Changing Gender Demography on Capitol Hill. Former Speaker "Uncle Joe" Cannon (R-Ill.), the last of the strong post–Civil War House leaders, gets a shave from his barber (top). Challenging male domination on Capitol Hill, the women of the 71st Congress (1929–1931) pose on the Capitol steps (center). In 2009 (bottom), the Congressional Women's Caucus gathers in the White House's East Room to witness President Obama signing legislation creating a White House Council on Women and Girls.

chapter

Evolution of the Modern Congress

The first Congress met in New York City, the seat of government, in the spring of 1789. Business was delayed until April 1 when a majority of members arrived to make a quorum. Once the thirtieth of the fifty-nine elected representatives reached New York, members chose Frederick A. C. Muhlenberg of Pennsylvania as Speaker of the House. Five days later the Senate achieved its first quorum, although its presiding officer, Vice President John Adams, did not arrive for another two weeks.

New York City was then a bustling port on the southern tip of Manhattan Island. Congress met in Federal Hall at the corner of Broad and Wall Streets. The House of Representatives occupied a large chamber on the first floor and the Senate a more intimate chamber upstairs. The new chief executive, George Washington, was still en route from Mount Vernon, his trip having become a triumphal procession with crowds and celebrations at every stop. To most of his countrymen, Washington—austere, dignified, the soul of propriety—embodied a government that was otherwise no more than a plan on paper.

The two houses of Congress did not wait for Washington's arrival. The House began debating tariffs, a perennial legislative topic. In the Senate, Vice President Adams, a brilliant but self-important man, prodded his colleagues to decide upon proper titles for addressing the president and himself. Adams was dubbed "His Rotundity" by a colleague who thought the whole discussion absurd.

On inaugural day, April 30, Adams was still worrying about how to address the president when the representatives, led by Speaker Muhlenberg, burst into the Senate chamber and seated themselves. Meanwhile, a special committee was dispatched to escort Washington to the chamber for the ceremony. The swearing-in was conducted on an outside balcony in front of thousands of assembled citizens.[1] Then the nervous Washington re-entered the Senate chamber and haltingly read his inaugural address. Following the speech, everyone adjourned to St. Paul's Chapel for a special prayer service. Thus the U.S. Congress became part of a functioning government.[2]

ANTECEDENTS OF CONGRESS

The legislative branch of the new government was untried and unknown, searching for procedures and precedents. And yet it grew out of a rich history

of development—stretching back more than five hundred years in Great Britain and no less than a century and a half in North America. If the architects of the U.S. Constitution of 1787 were unsure how well their new design would work, they had firm ideas about what they intended.

The English Heritage

From the eleventh century reign of Edward the Confessor, a central problem of political theory and practice was the Crown's relationship to its subjects. Out of prolonged struggles, a strong, representative parliament emerged that rivaled and eventually eclipsed the power of the Crown. The evolution of representative institutions on a national scale began in medieval Europe. Monarchs gained power over large territories where inhabitants were divided into social groupings, called "estates of the realm"—among them the nobility, clergy, landed gentry, and town officials. The monarchs brought together leaders of these estates, not to create representative government but to fill the royal coffers.

These assemblies later came to be called parliaments, from the French *parler*, "to speak." Historians and political scientists have identified four distinct stages in the evolution of the assemblies of estates into the representative legislatures of today. At first the assemblies representing the various estates gathered merely to vote taxes for the royal treasury, and they engaged in little discussion. Next, these tax-voting bodies evolved into bodies that presented the king with petitions for redressing grievances. Third, by a gradual process that culminated in the revolutions of the seventeenth and eighteenth centuries, parliaments wrested lawmaking and tax-levying powers from the king, transforming themselves into truly sovereign bodies. Finally, in the nineteenth and twentieth centuries parliamentary representation expanded beyond the older privileged groups to embrace all adult men and women.[3]

By the time the New World colonies were founded in the 1600s, the struggle for parliamentary rights was well advanced into the third stage, at least in England. Bloody conflicts, culminating in the beheading of Charles I in 1649 and the dethroning of James II in the Glorious Revolution of 1688, established parliamentary influence over the Crown.

Out of struggles between the Crown and parliament flowed a remarkable body of political and philosophic writings. By the eighteenth century, works by James Harrington (1611–1677), John Locke (1632–1704), William Blackstone (1723–1780), and the Frenchman Baron de Montesquieu (1689–1755) were the common heritage of educated leaders in North America as well as in Europe.

The Colonial Experience

European settlers in the New World brought this tradition of representative government with them. As early as 1619 the thousand or so Virginia colonists elected twenty-two burgesses, or delegates, to a General Assembly. In 1630 the Massachusetts Bay Company established itself as the governing body for the Bay Colony, subject to annual elections. The other colonies, some of them virtually self-governing, followed suit.

Representative government took firm root in the colonies. The broad expanse of ocean shielding America fostered self-reliance and autonomy on the part of colonial assemblies. Claiming prerogatives similar to those of the British House of Commons, these assemblies exercised the full range of lawmaking powers—levying taxes, issuing money, and providing for colonial defense. Legislation could be vetoed by colonial governors (appointed by the Crown in the eight royal colonies), but the governors, cut off from the home government and dependent on local assemblies for revenues and even for their own salaries, usually preferred to reach agreement with the locals. Royal vetoes could emanate from London, but these took time and were infrequent.[4]

Other elements nourished the growth of democratic institutions. Many of the colonists were free-spirited dissidents set on resisting traditional forms of authority, especially that of the Crown. Readily available land, harsh frontier life, and—by the eighteenth century—a robust economy expanded the colonists' self-confidence. The town meeting form of government in New England and the separatists' church assemblies helped cultivate habits of self-government. Newspapers, unfettered by royal licenses or government taxes, stimulated lively exchanges of opinions.

When Britain decided in the 1760s, following the ruinous French and Indian War, to tighten its rein upon the American colonies, it met with stubborn opposition. Did not the colonists enjoy the same rights as Englishmen? Were not the colonial assemblies legitimate governments, with authority derived from popular elections? As British enactments grew increasingly unpopular, along with the governors who tried to enforce them, the locally based legislatures took up the cause of their constituents.

The colonists especially resented the Stamp Act of 1765, which provoked delegates from nine colonies to meet in New York City. There, the Stamp Act Congress adopted a fourteen-point *Declaration of Rights and Grievances*—mainly written by John Dickinson, who called himself a Pennsylvania farmer but who had studied law in London. The Stamp Act was later repealed. But new import duties levied in 1767 brought inflated customs receipts that enabled the Crown to begin directly paying the salaries of royal governors and other officials, thus freeing those officials from the influence of colonial assemblies. The crisis worsened in the winter of 1773–1774, when a group of colonists staged a revolt, the Boston Tea Party, to protest the Tea Act's taxes. In retaliation, the House of Commons closed the port of Boston and passed a series of so-called Intolerable Acts, further tightening royal control.

National representative assemblies in America were born on September 5, 1774, when the First Continental Congress convened in Philadelphia, Pennsylvania. Every colony except Georgia sent delegates—a varied group that included peaceable souls loyal to the Crown, moderates such as Pennsylvania's Dickinson, and firebrands such as Samuel Adams and Paul Revere. Gradually anti–British sentiment congealed, and Congress passed a series of declarations and resolutions (each colony casting one vote) amounting to a declaration of war against the mother country.[5] After Congress

adjourned on October 22, King George III declared that the colonies were "now in a state of rebellion; blows must decide whether they are to be subject to this country or independent."[6]

If the First Continental Congress gave colonists a taste of collective decision making, the Second Continental Congress proclaimed their independence from Britain. When this second Congress convened on May 10, 1775, many still thought war might be avoided. A petition to King George asking for "happy and permanent reconciliation" was even approved. The British responded by proclaiming a state of rebellion and launching efforts to crush it. Sentiment in the colonies swung increasingly toward independence, and by the middle of 1776 Congress was debating Thomas Jefferson's draft resolution that "these united colonies are, and of right ought to be, free and independent states."[7]

The two Continental Congresses gave birth to national politics in America. Riding the wave of patriotism unleashed by the British indignities of 1773–1774, the Congresses succeeded in pushing the sentiments of leaders and much of the general public toward confrontation and away from reconciliation with the mother country. They did so by defining issues one by one and by reaching compromises acceptable to both moderates and radicals—no small accomplishment. Shared legislative experience, in other words, moved the delegates to the threshold of independence. Their achievement was all the more remarkable in light of what historian Jack N. Rakove describes as the "peculiar status" of the Continental Congress, "an extra-legal body whose authority would obviously depend on its ability to maintain a broad range of support."[8]

More than five years of bloody conflict ensued before the colonies won their independence. Meanwhile, the former colonies hastened to form new governments and draft constitutions. Unlike the English constitution, these charters were written documents. All included some sort of bill of rights, and all paid lip service to the doctrine of separating powers among legislative, executive, and judicial branches of government. But past conflicts with the Crown and the royal governors had instilled a fear of all forms of executive authority. So nearly all the constitutions gave the bulk of powers to their legislatures, effectively creating what one historian termed "legislative omnipotence."[9]

The national government was likewise, as James Sterling Young put it, "born with a legislative body and no head."[10] Strictly speaking, no national executive existed between 1776 and 1789—the years of the Revolutionary War and the Articles of Confederation (adopted in 1781). On its own, Congress struggled to wage war against the world's most powerful nation, enlist diplomatic allies, and manage internal affairs. As the war progressed and legislative direction proved unwieldy, Congress tended to delegate authority to its own committees and to permanent (executive) agencies. Strictly military affairs were placed in the hands of George Washington, who at the war's end returned his commission to Congress in a public ceremony. Considering the obstacles it faced, congressional government was far from a failure. Yet the mounting inability of all-powerful legislative bodies, state and national, to deal with postwar problems spurred demands for change.

At the state level, Massachusetts and New York rewrote their constitutions, adding provisions for stronger executives. At the national level, the Confederation's frailty led many to advocate what Alexander Hamilton called a more "energetic" government—one with enough authority to implement laws, control currency, levy taxes, dispose of war debts, and, if necessary, put down rebellion. Legislative prerogatives, Hamilton and others argued, should be counterbalanced with a vigorous, independent executive.

In this spirit, delegates from the states convened in Philadelphia on May 25, 1787, intending to strengthen the Articles of Confederation. Instead, they drew up a wholly new governmental charter.

CONGRESS IN THE CONSTITUTION

The structure and powers of Congress formed the core of the Constitutional Convention's deliberations. The delegates broadly agreed that a stronger central government was needed.[11] But the fifty-five delegates in Philadelphia that summer were deeply divided on issues of representation, and more than three months passed before they completed their work. The plan, agreed upon and signed September 17, 1787, was a bundle of compromises. In structuring the representational system, divergent interests—those of large and small states, northern and southern (i.e., slave-holding) states—had to be placated. The final result was an energetic central government that could function independently of the states, but with power limited to specific purposes and divided among three branches.

Powers of Congress

The federal government's powers are shared by three separate branches: legislative, executive, and judicial. Separation of powers was not a new idea. Philosophers revered by the Framers of the Constitution, including Harrington, Locke, and especially Montesquieu, had advocated the principle. But the U.S. Constitution's elaborate system of checks and balances is considered one of its most innovative features. The Articles of Confederation's failure to separate governmental functions was widely regarded as a serious defect, as were the all-powerful legislatures created by the first state constitutions. Thus the Framers sought to create a federal government that would avoid the excesses and instabilities that had marked policymaking at both national and state levels.

Article I of the Constitution embraces many provisions to buttress congressional authority and independence. Legislators have unfettered authority to organize the chambers as they see fit and are accorded latitude in performing their duties. To prevent intimidation, they cannot be arrested during sessions or while traveling to and from sessions (except for treason, felony, or breach of the peace). In their deliberations, members enjoy immunity from any punitive action: For their speech and debate, "they shall not be questioned in any other place" (Article I, Section 6).

Despite their worries over all-powerful legislatures, the Framers laid down an expansive mandate for the new Congress. Mindful of the achievements of

New World assemblies, not to mention the British Parliament's struggles with the Crown, the Framers viewed the legislature as the chief repository of governmental powers. Locke had observed that "the legislative is not only the supreme power, but is sacred and unalterable in the hands where the community have placed it."[12] Locke's doctrine found expression in Article I, Section 8, which enumerates Congress's impressive array of powers and sets out virtually the entire scope of governmental authority as the eighteenth-century Founders understood it. This portion of the Constitution clearly envisions a vigorous legislature as the engine of a powerful government.

Raising and spending money for governmental purposes lie at the heart of Congress's prerogatives. The power of the purse was historically the lever by which parliaments gained bargaining advantages over kings and queens. The Constitution's authors, well aware of this, gave Congress full powers over taxing and spending.

Financing the government is carried out under Congress's broad mandate to "lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States" (Article 1, Section 8). Although this wording covered almost all known forms of taxation, there were limitations. Taxes had to be uniform throughout the country; duties were prohibited on goods traveling between states; and "capitation...or other direct" taxes were prohibited, unless levied according to population (Article I, Section 9). This last provision proved troublesome when the U.S. Supreme Court held in 1895 (*Pollock v. Farmers' Loan and Trust Co.*) that it applied to taxes on incomes. To overcome this obstacle, the Sixteenth Amendment, ratified eighteen years later, explicitly conferred the power to levy income taxes.

Congressional power over government spending is no less sweeping. Congress is to provide for the "common defense and general welfare" of the country (Article I, Section 8). Furthermore, "No money shall be drawn from the Treasury, but in consequence of appropriations made by law" (Article I, Section 9). This funding provision is one of the legislature's most potent weapons in overseeing the executive branch.

Congress possesses broad powers to promote the nation's economic well-being and political security. It has the power to regulate interstate and foreign commerce, which it has used to regulate not only trade, but also transportation, communications, and such disparate subjects as civil rights and violent crime. The exact limits of the commerce power have been the subject of numerous political and legal battles. Congress may also coin money, incur debts, establish post offices, build post roads, issue patents and copyrights, provide for the armed forces, and call forth the militia to repel invasions or suppress rebellions.

Although the three branches supposedly are coequal, the legislature was given the initiative in formulating the structure and duties of the other two. The Constitution mentions executive departments and officers, but it does not specify their structure or duties, aside from those of the president. Thus the design of the executive branch, including cabinet departments and other agencies, is spelled out in laws passed by Congress and signed by the president.

The judiciary, too, is a statutory creation. The Constitution provides for a federal judicial system consisting of a Supreme Court and "such inferior courts as the Congress may from time to time ordain and establish" (Article III, Section 1). Congress determines the number of justices on the Supreme Court, and the number and types of lower federal courts. The outer limits of the federal courts' jurisdiction are delineated in Article III, but Congress must also define their jurisdictions through statute. (It is worth noting that Congress has never extended the federal courts' jurisdiction as far as the Constitution would presumably allow.) Moreover, the Supreme Court's appellate jurisdiction is subject to "such exceptions" and "such regulations as the Congress shall make" (Article III, Section 2).

Congress can also limit the federal courts' discretion in ways other than altering their jurisdiction. Mandatory minimum sentences imposed by statute, for example, limit judges' discretion in imposing prison sentences.

Congress's powers within the federal system were greatly enlarged by the Civil War amendments—the Thirteenth (ratified 1865), Fourteenth (ratified 1868), and Fifteenth (ratified 1870). The Radical Republicans, who had supported the war and controlled Congress in its aftermath, feared that former Confederate states would ignore the rights of former slaves—the cause over which the war had ultimately been waged. The Civil War amendments were intended to ensure former slaves' rights to vote, to be accorded due process, and to receive equal protection of the laws. The amendments also authorized Congress to enforce these rights with "appropriate legislation." In so doing, these amendments (and subsequent legislation) greatly expanded the federal government's role. In protecting the civil rights of all persons, the Civil War amendments effectively nationalized key rights of citizenship throughout the United States. Through a long series of Court rulings applying the rights guaranteed in these amendments, state governments were eventually required to respect many of the Bill of Rights guarantees that originally applied only to the federal government.

Congress can also be an active partner in foreign relations and national defense. It has the power to declare war, ratify treaties, raise and support armies, provide and maintain a navy, and make rules governing the military forces—including those governing "captures on land and water." Finally, Congress is vested with the power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers" (Article I, Section 8).

Limits on Legislative Power

The very act of enumerating these powers was intended to limit government, for by implication those powers not listed are prohibited. The Tenth Amendment reserves to the states or to the people all those powers neither delegated nor prohibited by the Constitution. This guarantee has long been a rallying point for those who take exception to particular federal policies or who wish broadly to curtail federal powers.

Eight specific limitations on Congress's powers are noted in Article I, Section 9. The most important bans are against bills of attainder, which

pronounce a particular individual guilty of a crime without trial or conviction and impose a sentence, and ex post facto laws, which make an action a crime after it has been committed or otherwise alter the legal consequences of some past action. Such laws are traditional tools of authoritarian regimes.

The original Constitution contained no bill of rights. Pressed by opponents during the ratification debate, supporters of the Constitution promised early enactment of amendments to remedy this omission. The resulting ten amendments, drawn up by the First Congress (James Madison was their main author) and ratified December 15, 1791, are a basic charter of liberties that limit the reach of government. The First Amendment prohibits Congress from establishing a national religion, preventing the free exercise of religion, or abridging the freedoms of speech, press, peaceable assembly, and petition. Other amendments secure the rights of personal property and fair trials and prohibit arbitrary arrest, questioning, or punishment.

Rights not enumerated in the Bill of Rights are not necessarily denied (Ninth Amendment). In fact, subsequent amendments, legislative enactments, judicial rulings, and states' actions have enlarged citizens' rights to include the rights of citizenship, of voting, of privacy, and of "equal protection of the laws."

Separate Branches, Shared Powers

The Constitution not only lists Congress's powers but also sets them apart from those of the other two branches. Senators and representatives, while in office, are prohibited from serving in other federal posts; those who serve in such posts are, in turn, forbidden from serving in Congress (Article I, Section 6). This restriction forecloses any form of parliamentary government, in which leading members of the dominant party or coalition form a cabinet to direct the ministries and other executive agencies.

Because the branches are separated, some people presume that their powers should be isolated from one another. In practice, however, governmental powers are interwoven, even if the branches are separate. Madison explained that the Constitution created not a system of separate institutions performing separate functions but separate institutions that share functions so that "these departments be so far connected and blended as to give each a constitutional control over the others."[13]

Historically, presidents and Congresses (and the courts) have reached accommodations to exercise the powers they share. As Justice Joseph Story once wrote, the authors of the Constitution sought to "prove that rigid adherence to [separation of powers] in all cases would be subversive to the efficiency of government and result in the destruction of the public liberties." Justice Robert Jackson noted in 1952 that "while the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government."[14]

Legislative-Executive Interdependence. Each branch of American government needs cooperation from its counterparts. Although the Constitution vests Congress with "all legislative powers," these powers cannot be exercised without involvement of the president and the courts. This same interdependency applies to executive and judicial powers.

The president is a key figure in lawmaking. According to Article II, the president "shall from time to time give to the Congress information on the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." Although Congress is not required to consider the president's legislative initiatives, the president's State of the Union Address profoundly shapes the nation's political agenda. In the modern era, Congress has "enacted in some form roughly six in ten presidential initiatives."[15] The Constitution also grants the president the power to convene one or both houses of Congress in a special session.

The president's ability to veto congressional enactments is a seemingly blunt weapon that influences the outcome and content of legislation. After a bill or resolution has passed both houses of Congress and been delivered to the White House, the president must sign it or return it within ten days (excluding Sundays). Overruling a presidential veto requires a two-thirds vote in each house. Presidential review might seem to be an all-or-nothing affair. In the words of George Washington, a president "must approve all the parts of a bill, or reject it in toto." Veto messages, however, often suggest revisions that would make the measure more likely to win the president's approval. Furthermore, veto threats allow the president to intervene in the legislative process by letting members of Congress know in advance what measures will and will not receive presidential support. Considering the extreme difficulty of overriding a president's veto, members of Congress know that White House support for legislation is almost always necessary.

Carrying out laws is the duty of the president, who is directed by the Constitution to "take care that the laws be faithfully executed" (Article II, Section 3). To this end, as chief executive, the president has the power to appoint "officers of the United States." However, the president's appointment power is limited by the requirement to obtain the Senate's advice and consent for his nominees, which has been interpreted as requiring a majority vote in the Senate. The president's executive power is further constrained by Congress's role in establishing and overseeing executive departments and agencies. Because these agencies are subject to Congress's broad-ranging influence, modern presidents have struggled to force them to march to a single common cadence.

Even in the realms of diplomacy and national defense—traditional domains of royal prerogative—the Constitution apportions powers between the executive and legislative branches. Following tradition, presidents are given wide discretion in such matters. They appoint ambassadors and other envoys, they negotiate treaties, and they command the country's armed forces. However, like other high-ranking presidential appointees, ambassadors and envoys must be approved by the Senate. Treaties do not become the law of the land until they are ratified by a two-thirds vote of the Senate. Although the president may dispatch troops through executive order, only Congress may

formally declare war. Reacting to the Vietnam War, Congress in 1973 passed the War Powers Resolution, intended to restrain presidents from making war without congressional approval. The next year it refused further funding for the war. Even in time of war, Congress wields formidable powers—but only if it chooses to employ them (see Chapter 15).

The constitutional division of power between the executive and legislative branches is, as we have seen, somewhat fluid. It became a subject of debate during the presidency of George W. Bush, whose advisers sometimes relied on the so-called unitary executive theory in order to rebuff congressional oversight and judicial review of executive branch actions. This controversial theory—rejected by most constitutional scholars—holds that the president, by virtue of Article II, should have complete (and sole) control over the executive branch. President Obama and the Democratic majorities in the House and Senate will be challenged in the 111th Congress to fashion a different interbranch working relationship.

Impeachment. Congress has the power to impeach and remove the president, the vice president, and other "civil officers of the United States" for serious breaches of the public trust: treason, bribery, or "other high crimes and misdemeanors." The House of Representatives has the sole authority to draw up and adopt (by majority vote) articles of impeachment, which are charges that the individual has engaged in one of the named forms of misconduct. The Senate is the final judge of whether to convict on any of the articles of impeachment. A two-thirds majority is required to remove the individual from office, or to remove and also bar the individual from any future "offices of public trust."

Three attributes of impeachment fix it within the separation of powers framework. First, it is exclusively the domain of Congress. (The chief justice presides over Senate trials of the president, but his rulings may be overturned by majority vote.) The two chambers are free to devise their own procedures for reaching their decisions. The Supreme Court refused to review the Senate's procedures when a former federal judge, Walter L. Nixon Jr., objected that although he had been convicted by a vote of the full Senate, the evidence in his case had been taken by one of the chamber's committees.[16]

Second, impeachment is essentially political in character. The structure may appear judicial—with the House resembling a grand jury and the Senate a trial court—but lawmakers decide whether and how to proceed, which evidence to consider, and even what constitutes an impeachable offense. Treason is defined by the Constitution, and bribery by statute; but the words "high crimes and misdemeanors" are open to interpretation. They are usually defined (in Alexander Hamilton's words) as "abuse or violation of some public trust"—on-the-job offenses against the state, the political order, or the society at large.[17] This means they can be either more or less than garden-variety criminal offenses. Both presidential impeachment trials (Andrew Johnson, 1868; Bill Clinton, 1998–1999) were fiercely partisan affairs, in which combatants disputed not only the facts but also the appropriate grounds for impeachment.

Finally, impeachment is a clumsy instrument for punishing officials for the gravest of offenses. Congress has many lesser ways of reining in wayward officials. As for presidents and vice presidents, their terms are already limited. Although impeachments are often threatened, only fifteen Senate trials have taken place, and only seven individuals have been convicted. Significantly, all seven who were removed from office were judges—who, unlike executive officers, enjoy open-ended terms of office.[18]

Interbranch "No-Fly Zones." Although the constitutional system requires that the separate branches share powers, each branch normally honors the integrity of the others' internal operations. Communications between the president and his advisors are mostly (though not entirely) exempt from legislative or judicial review under the doctrine of "executive privilege."

Similarly, Article I places congressional organization and procedures beyond the scrutiny of the other branches. In 2006 House leaders of both parties protested when FBI agents staged a Saturday-night raid of the office of Rep. William J. Jefferson, D-La., who was under investigation for accepting illegal payments for supporting certain legislation. (In a separate raid of Jefferson's home, agents had found a stash of money in his freezer.) Then-majority leader John A. Boehner, R-Ohio, called the office search "an invasion of the legislative branch." Then-minority whip Steny H. Hoyer, D-Md., asserted, "The institution has a right to protect itself against the executive branch going into our offices and violating the Speech and Debate Clause that essentially says, 'That's none of your business, executive branch.'"[19] Jefferson filed suit in federal court challenging the constitutionality of the search and demanding the return of material seized. Although initially rebuffed, Jefferson's claim was ultimately successful.[20] The U.S. Court of Appeals for the District of Columbia Circuit held that the FBI's search of Jefferson's office did, in fact, violate the Constitution's Speech and Debate clause,[21] a ruling that the Supreme Court declined to review.[22] The case establishes a precedent that members of Congress be provided advance notice and the right to review materials before the execution of a search warrant on their congressional offices.

Judicial Review

The third of the separated branches, the judiciary, takes a leading role in interpreting laws and determining their constitutionality. Whether the Framers anticipated this function of judicial review is open to question. Perhaps they expected each branch to reach its own judgments on constitutional questions, especially those pertaining to its own powers. Whatever the original intent, Chief Justice John Marshall soon preempted the other two branches with his Court's unanimous assertion of judicial review in *Marbury v. Madison* (1803). Judicial review involves both interpretation and judgment. First, "it is emphatically the province and duty of the judicial department to say what the law is." Second, the Supreme Court has the duty of weighing laws against the Constitution, the "supreme law of the land," and invalidating those that are inconsistent—in *Marbury*, a minor provision of the Judiciary Act of 1789.[23]

Until the Civil War, Congress—not the Court—was the primary forum for weighty constitutional debates. Prior to 1860, only one other law (the Missouri Compromise of 1820) had been declared unconstitutional by the Court (*Dred Scott v. Sandford*, 1857). Since the Civil War, the Court has been more aggressive in interpreting and judging congressional handiwork. For the record, the Supreme Court has invalidated 163 congressional statutes, in whole or in part—the vast majority of these during the twentieth century.[24] This count does not include lower court holdings that have not been reviewed by the Supreme Court. Nor does it cover laws whose validity has been impaired because a similar law was struck down.

Who Is the Final Arbiter? Congress's two most common reactions to judicial review of its enactments are not responding at all (38 percent of the cases, 1954–1997) or amending the statute to comply with the Court's holding (36 percent of cases).[25] Other responses are repealing the law, repealing the law to pass new legislation, or even seeking a constitutional amendment.

The Supreme Court does not necessarily have the last word in saying what the law is. Its interpretations of laws may be questioned and even reversed. One study found that 121 of the Court's interpretive decisions had been overridden between 1967 and 1990, an average of ten per Congress. The author of the study concluded that "congressional committees in fact carefully monitor Supreme Court decisions." Congress was most apt to override decisions of a closely divided Court, decisions that rely on the law's plain meaning, and decisions that clash with positions taken by federal, state, and local governments.[26]

The Lilly Ledbetter Fair Pay Act offers a recent example of Congress overturning the Supreme Court's interpretation of a congressional law. In 2007 a conservative 5–4 majority of the Supreme Court made it more difficult for plaintiffs to sue employers for pay discrimination.[27] Lilly Ledbetter was a longtime supervisor at a Goodyear tire plant in Gadsden, Alabama, who received an anonymous tip that she had been earning less than similarly situated male supervisors at her company for many years. After learning of these longstanding pay discrepancies, she successfully sued the company for discrimination under Title VII of the Civil Rights Act of 1964, and a jury awarded her back pay and damages. Hearing the case on appeal, the Supreme Court threw out Ledbetter's complaint. The Court held that the statute of limitations had expired, because Ledbetter had not sued within 180 days of the intentionally discriminatory pay decisions that had occurred early in her career. The 111th Congress made it one of their first orders of business to reverse the Court's ruling. The legislation passed by Congress and signed by President Obama, among other provisions, revises the relevant statute of limitations to ensure that a new 180-day statute of limitations begins with every paycheck, reversing the Supreme Court's narrow reading of the statute.

Nor are the courts the sole judges of what is or is not constitutional. Courts routinely accept customs and practices developed by the other two branches. Likewise, they usually decline to decide sensitive political questions within the province of Congress and the executive.

When courts do strike down an enactment, Congress may turn around and pass laws that meet the courts' objections or achieve the same goal by different means. However, Congress sometimes reacts to judicial holdings by trying to impede, modify, or reverse them or by simply ignoring them. Reconstruction laws and constitutional amendments after the Civil War explicitly nullified the Court's 1867 holding in *Dred Scott v. Sandford*.[28] And even though legislative veto provisions were largely outlawed by the Court's decision in *Immigration and Naturalization Service v. Chadha* (1983),[29] Congress continues to enact them, and administrators nevertheless feel obliged to honor them out of political prudence.

The courts play a leading but not exclusive role in interpreting laws and the regulations implementing them. When Congress passes a law, the policymaking process has just begun. Courts and administrative agencies then assume the task of refining the policy, but they do so under Congress's watchful eye. "What is 'final' at one stage of our political development," Louis Fisher observes, "may be reopened at some later date, leading to revisions, fresh interpretations, and reversals of Court doctrines. Through this never-ending dialogue, all three branches are able to expose weaknesses, hold excesses in check, and gradually forge a consensus on constitutional issues."[30]

Bicameralism

Although "the Congress" is discussed as if it were a single entity, Congress is divided internally into two very different, virtually autonomous, chambers. Following the pattern initiated by the British Parliament and imitated by most of the states, the Constitution created a bicameral legislature. If tradition recommended the two-house formula, the politics of the early Republic commanded it. Large states with greater populations preferred popularly based representation, but the smaller states insisted on retaining the equal representation they enjoyed under the Articles of Confederation.

The first branch—as the House was called by Madison and Gouverneur Morris, among others—rests on the idea that the legislature should represent "the many," the people of the United States. As George Mason put it, the House "was to be the grand depository of the democratic principles of the government."[31]

In contrast, the Senate's composition reflected the Framers' concerns about controlling excessive popular pressures. Senators were chosen by the state legislatures and not by popular vote. The Senate—insulated in theory—would curb the excesses of popular government. "The use of the Senate," explained Madison, "is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch."[32]

Senate behavior did not necessarily match up with the Framers' theories. Even though senators were chosen by state legislatures, they were not insulated from democratic pressures. In order to be selected, Senate candidates "had to cultivate local party officials in different parts of the state and appeal directly to constituents in order to bolster their electoral chances."[33] Once in office,

senators voiced their state's dominant economic interests. They also sponsored private bills for pensions and other relief for individual constituents, doled out federal patronage, and sought committee assignments that would enable them to bring home their state's share of federal money. Recent research has shown that senators selected by state legislators were not substantially different from modern, directly elected senators.[34]

Historical evolution finally overran the Founders' intentions. Direct election of senators came with the Seventeenth Amendment, ratified in 1913. A by-product of the Progressive movement, the new arrangement was designed to broaden citizens' participation and blunt the power of shadowy special interests, such as party bosses and business trusts. Thus the Senate became directly subject to popular will.

Bicameralism is the most obvious organizational feature of the U.S. Congress. Each chamber has distinct processes for handling legislation. According to the Constitution, each house sets its own rules, keeps a journal of its proceedings, and serves as final judge of its members' elections and qualifications. In addition, the Constitution assigns unique duties to each of the two chambers. The Senate ratifies treaties and approves presidential appointments. The House must originate all revenue measures; by tradition, it also originates appropriations bills.

The two houses jealously guard their prerogatives and resist intrusions by the other body. Despite claims that one or the other chamber is more important—for instance, that the Senate has more prestige or that the House pays more attention to legislative details—the two houses staunchly defend their equal places. On Capitol Hill there is no "upper" or "lower" chamber.

INSTITUTIONAL EVOLUTION

Written constitutions go only a short way toward explaining how real-life governmental institutions work. On many questions such documents are inevitably silent or ambiguous. Important issues of both power and process emerge and develop only in the course of later events. Political institutions continually change under pressures from public demands, shifting political contexts, and the policy and electoral goals of officeholders.

Congress has evolved dramatically over time. Early on, Congress had little formal structure. When the first Congress convened, there were no standing committees. Deliberation about policy issues occurred directly on the floors of the House and Senate, where any interested members could participate. After chamber-wide debate had taken place on the broad issue, members would create temporary ad hoc committees to draft bills. The early Congress also had no formal party leadership organization.[35] Prior to the 1830s, the Federalist and Republican coalitions that existed in Congress were "no more than proto-parties"[36] There was almost no professional staff. Even by 1891 a grand total of 142 clerks, 62 for the House and 80 for the Senate, were on hand to serve members of Congress. Many senators and all representatives handled their own correspondence. Compared to the present, the early Congress was informal, fluid, and unstructured.

Today's Congress is a mature institution characterized by complex internal structures and procedures. It is led by a well-defined party apparatus, with each party organized according to established rules and led by a hierarchy of leaders and whips, elected and appointed. Party organization extends to policy committees, campaign committees, research committees, and numerous task forces. Minority and majority party leaders command considerable resources in terms of budgets and staff. Taken together, they employ some four hundred staff aides, and the various party committees employ approximately an equal number.[37]

The contemporary Congress also has an elaborate committee system bolstered by a vast body of rules and precedents regulating their jurisdictions and operations.[38] The Senate has sixteen standing committees and the House has twenty. These committees are only the tip of the iceberg. House committees have about one hundred subcommittees; Senate committees, nearly seventy subcommittees. Four joint House–Senate committees have been retained. This adds up to some two hundred work groups, plus an abundance of informal caucuses.

In addition, every member heads up a well-staffed personal office with employees to handle mail, appointments, policy research, speechwriting, and constituent service. Employing nearly 30,000 staff members housed in nearly a dozen Capitol Hill buildings, Congress now sustains a distinct Washington subculture.

A basic concept scholars use to analyze the development of Congress's growth and adaptation is *institutionalization.* Political scientist Nelson Polsby applied this concept to track the institution's professionalization of the legislative career; its increasing organizational complexity—the growth of more component parts (committees, subcommittees, caucuses, leadership organizations) within the institution; and its elaboration and observance of formal rules governing its internal business.[39] Scholars have identified a number of important factors that have driven institutionalization. Among these are legislative workload, institutional size, conflict with the executive branch, and members' partisan interests.

Workload

Congress's workload—once limited in scope, small in volume, and simple in content—has burgeoned since 1789. Today's Congress grapples with many issues that were once considered entirely outside the purview of governmental activity or were left to states or localities. From eight to ten thousand bills and joint resolutions are introduced in the span of each two-year Congress; from four to eight hundred of them are enacted into law. By most measures—hours in session, committee meetings, floor votes—the congressional workload doubled between the 1950s and the late 1970s. Legislative business expanded in scope and complexity as well as in sheer volume. The average public bill of the late 1940s was two-and-a-half pages long; by the late 1990s it ran to more than eighteen pages.[40]

Changes in workload have been an important driver of institutional change over the course of congressional history. Many of the earliest committees were established to help Congress manage a growing volume of constituent requests. "Congress was confronted with thousands of petitions requesting benefits of various sorts," writes Eric Schickler; committees such as Claims, Pensions, and Public Lands "facilitated the processing of such requests."[41] Similarly, the creation and, occasionally, abolition of committees parallel shifting perceptions of public problems. As novel policy problems arose, new committees were added.[42] The House, for example, established Commerce and Manufactures in 1795, Public Lands in 1805, Freedmen's Affairs in 1866, Roads in 1913, Science and Astronautics in 1958, Standards of Official Conduct in 1967, Small Business in 1975, and Homeland Security in 2003. An extensive system of committees allows the contemporary Congress to benefit from division of labor as it strives to manage a far-reaching governmental agenda and the press of public business.

Congress's growing workload does not come only from outside the institution. From the earliest days to the present, members themselves have contributed to their collective burden. Seeking to make names for themselves, members champion causes, deliver speeches on various subjects, offer floor amendments, refer matters to committees for consideration, and engage in much policy entrepreneurship. All these activities raise the congressional workload.

At regular intervals over congressional history, the crush of business, combined with a widespread sense that Congress is unable to manage its responsibilities, leads members to experiment with institutional reforms.[43] Under workload pressure, Congress has often adopted measures to streamline procedures and to limit the participation of individual members. Such reforms are ongoing, with congressional innovators devising new "unorthodox" procedures to cope with the workload challenges of today.[44]

The Size of Congress

Like workload, a legislative institution's size profoundly affects its work. From a study of fifty-five legislatures worldwide, Andrew J. Taylor found that "legislators in large chambers are willing to trade away procedural rights for centralized procedures...[in order to] prevent gridlock and cut the costs of forging cooperation."[45] Legislatures with more members face greater problems of agenda control and time management, unless they adopt mechanisms to manage the participation of their members. The United States Congress has grown dramatically over time, and this growth created pressure for institutional adaptation.

Looking at the government of 1789 through modern lenses, one is struck by the relatively small circles of people involved. The House of Representatives, that "impetuous council," was composed of sixty-five members—when all of them showed up. The aristocratic Senate boasted only twenty-six members, two from each of the thirteen original states.

As new states were added, the Senate grew. There were thirty-two senators in 1800, sixty-two in 1850, ninety by 1900, and one hundred today. (Since 1912 only the states of Alaska and Hawaii have been added.)

For much of the nation's history, the House grew along with the nation's growing population. The House was raised to 104 members after the first census, and there were steady enlargements throughout the nineteenth century. The 1910 census, which counted ninety-two million people, led to a final expansion to 435 members. Following the 1920 census Congress declined to enlarge the House further. And that is the way things stand to this day. (However, Congress has recently considered adding two House seats to award a voting member for the District of Columbia and a fourth House seat for Utah.

Growth impelled House members to empower strong leaders, to rely on committees, to impose strict limits on floor debate, and to devise elaborate ways of channeling the flow of floor business. It is probably no accident that strong leaders emerged during the House's periods of most rapid growth. After the initial growth spurt in the first two decades of the Republic, vigorous leadership appeared in the person of Henry Clay (1811–1814, 1815–1820, and 1823–1825). Similarly, the House's post–Civil War expansion was met with an era of forceful Speakers that lasted from the 1870s until 1910.

In the smaller and more intimate Senate, vigorous leadership has been the exception rather than the rule. The relative informality of Senate procedures, not to mention the long-cherished right of unlimited debate, testifies to looser reins of leadership. Compared with the House's complex rules and voluminous precedents, the Senate's rules are relatively brief and simple. Informal negotiations among senators interested in a given measure prevail on most matters. Although too large for its members to draw their chairs around the fireplace on a chilly winter morning—as they did in the early years—the Senate today retains a clubby atmosphere that the House lacks.

Conflict with the Executive Branch

Conflict with the president is a perennial impetus for institutional reform. When Congress cannot collaborate effectively with the executive branch to develop policy, members seek out ways to increase their capacity for independent action. During such confrontations, Congress creates new institutions and procedures that often endure long beyond the specific contexts that gave rise to them.

One of the most important standing House committees, Ways and Means, was first established to provide a source of financial information independent of the controversial and divisive Treasury secretary Alexander Hamilton. "Members understood that the alternative to a standing committee would be continued reliance on Hamilton and his department for information about such issues as tariffs and economic development," observes Eric Schickler.[46]

Similarly, the landmark Legislative Reorganization Act of 1946 was adopted in the midst of members' growing concern about congressional power. Following massive growth of the administrative state during the New Deal and World War II, members feared that Congress simply could no longer compete with the executive branch. Reformers saw "a reorganized Congress as a way to redress the imbalance of power that had developed between the branches."[47] The Act streamlined the legislative process by dramatically reducing the

number of committees and regularizing their jurisdictions. Sen. Owen Brewster (R-Maine) argued at the time that the reforms were necessary "if we are to retain any semblance of the ancient division of functions under our constitution."[48] The Act was adopted by a sizeable bipartisan majority, with both Republicans and Democrats expressing hope that reform would strengthen Congress's power and prestige.

Another major institutional innovation, Congress's budget process, was fashioned in an environment of intense interbranch warfare between President Richard Nixon and a Democratic Congress.[49] President Nixon's unprecedented assertion of authority not to spend funds that Congress had appropriated was a major stimulus for passage of the Congressional Budget and Impoundment Control Act of 1974. Without the power of the purse, Sen. John Tunney (D-Calif.) remarked, "we may as well go out of business."[50] However, the Act addressed an array of structural issues that went far beyond the particulars of the dispute over the president's impoundment powers. It established a new internal congressional budget process, new Budget committees in both chambers, and a new congressional agency, the nonpartisan Congressional Budget Office (CBO). The goal was to allow Congress on its own to formulate a comprehensive national budget, backed by appropriate estimates and forecasts, without relying on the president's budget or the executive branch's Office of Management and Budget.

In *Federalist* No. 51 Madison justified the Constitution as a system to "divide and arrange the several offices in such a manner as that each may be a check on the other." Congress's institutional development bears the indelible stamp of this checking and balancing, as Congress has repeatedly reformed itself to meet challenges from the executive branch.

Partisan Interests

Political parties had no place in the original constitutional blueprint. However, no account of institutional development in Congress can ignore the vital role of political parties. Everything about the organization and operation of the Congress is shaped by political parties. Indeed, the first thing a visitor to the House or Senate chamber notices is that the seats or desks are divided along partisan lines—Democrats to the left facing the dais, Republicans to the right. Although today's congressional parties are particularly cohesive and energetic, their importance is by no means unique to the present day. The goals and capacities of the political parties have been a major engine of change throughout congressional history.

Parties began to develop in Congress during the first presidential administration. When Treasury secretary Alexander Hamilton unveiled his financial program in 1790, a genuine partisan spirit swept Capitol Hill. The Federalists, with Hamilton as their intellectual leader, espoused energetic government to deal forcefully with national problems and foster economic growth. The rival Republicans, who looked to Thomas Jefferson and James Madison for leadership, rallied opponents of Federalist policies and championed local autonomy, weaker national government, and programs favoring rural, lower-class, or debtor interests. By 1794 Sen. John Taylor of Virginia could write:

> The existence of two parties in Congress is apparent. The fact is disclosed almost upon every important question. Whether the subject be foreign or domestic—relative to war or peace—navigation or commerce—the magnetism of opposite views draws them wide as the poles asunder.[51]

Parties flourished in the years following the Civil War. Regional conflicts, along with the economic upheavals produced by rapid industrialization, nurtured partisan differences. The Civil War and World War I mark the boundaries of the first era of militant partisanship on Capitol Hill and in the country at large. At the grassroots level the parties were divided along class, occupational, and regional lines. Grassroots party organizations were massive and militant. Strong Speakers tamed the unruly House, and a coterie of statewide party bosses dominated the Senate. However, even after the end of this partisan era, parties never became irrelevant. During periods of party weakness after the demise of the strong speakership (1910) and direct election of senators (1913), the parties were still able to organize the Congress.[52] The Speaker of the House has always been the leader of the majority party. House and Senate members receive and retain their committee assignments through their parties. Likewise, members of the majority party always chair all the standing committees of Congress. (An exception of sorts in the 111th Congress is Independent—formerly Democrat—Sen. Joe Lieberman of Connecticut, who chairs the Homeland Security and Governmental Affairs Committee, though only with the acquiescence of the Democratic Caucus.)

The political parties have profoundly influenced the development of the legislative process. Party politics have impelled the development of floor procedure, the parliamentary rights of members, the powers of leaders, and processes of agenda control. The rules of the legislative process at any given time are, in Sarah A. Binder's words, a "result of hard-nosed partisan battles—fought, of course, under a particular set of inherited institutional rules."[53]

A watershed moment in the development of the House of Representatives, the adoption of Reed's Rules in 1890, offers one of the clearest examples of partisan influence on institutional procedure. Prior to 1890 the minority party in the House of Representatives possessed an arsenal of dilatory tactics to obstruct the majority party's agenda. Reed's Rules, named for then-House Speaker Thomas Brackett Reed, R-Maine, revolutionized House procedure by granting the Speaker secure control over the order of business and strictly curbing the minority party's ability to obstruct the majority party's floor agenda. Republicans, the majority party, fought for the adoption of Reed's Rules over strong opposition from the Democrats. At that time, Republicans had just won unified party control of the government for the first time in more than a decade, and they had an ambitious and controversial agenda. Knowing that Democrats would use their resources to obstruct their agenda, Republicans changed the rules of the House to permit majority party control

over the institution, a fact of life in the House of Representatives ever since. In procedural terms, Reed's Rules permanently transformed the House of Representatives.

The circumstances surrounding the adoption of Reed's Rules offers a blueprint for many partisan rules changes over the course of House history. Based on a study of all procedural rules changes that benefited the majority party at the expense of the minority party between 1789 and 1990, Binder finds that "crucial procedural choices have been shaped not by members' collective concerns about the institution, but by calculations of partisan advantage."[54] When majority parties are cohesive in their policy preferences, but narrow enough that the minority party's resistance has the potential to obstruct their agenda, majority parties will be inclined to change the institution's rules to ensure the passage of their agenda. Majority parties are especially likely to do this when the minority party makes aggressive use of its procedural powers of obstruction.

Members' Individual Interests

Institutional development has been driven by more than members' partisan and institutional goals. Members are not just concerned whether Congress can manage its workload and the party agenda can be enacted. Members have individual as well as collective goals. As individuals, members want to build a reputation as effective lawmakers and representatives for their constituencies. To do so, they need to be able to point to achievements of their own. When congressional rules or structures inhibit their ability to do so, pressure builds for institutional reform.

In addition to its value as institutional division of labor, the elaborate committee system in Congress serves members' individual political needs and policy goals. The multitude of leadership positions created by numerous committees and subcommittees gives nearly every member an opportunity to make an individual contribution. "Whatever else it may be, the quest for specialization in Congress is a quest for credit," observes David Mayhew. "Every member can aspire to occupy a part of at least one piece of policy turf small enough that he can claim personal responsibility for some of the things that happen on it."[55]

The congressional reforms of the 1970s offer one example of the ways members' individual goals have affected institutional development. Over that decade, the two chambers extensively reworked their committee systems through a series of measures designed to allow more input from rank-and-file members. The streamlined committee systems put in place after the Legislative Reorganization Act of 1946 had offered relatively few committee leadership positions, which were gained on the basis of seniority. Each committee was led by its longest-serving members, who retained their positions until death, defeat, or retirement. The large classes of new members elected in the 1970s, feeling themselves thwarted by this system, began to press for change.[56] Out of this ferment emerged a variety of reforms that opened up new opportunities for junior members. Subcommittees within the committees gained greater authority and independence as they were granted specific jurisdictions, staffs, budgets, and leaders no longer chosen by the full committee chairs. The seniority system was weakened as committee chairs were forced to stand for election in their party caucus, making them accountable to the party's rank and file.

The persistence of Senate rules that permit unlimited debate provides another example of the way individual goals shape institutional rules.[57] Despite the many frustrations unlimited debate has caused for Senate majority parties over the years, senators have been unwilling to embrace changes that would allow for simple majority rule. Senators realize that a great part of their own institutional power derives from their ability to take advantage of unlimited debate to block votes on matters that have majority support. Senate leaders are forced to negotiate with senators who obstruct Senate action via unlimited debate. Reforms that would make it possible for a Senate majority to force a vote have long been in the interest of the Senate's majority party. But such reforms would come at direct, substantial cost to senators' individual power. Not surprisingly, senators have proven very reluctant to trade off so much of their individual influence in favor of collective party goals.

As with everything else about Congress, the institution's rules and procedures can only be fully understood in light of the two Congresses. Members want rules and processes to serve them as individual lawmakers and representatives, as well as to facilitate the functioning of the legislature as a whole.

Changing pressure on the institution, congressional-executive conflicts, partisan agendas, and members' individual goals have all been important drivers of Congress's institutional development. Indeed, significant reforms are almost always the result of several of these forces simultaneously buffeting the institution. In his broad-ranging survey of forty-two major institutional innovations, Schickler finds that institutional reforms are typically brought about through "common carriers," reform initiatives that are at once supported by several different groups of legislators for different sets of reasons.[58] The Legislative Reorganization Act of 1946, for example, was espoused by many legislators who wanted to enhance the power and effectiveness of the legislative branch, but it was also supported by members who valued the new pay and pension benefits included in the legislation.[59] Similarly, many members favored the 1970s reforms reducing the power of committee chairmen because they wanted access to more policy turf of their own, but many liberal members backed the reforms because they wanted to reduce the influence of the disproportionately conservative committee chairs.[60]

Because the same reforms are so often backed for several different reasons, no single theory can explain congressional change. "[L]egislative institutions are historical composites, full of tensions and contradictions."[61] Furthermore, reforms inevitably fall short of their sponsors' objectives. Instead of achieving stable, effective arrangements, what often results is "a set of institutions that often work at cross-purposes."[62] Also, innovations usually have unanticipated consequences, which may lead to yet another round of reform. In broadest terms, change is always a product of the dual Congress—driven by both electoral and institutional goals.

EVOLUTION OF THE LEGISLATOR'S JOB

What is it like to be a member of Congress? The legislator's job, like the institution of Congress, has evolved since 1789. During the early Congresses being a senator or representative was a part-time occupation. Few members regarded congressional service as a career, and from most accounts the rewards were slim. Since then the lawmakers' exposure to constituents' demands and their career expectations have changed dramatically. Electoral units, too, have grown very large. With the nation's population estimated at some 306 million citizens, the average House constituency contains more than 700,000 people and the average state, more than six million.

The Congressional Career

During its early years Congress was an institution composed of transients. The nation's capital was an unsightly place, and its culture was provincial. Members remained in Washington only a few months, spending their unpleasant sojourns in boardinghouses. "While there were a few for whom the Hill was more than a way station in the pursuit of a career," James Sterling Young observes, "affiliation with the congressional community tended to be brief."[63]

The early Congresses failed to command the loyalty needed to keep members in office. Congressional service was regarded more as odious duty than as rewarding work. "My dear friend," wrote a North Carolina representative to his constituents in 1796, "there is nothing in this service, exclusive of the confidence and gratitude of my constituents, worth the sacrifice.... Having secured this, I could freely give place to any fellow citizen, that others too might obtain the consolation due to faithful service."[64] Of the ninety-four senators who served between 1789 and 1801, thirty-three resigned before completing their terms, only six to take other federal posts.[65] In the House almost 6 percent of all early nineteenth-century members resigned during each Congress. Citizen legislators, not professional politicians, characterized that era.

Careerism mounted toward the end of the nineteenth century. As late as the 1870s more than half the House members at any given time were freshmen, and the mean length of service was barely two terms. By the end of the century, however, the proportion of newcomers had fallen to 30 percent, and average House tenure reached three terms, or six years. About the same time, senators' mean term of service topped seven years, in excess of one full term.[66]

Today the average senator and House member has served more than twelve years. The data in Table 2-1 show changes since 1789 in the percentages of new and veteran members and the mean number of terms claimed by incumbents. In both the House and Senate, members' average length of service has increased over time, and the proportion of first-termers is substantially lower than it was during the first 200 years of the nation's history.

Rising careerism had a number of causes. The increase in one-party states and districts following the Civil War, and especially after the partisan

TABLE 2-1 Length of Service in House and Senate, 1789–2009

	Congress			
Chamber and terms	*1st–56th (1789–1901)*	*57th–103d (1901–1995)*	*104th–110th (1995–2007)*	*111th (2009–2011)*
[illegible]				
One (up to 2 years)	44.0%	23.3%	13.4%	12.9%
Two to six (3–12 years)	53.4	49.7	54.6	44.2
Seven or more (12+ years)	2.6	27.0	32.1	42.9
Mean number of terms[a]	2.1	4.8	5.4	6.2
[illegible]				
One (up to 6 years)	65.6%	45.6%	33.2%	30.0%
Two (7–12 years)	23.4	22.4	27.0	25.0
Three or more (12+ years)	11.0	32.0	39.8	45.0
Mean number of terms[a]	1.5	2.2	2.6	2.8

Sources: Adapted from David C. Huckabee, *Length of Service for Representatives and Senators: 1st–103d Congresses*, Congressional Research Service Report No. 95–426GOV, March 27, 1995. Authors' calculations for the 104th through 111th Congresses. See also: Mildred Amer, *Average Years of Service for Members of the Senate and House of Representatives, First–109th Congresses*, Congressional Research Service Report RL32648, November 9, 2005.

[a] Figures are derived from the total number of terms claimed by members whether or not those terms were served out. For example, members in their initial year of service are counted as having one full term, and so on. Thus the figures cannot be equated precisely with years of service.

realignment of 1896, made possible repeated reelection of a dominant party's candidates—Democrats in the core cities and the South, Republicans in the Midwest and the rural Northeast. Vigorous state and local party organizations dominated the recruitment process and tended to select party careerists to fill these safe seats.[67] Members themselves also began to find congressional service more rewarding. The growth of national government during the twentieth century enhanced the excitement and glamour of the Washington political scene, especially compared with state or local politics.

The seniority rule further rewarded lengthy service. Seniority triumphed in both chambers at about the same time. In the Senate there was no decisive event. Senate seniority was largely unchallenged after 1877.[68] In the House, strong post–Civil War Speakers, struggling to control the unruly chamber, sometimes bypassed seniority to appoint loyal lieutenants to major committees. But in 1910, when Speaker Joseph G. Cannon passed over senior members for assignments and behaved arbitrarily in other ways, the House revolted, divesting the Speaker of committee assignment power. With the Speaker's clout

diminished, David W. Brady relates, "seniority came to be the most important criterion for committee assignments and chairmanships."[69]

Although the seniority system unquestionably increased the returns on long service in Congress, recent changes to the seniority system have not affected members' inclination to seek long careers. Seniority norms saw significant challenge during the 1990s. After taking over the House in 1995, Republican leaders passed over several senior members in naming committee chairs. At the same time, the GOP Conference limited chairs' terms to six years—a provision initially extended when Democrats organized the House in 2007, but repealed two years later. Seniority is no longer the unquestioned norm it once was, but all would-be chairs are still experienced members. Despite changes to the seniority system, extended service remains a prerequisite for top party and committee posts.

Professionalization

During the Republic's early days, lawmaking was not a full-time occupation. As President John F. Kennedy was fond of remarking, the Clays, Calhouns, and Websters of the nineteenth century could afford to devote a whole generation or more to debating and refining the few great controversies at hand. Rep. Joseph W. Martin, R-Mass., who entered the House in 1925 and went on to become Speaker (1947–1949, 1953–1955), described the leisurely atmosphere of earlier days and the workload changes during his service.

> From one end of a session to another Congress would scarcely have three or four issues of consequence besides appropriations bills. And the issues themselves were fundamentally simpler than those that surge in upon us today in such a torrent that the individual member cannot analyze all of them adequately before he is compelled to vote. In my early years in Congress the main issues were few enough so that almost any conscientious member could with application make himself a quasi-expert at least. In the complexity and volume of today's legislation, however, most members have to trust somebody else's word or the recommendation of a committee. Nowadays bills, which thirty years ago would have been thrashed out for hours or days, go through in ten minutes.[70]

The most pressing issue considered by the Foreign Affairs Committee during one session, Martin related, was a $20,000 authorization for an international poultry show in Tulsa, Oklahoma.

For most of its history Congress was a part-time institution. Well into the twentieth century Congress remained in session for only nine of every twenty-four months, the members spending the rest of their time at home attending to private business. As Representative Martin related:

> The installation of air conditioning in the 1930s did more, I believe, than cool the Capitol: it prolonged the session. The members were no longer in such a hurry to flee Washington in July. The southerners especially had no place else to go that was half as comfortable.[71]

In recent decades legislative business has kept the House and Senate almost perpetually in session—punctuated by constituency work periods. The average senator or representative works an eleven-hour day when Congress is in session.[72] Members of the contemporary Congress are—and must be—full-time professional politicians.

Constituency Demands

From the start, American legislators have been expected to remain close to their voters. Early representatives reported to their constituents through circular letters, communications passed around throughout their districts.[73] In an era of limited government, however, there was less constituent errand running. "It was a pretty nice job that a member of Congress had in those days," recalled Rep. Robert Ramspeck, D-Ga. (1929–1945), describing the Washington of 1911, when he came to take a staff job:

> At that time the government affected the people directly in only a minor way.... It was an entirely different job from the job we have to do today. It was primarily a legislative job, as the Constitution intended it to be.[74]

In those days a member's business on behalf of constituents was confined mainly to awarding rural mail routes, arranging for Spanish War pensions, sending out free seed, and only occasionally explaining legislation. At most, a single clerk was required to handle correspondence. Members from one-party areas often did little personal constituency work. It was said that Democratic Speaker John Nance Garner, who entered the House in 1903 and ended his career as vice president (1933–1941), "for thirty years did not canvass his [south Texas] district and franked no speeches home."[75] His major constituency outreach consisted of the barbecues he gave at his home in Uvalde, Texas.

This unhurried pace has long since vanished. Reflecting on his forty years on Capitol Hill, Representative Martin remarked on the dramatic upsurge of constituent awareness.

> Today the federal government is far more complex, as is every phase of national life. People have to turn to their Representative for aid. I used to think ten letters a day was a big batch; now I get several hundred a day. In earlier times, constituents didn't know their Congressman's views. With better communications, their knowledge has increased along with their expectations of what he must know.[76]

Even people of Martin's era (he left the House in 1967) would be astonished at the volume of constituency work now handled by House and Senate offices. Not only are constituents more numerous than ever before, but they are also better educated, served by faster communication and transportation, and mobilized by lobby organizations. Public opinion surveys show that voters expect legislators to dispense federal services and to communicate

frequently with the home folks. Even though the more flagrant forms of pork-barrel politics are denounced, constituents' demands are unlikely to ebb in the future.

CONCLUSION

Although the Founders understood the guiding principles of representative assemblies, they could not have foreseen what sort of institution they had created. They wrote into the Constitution legislative powers as they understood them and left the details to future generations.

Just as physical anthropologists believe the earth's history is marked by periods of intense, even cataclysmic, change—punctuated equilibrium—so historians of Congress have identified several eras of extensive institutional change. "Reconstitutive change" is what Elaine K. Swift calls these instances of "rapid, marked, and enduring shift[s] in the fundamental dimensions of the institution."[77] During one such period—1809–1829—Swift argues, the Senate was transformed from an elitist, insulated "American House of Lords" into an active, powerful institution whose debates stirred the public and attracted the most talented politicians of the time. Major reform efforts in Congress have also periodically resulted in bold new departures in process and structure.

Institutional change is not necessarily dramatic. Incremental changes of one kind or another are also always unfolding. For example, the House in 1999 streamlined and codified its rules, and hardly anyone noticed. In a detailed examination of changes in committee jurisdictions, David C. King showed that periodic, large-scale jurisdictional "reform acts" were mainly compilations of gradually accumulated precedents created as novel bills were introduced.[78]

Over time, as a result of changes large and small, Congress became the mature institution of today. The contemporary Congress bristles with norms and traditions, rules and procedures, committees and subcommittees. In short, the modern Congress is highly institutionalized. How different from the First Congress, personified by fussy John Adams worrying about what forms of address to use.

The institutionalization of the contemporary Congress must be taken into account by anyone who seeks to understand it today. Capitol Hill newcomers—even those who vow to shake things up—confront not an unformed, pliable institution but an established, traditional one that must be approached largely on its own terms. This institutionalization has a number of important consequences, some good and some bad.

Institutionalization enables Congress to cope with its extensive workload. Division of labor, primarily through standing committees, permits the two houses to process a wide variety of issues simultaneously. In tandem with staff resources, this specialization allows Congress to compete with the executive

branch in absorbing information and applying expertise to public issues. Division of labor also serves the personal and political diversity of Congress. At the same time, careerism encourages legislators to develop skills and expertise in specific areas. Procedures and traditions can contain and channel the political conflicts that converge upon the lawmaking process.

The danger of institutionalization is organizational rigidity. Institutions that are too rigid can frustrate policymaking, especially in periods of rapid social or political change. Structures that are too complex can tie people in knots, producing inaction, delays, and confusion. Despite its size and complexity, however, today's Congress continues to adapt and change.

SUGGESTED READINGS

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