A NEW VIEW OF A NEWLY PRODUCTIVE CONGRESS

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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.

JH: Welcome to this episode of the College Commons podcast, where we have the pleasure of a new conversation with Ira Shapiro. Ira Shapiro served 12 years in senior staff positions in the United States Senate, working for the likes of Jacob Javits and Jay Rockefeller, among others. He 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, with the rank of ambassador. Shapiro's the author of 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 most recent publication, The Betrayal: How Mitch McConnell and the Senate Republicans Abandoned America, about the Senate during the Trump presidency. Ira Shapiro, thank you for joining us again on the College Commons podcast. It's great to have you.

Ira Shapiro: It's great to be with you, Joshua. Thanks for having me again.

JH: Let's start off with the '22 mid-terms. We've had a little time to digest the results, what's your take away?

IS: One of optimism. If you go back to the fall of 2022, from a Democratic standpoint, there was great concern that historical patterns and polls suggested that it would be a broad defeat for the Democrats and the Biden presidency. That didn't happen. We had an ahistorical result, it's very unusual for a Democratic President to do quite as well in an off-year election as the Democrats did with very narrow losses in the house and holding their own in the Senate. And I think the only conclusion that can be drawn from it is that it was by and large, a narrow but clear rejection of MAGA Republicanism and Trumpism. I think many of us feared that a possible violence around election time, a great reaction and a lot of election denial and that didn't happen. So all in all, an encouraging result.

JH: Let's go back to the theme of your book, The Betrayal, which focuses on Mitch McConnell. Mitch McConnell, since the publication of your book, has criticized Donald Trump for some of his rhetorical excesses, including for example, his comments about the Constitution. Though it is true as you lay out for us in a really compelling argument, McConnell has indeed carried Trump's water in the past, but have the core philosophical, not to mention, by the way, temperamental differences between the two of them brought their alliance to a definitive breaking point, or do you think they're gonna continue to find a way to work towards common goals and against common adversaries?

IS: The Senate was remarkably constructive in 2022, in part because of Biden and Schumer and their leadership as well as speaker Pelosi, but also because between 12 and 20 Republicans were willing to join in bipartisan action a series of accomplishments, ranging from semiconductors to marriage equality, and the first gun safety bill in 20 years, and by the way, I would say that McConnell played a central part in that. I have said in the past, part of McConnell's power is that the Senate functions successfully when he allows it to function successfully. And that's what happened in 2022. Why is that? Well, first of all, I've always said that McConnell would like nothing more than to be rid of Trump, he wants his power to continue withering away. And second, I think McConnell, like politicians, is motivated by a combination of conviction, calculation, and even conscience. I think he's trying to move beyond his failures and perhaps put a better sheen on his legacy.

JH: One of the seemingly great insurmountable issues, both of conscience, perhaps, but also of politics and money, is the relationship between our legislature and the NRA. Where do you see things today in relation to gun control and the influence of the NRA In both houses of Congress?

IS: I think that McConnell and a number of the other Republicans made their first ever small break with the NRA in passing a modest but useful gun safety bill in 2022. If McConnell really wanted to have his legacy more positive, one of the things that he could do is say that enough is enough, we should not have assault weapons that are sold on the market, and we should have universal background checks. Do I believe that McConnell will say those things? Unfortunately, I don't believe that. Politically, I think the NRA influence is not as strong as it was, but the Republicans are not ready to break with it yet.

JH: Those of us who may favor gun control interpret legislators in particular, who resist any movement towards guns control. We interpret that to be a fear of the slippery slope. That if they give an inch, the Left will take a mile in the erosion of the Second Amendment. What's the role of the fear of the slippery slope, not just in relation to gun control, but in legislators' minds? You've spent a career amidst senators who actually have to do these calculations, I'm curious, because from the Left's perspective, the fear of the slippery slope has vindicated itself in relation to Roe v. Wade and abortion rights and women's reproductive rights. Tell us a little bit about your experience with how people deal with their fears of the slippery slope.

IS: There is so much inertia in the legislative process, so many places which there are checks against radical action, substantial action, that I don't think the slippery slope is a particularly meaningful threat. What we have seen however, we have seen radical change in the McConnell

engineered Supreme Court, that court which is often described as conservative as opposed to liberal. There's nothing conservative about the current court majority, they are extreme and they are radical, and they've moved at a blistering pace to eviscerate certain Constitutional rights and roll back others and to encroach on the power of the presidency, the Congress and state governments. So I don't worry too much about radicalism in the Congress on either side, I worry about an unchecked Supreme Court made up of a five or a six person majority with lifetime appointments, that's radicalism.

JH: This is quite a sea change in our understanding of the Republican, the balance of powers.

IS: The truth is, we've had a conservative court since the Nixon presidency. One of his commitments was to roll back the liberalism of the Warren Court, and he did so. He had four Supreme Court Justices confirmed. He had a couple rejected, but he had four confirmed in five and a half years. And what we saw was a long period of time when we had a conservative, but moderately conservative court, because many of the judges that got on it who were Republican appointees turned out to be either moderate conservatives, guardians of the Constitution, a couple of them turned out to be liberal. It wasn't enough for the Federalist Society and for McConnell, and they hung in there and they proceeded to get a number of additional appointments confirmed and produce the court that is not conservative. And I, for one, I'm among those who believe that there should be 18-year limits on Supreme Court Justices' tenure, that's an idea that's gotten traction among liberals and conservatives, we shouldn't have people on the court for 30 or 40 years exercising unchecked power.

JH: It may not be unique, but it's anomalous in liberal democracies to have such long tenures, if I'm not mistaken. Is that correct, Shapiro?

IS: No, you're exactly right. To my knowledge, there is no other democracy that combines a small court and ours is pretty small, with life tenure.

JH: What you seem to be edging toward is pinpointing the difficulty in understanding the very idea of conservatism in this country today, you see it in the split between MAGA or Trumpist Republicans versus kind of neo-liberal conservative Republicans, Never Trumpers. There appears to be a real rift within conservatism about the very notion of the idea.

IS: Well, I think that's absolutely right, except to say that I don't believe the MAGA Republicans would claim to be conservative.

JH: What would they claim to be, the populists? What would you call them?

IS: No, I think they would claim to be populist, they would claim to be anti-government, they might claim to be White nationalists, but look, I think that the long arch of our politics is that the Republican Party has moved over time from anything resembling conservatism to extremism, and we will not have a healthy political system, I think, until the current iteration of Republicanism is smashed and defeated repeatedly.

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JH: Here in California, Democrats are looking toward Adam Schiff's senate bid in 2024. What do you think he might bring to the upper house?

IS: Full disclosure, I'm a huge admirer of Adam Schiff, and I say that because I think the other declared candidates, Representatives Katie Porter and Barbara Lee, are very strong candidates. The reason I favor Adam Schiff is that I believe that no one has done more to try to save our democracy than Adam Schiff did in his efforts as heading the first impeachment and in his efforts on the January 6th committee. He has been an extraordinary champion of our democracy, an extraordinary opponent of Trump and MAGA Republicanism at a time when it was most needed. From my standpoint, Adam Schiff would add a great deal to the senate. And the only other position I think he would be uniquely qualified for is president.

JH: Speak with us a bit about how you understand and interpret Adam Schiff's relationship to Israel.

IS: I think like most, virtually all members of Congress, he has been a strong supporter of Israel over the years, and like many members of Congress, he's quite concerned about the current situation in Israel and the current government in Israel and the actions that have been taken also very rapidly, another situation where we can't really use the phrase conservatism.

JH: Since the balance of powers constitutionally and sort of in the context of liberal democracy itself is emerging as a theme in this conversation, I wanna talk a little bit about Ukraine because we tend to think of the presidency as having broad power in foreign relations, but of course, Congress still holds the purse strings, and to throw into the mix, Presidential hopeful Ron DeSantis has just given voice to what I think of as a kind of simmering position in American public discourse today that we should back off from our support for the Ukraine. So I'd like to hear your thoughts about that as an expert on foreign relations, what the role of the United States support for the Ukraine might be, but if you would also weigh in a little bit on the role of the Congress in relation to the role of the executive branch in developing our position in relation to Ukraine?

IS: Over a long period of time, let's say since World War II, we have generally seen the increased power of the president in foreign affairs and national security to some extent at the expense of Congress. Certainly Congress has deferred to the president in a lot of things, going back to initially in Vietnam, certainly the invasion of Iraq later, and to some extent, Congress learns from that and becomes a little more assertive in recognizing that there is a role to be played. With respect to Ukraine, we've had a gratifying consensus thus far in the importance of supporting Ukraine. President Biden has been very strong, but he's had strong support from Congress, including from the Republicans.

IS: I've given Senator McConnell great credit for his forthright and strong position about the need to give military aid to Ukraine. There is some simmering undercurrent that too much is being done and that may be articulated by how speaker McCarthy or some of the presidential candidates and including DeSantis and former President Trump. But I think US commitment to Ukraine is likely to be sustained in the next two years, but I do think that the Ukrainians and then President Zelenskyy who has earned all of our admiration, I believe, are also going to have to consider whether there is an outcome short of absolute victory that they can accept, because they have a higher regard for human life than their Russian opponents do. I think that we are fortunate to have a president of Biden's experience at this point.

JH: Indeed. Indeed.

IS: He has had unmatched experience, and in my view, of having seen him over 50 years, he continues to grow with every position he is in. So that's kind of remarkable.

JH: I'd like to ask your expertise to parse out for us one of the most opaque aspects of public life, to me at least, which is the relationship of the government, be it Congress, be it the Fed, be it the presidency, to the universe of banking. I'd like to ask you a simple question, which is, what's the potential role for Congress in the looming or feared banking crisis of today? But I suspect that that's a can of worms, so I'm wondering if you can help us through that highly technical, highly consequential, highly opaque world that we're all sort of just watching again after a hiatus of a cool dozen years plus since the last banking crisis?

IS: After the Lehman crash and the financial crisis, which triggered the great recession, there was a fierce debate over financial regulation. And I remember Senator Dick Durbin, I quote him at one point saying, "The banks own this place." But at the same time, thanks to President Obama and thanks to at that time, Senator Chris Dodd and Congressman Barney Frank, we got the Dodd-Frank financial regulation bill into law in 2010. And that was a significant regulatory response and strengthening of the regulation of financial institutions, and one of the things that's happened here is the fact that the regulations that were put in place after a long fight had been weakened during the Trump years. In 2018, the regulation of big banks was redefined, big banks were no longer banks that had more than, I think $50 billion in assets, now they were that up to $250 billion.

IS: And I think that weakening of regulation is likely to have contributed to this situation, and it was a mistake, and that's because the financial interests in the country are powerful and they

don't like regulation, so they push back against Elizabeth Warren and various regulators who have been strongly supportive of stress tests on mid-sized banks. The consequences of that were that these two banks, which should have been more tightly regulated weren't. How much you regulate financial institutions, how do you prevent bailouts when you grant them, etcetera, these are hard issues, but they're in the realm of normal politics and government. What we went through in the Trump years, particularly with the assault on our democracy that Trump waged with the either active support or the condoning of his party, that was not normal politics.

JH: I sense that this distinction that you're making between normal politics versus fundamental differences and movement against the structures, the very foundations of our government and our philosophy, I think that that is part of what Democrats are experiencing in their political emotions as they have imagined the possibility of a DeSantis presidency as opposed to a Trump presidency. From the Democratic perspective, the nightmare of the DeSantis presidency is about extreme conservatism, and the nightmare of the Trump presidency is fear of further undermining of the very structure of our democracy. It's an interesting struggle, and I say political emotions advisedly because it gets to something beneath analysis and closer to the gut in terms of how we interpret our citizenship.

IS: I think you make an important point. In my mind, obviously, others would disagree, Donald Trump has disqualified himself for any real consideration of being president again. I don't like many of Ron DeSantis' views as I've seen them, but I don't think that he has similarly disqualified himself, I just think that if he were the nominee, Democrats and hopefully many independents would rise to the occasion and produce the votes to defeat him.

JH: You opened this interview with an observation of relative optimism for the Senate, and I'd like to ask you what would you charge the Senate with to achieve for the remainder of this term if you could set the top of the agenda?

IS: Well, I think the Senate is in a situation where it's going to be difficult to accomplish positive things given the Republican leadership of the House and the Republican majority of the House, but I do think the Senate plays an important role in sort of being the adults in the room hopefully. I think preventing the crisis over whether to raise the debt limit would be important. I think continuing to move forward on Biden-appointed judges would be very important. I do think that the Senate should take up the question of whether Supreme Court Justices should be limited to 18 years, even if you can't finish that legislatively, I think it's good to take up that kind of issue, and I think the Senate can take up a number of issues in terms of what the future budgets ought to look like. I also hope that they will revise the current resolution that authorizes the president to go to war under the terms that we adopted in 2001, which are long outdated.

JH: Okay. Well, we have tasks to embark upon, even if not to finish, which is great for a Jewish podcast because it echoes the ancient dictum of Rabbi Tarfon, which is to say that it's not your job necessarily to finish the work, but you can't consider yourself free from embarking upon it anyway. So here's to that work and to you, Ira Shapiro, thanks for joining us again, it's always a real pleasure and an eye-opener to talk to you and to have you help us unravel this world of our republic.

IS: Thank you so much for having me.

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