry Reid changed it so you only need 51 votes to break a filibuster on a nomination, for all nominees except Supreme Court Justices. He didn't do that for high-minded, statesmen-like reasons. He couldn't get Obama judges through and so he changed it. But I still think it was the right thing to do.

Then Mitch McConnell broadened that to include Supreme Court Justices. He again didn't do that for high-minded reasons. He realized that he would never get any Supreme Court nominee that President Trump nominated through the Senate if he didn't. But again, I think that was the right thing to do.

And so, you say, "Well, why are there literally hundreds of nominations that the Democrats have blocked? How can they do that? Why don't the Republicans just pass them? They have the majority in the Senate after all." There are all kinds of other rules, including one particularly, which is called the 30-hour rule. And that is that once the Majority Leader files for cloture, you get a cloture vote, cut off debate. The Minority can require up to 30 hours of debate after the cloture vote. And 30 hours on the Senate floor is like a lifetime.

I mean, I remember when I had to plead with Senator Dole who was the Leader to give us one day on the floor, please, to pass some piece of legislation. And so, for big, important nominees, Cabinet officials or Supreme Court Justices, McConnell will say, "Okay, we'll take 30 hours. We'll run it out, and we'll pass it then."

But for these other hundreds of nominees you can't do that. And so in effect, by saying, "We're going to insist on a 30-hour debate," the Democrats with this "Resistance" that they're doing have effectively held up hundreds of nominees.

Initially, to some degree the Trump Administration was at fault for not sending up nominees and there are still a few places where they probably should but they haven't. But right now, the fault lies with the Senate Democrats who are holding up literally hundreds of these people, many of whom were nominated for months last year and now had to be re-nominated again come two weeks ago.

I have a neighbor in particular who has been nominated to be the Federal Transit Administrator. I don't even know what that job is. But she came out of the committee with a near unanimous vote of all Republicans and Democrats. But she sat on the Senate floor for eight months. She can't be considered. Why? Well, because Democrats have blocked.

I would be in favor of immediately getting rid of the 30-hour rule and taking it either to zero or to a very small number of hours like two. There's absolutely nothing Senators learn in this 30 hours of debate, nothing. In fact, if you look back at something like the Kavanaugh nomination where they had to go through this 30-hour ritual, most of the Democratic senators announced their opposition to him before he even opened his mouth. And so, it wasn't like they were going to learn something about him. Everybody knows everything about these nominees after they come out of committee for all practical purposes. So, there's no reason not to do this. It's just a stall tactic.

KRISTOL: Certainly, you could have 30 hours if you wanted for Supreme Court Justices.

BERGNER: Sure.

KRISTOL: Cabinet nominees.

BERGNER: Sure.

KRISTOL: But for sub-Cabinet and stuff like that, I mean –

BERGNER: I mean, for the Assistant Secretary of something or another, why?

KRISTOL: It's pure delay.

BERGNER: It's pure delay.

I'll tell you a little story. When I was at the State Department, I got a call from the White House. The White House said, "There's a delegation of British parliamentarians coming over from the House of Commons." It seemed that the House of Commons was thinking about putting in some kind of system over there of nominations and confirmations for their Cabinet officials like we have. I was kind of surprised to hear that, but the White House asked, "Would you see them because you do more nominees than anybody in the government." Because we not only have to nominate and confirm our nominees for senior positions in the State Department, but also it's a Constitutional requirement to confirm ambassadors and there are roughly 200 or 300 ambassadors. And if they have a three-year tenure, every year we were doing 60 or 70 ambassadors. So, she said, "Would you come and talk to them and explain how this works?" So, I said, "Happy to."

So, I reserved the Secretary of State's fancy little conference room, you know, dark wood and all that, very nice. And the morning came when I was supposed to meet with them and I looked at my schedule and I saw I had to meet with these guys. I really have no idea what I want to tell them here. I don't want to speak ill of American institutions to a group of foreigners. But, on the other hand, there are some plusses and minuses here.

So, what I did was I gathered up all my papers that I had had from my nomination, about three inches high, and for my confirmation, about three inches more high. All the same information, by the way, but in a different format of course. And so, I had it with me. And as fortune would have it, I got totally stuck in a meeting right before this meeting with them and I just couldn't extricate myself. I tried and tried. Finally, I escaped and I come crashing into the Secretary's conference room about 10 minutes late, apologized profusely and so forth, put my papers down on the table and sat down and said, "I'm very sorry to keep you guys waiting."



And the British guy who was the head of delegation like out of central casting, wonderful guy. “Oh, no worries,” you know. And so forth. And he said, “In fact, I see you have quite a lot of work here with you. We won’t hold you up very long.” And I laughed and I said, “Well, that’s not anything I’m working on. These are the papers that I had for my own nomination and my own confirmation. And they looked and it was like something dawned on them.

So, we had a very pleasant conversation afterward and talked about the plusses and the minuses. But I realized, through no intention of my own, I had killed this idea in the cradle in the first 30 seconds of the meeting when they saw how ridiculous this process had become.

KRISTOL: Right.

BERGNER: And so, I have been ever since awaiting calls from a grateful generation of British Cabinet officials. I have not had any. But I did get a nice little tin of mints with the House of Commons embossed on the top of it. So, I still have that.

KRISTOL: That’s good.

BERGNER: Yes.

KRISTOL: I mean, it does show how Congress’s dysfunction spills over into the Executive Branch because it’s really a Congressional dysfunction, I would say, the nomination and confirmation process.

BERGNER: It is now.

KRISTOL: As it is proposed by Congress. There are some intra-Executive Branch problems too obviously. But now it makes it very difficult to staff an administration. So, again, if you just want competent execution of government, which the Federalist stresses, it’s pretty important for good government and for Republican government, it’s much less likely to happen.

BERGNER: And so, my takeaway from it all is that somehow the members of Congress didn’t think that the checks that the Framers put in place were quite enough and they had to put a whole bunch more checks on themselves. And they’ve done this to the extent that they now have created the very complexities that bedevil them.

If they weren’t wasting their time on nominees and trying to get over 60-vote requirements and this ridiculous budget process and all the bills that get introduced that are going nowhere, they might have a chance really to look at smaller numbers of pieces of legislation, look at them more seriously, and also what would be important is to conduct some genuine oversight. Once a bill is passed and becomes a law, for the most part that’s the last time Congress ever thinks about it. That’s a bit of an overstatement, but not much.

It would be very nice if after a major piece of legislation passed, the Congress would come behind and say, “How is the Executive Branch doing? Are they executing this in the way that we intended?”

KRISTOL: Is this working the way –

BERGNER: Yeah. “Is this working the way we intended?” and so forth. They might actually learn something about their own work, which they don’t now. Once it’s done and gone and out, that’s pretty much the last you hear about it. And the notion that a member of Congress would ever acknowledge that they had made a mistake – I’ve been around that institution personally since 1978 and I never heard that one time, not one time.

KRISTOL: But now, is there something about their own personal incentives that leads them to not to be interested in the kinds of reforms, that you've been talking about? Because it would require them to actually take more positions on issues, or actually do more work? I mean, why are they comfortable – or are they comfortable, I guess, with the current situation?

BERGNER: Well, let me say this will probably be the harshest thing I say about them in this conversation. They've created a situation now in which they have managed to all but avoid accountability for anything. And by preening and taking positions and so forth, but not actually passing much legislation and not, in a way, being responsible for it, they've in effect given over a lot of their power to the President, to the Executive Branch, to the independent agencies, and now to the Courts.

And it seems to me a very bad thing that they've kind of accustomed themselves to it, and that's kind of what they like. And they now are quite content with delegating their own responsibilities to somebody else, and then simply coming behind and criticizing it when they don't like it, or it hasn't worked out well.

And that really, I think, is a very bad sign about the institution: that that's more their currency now than actual legislative handiwork or oversight.

In a way, I think I would say what's wrong with Congress being weak and inefficient? For Liberals, you know, the answer might be obvious. Well, if it were stronger, it would pass more laws and that's good. Other things equal, the more laws you pass the better.

For Conservatives it's a little harder argument, but I think nevertheless it's true. And that is if Congress were the only institution in Washington that was part of the federal government and it did nothing, that might be just fine. A do-nothing Congress, well, they're not doing any harm anywhere. But instead what happens is they kind of leave the field open to the President. And you've seen this with Executive Orders on immigration with Obama and then with Trump both. Things which they never would have necessarily done if Congress had actually done its work and passed some kind of a broad immigration reform bill.

So, the President, the Executive Branch –

KRISTOL: And I would just say on that, I think the bitterness would be less if voters felt look, "It was debated. It was discussed. There were amendments. And finally, they passed something, 65 to 35. We might have lost, but."

Now it seems like things are drifting along, nothing changes, the system's broken. And then the President slaps something down one day, and then does a sudden change. And other parts aren't changed.

BERGNER: I agree totally. If the Congress had hashed it all out and said, "Well, okay, we agreed to \$3 billion for a wall." I mean, that's been agreed to. Or "we agreed that we would now give citizenship to these DACA people." Okay, that's been agreed to. Or "we got rid of the diversity lottery." Or "we made the main part of the immigration requirements job related as opposed to family related" as they are now, or whatever. People I think would have the sense that the Congress has spoken and both parties have somehow agreed to this, hopefully.

Barack Obama – I mean, it's a very strange thing for a Constitutional lawyer, as he says he is, to say, "Well, since the Congress hasn't acted, I will." I mean, it's not like he has some new authority to act just because the Congress hasn't.

But in fairness, it does offer that temptation. It does leave the field open to say, "Well, they haven't done anything. I could at least do this and this." And so, Presidents do this. The Executive Branch as a whole does this.

We've had long debates over whether there's kind of a "deep state" or not. And certainly, the independent agencies do this. I mean, these agencies – now Congress is empowered to do 90% of all the things that govern us, the Federal Register being 85,000 pages long and the amount of legislation it's passed being a very small, miniscule fraction of that. Those folks seem to feel like they have the right both to legislate and to execute and also to judge. And if you get afoul of one of the independent regulatory agencies, you have a big problem because there's no accountability and there's no going back.

And, finally, again, District Court Judges. I mean, how did District Court Judges put national injunctions on individual cases that affect one person if Congress had already just spoken for this?

And so, I mean, there are all kinds of fields that Congress has left simply in abeyance: immigration reform, the whole question about the use of force abroad and war powers, trade policy. President Trump seems to think he's in charge of trade policy. Well, the last time I read Article 1, Section 8 in the Constitution, the Congress had that role.

KRISTOL: It's explicit.

BERGNER: Like *the* role in regulating commerce with foreign nations. And they had worked out with previous administrations a way to do this that made sense, was fast-tracked.

Now President Trump puts tariffs on China, threatens the Canadians with tariffs, threatens the Europeans with tariffs. And the Congress does what? Short answer, nothing. And so, they sort of ceded that whole field now to the President.

Even in healthcare, where they actually did something, if you read the 906-page Obamacare Bill, which most people – and I'm guessing maybe President Obama may be included in this – haven't. Every other page the Congress gives enormous grants of discretionary authority to the Secretary. Who's the Secretary? Well, usually, it's the Secretary of HHS. And so, the Secretary of HHS now has discretionary authority to do things that he never would have had if this bill hadn't passed. And that's why it's been so easy for President Trump to dismantle parts of it because it's not founded in anything that really came out of the Congress and had Congressional support on both sides.

KRISTOL: One of the things that's striking when you look back at the [Federalist Papers](#), just where you sort of begin with the book, is the distinction between the Senate and the House, I would say, and their understanding going forward of what it's going to be like. One will be a more representative body. The other will be more deliberative. And all the obvious things.

A lot of change since then. The mode of election of senators, most notably, or one of the most notable aspects of what's changed. I'm struck that in our conversation – your book's mostly about the Senate, I think it's fair to say.

BERGNER: More so.

KRISTOL: More about the Senate. But in our conversation, we were talking about Congress without much distinction because – Is it fair to say the Senate has become more like the House? In the sense that just the House always had a slight tendency towards party loyalty, majoritarianism, strong speaker.

BERGNER: The House always has a tendency to have strong leadership because, as the Framers point out in the [Federalist Papers](#), the bigger the body, the more likely there's some silent springs of action running the whole thing that you may see or you may not see. Usually you can, because it's the leadership and the Speaker and the Assistant Leader and the Rules Committee. And so, in that sense I think the Senate has become a little bit more like the House.

I spent a lot of time on the book thinking about this question that the Framers put that not only is representative government good in and of itself, to narrow down the number of people who are making decisions, but that the people we elected would be better than we are.

KRISTOL: Yeah, well, let's talk about that. Just to make sure you're not confirmed again for any Executive Branch [laughter].

BERGNER: It's too late. If anybody ever looked at this, I could never be confirmed for anything. But I spent a lot of time thinking about that. What does that mean actually? Better in what way? Is it so un-PC to say one person is better than another one now?

But I think they had in mind a number of things: 1) that these people would be wealthier, 2) that they'd be better educated, 3) that they'd have more connections with their state or district that they came from than the average person did, 4) that they'd be a little more facile with the use of words and argumentation and that sort of thing. And finally, that they might – and this was the point in which Madison hedged – might or might not be more virtuous.

I think probably in some of those ways, also more education, if you look at the statistics, members of Congress both have more education than the average American. They're certainly wealthier than the average American. They certainly have more connections in their states or districts than the average American. Most of them, having come out of law practice or lower office somewhere, have more knowledge of how to use words and make arguments and so forth than the average American.

And finally, I think on the question of virtue, that, it strikes me to say, based on now 40 or 50 years of watching this institution and knowing so many of these people, that members of Congress do not have more virtue than most Americans. And Madison points out that sometimes if you have more knowledge but less virtue, it's worse than if you didn't have more knowledge in the first place.

And to a certain extent, I do not see any superior virtue in people [in Congress]. I won't name names here, but I could so easily. If you look at some of these people that you see just on the news even, they're not advancing something which arguably is good for the country. They're advancing some kind of agenda that they support or their party supports or something. And I just don't see that hope of the Framers that these people would "refine and enlarge" the views of people. Maybe up to a certain extent, but not when it comes really to having more virtue to do the right thing, as opposed to do something.

KRISTOL: Is that more of a phenomenon in developments outside Congress, I suppose, in society and media?

BERGNER: Yeah, I think so. I mean, to the extent that –

KRISTOL: More democratic. You want somebody who represents your opinions, not who enlarges and refines them, I suppose.

BERGNER: And recently, you touched on a question of the change in the mode of becoming a Senator from being selected by a state legislature to being elected through a direct election. I have thought long and hard about that and I've read everything that people have written, arguing that it would be better to go back somehow to this older way. I just don't see that, I guess. When you look at the older way, the argument that Senators cared more about their states than they do now. I'm not sure that's true now. Senators still do.

You know, we used to spend a lot of time when I worked for a Senator concerned with state things. What grants are we getting here and there, and this and that? And how does this affect our state? Very many members with this change in the tax code in the Tax Bill that's going to hit high income states like New York harder. So, members still care about their states.

The other half of it is that I'm not so sure the members that were chosen by state legislatures cared more about their states than they did about whatever the faction in the legislature that picked them wanted. And there are some real horror stories about some of these characters that came into the Senate by being chosen by state legislatures that really had very base motives.

So, I guess I'm not one who thinks there's reason really to change that back from direct election. In particular, if you read the *Federalist Papers* fairly closely in that regard, you see they say that they put in this Senate mode because it was more congenial to public opinion by which it meant they could not have gotten this Constitution –

KRISTOL: Passed through, yeah.

BERGNER: If they hadn't done it that way. And so, there was a hint there too that maybe as the country becomes more homogenized and the national government takes more shape, that maybe we wouldn't need to do it that way.

KRISTOL: Yeah.

BERGNER: There was a motion offered in the Constitutional Convention to do direct election of Senators. It lost. By a big vote. But how did the vote occur? By states. The way votes occurred in the Convention. So, it was 10 to 1 against it, I think, something like that. And there was a whole history ever since that point of people campaigning to try to get the Senate elected the same way House members are.

KRISTOL: Yeah. I don't think that's practical in a democratic age to go back to the legislature electing Senators. As you say, it's one of those things some Conservatives and constitutional types have kind of hit upon.

BERGNER: Yes.

KRISTOL: It was "the way it was done in the old days before the Progressives." The truth is, as you say, there's very little evidence, if you really think about it –

BERGNER: It would be a little like term limits, I think. You would need expend so much work to get a Constitutional Amendment passed for a result which is so uncertain. To my mind, it wouldn't really make any difference.

KRISTOL: And it's a way of not grappling, I think, with the problems.

BERGNER: Yeah.

KRISTOL: Which is a sort of simplistic gimmick almost. You really in this book and I hope in this conversation have really focused on the actual processes.

I mean, it is very important, I think. Well, let me say this – I want to ask you a little bit about the Executive Branch, taking advantage of having you here since you were Assistant Secretary of State and saw that up close too.

I mean, so much of the *Federalist* when you really read the whole *Federalist* and not just the *Federalist* 10 and 51 and the famous snippets. I mean, they were thinking very hard about institutional design and how things would work so as to both limit government appropriately, but make government effective where you'd want a government to act. And how to get better representatives who both were representative but also were wiser than the people.

I mean, I think one great virtue of your book is that it's an attempt to think institutionally in terms of what could be fixed and not in some utopian way. It would be great if all of our Congressmen and Senators were wonderful people. But sort of a serious way. that we are operating much less than optimally just in terms of the incentives and the processes that are in place.

It's funny, though, I find when I'm in Washington here, people don't really talk much about that. You'd think it would be such a core issue in thinking about government.

BERGNER: Well, I agree. That Congress has over these last 40 or 50 years lost so much of its power and authority that people don't focus so much on it. They focus much more naturally on the Presidency.

KRISTOL: Or they focus on issues. I guess what I'm saying is the institutional way of thinking about politics itself seems to me to be lacking.

BERGNER: I agree, I agree.

KRISTOL: It's a debate about healthcare, which is fine. It's a debate about this or that, but not sort of this actual structural stuff, which is very important if you care about the longer-term presumably.

### **III: The Executive Branch 1:07:52 – 1:27:33**

BERGNER: Well, I think so and we're getting the government we deserve in that regard, I guess. We don't think so much about it.

With regard to the President, I mean, the Framers spent a lot of time thinking about that office because no office like that had ever existed before. This was a brand-new thing. And so, you can see them going back and forth trying to figure out, "How can we make this strong enough so that it could conceivably defend itself against this behemoth, this Goliath, this Congress?" Which has got – and read Article 1, Section 8 if anybody wants to see what powers Congress has. It's right across the board: every power that you can imagine is in the Congress, not in the Presidency. Or read Article 2, Section 2, which describes the President's powers, you know, it's a few sentences.

But the Framers tried very hard just to get the Presidency beefed up to the point where it could defend itself against the Congress. But now we see a situation which is very much different from that and which the Congress really has given away its authorities, which it's not supposed to delegate, but it has. Why? Well, to some extent this Progressive view of government. To some extent they like it. To some extent because the courts have never pulled back from this and they simply allowed Congress to delegate, especially to the independent agencies from 1935 onward.

And Congress is going out of its way increasingly to give away its powers. If you look at the Consumer Finance Protection Bureau, there they've structured something which doesn't even require a Congressional appropriation to run. In the old days, I mean, 1978 when I first showed up, this would have been absurd. That you couldn't get anything ever funded in that multi-year way because Congress wanted to do it every year. And so, there was never going to be a question of an endowment for something. It was always going to be an annual appropriation. They gave it entirely away.

Or if you look at the legislative veto, which Congress was all too happy to give the President total responsibility if only they could second guess him. And that finally the court did step in in 1983 and take away, saying that just because Congress wanted to give away its authority, it didn't have a right to. But look at something like the line-item veto. I could imagine why somebody likes the line-item veto if you're a budget hawk, if you're interested in saving money. Sure, give the President the ability to just take a whole appropriation bill and say, "No to this. No to that. No to the next thing." But this would be to give away the core power that Congress has.

Nevertheless, they've been willing to do it. They've simply been stopped by the court in this again, happily. Because what would this encourage? Now you maybe have an appropriation bill for \$100 billion to do something, right? It goes to the President and it's the President's hard decision. If he hadn't been able to change it to suit him before it finally got to him, maybe he can still wiggle around the edges and not deal with it by doing the signing statement thing that they do now. But if you had a line item veto, I mean, you wouldn't have a \$100 billion appropriation bill, you'd have a \$500 billion appropriation bill because members would just stuff it up with stuff that they would then take credit for, except for that "mean President" who struck it out of the bill. It would be as if to say that a line item veto is like a Congressional irresponsibility act, which it would be.

But, nevertheless, there's a sizeable chunk of them, in this case conservatives, who can't think how else to cut federal spending, who are prepared to give away this institutional authority, which would completely neuter Congress.

KRISTOL: That's such a good example, I think, of thinking seriously, as I would say, institutionally, as opposed to –

BERGNER: Yeah.

KRISTOL: This seems like a good gimmick.

BERGNER: This seems like a good thing.

KRISTOL: We all like spending.

BERGNER: Let's do this.

KRISTOL: Let's cut spending.

BERGNER: And the result would be the President would have all the authority in the world then.

KRISTOL: I hadn't really planned on this, but you were Assistant Secretary of State as you mentioned for four years, I guess, the second Bush term, most of four years, all of four years?

BERGNER: Not quite all. It took me a while to get confirmed myself. I don't want to make it look like my comments on confirmation had something to do with my own personal case, but I did struggle a bit.

KRISTOL: I remember. It was ridiculous what you had to go through.

BERGNER: I expressed some views on Cuba, that I didn't think the sanctions had worked all that well in 30 years. We still had Castro running the place. Why didn't we simply get rid of that and inundate the place with Americans? Well, that didn't go over in some quarters so well. But in fairness now, we're almost at 60 years and it still hasn't worked very well. So, I had some issues. So, I didn't get there until later on in 2005.

KRISTOL: So, just curious, you hadn't been in the Executive Branch. You had been very close to it honestly as a senior member of the senior staff in Congress. And then as a government relations person in Washington. But most of your work had been congressionally focused. So, what surprised you? What was your lesson from being at a high level of a major department? I mean, does it work better than you thought, less well than you thought? The bureaucracy is too powerful? Not powerful enough? Competent people, not competent people?

BERGNER: A number of things. The first thing was what surprised me was how little I had really to do with anybody except the appropriations committees. That was the first thing. I mean, I knew this intellectually, but to see it in person. I had to spend all my time dealing with [Representative] Frank Wolf and not at all with [Senator] Dick Lugar [Chairman of Foreign Relations Committee] was something I didn't expect. So, that was one thing.

Secondly, I realized that there were a lot of people in Congress who didn't act the way we did when I was there. When I was there, we tried very hard to work together with the Executive Branch. It helped when I was Staff Director that it was an administration of the same political party. And at that time George Schultz was the Secretary of State. And so, every two weeks he and his chief legislative guy would have a breakfast with Chairman Lugar and me either in his office at the State Department or in my office as it happened on the Hill. And we tried very much to coordinate. And when we said we couldn't be for something, which was a very hard time for Senator Lugar, that he had to disappoint George Schultz on the South Africa sanctions bill. Because they didn't want this in law; they were willing to do it as an Executive Order. But we were transparent about it and so forth.

What surprised me a little bit was that not everybody in the Congress acts quite that way and that there are things that they try to put in bills that they never even ask you about, which are sometimes very bad ideas. And so, I spent a lot of time putting out fires that I didn't think I would necessarily have to do, even for members of the same party that I was working with at that point.

KRISTOL: How about the Executive Branch itself? Did it work better than you expected? Was the quality of people better?

BERGNER: The quality of people struck me as generally speaking quite good and people were knowledgeable, more knowledgeable than their counterparts on the Hill usually.

KRISTOL: And [the Department of] State is a little special, with the Foreign Service and stuff like that.

BERGNER: A little bit maybe, but still in all, even with people at DOD or at the NSC I had the same feeling that I was surrounded by pretty capable people. I didn't always agree with them. I didn't always agree with people in my own administration.

This was something that, again, I had known intellectually, but it surprised me to see it in person, how much back and forth there is at a lower level in the Executive Branch, trying to do things that maybe even the President wouldn't support: trying to make our policy to Country X this way, not that way. And so, there were a lot of times when I felt like I was, in a way, trying to make sure that the State Department was consistent with what I thought the Secretary of State wanted to do, much less the Congress. And that was not always easy. There were a lot of differences of opinion *within* the Executive Branch and even within our department.

There was one occasion which was kind of amusing. Our Assistant Secretary from the Middle East wanted to get Saudi Arabia into the visa waiver program, the program where you can get a visa to come to the United States without an interview with a consulate official and you can just do it online. And every country wants this, of course, and especially wealthy Saudis did. You have some Saudi, you have to go down to the consulate, you know, it's so grubby. "I want his staff to just fill this stuff out online." This was a real deliverable.

The Assistant Secretary for Consulate Affairs thought this would be a disaster, that 19 of the 20 hijackers had come from Saudi Arabia, and that she knew who was going to get the blame if there was another event like that. It wasn't going to be the Assistant Secretary from the Middle East, it was going to be her. "Why did you change the visa program?" and so forth. So, they were just at loggerheads and fought about this for months.



And finally, they couldn't figure out any other way to solve this, but they didn't want to take it up to Secretary Rice. She didn't want to deal with this kind of internal disagreement. She wanted people to work this out. So, they came to me and said, "Look, you're on her level. Why don't you decide? Why don't you go up to the Hill and see if people think this is a good idea or a bad idea." And so, I said okay. And they agreed they would abide by whatever I came back with.

And so, you can imagine the temptation. I mean, I thought it was a bad idea personally. I mean, what did these people do to deserve to get in this program? And I could have, I suppose, just sat at my desk and made up an answer to this, but I didn't. In fairness, I went up and I talked to some R's and some D's on the Senate side and the House side and I produced a whole matrix of 10 or 12 people. I may have asked a few more people I knew would be against it, but I came back and said, "Look, the Hill doesn't think this is a good idea."

And so, they said okay. And so, the Middle East guy dropped it, and we went forward and we never did do that.

It was a wonderful thing for me. I had no idea how good this would be, because [afterwards] I could get a passport for people in no time. My record was 20 minutes once when a friend was at Dulles and thought her passport had expired. I said, "Message it down. We'll turn it around and message it right back."

KRISTOL: Because you were on such good terms with the passport, Consulate Affairs –

BERGNER: Oh, she loved me. She loved me. So, at any rate –

KRISTOL: Pulling strings still works.

BERGNER: A little bit. But, again, through no intention. This is just a happy result of that.

But there is always a lot of contesting going on in the Executive Branch for what the policies should be.

I remember Secretary Rice was very vexed by this problem about whether the United States should drop off the Human Rights Council in the UN or not. And, of course, there were some people who said, "Yes, for sure." And then you can imagine the entirety of the more diplomatic types at the State Department that said, "Oh, no, no, no. Very bad idea. We need to be there, in the fight, be in the mix and so forth."

And so, it's not as if the Executive Branch is a monolith coming against the Congress. It sometimes doesn't figure out itself what it wants because it's fighting with itself.

And that surprised me a little bit, the extent to which that was the case. Our North Korea policy in particular. I mean, it was just a knock down drag out, internal fight about whether we should do these negotiations with North Korea, the Six-Party Talk so called, or not. And it was really very tough stuff.

KRISTOL: Yeah, that's interesting. I found that too, I think, a little bit.

Young people coming to Washington, should they go to work on the Hill or not?

BERGNER: Well, having just denounced the Hill for an hour now, let me say this. I think if anybody's interested in government or Washington but doesn't know exactly what they want to do, Congress is a perfect place.

If you know what you want to do, and you want to take the Foreign Service Exam and spend your life as a career foreign service officer and do that, great, do that. If you want to get in the intelligence side of things and basically end up spending most of your life in that channel, I think, great, do that.

If you're not sure, I think there's no better place than the Congress. If you come in as a Congressional staff person – and I tell my students this – you will see in the course of a month everybody that has any interest in anything going on in Washington, which these days is just about everybody. You'll deal with other staff in your own Congressperson's office. You'll deal with people from other members' staffs. You'll deal with Committee staffs. You'll deal with the Executive Branch who interact with you a lot. You'll deal with the press. You'll deal with the single-issue groups. You'll deal with lobbyists. You'll deal with corporations. You'll deal with constituents. Everybody who's got any interest in what's happening in Washington comes through there, and you can sort of figure out what your best step is next. Whether you really like this or you don't like this.

For the same reason, all these aspiring lawyers that I seem to have in my classes who are fourth-year students at UVA, I ask them, "Have you ever done an internship for a summer in a law firm? Maybe you'll like this; maybe you won't."

Congress is a good place to test out what you might like or what you don't like. Maybe you'll be sick of the whole thing and move to California. I don't know, but maybe you'll discover that you kind of like this and you'll stay for a while. And then you'll figure out that you can move somewhere else, either into the Executive Branch, or into a corporation, or into a lobbying firm if you kind of like that, and the lucrative pay and all of that. I mean, you can sort of map out your future in a little bit more intelligent way if you've had a chance to just look at all this stuff right in front of you for a year or two, I think.

So, I recommend it as a good thing to do. Jobs are hard to find. Everybody that applies for a job has a Bachelor's Degree. Some of them have a Master's Degree You don't need it.

KRISTOL: Some of them have Ph.D.'s like you did when you came to Washington –

BERGNER: Yes.

KRISTOL: – and been professors, right?

BERGNER: Yeah. And so, I recommend if you can, to do that. But if you can't find a job, do something else, but intern up there. Tell a Congressman or Senator you'll work for free every Wednesday, Friday, and Monday afternoon or something. And if you're around and you help and you do good, if you solve more problems every day than you create, and then something opens up, well, you're a natural candidate at that point to fill that job because everybody knows who you are. And you may have expended six months or nine months living poorly and as an intern, unpaid and working at Starbucks or something, but you'll turn this into a job opportunity sooner or later, I think, if you've got anything at all going for you.

KRISTOL: Yeah, I do think it's a place you can be entrepreneurial. I mean, so much of America is corporate, or bureaucratic and you move up to – you're in this niche and then you move to that niche.

BERGNER: Absolutely, very different than the civil service, for example, where there are step grades and then 10 grades within each step and so forth.

KRISTOL: And specialties.

BERGNER: And it protects you on the downside. I mean, it's almost *impossible* to fire somebody in the civil service. I give an example in my book here about that. But it protects you on the downside, but it limits how much you can go on the upside.

On the Hill, there's no downside protections. If your member decides one day he doesn't like your tie, you know, you could be fired for no reason at all, other than that. Or if your member is killed in a plane crash or the parties change control and your member changes to a different committee and wants somebody with some more background in that area than this area. No protection at all. But on the other hand, most

people are young. A lot of them aren't married. Certainly, with today's demographic none of them have kids. And so, it's the perfect time to do this because on the upside you're not limited either. And you can go from somebody who steps in as a 22-23-year-old, freshly-minted, college graduate who is maybe doing correspondence or some legislative scut work of some kind, in two, three, four years, you can be the Chief of Staff to a subcommittee that's got \$100 billion worth of money under its control. And there's no real bound to the upside.

And so, for young people especially who can do this, I mean, it's not something you can do when you're older and you've got a family and you have responsibilities. You can't really take some job that you could get fired from the next day, but young people can do that, and I usually encourage them to do just that if they don't know what else they want to do, but they have a kind of a vague interest in government.

KRISTOL: Well, that's good advice, I think I can say. I didn't work on the Hill but – the breadth of what you get exposed to and the sort of fluidity of the jobs and the chance to – you know, "I thought I was interested in this, but you know, this is pretty fascinating. And I thought I was good at this, but I'm actually better at that."

BERGNER: You can find those things out about yourself.

KRISTOL: Yeah, much more than I think in a more constrained job.

BERGNER: And I've argued the staff is too powerful, that's a virtue of going and being a staff member is that you'll find that you have a lot of authority fairly quickly if you're any good at all.

KRISTOL: And then you can act as a staffer to fix the Hill and fix Congress, in the way that you recommend in the book. So, that would be the best of all worlds there.

BERGNER: That would be too much to hope for almost.

KRISTOL: No. Well, I hope this conversation has helped people think about that. As I said, for me, just the model in your book, and I hope this conversation of trying to think seriously in the spirit of the Founders in that kind of institutional way in terms of the design of the institutions, the incentives, the structures. As opposed to, "Gee, I think we should raise the minimum wage. Let's just focus on that."

But thinking about ultimately, the success of the government depends probably less on all these different policies. It depends on some huge policies, of course, getting them right. But it depends less on getting this policy perfectly right and that policy perfectly right, and more on having a self-governing system that functions well.

BERGNER: I think that's right. That's certainly where the Framers wanted the authority and the power to be, is in a group that came out of the people in a way that you might say no one in the Executive Branch does, except the President and the Vice President. And no one in the independent regulatory agencies do, and no one in the Courts do. This was the branch that was supposed to be accountable to people. And, unfortunately, as we've discussed, it sort of delegated away a lot of its own authorities.

My immediate hope is that the Senate Republicans will get rid of this 30-hour rule. That would be the first thing they could do. They talked about it the other day at a conference. They haven't quite the nerve up to do it, but they certainly should. They certainly should.

KRISTOL: And when that happens, we'll take credit for it right here. This conversation.

BERGNER: Absolutely, absolutely.

KRISTOL: Jeff Bergner, thank you very much for joining me today.

BERGNER: Thank you, Bill, I appreciate it.

KRISTOL: And thank you for joining us on CONVERSATIONS.

[END]