

The End to Sunshine

Unedited excerpt from 1992 book "Washington At Work: Back Rooms and Clean Air"
By Richard Cohen (Washington Post)

When they finally completed their drafting of the clean-air bill on April 5, 1990, the exhausted Energy and commerce Committee members were pleased and relieved. After nine years of fits and starts on the bill, they finally could see the light at the end of the tunnel. But if that light was growing brighter, another one had remained remarkably dim during the committee's work: the light of public sunshine over the legislative process had all but disappeared.

Among the most significant institutional changes during the 1970s, when the House and Senate overhauled many internal procedures, were decisions to open most committee meetings to the public. Only in unusual circumstances did members vote to shut the doors in the initial years. The "sunshine" movement had flourished in response to pressures from junior members to force more accountability by powerful committee and subcommittee chairmen. It also mirrored the public demand for openness in government, inspired by groups such as Common Cause. In the wake of the Watergate scandal of 1972-1974 and the election of President Carter in 1976, secrecy and back-room deals had gained a bad public image.

Why, then, were nearly all the House committee's meetings and decisions on the clean-air bill conducted behind closed doors, often in the middle of the night? Why, for that matter, were the Senate's negotiations likewise in back rooms? (The legendary "smoke-filled rooms" of Congress are a virtual relic - few lawmakers or their aides smoke cigarettes at work. The surviving traditionalists often are the target of social pressure from non-smoking colleagues.) The answer, said participants in each chamber, was that, despite some personal doubts about the process, they had no other way to build the consensus and gain the votes required for such a controversial bill.

“All of us were surprised that the meetings were so closed” said Sharp, a political science professor before he was elected with the 1974 Watergate class. But, he continued, the public commitment to open government had diminished during the 1980s. “In the 1970s, we junior members argued strongly for openness, as did the media. But we discovered that people posture and abandon the responsibility of legislating. So, the public ethic in the 1980s shifted from openness to the ‘can you decide’ question.” He justified the switch on the basis that “there is a big difference between closed meetings and secrecy.” With the clean-air bill, he claimed, most sides of the public debate were represented in the negotiations and interested citizens could learn what had happened from their elected officials or from interest groups on all sides of the debate.

Defenders of the closed-door meetings said that the framers of the U.S. Constitution would not be surprised or disconcerted by this shift. After all, the founding fathers conducted most of their work behind closed doors in Philadelphia more than two centuries earlier. Nor would they necessarily be troubled by the lack of roll-call votes, a pattern that continued when the clean-air bill reached the House floor. Lawmakers have the responsibility not simply to choose up sides but also to educate and convince each other of the merits of their arguments. From these exchanges, it is argued, can flow a more complete understanding and coalescing of the nation’s diverse views. But the theory didn’t work in this case. “We had had 10 years of public meetings and posturing on clean-air that led nowhere,” said Rep. Cooper. “Sometimes, the normal process can impede results... Our real work is not in the votes but in our meetings in the side rooms. This was the most intensive work I have been involved with.” Participants made a similar defense of the Senate’s closed-door negotiations. “The alternative probably would have been no bill,” Baucus said. Handling the bill and the innumerable amendments on the Senate floor would have been “a chaos,” he added.

Even an informed observer who raised questions about the recent decline in congressional openness said that he could not offer a better alternative. Ex-Rep. Tauke said that the public “should be concerned” about the movement toward closed meetings in Congress. “But I know

of no other way for Congress to conduct its business,” he said. “An interest group with a specific issue will be very motivated to make its views known and learn what happened. The general public is not so motivated... But behind closed doors, lobbyists don’t know everything that is going on.”

On the clean-air bill, the political complexities in moving controversial legislation were compounded by the technical complexities facing often inexperienced lawmakers and their aides, who were trying to explain and understand what was happening. Important nuances could have been easily overridden in public debate with disastrous policy results, a clean-air expert said. It was more important, according to this view, for the technical experts to retain some control over the debate so that such mistakes were not made.

But there were additional reasons for moving the debate behind closed doors. Many members of Congress undoubtedly welcomed the political cover that they received by having to cast so few public votes on the clean-air bill. “Many members were not anxious to vote,” Dingell said. “They were under enormous pressure from both sides. In their view, it was politically dangerous.” It was far easier, and preferable, for them to tell their constituents that they had approved the landmark legislation without being forced to make the type of difficult choices that delayed approval of the bill for nearly a decade. Therefore, when Dingell and Waxman in October 1989 cut their private deal on new rules to limit automobile emissions, they not only settled a long-standing sore point between the two of them they also saved many Democrats from a likely no-win vote in which they would have been lobbied by the United Auto workers and others from organized labor on one hand, and by the environmentalists on the other.

The larger trend, which has been virtually ignored by most Washington news reporters and other observers, raises important questions about how Congress operates. Representative government rests on the principle of the accountability of elected officials. But a legislative system that was designed by the framers of the U.S. Constitution to be a forum for the nation’s competing factions to find common ground has

virtually collapsed from countervailing pressures. If these lawmakers make all their decisions in closed rooms or defer to a few expert colleagues and their aides, how can the voters judge the effectiveness and wisdom of their representatives? If the issues and the choices have become so difficult to comprehend that these leaders are not well equipped to decide, then the premise of self-government has become diluted. And, as was the case with most of the 1990 Clean Air Act, when press coverage of the legislating is so sparse that few citizens can receive more than superficial information, the opportunity for informed consent is curtailed.

When government makes decisions that inescapably will have a wide-ranging impact for many years, the smooth functioning of the democratic process makes it desirable that its citizens understand the changes. Many of those who are governed are likely to gripe, for example, about clean-air decisions that raise the cost of dry cleaning or limit the use of barbecue grills. But they might be more inclined to support those actions if they knew that the alternatives are more expensive automobiles or air that is more difficult to breathe.

As the House prepared to debate the clean-air bill, these dilemmas undoubtedly became apparent to many members. But in the helter-skelter world in which they often operate, it was easier to brush aside these problems and leave them in the care of the “experts.”