**9. The Legislative Branch**

Introduction: Article I of the Constitution created the legislative branch of government we know today. Any two-house legislature, such as the one created by the Framers, is called a **bicameral legislature**. All states except Nebraska, which has a one-house or *unicameral legislature*, follow this model. The Great Compromise resulted in the creation of an upper house, the Senate, and a lower house, the House of Representatives.

Structure of Congress

|  |  |  |
| --- | --- | --- |
|  | **House of Representatives** | **Senate** |
| **Membership** | 435 members **(apportioned by population)** | 100 members (**two from each state**) |
| **Term of Office** | **2 years; entire House elected every 2 years** | **6 years; staggered terms** with one-third of the Senate elected every 2 years |
| **Qualifications** | At least **25 years of age; citizen for 7 years**; must live in state where district is located | **At least 30 years of age citizen for 9 years** must live in state |
| **Constituencies** | Smaller, by districts | Larger, entire state |
| **Prestige** | Less prestige | More prestige |

Organization of Congress

* Two houses meet for terms of two years beginning on **January 3 of odd-numbered years**; each term is divided into two one-year sessions
* The president may call special sessions in cases of national emergency
* Each house of Congress **chooses its own leadership** and determines its own rules

**Congress is the bicameral (two-house)** legislature responsible for writing the laws of the nation. Congress also serves other functions, such as overseeing the bureaucracy, consensus building, clarifying policy, legitimizing, and expressing diversity. It is made up of a House of Representatives with 435 members and a Senate of 100 members.

The U.S. Constitution mandates that House Representatives represent single-member districts with **approximately equal numbers of constituents**.

Every ten years a census is taken by the federal government to count the population to determine the number of each state’s congressional districts. Each state must then **redraw its congressional boundaries to ensure that each district is equal in population**.

Congressional Reapportionment is done by each **state’s legislature**. Therefore, the political party in control of the state legislature is responsible for redrawing Congressional District boundaries. As much as is legally possible, the legislature will gerrymander the district boundaries t**o give the majority party an advantage in future elections**.

This is true in every state except **Iowa**, which uses an independent commission to redraw Congressional District boundaries. In some states, such as **Alaska and Wyoming**, the populations are so small that the entire state becomes a congressional district; all states are guaranteed at least one seat in the House.

Election to Congress

**Getting Elected to the House of Representatives**

The constitution guarantees each state at least one representative. Members are chosen **from districts within each state**. Some practices related to determining congressional representation are:

* **Apportionment –** distribution among the states based on the population of each of the states
* **Reapportionment –** the redistribution of Congressional seats **after the census** determines changes in population distribution among the states
* **Congressional districting –** the drawing by state legislatures of congressional districts for those states with more than one representative
* **Gerrymandering –** drawing congressional districts **to favor one political party or group over another**

One Man, One Vote

In the 1960s the Supreme Court addressed fairness in the reapportionment and redistricting process. The Tennessee General Assembly **had not redrawn its legislative map since 1900**, in violation of the Tennessee State Constitution that required redistricting every 10 years. The 1960 census showed drastic demographic shifts had occurred in the State.

In **Baker v. Carr (1962)**, the Court ruled that Tennessee violated the **equal protection clause of the Fourteenth Amendment** because districts were not proportionately represented.

Redistricting and Race

Can states draw new congressional districts with race in mind? That was the question in **Shaw v. Reno (1993).** After the 1990 census, North Carolina submitted its congressional district map to the U.S. Attorney General, Janet Reno, to comply with the 1965 Voting Rights Act.

Reno and the Justice Department required the state to reconfigure the districts because there was only one majority black district. The state complied and redrew lines, yielding a very bizarrely shaped district. **It was called the “I-85 District”** because at one point it barely straddled each side of the Interstate 85.

North Carolina residents challenged the plan as a **violation of the equal protection clause of the 14th Amendment**. The litigants argued that these unusually shaped districts, drawn with race in mind, violated their rights.

The Court invalidated the district in question because its boundaries were **neither contiguous nor compact** and were drawn with the intent to **discriminate through the use of racial gerrymandering**. The Court ruled that any racial gerrymandering by the state required a compelling state interest, and it did not see such a compelling interest in this district.

**Getting Elected to the Senate**

The Constitution guarantees that “no state without its consent shall be deprived of its equal suffrage in the Senate” **(Article V).**

* Members were **originally chosen by the state legislatures in each state**.
* Since 1913, the **Seventeenth Amendment** allows for the direct election of senators by the people of the state.

**Incumbency Effect**

The **incumbency effect** is the tendency of **those already holding office to win reelection**. The effect tends to be stronger for members of the House of Representatives and weaker for the Senate. Advantages may include:

* ***Name recognition*** *–* voters are more likely to recognize the officeholder than the challenger.
* ***Credit claiming*** *–* the officeholder may have brought government projects and money into the state or district.
* ***Casework for constituents*** *–* Officeholders may have helped constituents solve problems involving government and the bureaucracy.
* ***More visible to constituents*** *–* Members can use the “perks” of the office to communicate with constituents. **Franking**, the privilege of sending official mail using the incumbent’s signature as postage, provides communication with constituents.
* ***Media exposure*** *–* Incumbents are more likely to gain “free” publicity during a campaign through the media.
* ***Fundraising abilities*** *–* it is generally greater for incumbents.
* ***Experience its campaigning*** *–* incumbents have already experienced the campaign process.
* ***Voting record*** *–* Votes can evaluate their performance based on their record.

**Term Limits**

Although several states have passed legislation establishing term limits for members of Congress, the Supreme Court has ruled that neither the states nor Congress may impose term limits without a constitutional amendment. Therefore, today, **there are no limitations on the number of terms a member of Congress may serve**.

**Leadership of Congress**

The **majority political party in each house** controls the leadership positions of Congress.

**House of Representatives**

* The **Speaker of the House** is the presiding officer and most powerful member of the House. Major duties include **assigning bills to committee, controlling floor debate, and appointing party members to committees.**
* Majority and minority leaders

1. The **majority leader** serves as the major assistant to the speaker, helps plan the party’s legislative program, and directs floor debate.
2. The **minority floor leader** is the major spokesperson for the minority party and organizes opposition to the majority party.

* **Whips help floor leaders** by direction party members in voting, informing members of impending voting, keeping track of vote counts, and pressuring members to vote with the party.

**Senate**

* The **U.S. vice president**, although not a Senate member, it’s the presiding officer of the Senate, according to the Constitution. The vice president may not debate and only votes to break a tie.
* The **president pro tempore** is a senior member of the majority party chosen to preside in the absence of the Senate president. This is a mostly ceremonial position lacking real power.
* Majority of the minority **floor leaders**

1. The **majority floor leader** is the most influential member of the Senate and often the majority party spokesperson.
2. The **minority floor leader** performs the same role as the House minority leader.

* **Whips** serve the same role as whips in the House of Representatives.

The Committee System

Most of the work of Congress is accomplished through committee. **Committees permit Congress to divide the work among members**, thus allowing for the study of legislation by specialists and helping speed up the passage of legislation.

**Leadership of Committees**

**Committee chairpersons** are members of the majority party in each house chosen by party caucus. They **set agendas, assign members to subcommittees**, and decide whether the committee will hold public hearing and which witnesses to call. They manage floor debate of the bill when it is presented to the full House or Senate.

Traditionally chairpersons were chosen based on the **seniority system**, with the majority party member having the longest length of committee service chosen as chairperson. Today, reforms allow for the selection of chairpersons **who are not the most senior majority-party member on the committee**. However, most are long-standing members on the committee.

**Membership of Committees**

The percentage of each committee’s membership **reflects the overall percentage of Democrats and Republicans in each house**. Members try to serve on committees where they can influence public policy relating to their district to state (**for example, a Kansas senator on the agriculture committee**) or influence national public policy issues (an Iowa representative on the foreign relations committee).

**Types of Committees**

* A **standing committee** is a permanent committee that deals with **specific policy matters** (agriculture, energy and natural resources, veterans affairs). Most representatives are members of at least one standing committee or two subcommittees (smaller committees that are organized around specific areas)
* A **select committee** is a temporary committee appointed for a specific purpose. Most are formed to **investigate a particular issue**, such as the Senate Watergate Committee.
* A **joint committee** is made up of **members of both houses of Congress**. It may be a select committee (Iran-Contra Committee) or perform routine duties (Joint Committee on the Library of Congress)
* A **conference committee** is a temporary committee of members from both houses of Congress, created to **resolve the differences in House and Senate versions of a bill**. It is a compromise committee.

**Important Committees**

**The House Rules Committee** is commonly known as “The Speaker’s Committee” because it is the mechanism that the Speaker uses to maintain control of how legislation proceeds on the floor of the House of Representatives.

* Until 1910, the Speaker chaired this committee. The Rules Committee reviews all bills submitted by all subsequent committees before they can be assigned time for debate on the floor. The “rule” that is assigned **specifies the time allotted for debate**. It also determines whether or not amendments are possible. The rules committee serves as a **traffic cop** for legislation.
* **A closed rule** is one where no amendments (changes) are possible. **An open rule** permits amendments (changes), although oftentimes an open rule will limit the number or type of amendments that will be allowed. The rule that is given has a major effect on the prospects for the legislation on the floor.

**The House Ways and Means Committee** is the chief **tax-writing** committee in the House of Representatives. This committee must approve all tax legislation, even that which has been considered by other committees.

**The Appropriations Committee** deals with spending bills. Appropriations are the one type of legislation that goes to the floor of the House without the possibility of amendments.

* Many members of the House would hope to add pet projects to any spending bill, and there would be endless list of potential amendments (changes). Most of the detailed spending decisions are made in the committee and its subcommittees, providing the members **with a great deal of influence.**

The Rules Committee, Appropriations Committee, and the Ways and Means Committee are considered so important that **they are exclusive committees in the House**. Members that serve on these committees do not serve on other committees, which is a reflection of their importance.

These committees **rarely include any freshman members** of the House. It usually requires years of service in the House before representatives can hope to gain membership on any one of these committees.

There are **no exclusive committees in the Senate**. There are far too few senators to staff all the standing committees if some of the senators were restricted to service on only one committee.

**The Finance Committee** is often considered one oft eh most important committees in the Senate and is equivalent to the House Ways and Means Committee, dealing with tax and revenue generation issues.

The **Foreign Relations Committee** is considered quite important given the special duties that the Senate has in regard to foreign policy, including approval of treaties and appointments of ambassadors and key officials in the Department of State.

The **Senate Judiciary Committee** makes a recommendation regarding presidential judicial appointments. They are involved with the vetting of potential judges including **Supreme Court nominees**.

**Caucuses**

**Caucuses** are informal groups formed by members of Congress who **share a common purpose or set of goals** (Congressional Black Caucus, Women’s Caucus, Democratic or Republican Caucus).

**Congressional Staff and Support**

* Personal Staff work **directly for members of Congress** in Washington D.C., and their district offices in their home states.
* Committee Staff work for committees and subcommittees in Congress, **researching problems and analyzing information**.
* **Support agencies** provide services to members of Congress (Library of Congress, Government Printing Office).

**Roles of Members of Congress**

Members of Congress have several roles.

* ***Policymaker*** *–* make public policy through the passage of legislation
* ***Representative*** *–* represent constituents

-delegate- members vote based on the wishes of constituent, regardless of their own opinions

-**trustee-** after listening to constituents, members vote based on their own opinions

* ***Constituent servant***– help constituents with problems
* ***Committee member***– serve on committees
* ***Politician/party member***– work to support their political party platform and get reelected

**Privileges of Members of Congress**

Members of Congress enjoy several privileges, including:

* **Allowances for offices** in their district or home state
* **Travel allowances**
* The **franking privilege** allows members of Congress to send mailing to constituents postage free
* **Immunity from arrest** while conducting congressional business
* Immunity from **libel or slander suits** for their speech or debate in Congress

**Powers of Congress**

Congress has legislative and non-legislative powers.

1. Legislative powers – **power to make laws**

* ***Expressed powers*** – powers specifically granted to Congress, mostly found in Article I, Section 8 in the Constitution
* ***Implied powers*** – powers that may be reasonably suggested to carry out the expressed powers; found in Article I, Section 8, Clause 18; **“necessary and proper” or elastic clause**; allows for the expansion of Congress’ powers (expressed power to raise armies and navy implies the power to draft men into the military)
* ***Limitations on powers***- powers denied by Congress by Article I, Section 9 and the Tenth Amendment

1. Non-legislative powers – **duties other than lawmaking**

* ***Electoral powers*** – selection of the president by **the House of Representatives and/or vice president by the Senate** upon the failure of the electoral college to achieve a majority vote
* ***Amendment powers***– congress may propose amendments by **two-thirds vote of each house** or by calling a national convention to propose amendments if requested by two-thirds of the state legislatures
* ***Impeachment***– **the House may bring charges**, or impeach, the president, vice president or any civil officer; case if tried in the Senate with **the Senate acting as the jury** (Andrew Johnson and Bill Clinton were both impeached by the House but not convicted by the Senate)
* ***Executive powers of the Senate***– the Senate shares the **appointment and treaty making powers with the executive branch**; the Senate must approve appointments by majority vote and treaties by two-thirds vote
* ***Investigative/oversight powers***– investigate matters falling within the range of its legislative authority; often involves the review of policies and programs of the executive branch

**The Lawmaking Process**

**Bills, or proposed laws**, may begin in either house, except revenue bills, which must begin in the House of Representatives.

The legislative process is, by design, **slow, deliberate and complicated**. This is to prevent Congress from acting hastily.

The Framers intended for the process to **foster compromise**. The result has been that the final version of bills are often radically different from initial versions. Without compromise, there would be no legislative process.

As many as **10,000 bills are proposed** on the floor of Congress each year. Some are written by members of Congress, some by members of Congress’s staffers, others by special interest groups and their lawyers and then submitted by members of Congress.

Regardless of who writes a bill, a member of Congress MUST submit the bill; this is called **sponsoring a bill**.

The legislative process requires both houses of Congress to work cooperatively. **All bills must pass in both houses of Congress in the exact same (verbatim) form!** While the bills must be verbatim, the debate and voting process within the House and the Senate differ from one another. Because there are 435 members in the House, the extent of debate is more limited than in the Senate, which has fewer rules.

Unlike the Senate, the House has **a Rules Committee**, which is responsible for determining how long a bill will be debated and whether to allow an open or closed rule for amending the bill. Open rules allow amendments to a bill, a closed rule allows no amendments to a bill.

In the House, **a discharge petition** can be used if committee members feel a piece of legislation is important enough to share with the rest of the chamber. This petition is a means of bringing a bill out of committee and to the floor of the United States House of Representatives **without the cooperation of the leadership**. It requires the signature of a majority of House members.

While the House strictly controls voting and debate on bills, the Senate does not! There are no time restraints placed on Senators. **Filibusters occur when senators speak with no intention of stopping**. It is their intent to delay a vote on the bill and to tie up the agenda of the Senate. The only way of stopping a filibuster is to vote for cloture, but this requires 60 senators to vote to stop the filibuster, obviously a difficult task.

The Senate has no closed rules for amending legislation. Amendments, **called riders**, do not have to be germane to a bill. This allows individual senators an opportunity to add amendments, such as **“earmarks” for their home state or congressional district**.

Projects that are directed at bringing money or amenities to a Congressperson’s state or congressional district are called earmarks or **pork barrel legislation** (bring home the bacon) and is one reason that incumbents have such a high reelection rate.

After debate, bills usually end up passing the House and Senate **in different forms**. A Conference Committee is then called where members of both houses of Congress meet and create a new bill that is the finalized and identical form that **must be then passed in both houses of Congress**.

Failure to reach a negotiated bill kills the bill; if the bill is passed in identical form in both houses, it is **sent to the President for his approval**.

The President can then:

(1) **sign the bill** and make it a law,

(2) **veto** (literally “I forbid”) and send it back to Congress with an explanation on why he didn’t sign the bill. It can then be overridden with a **2/3 vote in both houses**,

(3) **do nothing** and the bill becomes law after ten days,

(4) If Congressional session ends before the ten day limit and the president does not sign the bill, the bill dies; this is called a **Pocket Veto.**

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| --- | --- |
| **House of Representatives** | **Senate** |
| * A bill is introduced, numbered, and assigned to a committee. * The bill may be assigned to a subcommittee for a further study. * The bill is returned to committee, where it is approved or rejected. * The **rules committee** sets terms of debate for the bill. * The bill is debated by the House. * A vote is taken, where the bill is passed or defeated. Bills that pass the House are sent to the Senate. | * A bill is introduced, numbered, and assigned to a committee. * The bill may be assigned to a subcommittee for a further study. * The bill is returned to committee, where it is approved or rejected. * **No rules committee**! * The bill is debated by the Senate. * A vote is taken, where the bill is passed or defeated. Bills that pass the House are sent to the Senate. |

**Legislative Tactics**

Legislative tactics are the strategies and devices used by Congress and others in an attempt to block legislation or to get legislation passed.

* ***Caucuses***– May form voting blocs.
* ***The committee system***– Plays a major role in the passage of legislation; bills may die if committees fail to act upon them or reject them.
* ***Filibuster and cloture****—*Filibuster is **unlimited debate** in an attempt to stall actionon a bill. It occurs in the Senate only, and is possible because the Senate’s rules for debate are almost unrestricted. **Cloture** is the method by which the Senate limits a filibuster. It involves a petition to end debate and requires the vote of at least 60 Senators.
* ***Pork Barrel Legislation***—An attempt to **provide funds and projects for a member’s home district or state.**
* ***Logrolling***—An attempt by members to gain the support of other members in return for their support on the member’s legislation; **“I’ll support your bill, if you will support mine.”**
* ***Riders***—Additions to legislation which generally have no connection to the legislation; generally legislation that would not pass on its own merit; when a bill has lots of riders it becomes a **“Christmas Tree Bill.”**
* ***Amendments***—Additions or changes to legislation that deal specifically with the legislation.
* ***Lobbying***—Trying to influence members of Congress to support or reject legislation.
* ***Conference Committees***—May affect the wording and therefore the final intent of the legislation.
* ***Legislative Veto***—The rejection of a presidential or executive branch action by a vote of one or both houses of Congress, used mostly between 1932 and 1980 but declared unconstitutional by the Supreme Court in 1983 (***Immigration and Naturalization Service v. Chadha***) stating that Congress cannot take any actions having the force of law unless the president agrees.

Influences on Congress

Various individuals and groups influence Congress members.

* ***Constituents***—Members, especially those who hope to win reelection, often take into consideration the opinions of their constituents and **voters back home in their district or state.**
* ***Other lawmakers and staff***—More senior members often influence newer members; committee members who worked on legislation often influence other members; and staff often research issues and advise members.
* ***Party Influence***—Each party’s platform takes a stand on major issues, and loyal members often adhere to the **“party line.”** Members in the House are more likely to support the party position than are Senators.
* ***President***—Presidents often lobby members to support legislation through **phone calls, invitations to the White House, or even appeals to the public** to gain support from voters to bring pressure on members.
* ***Lobbyists and Interest Groups***—often provide members with information on topics relating to their group’s interest or possible financial support in future campaigns.

**Review**

**Key Supreme Court Case Related to This Section:**

Baker v. Carr (1961)

Shaw v. Reno (1993)

**Essential Learning Points:**

* Congress is bicameral in nature
* The Senate is designed to represent states equally, while the House is designed to represent the population
* Different chamber sizes and constituencies influence the formality of debate
* There are no term limits in Congress.
* Coalitions in Congress are affected by term-length differences
* Reelection to Congress is often a consequence of the incumbency effect. Several factors may contribute to the incumbency effect.
* The enumerated and implied powers in the Constitution allow the creation of public policy by Congress, which includes:
  + Passing a federal budget, raising revenue, and coining money
  + Declaring war and maintain the armed forces
  + Enacting legislation that addresses a wide range of economic, environmental, and social issues based on the Necessary and Proper Clause
* By design, the different structures, powers, and functions of the U.S. Senate and House of Representatives affect the policy-making process
* Though both chambers rely on committees to conduct hearings and debate bills under consideration, different constitutional responsibilities of the House and Senate affect the policy-making process.
* Chamber-specific procedures, rules, and roes that impact the policy-making process include:
  + Number of chamber and debate rules that set the bar high for building majority support
  + Roles of Speaker of the House, President of the Senate, party leadership, and committee leadership in both chambers
  + Filibuster and cloture
  + Holds and unanimous consent in the Senate
  + Role of Rules Committee, Committee of the Whole, and discharge petitions in the House
  + Treaty ratification and confirmation role of the Senate
* Pork barrel legislation and logrolling affect lawmaking in both chambers

* Congressional behavior and governing effectiveness are influenced by:
  + Ideological divisions within Congress that can lead to gridlock or create the need for negotiation and compromise
  + Gerrymandering, redistricting, and unequal representation of constituencies have been partially addressed by such Court decisions as Baker v. Carr (1961), which opened to door to equal protection challenges to redistricting and stated the “one person, one vote” doctrine, and the no-racial-gerrymandering decision in Shaw v. Reno (1993)
* Elections that have led to a divided government, including partisan votes against presidential initiatives and congressional refusal to confirm appointments of “lame-duck” presidents of the opposite party
* Different role conceptions of “trustee,” “delegate,” and “politico” as related to constituent accountability in each chamber.
* Personal staff, committee staff, and support agencies aid members of Congress and the committees
* Non-legislative include electoral powers, amendment powers, impeachment powers, executive powers of the Senate, and oversight powers.
* Congress has a specific process for how a bill becomes a law.
* Legislative tactics are used in the process of passing, stopping, or slowing legislation.
* Constituents, other lawmakers, party influences, the president, lobbyists, and interest groups influence members of Congress.

**Key Terms**

Bicameral President pro tempore Rules Committee

Apportionment Seniority system Filibuster

Reapportionment Standing Committee Cloture

Congressional districting Select Committee Pork Barrel Legislation

Gerrymandering Joint Committee Logrolling

Incumbency effect Conference committee Riders

Casework Caucuses Amendments

Constituents Trustee Lobbying

Speaker of the House Franking privilege Legislative veto

Floor leaders oversight

Majority leader bills