

Interviewee: Frances Lee
Part 2

MATTHEW CHERVENAK: I'm curious about your perspective on bills, on the concept of message bills versus bills that people actually want to get passed. Could you talk a little bit about that? What's your perspective? Has it increased or decreased over time? Does it matter? Is it something that's a useful thing for Congress to do? Or is it a waste of time? Interested to hear your perspective on this, on the mix of bills that are in any individual Congress and the percentage of those that are messaging, and what does that mean.

FRANCES LEE: Well, a messaging bill is a bill introduced for the purpose of taking a stand and for communicating a point of view, a preference on an issue, to force the other side to take a vote that will embarrass them in some way. It's legislation offered for reasons of political posturing, not actually to change the public law in some manner. That no one has any illusions that this is actually going to become part of the statute books, the US code.

Lots of legislation is introduced for those kinds of political purposes. It's more than used to be the case because of increased competition for majority status. Lots of legislation is introduced for partisan messaging purposes, to try to put the other party on the spot, make them vote for something that will embarrass them in some way, highlight the unpopular aspects of the proposals that they're putting forward.

More institutional resources are devoted to this kind of activity under current conditions of intense and narrow competition for control, so it goes hand in hand with the rise of communication staffers in the legislative branch. About half of all the people who work for the Senate leadership, for example, work on communications not on policy. They're not policy experts. More and more members of Congress have hired more communicators, so there's lots of legislation that's introduced just to make a point. It's not serious. Think about all the bills to repeal Obamacare Republicans easily passed after Republicans won control of Congress in 2010.

It didn't mean that they actually knew what healthcare policy they wanted or that they had a plan for how to improve healthcare policy. This was a way of saying, We think Obama is doing a bad job. That's basically what those bills were. They were not serious efforts to legislate. They knew that they'd be vetoed if they even managed to pass them through both House and Senate.

And I'm just choosing that as an example because it is such an easy one. Because we were able to see after the 2016 elections that Republicans had a great deal of difficulty figuring out what they wanted to do on healthcare policy. But, the same principle applies, generally, that messaging doesn't mean—. The fact that you can put a messaging bill forward doesn't really mean you've worked out the complexities of the policy.

Democrats can vote to have a \$15 minimum wage all day long as long as they don't have the majority. They could force members to take stands, propose amendments to move them to raise the minimum wage, make their opponents vote against it, but then when you put them in power, then they have to figure out, well, How much can we really raise the minimum wage without causing job loss? How much can we raise the minimum wage when the cost of living varies so much across the whole country? They have to deal with the complexities of public policy when it comes to real governance.

But messaging doesn't require you to deal with those kinds of complexities, and so it's very simplistic. It's designed for campaigns, for the 30-second ad, and it's misleading to the public in some key ways. It makes the public think that all this is very simple. All we have to do is, you know, vote. We can just get rid of Obamacare. Well, wait a minute, like, Now what are we going to actually—? How is this really going to work? What do you intend to do on police reform, for example?

So to work out the real policy problems in an area is a completely different enterprise than proposing these symbolic messaging bills. And so a lot of congressional resources today are oriented toward this kind of politicking, using their bully pulpit as members of Congress to take stands rather than to actually try to solve problems.

It's a misuse of resources. You might think of it as a form of public financing of congressional campaigns. We provide them with all the staff to do all this messaging, and they're paid for by taxpayer dollars. And I think there's some concerns about that as a use of public funds.

CHERVENAK: Any other of your research that you'd like to discuss before we move on to the questions that I ask of every person who comes on the program?

LEE: No, I have filibustered at some length here.

CHERVENAK: Alright, so you're ready for the next questions. My first one here is about what you think congressional representation should mean.

LEE: Congressional representation should give voice to all the interests, concerns in society, as it bears on an issue. That Congress needs to explore all the implications of government action in any given area. And to do that, you need to hear from different vantage points. And so that's why you have a representative assembly bringing together representatives from all parts of the country with different types of backgrounds and experiences and coalitions that elected them and to hear from them.

To be effective representatives, those members need to have the trust of their constituencies, so they need to be able to speak in a way that their constituents will feel spoken for.

So that's the function of a representative body. Now, we also ask that representative body to legislate, to take action in the public interest, and those two tasks are at odds. Or, there's a

tension between them. Giving voice to all these perspectives and hearing everyone out gets in the way of getting things done.

You want all the parties'—the ideological viewpoints, philosophical viewpoints, interests—you want them heard, you want them represented, you want them in the room, ideally, somehow roughly in proportion to the country that they represent. But we also need Congress to be effective as a policymaking institution.

That's a lot to ask of any one organization to accomplish. And there are times when Congress is doing a better job at one than the other.

I don't think Congress as an institution can successfully maximize both those goals simultaneously given that they do cut against each other in fundamental ways.

CHERVENAK: So when you talk about representation, it seems to me like there you're assuming that the representative makes judgments rather than reflects beliefs.

LEE: Well, they have to do both those things. They do need to reflect, also, because they need to maintain the trust of their constituencies. They cannot just act in ways that make sense to them as representatives but that their constituents cannot continue to support or understand. I mean, you'll lose your seat if you do that.

CHERVENAK: But should that be a concern of a representative?

LEE: Well, they're there to stand in for the people they represent, so if the people judge them as having done that poorly, they don't trust them anymore. Then, you're failing, basically, at the fundamental task of a representative.

Now, there's, like I said, the policymaking role is somewhat different, but to be an effective representative you need to be trusted, and that means doing things that make sense to the people who sent you there. You can depart in some ways. You can use some leeway. You can say, I've studied this more closely than you have, and this is why I think this is the right thing to do.

But, in the end, they wield the electoral check. That's democracy. It is democracy's intention with technocracy—people who really know what they're doing, being empowered to govern.

Members of Congress are not experts. They tend to know more than their constituents do, but they still need to act in ways that their constituents can relate to and where they still feel represented. That's the task. It's not easy. It's why members need to spend a lot of time back in their constituencies. And they need to spend a lot of time meeting with and talking with people so that their constituents feel heard.

When a decision-maker in any organization has to finally come down and say X or Y, this is what we're doing, these are our priorities, in order to maintain the confidence of the organization, different elements need to think, well, I got hurt, they didn't decide to take my advice, but there were channels where I could be heard.

That's what constituents need to get from their representatives. They need to feel heard. And then the legislative process needs to bring those voices into consideration. Doesn't guarantee anything about who wins and who loses or what decisions get made. But, fundamentally, representation rests on that sense of trust that comes from a sense of having been heard.

CHERVENAK: What you mentioned there about the constituent side leads nicely into my next question which is, How would your ideal Congress allocate its time?

LEE: Well, it's hard to answer that by way of a rigid formula because the demands on Congress change. Think about 2020. Enormous crisis in the country. This pandemic affecting the entire world and the entire country. And the need for assistance from whole sectors of the economy that couldn't continue to function in the interest of public health and well-being. Large increases, huge spikes, in unemployment simultaneously in every state and no pre-existing policies designed to cope with that kind of increase in unemployment everywhere at the same time.

That's a time when Congress needs, we need, the Congress in session. Congress has to figure out what to do at such a time of need.

There are other times where the pressures are less great. I mean, of course, there are problems, but much of the time, Congress is devoted to routine matters of, well, what level of appropriations, no great shocks, no economic crisis, no financial crisis. The variation over time and what's needed. You need people in Congress to be able to step up in these times of crisis. And to do that, you need members who command the trust of their constituents.

CHERVENAK: So, in non-crisis times, if we divvied up the time among legislation versus oversight versus campaigning versus legislating or oversight. Do you have any thoughts about how that time should be allocated?

LEE: The problem is there's not enough time to go around.

CHERVENAK: That's precisely why we need to prioritize, right? And that's what I'm trying to get from you is, you know, obviously you talked about messaging is taking up time and resource. And it seemed that you questioned the value of this exercise in the legislative circle, so I would assume that that time you think would be better spent doing real legislation compared to the fake legislation. Would that be accurate?

LEE: I do think it's a waste of institutional resources. I'm not sure that taxpayers should be funding these enterprises on the parts of members of Congress. I mean, too, it's a political

question. How they devote their time. Whether they are aiming at winning power in the next elections, or whether they are focusing on the problems of today.

I don't think we can set up institutions to prescribe an answer to that, but we can say, you can't use taxpayer dollars to run for reelection. There were regulations around the mailings that members of Congress could send out. Well, we have funded members of Congress now to have large staffs of people who don't have policy expertise and who work to get their members' public attention. And who put together messaging documents and who engage in liaison with organizations that support the party to try to drive a particular message in the public discourse.

I think we could probably look at some regulations there right along the lines of the old regulations that we used about what could you do with your newsletters. Those are not supposed to be to help you to raise money for your campaign. And so there are restrictions on what members can do with that.

We could take a look at some of the ways in which members are using their staff resources, so that at least we're not footing the bill for activities that are political in nature and not—

CHERVENAK: —but we're footing the bill if the time of the member is also allocated to such activities, right. It's still an opportunity cost for the member himself if his time is spent doing such activities.

LEE: Yes, but what I'm saying—. You're right. You're absolutely right in pointing that out, but it is a political question whether you should cut a deal now or whether you should try to win enough power so that you can get the bigger package later.

So think about the Democrats who wanted to do something on healthcare for many years. Do you do incremental reform? Say, aim at helping children get health insurance. You can do some public good from their vantage point, by their lights by doing that, but it saps the energy for broader reform. So do we cut this narrow deal now? Or do we say, We're not going to negotiate. We've got to have universal health care or nothing less. And we're going to campaign and we're going to win a majority to do that.

That is a political question. I don't think we can prescribe an answer to that, and say, you know, you got to cut the incremental deal rather than take it to the voters, message on it, help people see that this is what's at stake in the elections, and try to win power.

And so that's where we can draw some lines of how do you use the resources that we give you as a member of Congress. But the political question of whether we should seek the compromise deal or aim at something bigger, I don't think we can say at the outset, there's one right approach there.

CHERVENAK: I want to ask you, then, because of your opinion on this concept of funding, the communication aspect of each member's office, which you think potentially could be a misallocation of resources, what about the idea of constituent service?

A lot of them would say, well, this is constituent service, we need people to collect all this information and communicate with our constituents, and we need offices for that, and we need to be able to collect all these ideas. People who need help with the VA, or they need help with their Social Security and they need help with the Medicare or the Medicaid.

What's your opinion of that expense for individual member personal offices and senator offices. Does that fall into the category of misallocation?

LEE: It's a pathway by which members understand the problems and their constituencies to hear from people who are having difficulty with federal programs with the way in which federal programs are being carried out, their access to resources, to know where policy pinches or where it's missing its intended recipients.

It is a path by which members collect information about what is happening back home, so I wouldn't see it as meaningless. Now, there's been proposals in the past to farm out more of this ombudsman work to professionals. That if you've got a problem with your missing Social Security check, should members of Congress really have to do that or should there be some other way in which that can get handled.

I think there's room to look into those kinds of reforms. But, fundamentally, casework is a way for members to know what their constituents are struggling with, where the problems are. They need to hear from them. One of the challenges of being a representative is to hear from people, get them to talk to you so that you know what is on their minds, what are the problems that they are facing, how do you meet them. You know, you hold a town hall and some cranky voices show up, but they're not representative of your constituency.

How do you find out? And so, casework is a path for that. I wouldn't dismiss all that as wasted resources. The precise balance is one thing, but it's certainly not all a waste. It's a way for members to build connections with their constituencies, and as I mentioned earlier, that trust relationship is fundamentally what representation is all about. That you can speak for me. You understand me. I trust you to deal with these problems because I know you and I believe that and care about me.

That's fundamentally what that transaction is all about—representative democracy is about. So a constituent feeling that the members help them out—. I had problem with my disaster relief and I got help from my member. That makes me feel that government is responding to my needs and that my representative cares about me. That has value in the democratic system given what the representative bonds, fundamentally, are.

CHERVENAK: How should debate, deliberation, or dialogue occur or be structured in Congress?

LEE: I think we need to allow members of Congress settings where they can discuss issues with one another. We need to trust them enough to let them do it without the cameras being on.

CHERVENAK: So you want some private places. Is it in the committee? Is it some kind of other mechanism?

LEE: I think committees are the best setting for it because it's focused on policy in a given area. I think committee retreats are a good thing, where members can spend time with one another across party lines, build some relationships, find out where we have some common ground. If I want to work on this, maybe there might be somebody across the aisle who also cares about this issue, but I wouldn't have ever known if I hadn't spent some time talking with my colleagues across the aisle.

So, spaces for that to happen. Prioritizing doing that. I think the prohibitions or the public disapproval on junkets or travel, that's misguided. I think, travel together. If you listen to members of Congress talk about their experiences and serving in the institution, they talk about the meaningful relationships that they forged during the times where they had sustained opportunity to get to know other members. And travel has been a way to do that.

And so, I think that that's a good use of members time because it permits them to forge those relationships of trust with their colleagues so that they can have those frank discussions that can uncover where common ground lies. I don't want to be overly sunny about it, and say, oh well, they're going to be friends and that's why they can legislate. It's that they understand one another better when they talk. Not that they necessarily become friends, and sometimes they're not going to like one another, but it helps a great deal for me to know what you really care about. And sometimes we can figure out a way to solve problems so that you get what you care about, and I get what I care about too.

CHERVENAK: Well, I think that's a kind of trade. Turning the discussion into a market. I think there's also, hopefully, this idea that one could convince someone else that a particular action is in their interest or in their constituents' interest. The whole concept of convincing someone else of something, I think, we also shouldn't give up hope on.

LEE: No, we shouldn't give up hope on it, but in many cases the way that convincing occurs is by finding out what it is that others need and care about and what their concerns are. If you're going to legislate in an area where different interests in society are going to be pinched, find out, What can they accept? What would work for them? What would be problematic?

Legislation regularly involves trade-offs. What's acceptable? What can you live with? Those kinds of discussions need to happen, too. That's not a matter of persuading so much as of finding a path forward to something workable that can improve the situation, coordinate us better, regulate in the public interest in a way that's acceptable. And not stupid. Sometimes regulations are designed, and they're so misguided. Because when they were developed, they

were not developed with a good understanding of the processes that they were regulating. So that need to hear and to understand where one another is coming from.

CHERVENAK: My next question is, What institutional improvement should Congress make within 50 years? Is it this concept of closed-door deliberations? Or do you have some other ideas that you think are more fundamental?

LEE: I think Congress has places to do closed-door deliberations. I think, in that case, what we need is a better understanding among the public and in the reform community of the value of those, instead of seeing it as illegitimate in some way for Congress to have a meeting behind closed doors. I think that that's more of a matter of understanding the institution and what we expect of it and what needs to happen.

So, I'd see that as more of a reform of the reformers rather than of the institution. The institution can find these places. They still exist. They just they migrate. They move to different locations. If you turn the cameras on in one place, the deal-making and negotiation go some other place.

I do have concerns about the structure of the Senate. This goes back to my earliest work. That it's problematic when a large majority of the country's population is in a small minority of states, you know, where 60 percent of the nation's population is represented by a quarter of the senators. That departure from one person, one vote in the Senate is very extreme. And that's less of a problem during times where large states and small states don't differ so much, where their interests are not at odds. But where political divides begin to split large states from small states, that becomes more problematic. It means the playing field is not level in some fundamental ways.

That is worrisome to me about the Senate as it relates to the society that it represents. That kind of discrepancy is risky for the Senate.

CHERVENAK: I hear you there, but my question is about what Congress could do in 50 years. I don't think they can change that inequality in a 50-year time frame. That would require a big restructuring, I would assume, unless there's a way that Congress could actually affect change in that area?

LEE: No, Congress can't do, I mean, it would require changing, it's a constitutional change so Congress alone—. I was thinking of changes to Congress as an institution, not what Congress can do to change itself.

CHERVENAK: Okay, what could Congress do itself to change itself?

LEE: This is where I hesitate based on my knowledge of congressional history to make quick recommendations. That reforms that have been aimed at making Congress work better have not always done so, and, in fact, have often had unanticipated consequences.

Transparency reforms in Congress were aimed with the highest of motivations to bring Congress closer to the people, to make Congress better understood by the people. I love to have C-SPAN as someone who studies Congress, but I don't think having it made Congress work better.

Things that you think sound like they make great sense at one point in time can blow back on you in very troublesome ways. I see these as large-scale political questions. I get a question, Who should lead committees? The old way in which this was handled is this should be decided on the basis of seniority. That's when Democrats couldn't agree on an agenda. They couldn't agree on an agenda, so they couldn't agree on how to choose committee chairs, so they just said, well, we're going to have committee chairs chosen by whoever's been on the committee the longest. In other words, we're not going to make a decision about who we're going to give agenda-setting authority to. We're going to let it fall out by accident.

So now in Congress, there's more of a role for party caucuses to decide who will be committee chairs. And then the Republican side, the Republican conference, they put a term limit on it, and so committee chairs are handpicked by leadership. And often there's a competition among people who'd like to be committee chairs, who can raise the most money for the committee—and raise the most money for the party, I mean.

So the old way sounded really stupid. That we're going to have committee chairs based on who's been there the longest. That seems very irrational. And you put some not very talented people in leadership roles for a long period of time.

But now to have it this other way, where then the competition is who can be the most loyal lieutenant of the leader and can be the most helpful to the party in fundraising. That's problematic, too.

So that's what I mean about how this is an area where angels fear to tread. That reforms that sound very sensible wind up having serious downsides. So decision to give members of Congress staff. They need help. Then they wind up using the staff for posturing and for communications and not serving the public interest. But they need that information.

I'm happy to offer my perspective on congressional history in this area and on the difficulties of congressional reform, but I do not feel that I have a set of recommendations to say this is what Congress needs to do.

Instead I would encourage you, as you work in this area, to vet proposals very carefully, especially where you begin to see groupthink in the reform community. Because I can't think, reflecting back on congressional history, of a reform that was unambiguously good and that didn't have ramifications that were not anticipated by those who adopted the reform in the first place.

CHERVENAK: Next one is an easy one. What book or article most shaped your thinking with respect to congressional reform?

LEE: I think the best book on congressional reform is Eric Schickler's *Disjointed Pluralism* that looks at the different motivations members of Congress bring to congressional reform and how reformed coalitions get brought together in ways that sort of log roll across the different concerns members have—they never serve just one purpose—and that congressional reforms layer on top of one another often in ways that are not rational and are not productive, but no one gets to start with a blank slate. And anytime reforms are adopted, they affect the allocation of power or other interests members care about, so accommodations have to be made with those pre-existing stakeholders.

That book details congressional reform efforts throughout the whole history of the institution. It's the most comprehensive and authoritative work on congressional reform politics. It doesn't offer any clear answer, any easy answers, any set of recommendations in the end, but sort of understands that Congress never maximizes one goal, whether that be the reelection of members or party power or policy expertise, and these goals compete with one another as members consider ways to change their institution internally.

If you haven't had a chance to talk to Eric Schickler, I would recommend that you do so. I think you could get some great perspective on other moments when Congress has considered reform proposals, and, when Congress has succeeded in instituting major reforms, how did those come about.

CHERVENAK: He's on the list.

LEE: Alright. That's good.

CHERVENAK: So my last question also is related to your own work. Obviously, you've done a tremendous amount already, and you have a number of books out, you've looked at parties, you've looked at this concept of equilibrium, transparency, all these different areas. What's your plan for the future? If we look forward five, ten years, Where do you see your own research going? And what questions do you think are the most interesting?

LEE: I'm interested next in exploring media coverage of Congress. I see media coverage as misleading about how Congress operates in some fundamental ways. And that it gets in the way of public understanding of what Congress does and doesn't do. That there's too much focus on politics relative to policy. What Congress actually does, and did, and accomplished versus where it's deadlocked or where it's struggling. That there's far more coverage on the latter than the former.

We had a major legislative package passed at the end of December last year. Not only did it fund the government for the rest of the fiscal year, but it also included a major energy package, significant environmental legislation, a healthcare package, too, dealing with surprise medical

billing. There's a bunch of stuff in there that almost no attention at all. If you ask people, What did Congress do last year? Even people who follow Congress closely, it'd probably bring them up short.

And it's an amazing legislative year. I mean, the Cares Act itself. I can't think of any piece of legislation comparable to the Cares Act in size and scope, and yet not much coverage there either of what it actually did and follow through on that on the policy. All the coverage of the minutia of political posturing, and not enough attention to what the institution actually has done.

And so, I think that the public sense that nothing is getting done in Congress—they do nothing but engage in attacks of one another, and there's continual gridlock—that picture of the institution is, to a great extent, a reflection of the way in which it's covered. Congress does more than is understood, and there's not enough attention to what actually is happening. It's coverage of Congress as entertainment. I want to explore the gaps there between what actually happens and what actually gets covered as having happened in Congress.

So, I guess, you'd say my next research is looking more outside the institution to how the institution is perceived and portrayed in public consciousness.

CHERVENAK: Sounds excellent. Looking forward to it.

LEE: Thank you.

CHERVENAK: Thank you very much for joining us. I really appreciate it. It was a great learning experience. And best of luck with the future work.

LEE: Thank you very much. I appreciate this this conversation, and I look forward to seeing where you take the organization next.