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The History of the Speaker of the House

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Jeffrey Rosen: Hello, friends. I'm Jeffrey Rosen, President and CEO of the National Constitution Center, and welcome to *We the People*, a weekly show of constitutional debate. The National Constitution Center is a non-partisan non-profit chartered by Congress to increase awareness and understanding of the Constitution among the American people. At the beginning of January, Representative Kevin McCarthy of California became the Speaker of the House of Representatives after 15 rounds of voting. It was the first time a Speaker wasn't elected in the first ballot since 1923. In this episode, we're joined by two great scholars, Matthew Green and Josh Chafetz, who can tell us about the role and the history of this important constitutional office. Matthew Green is professor and chair of the politics department at Catholic University. He's the author of *The Speaker of the House: A Study of Leadership*. His most recent book is *Newt Gingrich: The Rise and Fall of a Party Entrepreneur*. Matthew, thank you so much for joining and welcome to *We the People*.

Matthew Green: Thanks. Pleasure to be here.

Jeffrey Rosen: And Josh Chafetz is professor of law at Georgetown University Law Center. He is the author of *Congress's Constitution: Legislative Authority and the Separation of Powers*. Josh, thank you so much for joining and welcome back.

Josh Chafetz: Thanks so much for having me back.

Jeffrey Rosen: The Constitution in Article One, Section Two says, "The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment." Matthew Greene, what did the Founders intend the Speaker to do in those spare words?

Matthew Green: It's an excellent question, because there's very little in the Constitution other than what you just said. So, what we know the Founders intended, we have to glean from other writings that they've done and other sources of inspiration that they had in drafting the Constitution, and particularly Article One. The Founders certainly looked to the House of Commons to see how it operated and looked at the Speaker of the House there as well as state legislatures or colonial legislatures at the time of the Founding. What we can glean from that is that the Founders most likely intended the Speaker to serve as a referee to make sure that the House operated according to the rules and that the rules were being followed. But part of that, too, was an understanding that fundamental to legislative politics is deliberation. And so, there

needed to be somebody who was in charge of not just making sure the rules were followed, but that they were followed such that lawmakers could deliberate, come up with solutions to problems and legislate accordingly.

Jeffrey Rosen: Thank you so much for that. Josh Chafetz, in your book, about *Congress's Constitution*, you talk about how the Framers intended for Congress, both the individual houses and the individual members to make use of constitutional powers in addition to the power to pass laws, and you note a series of hard powers like the power of the person, the personnel power and contempt of Congress and soft powers like freedom of speech, internal discipline, and cameral rules. What was the role of the Speaker as originally understood in exercising those hard and soft powers?

Josh Chafetz: The role of the Speaker, in some sense goes to this last idea that you mentioned. This idea of cameral rulemaking and cameral organization. It was sort of central to the constitutional scheme that each House of Congress had the ability to determine the way it would operate internally, and to determine that without any kind of influence from outside actors. And this comes out of the sort of parliamentary history of the Speaker, where for a long time, the Speaker had been understood to have dual loyalties, the Speaker had to be acceptable to the crown for much of English history. And that led to significant conflicts between parliament and especially the Stuart crown in the 17th century. We see similar conflicts playing out in the American colonial legislatures in the 18th century, where there were repeated fights between colonial legislatures that had been elected in the colonies on the one hand, and royally appointed governors on the other hand as to who had the authority to appoint the Speaker of the legislature. In some cases, like in Georgia in the 1770s, the legislature kept electing the same guy over and over again, and the governor kept rejecting him over and over again. And it led to this sort of two years standoff in Georgia in which almost no legislative business was transacted.

Josh Chafetz: So, that's the sort of background the Constitution is written against. This idea that coming out of those conflicts, we want to make sure that sort of no one else has the authority to interfere in the operations of the House of Representatives. And that's why it's so clearly stated that the House is the one that chooses its own Speaker, right? It goes hand in hand with the ability of the house to conduct its own business, free from outside influence, which then is one of the things that allows it to assert itself. And we see that beginning to happen relatively early in the House Speaker, the history of the House, especially with the Speakership of Henry Clay in the very beginning of the second decade of the 19th century.

Jeffrey Rosen: Thank you so much for that. And so interesting that you both mentioned the model of the Speaker of the House of Commons, but the determination of the founders to create an independent office that would empower Congress to exercise its independent authorities. Well, before we get to Henry Clay, who as you say, Josh Chafetz is the best known of the early 19th century Speakers. Let's talk about his predecessors. We have Speakers like Frederick Muhlenberg, Jonathan Trumbull, Jonathan Dayton, Theodore Sedgwick, Nathaniel Macon, and Joseph Varnum. I hadn't heard of most of those gentlemen before. Matthew Greene tell us about those early Speakers and how they exercise their constitutional role.

Matthew Green: So, not much attention is usually given to these early Speakers, partly because they are overshadowed by Henry Clay and his contributions. Also, partly because many of these Speakers took seriously their parliamentary responsibilities and made a point of acting in a neutral fashion when they governed over the House of Representatives, which doesn't get you as much attention as say somebody who's acting in a decisive partisan fashion. Having said that, though, one of the things that's not so well-known about these Speakers is that they weren't entirely 100% neutral. And some of them were doing small things that were moving the Speakership as an institution towards a more partisan role. So, for example, folks like Speaker Joseph Varnum, for instance, he was taking some certain steps in terms of committee assignments to help partisans influence policy outcomes. And even the first Speaker, Frederick Muhlenberg very much a non-partisan Speaker, a parliamentary Speaker, but he also was very much interested in state interests, he's from Pennsylvania. And Pennsylvania, wanted to be sure that they had some, some influence in, in this new government.

Matthew Green: And so, they pushed at least covertly to make sure to get their choice, or to get someone from their state to be, to be Speaker. And so even from the get go, you can see that Speakers were kind of torn between this parliamentary role that they, they were expected to fulfill, but also their own personal policy interests in the interests of their supporters, and trying to help them succeed in the House of Representatives.

Jeffrey Rosen: Josh Chafetz, tell us about these early Speakers before Henry Clay And were there any significant constitutional clashes between Congress and the president during this period or not?

Josh Chafetz: Sure. So, one of the, I mean, important, I think background for this, right? Is that, is that this is the, the moment at which you get the sort of rise of proto-party politics at the national level, and then actual party politics at the national level. So, when Congress first convenes in 1789, you know, there's still this idea that maybe the United States won't develop a political party system, right? That there will be disagreements in the legislature and debates in the legislature, but that the idea of the, the sort of idea that things might harden into competition between major parties, there's still a sense that that might be able to be resisted.

Josh Chafetz: At the same time, that sort of one faction, led by, by Jefferson and Madison and another faction led by, by Alexander Hamilton, are sort of beginning to lay the groundwork for this kind of competition. What that means is that in the earliest Congress, in the first Congress, the vast majority of the legislation that the first Congress passes is, in fact, written by cabinet officers. And in fact, a huge percent of it is written by, by Alexander Hamilton, the Secretary of the Treasury, even things that fall outside of Treasury's sort of orbit, a lot of that legislation is written by Hamilton. And in part, that's because the House at that point and, and the Senate as well don't really have the institutional infrastructure to sort of operate as a powerful legislature.

Josh Chafetz: So, one thing that the early Speakers are sort of groping their way towards, something that the House of Commons had earlier groped its way towards is a committee structure, a structure that will allow expertise to develop in the legislature that will allow members to sort of focus on one piece of business. But for the early years, the committees in the

House are almost entirely select committees, they're not standing committees. That is to say, there'll be a particular problem that arises and a sort of ad hoc committee will be appointed to look into that committee until the, until the, until, until about 1810. The committee's didn't have the jurisdiction to report out bills unless they were specifically given that on a sort of ad hoc basis, they could issue reports, but they couldn't report out a bill.

Josh Chafetz: So, a, a big part of what these early Speakers are trying to, to think about is how to institutionalize legislative power, right? It sort of sits in-between this idea of neutral arbiter on the one hand and partisan arbiter on the other is, is sort of how do we empower our institution? And we can see the early Speakers sort of groping towards that. But as I suggested a minute ago, it's really, I think, Clay coming into office in 1810, who begins to develop what we think of as the sort of more modern answers to those questions.

Jeffrey Rosen: Well, let's turn them to Henry Clay. He was the first dynamic national political figure to become Speaker. He's served three terms in the House. Matthew Green, tell us about the constitutional legacy of Henry Clay.

Matthew Green: Well, his legacy is substantial, obviously, not just the Speaker of the House. But what's really impressive about Clay is that he's elected Speaker. He is a freshman member, as I recall. So, he doesn't really have a history there in the House. And he builds upon what some of his predecessors had been trying to do in the House and institutionalize the legislative process internally. So, for example, the establishment of the Standing Committee system. So, moving from this ad hoc select committee process where committees are being created, on a case by case basis to committees that exist from one Congress to another. That establishes continuity, it also is a step towards professionalization. So, you join Congress and you become a member of a committee and you may or may not stay, but the idea is that it's there from one Congress to the next.

Matthew Green: And that is a very, very important institutional development that Clay initiated or built upon, really pushed forward as Speaker. But he also was willing to move away from the role of the Speaker as a strict parliamentarian towards a more political partisan actor. So, he is known for his speeches that he's giving on the floor, which is not against the rules of the House. But if you're a neutral parliamentarian, you shouldn't be advocating for one position or another. Clay's not afraid to do that. A lot of his influence is informal. So, it was his personality, his ability to persuade, his ability to lead that made him a really remarkable figure as Speaker of the House of Representatives.

Jeffrey Rosen: Josh Chafetz, tell us about Henry Clay, he takes office on November 4th, 1811. He's known as the Great Compromiser. He originated the term I recently learned self-made man, which both Abraham Lincoln and Frederick Douglass picked up on. And yet, as Matthew Greene just said, he's the first partisan actor Speaker too. What was Clay's constitutional legacy?

Josh Chafetz: So, yeah, I agree with everything that, that Matt just said. We tend to remember a Clay more for his time in the Senate than for his time in the House. But as you noted, he becomes Speaker of the House on his first day in the House of Representatives, and really becomes this tremendously important Speaker; two things that I would add to what Matt said.

One is that this is in the context of an incredibly weak presidency, right? So, this is in the context of the Madison presidency. The Federalist Party has largely at this point disappeared from the national scene. And we're into what would come to be termed the Era of Good Feelings in which the Democratic-Republicans are briefly the only party in the game. But, that doesn't mean that Madison has a strong presidency. In fact, Madison has a lot of trouble getting nominees confirmed in the Senate, he has a lot of trouble getting legislation passed in the House.

Josh Chafetz: And in particular, Clay comes into office as the head of a faction of the Democratic-Republicans that are known as the War Hawks. And this is the faction that is pressing for a more aggressive posture towards Britain. They're pressing for what would eventually become the, the War of 1812. So, one way to think about it is they see it coming, another way to think about it is that they're trying to pressure the United States into it. But essentially, he comes into office...Although nominally a member of the same party as as he president, with a very different idea about what national policy should be than the president. And that, I think, is the context in which he sets about empowering the institutions of the House. So, he sets up, as Matt said, he, he creates the standing committee system. There had been a few standing committees before this, but he basically takes a system that was dominated by select committees, and turns it into a system that's dominated by standing committees.

Josh Chafetz: He's also, as Matt said, the first overtly partisan Speaker. And then part of what that means is he starts the practice of every committee having a majority that reflects who controls the majority of the House as a body. Up to that point, there could be committees where the majority of the committee looks very different than the majority of the chamber. So, he does all of that because he comes into office as the head of the significant faction of War Hawks, and he wants to use his, his chambers power to, to sort of push forward their goals. So, that's the sort of political context in which, in which he winds up sort of taking these chamber empowering positions.

Jeffrey Rosen: Well, between Clay's last speakership, which ends in 1825, and 1856, which is the longest and most contested battle over the speakership in American history. The election lasted for 133 ballots over nearly two months. We have a bunch of Speakers, the only one I've heard of was James Polk, who became President, of course. Matthew Green, tell us about the lead up to 1856. And what happened in 1856, as the battle over slavery began to lead to high contestation in the House?

Matthew Green: Sure. So, the Speakers have followed Clay, it's hard to generalize about all of them. The fact that they also aren't very well-known like Speakers before Clay, I think speaks to the, the contributions that, that Clay made to American politics, and that he was [00:16:00] a tough act to follow. There's two really important developments in the lead up to that two-month long battle for Speaker in 1856. The first is a change in the way that Speakers are chosen. So, prior to 1839, Speakers were elected by secret ballot. And the problem was that as you see parties developing and becoming more important in American politics, the election for Speaker but also for other offices like the clerk and the printer, really matter to parties. And the problem is, not everyone in a party is being loyal to the, the party itself in these elections. And so, to make sure that lawmakers are voting for the nominee of the party in 1839, the House changes the rules

so that the vote is held by a voice vote, just like it is today. What, but it's a roll call vote, vote. So, every member says how they're going to vote alphabetically.

Matthew Green: So, this shows an important development. And it's also a sign that parties really matter now in Congress, and they want these leadership positions are important. But at the same time, and shortly thereafter, you've got the rise of sectionalism, its divisions in the country around the issue of slavery. And what as one of the consequences of that is that, even though the, is that these divisions were splitting the parties internally. So, it's actually now this open voting process actually produces a new problem with discipline, which is that lawmaker's vote for Speaker can be seen by their constituents. And if a candidate is seen as say, pro-slavery, and their party endorses them, but the member's constituency is anti-slavery, then they're really caught in a bind and may defy their vote because they don't want to make their constituents mad, which is basically the build up to, it's not the only highly contested election, but this 1856 election for Speaker, which takes place over a two-month period.

Matthew Green: And to summarize the history briefly, you've got a real scrambling of the party system, you've got, basically the end of the Whig Party, you've got the rise of this new Republican Party, a rise of a nativist Know Nothing Party. And we've got multiple people being nominated for Speaker and this tremendous battle over who the nominee should be.

Jeffrey Rosen: Josh Chafetz, we've just learned that the rise of the fight over slavery and the increased transparency of Congress led to this great battle in 1856. There were other contested speakerships over slavery around that time in 1849, and 1859. Tell us more about the Battle of 1856 and what kind of speakership emerged from it?

Josh Chafetz: Sure. So, there's a way in which we can sort of tie this story back to Henry Clay as well. So, Henry Clay becomes one of the, the sort of leading members, one of the Founding members of the Whig Party, this party that arises in opposition to Andrew Jackson's presidency. And that takes its name from the Whig Party in Britain, which was the party that traditionally opposed strong monarchical power. And so, this idea that is founded on this idea that Jackson has sort of become a quasi-monarch, King Andrew the First as he was sometimes caricatured in the press. And Clay becomes, in the Senate, becomes the sort of leader of the Whig Party. But the Whig Party, in part because it was founded as an anti-Jackson party never had a clear internal sort of ideology. It's remarkably fractious over time. And it really falls apart in the 1850s over this issue of slavery. It has a pro-slavery wing and an anti-slavery wing. And the Whig Party disintegrates. And the Democratic Party sort of manages to, to sort of continue going forward and that's the context in which we get the 1856 speakership contest which is you have this sort of loose coalition of anti-slavery parties.

Josh Chafetz: The Republican Party has just sort of come on the scene. So, 1856 is the first election in which the Republicans actually run a presidential candidate, John C. Frémont. But there are a bunch of other sort of smaller parties, including the Know Nothing Party or as they call themselves the American Party. And that's the party that Nathaniel Banks identifies with. And essentially what he has to do over the course of these 133 elections in the House of

Representatives that year, is try to sort of cobble together a coalition. So, Matt talked about how the speakership becomes over the, over the course of the 19th century a party affair.

Josh Chafetz: That usually means that it goes off relatively without a hitch, because if you have two dominant parties, whoever has the majority is, is going to sort of manage to put their Speaker in place. But when you have this in the 1850s, of party crumbling or one of the two major parties crumbling, it becomes much harder to put together that coalition and the way that plays out is in these 133 ballots before the Know Nothing that Nathaniel Banks is finally elected Speaker.

Jeffrey Rosen: Well, we're now into the Civil War. We have names like Schuyler Colfax, and after in the late 19th century, I see James G. Blaine. And the people know the jingle, Blaine, Blaine, James G. Blaine, the congenital liar from the State of Maine. And then other Speakers who I hadn't heard of before, leading up to folks like Thomas Reed in 1889. Matthew Green, take us through this period from the Civil War through the late 19th century.

Matthew Green: Certainly. So, first of all, the most important thing I'd say to note is that this idea of the Speaker as a partisan officer continues throughout this period and party becomes, continues to be a very important factor in Congress and important, and being a partisan actor is very important for Speakers. So, folks that you mentioned like Blaine, for example, are very loyal to their party and they're working hard to help their party achieve, its, their legislative goals. One of the challenges that Speakers are facing in the late 19th century is how the House operates. And in particular, the kind of loose approach to legislating and that's the right way of putting it. The, the, the kind of the rules of the House and the way in which it gives individual members significant power. And basically, what this means is that lawmakers, particularly lawmakers in the minority party, rarely, lawmakers in the minority party are able to filibuster, they don't use that term, but in effect, slow things down. There are certain rules and practices in the House that individual lawmakers in the minority are taking advantage of.

Matthew Green: So, for example, you have the famous disappearing quorum, where lawmakers choose not to be called when the presiding officer, the Speaker calls out their name. And the practice in the House at the time was, it's optional, whether you wish to be counted as present. But the Constitution makes clear that the House cannot operate without a quorum, so lawmakers can simply refuse to be counted. And there's a lot of absences at the time as well, a lot of lawmakers are not in Washington. They're not in Congress when their name is being called. And so, you have a lack of a quorum. And as this technique and other tactics are being used with increasing frequency, the House is having a harder and harder time legislating. And it really reaches a kind of a final point in 1890 when the Speaker of the House, Thomas Brackett Reed was Republican decides, and in his party had used these tactics themselves, but it was really Democrats who were using them very effectively.

Matthew Green: Reed decides that he is going to simply start counting members, whether when they're in the chair, in the chamber, whether they want to be counted or not. And there's a huge amount of protest. The Democrats are absolutely furious. They say this is unconstitutional, but Reed stands firm and his party stands firm. And eventually what you have is a rewriting of the

rules of the House to get rid of this ability to delay the legislative process and other tactics that, that minority party members are using as well. There's all kinds of things that Reed is cracking down on. And what that results in is not only a more efficient House, but a further cementing of this partisan role of the Speaker that the Speaker is saying, "My job is to make this institution work, but it's to make it work for the governing party, for the majority party. And if need be, we'll change the rules to make that happen."

Jeffrey Rosen: So interesting. Thank you so much for that history. Josh Chafetz, it sounds like there's important constitutional changes going on in the period from the Civil War through the late 19th century. Tell us more about it.

Josh Chafetz: Absolutely. And Thomas Brackett Reed is really the, the person to focus on. So, in the 1880s, even before he's Speaker, he's a member of the Rules Committee and is to a large extent responsible for turning the Rules Committee into what it has become today. And that in turn is responsible for turning the House of Representatives into what it's become today. Which is to say that the Rules Committee basically serves as the gatekeeper to the House floor, that every piece of legislative business basically that comes to the floor of the House of Representatives first makes a detour through the House Rules Committee, and they have this agenda setting function. And Reed is really largely responsible for that, even in the time before he becomes Speaker that's in the 1880s. And then in 1890s, we get the Reed rules, these, these reforms that Matt talked about, that are, basically meant to take the House, which by the way, is something I've talked about in a previous *We the People* podcast. But you know, for most of the 19th century, the House of Representatives was the, the obstructionist House. Filibustering largely took place in the House and not the Senate.

Josh Chafetz: And it's Reed who really changes that. It's Reed who manages to make the House function much more effectively. And as Matt said, take away these opportunities for obstructionist behavior. In fact, when, when he's issuing the ruling from the chair that, that ends the disappearing quorum that Matt was talking about, his ruling sort of sounds in general parliamentary law, but he says from the chair is, "The object of a parliamentary body is action and not stoppage of action. Hence, if any member or set of members undertakes to oppose the orderly progress of business, even by the use of ordinarily recognized parliamentary motions, it is the right of the majority to refuse to have those motions entertained, and to cause the public business to proceed." So, he really is putting forward this idea of the, the, the majority in the House needs to be able to get its agenda through. And that's partisan, but that's also sort of changing the character of the House from one where obstruction is the norm, to one where sort of the orderly processing of the majority's business is the norm.

Jeffrey Rosen: So interesting to learn about Reed and transformation of the House. I think our next big Speaker is Joseph Gurney Cannon, who served at the beginning of the 19th century. Matthew Green, tell us about him and his contribution.

Matthew Green: Joe Cannon, so many historians, when they're breaking down the history of Congress into eras, they'll often have an era that starts with Thomas Brackett Reed and ends with Joe Cannon. And the reason for that is, as Josh was talking about, Reed brought about this

tremendous change in the rules and this rethinking of the role of the Speaker, and for the House to be a source of action. And it's a source of action for the governing party, the majority party. The famous quote attributed to Reed is that, "The job of the majority is to govern and the job of the minority is to collect their pay," something to that effect, or to keep making a quorum And Cannon follows the same ethic. He is also a very strong partisan, and it's almost as if it's not just that, you know, you are Repu- these are Republicans. It's not just, "Oh, you're Republican to support your party," but it's sort of party is central to the ability of Congress to govern and for the government to work.

Matthew Green: And then so party loyalty just is just a necessary requirement if you're going to be in government. So, for Cannon, party is central. And he continues kind of Reed's tradition here of governing from the speakership, and in some ways, further centralizes, the power of the Speaker. The Speaker at that time is exercising the power to appoint committees. Now, Cannon shares that power with the minority party, he chooses to do so. But other than that, he is picking all of the members of committees, certainly the Republican Party. He is choosing all the members of the Rules Committee, which Josh talked about, which is the gatekeeper for the House floor. And he originally was chosen as someone that, you know, members of both parties really liked and respected as someone who would protect the power of Congress, particularly the House against the Senate.

Matthew Green: But by the near the end of his term, 1908, 1909, he is seen as almost more of a kind of almost a tyrant. In fact, that's the, that's the term that's used by his opponents is that he's a tyrant or a czar, he's called Czar Cannon. And his problem, Cannon's problem wasn't really Democrats, it was Progressives in his party. So, it was a faction within the majority party that felt that the Republicans were too conservative, and align themselves more closely with progressive ideas and with some of the policies of President Teddy Roosevelt. And from Cannon's perspective, this is apostasy and if they're going to be rebellious then they need to be punished.

Matthew Green: And so, Cannon did in fact, punish some Progressives in his party for defying him, putting them on really bad committees such as the Committee on Acoustics, which is in charge of the sound quality in the House chamber. And it all culminates in this amazing scene in the House floor in early 2010 when the Progressives join with Democrats and challenge Cannon's authority, and there's a standoff between them and Democrats on the one hand and Cannon on the other, that basically culminates in a change in the House rules that limits the power of the Speaker. And so, that's why for many historians, that's kind of the endpoint of this period of very powerful partisan Speakers in the House of Representatives.

Jeffrey Rosen: Love it. The highest committee assignment on *We the People* podcast is their Committee on Acoustics, and it's great to hear about it. And also, important to hear about this conflict between stand-patter Republicans and more progressive Republicans that defined the early Speaker battles for much of the 20th century. Josh Chafetz, tell us more about those battles they encompassed. Speakers following Cannon like Champ Clark, and led to the longest ballot over Speaker in American history in 1923 when it took four days and nine ballots to elect Speaker Frederick Gillette.

Josh Chafetz: Yeah. So, Matt, I think did an amazing job taking us through the Cannon's speakership. One thing I would just add is, as Matt noted, he was frequently referred to as Czar Cannon. That may sound kind of prosaic test today. And we're used to talking about czars in the executive branch and all this. You have to remember, this is before the Russian Revolution. So, they were, when they called him Czar Cannon, that had real bite at that moment. They were talking about him as a sort of absolute monarch. And you can see this throughout press accounts at the time. So, you really have this height of speakership power in the Cannon speakership, and then you have this dramatic sort of confrontation on the House floor. It's so dramatic that would, what it looks like this sort of alternative rules package is going to be passed by a combination of progressive Democrats and progressive Republicans both against the sort of conservative wings of their own party.

Josh Chafetz: At that point, Cannon actually says, "Well I've lost control of my party, I invite someone to make a motion to vacate the speakership." So, he sort of does that. Now, it turns out that motion fails, because the Republicans don't want to turn over... Even the progressive Republicans don't want to turn over control of the, of the House to the Democrats. But it is really this sort of moment on the floor. And then the, what comes out of that is that control of the Rules Committee basically gets taken away from the Speaker. So, the Rules Committee remains tremendously powerful. But the Speaker loses control over it. And instead, what you get is the growth of a sort of strong seniority system, the growth of a system in which sort of how long you've been in the House, really determines sort of control of committees, including the Rules Committee, so that when Champ Clark becomes Speaker just a couple of years later, after the 1910 elections, the Democrats take control of the House, Champ Clark becomes Speaker. But it's a much-diminished speakership.

Josh Chafetz: Not only does he not have control the Rules Committee, but then starting in 1911, membership and chairmanships of all of the committee's would be determined by ballot of the House rather than appointed by the Speaker. You get the disempowering of the Speakership. And it's largely a function of the fact that both of the parties are internally divided at this moment. So, what had... The strong speakership that had arisen out of this idea that you have unified parties that want to sort of put their stamp on the legislative agenda in the way that Thomas Brackett Reed was insisting on then gets destroyed by the fact that both of these parties are internally divided and can't agree on exactly what stamp they want to put on the legislative agenda.

Josh Chafetz: And that's the context for this 1923 contest with Frederick Gillette who's another Republican who, again is facing a bunch of progressive Republicans in his own party. He's a conservative Republican and, and essentially he has to make all of these concessions sort of further weakening the speakership in, in order to actually win the speakership election. So, there are interesting sort of echoes, I think in the Gillette election of the McCarthy election that we just went through, where essentially the only way he could win power was by appeasing a significant faction within his own party. And, and what it meant to appease them was not just policy concessions, but indeed, was concessions that, that limited the power of the speakership and increased the power that that faction would be able to wield in internal deliberations.

Jeffrey Rosen: Fascinating. Thank you so much. Matthew Green, tell us more about the outcomes of the contested election of 1923. Frederick Gillette was supported by Nicholas Longworth, the Republican who joined Progressives in championing a democratization of House rules, but Longworth himself became Speaker in 1925, and punished members who've broken with their party and, and, and sort of reined in the progressive insurgency. So, tell us about Longworth speakership as well.

Matthew Green: Certainly. So, one way to think about this period from Joe Cannon, and this revolt on the House floor, and then the Republicans losing the House in 1910 until about the early mid-1930s is the House is kind of struggling to figure out exactly where power should be and where decisions should be made? So, if it's not going to be entirely with one person, the Speaker, who would have that authority. So, after Cannon, for example, the Democrats, under Speaker Champ Clark experimented with the binding caucus, which was this idea that the party would meet as a group, come up with decisions. And if two-thirds agreed on that decision, everyone would vote on that bill. They didn't use it that often. And as you can imagine, it didn't work all that well. It's hard to get everybody to agree on, on things in, in political parties in the US, certainly. But that was sort of an experiment there. And also, but that wasn't the only thing.

Matthew Green: So, the idea also is, well, maybe the majority leader would have some authority. Or maybe it would be, you know, committees that are chosen, you know, by the party or by leaders. And so, in theory, a committee is making the decision, but really, they're there, they're there because the leader chose them, so they're gonna agree with the leader. So, the House is kind of experimenting with this and things are moving. It's a somewhat fluid period. So, the Gillette election, this contested election in 1923. Now, Gillette is elected when he agrees that the House can change its rules, and they do change their rules, for example, making it easier to issue what's called a discharge petition. So, you, if a bill is blocked in a committee, a number of members can file a petition to force [00:37:00] it out of the committee and bring it to the floor.

Matthew Green: And so, there are these reforms that are adopted so that Gillette can get elected. But what happens two years later in the 1924 elections is the Republicans do very, very well, the party is much bigger, and all of a sudden these Progressives are no longer the pivotal block that they had been before. And Gillette leaves the House. Longworth is the Republican nominee for Speaker and he basically tells the Progressives, "You're outnumbered now. And so, now we're going to change the rules back so that you don't have as much power as you did before. And if you don't agree that you won't go along, you'll be punished." And Longworth made good on his threat and changed the rules. And a number of these Progressives were punished in various ways. But Longworth didn't centralize power either entirely. And he was a very charismatic individual, very persuasive, but he did not have the power that Joe Cannon had.

Matthew Green: And so, much of what he had to do is through more informal means, or working with other members to get things done. He was still a very important Speaker and a very popular one with Republicans and even Democrats. But this is just a part of this period where it's a little uncertain exactly what role the Speaker plays in the legislative process if the, if the Speaker isn't going to be the central czar-like figure that Joe Cannon turned out to be.

Jeffrey Rosen: Josh, Matthew mentioned that it wasn't until the 1930s that things began to stabilize. We have a bunch of New Deal era Speakers, including John Nance Garner, who became FDR's vice president and of course, culminating in the long-serving Sam Rayburn, who took office in 1948. So, take us up through the speakership of Rayburn.

Josh Chafetz: Sure. The 1940s into the 1950s are a period of Democratic dominance of the national government. You have FDR winning election to the presidency four times followed by Truman as his last vice president. And for much of that time Democratic majorities in both chambers of Congress. A lot of what's happening in that period is trying to, especially the beginning part of that period is trying to push New Deal policies through Congress in the middle of later half of that period. There's a turn to foreign policy with of course, World War II, and then the beginning of the Cold War. There's a tremendous amount of sort of policy ferment. But there's also in some sense one party governance for, for a significant chunk of that time. At the same time, you have the rise of long-serving Southern Democrats.

Josh Chafetz: So, this is a moment where seniority is important. And the, the Southern Democrats have a lock on most of the Southern seats in both Houses of Congress, because it's the legacy of the Civil War. The Republicans are the party of Union in the Civil War. And so, that has a long tail with, with Southern whites identifying with the Democratic Party, and Southern blacks being almost entirely disenfranchised by Jim Crow, and white supremacist terrorism during this period. And so, you have these long, in fact increasingly long-serving Southern Democrats who come to chair sort of most of the most important committees. And that really shapes a lot of American national policy at mid-century. It shapes the way the New Deal looks. So, as a lot of scholars have pointed out in recent years, the New Deal, programs that aim to benefit the working class are really very much skewed towards the white working class.

Josh Chafetz: And then in the aftermath of, of World War II, the sort of power of Southern Democrats means that it's, it takes a long time before any significant progress is made on civil rights or voting rights legislation. And during this [00:41:00] time, as well, right? We have some very powerful Speakers from, who are that sort of identified with the, the, the, the Southern Democratic Party, right? And that includes, of course, Sam- Sam Rayburn in Texas, who's a, who's a powerful Speaker, but he's also a Speaker who sort of comes out of this real rise of Southern Democrats as a, as a major power block in the, in the House of Representatives.

Jeffrey Rosen: Matthew Green, in your book, The Speaker of the House, you have an entire chapter on the speakership of Sam Rayburn, and John McCormack. Tell us about why those were significant.

Matthew Green: Well, part of it, you know, as Josh was talking about, kind of where party politics were at this time, you did have, you had one dominant party, the Democratic Party certainly in Congress, as well as in the presidency, with a couple of exceptions. And so, with that one party dominance, part of that is, of course, if you pick a leader, the leader doesn't have to worry about losing their position because their party loses power. So, Rayburn has chosen, as you said, 1940 is Speaker almost entirely until he passes away in 1961, I believe, with a couple of small exceptions, Republicans will control the House for two-year periods. And so, part of

what made him an important Speaker was just that he lasted as long as he did, and that was partly because Democrats were such a dominant party.

Matthew Green: He was also from the South, which was really the dominant wing of the Democratic Party at the time. And so, he had that Southern bloc that was supporting him. He also was a very skilled leader. He was very much a good fit for the kind of politics of the House at that time. He had been Speaker in the statehouse in Texas before he was Speaker of the House. So he already kind of understood what it required to be a legislative leader. But he also kind of understood that a [00:43:00] part of this new establishment that we had in the House at the time was a period in which, as Josh mentioned, you have these Southerners who are chairing committees. And with that came this idea that, that seniority was how you chose committee chairs, which of course benefited the South, because Southerners in the South tend to get reelected, they never have to worry about losing to a Republican. But it's a practical matter that meant that chairs also became powerful because they could develop these fiefdoms chairing committees for year after year, after year.

Matthew Green: And so, Rayburn was important, in part because he didn't try to act like a Joe Cannon. He knew that these chairs were powerful. He knew that his authority rested on the support of Southerners. And so, a lot of the power was devolved from the speakership to committees that, but at the same time, Rayburn had this tremendous informal skills and ability to work with Southerners, to negotiate with them. So, this bargaining model is one that, that Rayburn used, which allowed him to stay in power but also allowed him to exercise some influence despite having these powerful committee barons who can often be very independent-minded. And so, you know, those are some of the things that, that made Rayburn very important.

Matthew Green: Now, one thing you should know, you know, part of that power that he had rested not just on Southern committee chairs, being you know, you know, deferring to them but also, keeping civil rights off the agenda. Rayburn was not as a anti-civil rights as some of other Southerners were, but he understood that if you were pushing for civil rights in the South for African Americans in the House of Representatives, there would be a tremendous blowback from his own party. And so, one of the unfortunate legacies of that period is the dominance of the South and Southern Democrats meant that there was really virtually no action on civil rights legislation for most of his speakership.

Jeffrey Rosen: Well, we now come to what Matthew Green, you call in your book, “The Reform Era of the Modern Speakership.” It includes Carl Albert, who takes office in 1971, and goes through the speakership of Thomas Foley, which ends in 1995. Josh Chafetz, tell us about these Reform Era Speakers.

Josh Chafetz: Sure. So, Albert, perhaps isn't as well-known as some of the other Speakers, but you know, really does preside over an important part of the development of the House. So, you know, starting in the 1950s, actually, there's a, a group of Democrats, a group of moderate, mostly Northern and Western Democrats in the House who formed what they call the Democratic Study Group. And part of what they're trying to do is actually chip away at the power of the Southern Democrats, to chip away at the power of these Democratic chairs, in

particular, because those chairs had been keeping legislation that they cared about, including in some cases, civil rights legislation off the floor. So, we're talking about Southern [00:46:00] Democratic legislators like Howard, Judge Smith, who was the longtime chair of the Rules Committee from Virginia, and was really one racist, and really played a significant role in keeping civil rights legislation off the floor. So, in the 50s, you have some other Democrats starting to organize against that. And then it's really in the 70s. So, Carl Albert becomes Speaker in 1971 until 1977. And it's really at that moment when some of this begins to come to fruition, right?

Josh Chafetz: So, some of these are young guns in the late 50s, are now have some seniority in the, in the 1970s themselves. In addition, you have tthe reaction against not only the, the Vietnam War, but also against Watergate. And then as a result of the 1974 elections, you have the Watergate babies, all of these new Democrats who come into Congress in beginning in 1975, who were elected on the strength of sort of popular opposition to Nixon. And so, Carl Albert is the Speaker during this period, and he's the one who is either gifted or challenged, depending on how you want to think of it with sort of, you know, a, a Democratic caucus that looks different than it had previously looked. That is to say, one in which Southern Democrats are less powerful than they had been.

Josh Chafetz: And so, he begins, and one way that that sort of takes form, is that the, the sort of opposition to these old Southern Democrats leads to demands for more, a little bit more centralization of power, not to the extent that we saw with someone like Reed or Cannon. But nevertheless, the idea is, "Well, if the committee chairs are too powerful, if the committee chairs are able to keep things off the floor, even when, you know, a significant majority of the Democratic caucus wants them to come to the floor, then what we need to do is disempower the committee chairs, that power has got to go somewhere." And so, it leads to a period in which you start to see a little bit more centralization of power again, and this is the period in which the speakership, for example, regains control over the Rules Committee. So, we talked about the fact that part of the revolt against Speaker Cannon was that he lost the power to appoint the Rules Committee, he lost the power to appoint the chair of the Rules Committee. At this moment that power goes back to the speakership.

Josh Chafetz: And so, the idea is, well, you have enough Democrats saying, "We don't want someone like Judge Smith controlling the Rules Committee anymore. We want someone who represents the sort of midpoint of the Democratic caucus." And so that's, I think what Matt means by talking about this as a sort of period of reform, is that it's an attempt to sort of swing the pendulum a little bit back, sort of away from this decentralized Southern Democrat-controlled chamber towards something more of a, of a sort of balance between chamber leadership on the one hand and committee leadership on the other.

Jeffrey Rosen: Well, we now come to the speakership of Newt Gingrich, and in your new book, Matthew Green, which is called *Newt Gingrich: The Rise and Fall of a Party Entrepreneur*. You argued that Gingrich exemplifies a particular type of elected representatives you call a party entrepreneur, unlike the typical member of Congress who fixates on cultivating support with his own district or state to get reelected. You argue, party entrepreneurs dedicate their scarce

resources to strategically create or exploit opportunities that will assist their political party. Tell us about Newt Gingrich and his influence on the speakership.

Matthew Green: Gingrich had a significant influence on the speakership and some ways it can be overstated because some of the things he did as Speaker were building on what these developments that Josh talked about previously, giving more power to the Speaker, giving more power to the majority party. But what really motivated Newt Gingrich from the time he was first elected to the House in 1978 was this frustration that the Republicans were a minority party. So, the Republicans had last been a majority in the House of Representatives in 1954. And from that point on, the Democrats had the majority in the House. They seem to have a lock, they were able to take advantage of, as Josh mentioned, this sort of long legacy of the Civil War, where Southerners were voting Democrat, even as the party was becoming more liberal, along with the Northern wing of the Democratic Party, and Republicans just couldn't seem to crack that, that coalition.

Matthew Green: So, from Gingrich's perspective, that was the most important thing. That really mattered more than almost anything else. And so, that's why we call him an entrepreneur, because he's not focusing most of his time on the district. He's not focusing most of his time on legislating. He's focusing on party strategy. He's focusing on electioneering. He's trying to figure out, how do you get and create a Republican majority? Now in the process of doing that, over that 20-year period, while he's in the minority, he is either initiating or supporting reforms that are centralizing power in the Republican Party in the House. So, things like giving the Minority Leader a say over who is on the Rules Committee on the Republican side, pursuing legislation or policy or changes in the party that punish members who defy what the party wants. So, in other words, increasing the costs associated with voting with Democrats. And the idea is not only to create more party discipline, but to create a party brand. So, the Republicans are fundamentally different than Democrats.

Matthew Green: And from Gingrich's perspective, whenever a Republican a moderate Republican votes with a Democrat that weakens the reputation of the party and its brand. So, we fast forward to the 1994 elections, Republicans win control of the House for the first time in 40 years. And a lot of Republicans see Gingrich as responsible because of all these things he's been doing, that we also outlined in the book to bring about a Republican majority. Now, it's not really clear that he is all that responsible. If anything, it's Bill Clinton being unpopular, and the South realigning itself finally towards the more conservative Republican Party. But the point is that Gingrich has been chosen, he's seen as being responsible, and given the credit. And so, he's the natural choice to be Speaker of the House of Representatives, plus the existing Minority Leader or Republican leader, Bob Michael, had chosen to retire.

Matthew Green: So, the first few months of Gingrich's speakership is really remarkable. I can go into great detail. But in a nutshell, the House passes a series of bills in 100 days, it's an unprecedented speed of passing legislation. The House hadn't seen this since the New Deal. And also, the House rules change, or Gingrich and his allies changed the rules of the House to further empower the Speaker to further centralize power in the speakership. And so, in other words, the House is moving more towards this Cannon model of governance. And so, for this first period of

the Gingrich speakership, there's just this tremendous energy and a sense that really power in national government rests with the House of Representatives, not the White House, not the Senate, but it's the House. And it's under Gingrich's leadership where this is happening.

Jeffrey Rosen: Well, we now come to the post-Gingrich era, there are a series of Republican Speakers, including John Dennis Hastert, and John Boehner and Paul Ryan, and most recently, Kevin McCarthy. And one Democratic Speaker, Nancy Pelosi, first took office in 2007, served until the beginning of 2011, and then took the speakership again in 2019. Josh Chafetz, how would you characterize this post-Gingrich era, and what important constitutional changes in the role of the Speaker, if any took place?

Josh Chafetz: So, it's a period in which, you know, we're still to a large extent living in Newt Gingrich's world as far as the way that the House operates? It's still a period in which you have a, a tremendous amount of power in the House concentrated in the speakership and, and the, the majority leadership. And you see that sort of through all of basically all of those speakers that you've just mentioned, although with some interesting caveats. So, Hastert, in addition to being now known as a felon, I think the main thing that he was known for during his, his speakership was what has come to be called the Hastert Rule. Which is this idea that he wouldn't allow anything to come to the floor unless it had a majority, and this was supported by a majority of the Republican caucus. That is to say, unless a majority of the majority party supports it, it won't come to the floor and of course, he can use his control over the Rules Committee to and to determine what does or does not come to the floor.

Josh Chafetz: Now, the Hastert Rule is, to borrow from Pirates of the Caribbean more like guidelines than rules really. That is to say it’s not infrequently honored in the breach. But it does really sort of point to a, a sort of centralization of power and the leadership of the party, and to a real sort of running of the House along very clearly majoritarian party-dominated lines. So, even if something would have a cross-partisan majority, if it doesn't have a majority of the party that's in power, it's never going to get a vote, at least in those moments when the Hastert Rule is being adhered to. The other thing that we see during this period, as well is sort of this continuation of, of centralized power is sort of something beginning to point in the other direction, at least when it comes to the Republican Party, which is a sort of growing fracture within the Republican Party. And it's called sort of different things at different points.

Josh Chafetz: So, during the Obama presidency, which is largely the sort of Boehner speakership, that was what after 2011. This is what we commonly call sort of the Tea Party Republicans versus the mainstream Republicans. Later, we might call it the Freedom Caucus Republicans versus mainstream Republicans or the Trump Republicans versus other Republicans. But it's a shifting group, but a group of Republicans who are willing to buck the leadership of their party in the House. And they succeed in deposing the two most recent Speakers. They deposed John Boehner, and then they basically deposed Paul Ryan. Ryam retired at the end of Congress, but was kind of facing revolts and almost inability to manage his own party. And then we saw the same thing with McCarthy. Taking 15 ballots to get elected, having to give over tons of concessions.

Josh Chafetz: One of those concessions is loosening the rules about the motion to vacate the chair. It would be shocking if we didn't see motions to vacate the chair are popping up with, you know, fairly frequently, in this Congress whether or not they actually succeed. So, there seems to be when Republicans control the majority, something of a weakening of, of the speakership of a party leadership, especially when their margin is very thin. On the other side of the aisle, Pelosi, who has been the only Democratic Speaker of the 21st century, has managed to maintain a really strong central leadership, even when she [00:57:00] had very, very small majorities that she did in the recently ended 117th Congress. She has managed to keep her caucus united, keep her, keep it united behind sort of majority leadership set agenda, and sort of hasn't faced that kind of revolt in any serious way.

Josh Chafetz: It'll be interesting to see if, if, you know, Hakeem Jeffries become Speaker at some point in the future, if he's able to wield that same kind of control. Because if he is, that will suggest that the real difference here is between the two parties, which is certainly plausible. It's also plausible that Pelosi is just a sort of a uniquely skilled coalition builder and coalition maintainer and that's why she was able to keep her party in line. I suspect it's probably some combination of those two things. But there's an interesting sort of disconnect right now between the two parties in terms of how much they line up behind their leadership.

Jeffrey Rosen: Matthew Green, how would you characterize this important post-Gingrich period? And what changes in the rules and norms of the House created an increase in partisanship and a decrease in compromise?

Matthew Green: Well, Josh has summarized very well, this environment. We've been in post-Gingrich, where you have a continued centralization of power within leadership in both parties, but at the same time, this countervailing force of factions within the parties, particularly the Republican Party, I think that one of the kind of important differences between Democrats and Republicans in this period... Well, there's a couple of them, one of them is I think, leadership. John Boehner, who as Josh mentioned left under pressure from the, this conservative group called the Freedom Caucus. I've written about and described him as a Rayburn Speaker in a Gingrich House. His style of leadership just didn't really jibe with what the party wanted. His party wants political action. They want legislating. They want conservative legislating. They don't want to compromise with Democrats. And Boehner's instinct was to compromise was to make deals and it just did not really jibe. So, part of it is you know, how well are these leaders, how well do they fit with what their party wants, what they expect in terms of strategy and in terms of policy? Pelosi is a good contrast. And I think that a lot of her success has to do with her ability to manage a party. Being a good Speaker means party management.

Matthew Green: Gingrich was not very good at that as Speaker. He was a thinker. He had big ideas, but dealing with factions, dealing with differences of opinion within your party, it's hard to do. Pelosi is a wheeler-dealer. She is very, very good at that. And so, when she has faced resistance in our party, whether it's whenever the Gang of Four, these four difficult Democrats or when she was running for leader in 2018and she had enough Democrats who oppose her for Speaker, she wasn't going to win. She knew how to bargain and how to get their votes. Republican leaders just haven't been as good at that. I think one of the reasons we've seen Kevin

McCarthy take 15 ballots, as Josh mentioned to be Speaker is, he doesn't seem to have the skill set to know how to so much make deals, but to make deals in a timely fashion, so that they get dealt with before it comes to the floor, and everyone's paying attention to how divided your party is. But I think the bigger picture here is that the House right now is in a really interesting, and the speakership is in a very interesting moment where power is very much centralized, and lawmakers in a way like that, because it means that things get done.

Matthew Green: But at the same time, many of them feel disempowered, that they don't have a say, and some of these rebels on the left in the Democratic Party, and in the right in the Republican Party, including members of the Freedom Caucus, fall into that latter group, and they say, you know, we want to say and we want to change and how things are done, so that we can influence outcomes. So, I think the next two years are going to be a very interesting one with McCarthy, kind of like in Gillette's position, he's made these deals with lawmakers in his, on his right flank, that empower them. And that might mean the agenda changes, it might mean that bills come to the floor that Republicans don't like, it might mean that conservative Freedom Caucus members make deals with Democrats, in some cases, to bring, to change the rules.

Matthew Green: So, everyone can offer amendments to bills that normally you can't offer amendments to. So, I think it's going to be a very interesting period and a possibly a kind of transition even from a centralized model of the speakership to one where power is distributed more widely.

Jeffrey Rosen: Well, it's time for a summation of this superb discussion, what a great way of learning about the history of America and the Constitution through this constitutional history of the House. And Josh Chafetz. I'm gonna ask you to pull back and tell *We the People* listeners, what the most important constitutional and historical changes in the role of the Speaker were from the time of the founding to today?

Josh Chafetz: Well, big question. So, I think that for me, the big takeaway is like so many other patterns of American political life, the speakership and the House of Representatives in general goes in cycles and epicycles. You have a sort of decentralized House that over time you have pressures on it to, to sort of get its business done that lead to becoming more centralized. At some point, it becomes so centralized that the backbenchers don't like it. And so, they revolt, and then it becomes decentralized again. At some point that becomes problematic. And so, and so you start to centralize again. And I think what Matt was suggesting just now is perfect, sounds, sounds completely plausible to me that we may be on the cusp of a sort of new decentralization, as well, right?

Josh Chafetz: So, there isn't a stable equilibrium here, but rather, it, it is sort of slow-swinging back and forth. And so, sometimes you have more powerful Speakers, sometimes the Speakers become too powerful than you, then they get deposed in one way or another. And then you have sort of power more dispersed. The, the, you know, how concentrated or how dispersed power is, sort of serves different ends, leads to different outcomes. And so, is hugely consequential. But it's not clear that there's a sort of right answer or that there is a sort of something that, you know,

an endpoint that we're groping our way towards. But like so many processes of government, It's, it's messy and contentious, and, and sort of irreducibly and inevitably so.

Jeffrey Rosen: Thank you so much, Matthew Green and Josh Chafetz for rich, rigorous learned surprising and really illuminating constitutional history of the role of the Speaker of the House. I've learned a huge amount and I know *We the People* listeners have as well. Matthew, Josh, thank you so much for joining.

Josh Chafetz: Thanks for having us.

Matthew Green: Thank you.

Jeffrey Rosen: Today's show was produced by Lana Ulrich and Bill Pollock. Was engineered by Kevin Kilbourne and Bill Pollock. Research was provided by Liam Kerr, Emily Campbell, Sophia Gardell, Sam Desai and Lana Ulrich. Please rate, review and subscribe to *We the People* on Apple, recommend the show to friends, colleagues or anyone anywhere who is eager for a weekly dose of constitutional and historical illumination and debate. It's so great to bring these non-partisan discussions to you. I learned so much and I hope that you are learning and enjoying them as well. And always remember that the National Constitution Center is a private non-profit. We rely on the generosity, the passion, the engagement, the dedication to learning of people like you from across the country who are inspired by a non-partisan mission of constitutional education and debate. Support the mission friends by becoming a member at constitutioncenter.org/membership or give a donation of any amount to support our work, including the podcast at constitutioncenter.org/donate. On behalf of the National Constitution Center, I'm Jeffrey Rosen.