Has Congress Lost the Legislative Power?
Constitution Day Lecture for the Boston College Department of Political Science
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I. The Atrophy of Legislative Power
   o the Executive and the Administrative State
   o the Courts
   o Democracy & Representation

II. Two Caveats about Congress
   o Federalism and “herein granted”
   o Non-legislative powers of Congress

III. The Political Theory of Law & Legislation I: Classical Views
   o Aristotle on law, the assembly, & the people
   o Aristotle on the legislative art
   o Romans: pagan and Catholic

IV. The Political Theory of Law & Legislation II: Modern Inventions
   o Machiavelli & the priority of executive power
   o Hobbes & sovereign legislation
   o Locke & the invention of legislative power
   o Montesquieu & Rousseau: the return of the legislator?
   o Bentham & the theory of legislation

V. The (Anglo-)American Practice of Law and Law-Making
   o Common Law and the High Court of Parliament
   o Blackstone’s Commentaries
   o Colonial assemblies and the American Revolution
   o the States and the initial Congress
   o the new Congress

VI. Congress’s Constitutional Power
   o law-making: tax; regulate commerce; establish uniform rules on naturalization and bankruptcies; standardize money and weights; secure patents and copyright; punish counterfeiting and piracy; govern capital district; “necessary & proper”
   o other: spend; borrow; establish government agencies (including military); declare war; impeachment; amendment
   o unwritten/auxiliary power: investigate
   o (Senate only: confirm appointments; ratify treaties)
   o later amendments: “appropriate legislation” to enforce rights
VII. Congress’s Legislative Record, or, Are there 100 Acts of Congress Everyone Should Know?
   o What criteria of importance?
   o What criteria of success?
   o What do important and successful acts of legislation have in common?

VIII. When Congress Chooses NOT to Legisl ate
   o Constitutional amendments
   o Delegation of authority to agencies and courts
   o “Legislative vetoes”
   o Ceding interpretation to agencies and courts
   o Leaving issues to the states

IX. Has Congress Lost the Legislative Power?
   o Remember the legislative power is limited
   o Observe when Congress has delegated, ceded, or refrained
   o Representation and Democracy