Congress Sinks to New Depths

The sad state of American democracy – from the presidential race to Congress – is easy to lament as something beyond correction, but change is possible if the electorate starts taking citizenship seriously, says Mike Lofgren.

By Mike Lofgren

We might have thought the Congress of the United States hit rock bottom in 2011, when it nearly drove the country into a sovereign debt default. It was averted in time, but Standard and Poor’s still downgraded America’s debt rating. Or was rock bottom the government shutdown of 2013? Or was the low point reached in the summer of 2016, when the Senate refused to perform its constitutional duty to consider a Supreme Court nominee, and left a court vacancy in the midst of several important judicial decisions?

No, Congress achieved its nadir of dysfunction at the end of September, with how it handled its first veto override of Barack Obama’s presidency. The bill in question is the Justice Against Sponsors of Terrorism Act (JASTA), which narrows the scope of foreign sovereign immunity from the jurisdiction of U.S. courts: a state involved in the death of U.S persons becomes liable for court claims. The bill was intended as relief for the next of kin of those killed in the September 11, 2001 terror attacks.

Because the likeliest target of a lawsuit over the 9/11 attacks was the government of Saudi Arabia, the administration had already issued a veto threat back in April: rescinding sovereign immunity would immensely complicate foreign relations, could subject the United States to similar suits, and might result in the Saudis pulling their estimated $750 billion of investments out of American financial markets.

Congress was not about to take this affront to its institutional majesty lying down, and accordingly overrode Obama’s veto by the overwhelming votes of 348 to 77 in the House and 97 to 1 in the Senate.

Instantly, buyer’s remorse set in, accompanied by Senate Majority Leader Mitch McConnell’s and House Speaker Paul Ryan’s plaintive wails that it was all Obama’s fault for not telling them the implications of JASTA forcefully enough – despite the fact that the administration had already threatened a veto for precisely the reasons that now weighed so heavily upon the members, and despite the fact that the whole thing was Congress’s bright idea, not Obama’s.

And, incidentally, when have the Republicans, who control both chambers, ever refrained from doing something because Obama thought it was a bad idea?
Typically, he is a reverse barometer for their course of action. One suspects Obama’s actions or lack of them were irrelevant to Congress’s instant regret. After the override vote, did the House and Senate leadership offices receive calls from some well-placed entities on Wall Street reminding them that the Saudis’ pulling their investments out of New York might kill the golden goose, as well as dampen the financial services industry’s appetite to attend fundraisers? I’ll leave further speculation to the reader.

This is not the place to analyze the merits or demerits of JASTA. Perhaps the moral and jurisprudential arguments override the principle of sovereign immunity – but Congress obviously never weighed the balance of those interests in a deliberative fashion, as it was constitutionally intended to do. Instead, members wanted cheap credit for associating themselves with 9/11 victims, and all other considerations be damned.

**Selling the Saudis Weapons**

The cherry on the cake of this tragicomedy is the fact that only a few days before approving JASTA, the Senate agreed to a $1.15 billion sale of weapons to the very same government of Saudi Arabia that it now wants to subject to lawsuits on the grounds that it is presumptively involved in terrorism!

JASTA is only the tip of the legislative iceberg. Congress simply hasn’t done its job: it has not agreed to a budget resolution – the most basic blueprint for spending – since 2009, and the last time all appropriations bills were enacted by Oct. 1 (the beginning of the new fiscal year) was in 1996. Partly this is just laziness, and the growing preference of members to pontificate via press release and sound byte rather than doing the public business.

But it is hard to interpret some of it as anything other than malign intent. Congress, like any halfway awake newspaper reader, has known for the last six months that the Zika virus was an imminent menace. Yet funding for public health measures were held hostage until late September by the insistence that the measure could only pass when paired with cuts to Planned Parenthood: in other words, poorer women would not be allowed to obtain fetal screening for potential health problems, including Zika.

The Zika funding only passed when it became clear even to the most addled member of Congress that the majority of the public preferred action on public health to ideological grandstanding.

It is all too easy for the American people to throw up their hands and sigh, “Congress! There go the two parties again! Like kids in a schoolyard!” Notice how the criticism, like rain, falls on the just and the unjust alike, implying
that the sad state of Congress is inevitable. There are three answers to this criticism.

First, the American people need to take greater responsibility for the people they elect. When they send a representative to Congress, it is a serious business bound up with maintenance of constitutional government. The notion of “sending a message” or “shaking things up” by inflicting a Louis Gohmert, or a Steve King, or an Alan Grayson on the country, is immature and unworthy of a serious body politic. Congress is a legislative body, not WrestleMania.

Second, there is plenty of blame to go around on a bipartisan basis—note that the veto override votes in both Houses were overwhelming. And, yes, politicians of both parties are beholden to corporate special interests. Nevertheless, the source of Congress’s extreme dysfunction lies predominantly in one party.

**Self-Fulfilling Prophecies**

For decades, the Republican Party has been damning government—established by the very Constitution that the party claims to revere. They promise to clean up the mess in Washington, and then proceed to throw sand in the gears of any possibility of orderly governance.

The resulting increased disarray then becomes their rationale to be reelected: a self-fulfilling prophecy. This is apparently a convincing argument for millions of low-information voters who want to shrink government to a size that it can be drowned in a bathtub, but also want their Social Security checks delivered on time, and with the customary cost-of-living increase.

Finally, democracies, like civilization itself, are inherently fragile. The self-brainwashing of millions of Americans by habitual exposure to the right-wing media-entertainment complex has replaced social trust with resentment, vitriol, and the perpetual hunt for scapegoats. This process has been faithfully reproduced in the actions of Congress.

At one time the inequitable political treatment of different parts of the country suffering from natural disasters would not have occurred to anyone. But with the seating of the Tea Party faction in Congress in 2011, that changed. Tornadoes in Joplin, Missouri, and Tuscaloosa, Alabama, were promptly addressed, but Red State Republicans dragged their feet in addressing 2012’s Superstorm Sandy. Why? It affected predominantly Democratic constituencies.

The same syndrome repeated itself this year: September’s inundations in Louisiana were speedily tackled, but Republicans only grudgingly included funding to solve the Flint, Michigan water crisis to avoid being blamed for another government shutdown, even though the contamination had been a nationally
known issue for a year.

This kind of endemic bad faith within our national legislature provides abundant evidence that the problem in our governing institutions is not confined to nominating the occasional lunatic to be a presidential candidate. The rot extends to Congress, the focus of the very first article of the Constitution and, as James Madison believed, the premier instrument of popular self-government.

It is well past time to clean up Congress. The first step is for the electorate to understand that choices have consequences, and that voting is a serious responsibility— not just for president, but down the ballot as well.