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## Congress



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## WHO GOVERNS?

1. Are members of Congress representative of the American people?
2. Does Congress normally do what most citizens want it to do?



## TO WHAT ENDS?

1. Should Congress run under strong leadership?
2. Should Congress act more quickly?

If you are like most Americans, you trust the Supreme Court, respect the presidency (whether or not you like the president), and dislike Congress (even if you like your own member of Congress). Congress is the most unpopular branch of government. Some people think of it as the broken branch, badly in need of fixing. But it is also the most important one. You cannot understand the national government without first understanding Congress.

Glance at the Constitution and you will see why Congress is so important: the first four and a half pages are about Congress, while the presidency gets only a page and a half and the Supreme Court about three-quarters of one page. And when you go beyond the Constitution and discover how Congress actually operates, you may come to think that it is not a broken branch at all, but rather one that is remarkably sensitive to American public opinion.

The late senator Daniel Patrick Moynihan once remarked that the United States is the only democratic government with a legislature. Of course, lots of democracies have parliaments that can pass laws. What he meant is that among the world's major democracies, only the U.S. Congress has great powers that it can exercise independently of the executive branch. To see why this is so, we must understand the difference between a congress and a parliament.

## ★ Congress Versus Parliament

The United States (along with many Latin American nations) has a congress; Great Britain (along with most Western European nations) has a parliament. A hint as to the difference between the two kinds of legislatures can be found in the original meanings of the words: *Congress* derives from a Latin term that means “a coming together,” a meeting, as of representatives from various places. *Parliament* comes from a French word, *parler*, that means “to talk.”

There is of course plenty of talking—some critics say that there is nothing *but* talking—in the U.S. Congress, and certainly members of a parliament represent to a degree their local districts. But the differences implied by the names of the lawmaking groups are real ones, with profound significance for how laws are made and how the government is run. These differences affect two important aspects of lawmaking bodies: how one becomes a member and what one does as a member.

Ordinarily a person becomes a member of a parliament (such as the British House of Commons) by persuading a political party to put his or her name on the ballot. Though usually a local party committee selects a person to be its candidate, that committee often takes suggestions from national party headquarters. In any case the local group selects as its candidate someone willing to support the national party program



The House Democratic leaders: Speaker Nancy Pelosi with (left to right) Rahm Emanuel, James Clyburn, and Steny Hoyer.

and leadership. In the election voters in the district choose not between two or three personalities running for office, but between two or three national parties.

By contrast, a person becomes a candidate for representative or senator in the U.S. Congress by running in a primary election. Except in a very few places, political parties exercise little control over the choice of who is nominated to run for congressional office. (This is the case even though the person who wins the primary will describe himself or herself in the general election as a Democrat or a Republican.) Voters select candidates in the primaries because of their personalities, positions on issues, or overall reputation. Even in the general election, where the party label affects who votes for whom, many citizens vote “for the man” (or for the woman), not for the party. As a result of these different systems, a parliament tends to be made up of people loyal to the national party leadership who meet to debate and vote on party issues. A congress, on the other hand, tends to be made up of people who think of themselves as independent representatives of their districts or states and who, while willing to support their party on many matters, expect to vote as their (or their constituents’) beliefs and interests require.

Once they are in the legislature, members of a parliament discover that they can make only one important decision—whether or not to support the government. The government in a parliamentary sys-



Illinois Senator Barack Obama spoke to the Democratic National Convention in 2004.

tem such as Britain’s consists of a prime minister and various cabinet officers selected from the party that has the most seats in parliament. As long as the members of that party vote together, that government will remain in power (until the next election). Should members of a party in power in parliament decide to vote against their leaders, the leaders lose office, and a new government must be formed. With so much at stake, the leaders of a party in parliament have a powerful incentive to keep their followers in line. They insist that all members of the party vote together on almost all issues. If someone refuses, the penalty is often drastic: the party does not renominate the offending member in the next election.

Members of the U.S. Congress do not select the head of the executive branch of government—that is done by the voters when they choose a president. Far from making members of Congress less powerful, this makes them more powerful. Representatives and senators can vote on proposed laws without worrying that their votes will cause the government to collapse and without fearing that a failure to support their

party will lead to their removal from the ballot in the next election. Congress has independent powers, defined by the Constitution, that it can exercise without regard to presidential preferences. Political parties do not control nominations for office, and thus they cannot discipline members of Congress who fail to support the party leadership. Because Congress is constitutionally independent of the president, and because its members are not tightly disciplined by a party leadership, individual members of Congress are free to express their views and vote as they wish. They are also free to become involved in the most minute details of lawmaking, budget making, and supervision of the administration of laws. They do this through an elaborate set of committees and subcommittees.

A real parliament, such as that in Britain, is an assembly of party representatives who choose a government and discuss major national issues. The principal daily work of a parliament is debate. A congress, such as that in the United States, is a meeting place of the representatives of local constituencies—districts and states. Members of the U.S. Congress can initiate,

modify, approve, or reject laws, and they share with the president supervision of the administrative agencies of the government. The principal work of a congress is representation and action, most of which takes place in committees.

What this means in practical terms to the typical legislator is easy to see. Since members of the British House of Commons have little independent power, they get rather little in return. They are poorly paid, may have no offices of their own and virtually no staff, are allowed only small sums to buy stationery, and can make a few free local telephone calls. Each is given a desk, a filing cabinet, and a telephone, but not always in the same place.

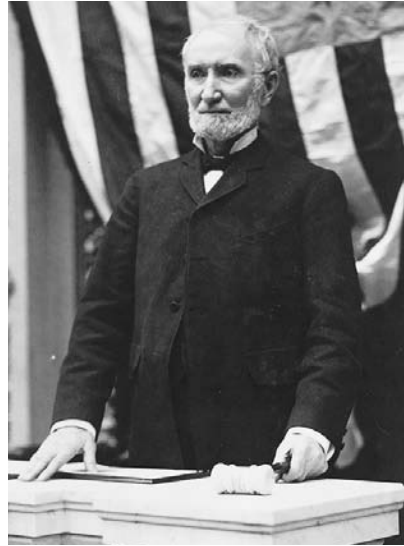
By contrast, a member of the U.S. House of Representatives, even a junior one, has power and is rewarded accordingly. For example, in 2006 each member earned a substantial salary (\$165,200) and was entitled to a large office (or “clerk-hire”) allowance, to pay for as many as twenty-two staffers. Each member also received individual allowances for travel, computer services, and the like. In addition, each member could

## How Things Work

### The Powers of Congress

The powers of Congress are found in Article I, section 8, of the Constitution.

- To lay and collect taxes, duties, imposts, and excises
- To borrow money
- To regulate commerce with foreign nations and among the states
- To establish rules for naturalization (that is, becoming a citizen) and bankruptcy
- To coin money, set its value, and punish counterfeiting
- To fix the standard of weights and measures
- To establish a post office and post roads
- To issue patents and copyrights by inventors and authors
- To create courts inferior to (that is, below) the Supreme Court
- To define and punish piracies, felonies on the high seas, and crimes against the law of nations
- To declare war
- To raise and support an army and navy and make rules for their governance
- To provide for a militia (reserving to the states the right to appoint militia officers and to train the militia under congressional rules)
- To exercise exclusive legislative powers over the seat of government (that is, the District of Columbia) and other places purchased to be federal facilities (forts, arsenals, dockyards, and “other needful buildings”)
- To “make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States” (Note: This “necessary and proper,” or “elastic,” clause has been generously interpreted by the Supreme Court, as explained in Chapter 16.)



**Three powerful Speakers of the House: Thomas B. Reed (1889–1891, 1895–1899) (left), Joseph G. Cannon (1903–1911) (center), and Sam Rayburn (1941–1947, 1949–1953, 1955–1961) (right). Reed put an end to a filibuster in the House by refusing to allow dilatory motions and by counting as “present”—for purposes of a quorum—members in the House even though they were not voting. Cannon further enlarged the Speaker’s power by refusing to recognize members who wished to speak without Cannon’s approval and by increasing the power of the Rules Committee, over which he presided. Cannon was stripped of much of his power in 1910. Rayburn’s influence rested more on his ability to persuade than on his formal powers.**

mail newsletters and certain other documents to constituents for free using the “franking privilege.” Senators, and representatives with seniority, received even larger benefits. Each senator was entitled to a generous office budget and legislative assistance allowance and was free to hire as many staff members as he or she wished with the money. These examples are not given to suggest that members of Congress are overrewarded, but only that their importance, as individuals, in our political system can be inferred from the resources that they command.

Because the United States has a congress made up of people chosen to represent their states and districts, rather than a parliament made up to represent competing political parties, no one should be surprised to learn that members of the U.S. Congress are more concerned with their own constituencies and careers than with the interests of any organized party or program of action. And since Congress does not choose the president, members of Congress know that worrying about the voters they represent is much more important than worrying about whether the president

succeeds with his programs. These two factors taken together mean that Congress tends to be a decentralized institution, with each member more interested in his or her own views and those of his or her voters than with the programs proposed by the president.

Indeed, Congress was designed by the Founders in ways that almost inevitably make it unpopular with voters. Americans want government to take action, follow a clear course of action, and respond to strong leaders. Americans dislike political arguments, the activities of special-interest groups, and the endless pulling and hauling that often precede any congressional decision. But the people who feel this way are deeply divided about what government should do: Be liberal? Be conservative? Spend money? Cut taxes? Support abortions? Stop abortions? Since they are divided, and since members of Congress must worry about how voters feel, it is inevitable that on controversial issues Congress will engage in endless arguments, worry about what interest groups (who represent different groups of voters) think, and work out compromise decisions. When it does those things, however, many

people feel let down and say that they have a low opinion of Congress.

Of course, a member of Congress might explain all these constitutional facts to the people, but not many members are eager to tell their voters that they do not really understand how Congress was created and organized. Instead they run for reelection by promising voters that they will go back to Washington and “clean up that mess.”

## ★ The Evolution of Congress

The Framers chose to place legislative powers in the hands of a congress rather than a parliament for philosophical and practical reasons. They did not want to have all powers concentrated in a single governmental institution, even one that was popularly elected, because they feared that such a concentration could lead to rule by an oppressive or impassioned majority. At the same time, they knew that the states were jealous of their independence and would never consent to a national constitution if it did not protect their interests and strike a reasonable balance between large and small states. Hence they created a **bicameral** (two-chamber) **legislature**—with a House of Representatives, to be elected directly by the people, and a Senate, consisting of two members from each state, to be chosen by the legislatures of each state. Though “all legislative powers” were to be vested in Congress, those powers would be shared with the president (who could veto acts of Congress), limited to powers explicitly conferred on the federal government, and, as it turned out, subject to the power of the Supreme Court to declare acts of Congress unconstitutional.

For decades, critics of Congress have complained that the body cannot plan or act quickly. They are right, but two competing values are at stake: centralization versus decentralization. If Congress were to act quickly and decisively as a body, then there would have to be strong central leadership, restrictions on debate, few opportunities for stalling tactics, and minimal committee interference. If, on the other hand, the interests of individual members—and the constituencies that they represent—were to be protected or enhanced, then there would have to be weak leadership, rules allowing for delay and discussion, and many opportunities for committee activity.

Though there have been periods of strong central leadership in Congress, the general trend, especially

since the mid-twentieth century, has been toward decentralizing decision-making and enhancing the power of the individual member at the expense of the congressional leadership. This decentralization may not have been inevitable. Most American states have constitutional systems quite similar to the federal one, yet in many state legislatures, such as those in New York, Massachusetts, and Indiana, the leadership is quite powerful. In part the position of these strong state legislative leaders may be the result of the greater strength of political parties in some states than in the nation as a whole. In large measure, however, it is a consequence of permitting state legislative leaders to decide who shall chair what committee and who shall receive what favors.

The House of Representatives, though always powerful, has often changed the way in which it is organized and led. In some periods it has given its leader, the Speaker, a lot of power; in other periods it has given much of that power to the chairmen of the House committees; and in still other periods it has allowed individual members to acquire great influence. To simplify a complicated story, the box outlines six different periods in the history of the House.

The House faces fundamental problems: it wants to be both big (it has 435 members) and powerful, and its members want to be powerful both as individuals and as a group. But being big makes it hard for the House to be powerful unless some small group is given the authority to run it. If a group runs the place, however, the individual members lack much power. Individuals can gain power, but only at the price of making the House harder to run and thus reducing its collective power in government. There is no lasting solution to these dilemmas, and so the House will always be undergoing changes.

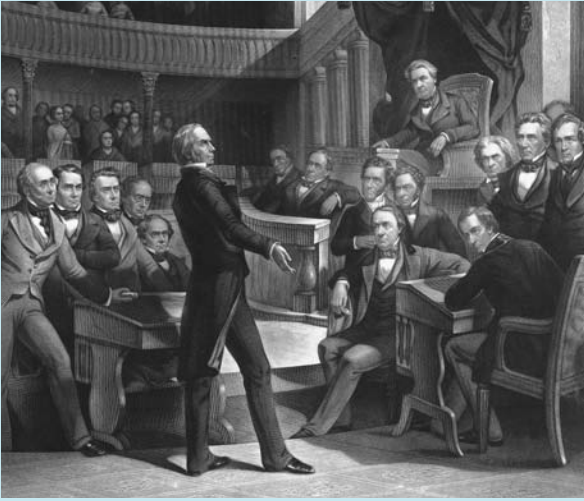
The Senate does not face any of these problems. It is small enough (100 members) that it can be run without giving much authority to any small group of leaders. In addition, it has escaped some of the problems the House once faced. During the period leading up to the Civil War it was carefully balanced so that the number of senators from slaveowning states exactly equaled the number from free states. Hence fights over slavery rarely arose in the Senate.

From the first the Senate was small enough that no time limits had to be placed on how long a senator could speak. This meant that there never was anything

### **bicameral legislature**

*A lawmaking body made up of two chambers or parts.*

## House History: Six Phases



One of the most powerful Speakers of the House, Henry Clay, is shown here addressing the U.S. Senate around 1850.

### Phase One: The Powerful House

During the first three administrations—of George Washington, John Adams, and Thomas Jefferson—leadership in Congress was often supplied by the president or his cabinet officers. Rather quickly, however, Congress began to assert its independence. The

like a Rules Committee that controlled the amount of debate.

Finally, senators were not elected by the voters until this century. Prior to that they were picked instead by state legislatures. Thus senators were often the leaders of local party organizations, with an interest in funneling jobs and contracts back to their states.

The big changes in the Senate came not from any fight about how to run it (nobody ever really ran it), but from a dispute over how its members should be chosen. For more than a century after, the Founding members of the Senate were chosen by state legislatures. Though often these legislatures picked popular local figures to be senators, just as often there was intense political maneuvering among the leaders of

House of Representatives was the preeminent institution, overshadowing the Senate.

### Phase Two: The Divided House

In the late 1820s the preeminence of the House began to wane. Andrew Jackson asserted the power of the presidency by vetoing legislation that he did not like. The party unity necessary for a Speaker, or any leader, to control the House was shattered by the issue of slavery. Of course, representatives from the South did not attend during the Civil War, and their seats remained vacant for several years after it ended. A group called the Radical Republicans, led by men such as Thaddeus Stevens of Pennsylvania, produced strong majorities for measures aimed at punishing the defeated South. But as time passed, the hot passions the war had generated began to cool, and it became clear that the leadership of the House remained weak.

### Phase Three: The Speaker Rules

Toward the end of the nineteenth century the Speaker of the House gained power. When Thomas B. Reed of Maine became Speaker in 1889, he obtained by vote of the Republican majority more authority than any of his predecessors, including the right to select the chairmen and members of all committees. He chaired the Rules Committee and decided what business would come up for a vote, what the limitations on debate

various factions, each struggling to win (and sometimes buy) the votes necessary to become senator. By the end of the nineteenth century the Senate was known as the Millionaires' Club because of the number of wealthy party leaders and businessmen in it. There arose a demand for the direct, popular election of senators.

Naturally the Senate resisted, and without its approval the necessary constitutional amendment could not pass Congress. When some states threatened to demand a new constitutional convention, the Senate feared that such a convention would change more than just the way in which senators were chosen. A protracted struggle ensued, during which many state legislatures devised ways to ensure that the senators

would be, and who would be allowed to speak and who would not. In 1903, Joseph G. Cannon of Illinois became Speaker. He tried to maintain Reed's tradition, but he had many enemies within his Republican ranks.

#### Phase Four: The House Revolts

In 1910–1911 the House revolted against “Czar” Cannon, voting to strip the Speaker of his right to appoint committee chairmen and to remove him from the Rules Committee. The powers lost by the Speaker flowed to the party caucus, the Rules Committee, and the chairmen of the standing committees. It was not, however, until the 1960s and 1970s that House members struck out against all forms of leadership.

#### Phase Five: The Members Rule

Newly elected Democrats could not get the House to vote on a meaningful civil rights bill until 1964 because powerful committee chairmen, most of them from the South, kept such legislation bottled up. In response, Democrats changed their rules so that chairmen lost much of their authority. Beginning in the 1970s committee chairmen would no longer be selected simply on the basis of seniority: they had to be elected by the members of the majority party. Chairmen could no longer refuse to call committee meetings, and most meetings had to be public. Committees without subcommittees had to create them

and allow their members to choose subcommittee chairmen. Individual members' staffs were greatly enlarged, and half of all majority-party members were chairmen of at least one committee or subcommittee.

#### Phase Six: The Leadership Returns

Since every member had power, it was harder for the House to get anything done. By slow steps, culminating in some sweeping changes made in 1995, there were efforts to restore some of the power the Speaker had once had. The number of committees and subcommittees was reduced. Republican Speaker Newt Gingrich dominated the choice of committee chairmen, often passing over more senior members for more agreeable junior ones. But Gingrich's demise was as quick as his rise. His decision not to pass some appropriations bills forced many government offices to close for a short period, he had to pay a fine for using tax-exempt funds for political purposes, and then the Republicans lost a number of seats in the 1998 election. Gingrich resigned as Speaker and as a member of the House and was replaced by a more moderate Speaker, Republican Dennis Hastert of Illinois, with a penchant for accommodating his colleagues. As the 110th Congress began in 2007, Democrat Nancy Pelosi of California held the Speaker's gavel. She was the first woman to lead the House.

they picked would already have won a popular election. The Senate finally agreed to a constitutional amendment that required the popular election of its members, and in 1913 the Seventeenth Amendment was approved by the necessary three-fourths of the states. Ironically, given the intensity of the struggle over this question, no great change in the composition of the Senate resulted; most of those members who had first been chosen by state legislatures managed to win reelection by popular vote.

The other major issue in the development of the Senate was the filibuster. A **filibuster** is a prolonged speech, or series of speeches, made to delay action in a legislative assembly. It had become a common—and unpopular—feature of Senate life by the end of

the nineteenth century. It was used by liberals and conservatives alike and for lofty as well as self-serving purposes. The first serious effort to restrict the filibuster came in 1917, after an important foreign policy measure submitted by President Wilson had been talked to death by, as Wilson put it, “eleven willful men.” Rule 22 was adopted by a Senate fearful of tying a president's hands during a wartime crisis. The rule provided that debate could be cut off if two-thirds of the senators present and voting agreed to a “cloture” motion (it has since been revised to allow sixty senators to cut off debate). Two years later it was first

**filibuster** *An attempt to defeat a bill in the Senate by talking indefinitely, thus preventing the Senate from taking action on the bill.*



## POLITICALLY SPEAKING

### Filibuster



A filibuster is a technique by which a small number of senators attempt to defeat a measure by talking it to death—that is, by speaking continuously and at such length as to induce the supporters of the measure to drop it in order to get on with the Senate’s business.

The right to filibuster is governed by the Senate’s Rule 22, which allows for unlimited debate unless at least sixty senators agree to a motion to cut it off.

Originally *filibusterers* were sixteenth-century English and French pirates and buccaners who raided Spanish treasure ships. The term came from a Dutch word, *vrijbouter*, meaning “free-booter,” which was converted into the English word *filibuster*.

The word came into use in America as a term for “continuous talking” in the mid-nineteenth century. One of its first appearances was in 1854, when a group of senators tried to talk to death the Kansas-Nebraska Act.

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invoked successfully when the Senate voted cloture to end, after fifty-five days, the debate over the Treaty of Versailles. Despite the existence of Rule 22, the tradition of unlimited debate remains strong in the Senate.



A cartoon from *Puck* in 1890 expressed popular resentment over the “Millionaires Club,” as the Senate had become known.

### ★ Who Is in Congress?

With power so decentralized in Congress, the kind of person elected to it is especially important. Since each member exercises some influence, the beliefs and interests of each individual affect policy. Viewed simplistically, most members of Congress seem the same: the typical representative or senator is a middle-aged white Protestant male lawyer. If all such persons usually thought and voted alike, that would be an interesting fact, but they do not, and so it is necessary to explore the great diversity of views among seemingly similar people.

### Sex and Race

Congress has gradually become less male and less white. Between 1950 and 2007 the number of women in the House increased from nine to seventy-four and the number of African Americans from two to thirty-eight. There are also twenty-three Hispanic members.

Until recently the Senate changed much more slowly (see Table 13.1). Before the 1992 election there

**Table 13.1** Blacks, Hispanics, and Women in Congress, 1971–2008

Congress	Senate			House		
	Blacks	Hispanics	Women	Blacks	Hispanics	Women
110th (2007–2008)	1	0	16	38	23	74
109th	1	0	14	37	23	59
108th	0	0	13	39	23	62
107th	0	0	13	36	19	59
106th	0	0	9	39	19	58
105th	1	1	9	37	18	51
104th	1	0	8	38	18	48
103rd	1	0	6	38	17	47
102nd	0	0	2	26	10	29
101st	0	0	2	24	11	25
100th	0	0	2	23	11	23
99th	0	0	2	20	11	22
98th	0	0	2	21	10	22
97th	0	0	2	17	6	19
96th	0	0	1	16	6	16
95th	1	0	2	16	5	18
94th	1	1	0	15	5	19
93rd	1	1	0	15	5	14
92nd (1971–1972)	1	1	2	12	5	13

Source: *Congressional Quarterly*, various years.

were no African Americans and only two women in the Senate. But in 1992 four more women, including one black woman, Carol Mosely Braun of Illinois, were elected. Two more were elected in 1994, when a Native American, Ben Nighthorse Campbell of Colorado, also became a senator. By 2007, there was one African American and sixteen women in the Senate.

The relatively small number of African Americans and Hispanics in the House understates their influence, at least when the Democrats are in the majority. In 1994 four House committees were chaired by blacks and three by Hispanics. In the same year, however, no woman chaired a committee. The reason for this difference in power is that the former tend to



When the Democrats regained control of the House, the very liberal John Conyers (ADA score = 100%) became chairman of the House Judiciary Committee in place of the very conservative James Sensenbrenner (ADA score = 10%).



Marcy Kaptur (D., OH) discusses the war on terrorism in front of the capitol.

come from safe districts and thus to have more seniority than the latter. When the Democrats retook control of Congress in 2007, African Americans and Hispanics became chairpersons of several important committees.

## Incumbency

The most important change that has occurred in the composition of Congress has been so gradual that most people have not noticed it. In the nineteenth century a large fraction—often a majority—of congressmen served only one term. In 1869, for example, more than half the members of the House were serving their first term in Congress. Being a congressman in those days was not regarded as a career. This was in part because the federal government was not very important (most of the interesting political decisions were made by the states); in part because travel to Washington, D.C., was difficult and the city was not a pleasant place in which to live; and in part because being a congressman did not pay well. Furthermore, many congressional districts were highly competitive, with the two political parties fairly evenly balanced in each.

By the 1950s, however, serving in Congress had become a career. Between 1863 and 1969 the proportion of first-termers in the House fell from 58 percent to 8 percent.<sup>1</sup> As the public took note of this shift,

people began to complain about “professional politicians” being “out of touch with the people.” A movement to impose term limits was started. In 1995 the House approved a constitutional amendment to do just that, but it died in the Senate. Then the Supreme Court struck down an effort by a state to impose term limits on its own members of Congress.

As it turned out, natural political forces were already doing what the term limits amendment was supposed to do. The 1992 and 1994 elections brought scores of

new members to the House, with the result that by 1995 the proportion of members who were serving their first or second terms had risen sharply. Three things were responsible for this change. First, when congressional district lines were redrawn after the

1990 census, a lot of incumbents found themselves running in new districts that they couldn’t carry. Second, voter disgust at a variety of Washington political scandals made them receptive to appeals from candidates who could describe themselves as “outsiders.” And third, the Republican victory in 1994—made possible in part by the conversion of the South from a Democratic bastion to a Republican stronghold—brought a lot of new faces to the Capitol.

This influx of freshman members should not obscure the fact that incumbents still enjoy enormous advantages in congressional elections.<sup>2</sup> Even in 1994, when thirty-five incumbent Democrats lost to Republicans, over 90 percent of all House members who ran for reelection were reelected. In the Senate 92 percent of incumbents who ran again were reelected. In 2004 and 2006, two of the most hotly contested elections in recent history, only a handful of House incumbents who ran for reelection lost.

The arrival of scores of new faces in Congress should not obscure the fact that most House members still win big in their districts. Political scientists call districts that have close elections (when the winner gets less than 55 percent of the vote) **marginal districts** and districts where incumbents win by wide margins (55 percent or more) **safe districts**. The proportion of House incumbents who have won reelection with at least 60 percent of the vote increased from about three-fifths in the 1950s and early 1960s to three-quarters in the 1970s and almost nine-tenths in the late 1980s (see Figure 13.1). Even as this trend began to change in 1990, most House districts remained safe. Senators remained less secure: the rule, to which the period 1980–1990 and the year 1998 are the exceptions, is that fewer than half of Senate incumbents win with as much as 60 percent of the vote.

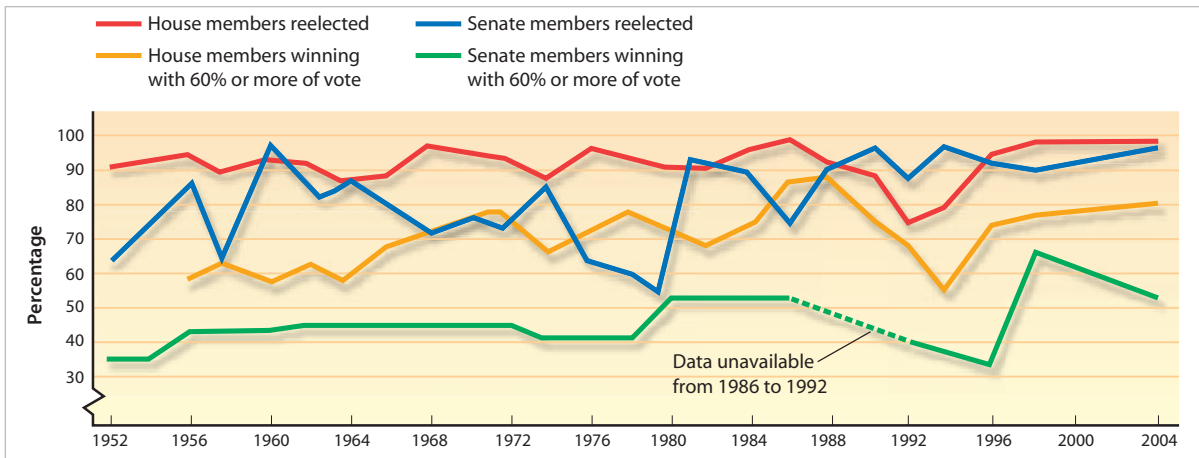
Why congressional seats have become less marginal—that is, safer—is a matter on which scholars do not agree. Some feel that it is the result of television and other media. But challengers can go on television, too, so why should this benefit incumbents? Another possibility is that voters are becoming less and less likely to automatically support whatever candidate wins the nomination of their own party. They are more likely, in short, to vote for the person rather than the party. And they are more likely to have heard of a person who is an incumbent: incumbents can deluge the voter with free mailings, they can travel frequently (and at public expense) to meet constituents, and they can get their names in the newspaper

### marginal districts

*Political districts in which candidates elected to the House of Representatives win in close elections, typically by less than 55 percent of the vote.*

### safe districts

*Districts in which incumbents win by margins of 55 percent or more.*

**Figure 13.1** Percentage of Incumbents Reelected to Congress

Source: Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics, 1999–2000* (Washington, D.C.: Congressional Quarterly Press, 2000), table 1-18; 2004 update by Marc Siegal.

by sponsoring bills or conducting investigations. Simply having a familiar name is important in getting elected, and incumbents find it easier than challengers to make their names known.

Finally, some scholars argue that incumbents can use their power to get programs passed or funds spent to benefit their districts—and thereby to benefit themselves. They can help keep an army base open, support the building of a new highway (or block the building of an unpopular one), take credit for federal grants to local schools and hospitals, make certain that a particular industry or labor union is protected by tariffs against foreign competition, and so on.<sup>3</sup>

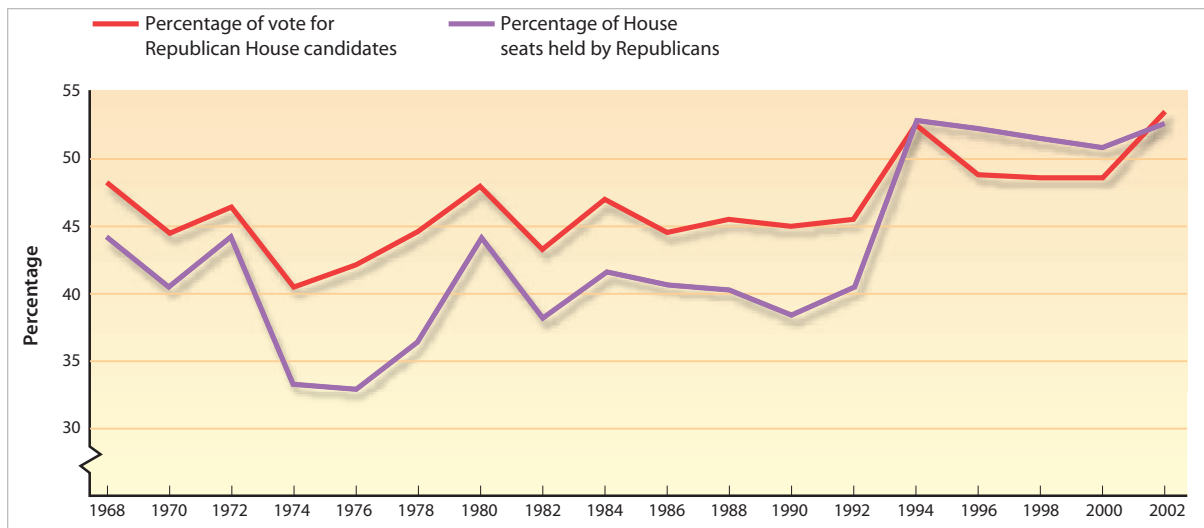
Probably all of these factors make some difference. Whatever the explanation, the tendency of voters to return incumbents to office means that in ordinary times no one should expect any dramatic changes in the composition of Congress.

## Party

From 1933 to 2007 thirty-eight Congresses convened (a new Congress convenes every two years). The Democrats controlled both houses in twenty-six of these Congresses and at least one house in twenty-nine of them. Scholars differ in their explanations of why the Democrats have so thoroughly dominated Congress. Most of the research on the subject has focused on the reasons for Democratic control of the House.

As Figure 13.2 shows, in every election from 1968 to 1992 the percentage of the popular vote for Republican candidates to the House was higher than the percentage of House seats that actually went to Republicans. For example, in 1976 the Republicans won 42.1 percent of the vote but received only 32.9 percent of the seats. Some argued that this gap between votes and seats occurred because Democratic-controlled state legislatures redrew congressional district maps in ways that make it hard for Republicans to win House seats. There is some striking anecdotal evidence to support this conclusion. For example, following the 1990 census, the Democratic-controlled Texas legislature crafted a new congressional district map clearly designed to benefit Democrats. In 1992 Republicans won 48 percent of the House vote in Texas but received only 30 percent of the seats. But after Republicans won control of more state legislatures, matters began to change. In Texas, a new districting plan was adopted that insured that more House seats would be won by Republicans. And when a court, rather than the Democratic legislature, redrew California's district lines, both parties won the same proportion of seats as their share of the popular vote.<sup>4</sup> In 2006, things had evened out nationally: both parties won about the same share of House seats as their percentage of the vote.

Partisan tinkering with district maps and other structural features of House elections is not a sufficient

**Figure 13.2** Republican Vote-Seat Gap, 1968–2002

Source: Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics, 1999–2000* (Washington, D.C.: Congressional Quarterly Press, 2000).

explanation of why Democrats dominated the House until 1994. As one study concluded, “Virtually all the political science evidence to date indicates that the electoral system has little or no partisan bias, and that the net gains nationally from redistricting for one party over another are very small.”<sup>5</sup> To control the redistricting process, one party must control both houses of the legislature, the governor’s office, and, where necessary, the state courts. These conditions simply do not exist in most states. And even if district lines were consistently drawn with scrupulous fairness, the Democrats would still win control of the House, because they win more votes. The pre-1994 Republican vote-seat gap is accounted for in part by the fact that the Democrats tend to do exceptionally well in low-turnout districts such as minority-dominated inner cities, while the Republicans tend to do well in high-turnout districts such as affluent white suburbs.

Congressional incumbents have come to enjoy certain built-in electoral advantages over challengers. Democrats were in the majority as the advantages of incumbency grew, but Republicans have enjoyed the same or greater advantages from 1994 to 2006. Studies suggest that the incumbency advantage was worth about two percentage points prior to the 1960s but has grown to six to eight points today.

It is important to remember that from time to time major electoral convulsions do alter the membership

of Congress. For example, in the election of 1938 the Democrats lost seventy seats in the House; in 1942 they lost fifty; in 1950 they lost twenty-nine; and in 1966 they lost forty-eight. Despite these big losses, the Democrats retained a majority in the House in each of these years. Not so, however, in 1994, when the Democrats lost fifty-two House seats (the largest loss by either party since the Republicans lost seventy-five seats in 1948), and Republicans gained majorities in both the House and the Senate.

Just as it is not easy to explain why Democrats dominated Congress for half a century, so it is not easy to explain why that domination ended when and as it did. Several reasons, however, stand out. By the 1990s the advantages of incumbency had turned into disadvantages: voters increasingly came to dislike “professional politicians,” whom they held responsible for “the mess in Washington.” Just what “the mess” was varied according to which voter you asked, but it included chronic budget deficits, the congressional habit of exempting itself from laws that affected everybody else, constant bickering between Congress and the White House, and various congressional scandals. During the 1980s about forty members of Congress were charged with misconduct ranging from having sex with minors to accepting illegal gifts. When it was disclosed that the House had its own bank that would cash checks even for members who (temporarily) had no funds

in their accounts, public indignation exploded, even though almost no taxpayer money was lost. Public respect for Congress, as measured by the polls, plummeted.

The Democrats had the misfortune of being the majority party in Congress when all of this happened. The anti-incumbent mood, coupled with the effects of redistricting after the 1990 census and the shift of the South to the Republican party, brought the Republicans into power in the House and Senate in the 1994 elections.

In the past the Democratic party was more deeply divided than the Republicans, because of the presence in Congress of conservative Democrats from the South. Often these southern Democrats would vote with the Republicans in the House or Senate, thereby forming what came to be called the **conservative coalition**. During the 1960s and 1970s that coalition came together in about one-fifth of all roll-call votes. When it did, it usually won, defeating northern Democrats. But since the 1980s, and especially since the watershed election of 1994, the conservative coalition has become much less important. The reason is simple: many southern Democrats in Congress have been replaced by southern Republicans, and the southern Democrats who remain (many of them African Americans) are as liberal as northern Democrats. The effect of this change is to make Congress, and especially the House, more ideologically partisan—Democrats are liberals, Republicans are conservatives—and this in turn helps explain why there is more party unity in voting.

## ★ Do Members Represent Their Voters?

In a decentralized, individualistic institution such as Congress, it is not obvious how its members will behave. They could be devoted to doing whatever their constituents want or, since most voters are not aware of what their representatives do, act in accordance with their own beliefs, the demands of pressure groups, or the expectations of congressional leaders. You may think it would be easy to figure out whether members are devoted to their constituents by analyzing how they vote, but that is not quite right. Members can influence legislation in many ways other than by voting: they can conduct hearings, help mark up bills in committee meetings, and offer amendments to the bills proposed by others. A member's final vote on a bill may conceal as much as it reveals: some members may vote

for a bill that contains many things they dislike because it also contains a few things they value.

There are at least three theories about how members of Congress behave: representational, organizational, and attitudinal.

The *representational* explanation is based on the reasonable assumption that members want to get reelected, and therefore they vote to please their constituents. The *organizational* explanation is based on the equally reasonable assumption that since most constituents do not know how their legislator has voted, it is not essential to please them. But it is important to please fellow members of Congress, whose goodwill is valuable in getting things done and in acquiring status and power in Congress. The *attitudinal* explanation is based on the assumption that there are so many conflicting pressures on members of Congress that they cancel one another out, leaving them virtually free to vote on the basis of their own beliefs.

Political scientists have studied, tested, and argued about these (and other) explanations for decades, and nothing like a consensus has emerged. Some facts have been established, however.

### Representational View

The representational view has some merit under certain circumstances—namely, when constituents have a clear view on some issue and a legislator's vote on that issue is likely to attract their attention. Such is often the case for civil rights laws: representatives with significant numbers of black voters in their districts are not likely to oppose civil rights bills; representatives with few African Americans in their districts are comparatively free to oppose such bills. (Until the late 1960s many southern representatives were able to oppose civil rights measures because the African Americans in their districts were prevented from voting. On the other hand, many representatives without black constituents have supported civil rights bills, partly out of personal belief and partly, perhaps, because certain white groups in their districts—organized liberals, for example—have insisted on such support.)

**conservative coalition** An alliance between Republican and conservative Democrats.

One study of congressional roll-call votes and constituency opinion showed that the correlation between the two was quite strong on civil rights bills. There was also a positive (though not as strong) correlation between roll-call votes and constituency opinion on



**Keith Ellison (D., MN), the first Muslim elected to Congress.**

social welfare measures. Scarcely any correlation, however, was found between congressional votes and hometown opinion on foreign policy measures.<sup>6</sup> Foreign policy is generally remote from the daily interests of most Americans, and public opinion about such matters can change rapidly. It is not surprising, therefore, that congressional votes and constituent opinion should be different on such questions.

From time to time an issue arouses deep passions among the voters, and legislators cannot escape the need either to vote as their constituents want, whatever their personal views, or to anguish at length about which side of a divided constituency to support. Gun control has been one such question, the use of federal money to pay for abortions has been another, and the effort to impeach President Clinton was a third. Some fortunate members of Congress get unambiguous cues from their constituents on these matters, and no hard decision is necessary. Others get conflicting views, and they know that whichever way they vote, it may cost them dearly in the next election. Occasionally members of Congress in this fix will try to be out of town when the matter comes up for a vote. One careful study found that constituency influences were an important factor in Senate votes,<sup>7</sup> but no comparable study has been done for the House.

You might think that members of Congress who won a close race in the last election—who come from a “marginal” district—would be especially eager to vote the way that their constituents want. Research so far has shown that is not generally the case. There seem

to be about as many independent-minded members of Congress from marginal as from safe districts. Perhaps it is because opinion is so divided in a marginal seat that one cannot please everybody; as a result the representative votes on other grounds.

In general, the problem with the representational explanation is that public opinion is not strong and clear on most measures on which Congress must vote. Many representatives and senators face constituencies that are divided on key issues. Some constituents go to special pains to make their views known (these interest groups were discussed in Chapter 11). But as we indicated, the power of interest groups to affect congressional votes depends, among other things, on whether a legislator sees them as united and powerful or as disorganized and marginal.

This does not mean that constituents rarely have a direct influence on voting. The influence that they have probably comes from the fact that legislators risk defeat should they steadfastly vote in ways that can be held against them by a rival in the next election. Though most congressional votes are not known to most citizens, blunders (real or alleged) quickly become known when an electoral opponent exploits them.

Still, any member of Congress can choose the positions that he or she takes on most roll-call votes (and on all voice or standing votes, where names are not recorded). And even a series of recorded votes that are against constituency opinion need not be fatal: a member of Congress can win votes in other ways—for example, by doing services for constituents or by appealing to the party loyalty of the voters.

## **Organizational View**

When voting on matters where constituency interests or opinions are not vitally at stake, members of Congress respond primarily to cues provided by their colleagues. This is the organizational explanation of their votes. The principal cue is party; as already noted, what party a member of Congress belongs to explains more about his or her voting record than any other single factor. Additional organizational cues come from the opinions of colleagues with whom the member of Congress feels a close ideological affinity: for liberals in the House it is the Democratic Study Group; for conservatives it has often been the Republican Study Committee or the Wednesday Club. But party and other organizations do not have clear positions on all matters. For the scores of votes that do not involve the “big questions,” a representative or senator is es-

pecially likely to be influenced by the members of his or her party on the sponsoring committee.

It is easy to understand why. Suppose you are a Democratic representative from Michigan who is summoned to the floor of the House to vote on a bill to authorize a new weapons system. You haven't the faintest idea what issues might be at stake. There is no obvious liberal or conservative position on this matter. How do you vote? Simple. You take your cue from several Democrats on the House Armed Services Committee that handled the bill. Some are liberal; others are conservative. If both liberals and conservatives support the bill, you vote for it unhesitatingly. If they disagree, you vote with whichever Democrat is generally closest to your own political ideology. If the matter is one that affects your state, you can take your cue from members of your state's delegation to Congress.

### Attitudinal View

Finally, there is evidence that the ideology of a member of Congress affects how he or she votes. We have seen that Democratic and Republican legislators differ sharply on a liberal-versus-conservative scale. On both domestic and foreign policy issues many tend to be consistently liberal or conservative.<sup>8</sup>

This consistency isn't surprising. As we saw in Chapter 7, political elites think more ideologically than the public generally.

On many issues the average member of the House has opinions close to those of the average voter. Senators, by contrast, are often less in tune with public opinion. In the 1970s they were much more liberal than voters; in the early 1980s more conservative. Two senators from the same state often mobilize quite different bases of support. The result is that many states, such as California, Delaware, and New York, have been represented by senators with almost diametrically opposed views.

Of late, the Senate has gone through three phases. In the first, during the 1950s and early 1960s, it was a cautious, conservative institution dominated by southern senators and displaying many of the features of a "club" that welcomed members into its inner circle only after they had displayed loyalty to its gentlemanly (and, in effect, conservative) customs. This was the era when the Senate was the graveyard of civil rights bills.

The second period began in the mid-1960s as liberal senators rose steadily in number, seniority, and influence, helped along by the Johnson reforms, which made it easier for junior senators to gain chairmanships. The decentralization of the Senate gave more

power to individual senators, including liberals. In 1972 there were about twenty-four liberal senators, but among them they held forty subcommittee chairmanships.<sup>9</sup>

The third period began in the late 1970s and became most visible after the 1980 elections, when many liberals lost their seats to conservative Republicans. The conservatism of the present Senate is based more on ideology than on the rules of the southern "club" that characterized it in the 1950s.

The Democratic party is more deeply divided than the Republican. There are only a few liberal Republicans, but there have been many more conservative Democrats from the South and West. Southern Democrats often teamed up with Republicans to form a conservative coalition. In a typical year a majority of Republicans and southern Democrats would vote together against a majority of northern Democrats about 20 to 25 percent of the time. When the conservative coalition did form, it usually won: between 1970 and 1982 it won about two-thirds of the votes on which it held together. After the Reagan victory and the Republican gain of thirty seats in the House in 1981, the conservative coalition became even more effective, dominating key votes on the Reagan budget and tax plans.

But the conservative coalition was important only when there were a lot of conservative southern Democrats. Many of these have now been replaced with southern Republicans. As a result almost all of the conservatives are now in the Republican party, so there is not much of a coalition left to form. The map and accompanying tables (on pages 330–331) show the most liberal and most conservative state delegations in the House.

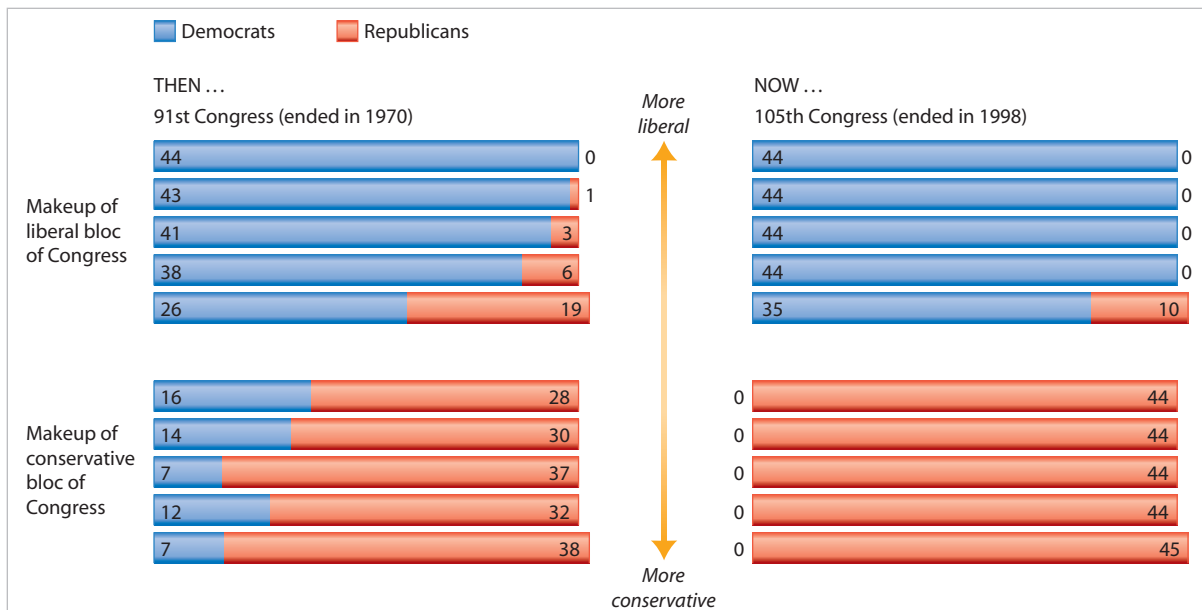
## ★ A Polarized Congress

Figure 13.3 shows that a generation ago the more liberal half of the House had twenty-nine Republicans.<sup>10</sup> About three decades later, however, it had only ten Republicans. Similarly, a generation ago the more conservative half of the House had fifty-six Democrats. By 1998, however, it had zero. (Zero!) The picture for the 110th Congress would not be radically different from that for the 105th Congress. Today, as it had been for over a decade now, Congress is polarized along ideological and partisan lines.

Congress has become an increasingly ideological organization. By that we mean its members are more



**Figure 13.3** Distribution of House Members in Terms of Their “Liberal” or “Conservative” Characteristics, by Party



Source: “A Polarized Congress,” *National Journal*, January 21, 2006, p. 21, reporting data compiled and depicted by Duke University political scientists David Rohde and John Aldrich. Reprinted with permission from *National Journal*. Copyright © 2007 National Journal. All rights reserved.

sharply divided by political ideology than they once were and certainly more divided than are American voters. In short, the attitudinal explanation of how members vote has increased in importance, while the organizational explanation has declined. All of Congress’s most liberal members are Democrats, and all of its most conservative ones are Republicans. That is not what you would find among ordinary voters. A lot of us split our tickets, voting for one party’s presidential nominee and a different party’s congressional candidate.

This higher level of congressional ideology does not mean that its existing members have changed how they think. Rather it means that new kinds of members have been elected, bringing to Congress a more ideological perspective.<sup>11</sup> In 1974 (the election right after Watergate) a large number of more ideological Democrats entered Congress. In 1994 there was a large influx of more ideological Republicans.

Congress has become more polarized than voters in terms of political beliefs. Among voters the average Democrat and the average Republican, though they surely disagree, nonetheless have views that put them close to the center of the political spectrum. But among

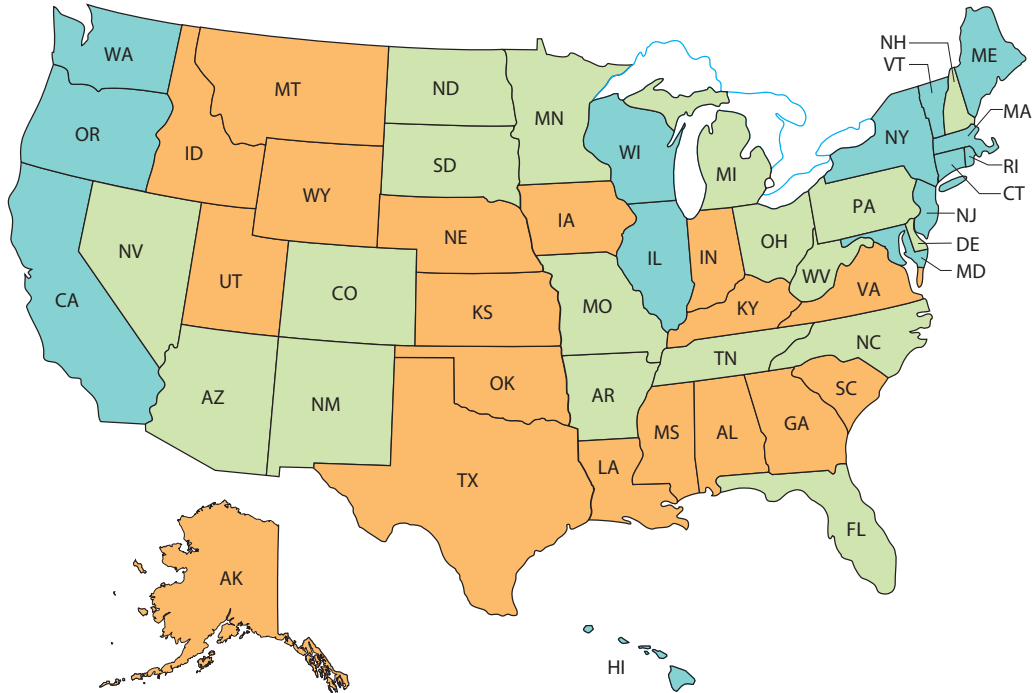
members of Congress the average Democrat is very liberal and the average Republican very conservative, a fact that keeps them far from the political center. There are, of course, some conservative Democrats and some liberal Republicans, but their numbers have been getting smaller and smaller.

One result of this polarization is that members of Congress, especially those in the House, do not get along as well as they once did with members who disagree with them, and they are more likely to challenge, investigate, and denounce one another. Two Speakers of the House, Jim Wright and Newt Gingrich, were investigated and resigned. Many presidential nominees have been subjected to withering investigations, some based on ideological differences and some on charges of ethical violations, many of which were dubious. President Clinton was impeached on a nearly party-line vote. Members regularly accuse one another of misconduct. When they run for reelection, they often use negative ads of the sort discussed in Chapter 10. The mass media feed on and aggravate this tendency because of their interest in scandal.

The result is that the public—already puzzled by the constitutional need members have to discuss pol-

State Delegations in the House

This map shows the most-liberal to most-conservative state delegations in the House, based on each delegation's average composite liberal score in *National Journal's* 2005 vote ratings.



**MOST-LIBERAL STATE DELEGATIONS**

Massachusetts	90	Oregon	65
Vermont	90	Connecticut	64
Maine	80	Illinois	63
Rhode Island	74	New Jersey	62
New York	69	California	61
Maryland	68	Washington	61
Hawaii	67	Wisconsin	61

**CENTRIST STATE DELEGATIONS**

North Dakota	60	Missouri	46
South Dakota	59	North Carolina	46
West Virginia	58	Pennsylvania	46
Minnesota	56	Colorado	44
New Mexico	54	Nevada	43
Delaware	53	Tennessee	43
Michigan	52	New Hampshire	42
Ohio	48	Arizona	40
		Florida	40

**MOST-CONSERVATIVE STATE DELEGATIONS**

Mississippi	39	Alaska	31
Virginia	39	Alabama	30
Georgia	38	Louisiana	30
Idaho	38	Utah	30
Iowa	36	Kansas	28
Texas	34	Nebraska	27
South Carolina	33	Kentucky	26
Indiana	32	Montana	25
Wyoming	32	Oklahoma	23

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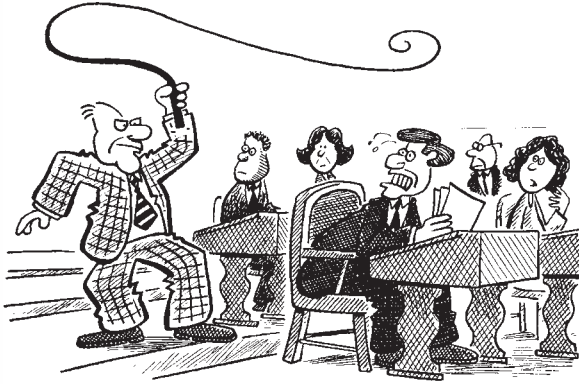
icy matters for long periods, listen to interest groups, and reach compromise settlements—are now put off even more by the political disposition members have to attack one another. At one time the constitutional need to negotiate was facilitated by reasonably good relationships between Democrats and Republicans, most of whom treated one another with politeness and socialized together after hours. This congenial social relationship no longer exists in most cases, and the public has noticed.

## ★ The Organization of Congress: Parties and Caucuses

Congress is not a single organization; it is a vast and complex collection of organizations by which the business of the legislative branch is carried on and through which its members form alliances (see Figure 13.4). If we were to look inside the British House of Commons,

## POLITICALLY SPEAKING

### Whip



A whip is a party leader who makes certain that party members are present for a vote and vote the way the party wishes. In the British House of Commons the whips produce strong party votes; in the U.S. Congress whips are a lot less successful.

The word comes from *whipper-in*, a term from fox hunting denoting the person whose job it is to keep the hounds from straying off the trail. It became a political term in England in the eighteenth century, and from there came to the United States.

Source: From *Safire's Political Dictionary* by William Safire. Copyright © 1968, 1972, 1978 by William Safire. Reprinted by permission of Random House, Inc. and the author.

we would find only one kind of organization of any importance—the political party. Though party organization is important in the U.S. Congress, it is only one of many important elements. In fact other organizations have grown in number as the influence of the parties has declined.

The Democrats and Republicans in the House and the Senate are organized by party leaders. The key leaders in turn are elected by the full party membership within the House and Senate. The description that follows is confined to the essential positions.

**majority leader** *The legislative leader elected by party members holding the majority of seats in the House or the Senate.*

**minority leader** *The legislative leader elected by party members holding a minority of seats in the House or the Senate.*

## Party Organization of the Senate

The majority party chooses one of its members—usually the person with the greatest seniority—to be president pro tempore of the Senate. It is largely an honorific position, required by the Constitution so that the Senate will have a presiding officer in the absence of the vice president of the United States (who is also, according to the Constitution, the president of the Senate). In fact, presiding over the Senate is a tedious chore that neither the vice president nor the president pro tem relishes, and so the actual task of presiding is usually assigned to some junior senator.

The real leadership is in the hands of the **majority leader** (chosen by the senators of the majority party) and the **minority leader** (chosen by the senators of the other party). In addition, the senators of each party elect a whip. The principal task of the majority leader is to schedule the business of the Senate, usually in consultation with the minority leader. The majority leader has the right to be recognized first in any floor debate. A majority leader with a strong personality who is skilled at political bargaining may do much more. Lyndon Johnson, who was Senate majority leader for the Democrats during much of the 1950s, used his prodigious ability to serve the needs of fellow senators. He helped them with everything from obtaining extra office space to getting choice committee assignments, and in this way he acquired substantial influence over the substance as well as the schedule of Senate business. Johnson's successor, Mike Mansfield, was a less assertive majority leader and had less influence.

The **whip** is a senator who helps the party leader stay informed about what party members are thinking, rounds up members when important votes are to be taken, and attempts to keep a nose count on how the voting on a controversial issue is likely to go. The whip has several senators who assist him or her in this task.

Each party in the Senate also chooses a Policy Committee composed of a dozen or so senators who help the party leader schedule Senate business, choosing what bills are to be given major attention and in what order.

From the point of view of individual senators, however, the key party organization is the group that assigns senators to the standing committees of the Senate. The Democrats have a Steering Committee that does this; the Republicans have a Committee on Committees. These assignments are especially im-



**Nancy Pelosi, the first woman to serve as House Speaker.**

portant for newly elected senators: their political careers, their opportunities for favorable publicity, and their chances for helping their states and their supporters depend in great part on the committees to which they are assigned.

Party control of the Senate has changed frequently. When George W. Bush took office in 2001, the Republicans briefly retained control by having 50 seats plus a tie-breaking vote cast by Vice President Cheney. But then Senator James Jeffords, a Republican, became an independent and voted to let the Democrats control it, 51 to 49. But that ended when the Republicans won enough seats in the 2002 election to regain control. Having a tiny majority in the Senate does not affect most important votes since the other side can filibuster, but having your own party control the chairmanships is very important because it helps determine what issues will get to the floor for a vote.

The key—and delicate—aspect of selecting party

leaders, of making up the important party committees, and of assigning freshman senators to Senate committees is achieving ideological and regional balance. Liberals and conservatives in each party will fight over the choice of majority and minority leader, but factors in addition to ideology play a part in the choice. These include personal popularity, the ability of the leader to make an effective television appearance, and who owes whom what favors.

## Party Structure in the House

Though the titles of various posts are different, the party structure is essentially the same in the House as in the Senate. Leadership carries more power in the House than in the Senate because of the House rules. Being so large (435 members), the House must restrict debate and schedule its business with great care; thus leaders who do the scheduling and who determine how the rules shall be applied usually have substantial influence.

The Speaker is the most important person in the House. Elected by whichever party has a majority, the Speaker presides over all House meetings. Unlike the president pro tem of the Senate, however, the Speaker's position is anything but honorific. He or she is the principal leader of the majority party as well as the presiding officer of the entire House. Though Speakers-as-presiders are expected to be fair, Speakers-as-party-leaders are expected to use their powers to help pass legislation favored by their party.

In helping his or her party, the Speaker has some important formal powers: deciding who shall be recognized to speak on the floor of the House; ruling whether a motion is relevant and germane to the business at hand; and deciding (subject to certain rules) the committees to which new bills shall be assigned. The Speaker influences what bills are brought up for a vote and appoints the members of special and select committees (to be explained on pages 338–341). Since 1975 the Speaker has been able to nominate the majority-party members of the Rules Committee. He or she also has some informal powers: controlling some patronage jobs in the Capitol building and the assignment of extra office space. Even though the Speaker is far less powerful than in the days of Clay, Reed, and Cannon, he or she is still an important person to have on one's side. Sam Rayburn of Texas exercised great

**whip** *A senator or representative who helps the party leader stay informed about what party members are thinking.*

## How Things Work

### Party Leadership Structure in 2007

#### SENATE

**President Pro Tempore** Selected by majority party  
**Democrats**

- Majority Leader* Leads the party
- Majority Whip* Assists the leader, rounds up votes, heads group of deputy whips
- Chairman of the Conference* Presides over meetings of all Senate Democrats
- Policy Committee* Schedules legislation
- Steering Committee* Assigns Democratic senators to committees
- Democratic Senatorial Campaign Committee* Provides funds, assistance to Democratic candidates for the Senate

#### Republicans

- Minority Leader* Leads the party
- Minority Whip* Assists the leader, rounds up votes
- Chairman of the Conference* Presides over meetings of all Senate Republicans
- Policy Committee* Makes recommendations on party policy
- Committee on Committees* Assigns Republican senators to committees
- Republican Senatorial Committee* Provides funds, advice to Republican candidates for the Senate

#### HOUSE

**Speaker of the House** Selected by majority party  
**Democrats**

- Majority Leader* Leads the party
- Majority Whip* Assists the leader, rounds up votes, heads group of deputy and assistant whips
- Chairman of the Caucus* Presides over meetings of all House Democrats
- Steering and Policy Committee* Schedules legislation, assigns Democratic representatives to committees
- Democratic Congressional Campaign Committee* Provides funds, advice to Democratic candidates for the House

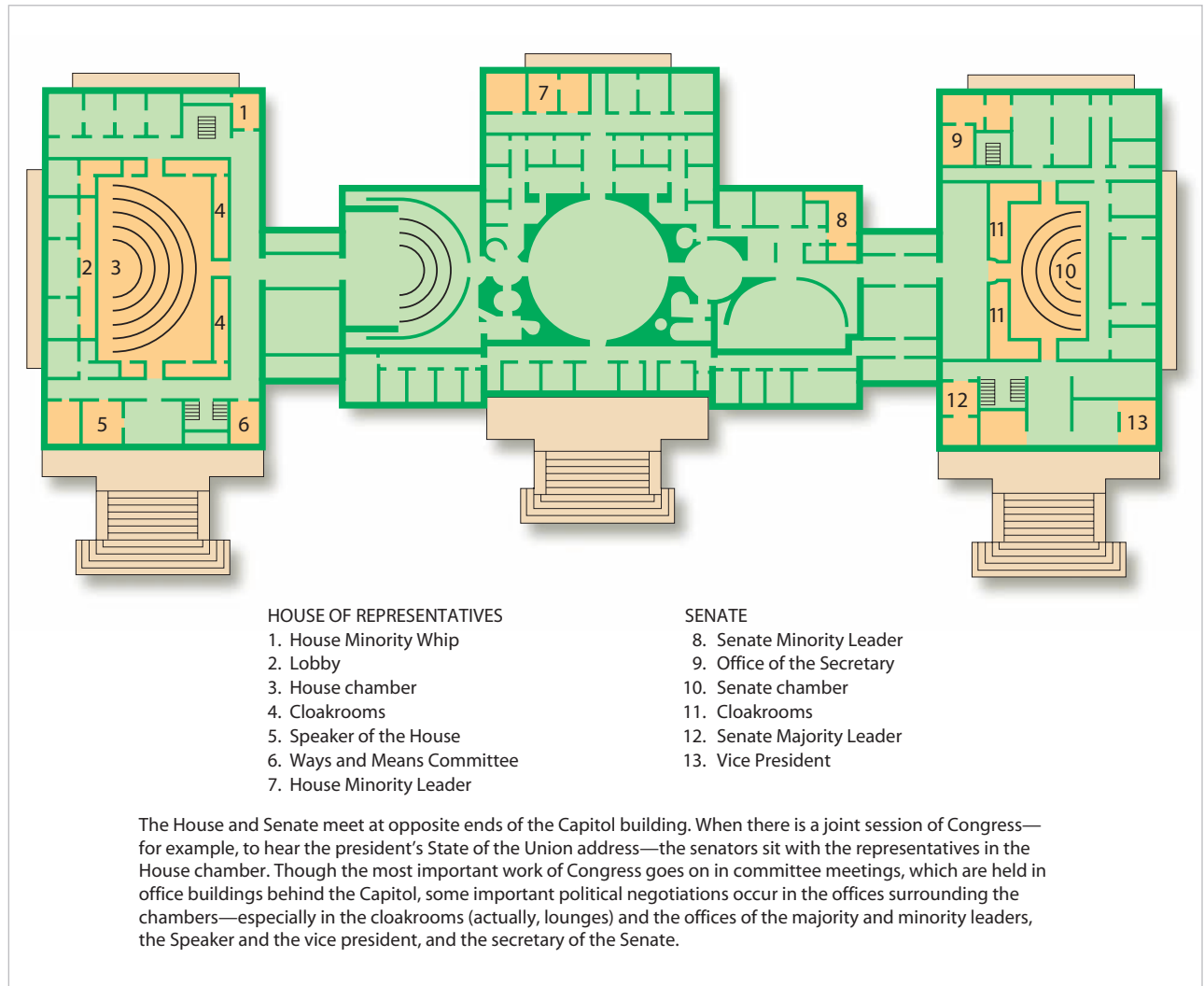
#### Republicans

- Minority Leader* Leads the party
- Minority Whip* Assists the leader, rounds up votes, heads large group of deputy and assistant whips
- Chairman of the Conference* Presides over meetings of all House Republicans
- Committee on Committees* Assigns Republican representatives to committees
- Policy Committee* Advises on party policy
- National Republican Congressional Committee* Provides funds, advice to Republican candidates for the House
- Research Committee* On request, provides information about issues

influence as Speaker, and Tip O'Neill, Jim Wright, Tom Foley, and Newt Gingrich tried to do the same.

In the House, as in the Senate, the majority party elects a floor leader, called the majority leader. The other party also chooses a leader—the minority leader. Traditionally the majority leader becomes Speaker when the person in that position dies or retires—provided, of course, that the departing Speaker's party is still in the majority. Each party also has a whip, with several assistant whips in charge of rounding up votes

from various state delegations. Committee assignments are made and the scheduling of legislation is discussed, by the Democrats, in a Steering and Policy Committee, chaired by the Speaker. The Republicans have divided committee assignments and policy discussions, with the former task assigned to a Committee on Committees and the latter to a Policy Committee. Each party also has a congressional campaign committee to provide funds and other assistance to party members running for election or reelection to the House.

**Figure 13.4** The U.S. Congress

### The Strength of Party Structures

One important measure of the strength of the parties in Congress is the ability of party leaders to get their members to vote together on the rules and structure of Congress. When Newt Gingrich became Speaker of the Republican-controlled House in 1995, he proposed sweeping changes in House rules, many not popular with some Republican members. For example, he wanted no one to serve as a committee chairman for more than six years, for three committees to be abolished, and for other committees to lose either func-

tions or members. He also wanted to pass over some senior members in picking committee chairmen. Though these moves adversely affected some Republican representatives, they all voted in favor of the new rules.<sup>12</sup> Of course, Gingrich would not have made these proposals unless he was certain he could get them adopted. But it was a measure of his influence and support among newly elected Republicans that even major changes in congressional procedures would get unanimous party support.<sup>13</sup> Getting support on proposed legislation is a harder task.

The Senate is another matter. As Barbara Sinclair

has argued, in the last few decades the Senate has been transformed by changes in norms (informal understandings governing how members ought to behave toward their colleagues), without any far-reaching changes in the written Senate rules.<sup>14</sup> Compared to the Senate of the 1950s and 1960s, today's Senate is less party-centered, less leader-oriented, more hospitable to freshmen (who no longer have to "pay their dues" before assuming major roles as legislators), more heavily staffed, and more subcommittee-oriented.

## Party Unity

The strength of Congress's elaborate party machinery can also be measured by the extent to which members of a party vote together in the House and Senate. **Party polarization** is defined as a vote in which a majority of voting Democrats oppose a majority of voting Republicans. In seven of the thirteen years from 1953 to 1965, at least half of all House votes pitted a majority of voting Democrats against a majority of voting Republicans. But in 1966 the number dropped to 41 percent, and it was not until 1983 that voting in the House once again took on a distinctively partisan cast. By the 1990s party unity voting was the norm in both the House and the Senate.

As these recent trends make plain, party unity in Congress is hardly a thing of the past. Specific issues can trigger an extraordinary degree of party cohesion. For example, in 1993 every single Republican in both the House and Senate voted against the Clinton budget plan, the first budget offered by a Democratic president since Jimmy Carter left office in 1980. This may be an extreme example, but it reflects the increasingly adversarial relationship between Democrats and Republicans, especially in the House.

Still, it is worth remembering that even today's Congress is less divided along party lines than many of its predecessors were. During the years 1890–1910, for example, two-thirds of all votes evoked a party split, and in several sessions more than half the roll calls

found 90 percent of each party's members opposing the other party.<sup>15</sup> Whereas the party splits of the past often reflected the routine operations of highly disciplined parties interested mainly in winning elections, dispensing patronage, and keeping power, today's party splits often reflect sharp ide-

ological differences between the parties (or at least between their respective leaders).

The sharp increase in party votes among members of Congress since 1970 is remarkable, since it is not obvious that the Americans who vote for these members are as deeply divided by party. When social scientists describe a trait among people—say, their height—they usually note that there are a few very short ones and a few very tall ones, but that most people are in the middle. They call this distribution "unimodal." But when one describes voting in Congress, except on matters of national urgency, the votes are "bimodal"—that is, almost all of the Democrats vote one way and almost all of the Republicans vote a different way.

For example, when President Clinton was impeached, 98 percent of the House Republicans voted for at least one of the four impeachment articles and 98 percent of the House Democrats voted against all four, and this happened despite the fact that most Americans did not want to have the president impeached. In fact, the Republican vote did not even match how people felt who lived in districts represented by Republicans. On abortion, most Americans favor it but with some important limitations, but in Congress Democrats almost always support it with no restrictions and Republicans usually want to put on lots of restrictions. Votes on less emotional matters, like the tax bills, often show the same pattern of Democrats and Republicans at loggerheads.

How could these things happen in a democratic nation? If the American people are usually in the center on political issues, why are congressional Democrats almost always liberal and congressional Republicans almost always conservative?

There is no simple or agreed-upon answer to this question. Some scholars have argued that in the last thirty years or so voters have in fact become more partisan. "More partisan" means that they see important differences between the two parties, they identify themselves as either conservatives or liberals, and they favor parties that share their ideological preferences.<sup>16</sup>

One reason this has happened has been the way congressional districts are drawn for House members. The vast majority are drawn so as to protect one party or the other. This means that if you are a Republican living in a pro-Democratic district (or a Democrat living in a pro-Republican one), your votes

### party polarization

*A vote in which a majority of Democratic legislators oppose a majority of Republican legislators.*

don't make much difference in an election. Most House districts are not competitive, meaning that in them the only election that counts is the primary used to pick a candidate. In primaries voter turnout is lower, so that the most motivated (and thus most ideological) voters play a disproportionate role in choosing candidates.

A second possibility is that the voters have become more partisan as a result of Congress having become more partisan. When House Democrats vote liberal and House Republicans vote conservative, a lot of voters follow this cue and take positions based on a similar ideology.<sup>17</sup> People who don't see the world this way have either become less numerous or vote less often.

And a third is the role of seniority. Even though the so-called seniority rule is no longer strictly followed, the chairmen of committees are typically the members who have been on those committees the longest, and they will, of course, be ones from the safest districts. Since the chairmen have a lot of influence over how bills are written, their views—which have been shaped by a lifetime of dedication to Democratic or Republican causes—will be very important.

Still, just how much congressmen are influenced by committee chairmen and other party leaders is hard to know. In several sophisticated studies, political scientists Keith T. Poole and Howard Rosenthal have suggested that, while parties and their leaders matter, individual members' ideological views (see Chapter 7) probably matter as much or more than party discipline does in explaining how Congress works and how congressmen behave. "Members of Congress," they find, "come to Washington with a staked-out position on the (liberal-conservative) continuum, and then, largely 'die with their ideological boots on.'"<sup>18</sup> Everything from which "ideological boots" a given member chooses to wear in the first place to how he or she votes on a particular issue "may result as much from external pressures of campaign donors and primary voters as from the internal pressures of the congressional party."<sup>19</sup>

In short, party *does* make a difference in Congress—not as much as it once did, and not nearly as much as it does in a parliamentary system, but enough so that party affiliation is still the most important thing to know about a member of Congress. Knowing whether a member is a Democrat or a Republican will not tell you everything about the member, but it will tell you more than any other single fact.



Senate Minority Leader Mitch McConnell (R, KY) speaks while on the left Sen. John Kyl (R, AZ) and on the right Sen. John Cornyn (R, TX) listen.

## Caucuses

Congressional caucuses are a growing rival to the parties as a source of policy leadership. A **caucus** is an association of members of Congress created to advocate a political ideology or a regional or economic interest. In 1959 there were only four caucuses; by the late 1980s there were over one hundred.

As Congress expert Susan Webb Hammond has observed, "The pace of caucus formation accelerated rapidly during the 1970s as members, operating with increased and more equitably distributed resources within a decentralized institution, sought to respond to increased external demands. . . . Members derive benefits—gaining information, being identified as a 'leader,' symbolically showing that they care about an issue of importance to constituents—from caucus activities."<sup>20</sup> In January 1995, at the beginning of the Republican-led 104th Congress, it was widely reported that the House of Representatives would "abolish" congressional caucuses. By 2006 there were some 290 congressional caucuses (most using that name, but a few styling themselves instead as "task forces" or "committees"). Table 13.2 offers a sample.

**caucus** *An association of Congress members created to advance a political ideology or a regional, ethnic, or economic interest.*

It is no longer easy to know whether any given caucus matters much to life in Congress, but there are some well-established exceptions. Perhaps the most notable is the Congressional Black Caucus (CBC). Founded in 1969, it received its



name in 1971 on the motion of Representative Charles Rangel, a Democrat from New York. As the 110th Congress convened in 2007, Rangel served as chairman of the powerful House Ways and Means Committee. Officially nonpartisan, all CBC members are Democrats. In the 1990s, former Representative J. C. Watts, a black Republican from Oklahoma, refused to join. In January 2007 Representative Stephen Cohen, a Democrat from Tennessee, attempted to join. Cohen is Jewish, but more than half of his constituents are African Americans. He was rejected. The “death” of caucuses was greatly exaggerated.

## ★ The Organization of Congress: Committees

The most important organizational feature of Congress is the set of legislative committees of the House and Senate. It is there that the real work of Congress is done, and it is in the chairmanships of these committees and their subcommittees that most of the power in Congress is found. The number and jurisdiction of these committees are of the greatest interest to members of Congress, since decisions on these subjects determine what group of members, with what political views, will pass on legislative proposals, oversee the workings of agencies in the executive branch, and conduct investigations.

There are three kinds of committees: **standing committees** (more or less permanent bodies with specified legislative responsibilities), **select committees** (groups appointed for a limited purpose and usually lasting for only a few congresses), and **joint committees** (those on which both representatives and senators serve). An especially important kind of joint committee is the **conference committee**, made up of representatives

and senators appointed to resolve differences in the Senate and House versions of the same piece of legislation before final passage.

### standing committees

*Permanently established legislative committees that consider and are responsible for legislation within a certain subject area.*

### select committees

*Congressional committees appointed for a limited time and purpose.*

### joint committees

*Committees on which both senators and representatives serve.*

### conference committees

*A joint committee appointed to resolve differences in the Senate and House versions of the same bill.*

**Table 13.2** Congressional Caucuses: A Sample, 2006

Caucus
9/11 Commission
African Trade
Air Force
Arts
Automotive
Black
Blue Dog (Democrats)
Cerebral Palsy
Children's
Climate Change
Food Safety
Former Mayors
Freedom of the Press
Hispanic
Horse
Korea
Native American
Navy-Marine
New Democrat
Nuclear Issues
Oil and National Security
Passenger Rail
Pell Grant
POW/MIA
Prayer
Pro-Choice
Public Broadcasting
Second Amendment
Shellfish
Singapore
Terrorism
Upper Mississippi Basin
U.S.-China
Victory in Iraq
Zero Capital Gains

Source: U.S. House of Representatives, 2006.

Though members of the majority party could, in theory, occupy all of the seats on all of the committees, in practice they take the majority of seats on each committee, name the chairperson, and allow the minority party to have the other seats. Usually the ratio of Democrats to Republicans on a committee roughly corresponds to their ratio in that house of Congress, but on occasion the majority party will try to take extra seats on some key panels, such as the House Appropriations or Ways and Means Committees. Then the minority party complains, as the Republicans did in 1981 and the Democrats did in 1999, usually with little effect. In 2001, with the Sen-

ate evenly divided between Democrats and Republicans, each committee had the same number of members from each party with Republicans serving as chairmen.

Standing committees are the important ones, because, with a few exceptions, they are the only ones that can propose legislation by reporting a bill out to the full House or Senate. Each member of the House usually serves on two standing committees, unless he or she is on an “exclusive” committee—Appropriations, Rules, or Ways and Means. In such a case the representative is limited to one. Each senator may serve on two “major” committees and one “minor” committee.

When party leaders were strong, as under Speakers Reed and Cannon, committee chairmen were picked on the basis of loyalty to the leader. Now that this leadership has been weakened, seniority on the committee governs the selection of chairmen. Of late, however, even seniority has been under attack. In 1971 House Democrats decided in their caucus to elect committee chairmen by secret ballot. From then through 1991 they used that procedure to remove six committee chairmen. When the Republicans took control of the House in 1995, they could have returned to the strict seniority rule, but they did not. When the Democrats regained control of the House in 2007, they followed suit.

Traditionally the committees of Congress were dominated by the chairmen. They often did their most important work behind closed doors (though their hearings and reports were almost always published in full). In the early 1970s Congress further decentralized and democratized its operations by a series of changes that some members regarded as a “bill of rights” for representatives and senators, especially those with relatively little seniority. These changes were by and large made by the Democratic Caucus, but since the Democrats were in the majority, the changes, in effect, became the rules of Congress. The more important ones were as follows.

### House

- Committee chairmen to be elected by secret ballot in party caucus
- No member to chair more than one committee
- All committees with more than twenty members to have at least four subcommittees (at the time, Ways and Means had no subcommittees)

## POLITICALLY SPEAKING

### Caucus



A *caucus* is a closed meeting of the members of a political party either to select a candidate for office or to agree on a legislative position.

The term is from an American Indian word meaning “elder” or “counselor.” It quickly entered political usage in the United States, there being a Caucus Club in Boston as early as 1763.

The first national political caucuses were in Congress, where legislators would gather to select their party’s candidate for president. Persons who did not get a caucus endorsement soon began denouncing the entire procedure, referring contemptuously to the “decrees of King Caucus.” Popular resentment led in the 1830s to the creation of the nominating convention as a way of choosing presidential candidates.

Today congressional caucuses are organizations of legislators from a single party (Democrats or Republicans), with a common background (for example, women, African Americans, Hispanics), sharing a particular ideology (liberals or conservatives), or having an interest in a single issue (such as mushrooms, steel mills, or the environment).

Source: From *Safire’s Political Dictionary* by William Safire. Copyright © 1968, 1972, 1978 by William Safire. Reprinted by permission of Random House, Inc. and the author.

- Committee and personal staffs to be increased in size
- Committee meetings to be public unless members vote to close them

## How Things Work

### Standing Committees of the Senate

#### Major Committees

No senator is supposed to serve on more than two (but some do).

Agriculture, Nutrition, and Forestry  
 Appropriations  
 Armed Services  
 Banking, Housing, and Urban Affairs  
 Budget  
 Commerce, Science, and Transportation  
 Energy and Natural Resources  
 Environment and Public Works  
 Finance  
 Foreign Relations  
 Governmental Affairs  
 Health, Education, Labor, and Pensions  
 Judiciary

#### Minor Committees

No senator is supposed to serve on more than one (but some do).

Rules and Administration  
 Small Business  
 Veterans' Affairs

#### Select Committees

Aging  
 Ethics  
 Indian Affairs  
 Intelligence

### Senate

- Committee meetings to be public unless members vote to close them
- Committee chairmen to be selected by secret ballot at the request of one-fifth of the party caucus
- Committees to have larger staffs
- No senator to chair more than one committee

The effect of these changes, especially in the House, was to give greater power to individual members and to lessen the power of party leaders and committee chairmen. The decentralization of the House meant that it was much harder for chairmen to block legislation they did not like or to discourage junior members from playing a large role. House members were quick to take advantage of these enlarged opportunities. In the 1980s they proposed three times as many amendments to bills as they had in the 1950s.<sup>21</sup>

There was a cost to be paid, however, for this empowerment of the membership. The 435 members of the House could not get much done if they all talked as much as they liked and introduced as many amendments as they wished. And with the big increase in

the number of subcommittees, many subcommittee meetings were attended by (and thus controlled by) only one person, the chairman. To deal with this, the Democratic leaders began reclaiming some of their lost power. They made greater use of restrictive rules that sharply limited debate and the introduction of amendments. Committee chairmen began casting proxy votes. (A proxy is a written authorization to cast another person's vote.) In this way a chairman could control the results of committee deliberations by casting the proxies of absent members.

Republican House members were angered by all of this. They suspected that restrictive rules and proxy voting were designed to keep them from having any voice in House affairs. When they took control of the House in 1995, they announced some changes:

- They banned proxy voting.
- They limited committee and subcommittee chairmen's tenures to three terms (six years) and the Speaker's to four terms (eight years).
- They allowed more frequent floor debate under open rules.
- They reduced the number of committees and subcommittees.

## How Things Work

### Standing Committees of the House

#### Exclusive Committees

Members may not serve on any other committee except Budget.

Appropriations  
Rules  
Ways and Means

#### Major Committees

Members may serve on only one major committee.

Agriculture  
Armed Services  
Education and the Workforce  
Energy and Commerce  
Financial Services  
International Relations  
Judiciary  
Transportation and Infrastructure

#### Nonmajor Committees

Members may serve on one major and one nonmajor committee, or on two nonmajor committees.

Budget  
Government Reform  
House Administration  
Resources  
Science  
Small Business  
Standards of Official Conduct  
Veterans' Affairs

*Note:* In 1995 the House Republican majority abolished three committees—District of Columbia, Post Office and Civil Service, and Merchant Marine and Fisheries—and gave their duties to other standing committees.

- They authorized committee chairmen to hire subcommittee staffs.

The endless arguments about rules illustrate a fundamental problem that the House faces. Closed rules, proxy voting, powerful committee chairmen, and strong Speakers make it easier for business to get done; they put the House in a good bargaining position with the president and the Senate; and they make it easier to reduce the number of special-interest groups with legislative power. But this system also keeps individual members weak. The opposite arrangements—open rules, weak chairmen, many subcommittees, meetings open to the public—help individual members be heard and increase the amount of daylight shining on congressional processes. But if everyone is heard, no one is heard, because the noise is deafening and the speeches endless. And though open meetings and easy amending processes may be intended to open up the system to “the people,” the real beneficiaries are the lobbyists.

The House Republican rules of 1995 gave back some power to the chairmen (for example, by letting them pick all staff members) but further reduced it in other

ways (for example, by imposing term limits and banning proxy voting). The commitment to public meetings remained.

In the Senate there have been fewer changes, in part because individual members of the Senate have always had more power than their counterparts in the House. Two important changes were made by the Republicans in 1995:

- A six-year term limit on all committee chairmen (no limit on the majority leader's term)
- A requirement that committee members select their chairmen by secret ballot

Despite these new rules, the committees remain the place where the real work of Congress is done. The different types of committees tend to attract different kinds of members. Some, such as the committees that draft tax legislation (the Senate Finance Committee and the House Ways and Means Committee) or that oversee foreign affairs (the Senate Foreign Relations Committee and the House International Relations Committee) are attractive to members who want to shape public policy, become experts on important is-

sues, or have influence with their colleagues. Others, such as the House and Senate committees dealing with public lands, small business, and veterans' affairs, are attractive to members who want to serve particular constituents.<sup>22</sup>

## ★ The Organization of Congress: Staffs and Specialized Offices

In 1900 representatives had no personal staffs, and senators averaged fewer than one staff member each. As recently as 1935 the typical representative had but two aides. By 1998 the average representative had seventeen assistants and the average senator over forty. To the more than ten thousand individuals who served on the personal staffs of members of the 103rd Congress must be added three thousand more who worked for congressional committees and yet another three thousand employed by various congressional research agencies. Until the 1990s Congress had the most rapidly growing bureaucracy in Washington—the personal staffs of legislators increased more than five-fold from 1947 to 1991, then leveled off and declined slightly. Though some staffers perform routine chores, many help draft legislation, handle constituents, and otherwise shape policy and politics.

### *Tasks of Staff Members*

Staff members assigned to a senator or representative spend most of their time servicing requests from constituents—answering mail, handling problems, sending out newsletters, and meeting with voters. In short, a major function of a member of Congress's staff is to help constituents solve problems and thereby help that member get reelected. Indeed, over the last two decades a larger and larger portion of congressional staffs—now about one-third—work in the local (district or state) office of the member of Congress rather than in Washington. Almost all members of Congress have such offices on a full-time basis; about half maintain two or more offices in their constituencies. Some scholars believe that this growth in constituency-serving staffs helps explain why it is so hard to defeat an incumbent representative or senator.

The legislative function of congressional staff members is also important. With each senator serving on an average of more than two committees and seven subcommittees and each representative serving on an

average of six committees and subcommittees, it is virtually impossible for members of Congress to become familiar in detail with all the proposals that come before them or to write all the bills that they feel ought to be introduced. As the workload of Congress has grown (over six thousand bills are introduced, about six hundred public laws are passed, and uncounted hearings and meetings are held during a typical Congress), the role of staff members in devising proposals, negotiating agreements, organizing hearings, writing questions for members of Congress to ask of witnesses, drafting reports, and meeting with lobbyists and administrators has grown correspondingly.

Those who work for individual members of Congress, as opposed to committees, see themselves entirely as advocates for their bosses. As the mass media have supplanted political parties as ways of communicating with voters, the advocacy role of staff members has led them to find and promote legislation for which a representative or senator can take credit. This is the entrepreneurial function of the staff. While it is sometimes performed under the close supervision of the member of Congress, just as often a staff member takes the initiative, finds a policy, and then “sells” it to his or her employer. Lobbyists and reporters understand this completely and therefore spend a lot of time cultivating congressional staffers, both as sources of information and as consumers of ideas.

One reason for the rapid growth in the size and importance of congressional staffs is that a large staff creates conditions that seem to require an even larger staff. As the staff grows in size, it generates more legislative work. Subcommittees proliferate to handle all the issues with which legislators are concerned. But as the workload increases, legislators complain that they cannot keep up and need more help.

The increased reliance on staff has changed Congress, not because staffers do things against the wishes of their elected masters but because the staff has altered the environment within which Congress does its work. In addition to their role as entrepreneurs promoting new policies, staffers act as negotiators. As a result members of Congress are more likely to deal with one another through staff intermediaries than personally. Congress has thereby become less collegial, more individualistic, and less of a deliberative body.<sup>23</sup>

### *Staff Agencies*

In addition to increasing the number of staff members, Congress has also created a set of staff agencies

that work for Congress as a whole. These staff agencies have come into being in large part to give Congress specialized knowledge equivalent to what the president has by virtue of his position as chief of the executive branch.

**Congressional Research Service (CRS)** Formerly the Legislative Reference Service, the CRS is part of the Library of Congress. Since 1914 it has responded to congressional requests for information and now employs nearly nine hundred people, many with advanced academic training, to respond to more than a quarter of a million questions each year. As a politically neutral body, it does not recommend policy, but it will look up facts and indicate the arguments for and against a proposed policy. CRS also keeps track of the status of every major bill before Congress and produces a summary of each bill introduced. This information is instantly available to legislators via computer terminals located in almost all Senate and most House offices.

**General Accounting Office (GAO)** Created in 1921, this agency once performed primarily routine financial audits of the money spent by executive-branch departments. Today it also investigates agencies and policies and makes recommendations on almost every aspect of government—defense contracting, drug enforcement policies, the domestic security investigations of the FBI, Medicare and Medicaid programs, water pollution programs, and so forth. Though the head of the GAO—the comptroller general—is appointed by the president (with the consent of the Senate), he or she serves for a fifteen-year term and is very much the servant of Congress rather than of the president. The GAO employs about five thousand people, many of whom are permanently assigned to work with various congressional committees.

**Office of Technology Assessment (OTA)** Established in 1972 to study and evaluate policies and programs with a significant use of or impact on technology, the OTA had a staff of more than one hundred. Staff members looked into matters such as a plan to build a pipeline to transport coal slurry. The agency had little impact and was abolished in 1995.

**Congressional Budget Office (CBO)** Created in 1974, the CBO advises Congress on the likely economic effects of different spending programs and provides information on the costs of proposed policies. This latter task has been more useful to Congress than the more

difficult job of estimating future economic trends. The CBO prepares analyses of the president's budget and economic projections that often come to conclusions different from those of the administration, thus giving members of Congress arguments to use in the budget debates.

## ★ How a Bill Becomes Law

Some bills zip through Congress; others make their way slowly and painfully. Congress, an English observer once remarked, is like a crowd, moving either sluggishly or with great speed.

Bills that have sped through on the fast track include ones to reduce drug abuse, reform Defense Department procurement procedures, end the mandatory retirement age, and help the disabled. Those that have plodded through on the slow track include ones dealing with health care, tax laws, energy conservation, and foreign trade, as well as several appropriations bills.

Why the difference? Studying the list above gives some clues. Bills to spend a lot of money move slowly, especially during times (such as the 1980s and early 2000s) when the government is running up big deficits. Bills to tax or regulate businesses move slowly because so many different interests have to be heard and accommodated. On the other hand, bills that seem to embody a clear, appealing idea (“stop drugs,” “help old folks,” “end scandal”) gather momentum quickly, especially if the government doesn't have to spend a lot of its money (as opposed to requiring other people to spend their money) on the idea.

In the following account of how a bill becomes law, keep in mind the central fact that the complexity of these procedures ordinarily gives a powerful advantage to the opposition. There are many points at which action can be blocked. This does not mean that nothing gets done but that, to get something done, a member of Congress must *either* assemble a majority coalition slowly and painstakingly *or* take advantage of temporary enthusiasm for some new cause that sweeps away the normal obstacles.

## Introducing a Bill

Any member of Congress may introduce a bill—in the House simply by handing it to a clerk or dropping it in a box (the “hopper”), in the Senate by being recognized by the presiding officer and announcing the

## How Things Work

### How a Bill Becomes Law

#### INTRODUCTION

**Draft and Introduce** You do not need to be a member of Congress to draft a bill; lobbyists, congressional staff, and others draft legislation all the time. But you do need to be a member of Congress to introduce legislation. The bill or resolution gets a number preceded by *H.R.* for House bills and *S.* for Senate bills.

**Refer to Committee** Numbered bills get referred to standing committees depending on their content and in accordance with detailed rules and procedures that differ somewhat between the House and the Senate. Once referred, the bill gets on the committee's calendar for review by a subcommittee or by the full committee.

#### COMMITTEE ACTION

**Get Committee Action** Not every bill on the calendar gets action. Many bills get referred to subcommittees for staff analysis and hearings held in public. But getting a hearing is not the same thing as getting action. Even after study, hearings, and other consideration of the bill, if the committee fails to act, the bill is dead.

**Go to Mark Up** If, however, the committee so chooses, the bill then goes to "mark up," a process that normally works by subcommittee members and staff editing or amending the bill, often extensively. But even after "the mark," the subcommittee may decide not to recommend the bill to the full committee, and the bill dies there.

**Order the Bill** Once the full committee gets the bill, it may or may not conduct more analysis and hold more hearings on the legislation, consider amendments thereto, and vote its recommendation to the House or Senate (a procedure called "ordering the bill" or "ordering the bill reported"). If the bill is ordered, it still has a chance; if not, it is dead.

**Publish a Report** The committee chairman orders a public report on the bill. Most such reports are prepared by committee staff and describe the nature and purpose of the bill; what various experts have said or testified concerning it; what, if any, position

the president has taken on it; what, if any, public comments the relevant cabinet agencies or other executive branch units have offered on it; and what dissenting members of the committee have to say about it.

#### FLOOR ACTION AND CONFERENCE ACTION

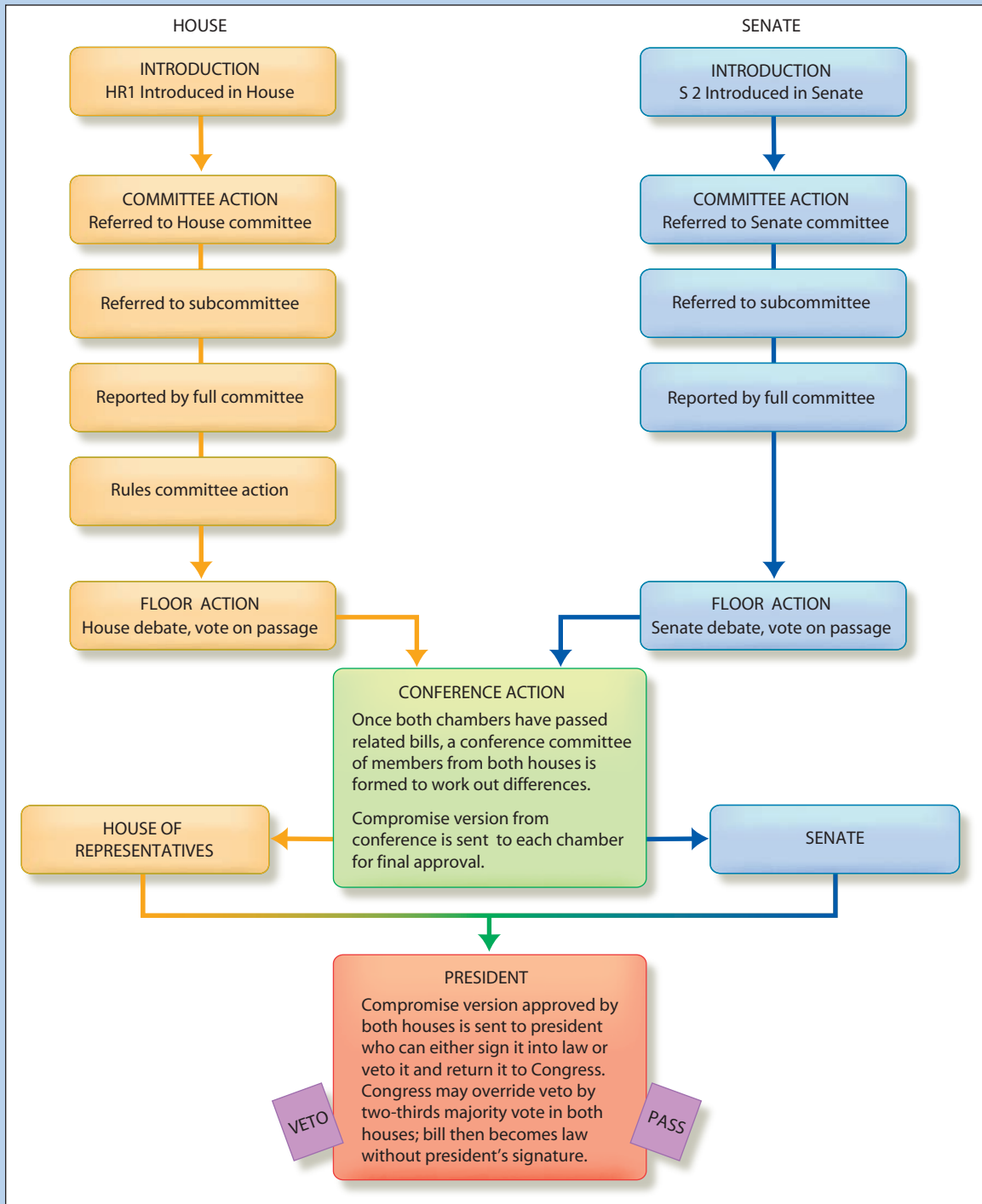
**Get a Date** The bill goes back to the chamber that originated it and is scheduled for floor debate and a vote. The House has many different scheduling procedures or "calendars," while the Senate has but one. Even having come this far, the bill might or might not get a date, or come up in an order that makes it likely to keep going.

**Win Two Chambers** The debate over the bill and any amendments having concluded, the members vote. If the bill is defeated, it is dead. If the bill is approved, it next goes to the other chamber, which begins the process again, starting with the bill being referred to committee. Anything can happen. The second chamber can accept the bill as is, change it, or never even consider it. The bill can go back to the first chamber with few or no changes, go to a "conference committee" to reconcile any significant differences between the two versions of the bill, or go nowhere. If the two chambers agree, a conference report on the final bill is prepared. Only if the two chambers approve exactly the same final bill with identical language does the bill get sent to the president for consideration.

#### PRESIDENT

**Get President's Signature** If the president signs the bill, it becomes law. If the president takes no action for ten days after receiving the bill, and Congress is still in session, the bill becomes law. If the president takes no action after the Congress has adjourned, the bill dies from his "pocket veto." Or, the president can veto the bill outright, in which case it goes back to Congress.

**Override President's Veto** If the president vetoes a bill, Congress can still turn it into law, but that requires a two-thirds vote of the members, and there must be enough members present to form a quorum.





bill's introduction. Bills are numbered and sent to the printer: a House bill bears the prefix *H.R.*, a Senate bill the prefix *S.* A bill can be either a **public bill** (pertaining to public affairs generally) or a **private bill** (pertaining to a particular individual, such as a person pressing a financial claim against the government or seeking special permission to become a naturalized citizen). Private bills were once very numerous; today many such matters have been delegated to administrative agencies or the courts. If a bill is not passed by both houses and signed by the president within the life of one Congress, it is dead and must be reintroduced during the next Congress. Pending legislation does not carry over from one Congress to the next. (A new Congress is organized every two years.)

We often hear that legislation is initiated by the president and enacted by Congress—the former proposes, the latter disposes. The reality is more complicated. Congress frequently initiates legislation; in fact most of the consumer and environmental protection legislation passed since 1966 began in Congress, not in the executive branch. And even laws formally proposed by the president often represent presidential versions of proposals that have incubated in Congress. This was the case, for example, with some civil rights laws and with the proposal that eventually became Medicare. Even when the president is the principal author of a bill, he usually submits it (if he is prudent) only after careful consultation with key congressional leaders. In any case the president cannot himself introduce legislation; he must get a member of Congress to do it for him.

One study showed that of ninety major laws passed between 1880 and 1945, seventy-seven were introduced without presidential sponsorship. In shaping the final contents, congressional influence dominated in thirty-five cases,

presidential influence dominated in nineteen, and influence was mixed in the remaining thirty-six. Another study, covering the period 1940 to 1967, found that Congress was the major contributor to the contents of about half of all laws passed.<sup>24</sup>

In addition to bills, Congress can pass resolutions. A **simple resolution** (passed by either the House or the Senate) is used for matters such as establishing the rules under which each body will operate. A **concurrent resolution** settles housekeeping and procedural matters that affect both houses. Simple and concurrent resolutions are not signed by the president and do not have the force of law. A **joint resolution** requires the approval of both houses and the signature of the president; it is essentially the same as a law. A joint resolution is also used to propose a constitutional amendment; in this case it must be approved by a two-thirds vote of both houses, but it does not require the signature of the president.

## Study by Committees

A bill is referred to a committee for consideration by either the Speaker of the House or the presiding officer of the Senate. Rules govern which committee will get which bill, but sometimes a choice is possible. In the House the right of the Speaker to make such choices is an important component of his powers. (His decisions can be appealed to the full House.) In 1963 a civil rights bill was referred by the presiding officer of the Senate to the Commerce Committee in order to keep it out of the hands of the chairman of the Judiciary Committee, who was hostile to the bill. In the House the same piece of legislation was referred by the Speaker to the Judiciary Committee in order to keep it out of the grasp of the hostile chairman of the Interstate and Foreign Commerce Committee.

The Constitution requires that “all bills for raising revenue shall originate in the House of Representatives.” The Senate can and does amend such bills, but only after the House has acted first. Bills that are not for raising revenue—that is, bills that do not change the tax laws—can originate in either house. In practice the House also originates appropriations bills—that is, bills directing how money shall be spent. Because of the House's special position in relation to revenue legislation, the committee that handles those bills—the Ways and Means Committee—is particularly powerful.

**public bill** *A legislative bill that deals with matters of general concern.*

**private bill** *A legislative bill that deals only with specific, private, personal, or local matters.*

**simple resolution** *An expression of opinion either in the House or Senate to settle procedural matters in either body.*

**concurrent resolution** *An expression of opinion without the force of law that requires the approval of both the House and the Senate, but not the president.*

**joint resolution** *A formal expression of congressional opinion that must be approved by both houses of Congress and by the president; constitutional amendments need not be signed by the president.*

<b>H.R.1661</b>	
Children's Health Insurance Accountability Act of 1999 (Introduced in the House)	
HR 1661 IH	106th CONGRESS
	1st Session
	H. R. 1661
To amend title XXVII of the Public Health Service Act and part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 to establish standards for the health quality improvement of children in managed care plans and other health plans.	
IN THE HOUSE OF REPRESENTATIVES	
May 4, 1999	
Mrs. MORELLA (for herself, Mr. BALDACCI, Mr. SAWYER, and Mr. HILLIARD) introduced the following bill: which was referred to the Committee on Commerce, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned	
A BILL	
To amend title XXVII of the Public Health Service Act and part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 to establish standards for the health quality improvement of children in managed care plans and other health plans.	
<i>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,</i>	

### A bill (H.R. 1661) as it looks when introduced in the House.

Most bills die in committee. They are often introduced only to get publicity for the member of Congress or to enable the member to say to constituents or pressure groups that he or she “did something” on a matter concerning them. Bills of general interest—many of which are drafted in the executive branch but introduced by a member of Congress—are assigned to a subcommittee for a hearing, where witnesses appear, evidence is taken, and questions are asked. These hearings are used to inform members of Congress, to permit interest groups to speak out (whether or not they have anything helpful to say), and to build public support for a measure favored by the majority of the committee.

Though committee hearings are necessary and valuable, they also fragment the process of considering bills dealing with complex matters. Both power and information are dispersed in Congress, and thus it is difficult to take a comprehensive view of matters cutting across committee boundaries.

To deal with this problem Congress has established a process whereby a bill may now be referred to several committees that simultaneously consider it in whole or in part. This process, called **multiple referral**, was used in 1977 to send President Carter’s energy proposals to six different committees in both the House and Senate. An even bigger multiple referral was used for the 1988 trade bill, which was considered by fourteen committees in the House and nine in the Senate. The advantage of this procedure is that

all views have a chance to be heard; the disadvantage is that it takes a lot of time and gives opponents a greater chance to kill or modify the bill. And if the different committees disagree about the bill, their members have to come together in a gargantuan joint meeting to iron out their differences. In these cases the advantages of the committee system—providing expert knowledge and careful deliberation—are often lost. Before the practice was abolished in 1995, about a quarter of all House bills and resolutions went through multiple referrals. Under the new rules, the Speaker is allowed to send a bill to a second committee after the first is finished acting, or he may refer parts of a bill to separate committees. This process, called **sequential referral**, has not noticeably slowed down the pace of legislative activity in Congress. In the 108th Congress, House rules were changed to give the Speaker, “under exceptional circumstances the right to not designate a primary committee.” It is still too soon to know what, if any, difference this change will make.

After the hearings the committee or subcommittee will “mark up” the bill—that is, make revisions and additions, some of which are extensive. These changes do not become part of the bill unless they are approved by the

**multiple referral** A congressional process whereby a bill may be referred to several important committees.

**sequential referral** A congressional process by which a Speaker may send a bill to a second committee after the first is finished acting.

## How Things Work

### Congressional Calendars

#### House

*Union Calendar* Bills to raise revenue or spend money

Example: an appropriations bill

*House Calendar* Nonmoney bills of major importance

Example: a civil rights bill

*Private Calendar* Private bills

Example: a bill to waive the immigration laws so that a Philadelphia woman could be joined by her Italian husband

*Consent Calendar* Noncontroversial bills

Example: a resolution creating National Stenographers Week

*Discharge Calendar* Discharge petitions

#### Senate

*Executive Calendar* Presidential nominations, proposed treaties

*Calendar of Business* All legislation

#### discharge petition

A device by which any member of the House, after a committee has had the bill for thirty days, may petition to have it brought to the floor.

**closed rule** An order from the House Rules Committee that sets a time limit on debate; forbids a bill from being amended on the floor.

**open rule** An order from the House Rules Committee that permits a bill to be amended on the floor.

**restrictive rule** An order from the House Rules Committee that permits certain kinds of amendments but not others to be made into a bill on the floor.

house of which the committee is a part. If a majority of the committee votes to report a bill out to the House or Senate, it goes forward. It is accompanied by a report that explains why the committee favors the bill and why it wishes to see its amendments, if any, adopted. Committee members who oppose the bill have an opportunity to include their dissenting opinions in the report.

If the committee does not report the bill out favorably, that ordinarily kills it. There is a procedure whereby the full House or Senate can get a bill that is stalled in committee out and onto the floor, but it is rarely used. In the House a **discharge petition** must be signed by 218 members; if the petition is approved by a vote of the House, the bill comes before it directly. In the Senate a member can move to discharge a committee of any bill, and if the motion passes, the bill comes before the Senate. During the last century there have been over eight hundred efforts in the House to use discharge petitions; only two dozen have succeeded. Discharge is rarely

tried in the Senate, in part because Senate rules permit almost any proposal to get to the floor as an amendment to another bill.

For a bill to come before either house, it must first be placed on a calendar. There are five such calendars in the House and two in the Senate (see the box above).

Though the bill goes onto a calendar, it is not necessarily considered in chronological order or even considered at all. In the House, the Rules Committee reviews most bills and adopts a rule that governs the procedures under which they will be considered by the House. A **closed rule** sets a strict time limit on debate and forbids the introduction of any amendments from the floor, or forbids amendments except those offered by the sponsoring committee. Obviously such a rule can make it very difficult for opponents to do anything but vote yes or no on the measure. An **open rule** permits amendments from the floor. A **restrictive rule** permits some amendments but not others.

In the early 1970s most bills were debated under open rules. In the 1980s the Rules Committee—which is controlled by the Speaker—increasingly introduced bills for consideration under closed or restrictive rules in an effort to reduce the number of amendments from the floor (and, the Republicans argued, to reduce Republican influence). By the end of the 1980s roughly half of all bills, and nearly three-fourths of all important ones, were debated under restrictive or closed rules. In 1992 only one-third of all bills were considered under an open rule.<sup>25</sup>

The House has at least three ways of bypassing the Rules Committee: (1) a member can move that the rules be suspended, which requires a two-thirds vote; (2) a discharge petition, as explained above, can be filed; or (3) the House can use the “Calendar Wednesday” procedure.\* These methods are not used very often, but they are available if the Rules Committee departs too far from the sentiments of the House.

In theory, few such barriers to floor consideration exist in the Senate. There bills may be considered in any order at any time whenever a majority of the Senate chooses. The majority leader, in consultation with the minority leader, schedules bills for consideration. In practice, however, getting proposals to the Senate floor is far more complicated. Whereas the House normally plows through its legislative schedule, ignoring individual members’ complaints in favor of getting its work done, the Senate majority leader must accommodate the interests of individual senators before proceeding with the Senate’s business.

### Floor Debate—The House

Once on the floor, the bills are debated. In the House all revenue and most other bills are discussed by the “Committee of the Whole,” which is nothing more than whoever happens to be on the floor at the time. The **quorum**, or minimum number of members who must be present for business to be conducted, is only 100 members for the Committee of the Whole. Obviously this number is easier to assemble than a quorum for the House itself, which the Constitution specifies as a majority, or 218 members. The Speaker does not preside but chooses another person to wield the gavel. The Committee of the Whole debates, amends, and generally decides the final shape of the bill, but technically cannot pass it. To do that the Committee of the Whole reports the bill back to the House (that is, to itself), which takes final action. During the debate in the Committee of the Whole, the committee sponsoring the bill guides the discussion, divides the time equally between proponents and opponents, and decides how long each member will be permitted to speak. If amendments are allowed un-

\*On Wednesdays the list of committees of the House is called more or less in alphabetical order, and any committee can bring up for action a bill of its own already on a calendar. Action on a bill brought to the floor on Calendar Wednesday must be completed that day, or the bill goes back to committee. Since major bills rarely can be voted on in one day, this procedure is not often used.

## POLITICALLY SPEAKING

### Riders and Christmas Trees



A *rider* is a provision added to a piece of legislation that is not germane to the bill’s purpose. The goal is usually to achieve one of two outcomes: either to get the president (or governor) to sign an otherwise objectionable bill by attaching to it, as an amendment, a provision that the chief executive desperately wants to see enacted, or to get the president to veto a bill that he would otherwise sign by attaching to it, as an amendment, a provision that the chief executive strongly dislikes.

A rider is a convenient way for a legislator to get a pet project approved that might not be approved if it had to be voted on by itself. The term can be traced back to seventeenth-century England.

When a bill has lots of riders, it becomes a *Christmas tree bill*. In 1966, for example, the Foreign Investors Act, a bill designed to solve the balance-of-payments problem, had added to it riders giving assistance to hearse owners, the mineral ore business, importers of scotch whiskey, and presidential candidates.

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der the rule, they must be germane to the purpose of the bill—extraneous matters (riders) are not allowed—and no one may speak for more than five minutes

**quorum** *The minimum number of members who must be present for business to be conducted in Congress.*

on an amendment. During this process people wishing to take time out to huddle about strategy or to delay action can demand a **quorum call**—a calling of the roll to find out whether the necessary minimum number of members are present. If a quorum is not present, the House must either adjourn or dispatch the sergeant at arms to round up missing members. The sponsoring committee almost always wins; its bill, as amended by it, usually is the version that the House passes.

### Floor Debate—The Senate

Things are a good deal more casual in the Senate. Short of cloture (discussed below), there is no rule limiting debate, and members can speak for as long as they can stay on their feet. A senator's remarks need not be relevant to the matter under consideration (some senators have read aloud from the Washington telephone directory), and anyone can offer an amendment at any time. There is no Committee of the Whole. Amendments need not be germane to the purpose of the bill, and thus the Senate often attaches riders to bills.

In fact, the opportunity to offer nongermane amendments gives a senator a chance to get a bill onto the floor without regard to the calendar or the schedule of the majority leader: he or she need only offer a pet bill as an “amendment” to a bill already under discussion. (This cannot be done to an appropriations bill.) Indeed, the entire committee hearing process can be bypassed in the Senate if the House has already passed the bill. In that case a senator can get the House-passed measure put directly onto the Senate calendar without committee action. In 1957 and again in 1964 this was done with House-passed civil rights bills to make certain that they would not be bottled up in the conservative Senate Judiciary Committee.

A Senate filibuster is difficult to break. The current **cloture rule** requires that sixteen senators sign a petition to move cloture. The motion is voted on two days after the petition is introduced; to pass, three-fifths of the entire Senate membership (sixty senators if

there are no vacancies) must vote for it. If it passes, each senator is thereafter limited to one hour of debate on the bill under consideration. The total debate, including roll calls and the introduction of amendments, cannot exceed one hundred hours.

In recent years both filibusters and cloture votes have become more common. The filibuster occurs more frequently because it is now easier to stage one. Often it consists not of a senator's making a long speech but of endless requests for the clerk to call the roll. More filibusters means more cloture votes, which are now easier to win since the 1975 change lowering the required number of supporters from two-thirds to three-fifths of all senators. During the 100th Congress (1987–1988) there were almost as many cloture votes—forty-three—as there had been in the half century after the procedure was invented. Since 1975 about 40 percent of all cloture votes have succeeded in cutting off debate.

Conservatives have used the filibuster to try to block civil rights laws; liberals have used it to try to block decontrol of gas prices. Since both factions have found the filibuster useful, it seems most unlikely that it will ever be abolished, though it has been somewhat curtailed. One way to keep the Senate going during a filibuster is through **double-tracking**, whereby the disputed bill is shelved temporarily so that the Senate can get on with other business. Because double-tracking permits the Senate to discuss and vote on matters other than the bill that is being filibustered, it is less costly to individual senators to stage a filibuster. In the past, before double-tracking, a senator and his allies had to keep talking around the clock to keep their filibuster alive. If they stopped talking, the Senate was free to take up other business. Opponents of the filibuster would bring cots and blankets to the Senate so that they could sleep and eat there, ready to take the floor the moment the filibuster faltered. But with double-tracking other business can go on while the stalled bill is temporarily set aside. As a result the number of filibusters has skyrocketed. In the words of two expert Senate watchers, the “Senate has become increasingly unmanageable as filibusters have become virtually commonplace on both major and minor pieces of legislation, raising the standard for passage of even routine bills from fifty to sixty votes and resulting in frequent delays in scheduling, stop-and-go patterns of floor debate,” and the use of other procedures “that make the institution hostage to the whims of individual senators.”<sup>26</sup>

**quorum call** A roll call in either house of Congress to see whether the minimum number of representatives required to conduct business is present.

**cloture rule** A rule used by the Senate to end or limit debate.

**double-tracking** A procedure to keep the Senate going during a filibuster in which the disputed bill is shelved temporarily so that the Senate can get on with other business.

## How Things Work

### House-Senate Differences: A Summary

#### House

435 members serve two-year terms.  
 House members have only one major committee assignment, thus tend to be policy specialists.  
 Speaker's referral of bills to committee is hard to challenge.  
 Committees almost always consider legislation first.  
 Scheduling and rules are controlled by the majority party.  
 Rules Committee is powerful; controls time of debate, admissibility of amendments.  
  
 Debate is usually limited to one hour.  
  
 Nongermane amendments may not be introduced from the floor.

#### Senate

100 members serve rotating six-year terms.  
 Senators have two or more major committee assignments, thus tend to be policy generalists.  
 Referral decisions are easy to challenge.  
  
 Committee consideration is easily bypassed.  
 Scheduling and rules are generally agreed to by majority and minority leaders.  
 Rules Committee is weak; few limits on debate or amendments.  
  
 Debate is unlimited unless shortened by unanimous consent or by invoking cloture.  
 Nongermane amendments may be introduced.

What the threat of a filibuster means in practice is this: neither political party can control the Senate unless it has at least sixty votes. Neither party has had that many Senate seats since 1979, and so for the Senate to act there must be a bipartisan majority.

### Methods of Voting

Some observers of Congress make the mistake of deciding who was for and who was against a bill by the final vote. This can be misleading—often a member of Congress will vote for final passage of a bill after having supported amendments that, if they had passed, would have made the bill totally different. To keep track of various members' voting records, therefore, it is often more important to know how they voted on key amendments than to know how they voted on the bill itself.

Finding that out is not always easy, though it has become more so in recent years. There are four procedures for voting in the House. A **voice vote** consists of the members' shouting "yea" or "nay"; a **division** (or standing) **vote** involves the members' standing and being counted. In neither a voice nor a standing vote are the names of members recorded as having voted one way or the other.

To learn how an individual votes there must be either a recorded teller vote or a roll call. In a **teller vote** the members pass between two tellers, the yeas first and then the nays. Since 1971 a teller vote can be "recorded," which means that, at the request of twenty members, clerks write down the names of those favoring or opposing a bill as they pass the tellers. Since teller votes but not roll calls may be taken in the Committee of the Whole, the use of a recorded teller vote enables observers to find out how members voted in those important deliberations.

A **roll-call vote**, of course, consists of people answering "yea" or "nay" to their names. It can be done at the request of one-fifth of the representatives present in the House. When roll calls were handled orally, it was a time-consuming process, since the

**voice vote** *A congressional voting procedure in which members shout "yea" in approval or "nay" in disapproval, permitting members to vote quickly or anonymously on bills.*

**division vote** *A congressional voting procedure in which members stand and are counted.*

**teller vote** *A congressional voting procedure in which members pass between two tellers, the "yeas" first and the "nays" second.*

**roll-call vote** *A congressional voting procedure that consists of members answering "yea" or "nay" to their names.*



Cartoon by Mark Cullum/The Birmingham News. Reprinted with permission.

clerk had to drone through 435 names. Since 1973 an electronic voting system has been in operation that permits each member, by inserting a plastic card into a slot, to record his or her own vote and to learn the total automatically. Owing to the use of recorded teller votes and the advent of electronic roll-call votes, the number of recorded votes has gone up sharply in the House. There were only seventy-three House roll calls in 1955; twenty years later there were over eight times that many. Voting in the Senate is much the same, only simpler: there is no such thing as a teller vote, and no electronic counters are used.

If a bill passes the House and Senate in different forms, the differences must be reconciled if the bill is to become law. If they are minor, the last house to act may simply refer the bill back to the other house, which then accepts the alterations. If the differences are major, it is often necessary to appoint a conference committee to iron them out. Only a minority of bills require a conference. Each house must vote to form such a committee. The members are picked by the chairmen of the House and Senate standing committees that have been handling the legislation, with representation given to the minority as well as the majority party. There are usually between three and fifteen members from each house. No decision can be made unless approved by a majority of both delegations.

Bargaining is long and hard; in the past it was also secret. Now some conference sessions are open to the public. Often—as with President Carter’s energy bill—the leg-

### **pork-barrel legislation**

*Legislation that gives tangible benefits to constituents in several districts or states in the hope of winning their votes in return.*

islation is substantially rewritten in conference. Complex bills can lead to enormous conference committees. The 1988 trade bill went before a conference committee of two hundred members. Theoretically the conferees are not supposed to change anything already agreed to by both the House and Senate, but in the inevitable give-and-take even matters already approved may be changed.

In most cases the conference reports tend to favor, slightly, the Senate version of the bill. Several studies have suggested that the Senate wins in 57 to 65 percent of cases.<sup>27</sup> Whoever wins (and both sides always claim that they got everything out of the bargaining that they possibly could have), conferees report their agreement back to their respective houses, which usually consider the report immediately. The report can be accepted or rejected; it cannot be amended. In the great majority of cases it is accepted: the alternative is to have no bill at all, at least for that Congress. The bill, now in final form, goes to the president for signature or veto. If a veto is cast, the bill returns to the house of origin. There an effort can be made to override the veto. This requires that two-thirds of those present (provided that there is a quorum) must vote to override; this vote must be a roll call. If both houses override in this manner, the bill becomes law without the president’s approval.

## ★ Reducing Power and Perks

While most citizens are only vaguely familiar with the rules and procedures under which Congress operates, they do care whether Congress as an institution serves the public interest and fulfills its mission as a democratic body. Over the last several decades, many proposals have been made to reform and improve Congress—term limitations, new ethics and campaign finance laws, and organizational changes intended to reduce the power and perks of members while making it easier for Congress to pass needed legislation in a timely fashion. Some of these proposals—for example, campaign finance reforms (see Chapter 10)—have recently become law.

Many would-be reformers share the view that Congress is overstaffed and self-indulgent. It is, they complain, quick to impose new laws on states, cities, businesses, and average citizens but slow to apply those same laws to itself and its members. It is quick to pass **pork-barrel legislation**—bills that give tangible benefits (highways, dams, post offices) to constituents

in the hope of winning their votes in return—but slow to tackle complex and controversial questions of national policy. The reformers' image of Congress is unflattering, but is it wholly unwarranted?

No perk is more treasured by members of Congress than the frank. Members of Congress are allowed by law to send material through the mail free of charge by substituting their facsimile signature (*frank*) for postage. But rather than using this **franking privilege** to keep their constituents informed about the government, most members use franked newsletters and questionnaires as campaign literature. That is why use of the frank soars in the months before an election.

Thus the frank amounts to a taxpayer subsidy of members' campaigns, a perk that bolsters the electoral fortunes of incumbents. Some reformers do not believe that it is possible to fence in congressional use of the frank for public education or other legitimate purposes, and so they propose abolishing it outright. Other reformers argue that the frank can be fenced in by prohibiting mailings just before primaries and general elections.

For years Congress routinely exempted itself from many of the laws it passed. In defense of this practice members said that if members of Congress were subject to, for example, the minimum wage laws, the executive branch, charged with enforcing these laws, would acquire excessive power over Congress. This would violate the separation of powers. But as public criticism of Congress grew and confidence in government declined, more and more people demanded that Congress subject itself to the laws that applied to everybody else. In 1995 the 104th Congress did this by passing a bill that obliges Congress to obey eleven important laws governing things such as civil rights, occupational safety, fair labor standards, and family leave.

The bipartisan Congressional Accountability Act of 1995 had to solve a key problem: under the constitutional doctrine of separated powers, it would have been unwise and perhaps unconstitutional for the executive branch to enforce congressional compliance with executive-branch regulations. So Congress created the independent Office of Compliance and an employee grievance procedure to deal with implementation. Now Congress, too, must obey laws such as the Civil Rights Act, the Equal Pay Act, the Age Discrimination Act, and the Family and Medical Care Leave Act.

As already mentioned, bills containing money for local dams, bridges, roads, and monuments are re-

## POLITICALLY SPEAKING

### Pork Barrel



Before the Civil War it was the custom to take salt pork from barrels and distribute it to the slaves. Often the eagerness of the slaves to get the food would result in a rush on the barrels, with each slave trying to get as much as possible.

By the 1870s members of Congress were using the term *pork* to refer to benefits for their districts and *pork barrel* to mean the piece of legislation containing those benefits.

Today the classic example of pork-barrel legislation is the rivers and harbors bill, which provides appropriations for countless dams, bridges, and canals to be built in congressional districts all over the country.

Source: From *Safire's Political Dictionary* by William Safire. Copyright © 1968, 1972, 1978 by William Safire. Reprinted by permission of Random House, Inc. and the author.

ferred to disparagingly as pork-barrel legislation. Reformers complain that when members act to “bring home the bacon,” Congress misallocates tax dollars by supporting projects with trivial social benefits in order to bolster their reelection prospects.

No one can doubt the value of trimming unnecessary spending, but pork is not necessarily the villain it is made out to be. For example, the main cause of the budget deficit was the increase in spending on entitlement programs

#### franking privilege

*The ability of members to mail letters to their constituents free of charge by substituting their facsimile signature for postage.*



## How Things Work

### Rules on Congressional Ethics

#### Senate

*Gifts:* No gifts (in money, meals, or things) totaling \$100 or more from anyone except a spouse or personal friend.

*Lobbyists* may not pay for gifts, official travel, legal defense funds, or charitable contributions to groups controlled by senators.

*Fees:* No fees for lectures or writing (“honoraria”), except that fees of up to \$2,000 may go to a senator-designated charity.

*Outside earned income* may not exceed 15 percent of a senator’s salary.

*Ex-senators* may not try to influence members of Congress for one year after leaving the Senate.

*Mass mailings:* No senator may receive more than \$50,000 from the Senate to send out a mailing to constituents.

#### House

*Gifts:* No gifts (in money, meals, or things) totaling \$100 or more from anyone except a spouse or personal friend.

*Lobbyists* may not offer gifts or pay for travel, even if lobbyist is a spouse or personal friend.

*Travel:* House members may travel at the expense of others if travel is for officially connected meetings.

*Fees:* No honoraria for House members.

*Ex-House members* may not lobby Congress for one year after leaving office.

(like health care and interest on the national debt) without a corresponding increase in taxes. Spending on pork is a small fraction of spending on entitlements, but many categories of pork spending have increased in the last ten or fifteen years. Of course, one person’s pork is another person’s necessity. No doubt some congressional districts get an unnecessary bridge or highway, but others get bridges and highways that are long overdue. The notion that every bridge or road a member of Congress gets for his or her district is wasteful pork is tantamount to saying that no member attaches any importance to merit.

Even if all pork were bad, it would still be necessary. Congress is an independent branch of government, and each member is, by constitutional design, the advocate of his or her district or state. No member’s vote can be won by coercion, and few can be had by mere appeals to party loyalty or presidential needs. Pork is a way of obtaining consent. The only alternative is bribery, but bribery, besides being wrong, would benefit only the member, whereas pork usually benefits voters in the member’s district. If you want to eliminate pork, you must eliminate Congress, by converting it into a parliament under the control of a

powerful party leader or prime minister. In a tightly controlled parliament no votes need be bought; they can be commanded. But members of such a parliament can do little to help their constituents cope with government or to defend them against bureaucratic abuses, nor can they investigate the conduct of the executive branch. The price of a citizen-oriented Congress is a pork-oriented Congress.

### ★ The Post-9/11 Congress

Critics of Congress sometimes complain that the body cannot plan, cannot act quickly, and cannot change how it is organized in order to meet new challenges. There is some truth to this line of criticism, but it is important to remember that the Framers purposely crafted Congress as an institution to favor deliberation over dispatch; to act boldly only when backed by a persistent popular majority, or a broad consensus among its leaders, or both; and to be slow to change its time-honored procedures and structures. Consider what has happened since September 11, 2001, concerning Congress and terrorism.

In its 2004 report, the bipartisan National Commission on Terrorist Attacks Upon the United States,



The 9/11 Commission that reported on why Al Qaeda was able to attack America held hearings in 2004.

better known as the 9/11 Commission, recommended that Congress consider making fundamental changes in how it oversees the Department of Homeland Security and other federal agencies involved in intelligence-gathering and counter-terrorism activities.

Specifically, the 9/11 Commission warned that under “existing rules and resolutions the House and Senate intelligence committees lack the power, influence, and sustained capability to meet this challenge.”<sup>28</sup> The “reforms we have suggested,” the Commission concluded, “will not work if congressional oversight does not change too. Unity of effort in executive management can be lost if it is fractured by divided congressional oversight.”<sup>29</sup> But the 9/11 Commission also frankly acknowledged that “few things are more difficult to change in Washington than congressional committee jurisdiction and prerogatives.”<sup>30</sup>

Shortly after the November 2004 elections, those words seemed both timely and prophetic. Fresh from a reelection victory, with his own party leading both the House and the Senate, President George W. Bush urged Congress to pass a bill embodying key 9/11 Commission recommendations. Initially, the presi-

dent’s plan was opposed on Capitol Hill by many Republican leaders, as well as by senior Democrats whose committee jurisdiction and prerogatives seemed threatened by the president’s proposals. Finally, however, Congress passed measures embodying many of the 9/11 Commission’s proposals for reorganizing the federal government’s intelligence-gathering and other counterterrorism activities.

Still, whatever additional antiterrorism bills, big or small, are passed or blocked before the presidential election in 2008, it will almost certainly take Congress the remainder of the present decade or longer to reorganize itself accordingly. Meanwhile, Congress has not yet acted to ensure that “the first branch” can continue to function should a terrorist attack kill or incapacitate many or most of its members. In its May 2003 report, the bipartisan Continuity of Government Commission noted that, in the aftermath of the 9/11 attacks, “our government was able to function through normal constitutional channels.”<sup>31</sup>

But it could easily have been otherwise. Intelligence officials believe that the fourth plane involved in the 9/11 terrorist attacks, United Flight 93, was

## How Things Work

### How Congress Raises Its Pay

For over two hundred years Congress has tried to find a politically painless way to raise its own pay. It has managed to vote itself a pay increase twenty-three times in those two centuries, but usually at the price of a hostile public reaction. Twice during the nineteenth century a pay raise led to a massacre of incumbents in the next election.

Knowing this, Congress has invented various ways to get a raise without actually appearing to vote for it. These have included the following:

- Voting for a tax deduction for expenses incurred as a result of living in Washington
- Creating a citizens commission that could recommend a pay increase that would take effect automatically, provided Congress did not vote *against* it
- Linking increases in pay to decreases in honoraria (that is, speaking fees)

In 1989 a commission recommended a congressional pay raise of over 50 percent (from \$89,500 to \$135,000) and a ban on honoraria. The House planned to let it take effect automatically. But the public wouldn't have it, demanding that Congress vote on the raise—and vote it down. It did.

Embarrassed by its maneuvering, Congress retreated. At the end of 1989 it voted itself (as well as most top executive and judicial branch members) a small pay increase (7.9 percent for representatives, 9.9 percent for senators) that also provided for automatic cost-of-living adjustments (up to 5 percent a year) in the future. But the automatic adjustments in congressional pay have been rejected every year in recorded roll-call votes. Apparently nobody in Congress wants to be accused of “getting rich” at the taxpayers' expense.

headed for the Capitol. But the plane took off late, and some passengers learned via cell phones that their flight was a suicide mission; they stormed the cockpit, bringing the plane down in Pennsylvania. The Continuity Commission urged members to recognize how close Congress had come to disaster on 9/11, look ahead, and think the unthinkable. “The greatest hole in our constitutional system is the possibility of an attack that would kill or injure many members of Congress.”<sup>32</sup>

This “hole” in America's constitutional system is smaller with respect to the Senate than it is with respect to the House. Under the Seventeenth Amendment, governors can fill Senate vacancies within days by temporary appointment. The House, however, can fill vacancies only by special election (a process that, on average, takes states about four months to complete). In addition, the House's official interpretation of its quorum requirement makes it conceiv-

able that, if only, say, 30 members were living and present, a group of 16 might proceed with business and elect a new Speaker who could, in the event that the president and vice president were also killed, become president.

Without providing details or proposing precise language, the Continuity Commission recommended a constitutional amendment that empowers governors, in the aftermath of a catastrophic attack, to appoint temporary representatives to fill seats in the House and in the Senate that are held by killed or incapacitated members. It urged Congress to draft and propose such an amendment as soon as possible, and expressed hope that the measure might be adopted within a two-year period. While some important bills have been passed and some institutional changes have been made to combat terrorism, the post-9/11 Congress still closely resembles the pre-9/11 Congress.

## WHAT WOULD YOU DO?

### MEMORANDUM

**To:** Representative Peter Skerry  
**From:** Martha Bayles, legislative aide  
**Subject:** *The Size of the House of Representatives*

The House can decide how big it wishes to be. When it was created, there was one representative for every 30,000 people. Now there is one for every 600,000. In most other democracies each member of parliament represents far fewer than 600,000 people. Doubling the size of the House may be a way of avoiding term limits.

#### Arguments for:

1. Doubling the size of the House would reduce the huge demand for constituent services each member now faces.
2. A bigger House would represent more shades of opinion more fairly.
3. Each member could raise less campaign money because his or her campaign would be smaller.

#### Arguments against:

1. A bigger House would be twice as hard to manage, and it would take even longer to pass legislation.
2. Campaigns in districts of 300,000 people would cost as much as ones in districts with 600,000 people.
3. Interest groups do a better job of representing public opinion than would a House with more members.

#### Your decision:

Increase size of House \_\_\_\_\_ Do not increase size of House \_\_\_\_\_

## Should We Have a Bigger Congress?

November 15

WASHINGTON, D.C.

A powerful citizens organization has demanded that the House of Representatives be made larger so that voters can feel closer to their members. Each representative now speaks for about 600,000 people—far too many, the group argues, to make it possible for all points of view to be heard. In its petition . . .

## ★ SUMMARY ★

As complicated as congress seems (and is), even a single legislator among 535 can make a big difference in what ideas get considered and which bills become law. Constitutionally speaking, Congress was and remains the first branch of American government. Party control may shift—as it did in 1994 to the Republicans and in 2006 to the Democrats—but the features that make Congress a representative institution with law-making functions persist. The House and the Senate both differ greatly from any parliamentary bodies. Over the last half-century or so Congress, especially the House, has evolved through three stages.

During the first stage, lasting from the end of World War I until the early 1960s, the House was dominated by powerful committee chairmen who controlled the agenda, decided which members would get what services for their constituents, and tended to follow the leadership of the Speaker. Newer members were expected to be seen but not heard; power and prominence came only after a long apprenticeship. Congressional staffs were small, and so members dealt with each other face to face.

The second stage emerged in the early 1970s, in part as the result of trends already under way (for example, the steady growth in the number of staffers assigned to each member) and in part as a result of changes in procedures and organization brought about by younger, especially northern, members. Dissatisfied with southern resistance to civil rights bills and emboldened by a sharp increase in the number of liberals who had been elected in the Johnson landslide of 1964, the House Democratic caucus adopted rules that allowed the caucus to select committee chairmen without regard to seniority, dramatically increased the number and staffs of subcommittees (for the first time, the Ways and Means Committee was required to have subcommittees), authorized individual committee members (instead of the chairman) to choose the chairmen of these subcommittees, ended the ability of chairmen to refuse to call meetings, and made it much harder for those meetings to be closed to the public. The installation of electronic voting made it easier to require recorded votes, and so the number of times each member had to go on record rose sharply. The Rules Committee was instructed to issue more rules that would allow floor amendments.

At the same time, the number of southern Democrats in leadership positions began to decline, and the

conservatism of the remaining ones began to lessen. (In 1990 southerners held only a quarter of committee chairmanships in the House and none of the major party leadership posts.) Moreover, northern and southern Democrats began to vote together a bit more frequently (though the conservative Boll Weevils remained a significant—and often swing—group).

These changes created a House ideally suited to serve the reelection needs of its members. Each representative could be an individual political entrepreneur, seeking publicity, claiming credit, introducing bills, holding subcommittee hearings, and assigning staffers to work on constituents' problems. There was no need to defer to powerful party leaders or committee chairmen. But because representatives in each party were becoming more alike ideologically, there was a rise in party voting. Congress became a career attractive to men and women skilled in these techniques, and these people entered Congress in large numbers. Their skill was manifest in the growth of the sophomore surge—the increase in their winning percentage during their first reelection campaign.

Even junior members could now make their mark on legislation. In the House more floor amendments were offered and passed; in the Senate filibusters became more commonplace. Owing to multiple referrals and overlapping subcommittee jurisdictions, more members could participate in writing bills and overseeing government agencies.

But lurking within the changes that defined the second stage were others, less noticed at the time, that created the beginnings of a new phase. The third stage was an effort in the House to strengthen and centralize party leadership. The Speaker acquired the power to appoint a majority of the members of the Rules Committee. That body, worried by the flood of floor amendments, began issuing more restrictive rules. By the mid-1980s this had reached the point where Republicans were complaining that they were being gagged. The Speaker also got control of the Democratic Steering and Policy Committee (it assigns new members to committees) and was given the power to refer bills to several committees simultaneously.

The evolution of the House remains an incomplete story; it is not yet clear whether it will remain in stage two or find some way of moving decisively into stage three. For now it has elements of both.

Meanwhile the Senate remains as individualistic and decentralized as ever—a place where it has always been difficult to exercise strong leadership.

Though its members may complain that Congress is collectively weak, to any visitor from abroad it seems extraordinarily powerful, probably the most powerful legislative body in the world. Congress has always been jealous of its constitutional independence and authority. Three compelling events led to Congress's reasserting its authority: the increasingly unpopular war in Vietnam; the Watergate scandals, which revealed a White House meddling illegally in the electoral process; and the advent of divided governments—with one party in control of the presidency and the other in control of Congress. It remains to be seen,

however, whether Congress will function differently with the return of unified party government or in response to the threat of terrorism.

Claims that Congress became weak as the president grew stronger are a bit overdrawn. As we shall see in the next chapter, the view from the White House is quite different. Recent presidents have complained bitterly of their inability to get Congress even to act on, much less approve, many of their key proposals and have resented what they regard as congressional interference in the management of executive-branch agencies and the conduct of foreign affairs. If the past is prologue, the present era of unified party government will involve plenty of legislative-executive intraparty conflicts.

## RECONSIDERING WHO GOVERNS?

### 1. *Are members of Congress representative of the American people?*

Demographically, no: most Americans are not middle-aged white males with law degrees or past political careers. Some groups (for example, women) are much less prevalent in Congress than they are in the nation as a whole, while other groups (for example, Catholics) constitute about the same fraction of Congress as they do of the American people. Ideologically, Republican members of Congress are more conservative than average Americans, and Democratic members of Congress are more liberal than average Americans.

### 2. *Does Congress normally do what most citizens want it to do?*

On most issues most of the time, Congress is in step with the public. But on some issues, most representatives' opinions are generally out of sync with mass public preferences. For example, most Americans have long favored protectionist trade policies, but most members of Congress have consistently voted for free trade policies. Likewise, most citizens are less solicitous of laws that reinforce civil liberties than the Congress has traditionally been. This, however, is much as the Framers of the Constitution had hoped and expected. They believed that representatives should refine, not reflect, public wishes, and mediate, not mirror, public views.

## RECONSIDERING TO WHAT ENDS?

### 1. *Should Congress run under strong leadership?*

Congress has tried it both ways. Sometimes the House has had a strong Speaker, sometimes a weak one; sometimes committee chairmen were selected by seniority, sometimes by the Speaker, and sometimes by party vote. If we want a Congress that can act quickly and decisively as a body, then we should desire strong leadership, place restrictions on debate, provide few opportunities for stalling tactics, and brook only minimal com-

mittee interference. But if we want a Congress in which the interests of individual members and the people they represent are routinely protected or enhanced, then we must reject strong leadership, proliferate rules allowing for delay and discussion, and permit many opportunities for committee activity. Unfortunately, the public often wants both systems to operate, the first for some issues and the second for others.

## 2. *Should Congress act more quickly?*

The Framers of the Constitution knew that Congress would normally proceed slowly and err in favor of deliberative, not decisive, action. Congress was intended to check and balance strong leaders in the executive branch, not automatically cede its authority to them, not even during a war or other national crisis. Today, the increased ideological and partisan polarization among members has arguably made Congress even less capable than it traditionally has been of planning ahead or swiftly adopting coherent changes in national policies. There is, however, only conflicting evidence concerning whether so-called policy grid-

lock has become more common than in decades past. Since the September 11, 2001 terrorist attacks on the United States, Congress has passed a host of new laws intended to enhance America's homeland security. Still, Congress took its time with several major proposals to reorganize the government around homeland security priorities. Some cite this as but the latest, and potentially the gravest, example of what's wrong with Congress. But others cite it as a salutary reminder that a Congress that could move swiftly to enact wise homeland security or other policies could also move swiftly to adopt unwise ones.

## WORLD WIDE WEB RESOURCES

House of Representatives: [www.house.gov](http://www.house.gov)  
 Senate: [www.senate.gov](http://www.senate.gov)  
 Library of Congress: [www.loc.gov](http://www.loc.gov)

For news about Congress  
*Roll Call* magazine: [www.rollcall.com](http://www.rollcall.com)  
 C-SPAN: [www.c-span.org](http://www.c-span.org)

## SUGGESTED READINGS

Arnold, R. Douglas. *The Logic of Congressional Action*. New Haven and London: Yale University Press, 1990. Masterful analysis of how Congress sometimes passes bills that serve the general public, not just special interests.

Black, Amy E. *From Inspiration to Legislation: How An Idea Becomes a Bill*. Upper Saddle River, N.J.: Pearson, 2007. An insider's account of the creation of the Safe Haven Act of 2001.

Davidson, Roger H., and Walter J. Oleszek. *Congress and Its Members*. 9th ed. Washington, D.C.: Congressional Quarterly Press, 2004. Complete and authoritative account of who is in Congress and how it operates.

Fenno, Richard E., Jr. *Congressmen in Committees*. Boston: Little, Brown, 1973. Study of the styles of twelve standing committees.

Fiorina, Morris P. *Congress: Keystone of the Washington Establishment*. 2d ed. New Haven, Conn.: Yale University Press, 1989. Argues that congressional behavior is aimed at guaranteeing their chances for reelection.

Jacobson, Gary. *The Politics of Congressional Elections*. 6th ed. New York: Longman, 2004. Authoritative study of how members of Congress are elected.

Maass, Arthur. *Congress and the Common Good*. New York: Basic Books, 1983. Insightful account of congressional operations, especially those involving legislative-executive relations.

Disputes Fiorina's argument that reelection needs explain congressional behavior.

Malbin, Michael J. *Unelected Representatives*. New York: Basic Books, 1980. Study of the influence of congressional staff members.

Mann, Thomas E., and Norman J. Ornstein. *Renewing Congress*. 2 vols. Washington, D.C.: Brookings Institution and American Enterprise Institute, 1993. Superb overview of what's really wrong with Congress and how to fix it.

Poole, Keith T., and Howard Rosenthal. *Congress: A Political-Economic History of Roll Call Voting*. New York: Oxford University Press, 1997. Sophisticated study of why members of Congress vote as they do and how relatively stable congressional voting patterns have been throughout American history.

Smith, Steven S., and Christopher J. Deering. *Committees in Congress*. Washington, D.C.: Congressional Quarterly, 1984. Analysis of how different kinds of congressional committees operate.

Sundquist, James L. *The Decline and Resurgence of Congress*. Washington, D.C.: Brookings Institution, 1981. A history of the fall and, after 1973, the rise of congressional power vis-à-vis the president.