Chapter 1

The Two Congresses

Rep. Dan Newhouse, R-Wash., picks apples on his farm, outside of Sunnyside, Washington.
Tom Williams/CQ Roll Call/Getty Images

"I guess I assumed that Republicans would stand behind him, Dan," said a county GOP leader to Rep. Dan Newhouse (R-WA) in August 2024. "I was hurt, I was disgusted, I was dismayed when you came out and voted to impeach the man."[1] Newhouse was meeting with a group of Republicans in the back room of a local pizza joint in his central Washington district in the lead-up to the 2024 primary elections. As one of the ten House Republicans who had voted to impeach President Donald J. Trump in the wake of the January 6, 2021, attack on the Capitol, Newhouse had been faced with many similar questions from his constituents over the past three years. Maintaining a respectful tone, Newhouse replied that the Capitol riot had occurred just days after he had taken an oath of office to defend the Constitution. "I took that [oath] very literally," said Newhouse. "I think I made the right choice for upholding the Constitution. It's not political."[2]

Newhouse would go on to finish second in the primary five days later. The first-place finisher was Navy veteran and former NASCAR driver Jerrod Sessler, who had been endorsed by President Trump. Just the weekend before the election, Trump took to his social media platform to denounce Newhouse as "a weak and pathetic RINO [Republican In Name Only] who stupidly voted to impeach me for absolutely no reason."[3] Despite finishing behind Sessler in the primary, Newhouse was not finished. He benefited from Washington state's unusual "top two" primary system, in which all candidates from any party compete in a single primary and then the two candidates receiving the most votes advance to the general election in November.

The 2024 primary was not the first time Newhouse had faced a serious challenge from within his own party. In 2022, in the immediate aftermath of his impeachment vote, he had also faced a competitive primary featuring another Trump-backed opponent. Facing six Republican challengers, Newhouse managed to eke out a primary win with just 25.5 percent of the vote. With a Democrat coming in second in the top two, Newhouse was easily able to dispatch his opponent in the 2022 general election. But after coming in second in the 2024 primary, Newhouse had to face down a Trump-backed Republican as his sole opponent in the 2024 general election—in one of the most reliably Republican districts in the country.

Washington's Fourth Congressional District encompasses the whole central part of the state from Canada to the Oregon state line. Encompassing no major cities, the district is heavily agricultural. It produces most of the nation's apples, along with many other crops, including grapes, wheat, potatoes, and hops. Clearly set on one side of the deep rural-urban divide in American politics, the district is a Republican bastion. No Democratic presidential candidate has won even one county in the district since Bill Clinton in 1992. None of the district's other counties have voted for a Democrat since 1964. Trump carried the district by more than 15 percentage points in 2016, 2020, and 2024.

Clearly, Washington's Fourth District is not friendly territory for a Trump "impeacher." To make matters more difficult, Newhouse staked out positions on other national issues unusual for a conservative Republican. He supported a path to legal status for undocumented immigrants.[4] He was one of only thirty-nine House Republicans to vote for the Respect for Marriage Act requiring the federal government and all U.S. states and territories to recognize same-sex marriages.[5] Against conservative Republican opposition, Newhouse advocated for the reauthorization of the Export-Import Bank, a credit agency that assists in financing and facilitating U.S. exports.[6] Newhouse opposes tariffs, another source of friction with President Trump.[7] Since his election to the House in 2014, Newhouse has often found himself at odds with Republican hardliners on prominent issues.

No one could question Newhouse's deep roots in the district, however. A third-generation farmer, he grew up in a Yakima Valley family. He graduated from Washington State University with a degree in agricultural economics. Before entering politics, he operated an 850-acre farm near Sunnyside growing hops,

grapes, and alfalfa. He is a former president of the Hop Growers of America. He served as Washington's Director of Agriculture from 2009 to 2013, under both a Republican and a Democratic governor. He has detailed positions on an array of regional issues, from his support for maintaining the federal hydropower dams on the Snake River to his opposition to reintroducing grizzly bears to the North Cascades ecosystem. Clearly, Newhouse has deep knowledge of the district and its principal industry.

The 2024 race in Washington's Fourth Congressional District featured one of the most competitive challenges to a House incumbent, even though, with two Republicans competing against one another, the outcome would have no effect on party control of the House of Representatives. Different Republican factions took stands on the race. Newhouse's opponent Sessler had the endorsement of Trump, the Washington State Republican party,[8] and the pro-Trump conservative House Freedom Caucus's campaign arm.[9] Newhouse had the support of the Main Street Caucus, a faction of mainstream House Republicans.[10] Speaker Mike Johnson and House Majority Leader Steve Scalise also flew out to visit Newhouse's district to support him in the last week before the election.[11] Recognizing that Trump would win the district in a landslide, Sessler constantly touted his Trump endorsement and promised to be Trump's "greatest ally."[12] Meanwhile, Newhouse campaigned on his understanding of local issues. "It's tough to make a buck in agriculture," he said. "That's why I think it's so important that we have a strong representative that knows agriculture. And I'm a farmer. Those are my issues."[13]

Faced with the choice, Washington's Fourth District voters reelected Newhouse with 52 percent of the vote. "The results from this election show the people want a results-driven leader who understands the unique challenges facing Central Washington," concluded Newhouse.

Newhouse's wins in 2022 and 2024 illustrate the central theme of this book. The work of Congress is conducted not only in Washington, DC but also in states and districts hundreds or thousands of miles away. Members of Congress gain and hold office not just by virtue of their stances on national issues but on the basis of their capacity to forge and maintain voters' trust. Newhouse's deep roots in his district afforded him some leeway to deviate from conservative orthodoxy on a number of national issues. But ambitious challengers were always waiting in the wings, ready to take advantage of any opportunity. In an overwhelmingly pro-Trump district, Newhouse's support for Trump's impeachment put his seat at severe risk. The decision has dogged him for years and will likely cause him trouble in the future, should he decide to run for reelection again. Nevertheless, his local ties and bonds of constituency trust have thus far enabled him to fend off Trump's efforts to purge him from Congress. He must continue to nurture and renew these personal relationships and open lines of communication if he is to have any hope of staying in Congress beyond 2026. Constituents may not always understand the details of national politics and policy, but they know whom they trust—and whom they doubt.

The Dual Nature of Congress

Dan Newhouse's reelection victories underscore the dual nature of Congress. Members of Congress continually inhabit two very different but closely linked worlds, attempting to strike a difficult balance between them. In Newhouse's case, there are, on the one hand, the unique needs and issues of central Washington, with its conservative rural voters, its reliance on agriculture, its dependence on international trade, and its appreciation for someone who knows and understands local ways of life. On the other hand, there is the world of national politics, where Newhouse has found himself in conflict with influential factions in Republican party politics and on the front pages of the newspapers as one of a handful of House Republicans who supported his own president's impeachment. These tensions highlight the dual character of the national legislature—Congress as a national policymaking institution and Congress as an assembly of local representatives.

In this sense, there are two Congresses. One is the Congress of textbooks, of "how a bill becomes a law." It is Congress acting as a collegial body, performing constitutional duties, and debating legislative issues that affect the entire nation. This Congress is a fascinating arena in which all of the forces of U.S. political life converge—presidents, cabinet members, career bureaucrats, activists, lobbyists, policy wonks, military leaders, and ambitious political entrepreneurs of every stripe. This Congress is more than a collection of its members at any given time. It is a mature institution with a complex network of rules, organizations, and traditions. Norms mark the boundaries of the legislative playing field and define the rules of the game. To be effective legislators, individual members generally must accept Congress on its own terms and conform to its established ways of doing things.

A second Congress exists as well, and it is every bit as important as the Congress portrayed in textbooks. This is the representative assembly of 541 individuals (100 senators, 435 representatives, 5 delegates, and 1 resident commissioner). This Congress includes men and women of many different ages, backgrounds, and routes to office, all doing what is necessary to maintain political support in their local constituencies. Their electoral fortunes depend less on what Congress produces as a national institution than on the policy positions they take individually and the local ties they build and maintain. "As locally elected officials who make national policy," observes Paul S. Herrnson, "members of Congress almost lead double lives."[14]

The two Congresses are, in many ways, separated by a wide gulf. The complex, often insular world of Capitol Hill is far removed from most constituencies, in perspective and outlook as well as in miles. Lawmaking and representing are separate tasks, and members of Congress recognize them as such. Yet these two Congresses are bound together. What affects one affects the other—sooner or later.

Legislators' Tasks

The duality between institutional and individual duties permeates legislators' daily activities and roles. As Speaker Sam Rayburn, D-Tex., once remarked, "A congressman

has two constituencies—he has his constituents at home, and his colleagues here in the House. To serve his constituents at home, he must also serve his colleagues here in the House."[15]

No problem vexes members more than that of juggling constituency and legislative tasks. For maintaining local connections, members know that there is no substitute for being present in their states and district. Congressional calendars allow for lengthy recesses, termed district work periods, and most legislative weeks are scheduled from Tuesday to Thursday. "I can tell you based on my experience . . . that time spent in our districts is not 'time off,'" observed Rep. Rob Bishop, R-Utah.[16] On average, between 2010 and 2022, Congress was in session for 134 days a year, about one out of every three days.[17] Members spend much of the rest of their time at home among their constituents.

Reelection is the paramount operational goal of members of Congress. As a former representative put it, "All members of Congress have a primary interest in getting reelected. Some members have no other interest."[18] After all, politicians must win elections before they can achieve any long-range political goals. "[Reelection] has to be the proximate goal of everyone, the goal that must be achieved over and over if other ends are to be entertained," David R. Mayhew observed in *Congress: The Electoral Connection*.[19]

Individual legislators vary in how they balance the twin roles of legislator and representative. Some legislators devote more time and resources to lawmaking while others focus almost entirely on constituency tending. With their longer terms, some senators stress voter outreach and fence mending during the two years before reelection and focus on legislative activities at other times. Yet senatorial contests normally are more competitive and costlier than House races, and many senators now run for reelection all the time—like most of their House colleagues.[20] Most senators and representatives would like to devote more time to lawmaking and other Capitol Hill duties, but the press of constituency business is relentless.[21]

Popular Images

The notion of two Congresses also conforms to the average citizen's perceptions. The public views the U.S. Congress differently from the way it sees individual senators and representatives. Congress, as an institution, is perceived primarily as a lawmaking body. It is judged mainly on the basis of citizens' overall attitudes toward politics, policy processes, and the state of the Union. Do people like the way things are going or not? Do they feel that Congress is carrying out its duties effectively? Are they optimistic or pessimistic about the nation's future?

In contrast with their expectations of Congress as a whole, citizens view their legislators in great part as agents of local concerns. People judge individual legislators by yardsticks such as communication with constituents, their positions on prominent issues, service to the district, and home style (the way officeholders present themselves

in their districts or states). In judging their senators or representatives, voters ponder questions such as, "Is the legislator trustworthy? Does the legislator communicate well with the state (or district) by being visible in the constituency and offering timely help to constituents? Does the legislator listen to the state (or district) and its concerns?"[22]

The public's divergent expectations of Congress and its members send conflicting signals to senators and representatives. Congress, as a whole, is judged by the processes it uses and the policies it adopts (or fails to adopt), however vaguely voters understand them.[23] But individual legislators are regularly nominated and elected to office on the strength of their personal qualities, the positions they take, and their constituency service. In response to this incongruity, officeholders often adopt a strategy of opening as much space as possible between themselves and those other politicians back in Washington.

The Constitutional Basis

Congress's dual nature—the dichotomy between its lawmaking and representative functions—is dictated by the U.S. Constitution. Congress's mandate to write the nation's laws is found in Article I of the Constitution. By contrast, Congress's representational functions are not specified in the Constitution, although these duties flow from the constitutional provisions for electing senators and House members.

It is no accident that the Constitution's drafters devoted the first article to establishing the legislature and enumerating most of the government's powers. Familiar with the British Parliament's prolonged struggles with the Crown, the authors assumed the legislature would be the chief policymaking body and the bulwark against arbitrary executives. "In republican government, the legislative authority necessarily predominates," observed James Madison in *The Federalist Papers*.[24]

Although in the ensuing years the initiative for policymaking has shifted many times between the legislative and executive branches, the U.S. Congress remains virtually the only national assembly in the world that drafts, in detail, the laws it passes instead of simply debating and ratifying measures prepared by the government in power.

The House of Representatives was intended to be the most representative element of the U.S. government. House members are elected directly by the people for two-year terms to ensure that they do not stray too far from popular opinion. As Madison explained, the House should have "an immediate dependence on, and an intimate sympathy with, the people."[25] For most representatives, this two-year cycle means nonstop campaigning, visiting, and looking after constituents.

The Senate was initially one step removed from popular voting. Some of the Constitution's framers hoped the Senate would temper the popular passions expressed in the House, so under the original Constitution, state legislatures selected senators. But this original vision was ultimately overruled in favor of a Senate that, like the House, directly expresses the people's voice. In 1913, the Seventeenth Amendment to the Constitution was adopted, providing for direct popular election of senators.

Although elected for six-year terms, senators must stay in close touch with the electorate. Like their House colleagues, senators typically regard themselves as constituency servants. Most have transformed their office staffs into veritable cottage industries for generating publicity and handling constituents' inquiries.

Thus, the Constitution and subsequent historical developments affirm Congress's dual functions of lawmaker and representative assembly. Although the roles are tightly bound together, they nonetheless impose separate duties and functions.

Back to Burke

On November 3, 1774, in Bristol, England, the British statesman and philosopher Edmund Burke set forth in a speech the dual character of a national legislature. The constituent-oriented parliament, or Congress, he described as

> a Congress of ambassadors from different and hostile interests, which interests each must maintain, as an agent and advocate, against other agents and advocates.
>
> The parliament of substantive lawmaking he portrayed in different terms. It was a deliberative assembly of one nation, with one interest, that of the whole—where not local purposes, not local prejudices, ought to guide, but the general good, resulting from the general reason of the whole.[26]

Burke preferred the second concept and did not hesitate to let his voters know it. He would give local opinion a hearing, but his judgment and conscience would prevail in all cases. "Your faithful friend, your devoted servant, I shall be to the end of my life," he declared. "A flatterer you do not wish for."[27]

Burke's Bristol speech is an enduring statement of the dilemma legislators face in balancing their two roles. Burke was a brilliant lawmaker. (He even sympathized with the cause of the American colonists.) But, as might be said today, he suffered from an inept home style. His candor earned him no thanks from his constituents, who turned him out of office at the first opportunity.

Burke's dilemma applies equally on this side of the Atlantic. U.S. voters tend to prefer their lawmakers to be delegates who listen carefully to constituents and follow their guidance. During an encounter in Borger, Texas, an irate Baptist minister shouted at then-representative Bill Sarpalius, D-Tex., "We didn't send you to Washington to make intelligent decisions. We sent you to represent us."[28] Sarpalius was later defeated for reelection.

Representing local constituents is not the whole story, of course. Burke's idea that legislators are trustees of the nation's common good is still extolled. In a 1995 decision, U.S. Supreme Court Justice John Paul Stevens noted that, once elected, members of Congress become "servants of the people of the United States. They are not merely delegates appointed by separate states; they occupy offices that are integral and essential components of a single national government."[29]

Many talented individuals seek public office, often forgoing more lucrative opportunities in the private sector, precisely because they believe strongly in a vision of what government should do and how it should do it. For such legislators, winning office is a means to a larger end. It is reasonable to assume that elected officials "make an honest effort to achieve good public policy."[30]

Burke posed the tension between the two Congresses so vividly that we have adopted his language to describe the conceptual distinction that forms the crux of this book. From Burke, we have also drawn the titles for Part II, "A Congress of Ambassadors," and Part III, "A Deliberative Assembly of One Nation." Every member of Congress, sooner or later, must come to terms with Burke's dichotomy; citizens and voters will also have to form their own answers.

The Two Congresses in Comparative Context

A look around the world reveals that most democracies differ from the United States in how they elect legislators. Members of Congress are selected using the oldest form of elected democratic representation: a plurality vote within geographic constituencies. By contrast, most other advanced democracies elect legislative representatives under systems of proportional representation (PR), a more recent innovation in democratic institutions. Many varieties of PR are in use, but compared with the U.S. electoral system, these systems tend to tie legislators more closely to their political parties than to local constituencies. In this way, PR systems alleviate the difficult trade-offs that members of Congress face as they attempt to balance national lawmaking with attention to local constituencies.

PR systems rest on the basic principle that the number of seats a political party wins in the legislature should be proportional to the level of support it receives from voters. If a political party wins 40 percent of the vote overall, then it should receive about 40 percent of the seats. In other words, these systems explicitly assume that political parties are more important than geographic locales to voters' values and political interests.[31] Most commonly in these systems, the parties put lists of candidates before the electorate. The number of a party's candidates to be seated in the legislature from those lists then depends on the percentage of voters supporting that party in legislative elections. To a greater extent than is true of members of the U.S. Congress, candidates elected in PR systems thus serve as representatives of their party's policy goals and ideological commitments.

Legislators in PR systems face fewer dilemmas about how to balance local constituency politics with national party platforms. Indeed, some PR systems, such as those in Israel and the Netherlands, do not tie representatives to local geographic constituencies at all; legislators represent the entire nation. Other countries, such as Austria and Sweden, elect multiple representatives from regional districts. Multimember districts are not captured by a single party on a winner-take-all basis. (The United States, by

contrast, employs single-member districts, meaning that each constituency elects a representative on a winner-take-all basis.) In countries with multimember districts, constituencies in which more than one political party enjoys a meaningful level of voter support will elect representatives from more than one party, with each legislator thus representing those voters who supported their party. Some countries, such as Germany, Italy, and New Zealand, use a mixed system, with some representatives elected in individual geographic constituencies and others drawn from party lists to ensure proportionality. In all PR cases, citizens and legislators alike recognize that the system is primarily designed to ensure that voters' party preferences are proportionally represented.

Members of the U.S. Congress, by contrast, officially represent all residents of their geographic constituency—a difficult task. The constituents grouped within congressional districts often have little in common. Indeed, constituencies can be very diverse in terms of race, class, ethnicity, religion, economic interests, and urbanization. The largest states are microcosms of the whole nation. Some constituencies are narrowly divided in terms of partisanship and ideology, forcing representatives to cope with continual local controversies about their stances on national issues. A few members of Congress face the challenge of representing constituents who lean toward the opposing party.[32]

In attempting to represent their whole state or district, some senators and House members attempt a "lowest common denominator" form of representation, deemphasizing their party affiliation and their opinions on controversial national issues. Instead, they advertise their accessibility to constituents; focus on narrow, localized concerns; and dodge hot-button questions whenever they can.[33] This strategy is most appealing to members representing swing or cross-pressured states and districts. But, to an important extent, the U.S. system of representation encourages a focus on parochial matters among lawmakers generally. Members see themselves, at least to some degree, as attorneys for their constituencies.

Even though the U.S. system of representation does not recognize the importance of political parties in the way that PR systems do, members of Congress have nevertheless become more closely tied to their parties in recent decades. Lawmakers vote with their parties far more reliably than they did in the decades spanning the 1950s through the 1980s. The sources of this increased partisanship are many, but it has corresponded with an increasingly partisan ideological polarization in the activist base of both political parties. "The American public has become more consistent and polarized in its policy preferences over the past several decades," writes Alan I. Abramowitz, "and this increase in consistency and polarization has been concentrated among the most politically engaged citizens."[34] At the same time, the politically engaged public has also sorted itself into more ideologically coherent political parties, with fewer liberals identifying with the Republican Party and fewer conservatives identifying with the Democratic Party.[35] Consequently, few voters split their tickets today by voting for one party's presidential candidate and another party's congressional candidate. These

trends have reduced the cross-pressures that members face as they attempt to balance their roles as constituency representatives and national policy makers. More members can cooperate with their national party leaders without endangering the support of an electoral majority in their constituency. At the same time, a body of members responding to this more polarized activist base may have a harder time engaging in genuine deliberation and crafting workable legislative compromises.

All members must constantly cultivate the local roots of their power as national legislators. Yet Congress is one body, not two. The same members who attempt to forge national legislation in committee and on the floor must rush to catch planes back to their districts, where they are plunged into a different world of local problems and personalities. The same candidates who sell themselves at shopping centers also shape the federal budget or military weapons systems in the nation's capital. The unique character of Congress arises directly from its dual role as a representative assembly and a lawmaking body.

Divergent Views of Congress

Congress is subject to intense scrutiny, as the huge array of books, news outlets, and articles devoted to it attest. Many of its features make Congress a favorite object of scholarly attention. For one thing, it is relatively open and accessible, so it can be approached by traditional means—journalistic stories, case studies, normative assessments, and historical accounts. It is also amenable to the analytic techniques of social science. Indeed, the availability of quantitative indicators of congressional work (e.g., floor votes) permits elaborate statistical analyses. Its rule-governed processes allow it to be studied with sophisticated formal models. And Congress is, above all, a fascinating place—the very best location from which to view the varied actors in the U.S. political drama.

Writers of an interpretive book on the U.S. Congress thus can draw on a multitude of sources, an embarrassment of riches. In fact, studies of Congress constitute a vast literature. This is a mixed blessing because all of this information must be integrated into a coherent whole. Moreover, scholarly writing is often highly detailed, technical, and theoretical. We have tried to put such material in perspective, make it accessible to all interested readers, and use illustrative examples wherever possible.

Meanwhile, a gaping chasm exists between this rich scholarly literature and the caricature of Congress prevalent in the popular culture. Humorists from Mark Twain and Will Rogers to Stephen Colbert and Anthony Borowitz have found Congress an inexhaustible source of raw material. Citizens tend to share a disdain toward the legislative branch—especially at moments of furor over, say, ethics scandals or difficult legislative fights. When legislators are at home with constituents, they often reinforce Congress's poor image by portraying the institution as out of touch with reality. As Richard F. Fenno puts it, members "run *for* Congress by running *against* Congress."[36]

The picture of Congress conveyed by the media is scarcely more flattering. Journalistic hit-and-run specialists perpetuate a cartoon-like stereotype of Congress as "a place where good ideas go to die in a maelstrom of bureaucratic hedging and rank favor-trading."[37] News magazines, editorial writers, and nightly news broadcasts regularly portray Congress as an irresponsible and somewhat disreputable gang, reminiscent of Woodrow Wilson's caustic description of the House as "a disintegrated mass of jarring elements."[38] A common refrain is that today's Congress is a "broken" institution where little happens save partisan bickering.[39]

To comprehend how the two Congresses function—both the institution and individual members—popular stereotypes must be abandoned and the complex realities examined. Citizens' ambivalence toward the popular branch of government—which goes back to the beginnings of the Republic—says something about the milieu in which public policy is made. We believe we know our subject well enough to understand why Congress works the way it does, yet we try to maintain a professional, scholarly distance from it.

According to an old saying, two things should never be viewed up close: making sausages and making laws. Despite this warning, we urge readers to take a serious look at the workings of Congress and form their own opinions. Some may recoil from what they discover. Numerous flaws can be identified in members' personal or public behavior, in their priorities and incentive structures, and in lawmaking processes generally. Recent Congresses especially have displayed troubling tendencies, including rushed legislation, extreme partisanship, frequent gridlock, and abdication of legislative power to the executive branch.[40]

Yet careful observers will also discover much behavior in Congress that is purposeful and principled and many policies that are reasonable and workable. We invite students and colleagues to examine with us what Congress does and why—and to ponder its values and its prospects.

Chapter 2

Evolution of the Modern Congress

The United States Capitol Dome was constructed more than 150 years ago from a design by architect Thomas U. Walter. The Dome recently underwent a major renovation to restore its original grandeur, which had been gradually eroded by age and weather. Just as the physical appearance of the Capitol has undergone many changes over the years, the institutions of Congress have developed over many decades as members have adapted to new challenges and opportunities.

Library of Congress/Contributor/Getty Images

The First Congress met in New York City in the spring of 1789. Business couldn't begin until April 1, when a majority of the fifty-nine House members finally arrived to make a quorum. Members then chose Frederick A. C. Muhlenberg of Pennsylvania as Speaker of the House. Five days later, the Senate achieved its first quorum, although its presiding officer, Vice President John Adams, did not arrive for another two weeks.

New York City, the seat of government, was then a bustling port on the southern tip of Manhattan Island. Congress met in Federal Hall at the corner of Broad and Wall Streets. The House of Representatives occupied a large chamber on the first floor

and the Senate a more intimate chamber upstairs. The new chief executive, George Washington, was still en route from Mount Vernon, his plantation in Virginia; his trip had become a triumphal procession, with crowds and celebrations at every stop. To most of his countrymen, Washington—austere, dignified, the soul of propriety—embodied a government that otherwise was no more than a plan on paper.

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

On inauguration day, April 30, Adams was still worrying about how to address the president when the representatives, led by Speaker Muhlenberg, burst into the Senate chamber and seated themselves. Meanwhile, a special committee was dispatched to escort Washington to the chamber for the ceremony. The swearing-in was conducted on an outside balcony in front of thousands of assembled citizens.[1]

Then, a nervous Washington reentered the Senate chamber and haltingly read his inaugural address. After the speech, everyone adjourned to nearby St. Paul's Chapel for a special prayer service. Thus, the U.S. Congress became part of a functioning government.[2]

Antecedents of Congress

The legislative branch of the new government was untried and unknown, searching for procedures and precedents. And yet, it grew out of a rich history of development—stretching back more than five hundred years in Great Britain and no less than a century and a half in North America. If the architects of the U.S. Constitution of 1787 were unsure of how well their new design would work, they had firm ideas about what they intended.

The English Heritage

The evolution of representative institutions on a national scale began in medieval Europe. Monarchs gained power over large territories where inhabitants were divided into social groupings, called *estates of the realm*—among them, the nobility, clergy, landed gentry, and town officials. The monarchs brought together the leaders of these estates, not to create representative government but to fill the royal coffers.

These assemblies later came to be called parliaments, from the French *parler*, "to speak." Historians and political scientists have identified four distinct stages in the evolution of the assemblies of estates into the representative legislatures of today. The first stage saw the assemblies representing the various estates gathering merely to approve taxes for the royal treasury; they engaged in little discussion. During the second stage,

these tax-voting bodies began to present the king with petitions for redressing grievances. In the third stage, by a gradual process that culminated in the revolutions of the seventeenth and eighteenth centuries, parliaments wrested lawmaking and tax-levying powers from the king. In the fourth and final stage, during the nineteenth and twentieth centuries, parliamentary representation expanded beyond the older privileged groups to embrace all adult men and women.[3]

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

Out of the struggles between the Crown and Parliament flowed a remarkable body of political and philosophic writings. By the eighteenth century, works by James Harrington (1611–1677), John Locke (1632–1704), David Hume (1711–1776), William Blackstone (1723–1780), and the Frenchman Baron de Montesquieu (1689–1755) were the common heritage of educated leaders in North America as well as in Europe.

The Colonial Experience

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

Representative government took firm root in the colonies. The broad expanse of ocean shielding America from its European masters fostered autonomy on the part of the colonial assemblies. Claiming prerogatives similar to those of the British House of Commons, these assemblies exercised the full range of lawmaking powers: levying taxes, issuing money, and providing for colonial defense.[4] Legislation could be vetoed by colonial governors (appointed by the Crown in the eight royal colonies), but the governors, cut off from the home government and dependent on local assemblies for revenues and even for their salaries, usually preferred to reach agreements with the locals. Royal vetoes could emanate from London, but these took time and were infrequent.[5]

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

When Britain decided in the 1760s, following the financially ruinous French and Indian War, to tighten its rein on the American colonies, it met with stubborn

opposition. Colonists asked, Why don't we enjoy the same rights as Englishmen? Why aren't our colonial assemblies legitimate governments, with authority derived from popular elections? As British enactments grew increasingly unpopular, along with the governors who tried to enforce them, the locally based legislatures took up the cause of their constituents.

The colonists especially resented the Stamp Act of 1765, which provoked delegates from nine colonies to meet in New York City. There, the Stamp Act Congress adopted a fourteen-point *Declaration of Rights and Grievances.* Although the Stamp Act was later repealed, new import duties levied in 1767 increased customs receipts and enabled the Crown to begin directly paying the salaries of royal governors and other officials, thereby freeing those officials from the influence of colonial assemblies. The crisis worsened in the winter of 1773–1774, when a group of colonists staged a revolt, the Boston Tea Party, to protest the taxes imposed by the Tea Act. In retaliation, the House of Commons closed the port of Boston and passed a series of so-called Intolerable Acts, further tightening royal control.

National representative assemblies in America were born on September 5, 1774, when the First Continental Congress convened in Philadelphia. Every colony except Georgia sent delegates—a varied group that included peaceable souls loyal to the Crown, moderates such as Pennsylvania's John Dickinson, and firebrands such as Samuel Adams and Paul Revere. Gradually, anti-British sentiment congealed, and Congress passed a series of declarations and resolutions (each colony casting one vote) amounting to a declaration of war against the mother country.[6] After Congress adjourned on October 22, King George III declared that the colonies were "now in a state of rebellion; blows must decide whether they are to be subject to this country or independent."[7]

If the First Continental Congress gave colonists a taste of collective decision making, the Second Continental Congress proclaimed their independence from Britain. When this second Congress convened on May 10, 1775, many colonists had still believed war might be avoided. A petition to King George asking for "happy and permanent reconciliation" was even approved. The British responded by proclaiming a state of rebellion and launching efforts to crush it. Sentiment in the colonies swung increasingly toward independence, and by the middle of 1776, Congress was debating Thomas Jefferson's draft resolution that "these united colonies are, and of right ought to be, free and independent states."[8]

The two Continental Congresses gave birth to national politics in America. Riding the wave of patriotism unleashed by the British actions of 1773–1774, the Congresses succeeded in pushing the sentiments of leaders and much of the general public toward confrontation and away from reconciliation with the mother country. They did so by defining issues one by one and by reaching compromises acceptable to both moderates and radicals—no small accomplishment. Shared legislative experience, in other words, moved the delegates to the threshold of independence. Their achievement was all the more remarkable in light of what historian Jack N. Rakove describes as the "peculiar

status" of the Continental Congress, "an extra-legal body whose authority would obviously depend on its ability to maintain a broad range of support."[9]

Eight years of bloody conflict ensued before the colonies won their independence. Meanwhile, the former colonies hastened to form new governments and draft constitutions. Unlike the English constitution, these charters were written documents. All included some sort of bill of rights, and all paid lip service to the doctrine of separating powers among legislative, executive, and judicial branches of government. But past conflicts with the Crown and the royal governors had instilled a fear of all forms of executive authority. So nearly all of the constitutions gave the bulk of powers to their legislatures, effectively creating what one historian termed "legislative omnipotence."[10]

The national government was likewise, as James Sterling Young put it, "born with a legislative body and no head."[11] Strictly speaking, no national executive existed between 1775 and 1789—the years of the Revolutionary War and the Articles of Confederation (adopted in 1781). On its own, Congress struggled to wage war against the world's most powerful nation, enlist diplomatic allies, and manage internal affairs. As the war progressed and legislative direction proved unwieldy, Congress tended to delegate authority to its committees and permanent (executive) agencies. Strictly military affairs were placed in the hands of Commander in Chief George Washington, who, at the war's end, returned his commission to Congress in a public ceremony. Considering the obstacles it faced, congressional government was far from a failure. Yet the mounting inability of the all-powerful legislative bodies, state and national, to deal with postwar problems spurred demands for change.

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

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

Congress in the Constitution

The structure and powers of Congress formed the core of the Constitutional Convention's deliberations. The delegates broadly agreed that a stronger central government was needed.[12] But the fifty-five delegates who met in the summer of 1787 in Philadelphia were deeply divided on issues of representation, and more than three months passed before they completed their work. The plan, agreed to and signed on September 17, 1787, was a bundle of compromises. Divergent interests—those of large and small states, landlocked states and those with ports, and northern and southern

(that is, slaveholding) states—had to be placated in structuring the representational system. The final result was an energetic central government that could function independently of the states but with limited, enumerated powers divided among the three branches.

Powers of Congress

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

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

Despite their worries over all-powerful legislatures, the framers laid down an expansive mandate for the new Congress. Mindful of the achievements of New World assemblies, not to mention the British Parliament's struggles with the Crown, the framers viewed the legislature as the chief repository of the government's powers. Locke had observed that "the legislative is not only the supreme power, but is sacred and unalterable in the hands where the community have placed it."[13] Locke's doctrine found expression in Article I, section 8, which enumerates Congress's impressive array of powers and sets out virtually the entire scope of governmental authority as the eighteenth-century framers of the Constitution understood it. This portion of the Constitution clearly envisions a vigorous legislature as the engine of a powerful government.

Raising and spending money for governmental purposes stand at the heart of Congress's prerogatives. The "power of the purse" was historically the lever by which parliaments gained bargaining advantages over kings and queens. The Constitution's authors, well aware of this lever, gave Congress full powers over taxing and spending.[14]

Financing the government is carried out under Congress's broad mandate to "lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States" (Article I, section 8).

Although this wording covered almost all known forms of taxation, there were limitations. Taxes had to be uniform throughout the country; duties could not be levied on goods traveling between states; and "capitation or other direct" taxes were prohibited, unless levied according to population (Article I, section 9). This last provision proved troublesome when the U.S. Supreme Court held in 1895 (*Pollock v. Farmers' Loan and Trust Co.*) that it precluded taxes on incomes. To overcome this obstacle, the Sixteenth Amendment, ratified eighteen years later, explicitly conferred on Congress the power to levy income taxes.

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

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

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

The judiciary, too, is a statutory creation. The Constitution provides for a federal judicial system consisting of "one Supreme Court, and . . . such inferior courts as the Congress may from time to time ordain and establish" (Article III, section 1). Congress determines the number of justices on the Supreme Court and the number and types of lower federal courts. Congress changed the number of justices several times in its first several decades, but the number has been fixed at nine since 1869. The outer limits of the federal courts' jurisdiction are delineated in Article III, but Congress must also define their jurisdictions through statute. Moreover, the Supreme Court's appellate jurisdiction is subject to "such exceptions" and "such regulations as the Congress shall make" (Article III, section 2). Congress can also limit the federal courts' discretion in ways other than altering their jurisdiction. Mandatory minimum sentences imposed by statute, for example, limit judges' discretion in imposing prison sentences.

Congress's powers within the federal system were greatly enlarged by the Civil War constitutional amendments—the Thirteenth (ratified in 1865), Fourteenth (ratified in 1868), and Fifteenth (ratified in 1870). The Radical Republicans, who had supported the war and controlled Congress in its aftermath, feared that formerly Confederate states would ignore the rights of formerly enslaved people—the cause over which the

war had ultimately been waged. The Civil War amendments were primarily intended to ensure that formerly enslaved people would have the rights to vote, to be accorded due process, and to receive equal protection of the laws. Nevertheless, the language of the Fourteenth Amendment was cast broadly, referring to "all persons" rather than only to "former slaves." These amendments also authorized Congress to enforce these rights with "appropriate legislation." As a result, these amendments (and subsequent legislation) greatly expanded the federal government's role relative to the states. Over time, the Civil War amendments effectively nationalized the key rights of citizenship throughout the United States. Through a long series of Court rulings, state governments were eventually required to respect many of the Bill of Rights guarantees that originally applied only to the federal government.

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

Limits on Legislative Power

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

Eight specific limitations on Congress's powers are noted in Article I, section 9. The most important bans are against bills of attainder, which pronounce a particular individual guilty of a crime without trial or conviction and impose a sentence, and ex post facto laws, which make an action a crime after it has been committed or otherwise alter the legal consequences of some past action. Such laws are traditional tools of authoritarian regimes.

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

Rights not enumerated in the Bill of Rights are not necessarily denied (Ninth Amendment). In fact, subsequent amendments, legislative enactments, judicial

rulings, and states' actions have enlarged citizens' rights to include the rights of voting, of privacy, and of "equal protection of the laws." While the scope of several of these rights—both enumerated and unenumerated—remains a subject of contestation in the courts, Congress, and the states, the principle that legislative powers are inherently limited is well established.

It should also be noted that the political process itself is a significant limit on the use of government powers, even those clearly granted in Article I, section 8. As Madison noted in *Federalist* No. 51, "A dependence on the people is, no doubt, the primary control on the government."[15]

Separate Branches, Shared Powers

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

Because the branches are separated, some people presume that their powers should be distinct as well. In practice, however, governmental powers are interwoven. Madison explained that the Constitution created not a system of separate institutions performing separate functions but separate institutions that share functions, so that "these departments be so far connected and blended as to give each a constitutional control over the others."[16]

Legislative–Executive Interdependence

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

The president is a key figure in lawmaking. According to Article II, the president "shall from time to time give to the Congress information on the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." Although Congress is not required to consider the president's legislative initiatives, the president's State of the Union address shapes the nation's political agenda. In the modern era, Congress has "enacted in some form roughly six in ten presidential initiatives."[17] The Constitution also grants the president the power to convene one or both houses of Congress in a special session.

The president's ability to veto congressional enactments influences both the outcome and content of legislation. After a bill or resolution has passed both houses of Congress and has been delivered to the White House, the president must sign it or return it within ten days (excluding Sundays). Overruling a presidential veto requires a

two-thirds vote in each house. Presidential review might seem to be an all-or-nothing affair. In the words of George Washington, a president "must approve all the parts of a bill, or reject it in toto." Veto messages, however, often suggest revisions that would make the measure more likely to win the president's approval. Furthermore, veto threats allow the president to intervene earlier in the legislative process by letting members of Congress know in advance what measures or provisions will or will not receive presidential support. Considering the extreme difficulty of overriding a president's veto, members of Congress know that White House support for legislation is almost always necessary and so will often incorporate presidential preferences into early drafts of legislation.[18]

Carrying out laws is the duty of the president, who is directed by the Constitution to "take care that the laws be faithfully executed" (Article II, section 3). To this end, as chief executive, the president has the power to appoint "officers of the United States." However, the president's appointment power is limited by the requirement to obtain the Senate's advice and consent for nominees, which has been interpreted as requiring a majority vote in the Senate.[19] The president's executive power is further constrained by Congress's role in establishing and overseeing executive departments and agencies. Because these agencies are subject to Congress's broad-ranging influence, modern presidents have struggled to force them to march to a common cadence.

Even in the realms of diplomacy and national defense—the traditional domains of royal prerogative—the Constitution apportions powers between the executive and legislative branches. Following tradition, presidents are given wide discretion in such matters. They appoint ambassadors and other envoys, negotiate treaties, and command the country's armed forces. However, like other high-ranking presidential appointees, ambassadors and envoys must be approved by the Senate. Treaties do not become the law of the land until they are ratified by a two-thirds vote of the Senate. Although presidents may dispatch troops on their own, only Congress may formally declare war. Even in a time of war, Congress still wields formidable powers if it chooses to employ them. Congress can refuse to provide continued funding for military actions, engage in vigorous oversight of the executive branch's military operations, and influence public opinion regarding the president's leadership.[20]

Impeachment

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

Three attributes of impeachment fix it within the separation-of-powers framework. First, it is exclusively the domain of Congress. (The chief justice of the U.S. Supreme Court presides over Senate trials of the president, but rulings by the chief justice may be overturned by majority vote.) The two chambers are also free to devise their own procedures for reaching their decisions.[21]

Second, impeachment is essentially political. The structure may appear judicial—with the House resembling a grand jury and the Senate a trial court—but lawmakers decide whether and how to proceed, which evidence to consider, and even what constitutes an impeachable offense. Treason is defined by the Constitution, and bribery is defined by statute, but the words "high Crimes and Misdemeanors" are open to interpretation. They are usually defined (in Alexander Hamilton's words) as "abuse or violation of some public trust"—on-the-job offenses against the state, the political order, or the society at large.[22] According to this definition, they could be either more or less than garden-variety criminal offenses. All four presidential impeachments (Andrew Johnson, 1868; Bill Clinton, 1998–1999; Donald Trump, 2019–2020, 2021) were fiercely partisan affairs, in which combatants disputed not only the facts but also the appropriate grounds for impeachment. (In August 1974, Richard Nixon resigned as president given the high certainty he would be impeached by the House and removed by the Senate. Nixon's decision to resign was made once it became clear that a substantial number of members of his own party supported impeachment.)

Finally, impeachment is a cumbersome, time-consuming process, only suitable for punishing officials for the gravest of offenses. As for presidents and vice presidents, their terms are already limited. Indeed, the 2021 impeachment of President Trump presented the question of whether the Senate would conduct a trial after the president's term of office (see Chapter 16). Meanwhile, Congress has many lesser ways of reining in wayward officials. Although impeachments are often threatened, only twenty Senate trials have taken place, and only eight individuals have been convicted. Significantly, all eight who were removed from office were judges, who, unlike executive officers, enjoy open-ended terms of office.[23]

Interbranch "No-Fly Zones"

Although the constitutional system requires that the separate branches share powers, each branch normally honors the integrity of the others' internal operations. Communications between the president and his advisers are mostly (though not entirely) exempt from legislative or judicial review under the doctrine of *executive privilege.* Similarly, Article I places congressional organization and procedures beyond the scrutiny of the other branches. This provision was given new meaning in 2007, when the courts determined that a Federal Bureau of Investigation (FBI) search of the office of Rep. William J. Jefferson, D-La., who was under investigation for bribery, had been unconstitutional under the Constitution's speech and debate clause.[24] The case established a precedent that members of Congress be provided advance notice and the right to review materials before the execution of a search warrant on their congressional offices.

Judicial Review

The third branch, the judiciary, interprets and applies laws in particular cases when called upon to resolve disputes. In rare instances, the judiciary adjudicates a claim that a particular law or regulation violates the Constitution. This is called *judicial review.* Whether the framers anticipated judicial review is open to question. Perhaps they expected each branch to reach its own judgments on constitutional questions, especially those pertaining to its own powers. Whatever the original intent, Chief Justice John Marshall soon preempted the other two branches with his Supreme Court's unanimous assertion of judicial review in *Marbury v. Madison* (1803). Judicial review involves both interpretation and judgment. First, "It is emphatically the province and duty of the judicial department to say what the law is." Second, the Supreme Court has the duty of weighing laws against the Constitution, the "supreme law of the land," and invalidating those that are inconsistent—in *Marbury*, a minor provision of the Judiciary Act of 1789.[25]

Despite the *Marbury* precedent, Congress—not the Court—was the primary forum for weighty constitutional debates until the Civil War. Before 1860, only one other federal law (the Missouri Compromise of 1820) had been declared unconstitutional by the Court (in *Dred Scott v. Sandford*, 1857). Since the Civil War, the Court has been more aggressive in interpreting and judging congressional handiwork. For the record, the Supreme Court has invalidated 182 congressional statutes in whole or in part—the vast majority of these since the start of the twentieth century.[26] This count does not include lower-court holdings that have not been reviewed by the Supreme Court. Nor does it include laws whose validity has been impaired because a similar law was struck down.

Who Is the Final Arbiter?

Congress's two most common reactions to judicial review of its enactments are not responding at all or amending the statute to comply with the Court's holding.[27] Other responses include passing new legislation or even seeking a constitutional amendment.

Reconstruction laws and constitutional amendments after the Civil War explicitly nullified the Court's 1857 holding in *Dred Scott v. Sandford*.[28] More recently, a great deal of legislative ferment has followed the Supreme Court's ruling in *Shelby County v. Holder* (2013),[29] a 5–4 decision that overturned the Voting Rights Act's provision requiring federal "preclearance" for election law changes by state and local governments in areas with a history of racially discriminatory voting practices. The Democratic House passed legislation in 2019 and 2021 to restore the preclearance provision, but it failed to win Senate approval each time. The Supreme Court thus does not necessarily have the last word in saying what the law is. Its interpretations of laws may be questioned and even reversed. One study found that 121 of the Court's interpretive decisions were overridden between 1967 and 1990, an average of ten per Congress. The author of the study concluded that "congressional committees in fact carefully monitor

Supreme Court decisions."[30] However, as Congress has become increasingly polarized, forging agreements to override important Court decisions has proven elusive.[31]

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

In summary, the courts play a leading but not exclusive role in interpreting laws and the regulations implementing them. When Congress passes a law, the policymaking process has just begun. Courts and administrative agencies then assume the task of refining the policy, but they do so under Congress's watchful eye. "What is 'final' at one stage of our political development," Louis Fisher observes, "may be reopened at some later date, leading to revisions, fresh interpretations, and reversals of Court doctrines."[32]

Bicameralism

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

The first branch—as the House was called by framers James Madison and Gouverneur Morris, among others—rests on the idea that the legislature should represent "the many," the people of the United States. As another framer, George Mason, put it, the House "was to be the grand depository of the democratic principles of the government."[33] Even so, who would count in the "many" was contested from the start. Southern delegates demanded that enslaved people count for representation purposes in the House (despite their lack of any political rights), but not when it comes to assessing direct taxes. The three-fifths compromise provided that "all other persons" (meaning enslaved people) would count as three-fifths of a person for both purposes. This arrangement gave southern whites disproportionate representation in the House before the Civil War.

By contrast, the composition of the Senate reflected the framers' concerns about controlling excessive popular pressures. Senators were chosen by the state legislatures and not by popular vote. This, in theory, would curb the excesses of popular government. "The use of the Senate," explained Madison, "is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch."[34]

Senate behavior did not necessarily match up with the framers' theories, however. Even though senators were chosen by state legislatures, they were not insulated from

democratic pressures. To be selected, Senate candidates "had to cultivate local party officials in different parts of the state and appeal directly to constituents."[35] Once in office, senators voiced their state's dominant economic interests. They also sponsored private bills for pensions and other relief for individual constituents, doled out federal patronage, and sought committee assignments that would enable them to bring home their state's share of federal money. Recent research has shown that senators selected by state legislators were not substantially different from modern, directly elected senators.[36]

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

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

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

Institutional Evolution

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

Congress has evolved dramatically over time. "Reconstitutive change" is what Elaine K. Swift calls instances of "rapid, marked, and enduring shift[s] in the fundamental dimensions of the institution."[37] Swift argues that during one such period, 1809 to 1829, the Senate was transformed from an elitist, insulated "American House of Lords" into an active, powerful institution whose debates stirred the public and attracted the most talented politicians of the time. Major reform efforts in Congress have also periodically resulted in bold new departures in process and structure.

Yet much of Congress's institutional development has occurred gradually. Early on, Congress had little formal structure. When the First Congress convened, there

were no standing committees. Deliberation about policy issues occurred directly on the floors of the House and Senate, where any interested members could participate. After a chamberwide debate had taken place on a broad issue, members would create temporary ad hoc committees to draft bills. Congress's system of standing committees developed in the early nineteenth century between 1810 and 1825.[38] The early Congress also had no formal party leadership organization.[39] Prior to the 1830s, the Federalist and Republican coalitions that existed in Congress were "no more than proto-parties."[40] Senate floor leaders only emerged in 1890.[41]

Today's Congress is a mature institution characterized by complex internal structures and procedures. It is led by a well-defined party apparatus, with each party organized according to its established rules and headed by a hierarchy of leaders and whips, elected and appointed. Party organization extends to policy committees, campaign committees, research committees, and numerous task forces. Minority and majority party leaders command considerable budget and staff resources. Taken together, they employ some four hundred staff aides, and the various party committees employ about an equal number.[42]

The contemporary Congress also has an elaborate committee system bolstered by a vast body of rules and precedents regulating committee jurisdictions and operations.[43] In the 119th Congress (2023–2024), the Senate has sixteen standing committees, and the House has twenty. But these committees are only the tip of the iceberg. House committees have about one hundred subcommittees; Senate committees possess nearly seventy subcommittees. Four joint House–Senate committees have been retained. All this adds up to some two hundred work groups, plus an abundance of informal caucuses.

A basic concept scholars use to analyze the development of Congress's growth and adaptation is *institutionalization.* Political scientist Nelson W. Polsby applied this concept to track the institution's professionalization of the legislative career; its increasing organizational complexity—the growth of more components within the institution (committees, subcommittees, caucuses, and leadership organizations); and its elaboration and observance of formal rules governing internal business.[44] Scholars have identified several important factors that have driven institutional development. Among these are legislative workload, institutional size, conflict with the executive branch, members' partisan interests, and individual members' electoral and power goals.

Workload

Congress's workload—once limited in scope, small in volume, and simple in content—has burgeoned since 1789. Today's Congress grapples with many issues that were once considered entirely outside the purview of governmental activity or were left to states or localities. Approximately ten thousand bills and joint resolutions are introduced in the span of each two-year Congress; from 250 to 500 of them are enacted into law in a typical Congress.[45]

By most measures—hours in session, committee meetings, and floor votes—the congressional workload doubled between the 1950s and the late 1970s. Legislative business expanded in scope and complexity as well as in sheer volume. The average public bill of the late 1940s was two-and-a-half pages long; the average bill now runs to more than fifteen pages.[46] The twenty-first century Congress typically enacts more legislation than congresses of the nineteenth or early twentieth century. But congressional activism has waxed and waned since the middle of the twentieth century. The 118th Congress (2023–2024) passed an unusually low number of laws—209—amid divided control of Congress and the White House and considerable infighting among House Republicans, who nominally controlled the chamber.

Changes in workload have been an important driver of institutional change throughout congressional history.[47] Many of the earliest committees were established to help Congress manage a growing volume of constituent requests. When the nineteenth-century Congress was deluged with petitions seeking benefits, members created committees, such as Claims, Pensions, and Public Lands, to process requests.[48] Similarly, the creation and, occasionally, the abolition of committees reflect shifting perceptions of public problems. As novel policy problems arose, new committees were added.[49] The House, for example, established Commerce and Manufactures in 1795, Public Lands in 1805, Freedmen's Affairs in 1866, Roads in 1913, Science and Astronautics in 1958, Standards of Official Conduct in 1967, Small Business in 1975, and Homeland Security in 2005. An extensive system of committees allows the contemporary Congress to benefit from a division of labor as it strives to manage a far-reaching governmental agenda.

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

The Size of Congress

Like workload, the size of a legislative institution profoundly affects its organization. Legislatures with more members face greater problems of agenda control and time management unless they adopt mechanisms to manage the participation of their members.[50] The U.S. Congress grew dramatically over time, and this growth created pressure for institutional adaptation.

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

As new states were added, the Senate grew, from thirty-two senators in 1800 to sixty-two in 1850; ninety by 1900; and, since 1959, one hundred.

For much of the nation's history, the House grew alongside the nation's population. The House membership was raised to 104 after the first census, and it steadily enlarged throughout the nineteenth century. The 1910 census, which counted 92 million people, led to an expansion to 435 members. After the 1920 census, Congress declined to enlarge the House further. And that is the way things stand to this day. With the population continuing to grow, some worry that House districts have grown too large to allow members to maintain close ties to constituents. This has led to renewed calls to increase the size of the House, though critics worry that an enlarged chamber would be harder to manage.[51]

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

In the smaller and more intimate Senate, vigorous leadership has been the exception rather than the rule. The relative informality of Senate procedures and the long-cherished right of unlimited debate testify to the looser reins of leadership. Compared with the House's complex rules and voluminous precedents, the Senate's rules are relatively brief and simple, putting a premium on informal negotiations among senators interested in a given measure.

Conflict With the Executive Branch

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

One of the most important standing House committees, Ways and Means, was first established to provide a source of financial information independent of the controversial and divisive Treasury Secretary at the time, Alexander Hamilton.[52] Similarly, the landmark Legislative Reorganization Act of 1946 was adopted amid members' growing concerns about congressional power. Following the massive growth of the administrative state during the New Deal and World War II, members feared that Congress could simply no longer compete with the executive branch. Reformers saw "a reorganized Congress as a way to redress the imbalance of power that had developed between the branches."[53] The act streamlined and strengthened the legislative process

by dramatically reducing the number of committees, regularizing their jurisdictions, and providing professional staff. Sen. Owen Brewster, R-Maine, argued at the time that the reforms were necessary "to retain any semblance of the ancient division of functions under our constitution."[54] The act was adopted by a sizable bipartisan majority, with both Republicans and Democrats expressing hope that reform would bolster Congress's power and prestige.

Another major institutional innovation, Congress's budget process, was fashioned in an environment of intense interbranch warfare between President Richard Nixon and a Democratic Congress.[55] President Nixon's unprecedented assertion of authority to withhold funds that Congress had appropriated was a major stimulus for the passage of the Congressional Budget and Impoundment Control Act of 1974. Without the power of the purse, Sen. John Tunney, D-Calif., remarked, "we may as well go out of business."[56] However, the act addressed an array of structural issues that went far beyond the particulars of the dispute over the president's impoundment powers. It established a new internal congressional budget process; new budget committees in both chambers; and a new congressional agency, the nonpartisan Congressional Budget Office (CBO). The goal was to allow Congress to formulate a comprehensive national budget on its own, backed by appropriate estimates and forecasts, without relying on the president's budget or the executive branch's Office of Management and Budget.

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

Partisan Interests

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

Parties began to develop in Congress during the first presidential administration. When Treasury secretary Alexander Hamilton unveiled his financial program in 1790, a partisan spirit swept the capital. The Federalists, with Hamilton as their intellectual leader, espoused an energetic government to deal forcefully with national problems and foster economic growth. The rival Republicans, who looked to Thomas Jefferson and James Madison for leadership, rallied opponents of Federalist policies and championed local autonomy, a weaker national government, and programs favoring agricultural

or debtor interests. Initially, membership in these factions was informal and shifting, but party lines sharpened amid escalating policy clashes. By 1794, Sen. John Taylor of Virginia could write,

> The existence of two parties in Congress is apparent. The fact is disclosed almost upon every important question. Whether the subject be foreign or domestic—relative to war or peace—navigation or commerce—the magnetism of opposite views draws them wide as the poles asunder.[57]

Although these earliest legislative parties lacked formal organizations, conflicts between Federalists and Republicans shaped Congress's deliberations. Parties also flourished throughout the nineteenth century. Regional conflicts, along with economic upheavals produced by rapid industrialization, nurtured partisan differences. At the grassroots level, the parties were differentiated along class, occupational, and regional lines. Grassroots party organizations were massive and militant. In the context of this vibrant nineteenth-century party system, the majority party gained organizational control over the House of Representatives. Ever since the Civil War, the leader of the House majority party has served as Speaker.[58] By the end of the nineteenth century, strong Speakers had tamed the unruly House, and a coterie of state party bosses dominated the Senate.

Even though parties were weaker during the Progressive era and throughout the middle of the twentieth century, they never became irrelevant. Despite the demise of the strong Speakership (1910), the direct election of senators (1913), and profound divisions in the Democratic majority party between the late 1930s and the 1970s, the parties continued to organize Congress down to the present day.[59] All contemporary House and Senate members receive and retain their committee assignments through the two parties. Likewise, members of the majority party chair all of the standing committees of Congress.

Party politics has impelled the development of floor procedure, members' parliamentary rights, leaders' prerogatives, and agenda control devices. The rules of the legislative process at any given time are, in Sarah A. Binder's words, a "result of hard-nosed partisan battles—fought, of course, under a particular set of inherited institutional rules."[60]

A watershed moment in the development of the House of Representatives, the adoption of Reed's Rules in 1890, offers one of the clearest examples of partisan influence on institutional procedure. Before 1890, the minority party in the House possessed an arsenal of dilatory tactics to obstruct the majority party's agenda.[61] Reed's Rules, named for then-House Speaker Thomas Brackett Reed, R-Maine, revolutionized House procedure by granting the Speaker secure control over the order of business and strictly curbing the minority party's ability to obstruct the majority party's floor agenda. Majority party Republicans fought for the adoption of Reed's Rules over strong opposition from the Democrats. At that time, Republicans had just won unified party control of the government for the first time in nearly a decade, and they had an ambitious and controversial agenda. Knowing that Democrats would use their

resources to obstruct their program, Republicans changed the rules of the House to permit majority party control over the institution, a fact of life in the House of Representatives since. In procedural terms, Reed's Rules permanently transformed the House of Representatives.

The circumstances surrounding the adoption of Reed's Rules offer a blueprint for many partisan rules changes over the course of House history. Based on a study of all procedural rules changes that benefited the majority party at the expense of the minority party between 1789 and 1990, Binder finds that "crucial procedural choices have been shaped not by members' collective concerns about the institution, but by calculations of partisan advantage."[62] When necessary to overcome minority party obstruction, unified majority parties have repeatedly shown themselves willing to alter the institution's rules to ensure the passage of their agenda.

Members' Individual Interests

Institutional development has been driven by more than members' partisan and institutional goals; members also have individual goals. As individuals, members want to build a reputation as effective lawmakers and representatives. To do so, they must be able to point to achievements of their own. When congressional rules or structures inhibit their ability to do so, pressure builds for institutional reform.

In addition to its value as an institutional division of labor, the elaborate committee system in Congress serves members' individual political needs and policy goals. Because of the multitude of leadership positions created by the numerous committees and subcommittees, nearly every member has an opportunity to make an individual contribution. "Whatever else it may be, the quest for specialization in Congress is a quest for credit," observes David R. Mayhew. "Every member can aspire to occupy a part of at least one piece of policy turf small enough that he can claim personal responsibility for some of the things that happen on it."[63]

The congressional reforms of the 1970s are examples of the ways in which members' individual goals have affected institutional development. Over that decade, the two chambers revamped their committee systems to allow more input from rank-and-file members. The streamlined committee systems that had been put in place after the Legislative Reorganization Act of 1946 offered relatively few committee leadership positions, and those were gained on the basis of seniority. Every committee was led by its longest-serving members, who retained their positions until death, defeat, or retirement. The large classes of new members elected in the 1970s, feeling thwarted by this system, began to press for change.[64] Out of this ferment emerged a variety of reforms that opened up new opportunities for junior members. Among these reforms, the seniority system was weakened as committee chairs were forced to stand for election in their party caucus, making them accountable to the party's rank and file.

The persistence of Senate rules that permit unlimited debate is another example of how individual goals shape institutional rules.[65] Despite the many frustrations

unlimited debate has caused for Senate majority parties over the years, senators have generally been unwilling to embrace changes that would allow for simple majority rule. Senators realize that a great part of their own individual power derives from their ability to take advantage of unlimited debate to block votes on matters that have majority support. Senate leaders are forced to negotiate with senators who threaten to obstruct Senate action via unlimited debate.

Reforms that would make it possible for a Senate majority to force a vote have long been in the immediate interest of the Senate's majority party. But such reforms come at a direct, substantial cost to senators' individual power. Not surprisingly, senators have proven reluctant to trade off so much of their individual influence in favor of collective party goals. In November 2013, majority party Democrats grew sufficiently frustrated with Republican filibusters of judicial and executive-branch nominations to make a substantial change. The Democratic majority imposed a new precedent allowing a simple majority to end debate on all confirmations for offices other than the Supreme Court. Republicans extended this precedent in April 2017, applying it to Supreme Court nominations to confirm Donald Trump's first nominee to the Court, Neil Gorsuch. As frustration with legislative obstruction has continued to mount, calls for further curbs on the filibuster have increased. Even so, most senators have thus far proved loath to establish simple majority rule for legislation, suggesting that they continue to value their individual prerogatives.[66]

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

Changing pressures on the institution, congressional–executive conflicts, partisan agendas, and members' individual goals have all been important drivers of Congress's institutional development. Indeed, significant reforms are almost always the result of several of these forces simultaneously buffeting the institution. One broad-ranging study of forty-two major institutional innovations concludes that institutional reforms are typically brought about through *common carriers*, reform initiatives that are, at once, supported by several different groups of legislators for different reasons.[67] The Legislative Reorganization Act of 1946, for example, was espoused by many legislators who wanted to enhance the power and effectiveness of the legislative branch, but it was also supported by members who valued the new pay and pension benefits included in the legislation.[68] Similarly, many members favored the 1970s reforms reducing the power of committee chairs because they wanted access to more policy turf of their own. At the same time, many liberal members backed the reforms because they wanted to reduce the influence of the disproportionately conservative committee chairs.[69]

Because the same reforms are so often backed for several different reasons, no single theory can explain congressional change. Legislative institutions incorporate internal tensions and contradictions rather than maximize the attainment of any particular goal.[70] Furthermore, reforms inevitably fall short of their sponsors' objectives. Instead

of achieving stable, effective arrangements, reforms frequently produce "a set of institutions that often work at cross-purposes."[71] At the same time, innovations usually have unanticipated consequences, which may lead to yet another round of reform.

Evolution of the Legislator's Job

What is it like to be a member of Congress? The legislator's job, like the institution of Congress, has evolved since 1789. During the early Congresses, being a senator or representative was a part-time occupation. Few members regarded congressional service as a career, and according to most accounts, the rewards were slim. Since then, lawmakers' exposure to constituents' demands and their career expectations have changed dramatically. Electoral units, too, have grown very large. With the nation's population estimated at some 335 million people, the average House constituency since the 2020 reapportionment consists of more than 760,000 people, and the average state of more than 6 million.

The Congressional Career

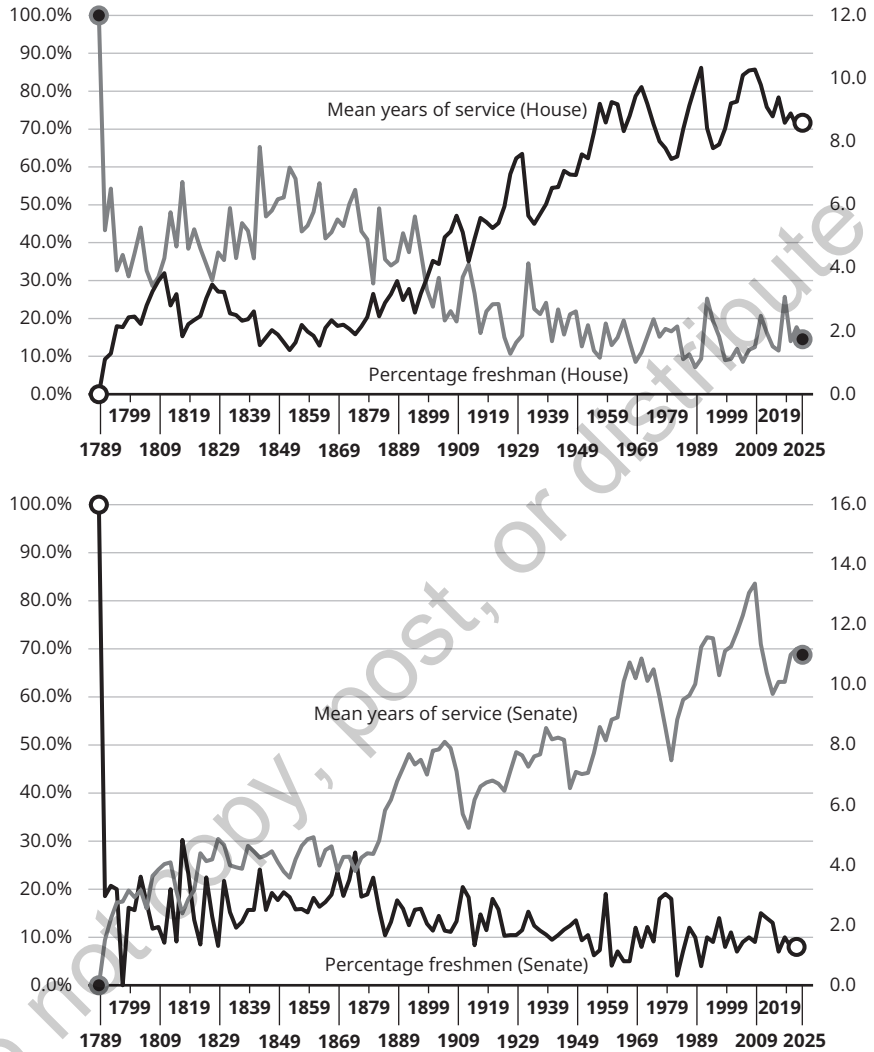
During its early years, Congress was an institution composed of transients. The nation's capital was an unsightly place, and its culture was provincial. Members remained in Washington only a few months, spending their unpleasant sojourns in boardinghouses.[72]

The early Congresses failed to command the loyalty needed to keep members in office. Congressional service was regarded more as an odious duty than as rewarding work. "My dear friend," a North Carolina representative, wrote to a constituent in 1796, "there is nothing in this service, exclusive of the confidence and gratitude of my constituents, worth the sacrifice."[73] Of the ninety-four senators who served between 1789 and 1801, thirty-three resigned before completing their terms, only six to take other federal posts.[74] In the House, almost 6 percent of all early nineteenth-century members resigned during each Congress.

Careerism mounted toward the end of the nineteenth century. As late as the 1870s, more than half of the House members at any given time were freshmen, and the mean length of service was barely two terms. By the end of the century, however, the proportion of newcomers had fallen to 30 percent, and average House tenure had nearly reached three terms or six years. About the same time, senators' mean term of service topped seven years, more than one full term.[75]

Today, the average senator has served eleven years, and the average House member has served nearly nine.[76] Figure 2.1 shows changes since 1789 in the percentages of new members and the mean number of terms claimed by incumbents. In both the House and Senate, members' average length of service has increased over time, and the proportion of first-termers is substantially lower than it was during the first hundred years of the nation's history.

Figure 2.1 ▪ Length of Service in House and Senate, 1789–2025



Sources: Adapted from David C. Huckabee, "Length of Service for Representatives and Senators: 1st–103d Congresses," CRS Report No. 95-426GOV, March 27, 1995; Mildred Amer, "Average Years of Service for Members of the Senate and House of Representatives, First–109th Congresses," CRS Report RL32648, November 9, 2005. Additional data assembled by the authors.

Rising careerism has several causes. The increase in one-party states and districts following the Civil War, especially after 1896, enabled repeated reelection of a dominant party's candidates—Democrats in the South and Republicans in the Midwest and the rural Northeast. Members themselves also began to find congressional service

more rewarding. The growth of national government during the twentieth century enhanced the excitement and glamour of the Washington political scene, especially when compared with state or local renown.

The prerogatives accorded to seniority further rewarded lengthy service. Beginning in the late nineteenth century in the Senate and the early twentieth century in the House, members with the longest tenure in office began to dominate positions of power in Congress. Although seniority norms have eroded since the 1990s, extended service generally remains a criterion for top party and committee posts. The benefits accruing to seniority continue to compound the returns on long service in the contemporary Congress.

Professionalization

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

> From one end of a session to another Congress would scarcely have three or four issues of consequence besides appropriations bills. And the issues themselves were fundamentally simpler than those that surge in upon us today in such a torrent that the individual member cannot analyze all of them adequately before he is compelled to vote. In my early years in Congress the main issues were few enough so that almost any conscientious member could with application make himself a quasi-expert at least. In the complexity and volume of today's legislation, however, most members have to trust somebody else's word or the recommendation of a committee. Nowadays bills, which thirty years ago would have been thrashed out for hours or days, go through in ten minutes.[77]

In recent decades, legislative business has kept the House and Senate almost perpetually in session—punctuated by constituency work periods. Members of the contemporary Congress are—and must be—full-time professional politicians.

Congress has also professionalized in that members now direct a large staff of aides. Before the second half of the twentieth century, members of Congress had access to very limited staff. In the 1890s, only 142 clerks (62 for the House and 80 for the Senate) were on hand to serve members of Congress. Many senators and all representatives handled their own correspondence. It was not until 1946 that Congress began to develop professional staffing. Every member now has employees to handle mail and phone calls, appointments, policy research, speechwriting, social media, and

constituent service. With each member directing their own staff "enterprise," Congress now sustains a distinct Washington subculture.[78] All told, approximately 20,000 staff directly support the operations of the Congress.[79]

Constituency Demands

Since the beginning, U.S. legislators have been expected to remain close to voters. Early representatives reported to their constituents through circular letters, communications passed around throughout their districts.[80] But the volume of those demands has increased many times over. Before the Civil War, a member's business on behalf of constituents was confined mainly to awarding rural post offices, arranging for Mexican War pensions, sending out free seed, and only occasionally explaining legislation. This unhurried pace has long since vanished.

Reflecting on his forty years of congressional service, concluding in 1967, Representative Martin remarked on the dramatic upsurge of constituent awareness:

> Today the federal government is far more complex, as is every phase of national life. People have to turn to their representative for aid. I used to think ten letters a day was a big batch; now I get several hundred a day. In earlier times, constituents didn't know their Congressman's views. With better communications, their knowledge has increased along with their expectations of what he must know.[81]

Members of Martin's era would be astonished at the volume of constituency work now handled by House and Senate offices. The advent of new communications technologies increased the volume of congressional mail by an order of magnitude. In 1997, the last year before email use became widespread, members of Congress received 30.5 million pieces of posted mail; by 2007, the volume of mail, email included, had surged to 491 million pieces.[82] Staff surveys suggest that the volume of email has continued to increase, consuming an ever-increasing share of their time.[83] Not only are constituents more numerous than ever before, but they are also better educated, served by faster communication and transportation, and mobilized by lobby organizations. Public opinion surveys reveal that voters expect legislators to dispense federal services and to communicate frequently with the home folks. Even though the more flagrant forms of pork-barrel politics are denounced, constituents' demands are unlikely to ebb in the future.

Conclusion

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

Just as the Earth's history is marked by periods of intense, even cataclysmic, change—punctuated by equilibrium—so historians of Congress have identified several eras of intensive institutional change, such as the advent of Reed's Rules or the early nineteenth-century transformation of the Senate described by Elaine Swift. But institutional change is not necessarily dramatic. Incremental changes of one kind or another are also always unfolding.

As an example of incremental change, the House of Representatives in 2019 established a Select Committee on the Modernization of Congress to identify ways to improve the institution's ability to meet governing challenges in an era of polarization.[84] In 2021, the committee was renewed for an additional two years. During this time, the committee approved 202 recommendations, 130 of which were partially or fully adopted, including boosting the staff available to individual members, improving Congress's use of technology, and revamping the House calendar to set aside more time for committee work. Although most of the approved changes were modest, the House voted to keep the Modernization panel as a subcommittee of the House Administration Committee after its authorization expired in January 2023. The Modernization Committee's work continued the process of institutional innovation that has shaped the modern Congress.

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

Institutionalization has several important consequences, some good and some bad. It enables Congress to cope with its extensive workload. The standing committee system permits the two houses to process a wide variety of issues simultaneously. Careerism encourages legislators to develop skills and expertise in specific areas. In tandem with staff resources, this specialization allows Congress to compete with the executive branch in absorbing information and applying expertise to public issues. The danger of institutionalization is organizational rigidity. Institutions that are too rigid can frustrate policymaking, especially in periods of rapid social or political change. Institutionalization, however, should not be seen as inevitable or irreversible, nor immune to change. As party conflict has intensified in recent decades, longstanding norms regarding legislative procedure and behavior have come under challenge.[85] The institutionalization of the contemporary Congress must be taken into account by anyone who seeks to understand it today. Capitol Hill newcomers—even those who vow to shake things up—confront not an unformed, pliable institution but an established, traditional one that must be approached largely on its own terms.