

HOW TO GOVERN IN TIMES OF GRIDLOCK

**By Maria Fornella-Oehninger*

Two weeks ago was the 40th anniversary of President Nixon's dramatic resignation. He did so against his own will, in order to avoid the certainty of impeachment as a result of the Watergate case. This event, together with the traumatic defeat and withdrawal from Vietnam that preceded it, resulted in a dramatic loss of trust in the Executive, followed by strong legislative action to limit its powers. It also revealed the growing partisan polarization that has characterized the politics of the following four decades.

Today we may be living the climax of this polarization, as Congress is unable to pass badly-needed legislation on immigration, energy and infrastructure funding, to name a few. Indeed, not even the presence of 40,000 unaccompanied Central American children at the border is sufficiently dramatic to bring about some kind of consensual action. At the same time, President Obama is being sued by the House leadership for abuse of power, and the media are irresponsibly talking about possible impeachment, the ultimate use of legislative power against a democratically elected President.

The transformative President has fulfilled or at the very least addressed most of the platform under which he was elected in 2008 and re-elected in 2012. Obstruction in Congress, his own bad foreign policy decisions and constant complaints from the left wing of his own party have resulted in low approval ratings (around 40%) by a frustrated public that has, for the most part, tuned out of politics. This will no doubt have consequences for the coming mid-term elections, when the majority of voters will stay home, giving an advantage to the militant extremes on both sides of the ideological spectrum.

Gridlock in government is nothing new. In fact, the fathers of the Constitution preferred Congress to "muddle through" rather than being too pro-active. Incremental, slow change was preferable to

sweeping reforms. Yet this 113th Congress, now in its long August recess before its return to a full-fledged electoral campaign in September, is probably unique in its paralysis. There are not only deep divisions between the two Houses, each dominated by one party, but also within the House of Representatives itself, where the GOP has a majority of seats but is so internally divided that it has had to withdraw many of its own leadership-introduced bills for lack of votes from its own party.

This Do-Nothing-Congress that left town on August 1st for a five-week recess is the least productive in History: Congressional productivity is down from 151 in the previous 112th Congress to 142; the originally “Do-Nothing Congress” of 1947-48 passed 906 laws.

Nothing seems to be sufficiently urgent or dramatic enough to bring the GOP legislators to a consensus, not even the unprecedented border crisis, where 40,000 unaccompanied migrant children from Central America are amassed in military bases and other government agencies at the southern border, awaiting due process. The House leadership was ready to pass a bill to provide a small part of the funding the President had requested to help him address the surge of newly arrived immigrants, but it did not have the votes. The Tea Party, on the other hand, opposed the funding and wanted to introduce its own bill to speedily deport the children and to rescind the President’s authority to decide whether to deport or not certain undocumented immigrants from earlier waves of immigration.

Late in the afternoon of their last day in the Capitol when all bags were packed and representatives were ready to leave, Speaker John Boehner announced he was ready to withdraw his bill since he didn’t have the votes, and let the recess begin. But Tea Party favorites Steven King and Michele Bachman demanded a vote on both measures. Finally, at the eleventh hour, Boehner compromised: both bills were introduced and passed by a narrow vote. They are at this point insignificant, and very unlikely to become laws since the Senate will not consider them. But the point was made: the Tea Party’s main goal is not solving any problems, but instead keep constraining presidential powers to the point of total ineffective government. They are succeeding to a large extent, even if Obama has been quite deft at using his executive authority of implementation to break free from the imposed legislative shackles.

Dysfunction in government is the new normalcy in the nation's capital. These bills were only a modest attempt to deal with the crisis of the day, but the acrimonious debate brought into relief a bigger systemic failure: the inability of Congress, since 2007, to pass a comprehensive overhaul of Immigration law. Once the Senate passed it last summer, it was expected that the House may come up with its own proposal, which would have been a series of smaller bills to solve the problem piecemeal, thereby satisfying different constituencies with a mixture of more border security, more workers' permits and other special visas, and the granting of legal status to the 11 million undocumented.

Unlike the year 2007, when G.W. Bush had expressed support for Comprehensive Immigration Reform legislation but could not muster enough consensus, this time around (2013-2014) it was supposed to be different. For the first time the concept had widespread support from all the very powerful interest groups concerned: corporations, labor unions, the Christian Evangelical right and immigration advocates. But it was halted by the Tea Party in the House and no legislation was passed.

It is this vacuum, among others, that the Executive has been trying to fill through administrative measures and executive decrees. The President used his prosecutorial discretion to solve some aspects of the enormously complex issue of dealing with 11 million undocumented immigrants, most of whom have lived and worked in the US for ten, twenty, or even thirty years. One example is the President's policy directive that provided temporary relief from deportation and study/work authorization to young people brought here illegally by their parents between certain dates, and under certain conditions (DACA). Lately, Obama has expressed some interest in extending DACA to the children's families, causing more Tea party outrage and increasing their attempts to stop him.

To strike a balance and to give more legitimacy to his unilateral decision to solve that part of the problem, the President has applied to the letter the pre-existing immigration law to deport (other) immigrants through the Immigration and Customs Enforcement Agency. He has deported more immigrants than any other president before him (360,000 in 2013 alone), earning him the sobriquet of "Deporter-in-chief" and the antipathy of immigrant advocate groups.

During the latest crisis of children at the border, Speaker

Boehner expressed his “frustration and his concern” with the situation, and quite cynically called on Obama to “take steps to secure the border and return the children to their home countries”, adding that the President “didn’t need Congressional action to do that”. Given that the Speaker is suing the President (just a political gesture, since he has no legal standing to do so) for over-stepping his Constitutional powers, his hectoring makes even less sense. In any case, his frustration was misdirected: Obama had asked Congress to approve funding for this operation and a Republican bill was ready to be introduced, but the Speaker himself was struggling to get the Tea Party votes he needed to pass it. This sort of dysfunction is a weakness the Republican Party will need to address in order to succeed in future elections.

The November mid-term election will be critical: according to the latest polls, Republicans have around an eighty per cent chance to win the six seats they would need for a majority in the Senate. With both Houses in Republican hands, the President will not only lose the minimum control he now has to shape the agenda but he will also find it very hard to keep in place the policies that he is already implementing.

If we add to that the problematic challenges he is now faced with on several foreign policy fronts, none of which can be solved in the short term, a Republican win becomes almost certain, not only in 2014 but also perhaps in the 2016 presidential election. But in order to seal those wins, Republicans will need two fundamental elements they lack now: party unity and a positive agenda.

*Professor Maria Fornella-Oehninger,
Old Dominion University
Virginia, U.S.A.