



SENATE 2022: THE GAME IS ON & THE STAKES ARE HIGH

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Joshua Holo: Welcome to The College Commons Podcast. Passionate perspectives from Judaism's leading thinkers. Brought to you by HUC Connect, the Hebrew Union College's online platform for continuing education. I'm Joshua Holo, Dean of HUC's Skirball campus and your host. Welcome to this episode of The College Commons Podcast and our conversation with author Ira Shapiro. Ira Shapiro served 12 years in senior staff positions in the US Senate. Working for the likes of Jacob Javits and Jay Rockefeller among others. He also served in the office of the US Trade Representative during the Clinton administration, first as general counsel and then chief negotiator with Japan and Canada. Shapiro also authored, *The Last Great Senate: Courage and Statesmanship in Times of Crisis* and *Broken: Can the Senate Save Itself and the Country? Which together comprise a trilogy with his recent publication, The Betrayal: How Mitch McConnell and the Senate Republicans Abandoned America*, about the Senate during the Trump presidency and the topic of our conversation today. Ira Shapiro, thank you for joining us on The College Commons Podcast.

Ira Shapiro: Thank you for having me. It's an important time to discuss politics and various threats to our democracy. So I'm glad to be with you.

JH: I'd like to begin with a broad view of your book, *The Betrayal*. Underlying your entire argument is the fundamental constitutional principle of separation of powers as the key mechanism for checks and balances. How do you understand this principle?

IS: I think that separation of powers is fundamental to our constitution, and it was very much on the minds of the framers of our constitution. And of course, all of us argue about originalism and things like that. But with respect to the structure of the three branches, the notion that the Congress, the President and the Judiciary would be separate branches and in some ways with their own responsibilities of checking each other was quite fundamental. And in terms of the Senate, vis-a-vis the presidency, I guess we have to remember that the founders were very ambivalent about strong executive. They had seen the Articles of Confederation fail, because the states were diffuse and there was no adequate federal government. So they wanted to have a federal government led by a strong executive, but at the same time they had the experience of

dealing with King George and they'd fought the revolution. So they wanted to make sure that this strong executive wouldn't overreach. And that was the essence of checks and balances. And one of the reasons, of course, that I write about the Senate and fault them in this case, was that I think they had the responsibility for checking a potentially overreaching president.

JH: You argue quite specifically that the senate failed in its duty to check the presidency, such as we've just discussed. More pointedly though, you argue that they failed in this duty even though senators, including Republican senators, disdained Donald Trump. How can you characterize these senators' internal mindset with such confidence?

IS: The book is not based on interviews with the senators, it's based on essentially the public record. What they said, what they did and what journalists wrote about them. So I have relied on some of the good journalism of the time. It's quite clear that many of the senators and particularly including those in his party, voiced the belief that Trump was too close to Putin, personally corrupt, not qualified to be president, but therefore will be with him anyway. I think the record on that is pretty ample, and what I tried to get at Josh is this question of knowing what they knew, how did they somehow fail in their responsibility and why?

JH: So we'll talk about that and develop it. I wanna work on some of the specifics because you dedicate an entire chapter to the nomination of Amy Coney Barrett. In 2020, an election year, Donald Trump nominated Amy Coney Barrett to the Supreme Court with Senate Republican support. Support that came a mere four years after many of the same Senate Republicans blocked the nomination of the eminently qualified Merrick Garland on the grounds that the nomination should not perceive during an election year. But it wasn't just the Republicans who flipped, Democrats also reversed their position, arguing against Coney Barrett's nomination after having defended Garland's. Do you think the Democrats' argument in 2020 was politically convenient rather than principled? And more trenchantly, did they lose the opportunity to stand on principle, to defend the Coney Barrett nomination precisely because it was an unquestioned foregone conclusion that they would lose the fight anyway?

IS: I think that's a great question, and I've given it a lot of thought. The Democrats in 2016, their argument and President Obama's argument was, it's February when Justice Scalia passed away. It was shortly thereafter that a nomination came forward. There is historically ample evidence that nominations were considered in an election year. Anthony Kennedy in 1988, for instance, was considered in the election year. There was plenty of time to consider the nomination. And so I believe that Senator McConnell's decision not to take up the nomination and the Republicans who hung with him on that were acting in an unprecedented way. Fast forward to Amy Coney Barrett, that wasn't February or March of the election year. That was the closing weeks of the campaign. Her nomination ultimately was confirmed eight days before election day. Chuck Grassley, who had been chairman of the Judiciary Committee said, "If I was still chairman, I would say this was too late to take up the nomination. Too close to the election. But since I'm not chairman, I'll vote for it anyway." There's a big difference and I don't believe that the Democrats were inconsistent or hypocritical on this subject. And I would add one thing

because I thought McConnell did something unprecedented by blocking Garland. But at least there was still political recourse.

IS: Obama could have raised the issue, Hillary Clinton running for president could have raised the issue and the next president, whoever it was, was gonna fill the vacancy. Still has some connection to Democratic principles. Barrett is the opposite. You're taking away from the voters the opportunity to choose the president who will fill that seat. You're handing it to a person who's about to lose the presidency and a person who had already been proven to be corrupt, etcetera and impeached before that. So I regarded the Barrett confirmation, which I call the Banana Republic confirmation, as the most outrageous violation of our Democratic principles other than trying to overthrow the government, which we later saw.

JH: Let's go back to the larger trends and motivating energy of the Senate and take a little historical tour to the middle of the 20th century. In describing the decline of the current Senate as a meaningful power of checks and balances, you contrast it to mid 20th century Senates. That really tackled systemic concerns of the republic. You also cite the fact that in the middle of the 20th century, Americans at large knew about the Senate and its work. Proverbially speaking, Americans knew their senators certainly from their own states. How much of the failure of the Senate today, which you so fully and compellingly describe, is really about a failure of American grassroots civics?

IS: I think there's no doubt that the Senate reflected a civic generation. The people who were my parents and the people who went through World War II. They had a commitment to the country and those of us who were privileged to be born after the war, we were raised in a certain way and civics were very important. And I think that certainly benefited the Senate. So I do believe that that's an important factor. I still think it lets them off too easily to blame a lack of civics, etcetera. What you see if you look at poll data and other anecdotal information is pretty good respect for the Congress when the Congress worked '60s, '70s, into the '80s all showed pretty good approval. And then it starts going down precisely when this Congress and particularly the Senate descend into hyper-partisanship and gridlock. So there's a complex relationship, I believe, between the senators, their performance and the expectations of the public. But it goes both ways basically. And one reason I hold them very responsible is I point out, as you know in the book, the times where they could have done better. They could have brought people together as opposed to dividing them. And because they didn't, then the public says, "This is a worthless institution." and you spiral downward.

JH: Fair enough. It is after all a republic so we're all responsible.

IS: But those hundred privileged people are particularly responsible.

JH: We're gonna circle back now to the reasons for the failure and I wanna kick off this aspect of the conversation with a question about polarization. An implicit through line ties your book together, which is this. Republicans have more dysfunctionally careened to the right word

extreme than the Democrats have to the left. I'd like to give you the opportunity to share one or two of the most salient data points that illustrate this argument.

IS: I'm obviously a Democrat. But I've worked for many years with Republicans in the Senate and with no fewer than four Republican administrations, starting with Gerald Ford and going through George W. Bush. My critique of the Republican Party is not only generally held by Democrats, it's held by many Republicans who can't recognize what their party has become. The first one who gave me a blurb on the book Jacket was William Crystal, who is a leading Republican who is now a never Trumper and has been instrumental in defending democracy. So I think the argument that the change has been asymmetrical is not only widely understood, but is understood by both parties. And somehow the Republican Party has made a long migration from conservatism to radicalism and neoliberalism and white nationalism. The Democratic Party and it's a fractious bunch. We've got our differences. I certainly see some things wrong with it. But we have two parties, one of which is a political party and one of which is more like an apocalyptic cult. And when I use that phrase, apocalyptic cult, I picked that phrase up from a Republican stalwart who wrote a book 10 years ago talking about his party as an apocalyptic cult. And that was 10 years ago. It's only gotten worse.

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JH: So now I wanna ask you if you're willing to engage in a thought experiment with me, which is an old debate team exercise.

IS: Yes.

JH: I'd like to ask you right now to lay out the exact opposite argument for us. When you have a conversation with Republicans or committed Conservatives, you often hear precisely the opposite: that the Democrats have gone off the deep end to the left and that that movement is what is causing the fractiousness. So lay out the Republican argument for Democratic apocalyptic cultishness.

IS: Well, I think the Republican argument would be that the Democrats have moved farther Left. That they are obsessed with the concerns of minority groups and particularly African Americans in their desire to make up for the historical injustices to African Americans. The Republicans would say the Democrats have gone way too far. Therefore in pursuing the concerns of

minorities, they are overlooking the things that most Americans care about. Safe streets, good schools, a working economy and strong borders, etcetera. So I guess that that would be their principle argument. And I guess I would say if I were responding to it, that some of the Democrats go overboard. You've gotta reckon with the fact that the Democratic president who was elected, Joe Biden is hardly anyone's idea of a radical.

IS: If you get into looking at the Republican arguments, you will find Mitch McConnell would say, "The Democrats are out to socialize America." America is not France, he likes to say. By which he means, you really can't get health insurance if you're poor and you can't get childcare and things like that. Those things that make for a more social democratic order. So I understand their argument and certainly occasionally, whether it's AOC or a few other Democrats on the far progressive edge, you can make that argument. But I don't think it really applies very effectively to what the Democratic administrations have tried to do.

JH: I have seen a statistical analysis whereby it's not how extreme the extreme wings of either party is, but how extreme the critical mass of the middle of each party really is. So it's not really about the ideas, but it's about the number of people who are buying into them in either case. That might be the difference between arguing that one side has moved too far to the extreme more than the other side.

IS: I think that's right. But again, I think if one looks at the spectrum, you'd find a lot of Democrats in sort of the near left center. And you'd find fewer Republicans in the near right center than you used to find. The cliché is that politics used to be between the 40-yard lines. And now maybe it's between the 30-yard line and the five-yard line on the other side.

[laughter]

JH: Alright, if you had to boil down, what is motivating the Senate to have failed as egregiously as you so compellingly argue, what would that reason be?

IS: Well, I think certainly the Senators were profoundly affected by Donald Trump being president and Donald Trump's strength in his party. The independent voices, and there were a couple of very independent voices, Senator Jeff Flake, Senator Bob Corker, they ended up retiring for one reason or another. But clearly the message to other Republicans was, you don't go against Trump very easily if you're gonna be a Republican. That gets to the question though of the responsibility of senators. To my mind, if you're a senator, you're a party member, you're a partisan, but you're not a partisan hack. You have to balance the country against the party. You're concerned about your state, but you're not a state legislator. You have national responsibilities. You have an obligation to try to make the senate work. You have an obligation to try to reach principled compromises and to bring people together.

IS: All of those things eroded over time. And I think what's important in my argument, I always come back to say, "Look, we had a pretty broken politics before Donald Trump ever came down

the escalator. So what happened?" Well, what happened and his adversaries and his supporters would agree that Newt Gingrich had a major impact on American politics. Gingrich turned politics into war. McConnell turned politics into obstruction. And as a consequence, the senators started to hate the institution they were in without changing it. I'm very critical of the other senators. I think in case some authoritarian president comes along, they're supposed to do something about it. And they lack the trust, they lack the pride in the Senate to do anything.

JH: The thesis of your book is that the Senate has failed us. Where do you see the light? The opportunities for the Senate to rise to the occasion rather than shirk its responsibilities?

IS: Well, one of the frustrations is that for me, the Senate passed any number of important pieces of legislation. Whether it was the CARES Act, or the second CARES Act, whether it was the infrastructure bill or a China competitiveness bill, and now a modest but useful safety bill. What frustrates me is, they have the capability to do the work, but they've allowed Senator McConnell to determine when the Senate will work. If you look at the last 13 or 14 years, the Senate works when McConnell allows it to work. And it doesn't work when he doesn't. And that's most of the time. So my answer is, reduce his power. You can't defeat him for another four years, you elect more Democratic senators, you can change the Senate. You disempower McConnell, you disempower Joe Manchin. It's all political at this point. A lot of issues, a lot of concerns, people trying to live normal lives again after coming out of COVID. You've gotta focus though on the elections, because if you're a Democrat or an Independent, every issue you care about with the possible exception of inflation, the Senate and McConnell are responsible for obstructing progress. So it's in your hands.

JH: Here's to rolling up our sleeves to do the work, Ira Shapiro. Thank you so much for the conversation. It's been a delight to talk to you.

IS: Take care.

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