

Congress and Lawmaking

CONGRESSIONAL RULES and procedures are a complex mix of intricate features that can be used to expedite, slow down, or stop action on legislation. Adroit lawmakers may influence how expeditiously legislation moves through Congress, but in doing so, they must navigate around procedural obstacles. This legislative reality typically means that measures move slowly through the congressional maze, or sometimes not at all. At times, members can employ parliamentary procedures to bypass lawmaking stages to accelerate even controversial measures through the usually slow-moving Congress. Crises may inspire swift legislative action as well, a classic example being the Depression-era emergency banking bill sent to Congress on March 9, 1933, by President Franklin D. Roosevelt. It passed both chambers in a matter of hours and was signed into law that same day.¹ Fast-forward to fall 2008, which witnessed the collapse of banking giants, the housing market, and Wall Street brokerage firms. In a 10-year anniversary analysis of the economic implosion, a congressional scholar wrote that “the nation’s economy hovered perilously on the edge of an abyss.” Congress acted with dispatch, said the scholar, and “prevented a second Great Depression.”² For example, Congress moved rapidly (January 26 to February 17, 2009) to enact the president’s nearly \$800 billion economic stimulus package, bypassing committee consideration of the legislation (H.R. 1) in both chambers.³

Too much haste in passing major legislation can sometimes have profound and unforeseen implications. Two classic examples highlight the dangers of insufficient deliberation by lawmakers and legislative speediness, especially in granting the president the equivalent of a declaration of war. In early August 1964, President Lyndon B. Johnson informed the country and Congress that North Vietnamese PT boats had twice attacked U.S. naval ships in the Gulf of Tonkin. (Analysts disagree on whether there was a second attack.) On August 5, 1964, the president asked Congress to pass a measure (the Gulf of Tonkin Resolution) authorizing the chief executive “to take all necessary measures” to deter further aggression in Southeast Asia. Two days later, on August 7, both chambers overwhelmingly approved the measure after limited debate: 414 to 0 in the House and 88 to 2 in the Senate. The resolution provided legal support for the administration’s military expansion of the war in Vietnam.

Nearly four decades later and reminiscent of the Gulf of Tonkin Resolution, Congress in October 2002 granted the president a blank check to invade Iraq on the grounds that dictator Saddam Hussein had ties to al Qaeda—the terrorist organization that organized the September 11, 2001, terrorist attack against the United States—and that he possessed weapons of mass destruction. Both allegations proved to be false. Debate in both chambers on the use-of-force resolution in Iraq was abbreviated, and each voted by large margins to pass the measure, which authorized the president to decide whether to launch preemptive military action against Iraq. On March 23, 2003, the United States attacked Iraq and toppled the Saddam Hussein-led regime within a matter of weeks.

The Vietnam and Iraq wars each divided the nation, killed and maimed thousands of U.S. military personnel and tens of thousands of local civilian residents of those nations, and cost the federal treasury hundreds of billions of dollars. Whether all this could have been avoided if Congress had spent more time evaluating the credibility of presidential claims can never be known. Wars and crises tend to strengthen the executive branch, as Congress and the country look to the White House for leadership. However, it is Congress's job not simply to defer to the president but to rigorously and vigorously debate, challenge, and question administration plans and proposals. Such actions by Congress may prevent presidential miscalculations, as well as engage the citizenry in a national debate. (In today's divided government and polarized Congress, there is concern among a number of lawmakers that there is too little challenge and too much deference to President Donald Trump's policies and actions.)

Conflicts and disputes are commonplace when Congress debates controversial issues or party priorities. These matters arouse the partisan or ideological zeal of lawmakers on each side of the issue and make compromises hard to come by. In the nearly 60-year experience of former Rep. John D. Dingell, D-Mich. (1955–2015), the longest serving member in the history of either chamber, "Legislation is hard, pick-and-shovel work," and it often "takes a long time to do it."⁴ Whether Congress can overcome procedural and substantive wrangling depends on numerous factors, such as backing from the public and presidential leadership. What remains constant, however, is Congress's ability to initiate ideas on its own, to encourage and refine public debate, and to delay, block, or modify policy proposals as they navigate the legislative process.

Congress is an independent policymaker as well as the nation's premier forum for addressing the economic, social, and political issues of the day—from agriculture to housing, environment to national security, health care to taxes. However, Congress is not impermeable to pressures from other governmental and nongovernmental forces (including the executive branch, the media, members' constituents, and lobbying groups) or from formal and informal procedural changes that affect policymaking.

2 Congressional Procedures and the Policy Process

The lawmaking process, which can be complicated and variable, is governed by rules, procedures, precedents, and customs that encourage some generally predictable strategies and tactics.

This book examines the most significant House and Senate **rules** and practices that influence the lawmaking process. It looks at such questions as, Why does Congress have rules? How do House and Senate rules differ, and what impact do those differences have on policymaking? How are rules applied strategically to accomplish partisan goals? What procedures frame budgetary debates on Capitol Hill? When and how can House and Senate rules be set aside to expedite consideration of legislation?

The Constitutional Context

Congress's central role in policymaking can be traced to the Constitution. James Madison, Alexander Hamilton, and the other framers developed a political system in which Congress would serve as the lawmaking body and set out its relationship with the other branches of government and with the people. As a legislative scholar noted:

The Constitution has successfully provided two features of national political life that seem unassailable. The first is a Congress that is institutionally robust and capable of gathering information and seeking opinions independently of the president. The second is that Congress is still linked directly to the people through elections. The president is a stronger rival than he once was, but he is not the only game in town. It is that unbreakable electoral link that provides [Congress's] continuing legitimacy, ensuring real political power.⁵

Several basic principles underlie the specific provisions of the Constitution: limited government, separation of powers, checks and balances, and federalism. Each principle continues to shape lawmaking today, despite the enormous changes that have transformed and enlarged the role and reach of government in American society.

Limited Government

The framers of the Constitution wanted a strong and effective national government, but at the same time, they intended to avoid concentrating too much power in the central government lest it threaten personal and property rights. The Constitution is filled with implicit and explicit “auxiliary precautions” (Madison’s phrase), such as checks and balances and the Bill of Rights. The framers believed that limits on government could be achieved by dividing legislative, executive, and judicial power among three

branches of national government and further dividing power between the national and state governments. The division of power ensured both policy conflicts and cooperation because it made officials in the several branches responsive to different constituencies, responsibilities, and perceptions of the public welfare. The framers believed that the “accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.”⁶ As men of practical experience, they had witnessed firsthand the abuses of King George III and his royal governors. The framers also wanted to avoid the possible “elective despotism” of their own state legislatures.⁷ Wary of excessive authority in either an executive or a legislative body, the framers were familiar with the works of influential political theorists, particularly John Locke and Baron de Montesquieu, who stressed the separation of powers, checks and balances, and popular control of government.

Separation of Powers

The framers combined their practical experience with a theoretical outlook and established three independent branches of national government, none having a monopoly of governing power. Their objective was twofold. First, the separation of powers was designed to restrain the power of any one branch. Second, it was meant to ensure that cooperation would be necessary for effective government. As Justice Robert Jackson wrote in a 1952 Supreme Court case, *Youngstown Sheet and Tube Co. v. Sawyer*, “While the Constitution diffuses power the better to secure liberty, it also contemplates that the practice will integrate the dispersed powers into a workable government.”⁸ The framers held a strong bias in favor of lawmaking by representative assemblies, and so they viewed Congress as the prime national policymaker. The Constitution names Congress the first branch of government, assigns it “all legislative power,” and grants it explicit and implied responsibilities through the so-called elastic clause (Article I, Section 8). This clause empowers Congress to make “all Laws which shall be necessary and proper for carrying into Execution” its enumerated or specific powers.

In contrast to the specificity of Article I, Articles II and III, creating the executive and judicial branches respectively, describe only briefly the framework and duties of these governmental units. Although separation of powers implies that Congress “enacts” the laws, the president “executes” them, and the Supreme Court “interprets” them, the framers did not intend such a rigid division of labor. The Constitution creates a system not of separate institutions performing separate functions but of separate institutions sharing functions (and even competing for predominant influence in exercising them). Indeed, the overlap of powers is fundamental to national decision making. (The framers did, however, grant certain unique responsibilities

to each branch and ensured their separateness by, for example, prohibiting any officer from serving in more than one branch simultaneously.) To make interbranch cooperation a necessity to national governance, they linked the branches through a system of checks and balances.

Checks and Balances

An essential corollary of separation of powers is checks and balances. The framers realized that members of each branch might seek to aggrandize power at the expense of the other branches. Inevitably, conflicts would develop. By design, the Constitution provides Congress and the president with an open invitation to struggle for power.

To restrain each branch, the framers devised a system of checks and balances. Congress's own legislative power is effectively "checked" by its structure; it is a bicameral body that consists of a House of Representatives and Senate, and both chambers must approve legislation for it to become law. The measures Congress passes may in turn be vetoed by the president. Treaties and the president's high-level executive, diplomatic, and judicial appointments require the approval of the Senate. Courts provide an additional check on power, as many decisions and actions of Congress and the president are subject to review by the federal judiciary.

Checks and balances have a dual effect: They encourage cooperation and accommodation among the branches—particularly between the popularly elected Congress and the president—and they introduce the potential for conflict. Since 1789, Congress and the president have cooperated with each other in many areas, and they have competed at times as well. Each branch depends in various ways on the others, and each is mindful to protect its own powers from encroachment. When interbranch conflicts occur, they are resolved most frequently by negotiation, bargaining, and compromise.

Federalism

Just as the three branches check each other, the federal and state governments also are countervailing forces. This division of power is another way to curb and control governing power. Although the term *federalism*—like *separation of powers* or *checks and balances*—is not mentioned in the Constitution, the framers understood that federalism was a plan of government acceptable to the 13 original states. The Constitution's "supremacy clause" (Article VI, Section 2) makes national laws and treaties the "supreme Law of the Land"; however, powers not granted to the national government remain with the states and the people. The inevitable clashes that occur between levels of government are often arbitrated by the Supreme Court or worked out through practical accommodations or laws.

Federalism has infused congressional proceedings with “localism.” As a representative institution, Congress and its members respond to the needs and interests of states and congressional districts. The nation’s diversity is given ample expression in Congress by legislators whose tenure rests on the continued support of their constituents. Federalism is a perennial issue, as many lawmakers often advocate the return of federal functions to state and local governments. Conversely, lawmakers also advance legislation expanding the federal role in areas traditionally left to states and localities, such as education and policing.

The Constitution outlines a complicated system. Power is divided among the branches and between levels of government, and popular opinion is reflected differently in each. Both Congress and the president, each with different constituencies, terms of office, and times of election, can claim to represent majority sentiment on national issues. Given each branch’s independence, formidable powers, different perspectives on many issues, and intricate mix of formal and informal relationships, important national policies reflect the judgment of both the legislative and the executive branches and the views of many others—constituents, influential persons, special interests, and the like.

Functions of Rules and Procedures

Any decision-making body needs formal and informal rules, procedures, and conventions to function. The rules and conventions described in Box 1.1 establish the procedural context for both collective and individual policy-making action and behavior.

Box 1.1 Major Sources of House and Senate Rules

U.S. Constitution. Article I, Section 5, states: “Each House may determine the Rules of its Proceedings.” In addition, other procedures of Congress are addressed, such as quorums, adjournments, and roll call votes.

Standing Rules. The formal rules of the House are contained in the *Constitution*, *Jefferson’s Manual*, and *Rules of the House of Representatives*, commonly called the *House Manual*. The Senate’s rules are in the *Senate Manual Containing the Standing Rules, Orders, Laws, and Resolutions Affecting the Business of the United States Senate*. The House prints its rulebook biennially as a separate document, and periodically the Senate does the same. The rules of each chamber and their precedents are available online.

Precedents. Each chamber has many precedents—applications of the rules to specific parliamentary circumstances—based on past rulings of the presiding officer. The modern precedents of the Senate are compiled in one volume prepared by the Senate parliamentarian. It is revised and updated periodically, printed as a Senate document, and titled *Senate Procedure: Precedents and Practices*. House precedents are contained in several sources. Precedents from 1789 to 1936 are found in *Hinds' Precedents of the House of Representatives* (from 1789 through 1907) and *Cannon's Precedents of the House of Representatives* (from 1908 through 1936). Precedents from 1936 on can be found in the many volumes prepared by current and former House Parliamentarians. For example, the most recent volume of House precedents was published in 2017 and authored by three Parliamentarians of the House: Charles W. Johnson (1994–2004), John V. Sullivan (2004–2012), and Thomas J. Wickham (2012–). In addition, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (2017) by Johnson, Sullivan, and Wickham examines selected precedents of current application.

Statutory Rules. Provisions of many public laws have the force of congressional rules. Rulemaking statutes include, for example, the Legislative Reorganization Act of 1946 (P.L. 79-601), the Legislative Reorganization Act of 1970 (P.L. 91-510), the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344), and the Congressional Review Act of 1996 (P.L. 104-121). These legal provisions are enacted under the constitutional authority of each chamber to write its own rules. This means that the House or Senate can change a statutory provision that applies to itself.

Jefferson's Manual. When Thomas Jefferson was vice president (1797–1801), he prepared a manual of parliamentary procedure for the Senate. Ironically, in 1837 the House made it a formal part of its rules but the Senate did not grant it such status. The provisions of his manual, according to the *House Manual*, “govern the House in all cases to which they are applicable and in which they are not inconsistent with the standing rules and orders of the House.”

Party Rules. Each of the two major political parties in each chamber has its own set of party rules. Some of these party regulations directly affect legislative procedure. The House Democratic Caucus, for example, has a provision that affects the Speaker's use of the suspension of the rules procedure.

Informal Practices and Customs. Each chamber develops its own informal traditions, customs, protocols, and policies. They can be uncovered by examining sources such as the *Congressional Record* (the substantially verbatim account of House and Senate floor debate), scholarly accounts, and other studies of Congress. Committees and party groups may also prepare manuals of legislative procedure and practice.

The Constitution authorizes the House and Senate to formulate their own rules of procedure and prescribes some basic procedures for both houses, such as overrides of presidential vetoes. Thomas Jefferson, who as vice president compiled the first parliamentary manual for the Senate, emphasized the importance of rules to any legislative body:

It is much more material that there be a rule to go by, than what that rule is; that there may be a uniformity of proceeding in business not subject to the caprice of the Speaker or captiousness of the members. It is very material that order, decency, and regularity be preserved in a dignified public body.⁹

Rules and procedures in an organization serve many functions. Among other things, they provide stability, legitimize decisions, divide responsibilities, protect minority rights, reduce conflict, and distribute power.

Stability

Rules provide stability and predictability in personal and organizational affairs. They allow individuals and institutions to conduct their day-to-day business without having to debate procedure. Universities, for example, have specific requirements for bachelor's, master's, and doctorate degrees. Students know that if they are to progress from one degree to the next they must comply with rules and requirements, such as completing a core set of courses. Daily or weekly changes in those requirements would cause chaos on any campus. Similarly, legislators need not decide each day who can speak on the floor, offer **amendments**, or close debate. Such matters are governed by regularized procedures that continue from one Congress to the next and generally afford similar rights and privileges to every member.

To be sure, House and Senate rules change in response to new circumstances, needs, and demands. The history of Congress is reflected in the evolution of the House and Senate rules. Increases in the size of the House in the 19th century, for example, produced limitations on debate for individual representatives. As Senator Robert C. Byrd, D-W.Va, the longest serving senator in U.S. history (over 51 years), once said about Senate proceedings,

The day-to-day functioning of the Senate has given rise to a set of traditions, rules, and practices with a life and history all its own. The body of principles and procedures governing many senatorial obligations and routines . . . is not so much the result of reasoned deliberations as the fruit of jousting and adjusting to circumstances in which the Senate found itself from time to time.¹⁰

Procedural evolution is a hallmark of Congress. The modern House and Senate differ in important ways from how each operated only a few decades ago. For example, the House today operates with more procedural and political powers centralized in the **Speaker** than it did in the past. In the contemporary Senate, the use or threat of dilatory procedures is a growth industry. Increasingly, the Senate finds it harder to reach unanimous consent agreements (see Chapter 6) as a way to avoid parliamentary stalemates and to facilitate the lawmaking process. In brief, the rules of each chamber are used by lawmakers and congressional parties to enhance their policy, power, and reelection aspirations.

Legitimacy

Students typically receive final course grades that are based on their classroom performance, examinations, and term papers. Students accept the professors' evaluations if they believe in their fairness and legitimacy. If professors suddenly decided to use students' political opinions as the basis for final grades, a storm of protest would arise against such an arbitrary procedure. In a similar fashion, members of Congress and citizens generally accept legislative decisions when they believe the decisions have been approved according to orderly and fair procedures.

For years Congress grappled with the issue of applying to itself many of the laws it passes for the private sector and executive branch. Issues of legitimacy abound in this area. As a House member highlighted in a story he told the House Rules Committee:

Mr. Chairman, at one town meeting recently a constituent stood up and said, "Congressman, how are we supposed to believe the laws you guys pass are good for America, when you're telling us they're not good for Congress?" He was right. To ensure confidence in our laws we need to apply them to ourselves as well.¹¹

Congress, therefore, devised a process consistent with constitutional principles to bring itself into compliance with appropriate workplace and employee protection laws (e.g., age discrimination, civil rights, and health and safety laws). The landmark bill, titled the Congressional Accountability Act (CAA) of 1995, was signed into law by President Bill Clinton. Twenty-three years later, the CAA was amended and signed into law by President Trump. For example, it expedited investigations of discrimination and harassment in the workplace and required lawmakers "to reimburse the government for any harassment settlements or court awards paid out because of their actions."¹²

Division of Labor

Any university requires both a division of labor to carry out its tasks effectively and responsibly and rules to establish the various jurisdictions. For that reason, universities have history, chemistry, and art departments; admissions officers and bursars; and food service and physical plant managers, all with specialized assignments. For Congress, **committees** are the heart of the legislative process. They provide the division of labor and specialization that Congress needs to handle the roughly 8,000 or so measures introduced biennially and to review the administration of scores of federal agencies and programs. Like specialized bodies in many organizations, committees do not make final policy decisions but initiate recommendations that are forwarded to their respective chambers.

The jurisdiction, or policy mandate, of Congress's standing (permanent) committees is outlined in House and Senate rules. Legislation generally is referred to the committee (or committees) having authority over the subject matter. As a result, the rules generally determine which committee, and thus which members and their staffs, will exercise significant influence over a particular issue such as defense, taxes, health, or education.

Rules also prescribe the standards that committees are expected to observe during their policy deliberations. These include **quorum** requirements, public notice of committee meetings and hearings, and the right to counsel for witnesses. These rules also allocate staff resources to committees and subcommittees.

Protection of Minority Rights

Colleges and universities have procedures and practices to make certain that minority ideas and beliefs are protected from suppression. Tenure for faculty members ensures that professors are typically free to expound unconventional views without fear of reprisal from academic administrators. Student handbooks are replete with policies and guidelines to ensure fairness and due process in the adjudication of academic grievances or violations. A fundamental purpose of the collegiate experience presumably is to encourage students to explore new areas, examine diverse ideas, and engage persons who think and believe differently than they do.

Congress provides procedural protections for individual lawmakers regardless of their party affiliation and for the minority party. However, the House and Senate differ in the extent to which they emphasize majority rule versus minority rights. The principle of majority rule is embedded in the rules, precedents, and practices of the modern House. Still, there are procedural protections for minority members and viewpoints. For example, the minority party is represented on every standing committee; any lawmaker with contrary views can claim one-third of the debate time

on conference reports if the Republican and Democratic floor managers both support it; any committee member is entitled to have supplemental, additional, or minority views printed in committee reports on legislation; and some motions (to recommit, for instance) are reserved for opponents of a bill. A House member declared, “This body, unlike the other, operates under the principle that a determined majority should be allowed to work its will while protecting the rights of the minority to be heard.”¹³ An insightful analysis of procedural change in the House by political scientist Sarah Binder finds that the minority party may see some of its parliamentary rights reduced “when members of the majority party believe rules changes are necessary to secure favored policy outcomes; minority parties have recouped some of those rights when cross-party coalitions emerge to demand new rights from a weakened majority party.”¹⁴

The Senate, by contrast, operates with rules and procedures that emphasize minority rights. Prime examples include the right of every senator to speak at great length—the filibuster—and to offer amendments, including amendments that are unrelated (or “nongermane”) to the bill under consideration. If the House errs on the side of majority rule, putting decision over deliberation, the Senate tilts toward minority rights, even if that thwarts the will of the majority. As political scientist Richard F. Fenno Jr. said about the awesome procedural prerogatives afforded each senator, “Every member of the Senate has an atomic bomb and can blow up the place. That leads to accommodation.”¹⁵

Conflict Resolution

Rules reduce conflicts among members and units of organizations by distinguishing appropriate actions and behavior from the inappropriate. For example, universities have procedures by which students may drop or add classes. There are discussions with faculty advisers, completion of appropriate paperwork, and the approval of a dean. Students who informally try to drop or add classes may encounter conflicts with their professors as well as sanctions from the dean’s office. Most of the conflicts can be avoided by observing established procedures. Similarly, congressional rules reduce conflict by, for example, establishing procedures for the orderly consideration of floor amendments or to settle bicameral disputes on legislation. As Rep. Clarence A. Cannon, D-Mo. (1923–1964), House parliamentarian and later chair of the Appropriations Committee, explained:

The time of the House is too valuable, the scope of its enactments too far-reaching, and the constantly increasing pressure of its business too great to justify lengthy and perhaps acrimonious discussion of questions of procedure which have been authoritatively decided in former sessions.¹⁶

Distribution of Power

A major consequence of rules is that they generally distribute power in any organization. Rules, therefore, are often a source of conflict themselves. College and university campuses are sometimes the scene of struggles among students, faculty, and administrators over curricula or other matters. Recent years have witnessed individuals, organizations, or groups on various campuses that have advocated for or against rules, guidelines, or codes regarding speech that is perceived as offensive to, for example, minority groups or women.

Congress also allocates power according to its rules, precedents, and customs. Informal party rules establish a hierarchy of leadership positions in both chambers each with rather unique responsibilities. House and Senate rules accord prerogatives to congressional committee chairs that are unavailable to others. Majority party leaders in both chambers exercise the largest influence over the floor agenda and schedule.

Rules are not neutral devices. They help shore up the more powerful members and influence the attainment of member goals such as achieving reelection, gaining internal influence, or winning congressional passage of legislation. Newt Gingrich, R-Ga., who served as Speaker from 1995 to 1998, once said, "The rules of the House are designed for a Speaker with a strong personality and an agenda."¹⁷ Attempts to change the rules almost invariably are efforts to redistribute power from those who have it to those who want it.

Rules and Policymaking in Congress

Rules play similar roles in most complex organizations. However, Congress has its own characteristics that affect the functions of the rules. First, members owe their positions to the electorate, not to their congressional peers or to influential congressional leaders. No one in Congress has authority over the other members comparable to that of university presidents and tenured faculty over junior faculty or to that of a corporation president over lower-level executives. Members cannot be fired except by their own constituencies. (Under the Constitution, either chamber may expel a member by a two-thirds vote, but the authority is rarely used. The authority was last employed on July 24, 2002, when the House voted 420–1 to expel Rep. James A. Traficant Jr., D-Ohio, for corruption.) And each member has equal voting power in committees and on the floor of the House or Senate.

The rules of Congress, unlike those of many organizations, are sensitive to the rights of minorities, including the minority party, ideological minorities, and individual members. Skillful use of the rules enables the minority to check majority action by delaying, defeating, or reshaping legislation. Intensity of views, especially in the Senate, often counts as much

as numbers—an apathetic majority may find it difficult to prevail over a determined minority. Except in the few instances in which extraordinary majorities are needed, such as overriding presidential vetoes (requires a two-thirds vote), Senate ratification of treaties (a two-thirds vote), and ending a legislative filibuster in the Senate (a three-fifths vote), the rules of the House and Senate require a simple majority to decide public policies.

Congress also is different from many other organizations in its degree of responsiveness to external groups and pressures. The legislative branch is not as self-contained an institution as a university or a corporation. Congress is involved with every significant national and international issue. Its agenda compels members to respond to changing constituent interests and needs. Congress is also subject to numerous other influences—particularly the president, pressure groups, political parties, state and local officials, and major external events or developments, such as the September 11, 2001, terrorist attacks in the United States, global climate change, or the opioid crisis.

Finally, Congress is a collegial, not hierarchical, body. Power flows not just from the top down, as in a corporation, but in practically every direction. While presidents can say, as did Harry S. Truman, “The buck stops here,” the “congressional system is not set up to have the buck stop somewhere,” observed Senate Democratic leader Charles E. Schumer, D-N.Y. (House, 1981–1998; Senate, 1999–).¹⁸ Congressional policies are not usually produced by fiat of the top House or Senate leaders; they are often made by shifting coalitions within or between the parties that vary from issue to issue. And Congress’s deliberations are more accessible and transparent to the public than those of perhaps any other kind of organization. These, then, are some of the characteristics that set Congress apart from other bodies. Inevitably, these differences affect the decision-making process.

Procedure and Policy

Legislative procedures and policymaking are inextricably linked in at least four ways. First, procedures affect policy outcomes. Congress processes legislation by complex rules and procedures that permeate the institution. Some matters are only gently brushed by the rules, while others become locked in their grip. Major civil rights legislation, for example, failed for decades to win congressional approval because southern senators used their chamber’s rules and procedures to kill or neuter such measures.

Congressional procedures are employed to define, restrict, or expand the policy options available to members during floor debate. They may prevent consideration of certain issues or presage policy outcomes. Such structured procedures enhance the policy influence of certain members, committees, or party leaders; facilitate expeditious treatment of issues; grant priority to some policy alternatives but not others; and determine, in general, the overall character of policy decisions.

Second, policy decisions often are expressed as procedural moves. Robert H. Michel, R-Ill., who served as House minority leader from 1981 to 1994, highlighted the procedure–substance linkage:

Procedure hasn't simply become more important than substance—it has, through a strange alchemy, become the substance of our deliberations. Who rules House procedures rules the House—and to a great degree, rules the kind and scope of political debate in this country.¹⁹

Or as Rep. Dingell phrased it, “If you let me write the procedure, and I let you write the substance, I'll [beat] you every time.”²⁰

Representatives and senators on various occasions prefer not to make clear-cut decisions on certain complex and far-reaching public issues. Should a major weapons system be continued or curtailed? Should the nation's energy production needs take precedence over environmental concerns? Should financial assistance for the elderly be reduced and priority given to disadvantaged children? On questions such as these, members may be cross-pressured—the president or legislative leaders may exert influence one way, while constituent interests dictate another approach. Legislators sometimes lack adequate information or time to make informed judgments. They may be reluctant to oppose powerful interest groups, or they may feel that an issue does not lend itself to a simple “yes” or “no” vote.

As a result, legislators employ various procedural devices to handle knotty problems. A matter may be postponed on the grounds of insufficient study in committee. Congress may direct an agency to prepare a detailed report before an issue is considered. The House or Senate may establish an outside commission or select committee to study a problem (for example, the establishment in the 116th Congress of the House Select Committee on the Modernization of Congress). Or the House or Senate may table a measure, a procedural vote that effectively defeats a proposal without rendering a clear judgment on its substance.

Third, the nature of the policy can determine the use of certain procedures. The House and Senate generally consider noncontroversial measures under expeditious procedures; controversial proposals normally involve lengthy deliberation. The House commonly passes noncontroversial or relatively noncontroversial legislation by suspending the rules, a procedure that limits debate to 40 minutes, prohibits floor amendments, and requires a two-thirds vote for passage. Legislation with overwhelming bipartisan support can be passed quickly by way of the suspension route.

Fourth, policy outcomes are more likely to be influenced by members with procedural expertise. Members who are skilled parliamentarians are better prepared to gain approval of their proposals than those who are only vaguely familiar with the rules. Just as carpenters and lawyers must learn their trade, members of Congress need to understand the rules if they

expect to perform effectively. Congressional procedures can be confusing to members. “To table, to refer to committee, to amend—so many things come up,” declared a junior senator. “You don’t know whether you are coming or going.”²¹ John W. McCormack, D-Mass., who served as House Speaker from 1962 to 1970, once advised House newcomers:

Learn the rules and understand the precedents and procedures of the House. The congressman who knows how the House operates will soon be recognized for his parliamentary skills—and his prestige will rise among his colleagues, no matter what his party.²²

Members who know the rules have the potential to shape legislation to their ends and become key figures in their party and in coalitions trying to pass, modify, or defeat legislation.

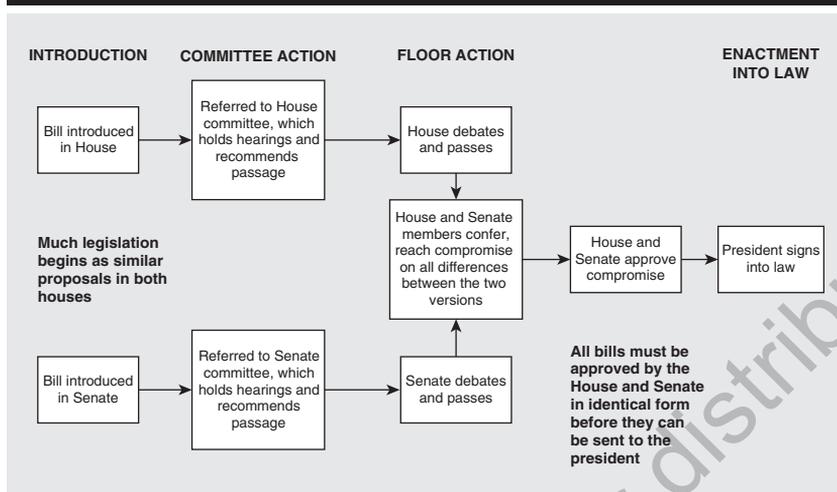
Conventional Versus Unconventional Lawmaking

A fundamental strength of Congress’s lawmaking process—a principal characteristic of the legislative process apparent from Congress’s earliest days—is its capacity to adjust and adapt to new circumstances. The House and Senate, not surprisingly, regularly modify, either formally or informally, their procedures and practices, making the procedures associated with lawmaking something of a moving target. What is conventional or orthodox in one era may seem unconventional or unorthodox in another as different patterns of congressional decision making emerge over time.

In recent years, numerous lawmakers, commentators, and scholars have noted many procedural deviations from what is often called the “regular order,” or the textbook version of lawmaking depicted in Figure 1.1. Although the regular order is not explicitly defined in House or Senate rules, it does refer to a host of procedural rules, precedents, and traditions designed to promote legislative benefits. These include an orderly and generally repeatable step-by-step method of considering legislation in committee and on the floor; a fair and reasonable opportunity in both venues for lawmakers of either party to debate and to amend legislation; and, more specifically, allows lawmakers, wrote former Representative Lee Hamilton (1965–1999), to “ask hard questions, consider the merits of various [policymaking] approaches, propose alternatives, smooth out problems, build consensus, knock out bad ideas, and refine good ideas to make better laws.”²³

The Figure 1.1 view of regular order legislating was largely dominant from the 1950s into the 1980s. It began to give way in the 1990s going forward to a variety of irregular, nontraditional, or unorthodox lawmaking processes—especially on consequential, “must pass,” and majority party priorities. While regular order lawmaking is still followed in enacting laws, many major issues bypass conventional policymaking

Figure 1.1 How a Bill Becomes Law



(for example, circumventing committee deliberations or taking up significant measures with scant opportunities for lawmakers to know their contents). Nontraditional lawmaking represents a “new normal” for various measures and reflects Congress’s response to a number of overlapping factors, such as these three.

First, the contemporary Congress is less insular, more partisan, more ideological, and more permeable to outside forces than ever before. Understandably, changes in the wider political environment—the election of activist lawmakers, the cost of congressional campaigns, the proliferation of interest groups, the rise in issue complexity, breakthroughs in communications technology, clashes with presidents, crises, and more—are reflected in the procedural practices and politics of the House and Senate. Compared to the textbook era, for example, numerous contemporary members confront an intensely competitive electoral environment. Party control of either the House or Senate is always in play, unlike when the Democrats controlled the House for 40 straight years (1955–1995) and the Senate for 26 years (1955–1981).²⁴

Frequent shifts in party control of the House and Senate is today’s reality. It intensifies partisan conflict over the two parties’ divergent policies and provokes use of unorthodox parliamentary practices by Democrats and Republicans. Holding or reclaiming institutional control is of utmost importance to party leaders and lawmakers of both political parties. Donald Wolfensberger, former staff director of the House Rules Committee, states

that “Congress has evolved over the decades from a culture of legislating to a culture of campaigning at the expense of serious deliberation to solve major problems confronting the nation.”²⁵

This development provides incentives for both parties to employ an array of procedural and political strategies to retain or win back institutional power. Typically, the top House and Senate leaders devise, orchestrate, and direct the legislative and communications plans of their party. If in the majority, steamroll the minority if feasible and necessary (easier to do in the House than Senate, see below) to achieve partisan objectives; in the minority, strive to block the agenda and message of the other party, calling it a “do nothing Congress,” for instance. In short, these conditions encourage nontraditional legislating over the textbook model. Moreover, unorthodox lawmaking has several advantages over traditional lawmaking: It often works in achieving desired results; it can be faster (fewer actors and less transparency) than the textbook model; and it is a flexible and versatile lawmaking approach that can accommodate evolving political conditions inside and outside the Congress.²⁶

Second, a sharper partisan and political environment means that compromise, civility, and bipartisanship are sometimes in short supply in both legislative chambers, attributed in part to the rise of party and ideological polarization in Congress and the country (the GOP “red” and Democratic “blue” states). As a Senator noted, “Today, most Democrats are . . . left, most Republicans are to the right, and there are very few [centrists] in between.”²⁷ The result is that on many consequential issues (tax, immigration, health) it is often difficult for lawmakers to build bipartisan coalitions. This circumstance fosters a zero-sum (winner-take-all) form of legislating. The “my way or the highway” approach sometimes emulates the British parliamentary model: the majority party governs alone and the minority party opposes.

Third, the current polarized environment challenges the ability of the House and Senate to govern. Disagreements between the parties can be so wide on various issues that deadlock and policy paralysis often suffuses the lawmaking process. This prompts many people to say that Congress is “broken” or “dysfunctional.” To surmount parliamentary obstacles, the majority party strives to advance its institutional and party-preferred priorities through unorthodox means. To control and manage the legislative process, party leaders “have to use exotic procedures that are basically incomprehensible,” said a congressional scholar and former aide to a Senate majority leader.²⁸ The minority party, upset at the majority’s parliamentary tactics, counters with their own unorthodox, tit-for-tat procedural maneuvers. The consequence is party and parliamentary warfare.²⁹ An apt summary of what often characterizes contemporary lawmaking was offered by former Senator Bill Nelson, D-Fla.: “If you want to get anything done . . . you have to figure out how to get there. It’s not a straight line. Sometimes it’s a circuitous path.”³⁰

Precedents and Folkways

Congress is regulated not only by formal rules but also by informal ones that influence legislative procedure and member behavior. Two types of informal rules are precedents and folkways. Precedents, the accumulated past decisions on matters of procedure, represent a blend of the formal and informal. They are the common law of Congress and govern many procedures not explicitly covered in the formal rules. As noted House parliamentarian Lewis Deschler wrote, the great majority of the “rules of all parliamentary bodies are unwritten law; they spring up by precedent and custom; these precedents and customs are this day the chief law of both Houses of Congress.”³¹ Formal rules prescribe the order of business in the House and Senate, but precedents permit variations through, for instance, the unanimous consent of the members. The rulings of the Speaker of the House and presiding officer of the Senate form a large body of precedents. They are given formal status by the parliamentarians in each chamber and then become part of the accepted rules and procedures.

Folkways are unwritten norms of behavior that members are expected to observe. Like rules and precedents, folkways evolve in response to new times, demands, and lawmakers. During the 1950s, for example, scholars wrote about norms of “apprenticeship” (junior lawmakers should listen and learn from their more seasoned colleagues before actively getting involved in policymaking), “courtesy” (members should be solicitous toward their colleagues and avoid personal attacks on them), or “specialization” (a member should master a few policy areas and not try to impress colleagues by attempting to be a jack-of-all-trades). Today, these particular norms are “torn and frayed.”³² In both chambers, lawmakers enter a partisan and “entrepreneurial” environment where the incentives—both inside and outside Congress—are to get quickly involved in lawmaking, publicity seeking, and campaign fundraising.

The “to-get-along, go-along” culture of the 1950s and 1960s Congresses is mainly a thing of the past. Newcomers who sit back quietly and defer to their elders are likely to be viewed as unusual, especially in the Senate, where norms of individualism now pervade the institution. There are exceptions, however. When Hillary Clinton was elected to the Senate from New York in 2001, she was famous in her own right. Senator Clinton deferred to her senior colleagues for much of the first year, focusing on constituency service and downplaying her celebrity status. Senator Clinton wanted to earn the respect of Senate colleagues and constituents as a legislative “work horse” and not a media-oriented “show horse.” Still, in today’s Senate, a member

feels minimally constrained by consensual codes of behavior. The relevant distinction in his [or her] life is not between the Senate and the rest of the political world but between himself (plus his

staff) and everything else. . . . With the help of the Senate's formal rules, he knows he can bring the collective business to a halt. He can be a force to be reckoned with whenever he wants to be.³³

Congressional decision making, then, is shaped by each chamber's formal and informal structure of rules, precedents, and traditions, as well as member preferences and goals.

Congressional Decision Making

The congressional decision-making process is constantly evolving, but it has certain enduring features that affect consideration of all legislation. The first is the decentralized power structure of Congress, characterized by numerous specialized committees and a central party leadership that works hard to promote party and policy coherence. A second feature is the existence of multiple decision points for most pieces of legislation. The many decision points mean that at each step of a bill's progress a majority coalition must be formed to move the measure along. This leads to the third important feature of the process: the need for bargaining and compromise to form a winning coalition. Finally, each Congress has only a 2-year life cycle in which to pass legislation once it has been introduced. The pressure of time is an ever-present force underlying the legislative process.

Decentralized Power Structure

Congress's decentralized character reflects both political and structural realities. Politically, legislators owe their reelection to voters in widely differing states and localities; structurally, the legislative branch has an elaborate division of labor to help it manage its immense workload. Responsibility for specific subject areas is dispersed among more than 200 committees and subcommittees.

Structural decentralization means that policymaking is subject to various disintegrative processes. Broad issues are divided into smaller sub-issues for consideration by the committees. Overlapping and fragmented committee responsibilities can impede the development of comprehensive and coordinated national policies. Many House and Senate committees consider some aspect of broad subject areas such as health care, trade, cybersecurity, or energy policy. For example, a major global climate change bill (to establish a "cap and trade" system) that passed the House was referred to nine standing committees (see Box 1.2).³⁴ Jurisdictional controversies occur as committees fight to protect or expand their turf. Finally, committees develop special relationships with interest groups, executive agencies,

and scores of other interested participants. These alliances—often called *subgovernments*, *issue networks*, or *sloppy large hexagons*—influence numerous policy areas. Committees, then, become advocates of policies and not simply impartial instruments of the House or Senate.³⁵

Box 1.2 One Down, Eight More House Committees to Go

After winning approval by the House Energy and Commerce Committee, legislation (H.R. 2454) that would create a “cap and trade” system addressing global climate change was referred to eight other House committees, each with jurisdiction over parts of the bill.

Committee	Issues Facing the Committee
Agriculture	Establishment of a program to help national forests adapt to climate change. May share jurisdiction with the Financial Services Committee for the new financial derivatives market that would have been created by buying and selling carbon emissions credits.
Education and Labor	Creation of training programs in alternative-energy technology and university grants for studying climate issues.
Financial Services	Creation of new energy use standards for housing. May share jurisdiction with the Agriculture Committee for the new financial derivatives market that would be created for buying and selling carbon emissions credits.
Foreign Affairs	Establishment of international programs to mitigate carbon emissions and climate change. Reduction of international deforestation and establishment of an international carbon offset market. Establishment of a State Department office aimed at exporting clean-energy technology.

Natural Resources	Establishment of a federal program aimed at adaptation of wildlife, oceans, and public lands to the effects of climate change.
Science, Space, and Technology	Creation of programs to research new low-carbon energy technology, including carbon sequestration and electric vehicles.
Transportation and Infrastructure	Creation of carbon emissions requirements for state and regional transportation infrastructure planning. Creation of emissions requirements for vehicles including planes, trains, and ships.
Ways and Means	Oversight and allocation of the billions in new revenue that the federal government would receive from selling carbon emissions credits to polluters.

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Political parties can provide the cohesive force needed to balance the centrifugal influences of a fragmented committee system. Parties serve to organize their members and elect the formal leaders of Congress. Democrats and Republicans regularly meet in their committees and in informal groups to discuss substantive and political issues. Neither party, however, commands the consistent support of all its members. Too great a spread of ideological and policy convictions exists within each party. Too many countervailing pressures—constituency, region, individual conscience, career considerations, or committee loyalty—also influence the actions of representatives and senators. “I’ll fight for my district even though it may be contrary to my national goals,” a top House party leader once declared.³⁶

Congressional party leaders understand that attempts to dictate policy are fraught with difficulties because they often lack the means to force agreement among competing party factions, committees, or informal legislative groups. They do have certain resources to deploy to win the support of colleagues—influencing committee assignments, providing campaign funds, sharing the media spotlight—but these may not always be sufficient. Box 1.3 discusses the leadership structure of Congress. Party leaders cannot count on automatic party support and so must rely heavily on their skills

as bargainers and negotiators to influence legislative decisions. In addition, the power and effectiveness of any party leader depend on several factors, some outside the leader's control. Among them are personality, intellectual and political talent, the leader's view of the job, the size of the majority or minority party in the chamber, whether the White House is controlled by the opposition party, the expectations of colleagues, and the political complexion of the House or Senate during a particular historical era.

Box 1.3 Leadership Structure of Congress

The party leadership in the House and Senate is crucial to the smooth functioning of the legislative process. In the House, the formal leadership consists of the Speaker, the majority and minority leaders, whips from each party, assistants to the whips, and various party committees. The vice president of the United States serves as **president of the Senate**; in the vice president's absence, the **president pro tempore** or, more commonly, a temporary presiding officer of the majority party, presides. The Senate also has majority and minority leaders, whips, assistant whips, and party committees.

The Speaker's fundamental power is to set the agenda of the House. Speakers achieve their influence largely through such means as personal prestige, fundraising ability, mastery of the art of persuasion, legislative expertise, and the support of members. Among the Speaker's formal powers are presiding over the House, deciding points of order, referring bills and resolutions to committee, scheduling legislation for floor action, and appointing House members to select, joint, and House–Senate conference committees. Speakers infrequently participate in debate and usually vote only to break a tie. Their institutional prerogatives are buttressed by their role as leader of the majority party. For example, Speakers may chair their party's committee assignment panel, raise significant campaign funds for partisan colleagues, and expedite or delay floor action on legislation.

The majority and minority parties of the House and Senate elect, respectively, majority and minority leaders. The House majority leader ranks just below the Speaker in importance and has considerable influence over the scheduling of bills and day-to-day management of the floor. The minority leader heads his or her party in the House. Among other things, he or she develops policy alternatives to majority initiatives, serves as party spokesperson, and devises strategies to win back majority control of the House.

In the Senate, the majority leader is the most influential officer because neither the vice president nor the president pro tempore holds substantive powers over the chamber's proceedings. Everyday duties of the minority

leader correspond to those of the majority leader, except that the minority leader has less authority over scheduling legislation. Agenda-setting is the prime prerogative of the majority leader. Both Senate leaders speak for their party and act as field generals on the floor, promoting partisan cohesion and searching for ways either to maintain or reclaim majority control of the chamber, as the case may be.

Each party in the House and Senate elects a whip and appoints a number of deputy, assistant, or regional whips to aid the floor leader in implementing the party's legislative program. The diversity of whips provides greater geographical, ideological, and seniority balance in the party leadership structure. At its core, the whips' job is to know where the votes are and to produce the votes on behalf of party objectives.

To be sure, there are eras when the leaders of the majority party exercise considerable influence over committee chairs and rank-and-file colleagues. For example, there were times during the dozen years (1995–2006) when the House was under GOP control that it operated in a parliamentary or quasi-parliamentary manner, with rank-and-file Republicans often following the lead of their top party leaders to approve priorities on largely party-line votes. Speaker Dennis Hastert, R-Ill. (1999–2006), even articulated a governing philosophy reminiscent of parliamentary bodies. His policy, he said, was to bring legislation to the floor only when it has the support of the majority of the majority party. This view would preclude floor consideration of measures supported by a bipartisan House majority unless half or more were GOP lawmakers. Even so, majority leaders of the House and Senate recognize that the votes of minority members are often required to enact major legislation.

Multiple Decision Points

Although Congress can act quickly, normally legislation works its way slowly through multiple decision points. Before a measure is formally introduced, a draft bill might be circulated to colleagues and outside stakeholders to solicit their views and ideas, likes and dislikes. After a bill is introduced, it usually is referred to committee and then frequently to a subcommittee. The views of executive departments and agencies may also be solicited at this stage. The full committee and subcommittee hold hearings and issue reports on the bill. The bill is then voted out of the full committee and is ready to be scheduled for floor consideration by the majority party leadership. After floor debate and final action in one chamber, the same steps generally are repeated in the other house. At any point in this

sequential process, the bill is subject to delay, defeat, or modification. “It is very easy to defeat a bill in Congress,” President John F. Kennedy once noted. “It is much more difficult to pass one.”³⁷

At each stage of the process, measures and procedures must receive majority (and sometimes supermajority) approval. All along the procedural route, therefore, strategically located committees, groups, or individuals can delay, block, or change proposals if they can form majority coalitions. Bargaining may be necessary at each juncture to forge the support that advances the bill to the next step in the legislative process. Thus, advocates of a piece of legislation must attract not just one majority but several successive majorities at each of the critical intersections along the legislative route. And at each legislative junction, the strategies for constructing winning coalitions can vary to accommodate diverse issues, external circumstances, and member goals.

Bargaining and Coalition Building

Three principal forms of bargaining are used to build majority coalitions: logrolling, compromise, and nonlegislative favors. “The way you get the votes to pass anything is to ask whoever would possibly vote for something, what do they want,” explained a House Ways and Means chair. “It is an additive process.”³⁸ The additive process was much on display when the House narrowly passed (219–212) an ambitious bill to curb greenhouse gases linked to global warming. To win the support of wavering lawmakers, committee and party leaders made numerous compromises and provided billions of dollars in vote-getting projects to undecided members. A major opponent of the bill sarcastically told members, “If you haven’t made your deal yet [with the House Energy and Commerce chair], come on down to the floor.”³⁹

During Senate consideration of President Obama’s landmark health care reform plan, then Majority Leader Harry Reid, D-Nev., made various policy concessions to four centrist, on-the-fence, party colleagues to win their crucial support on a pivotal procedural vote. A Democratic senator, for example, secured more Medicaid funding for her state (dubbed the “Louisiana Purchase”). Another Democratic senator won similar favorable treatment for Nebraska, called the “Cornhusker Kickback” by critics. Liberal senators were not happy with the use of such provisions to woo the votes of party holdouts. Despite their misgivings, liberal senators had little choice but to go along with Reid’s policy concessions; they needed their colleagues’ votes to prevail. Senate Republicans charged that various policy concessions were added to the health legislation to “buy” the votes of wavering Democratic senators.

Logrolling is an exchange of voting support on different bills by different members of Congress. It is an effective means of coalition building because members rarely are equally concerned about all the measures

before Congress. For example, Representatives A, B, and C strongly support a bill that increases government aid to farmers. But A, B, and C are indifferent toward a second bill that increases the minimum wage, which is strongly supported by Representatives D, E, and F. Because D, E, and F do not have strong feelings about the farm bill, a bargain is struck: A, B, and C agree to vote for the minimum-wage bill, and D, E, and F agree to support the farm bill. Thus, both bills are helped on their way past the key decision points at which A, B, C, D, E, and F have influence. Logrolling may be either explicit or implicit. A, B, and C may have negotiated directly with D, E, and F. Alternatively, A, B, and C may have voted for the minimum-wage bill, letting it be known through the press or in other informal ways that they anticipate similar treatment on the farm bill from D, E, and F. The expectation is that D, E, and F will honor the tacit agreement because they may need the support of A, B, and C down the line.

Compromise, unlike logrolling, builds coalitions through negotiation of the content of legislation. Each side agrees to modify policy goals on a given bill in a way that is generally acceptable to the other. A middle ground is often found—particularly for those bills involving money. A, B, and C, for example, support a \$50 million education bill; D, E, and F want to increase the funding to \$100 million. The six meet and compromise on a \$75 million bill they can all support.

Note the distinction between logrolling and compromise. In the logrolling example, the participants did not modify their objectives on the bills that mattered to them; each side traded voting support on a bill that meant little in return for support on a bill in which they were keenly interested. In a compromise, both sides modify their positions. “Anyone who thinks that compromise is a dirty word,” remarked a House member, “should go back and read one of the fascinating accounts of all that happened in Philadelphia in 1787” (when the Constitution was drafted).⁴⁰ As one Senator put it, “In politics there are no right answers, only a continuing flow of compromises between groups resulting in a changing, cloudy, and ambiguous series of public decisions where appetite and ambition compete openly with knowledge and wisdom.”⁴¹ Compromise, in short, is an essential component of governance, but it is not easy to achieve on contentious measures. In today’s polarized and acrimonious political environment, many lawmakers view “compromise” as a sellout of their principles or a sign of political weakness.

Nonlegislative favors are useful because the achievement of policy goals is only one of the many objectives of members of Congress. Other goals include winning assignment to a prestigious committee, raising campaign funds, running for higher office, obtaining larger office space and more staff, or being selected to attend a conference abroad. The variety of these nonpolicy motivations creates numerous bargaining opportunities—particularly for party leaders, who can dispense many favors—from which

coalitions can be built. As Senate majority leader from 1955 to 1960, Lyndon B. Johnson of Texas was especially skillful at using his powers to satisfy the personal needs of senators—all with the goal of building support for legislation he wanted.

For Johnson, each one of these assignments contained a potential opportunity for bargaining, for creating obligations, provided that he knew his fellow senators well enough to determine which invitations would matter the most to whom. If he knew that the wife of the senator from Idaho had been dreaming of a trip to Paris for ten years, or that the advisers to another senator had warned him about his slipping popularity with Italian voters, Johnson could increase the potential usefulness of assignments to the Parliamentary Conference in Paris or to the dedication of cemeteries in Italy.⁴²

In this way, Johnson made his colleagues understand that there was a debt to be repaid.

The Congressional Cycle

Every bill introduced in Congress faces the 2-year deadline of the congressional term. (The term of the 116th Congress, elected in November 2018, began at noon on January 3, 2019, and expires at noon on January 3, 2021.) Legislation introduced must be passed by both the House and the Senate in identical form within the 2-year term to become law (assuming the president approves). But because Congress normally adjourns prior to the end of the 2-year term, bills usually have less than 2 full years to germinate. Bills that have not completed the required procedural journey before final adjournment of a Congress automatically die and must be reintroduced in a new Congress to start the legislative process anew. Inaction or postponement at any stage of the process can mean the defeat of a bill.

Many measures considered by Congress come up in cycles—such as those bills required each year to finance the activities of federal agencies and programs. Generally, this kind of legislation appears regularly on the congressional agenda at about the same time each year. Other legislation comes up for renewal every few years. Emergencies demand immediate attention. Other matters become timely because public interest, international events, Congress, or the president has focused on them; prescription drug costs, gun control, border security, climate change, and cybersecurity are recent examples of such issues.

Complex legislation is often introduced early in the congressional term because it takes longer to process than a simple bill. A disproportionately large number of major bills are enacted during the last few weeks of a

Congress. Compromises that were not possible in July can be made in December. By this time—with the 2-year term about to expire—the pressures on members of the House and Senate are intense, and lawmaking can become frantic and furious. “It is a time when legislators pass dozens of bills without debate or recorded votes, a time when a canny legislator can slip in special favors for the folks back home or for special interest lobbyists roaming Capitol corridors.”⁴³ Members plan purposefully to take advantage of the end game through deadline lawmaking.

Finally, many ideas require years or even decades of cultivation before they can be enacted into law. Controversial proposals—reintroduced in successive Congresses—may need a 4-, 6-, or 8-year period before they win passage. Many of the 1960s policies of Presidents Kennedy and Johnson, for example, were first considered by earlier Congresses. Bankruptcy reform legislation required the action of four consecutive Congresses before it eventually surmounted hurdles and roadblocks to become public law in 2005. In 1994, President Bill Clinton and first lady Hillary Clinton tried unsuccessfully to win congressional approval of a comprehensive health care reform proposal. Sixteen years later, President Obama signed the Patient Protection and Affordable Care Act into law. To be sure, both congressional parties recognize that health care reform will occupy center stage well into the 21st century, given America’s aging society and the escalating cost of new drugs and medical technology.

The House and Senate Compared

The “House and Senate are naturally unlike,” observed Woodrow Wilson.⁴⁴ Each chamber has its own rules, precedents, and customs; different terms of office; varying constitutional responsibilities; and different constituencies. “We are constituted differently, we serve different purposes in the representative system, we operate differently, why should [the House and Senate] not have different rules?” asked Senator Wayne Morse, D-Ore. (1945–1968).⁴⁵ Or as former Speaker Hastert noted, “Even though the Senate is only 30 yards away across that [Capitol] Rotunda, sometimes it’s like they’re 30 miles away.” Table 1.1 lists some of the major differences between the chambers.

Three of the most important structural differences between the chambers are that (1) the House is more than four times the size of the Senate, (2) most senators represent a broader constituency than do representatives, and (3) senators serve longer terms of office. The most significant procedural differences between the House and Senate are (1) the germaneness requirement for amendments in the House but not the Senate; (2) extended debate in the Senate (in most cases) but not the House, which

Table 1.1 Several Major Differences Between the House and Senate

House	Senate
Shorter term of office (2 years)	Longer term of office (6 years)
Adheres closely to procedural rules on floor activity	Operates mostly by unanimous consent
Narrower constituency	Broader, more varied constituency
Originates all revenue bills	Sole power to ratify treaties and to advise and consent to presidential nominations
Policy specialists	Policy generalists
Less press and media coverage	More press and media coverage
Power less evenly distributed	Power more evenly distributed
Less prestigious	More prestigious
More expeditious in floor debate	Less expeditious in floor debate
Strict germaneness requirement for floor amendments	No general germaneness rule for floor amendments
Less reliance on staff	More reliance on staff
More partisan	Somewhat less partisan
Strict limits on debate	Extended debate on legislation
Method of operation stresses majority rule	Traditions and practices emphasize minority rights

has a **motion** (the previous question; see Chapter 4) to end debate by majority vote; (3) the Speaker has discretionary and unchallengeable **recognition** authority compared with the Senate's presiding officer, who must recognize the senator who first seeks recognition (with a few exceptions, such as priority for the majority leader); and (4) a Rules Committee in the House—but not the Senate—that can determine the ground rules for debating and amending legislation on the floor. These differences affect the way the two houses operate in a number of ways.

Complexity of the Rules

Size explains much about why the two chambers differ. Because it is larger, the 435-member House—441 if the six delegates and resident commissioner representing places such as the District of Columbia and Puerto Rico are included—is a more structured body than the 100-member Senate. Indeed, the restraints imposed on representatives by rules and precedents are far more severe than those affecting senators. The *House Manual*

for the 116th Congress consumes more than 1,400 pages. Its precedents are in nearly 30 large volumes (see Box 1.1). By contrast, the 116th Senate's rules, standing orders, resolutions, and laws affecting the business of the chamber are contained in about 1,400 pages and its precedents in one 1,608-page volume (more recent precedents are available online).

Where Senate rules maximize freedom of expression, House rules “show a constant subordination of the individual to the necessities of the whole House as the voice of the national will.”⁴⁶ Furthermore, House and Senate rules differ fundamentally in their basic purpose. House rules are designed to permit a determined majority to work its will. Senate rules are intended to slow down, or even defer, action on legislation by granting inordinate parliamentary power (through the filibuster, for example) to individual members and determined minorities. “Senate rules are tilted toward not doing things,” remarked Jim Wright, D-Tex., who served as Speaker from 1987 to 1989. “House rules, if you know how to use them, are tilted toward allowing the majority to get its will done.”⁴⁷ Ironically, moving legislation is easier in the larger House than in the smaller Senate because of the differences in their rules. A simple majority is sufficient to pass major and controversial legislation in the House. In the Senate, at least 60 votes (necessary to break a filibuster) might be needed—sometimes more than once—to move legislation to final passage. The House acts on the basis of majority rule; the Senate stresses minority rights and often functions as a supermajoritarian institution in which 60 votes are crucial to the enactment of legislation.

The Senate, as a result, is more personal and individualistic. “The Senate is run for the convenience of one Senator, to the inconvenience of 99,” said one senator.⁴⁸ It functions to a large extent by unanimous consent, in effect adjusting or disregarding its rules as it goes along. It is not uncommon for votes on a bill to be rescheduled or delayed until an interested senator can be present. Senate party leaders are careful to consult all senators who have expressed an interest in the pending legislation, because “under the rules of the Senate any one Senator can hold up the works here,” said former Senator Robert Byrd, the acknowledged expert at the time on Senate procedure.⁴⁹ In the House, the majority leadership focuses on party colleagues and usually consults only key members—often committee and factional leaders—about upcoming floor action. It is no wonder then that bills often take longer to complete in the smaller Senate than in the larger House. Senators can participate actively in shaping decisions on the floor given their unique prerogatives: unlimited debate and unlimited opportunities to offer either relevant or nonrelevant floor amendments to almost any bill. House members typically get involved on the floor only on measures reported from the committees on which they serve. To be sure, far-reaching issues such as health care, energy, or defense proposals will trigger floor participation by many representatives.

Policy Incubation

Incubation entails “keeping a proposal alive, while it picks up support, or waits for a better climate, or while the problem to which it is addressed grows.”⁵⁰ Both houses fulfill this role, but policy incubation is promoted in the Senate particularly because of that body’s flexible rules, more varied constituent pressures on senators, and more extensive press and media coverage. As the chamber with greater prestige, longer terms of office, and smaller size, the Senate is, news outlets find, easier to cover than the House.⁵¹ The Senate is more involved than the House in cultivating national constituencies, formulating questions for national debate, and gaining general public support for policy proposals. The policy-generating role is particularly characteristic of senators having presidential ambitions; they need to capture headlines and national constituencies.⁵²

However, when the House began televising its floor sessions in 1979 over the Cable-Satellite Public Affairs Network (C-SPAN)—the Senate began gavel-to-gavel coverage in mid-1986—many activist representatives recognized the technology’s bully-pulpit potential. A classic case involved Newt Gingrich, who was elected to the House from Georgia in 1978. He quickly saw C-SPAN as a means for mobilizing grassroots support behind the GOP’s agenda and for attacking Democrats and their decades-long control of the House. He organized floor debates and speeches, even when there was hardly anyone in the chamber, to highlight Republican ideas and policy priorities to the C-SPAN viewing audience and to persuade them that they ought to put the House in Republican hands. His efforts eventually paid off, culminating in the historic 1994 elections that produced a Republican House majority for the first time in 40 years.

In a 24/7 media environment, public relations strategies—message politics—are increasingly important in moving party priorities through the legislative process. Orchestrated speeches are conducted by lawmakers in both chambers to bolster their party’s image (“brand”) and agenda and also to challenge and critique the other party’s agenda and actions. On a broader level, lawmakers recognize that, as one scholar noted, “ideas do not sell themselves.” The side that prevails in legislative battles “will depend as much on which one has its messaging right as on which has its policies right.”⁵³ In brief, the party that frames the debate on its terms is likely to achieve a favorable outcome.

Specialists Versus Generalists

Another difference between the chambers is that representatives tend to be known as subject-matter specialists while senators tend to be generalists. “If the Senate has been the nation’s great forum,” a representative said, then the “House has been its workshop.”⁵⁴ The House’s larger

workforce and division of labor facilitate policy specialization. “Senators do not specialize as intensively or as exclusively in their committee work as House members do” because senators must spread their “efforts over a greater span of subjects than the average representative.”⁵⁵ During the 116th Congress, for example, senators served on about twelve committees and subcommittees on average, compared with about six for the average representative.

One reason for the specialist–generalist distinction is that most senators represent a more heterogeneous constituency than House members. This difference compels the former to generalize as they attempt to be conversant on numerous national and international issues that affect their states. With 6-year terms, senators are less vulnerable to immediate constituency pressures. They can afford to be more cosmopolitan in their viewpoints than House members. Journalists tend to expect senators, more than representatives, to have an informed opinion on almost every important public issue. Senators, too, suffer from what Senator Byrd called “fractured attention.”⁵⁶ They may be away from the Senate raising campaign funds, appearing on television, giving speeches, exploring a run for the presidency, or engaging in other legislative activities that limit their ability to participate in committee and floor deliberations.

Distribution of Power

Another difference between the two chambers is that the power to influence policy is more evenly distributed in the Senate than in the House. Unlike most representatives, senators can readily exercise initiative in legislation and oversight, get floor amendments incorporated in measures reported from committees on which they are not members, influence the scheduling of bills, and, in general, participate more widely and equally in all Senate and party activities. Moreover, every senator of the majority party typically chairs at least one committee or subcommittee.

This ability to make a difference quickly is one reason the Senate is so politically attractive to House members. “I’ve found the Senate to be a very liberating experience,” said a former representative who was elected to the Senate. “The House is so structured by its rules, and Members are so compartmentalized by ideologies or interests. Sometimes it’s hard to make an impact.”⁵⁷ In the 116th Congress, 51 senators were former House members; by contrast, no current representative served previously in the Senate. House procedures, in short, emphasize the mobilization of voting blocs to make policy; deference to individual prerogatives is the hallmark of senatorial decision making. Senator Pat Roberts, R-Kans., a former representative, noted that a House member must legislate by coalition, but a Senator has to “work with each individual senator.”⁵⁸

Similarities

The House and Senate have many similarities. Both chambers are essentially equal in power and share similar responsibilities in lawmaking, oversight, and representation. Both have heavy workloads, decentralized committee and party structures, and somewhat parallel committee jurisdictions. The roles and responsibilities of one chamber interact with those of the other. House and Senate leaders of the same party often cooperate to coordinate message themes and action on legislation. Cooperation in moving agenda priorities generally is made easier when the same party controls both houses.

A whole range of institutional, partisan, personal, and policy connections turns bicameralism into a force that shapes member behavior and policy outcomes. Along with traditional interchamber jealousies and rivalries, evident even when the same party controls both chambers, House members often hold negative views against what they perceive as Senate obstructionism. As House members sometimes say, “The other party is only the opposition, the Senate is the enemy!” House members of the majority party are often dismayed that the Senate, even if controlled by their party, usually cannot quickly move House-passed measures through its chamber.⁵⁹ Nonetheless, the top party leaders of each chamber and their staffs consult regularly on a partisan or bipartisan basis about policy, procedural, and political issues.

Part of the House’s frustration and exasperation with the other body is the ability of any senator to block legislation through means such as filibustering, placing a “hold” on measures, or offering nonrelevant amendments. Senators have their own complaints about House procedures and policymaking. Upset that the House was trying to impose a controversial budget procedure called *reconciliation* (see Chapter 2) on the Senate, a GOP senator exclaimed, “How outrageous is that?”⁶⁰ Suffice it to say that the within-chamber procedures of each body influence the policymaking activities of the other. The two houses are interlocked and national policies are fundamentally shaped by the bicameral connection.

In recent years, the two chambers have become more similar in some unexpected areas. Today’s House members, like senators, are more dependent on staff than were their colleagues of a few decades ago, in part because issues are more complex and because more informed constituents look to Capitol Hill for assistance and information. Senators are much more involved in constituency service than ever before. Like House members, they travel frequently to their states to meet in diverse forums with their constituents. In fact, two scholars found that small-state senators “have even more contact with their constituents than the House members in those states do.”⁶¹

A number of contemporary senators are concerned that the Senate is gradually becoming more like the majoritarian House, which imposes numerous restrictions on debate. In contrast, perhaps the most famous feature of the Senate is the traditional right of senators to engage in

prolonged debate (filibuster). Lengthy debate has been curbed through such parliamentary devices as the “nuclear option” (see Chapter 7) for presidential nominations and reconciliation (see Chapter 2) for certain budgetary measures. Each device enables a simple majority of the Senate to approve these matters without first attracting the 60 votes required to end a filibuster.

Many senators, too, emulate their House colleagues by preparing to run for reelection almost immediately after being sworn into office. This situation reflects contemporary electoral developments unforeseen by the framers—the escalating costs of election races, the professionalization of campaigns (the need to hire consultants, pollsters, and the like), the role of diverse media (blogs, e-mail, Facebook), and much more—that make senatorial races more competitive than most House contests.

House members enjoy more incumbent protection than senators because they attract fewer effective, well-known, or politically experienced challengers (in part by scaring off opponents with their money-raising ability), receive more favorable press and media attention, represent more homogeneous—and gerrymandered—areas, and court their constituents assiduously. Thus, representatives are more likely than senators to survive periodic electoral tides that oust numerous incumbents.

Pressures on Members

In making their legislative decisions, members of Congress are influenced by numerous pressures—the White House, the news media, constituents, lobbyists and interest groups, and their own party leadership and colleagues on Capitol Hill. These pressures are a central feature of the congressional environment; they affect the formal procedures and rules of Congress. All these pressures are present in varying degrees at every step of the legislative process. The interests and influence of groups and individuals outside Congress have a considerable impact on the fate of legislation.

The President and the Executive Branch

The president and executive branch are among the most important sources of external pressure exerted on Congress. Many of the president’s legislative functions and activities are not mentioned in the Constitution. The president is able to influence congressional action through techniques such as nominating and appointing federal officials backed by key lawmakers or legislative groups; endorsing or opposing the election of congressional office seekers, allocating federal funds and projects that may be vital to the reelection of certain members of Congress; or advocating and championing policy proposals to the House and

Senate. National or international crises, such as wars, economic recessions, or man-made and natural disasters, trigger a flow of power to the president and away from Congress. The September 11, 2001, terrorist attacks clearly strengthened President George W. Bush's assertion of executive power and role as commander in chief.

The president has ready access to traditional news media (newspapers, TV, radio) as well as an array of digital media outlets, such as Twitter. President Donald Trump relies heavily on tweets to, for example, fire or hire federal appointees, announce new policy directions, attack opponents who criticize his policies, or strengthen ties with electoral supporters. The bully-pulpit role, as Theodore Roosevelt described it, enables presidents to mold public opinion and build popular backing for White House proposals. With advances in communications technology and the amplifying power of the media, the bully pulpit is arguably the president's most significant resource. With the diversity of communications outlets (press conferences, talk-show formats, YouTube, Facebook, blogs, the Internet, and more), public officials are able to bypass traditional news outlets and communicate directly with voters. As a White House pollster put it, enacting the president's agenda "is not simply a matter of presenting a policy proposal, sending it to Congress and letting Congress do its work. Now you need an effort to keep the American public with you."⁶²

The president's role as legislative leader derives from the Constitution. While the Constitution vests "all legislative Powers" in Congress, it also directs the president to "give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient." This function has been broadened over the years. The president presents to Congress each year, in addition to the State of the Union message, two other general statements of presidential aims: an economic report, including proposals directed at maintaining maximum employment, and a budget message outlining appropriations requests and policy proposals. During a typical session, the president transmits to Congress scores of other legislative proposals and ensures that the White House and executive agency liaison offices monitor legislative activities and lobby for administration policies. The president's constitutional power to veto acts passed by Congress (a two-thirds vote in each house is needed to **override a veto**) often promotes legislative-executive accommodations ("veto bargaining").

The Media

Of all the pressures on Congress, none is such a two-way proposition as the relationship between legislators and the media. Although senators and representatives must contend with the peculiarities of the newsgathering business, such as deadlines and limited space or time to describe

events, and with constant media scrutiny of their actions, they also must rely on news organizations to inform the public of their legislative interests and accomplishments. At the same time, reporters must depend to some extent on inside information from members, a condition that makes many of them reluctant to displease their sources lest the pipeline of information be shut off.

But Congress is basically an open organization. Information flows freely on Capitol Hill, and secrets rarely remain secret for long. An enterprising reporter can usually find out what is newsworthy. Moreover, Congress has taken a variety of actions from the 1970s forward to further open its proceedings to public observation. For one thing, it has allowed nationwide, gavel-to-gavel coverage over C-SPAN of House and Senate floor proceedings. Instead of relying on press accounts of congressional actions, many citizens now have an opportunity to watch the floor sessions (and many committee sessions and pertinent public programs) via the electronic gallery and make their own legislative judgments. There are also numerous public websites that provide information and analysis of the role and work of Congress, not to mention the entire federal establishment.

On an individual basis, lawmakers are exploiting a large array of technologies to communicate with their constituents, generate favorable publicity, and promote their policy proposals. As Rep. David E. Price, D-N.C., described this aspect of his legislative experience,

My staff and I also try to maintain effective contact with the news media in the district. Members of the media, especially television, are often attracted to campaign fireworks, but it takes considerably more effort to interest them in the day-to-day work of Congress. We send television feeds by satellite to local stations from Washington, offer radio commentary about matters of current interest, and arrange interviews on these topics when I am home. We provide a steady stream of press releases to newspaper, radio, and television outlets; most of these either offer news about my own initiatives or give some interpretation of major items of congressional business, often relating them to North Carolina. We also furnish copies of my statements and speeches and let stations know when they can pick up my floor appearances on C-SPAN.⁶³

In brief, lawmakers employ a variety of contemporary devices and techniques—smartphone apps, Twitter, Facebook, e-mail, teleconferencing (meeting constituents in their states or districts without ever leaving Capitol Hill), social networking, blogging, and more—in addition to their traditional means—newsletters, franked mail, telephone calls, town hall meetings, radio, and television—for contacting constituents or promoting issues.

From a party perspective, Democratic and Republican leaders devote considerable attention to the many ways of using the media and the Internet to frame the terms of public debate on substantive and political issues so as to promote the outcome they want. In recent years, congressional party leaders—in collaboration with a president of their party and partisan-oriented outside groups—have regularly employed sophisticated electronic communications strategies to highlight their goals and messages to the American public. “New technologies make it possible to keep the public informed of what we’re doing and receive instant feedback,” said a spokeswoman for Steny Hoyer, D-Md., majority leader in the 116th House.⁶⁴ Opinion polling, televised ads, mobilization and coordination of interest groups, town hall meetings, think tanks, airport rallies, radio and television interviews, op-ed articles, blogs, partisan “talking points,” and more are employed by the congressional parties to generate public support for their agenda.

From an institutional perspective, scholarly research has shown “that press coverage of Congress has declined in volume and increased sharply in negativity, while moving from coverage of what the institution does as a legislature to increased emphasis on reports, rumors, and allegations of scandal, individual and institutional.”⁶⁵ The implications that flow from this finding are several, including the public’s lack of trust in the legislative branch, which hinders Congress’s ability to resolve pressing national problems. Michael Gerson, a former speechwriter for President George W. Bush, worries that the ideological polarization of various media outlets means that many Americans “get their information from sources that agree with them—sources that reinforce and exaggerate their political predispositions.”⁶⁶

Constituents

Although many pressures compete for influence on Capitol Hill, the constituents—not the president or the party or the congressional leadership—still grant and take away a member’s job.⁶⁷ A member who is popular back home can defy all three in a way unthinkable in a country such as Great Britain, where the leadership of the legislature, the executive, and the party are the same.

The extent to which members of Congress seek to follow the wishes of their constituents is determined to a considerable degree by the issue at stake. Few members would actively oppose issues deemed vital by most constituents. A farm-state legislator, for example, is unlikely to push policies designed to lower the price of foods grown by those who elect him. Likewise, few members would follow locally popular policies that would endanger the nation. Between these extremes lies a wide spectrum of different blends of pressure from constituents and from conscience.

Regularly, lawmakers confront the dilemma of how to maintain a rough balance between serving the often contradictory impulses of their many constituents (e.g., provide more government services without raising taxes) and the larger national interest.

Washington Lobbyists

Lobbyists and lobby groups play an active part in the legislative process. The corps of Washington lobbyists has grown markedly in number and diversity since the 1930s, in line with the expansion of federal authority and its spread into new areas. The federal government has become a tremendous force in the life of the nation, and the number of fields in which changes in federal policy may spell success or failure for special interest groups has grown enormously. Thus, commercial and industrial interests; labor unions; ethnic, ideological, health care, education, environmental, and racial groups; professional organizations; state and local governments; citizen groups; and representatives of foreign interests—all from time to time and some continuously—seek by one method or another to exert pressure on Congress to attain their legislative goals.

Interest groups, whether operating at the grassroots level to influence public opinion, through direct contact with members of Congress, or in many other ways perform some important and indispensable functions. These include helping inform both Congress and the public about problems and issues, stimulating public debate, and making known to Congress the practical aspects of proposed legislation: whom it would help, whom it would hurt, who is for it, and who is against. They also work closely with sympathetic party leaders, legislators, and their staffs drafting legislation, developing strategy, and preparing speeches. Party leaders in both chambers often work with lobbying organizations on matters such as the floor agenda, election goals, policy initiatives, or the enactment of priority legislation. As a House GOP whip stated, “We look at the outside groups as an extension of the whip operation” during key legislative battles.⁶⁸

A group’s ability to influence legislation is based on a variety of factors: the quality of its arguments; the size, cohesion, and intensity of the organization’s membership; the group’s ability to augment its political power by forming ad hoc coalitions with other associations; its financial and staff resources; and the shrewdness of its leadership. The proliferation of interest groups and their sophistication in using campaign funds, voter mobilization, expert information, and technology to affect legislative decisions continues to advance. However, the “power of interest groups is not, of course, exercised without opposition,” notes a group of scholars. “The typical issue has some interest groups on one side and some on the other, or many interest groups on many sides, not necessarily with an equal balance of power.”⁶⁹

NOTES

1. As House GOP leader Bertrand Snell, N.Y., exclaimed, “The House is burning down, and the President of the United States says this is the way to put out the fire.” See *Congressional Record*, March 9, 1933, 67.
2. John Lawrence, “When America Stared Into the Abyss,” *The Atlantic*, January 2019, online edition. As chief of staff to Speaker Nancy Pelosi, Lawrence provides an insider’s account of the legislative effort to avoid an economic calamity of immense proportions.
3. Each Congress consists of two sessions, each of which convenes in January and adjourns late in the year or during the first few days of the following January. Throughout this book, we identify a Congress by its first 2 years even though some technically include several days of a third year.
4. Margaret Kriz, “Still Charging,” *National Journal*, December 6, 1997, 2462.
5. Charles Stewart III, “Congress and the Constitutional System,” in *The Legislative Branch*, ed. Paul Quirk and Sarah Binder (New York: Oxford University Press, 2005), 30.
6. Paul L. Ford, ed., *The Federalist: A Commentary on the Constitution of the United States by Alexander Hamilton, James Madison and John Jay* (New York: Henry Holt, 1898), 319. James Madison wrote the commentary “Separation of the Departments of Power” (*Federalist* No. 47).
7. Thomas Jefferson, “Notes on Virginia,” in *Free Government in the Making*, ed. Alpheus Thomas Mason (New York: Oxford University Press, 1965), 164.
8. *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952), 635.
9. *Constitution, Jefferson’s Manual, and Rules of the House of Representatives*, 114th Cong., 2d sess., 2017, H.Doc. 114–192, 129.
10. *Congressional Record*, April 8, 1981, S3615.
11. Statement of Rep. Earl Pomeroy, D-N.D., on the application of laws to Congress, hearing before the House Rules Subcommittee on Rules, March 24, 1994, 1.
12. Alex Swoyer, “Congress Passes Sexual Harassment Bill, but House Members Want More,” *The Washington Times*, December 14, 2018, A5.
13. *Congressional Record*, September 16, 1982, H7097.
14. Sarah Binder, *Minority Rights, Majority Rule* (New York: Cambridge University Press, 1997), 2.

15. Adam Clymer, "In House and Senate, 2 Kinds of G.O.P.," *The New York Times*, November 15, 1994, B8.
16. Clarence Cannon, *Cannon's Procedure in the House of Representatives*, 86th Cong., 1st sess., 1959, H.Doc. 86-122, iii.
17. John M. Barry, "The Man of the House," *The New York Times Magazine*, November 23, 1986, 109.
18. "Lawmakers Were Warned of Abuses at HUD," *The New York Times*, July 3, 1989, 9.
19. Testimony Before the GOP Task Force on Congressional Reform, House Republican Research Committee, December 16, 1987, 3.
20. *National Review*, February 27, 1987, 24.
21. Marlene Cimon, "Senator Sam: 'Free Spirit' in Washington," *Los Angeles Times*, February 7, 1977, F3.
22. *Congressional Record*, March 9, 1976, 5909.
23. Lee H. Hamilton, *How Congress Works and Why You Should Care* (Bloomington: Indiana University Press, 2004), 58.
24. Frances E. Lee, *Insecure Majorities: Congress and the Perpetual Campaign* (Chicago: University of Chicago Press, 2016).
25. Donald R. Wolfensberger, *Changing Culture in Congress: From Fair Play to Power Plays* (New York: Columbia University Press, 2018), 6.
26. See James M. Curry and Frances E. Lee, "What Is Regular Order Worth? Partisan Lawmaking and Congressional Processes," Paper prepared for presentation at the Congressional Rules & Procedures Conference, University of Georgia, May 17–19, 2018.
27. Quoted in Kathy Kiely and Wendy Koch, "Committees Shaped by Party Ties," *USA Today*, October 5, 1998, 2A.
28. Paul Kane, "History Professor Landed a Privileged Perch to See How Harry Reid Works," *The Washington Post*, May 5, 2016, A17.
29. See, for example, Barbara Sinclair, *Party Wars: Polarization and the Politics of National Policy Making* (Norman: University of Oklahoma Press, 2006); Steven S. Smith, *The Senate Syndrome: The Evolution of Procedural Warfare in the Modern U.S. Senate* (Norman: The University of Oklahoma Press, 2014); and Charles Tiefer, *The Polarized Congress: The Post-Traditional Procedure of Its Current Struggles* (Lanham, MD: University Press of America, Inc., 2016).
30. David Nather, "Daschle's Soft Touch Lost in Tough Senate Arena," *CQ Weekly*, July 20, 2002, 1921.

31. Quoted in *Deschler-Brown Precedents of the United States House of Representatives*, vol. 1, 94th Cong., 2d sess., 1976, H.Doc. 94-661, iv.
32. Judd Choate, *Torn and Frayed: Congressional Norms and Party Switching in an Era of Reform* (Westport, CT: Praeger, 2003).
33. Richard F. Fenno Jr., "Adjusting to the Senate," in *Congress and Policy Change*, eds. Gerald C. Wright Jr., Leroy N. Rieselbach, and Lawrence C. Dodd (New York: Agathon Press, 1986), 134-136. See also Edward V. Schneier, "Norms and Folkways in Congress: How Much Has Already Changed?" *Congress and the Presidency* (Autumn 1988): 117-138; David W. Rohde, "Studying Congressional Norms: Concepts and Evidence," *Congress and the Presidency* (Autumn 1988): 139-145; Chester W. Rogers, "New Member Socialization in the House of Representatives," *Congress and the Presidency* (Spring 1992): 47-63; and David Rogers, "The Lost Senate," *Politico*, October 9, 2009, online edition.
34. See John M. Broder, "House Backs Bill, 219-212, to Curb Global Warming," *The New York Times*, June 27, 2009, A1. (The table is from *CQ Today*, June 2, 2009, 32.)
35. Roger H. Davidson and Walter J. Oleszek, *Congress Against Itself* (Bloomington: Indiana University Press, 1977); Roger H. Davidson, "Breaking Up Those 'Cozy Triangles': An Impossible Dream?" in *Legislative Reform and Public Policy*, ed. Susan Welch and John G. Peters (New York: Praeger, 1977), 30-53; Hugh Hecl, "Issue Networks and the Executive Establishment," in *The New American Political System*, ed. Anthony King (Washington, DC: American Enterprise Institute for Public Policy Research, 1978), 87-124; and Charles O. Jones, *The United States Congress: People, Place, and Policy* (Homewood, IL: Dorsey Press, 1982), 360. "Sloppy large hexagons," a phrase coined by Jones, refers to the large number of participants who shape policy issues.
36. Jeff Raimundo, "Cool Whip," *California Magazine*, April 1987, 64.
37. Donald Bruce Johnson and Jack L. Walker, "President John Kennedy Discusses the Presidency," in *The Dynamics of the American Presidency*, ed. Donald Bruce Johnson (New York: Wiley, 1964), 144.
38. *Congressional Record*, April 2, 2004, H2120.
39. Steven Mufson, David Fahrenthold, and Paul Kane, "In Close Vote, House Passes Climate Bill," *The Washington Post*, June 27, 2009, A4. See John M. Broder, "Adding Something for Everyone, House Leaders Won Climate Bill," *The New York Times*, July 1, 2009, A1; and Edward Felker, "Sweetener Helped Sway Vote on House Climate Bill," *The Washington Times*, July 1, 2009, A1.

40. *Congressional Record*, March 17, 1994, H1483.
41. *Congressional Record*, May 20, 1987, S6798.
42. Doris Kearns Goodwin, *Lyndon Johnson and the American Dream* (New York: Harper & Row, 1976), 11.
43. Ellen Hume and Paul Houston, "Dangerous Time for Republic: Bill-Passing Blitz Offers Something for Everyone," *Los Angeles Times*, October 6, 1982, B8.
44. Woodrow Wilson, *Constitutional Government in the United States* (New York: Columbia University Press, 1911), 87.
45. *Congressional Record*, February 7, 1967, 2838.
46. Asher C. Hinds, *Hinds' Precedents of the House of Representatives*, vol. 1 (Washington, DC: U.S. Government Printing Office, 1907), v.
47. Janet Hook, "Speaker Jim Wright Takes Charge in the House," *Congressional Quarterly Weekly Report*, July 11, 1987, 1486.
48. Steven V. Roberts, "Life, or Lack Thereof, in the Senate," *The New York Times*, November 22, 1985, B8.
49. *Congressional Record*, September 10, 1987, S11944.
50. Nelson W. Polsby, "Policy Analysis and Congress," *Public Policy* (Fall 1969): 67.
51. Michael Green, "Obstacles to Reform: Nobody Covers the House," *Washington Monthly*, June 1970, 62–70.
52. See Robert L. Peabody, Norman J. Ornstein, and David W. Rohde, "The United States Senate as a Presidential Incubator: Many Are Called but Few Are Chosen," *Political Science Quarterly* (Summer 1976): 236–258.
53. Drew Westen, "Selling Health Care? Watch What You Say," *The Washington Post*, June 28, 2009, B3.
54. Charles Clapp, *The Congressman* (Garden City, NY: Doubleday, 1963), 39.
55. Richard F. Fenno Jr., *Congressmen in Committees* (Boston: Little, Brown, 1973), 172.
56. Robert C. Byrd, *Operations of Congress: Testimony of House and Senate Leaders, Hearing Before the Joint Committee on the Organization of Congress*, 103d Cong., 1st sess., February 2, 1993, 4.
57. Ed Henry, "The Senate's Freshman Firestorm: Torricelli 'Liberated' by His Move to Upper Chamber," *Roll Call*, June 2, 1997, 24.

58. Lindsay Sobel, "From House Chairman to Senate Freshman, Pat Roberts Rides in Smaller Farm Pasture," *The Hill*, June 11, 1997, 20.
59. Tory Newmyer and Emily Pierce, "A Marriage of Convenience?" *Roll Call*, January 12, 2009, 1.
60. *Congressional Record*, March 31, 2009, S4025.
61. Frances E. Lee and Bruce I. Oppenheimer, *Sizing Up the Senate* (Chicago: University of Chicago Press, 1999), 56.
62. Thomas B. Rosenstiel, "Presidents' Pollsters: Who Follows Whom?" *Los Angeles Times*, December 28, 1993, A5.
63. David E. Price, *The Congressional Experience*, 3rd ed. (Boulder, CO: Westview Press, 2004), 245.
64. Emily Yehle, "Members Grapple With Media Trends," *Roll Call*, November 11, 2009, 3.
65. Norman J. Ornstein, "If Congress Played a Better Host to Guests, Maybe It Would Improve a Crummy Image," *Roll Call*, March 31, 1994, 15.
66. Michael Gerson, "Journalism's Slow, Sad Death," *The Washington Post*, November 27, 2009, A25.
67. For a valuable discussion of constituent pressures, see David Mayhew, *The Electoral Connection* (New Haven, CT: Yale University Press, 1974).
68. Kate Ackley, "Coalitions: Lobbyists' Holy Grail," *Roll Call*, November 8, 2005, 16.
69. John P. Heinz, Edward O. Laumann, Robert L. Nelson, and Robert H. Salisbury, *The Hollow Core: Private Interests in National Policy Making* (Cambridge, MA: Harvard University Press, 1993), 391. See also Allan J. Cigler and Burdett A. Loomis, *Interest Group Politics*, 9th ed. (Washington, DC: CQ Press, 2015).