

CHAPTER 8

CONGRESS I

THE PEOPLE'S BRANCH?

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About half the population thinks that every person in Congress, including their own representative, should be thrown out. That's the center not holding.

– NOAM CHOMSKY, 2013

The US Congress is usually – and accurately – referred to as the most powerful legislature in the world. While a common trend in other democratic countries has been the rise of powerful executives and the relative decline of assemblies and parliaments, Congress has been remarkably successful in maintaining its independence from executive influence. This is not to deny that the powers and functions of Congress have changed over time. Clearly they have, and the particular way in which the institution operates today is very different

even from 20 years ago. But throughout its history, Congress has remained an essentially autonomous institution. Even during periods of executive ascendancy – most recently during the Johnson and Nixon years and in the post-9/11 Bush years – Congress never became the mere instrument of presidents.

The independence of Congress derives in part from its constitutionally defined powers and in part from the particular way in which the American party system has evolved. Constitutionally, Congress was given three main powers, all of which remain important today. First, all legislative power is vested in the House of Representatives and the Senate, and within this broad function Congress is given special powers to appropriate monies, raise armies and regulate interstate commerce. Second, the House of Representatives has a constitutionally established right to declare war. Finally, the Senate is specifically empowered to ratify treaties and approve appointments by the president to the judiciary and executive branch. The House can impeach executive judicial officers for wrongdoing and the Senate is charged with the responsibility for trying impeached officers. In addition, from very early in its history, Congress established the right to oversee and investigate the behaviour of the executive. In total these powers are impressive, especially when it is remembered that originally Congress was expected to be the major initiator as well as approver of legislation. As with other legislatures around the world, Congress has partly (although by no means entirely) forfeited the responsibility for initiating legislation to the president. Unlike most other assemblies, however, Congress retains an

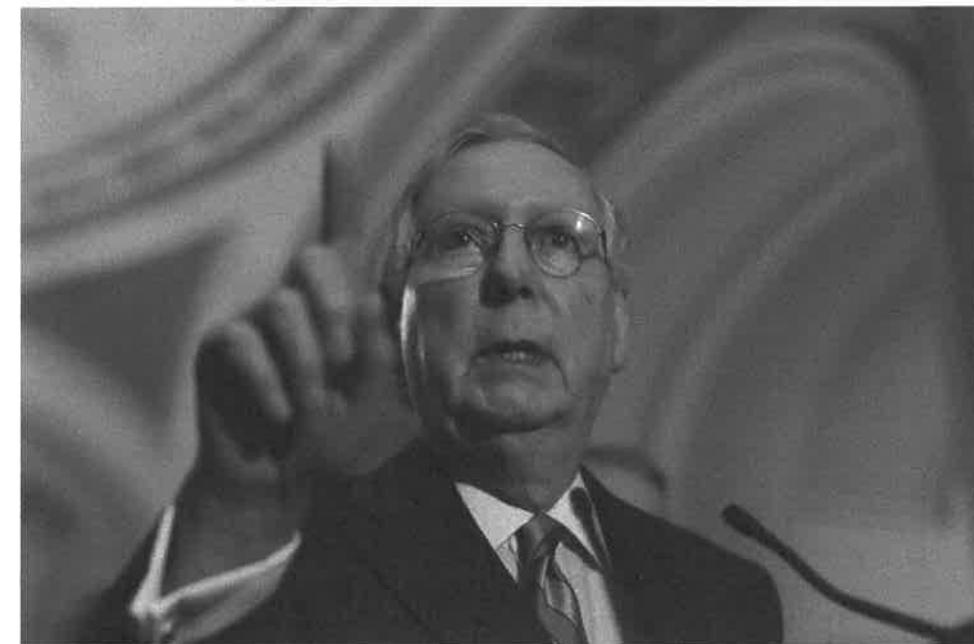


Plate 8.1 Senate majority leader Mitch McConnell addressing Congress
Source: Alex Wong/Getty, www.gettyimages.co.uk/license/546532964.

independent power to approve legislation, appropriate monies and generally oversee the executive branch.

The simplest explanation of this autonomy is the distinctive constituency base which individual members of Congress enjoy. In contrast to parliamentary systems, the electoral fortunes of presidents and legislators are not directly linked. Presidents can, and often do, face a legislature dominated by a party other than their own. But this constitutional arrangement has been reinforced by the nature of the American party system. It is certainly possible to imagine a system characterized by bicameralism and the separation of powers where political party ties are strong and the electoral fortunes of legislators are interdependent with those of the executive. Only rarely has this been the case in the history of the United States. Much more common is a very loose party relationship between the president and members of Congress, with the legislators remaining essentially independent.

Representation and Congress

The sort of party government associated with parliamentary systems greatly restricts the representative function of individual legislators. In Britain, for example, the individual Member of Parliament (MP) is largely tied, through party discipline in the House of Commons, to the policies of either government or opposition. Crucially, his or her electoral survival depends on an official party nomination or endorsement.¹ So, while MPs may exercise some independent pressure on party leaders or governments, it is limited. Clearly, this close organic link between executive and legislator limits the representative function of MPs. The electorate may benefit, at least in theory, from the coherent programmes and policies which party government produces, but the interests of individual constituencies do tend to become subordinated to national policy objectives. Curiously, British MPs are quick to insist that they come closest to what is called 'trustee' representatives; that is, they are elected by the people on trust to exercise their own judgement. They are not delegated to carry out a specific programme, to the letter and without discretion. In reality they are closer to being party delegates than trustees are. Members of Congress are patently not delegates either in the sense of being slaves to a party programme or in the sense that they are mandated by their constituents to carry out specific policies. Indeed, the idea of a representative being a direct delegate of the people has relatively few applications in modern industrial societies. In small communities – for example, in early New England town meetings – such a concept has meaning. But no member of Congress can accurately and continuously carry out the wishes of diverse and volatile electorates. Even if he or she knew what the electorate wanted, the individual member of Congress has but limited powers to influence what is a complex national policy process.

In truth, members are much closer to being trustees of their electorates. They are elected on the promise that they will exercise their judgement on behalf of their constituents' interests. And should they fail in the opinion of the electorate to defend and promote these interests, they are punished in subsequent elections. If members of Congress are not delegates, neither are they representative in the microcosmic sense (representative of the general

Table 8.1 Characteristics of the 104th, 106th and 114th Congresses, 1995–2017

	104th	106th	114th
<i>House</i>			
Democrats	197	211	189
Republicans	235	223	246
Independents/vacant	3	1	0
Women	48	56	78
Men	385	379	357
Blacks	38	35	46
Hispanics	17	19	33
Asian/Pacific Islander/Native American	3	3	14
<i>Senate</i>			
Democrats	47	45	44
Republicans	53	55	54
Independents	0	0	2
Women	8	9	20
Men	92	91	80
Blacks	1	0	2
Hispanics	0	0	4
Asian/Pacific Islander/Native American	3	3	1

Source: Computed from data available from the Congressional Research Service at Membership of the 114th Congress: A Profile, Jennifer E. Manning, Senior Research Librarian, 1 July 2016, <https://www.fas.org/sgp/crs/misc/R43869.pdf>.

population in ethnic and socio-economic terms). In fact by this measure they could hardly be less representative. An overwhelming majority of senators and representatives are white, college-educated, middle-aged, middle class and male. In the 114th Congress (2015–17) only 78 women were elected out of the total 435 members of the House, and only 20 senators were women. Just two African American senators and just 46 black representatives were elected (table 8.1). Lawyers and businesspeople are greatly over-represented among the members in both houses, although there has been a dramatic decline in the number of lawyers in the House over the past 40 years (figure 8.1). Among the 'other' professions, educators and representatives with government backgrounds predominate.²

To claim that members approximate most closely to a trustee form of representation is accurate, but tells us very little about the precise linkages between legislators, constituency and party, and how these have changed over time. Until recently, for example, it was commonly asserted that party had weakened its influence on members, with constituency pressures in the ascendant. At the same time, many voters have grown disillusioned with what they see as members who put their self-interest first and the public interest second. The remainder of this chapter is devoted to the ways in which the representative system raises public expectations of what members of Congress can do for them. The chapter concludes with a preliminary discussion of the links between constituency influences on members of Congress and their work within the House and the Senate.

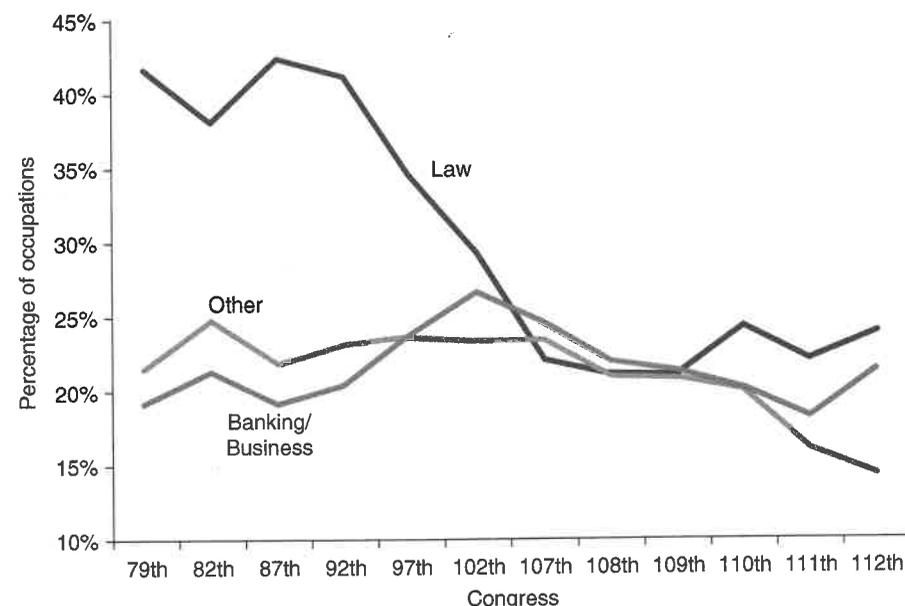


Figure 8.1 Occupations of members of Congress, 1945–2015
 Source: Computed from data at Representatives and Senators: Trends in Member Characteristics Since 1945, Congressional Research Service, R. Eric Petersen, Coordinator, Specialist in American National Government, 17 February 2012.

Briefing Forms of Representation

Direct Representation. Assumes that the electorate (or the citizens) directly instruct representatives to implement policies. Such instructions can only work in small communities such as in eighteenth-century New England, when town hall meetings made direct orders to the officers responsible for community affairs.

Delegate Representation. Applies when a larger electorate takes a majority decision to instruct delegates to vote on their behalf in a legislature or other decision-making body. This happens in American primary elections, where pledged delegates are chosen to vote for a particular candidate at the convention. In the UK the trade union 'bloc vote' also used to operate in this fashion, with union

delegates instructed to follow a particular line at the party conference. Such arrangements cannot easily work in modern legislatures where decisions are taken on varied and complex issues which cannot easily be foreseen when voters make their choice for a particular candidate. Also, should the representative fail to carry out the voters' wishes they have no sanction to apply except at a possibly distant periodic election.

Microcosmic Representation. Assumes that the representatives should be a microcosm of the electorate. So in the US, the House and the Senate should be 50 per cent female, 13 per cent black, 17 per cent Hispanic and so on. Quite apart from the technical problems involved in

such arrangements there is, of course, no guarantee that (say) black or female politicians will always loyally represent 'black' or 'female' issues, especially when many issues (for example, in foreign policy or environmental protection) have no consistently black or female dimension.

Party Representation. Assumes that political parties produce programmes of change in manifestos that elected representatives loyally adhere to once in office. Voters, therefore, have clear cues available to them when choosing between parties. In countries where there are deep religious, ethnic, regional, linguistic or ideological divides such as in Belgium, Northern Ireland, or Scotland in the UK, parties operate in much this manner. In many countries, however, including the US, the parties are broad coalitions of interests that rarely produce clear programmes of change – a fact that is complicated by the American separation of powers. This said, after 1994 the US Republican Party became much more programmatic than historically had been the case, and since then party lines have become more important as cues informing voter choice.

Trustee Representation. Recognizes the difficulties involved in more direct forms and assumes that representatives can be trusted to carry out the wishes of the electorate. Generally this form of representation assumes that there is a broad coincidence of values between the majority and the elected official. So in the US context, a senator from Utah would be expected to follow a broadly conservative, family-values line in harmony with the Mormon values prevalent in the state of Utah. Similarly a San Francisco representative would be expected to vote a liberal line. Problems occur, however, when constituencies are large and varied and when the values of either the electorate or the representative change once in office. A variation on this type is virtual representation, where the elected official is assumed to know 'what is best' for constituents without them actually voting. Edmund Burke championed this view when arguing that wise and experienced men could represent the disenfranchised masses in the eighteenth English parliament. Disenfranchised African Americans in the South were also patronized in this way until they won the vote after the 1960s.

Congressional Elections

Representatives are elected every two years, senators every six (with one-third elected for their six-year term every two years). This simple fact helps to account for what are some starkly contrasting trends in the electoral dynamics of the two houses, but there are also some common trends. Let us examine the latter first.

The spread of direct primaries

As with presidential elections, primaries are now the major means whereby members of Congress win their party's nomination for office. One major consequence of the demise of party conventions (the standard nineteenth-century and early twentieth-century form of nomination) has been to weaken the role of political parties in the nomination process. By being able to appeal directly to the electorate, the senator or representative now owes much less allegiance to local and national party figures.

Changing partisan control

Until 1994 it was widely believed that Democratic dominance of the House of Representatives was a near-permanent feature of American politics. As can be seen from table 8.2, the Democrats managed to maintain a large majority in the House for many years. They

Table 8.2 Composition of Congress, by political party, 1965–2019

	Party and president	Congress	House			Senate		
			Majority party	Minority party	Other	Majority party	Minority party	Other
1965	D (Johnson)	89th	D-295	R-140	–	D-68	R-32	–
1967	D (Johnson)	90th	D-247	R-187	–	D-64	R-36	–
1969	R (Nixon)	91st	D-243	R-192	–	D-57	R-43	–
1971 ^a	R (Nixon)	92nd	D-254	R-180	–	D-54	R-44	2
1973 ^{a,b}	R (Nixon)	93rd	D-239	R-192	1	D-56	R-42	2
1975 ^c	R (Ford)	94th	D-291	R-144	–	D-60	R-37	2
1977 ^d	D (Carter)	95th	D-292	R-143	–	D-61	R-38	1
1979 ^d	D (Carter)	96th	D-276	R-157	–	D-58	R-41	1
1981 ^d	R (Reagan)	97th	D-243	R-192	–	R-53	D-46	1
1983	R (Reagan)	98th	D-269	R-165	–	R-54	D-46	–
1985	R (Reagan)	99th	D-252	R-182	–	R-53	D-47	–
1987	R (Reagan)	100th	D-258	R-177	–	D-55	R-45	–
1989 ^e	R (Bush)	101st	D-259	R-174	–	D-55	R-45	–
1991 ^e	R (Bush)	102nd	D-267	R-167	1	D-56	R-43	–
1993 ^e	D (Clinton)	103rd	D-259	R-175	1	D-57	R-43	–
1995 ^e	D (Clinton)	104th	R-235	D-197	1	R-53	D-47	–
1997 ^e	D (Clinton)	105th	R-227	D-207	1	R-55	D-45	–
1999 ^e	D (Clinton)	106th	R-223	D-211	1	R-55	D-45	–
2001	R (Bush)	107th	R-221	D-212	2	R-50 ^f	D-50	–
2003	R (Bush)	108th	R-229	D-205	1	R-51	D-48	1
2005	R (Bush)	109th	R-232	D-202	1	R-55	D-44	1
2007	R (Bush)	110th	D-233	R-202	–	D-50	R-49	1
2009	D (Obama)	111th	D-257	R-178	–	D-58	R-42	2 ^g
2011	D (Obama)	112th	D-193	R-242	–	D-51	R-47	2 ^g
2013	D (Obama)	113th	D-201	R-234	–	D-53	R-45	2 ^g
2015	D (Obama)	114th	D-189	R-246	–	D-44	R-54	2 ^g
2017	R (Trump)	115th	D-194	R-239	–	D-46	R-52	2 ^g

Source: US Congress, Joint Committee on Printing, Congressional Directory annual; beginning 1977, biennial.

Note: D = Democratic, R = Republican. Data for beginning of first session of each Congress. Excludes vacancies at beginning of sessions.

'–' represents zero.

^aSenate had one independent and one conservative Republican.

^bHouse had one independent Democrat.

^cSenate had one independent, one conservative Republican and one undecided (New Hampshire).

^dSenate had one independent.

^eHouse had one independent.

^fBy virtue of casting vote of vice-president. Committee assignments distributed on a 50/50 basis.

^gTwo independents caucus with the Democrats.

were also strong in the Senate and controlled that house for all but six years in the 1965–95 period. In the mid-term election of 1994, however, the Republicans swept the board, winning back both the House and the Senate, leading many commentators to conclude that an era of Republican dominance was about to begin. However, in the 1996 presidential election the Republicans' majority was reduced, and in 1998 they suffered a further small loss in the House. This last result is highly significant because the party in control of the presidency almost always loses seats at mid-term. The 1998 result (a four-seat loss in the House and no change in the Senate) was the worst result for the non-presidential party at mid-term since 1934.

In 2000 the very narrow Electoral College victory by George W. Bush actually carried negative 'coattails'. The Democrats gained four seats in the Senate, producing a 50/50 split, and two seats in the House, reducing the Republicans' working majority to seven. Again very unusually, the 2002 mid-term elections actually produced small net gains for the party controlling the presidency, with the Republicans gaining eight seats in the House and one seat in the Senate. In the 2004 elections Bush did achieve small gains both in the House (the Republicans won three extra seats) and in the Senate (four extra seats). All was to change again in 2006 when in a truly startling result the Democrats regained the House with 32 extra seats and even more impressively the Senate with six additional seats. In 2008 the Democrats made further gains in both houses only to lose them in very dramatic fashion in 2010 when they lost control to a Republican landslide (table 8.2). There was little change in 2012, although the Democrats made small gains in both houses. However in the 2014 mid-term elections the Democrats lost control of the Senate and in spite of having many fewer seats up for election in 2016 they made only a net gain of two in that year. They also failed to make significant inroads into the Republican House majority.

So in spite of faltering by the Republicans in the late 1990s, the 1994 turnaround and the subsequent Democratic revival after 2006 followed by a return to Republican dominance after 2010 does represent a major change in American politics, and it raises two important questions. Why did the Democrats manage to maintain their grip on Congress for so long – especially as the Republicans actually won most of the *presidential* elections during this period? Second, what accounts for the Republican victories after 1994, the subsequent Democratic revival after 2006 and the startling Republican triumphs in 2010 and 2014? As far as the first question is concerned, undoubtedly the Democrats benefited from being the majority party – more Americans identified with the Democrats than with the Republicans. The Democrats also benefited from being the majority party in another sense, for in single-member-district, first past the post electoral systems majority parties usually score more constituency victories than would be expected from their aggregate popular vote. Democrats also dominated state legislatures, which are responsible for drawing up the boundaries of congressional districts. Although the courts have been active on the question of malapportionment (see chapter 15), a considerable amount of discretion remains – especially over the shape of constituencies rather than the balance of population between districts. As Gary Jacobson has pointed out, at least as far as the House is concerned, Democrats were actually better campaigners and politicians than their Republican counterparts. They were used to winning and to delivering the goods. As a result they continued to win.³

By the mid-1990s most of these advantages had been eroded. The number of people identifying with the Democrats declined and the number of Republican identifiers increased (see figure 6.2). Their hold on the state legislatures also weakened. By the mid-1990s the two parties controlled roughly the same number of state legislatures and the Republicans actually held a handsome majority of the state governorships. As we established in chapter 6, these changes were greeted by many as evidence of a Republican realignment. What seems more likely is that a changing political agenda worked to the Republicans' advantage, but not to the extent that they became in any sense the dominant or majority party. As far as congressional elections are concerned, the Republicans benefited from public support for lower taxes, a balanced budget, an enhanced role for state governments, welfare reform, and tougher law and order policies. But many issues on which the Democrats have the advantage – education, gender- and race-based questions, the environment, gun control, and the protection of Medicare and social security – remained very important to many voters. Add to this the economic woes after 2006 and the deep unpopularity of the war in Iraq, and the Democratic successes of 2006 and 2008 are not so surprising. This was hardly a long-term development, however. Amid continuing economic gloom, the Republicans won back the House in 2010 in quite spectacular fashion, although they were unable to win the Senate. In 2012 they were unable to consolidate their advantage and lost small numbers of seats in both houses. As was discussed in chapter 6, although Democratic Party identifiers increased substantially after 2006, so did the number of independents, many of whom switched their allegiance to the Republicans at the 2010 mid-term elections. However, as noted the Republicans lost ground in the 2012 House elections – indeed, more House votes were cast for Democrats than for Republicans in that year. In the 2014 mid-term elections, however, the Republicans made sweeping gains in both houses and captured the Senate for the first time since 2006. Most commentators agree that this election was a referendum on the performance of the Obama administration whose popularity waned amid continuing economic troubles and deep ambiguity about the US world role. Together with the surprise election of Donald Trump in 2016, the Republicans held on to their congressional majorities in that year, albeit with slightly reduced majorities.

Regional change

While at the congressional level the Democrats continue to show strength in the North the East and the Pacific states, they have lost what was the solid support of the southern states. The South is now effectively a Republican region, as are the mountain and prairie states. The old industrial northeast remains primarily Democratic, as do the Pacific states. In Florida, Virginia and much of the Midwest and in selected industrial states, notably Ohio, the parties are quite finely balanced. Even these generalizations can be misleading. At any time a Democrat can win many southern districts and a Republican many northeastern districts. Much depends not only on the socio-economic and ethnic make-up of the district in question, but also on the popularity of the incumbent president and personal appeal and financial resources of the candidate running for office.

The importance of money

For both senators and representatives, money has become a crucial resource in congressional elections. With voters acting in response to the appeal of individual candidates rather than to parties, both incumbents and challengers must ensure that the voters know who they are and what their record is. This translates into buying television time for advertisements as well as spending money on mailings, meetings and other attention-seeking devices.

Campaign finance has been through three distinct phases over the past forty years. Prior to the 1970s the personal efforts of candidates in raising money were less important than winning the party endorsement or the endorsement of the big corporations and labour unions. Large donations from such sources could help clinch the election of a particular candidate. However, in the second stage, declining partisanship and the passage of the Federal Election Campaign Act (FECA) in 1974 meant that candidates were forced to rely more and more on their own capacity to raise funds or to persuade others to contribute to their campaigns. FECA was designed to reduce candidate dependence on money, but in fact the very opposite has happened – campaign spending actually increased following the passage of the act. What accounts for this? In part it is because the Supreme Court struck down a central provision in the Act that limited contributions from candidates' own fortunes, and in part because the law encouraged the growth of political action committees (PACs). Although PACs are limited to giving \$5,000 per candidate per campaign, they account for a high proportion of campaign financing. Individuals are limited to \$2,000 per candidate, but there are no limits on what candidates themselves can spend on their campaigns. As can be seen from table 8.3, the latest legislation (the Bipartisan Campaign Reform Act of 2002, partly sponsored by John McCain) has produced a complex set of rules for contributions to both individuals and party committees. The new law actually increased the amount that individuals and PACs can contribute – in part to compensate for the fact that the limits had hardly changed in 28 years – but it effectively outlawed the use of 'soft-money' advertising. 'Soft money' refers to contributions not to official campaign committees but on behalf of interest groups that support or oppose the policy positions of candidates. For example, a pro-life (anti-abortion) group could advertise the fact that a candidate 'endorsed' the 'killing' of unborn children. One of the effects of such advertisements was to implant in the minds of voters much more extreme candidate policy positions than actually existed. After much debate and legislative wrangling, Congress eventually outlawed most soft-money advertising in 2002. The Supreme Court upheld the new law in 2003 (*McConnell v. Federal Election Commission*). However, the third stage in campaign finance law and the one that still prevails today was a result of the dramatic 2010 decision, *Citizens' United v. FEC*, when the Supreme Court effectively abolished all controls on campaign spending by corporations, unions and other organizations provided the money was not channelled through official campaign organizations. This has encouraged the growth of 'SuperPACs' able to raise unlimited funds that can be used to help or hinder the election chances of candidates (see chapter 14, pp. 312–13) and the explosion of money channelled not through official party campaigns but through non-party sources (figure 8.2).

Until quite recently it was common to contrast the advantages of incumbency in the House and the Senate. Of those seeking re-election to the House, a remarkably high and generally rising percentage were re-elected up until 1990 (90 per cent in that year).⁴ The

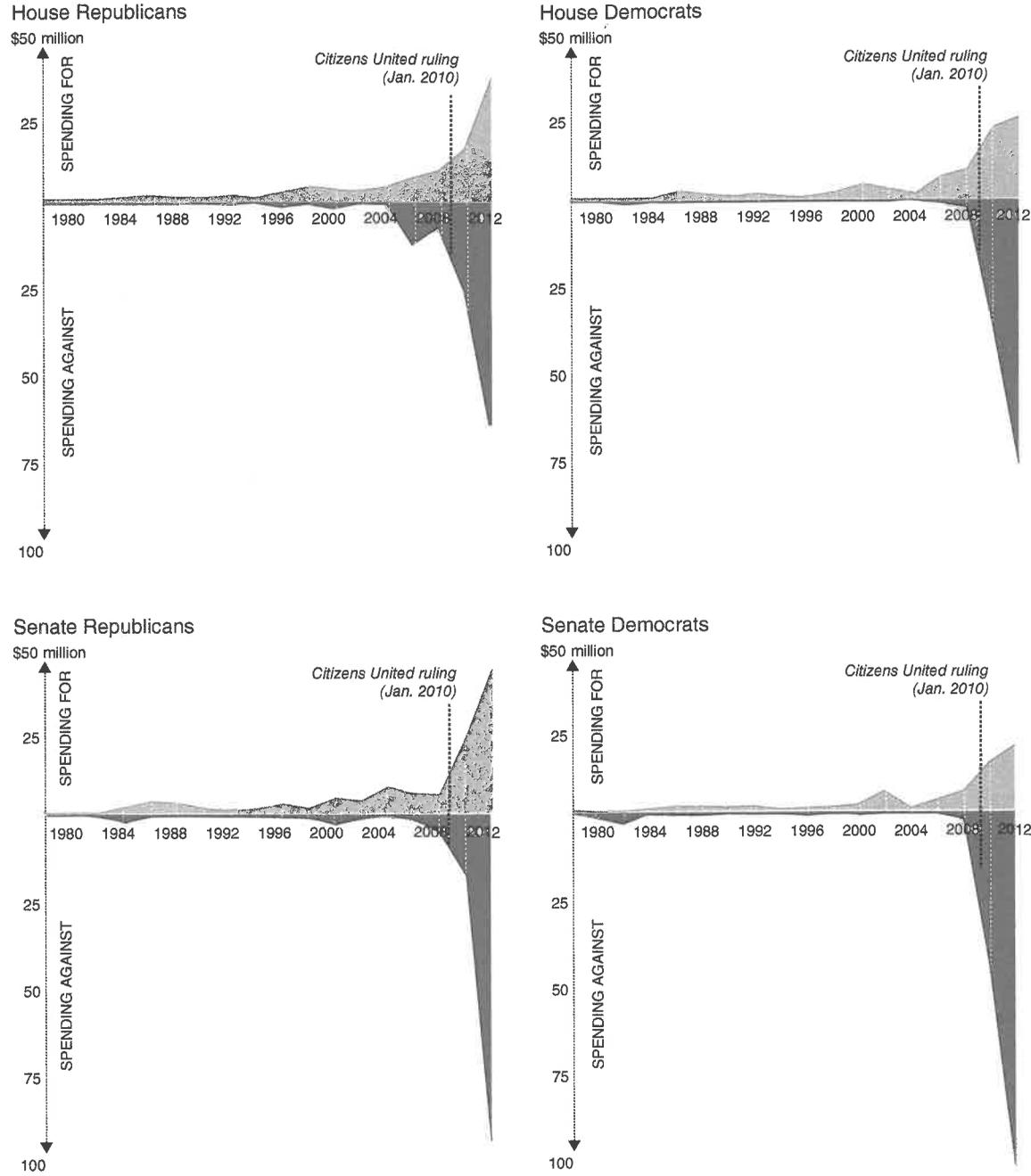


Figure 8.2 Non-party independent expenditures in House and Senate elections, 1978–2012 (all values in millions of US dollars)
 Source: Brookings Institution at www.brookings.edu/research/interactives/2013/non-party-spending-house-and-senate. These data were compiled from Table 3-14 of Vital Statistics on Congress Source: Campaign Finance Institute analysis of Federal Election Commission data.

Table 8.3 Contribution limits under the Bipartisan Campaign Reform Act of 2002

Donors	Recipients			Special limits
	Candidate committees	PAC ^a	State, district, and local party committees ^b	
Individual	\$2,000 per election ^{d,e}	\$5,000 per year	\$10,000 per year combined limit	Biennial limit of \$95,000 (\$37,500 to all candidates and \$57,500 to all PACs and parties) ^d
State, district, and local committees ^b	\$5,000 per election combined limit	\$5,000 per year combined limit	Unlimited transfers to other party committees	Unlimited transfers to other party committees
National party committees ^c	\$5,000 per election	\$5,000 per year	Unlimited transfers to other party committees	Unlimited transfers to other party committees
PAC multicandidate ^h	\$5,000 per election	\$5,000 per year	\$5,000 per year combined limit	\$35,000 to Senate candidate per campaign ^{d,g}
PAC not multicandidate ^h	\$2,000 per election ^d	\$5,000 per year	\$10,000 per year combined limit	\$15,000 per year

Source: Federal Election Commission, *January 2003 Record*, vol. 29, 11; reproduced in Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics, 2003–4* (Washington, DC: Congressional Quarterly Press, 2003), table 2.1. Reprinted with permission of SAGE.

^aThese limits apply to both separate segregated funds (SSFs) and political action committees (PACs). Affiliated committees share the same set of limits on contributions made and received.

^bA state party committee shares its limits with local and district party committees in that state unless a local or district committee's independence can be demonstrated. These limits apply to multicandidate committees only.

^cA party's national committee, Senate campaign committee, and House campaign committee are each considered national party committees, and each has separate limits, except with respect to Senate candidates⁷; see special limits column.

^dThese limits will be indexed for inflation.

^eEach of the following is considered a separate election with a separate limit: primary election, caucus or convention with the authority to nominate, general election, runoff election, and special election.

^fNo more than \$37,500 of this amount may be contributed to state and local parties and PACs.

^gThis limit is shared by the national committee and the Senate campaign committee.

^hA multicandidate committee is a political action committee that has been registered for at least six months, has received contributions from more than 50 contributors and – with the exception of a state party committee – has made contributions to at least five federal candidates.

contrast with the Senate used to be considerable, where in 1980 only 73 per cent of those seeking re-election were successful. In the last several elections, however, the incumbency advantage has diminished, as results since 2006 have shown.

In spite of the fact that incumbents have a clear advantage over challengers, they *believe* that unless they raise a large amount of money and organize and campaign well, they are in danger of losing. Indeed, as far as the House is concerned, incumbents virtually never cease to campaign. With elections every two years and the ever-present threat of an aggressive challenger, they cannot afford to let their guard slip. One consequence of this fraught environment is that vacant seats are at a premium. When representatives decide to quit after a few terms and to seek alternative careers, the 'out' party is likely to build an impressive campaign organization in order to win the seat. As Burdett Loomis has noted:

Only open seat candidates build organizations that resemble an incumbent's enterprise (with no accounting for congressional staff, district offices, communications capacities, and travel expenses). In the end, that is what much of the struggle for open seats is all about – to obtain the resources of incumbency for the future. One measure of the Republicans' 1994 success is that they won twenty-one open seats previously held by House Democrats and six such seats in the Senate.⁵

Senators are, of course, more secure by virtue of their six-year term. Challengers will rarely manage to amass the money and staff to match incumbents – although there are celebrated exceptions to this rule. In 1996, for example, incumbent John Kerry of Massachusetts narrowly held off a challenge by Republican governor William Weld. In the same election conservative Republican incumbent Larry Pressler of South Dakota was defeated by Democrat Tim Johnson. Even more dramatic was the 2004 defeat of Democratic Minority Leader Tom Daschle of South Dakota, who lost to Republican challenger Tom Thune in a bruising \$26 million battle. And in 2012 Democrat Elizabeth Warren defeated Republican Scott Brown who had famously won Ted Kennedy's long-held Massachusetts Senate seat in a 2010 special election. More than \$70 million were spent on this contest, much of it by Brown's corporate backers. There were more surprises in 2016 and in particular in Wisconsin where Ron Johnson won an unexpected victory over challenger Russ Feingold. National Republican leaders had just about given up on Johnson. But in the event he won 50.2 per cent of the vote.

Given the personalized nature of congressional electoral politics, how do members reconcile their commitment to campaigning and winning re-election on the one hand and their obligations to public policy-making on the other? To answer this question we have to look more carefully at the work of members, and in particular at the sort of strategic choices they face when seeking election or re-election.

Legislators as Rational Actors

Senators' and representatives' determined efforts to get elected or re-elected essentially involve an interaction between the candidate and the constituency. Party is important – indeed it has become more important in recent years – but it is often trumped by the

personalities and performance of the politicians themselves. This electoral interaction is not simply one of candidate projection and media promotion. Members are also required to tend to the needs and interests of their constituencies – a job that in the American context is both complex and demanding. In no other comparable political system are legislators so electorally vulnerable as to have to devote themselves wholeheartedly to this task. As table 8.4 shows, in most other systems members of lower houses are relatively secure from immediate electoral pressures. They do not have to fight primary elections, they depend on party identities and financial support rather than personal campaign fundraising at the time of their election, voters tend to use national rather than local cues when voting, and the life of the typical parliamentary session is longer than in the US.

Political scientists have attempted to characterize these efforts in terms of rational choice analysis. David Mayhew, for example, in his stimulating and influential book, *Congress: The Electoral Connection*,⁶ argued that members of Congress are mainly motivated by one thing: re-election. Almost all their behaviour inside and outside Congress is shaped by this simple drive. A major *a priori* assumption here is that members can affect their re-election chances. While Mayhew accepts that there are limits to what a representative or senator can do to please his or her constituents – no individual legislator can, after all, banish unemployment or solve the drug abuse problem – he does identify three broad strategies which can improve re-election chances. He or she can, first, advertise by spreading his or her name and reputation and generally creating a favourable image. Exposure on television and in the local press can be important, and unlike the Washington and New York press, local newspapers are generally sympathetic to members of Congress. Sometimes members go to unusual lengths in their efforts at self-promotion. Mayhew reports Charles Diggs Jr (Democrat, Michigan) as running a radio programme with himself as 'combination disc jockey-commentator and minister', and Daniel Flood (Democrat, Pennsylvania) apparently was 'famous for appearing unannounced and often uninvited at wedding anniversaries and other events'.⁷

It used to be the case that credit-claiming, or convincing constituents that the member has 'delivered the goods', was the key motivation of members. Indeed, 'pork-barrel' politics is part of American folklore. (The term derives from the metaphor of spreading the 'pork', or benefits, among constituents.) Pork-barrel politics almost always involves particular rather than collective benefits to constituents. It would be very difficult for an individual member of Congress to claim credit for having balanced the budget, which everyone benefits from. He or she is much more likely to benefit from helping channel direct federal investment (for example, on a military installation or community development project) to his or her constituency. As we shall see in the next chapter, the internal structure of power in Congress, not least the absence of strict party discipline, greatly facilitates just such distributions.

Finally, members benefit from position taking or being identified positively in the minds of constituents with a particular policy position. A predominantly Roman Catholic or Christian right constituency would be gratified by public pronouncements or actual legislative action by their member against abortion; New York's large Jewish community would expect their member of Congress to take a pro-Israeli stance; and so on. Legislators have also formed caucuses, or groups of like-minded members, to promote or defend a particular constituency interest in Congress. Typical examples are the House Auto Caucus and

Table 8.4 Legislators' electoral vulnerability in nine countries

	Maximum legal life of largest house of national legislature (years)	Average actual life of largest house of national legislature 1960-94 (years)	Percentage of years 1960-94 taken up by legislatures that lasted 3.5 years or more ^a	Level of use of primaries for selection of party candidates for national office	Level of candidate-centred, as distinct from party-centred, voting among electorate ^b	Level of member-centred, as distinct from party-centred, voting in national legislature ^c	Level of individual candidate's reliance on own fundraising efforts ^d
Australia	3	2.3	0.0	Non-existent	Low	Low	Low
Britain	5	3.3	94.3	Non-existent	Low	Low	Low
Canada	5	2.9	72.3	Non-existent	Low	Low	Low
France	5	3.5	76.7	Non-existent	Low	Low	Low
Germany	4	3.2	83.3	Non-existent	Low	Low	Low
Italy	5	3.2	85.6	Non-existent	Low	Medium	Low
Japan	4	2.8	31.4	Non-existent	Medium	Low	Medium
New Zealand	3	2.8	0.0	Non-existent	Low	Low	Low
United States	2	2.0	0.0	High	High	High	High

Source: Anthony King, *Running Scared* (New York: Free Press, 1997), table 1. (See original table for explanation of footnotes.) © Anthony King. Reprinted with kind permission of the author.

the Steel Caucus, both of which have striven to counteract economic decline and foreign competition in these industries.

Senators and representatives have always tended their constituencies. But in recent years the pressures to do so have increased considerably. We have already noted the relatively weak political party influence in the US – one potentially major bulwark against an intimate constituency-legislator relationship. Less obvious is the impact of a number of political and technological changes on the information flow between the electorate and members. On the members' side, free mailing (called franking) privileges, together with computerized mailing lists, enable legislators not only to send out a large volume of letters and emails, but also to target mail to particular groups of constituents. So if a legislator wants to publicize his anti-abortion stand to all Roman Catholics and pro-life Christians in his district he can do so. He can even hone down the target group to a particular neighbourhood or block. In recent years the cost of the franking privilege has fallen considerably as both houses have striven to reduce costs by substituting email mailings for conventional postal communications. On the constituents' side, interest groups and political action committees increasingly 'rate' the legislative voting record of individual members. These group ratings enable groups and (via publicity back home) constituents to identify their members as 'liberal', 'conservative', anti-environmental protection, labour, affirmative action, or whatever.⁸ In 2008, presidential candidate Senator Barack Obama was branded by the McCain campaign as the 'most liberal member of the Senate' because of his consistently high scores in congressional voting as judged by the liberal interest group, Americans for Democratic Action (ADA), and his low scores from the conservative Americans for Constitutional Action (ACA). While Obama has a liberal record, he had only served three and half years in the Senate by the time of the election campaign.

Predictably, senators are less exposed to such highly focused pressures than are representatives; none the less they are just as instrumental in their quest for re-election as are House members. There is undoubtedly a great deal of validity to the rational-choice approach. Any observer of the Washington scene would have to concede that members are increasingly preoccupied with constituency matters. Richard Fenno, who spent several months with members of Congress as a participant observer, dubbed these activities 'home style'.⁹ Fenno also noted another phenomenon, however, which does cast some doubt on the rational-actor thesis. The longer House members remained in Congress, the more concerned they became with Washington affairs and the less diligent they became in their pastoral constituency work. The implication here is that there are forces at work in the lives of members of Congress other than the simple drive to win re-election. It may be, of course, that these other forces complement rather than compete with constituency pressures. Most voters have very little knowledge of what representatives and senators actually do in Washington. And given that the electorate is not so naive as to expect an individual member to transform society, a steady flow of positive messages linked to advertising, credit-claiming and position-taking may be enough to convince voters that 'their' representative or senator is doing a good job.

Undoubtedly there are a number of activities important to the legislators that do not seriously conflict with constituency duties. On some issues – especially technical policy questions on the economy – constituents tend not to have well-formed opinions. Yet if

members devote themselves to such issues they are possibly at least indirectly neglecting their re-election chances by not putting their time to the most effective use. The rational-choice theorists' answer here is simple: members devote time to non-constituency questions because the internal dynamics of the House (or Senate) demand it. As separate and individual political actors they can achieve very little for the voters. So in order (say) to ensure that a federal installation is sited in their constituency, they are obliged to form coalitions with other members. Naturally, coalition formation involves give and take. It is necessary for a legislator to spend time on apparently non-relevant legislative activity in order to win support on those issues that are directly relevant. This has come to be known in political slang as 'log-rolling', or the bargaining, vote-trading and exchange of favours that have long been a characteristic of Congress. In recent years this process has led to a rise in 'earmarking' or the insertion of provisions in bills that benefit individual constituencies. As will be developed in the next chapter, this often means attaching money for pork-barrel projects that bear no relationship to the main purpose of the accompanying legislation. So serious had this problem become that the House (and later the Senate) imposed a moratorium on the practice in 2011. As a result, a 98 per cent drop in earmarking occurred – although the pork barrel remained in the form of legislation such as public works that has clear benefits for individual constituencies.

It is principally in any one of the more than 100 workgroups (committees and sub-committees) in the Senate and 150 in the House that dominate day-to-day legislative business that log-rolling takes place. We return to this, and the work of congressional committees, below. For now it is important to stress that, although persuasive, the rational-choice view of the work of Congress has its limitations. It assumes that legislators can know what the interests of their constituencies are. Often this is difficult. Some districts are socially, ethnically and economically diverse. A senator from Washington State may not need any prompting when voting on legislation affecting lumber, aerospace and software – three industries that dominate that state. But it is much more difficult for senators from California, representing diverse and politically volatile populations, to respond in this way. Even the senator from Washington State would today have to think twice about always serving the lumber industry, given the size and the influence of the environmental lobby in that state. More serious is the implication in the rational-choice approach that members of Congress are mere automatons responding to constituency demands. There is no place for ideology, party or individual preferences. Yet a wealth of empirical evidence exists to suggest that at one point or another in a legislator's life all of these can be – and usually are – important. As suggested, until quite recently party influences have historically been weak by European standards, but they have increased perceptibly in the past twenty years. Democrats have many policy positions and perspectives in common, as have Republicans. The next chapter shows, indeed, how party leadership within each House can be crucial in determining the outcome of legislation. Moreover, there is considerable evidence of growing party solidarity – first among Republicans in the House and now among legislators from both parties in both houses. In the 104th Congress, Speaker Newt Gingrich managed to persuade his Republican troops to vote the party line most of the time. Even more dramatic was the almost solid party-line voting in the impeachment trial of President Clinton in 1999. By the 2000s political scientists were referring to the 'shrinking middle' or the decline

of ideologically moderate legislators in both houses. We return to this development in the next chapter. And famously not one Republican member of the House voted for Barack Obama's health-care legislation in 2010. Similarly, appeals by a president to his fellow party members in Congress can be effective. Lyndon Johnson used the Democratic majorities in the House and Senate to great effect when passing his Great Society social and civil rights programmes. More recently, George W. Bush relied on an ideologically united Republican House majority to push through his legislative agenda, including sizeable tax cuts in 2002 and 2003. Barack Obama, although less successful with congressional Democrats, none the less managed to win their support on the economic stimulus measures in 2009 and health care in 2010.

The existence of 'conservative' and 'liberal' groupings shows the importance of ideology. In itself this need not be significant – members may after all be simply mirroring their constituents' view – but constituencies are not always easily labelled conservative or liberal, and it is not uncommon for an established conservative or liberal member to represent a constituency which cannot accurately be described as either. Legislators are also influenced by other members and by their staff. In other words, in the context of a legislative process that is both fragmented and complex, they are exposed to a number of pressures and influences. Constituency demands may be important, but this does not mean that we should reduce the role of legislators to the vote-getting machines implied by some political scientists.

In sum, members are exposed to many influences. Given the importance of their constituents' preferences in deciding their electoral survival, it is unlikely that members will do anything directly to antagonize the voters. And, if particularly vulnerable or in a marginal seat, they may indeed devote all their energies to re-election. For some, and particularly members of the Senate, however, political life becomes much more complex, with constituency, party, committee, interest group and ideological pressures competing for the members' favour.

The Work of Members of Congress

The changing pattern of influence on members has had important consequences on the internal structure of power in each House. These changes are analysed in the next chapter. A useful way to link discussion of the activities of members outside and inside the legislature is to examine the typical workload of legislators and the support in staff, offices and other services provided for them.

Clearly representatives and senators are not 'lobby fodder' or bound by party discipline to follow a particular line, as British MPs are often labelled. Members of Congress have little choice but to take note of the needs and demands of their constituents and to act on them. Part of this function involves formulating and monitoring a mass of complex legislation. Given the sheer volume of legislation (about 10,000 bills are introduced every session, but in the 111th Congress (2009–11) less than 1 per cent became law), most members specialize in a particular policy area, often but not always related to their constituents' interests. Senator William Fulbright, for example, was for many years chairman of the Senate Foreign Relations Committee. In this job he took a predominantly liberal stance, especially on the conduct of the Vietnam War – not a strategy that was linked in any obvious way to the

Table 8.5 Activities, actual and ideal, of members of Congress (%)

Activity	Members actually spending time				Members preferring to spend more time
	Great deal	Moderate amount	A little	Almost none	
Representation					
Meet with citizens in state/district	68	30	1	0	17
Meet in Washington with constituents	45	50	5	0	17
Manage office	6	45	39	10	13
Raise funds for next campaign, for others, for party	6	33	45	16	7
Law-making					
Attend committee hearings, markups, other meetings	48	46	6	0	43
Meet in Washington on legislative issues	37	56	6	0	43
Study, read, discuss pending legislation	25	56	6	0	31
Work with informal caucuses	8	43	36	13	25
Attend floor debate, follow it on television	7	37	44	12	59
Work with party leaders to build coalitions	6	33	43	18	42
Oversee how agencies are carrying out policies/programmes	5	22	43	29	53
Give speeches about legislation outside state/district	5	23	49	23	16

Source: US Congress, Joint Committee on the Organization of Congress, *Organization of Congress, Final Report*, H. Rept. 103-413 (103rd Congress, 1st sess., Dec. 1993), vol. 2, pp. 231-2, 275-87. Reproduced from Roger H. Davidson and Walter J. Oleszek, *Congress and its Members*, 6th edn (Washington, DC: Congressional Quarterly Press, 1998), table 5.2. Reprinted with permission of SAGE.

Note: A total of 161 members of Congress (136 representatives, 25 senators) responded to this survey, conducted in early 1993 under the auspices of the Joint Committee on the Organization of Congress. This series of questions elicited responses from 152 to 155 members.

interests of his rural and conservative constituency, Arkansas. Most of the crucial legislative work is conducted in the committees and sub-committees, yet as table 8.5 shows, members spend relatively little of their very heavy workloads directly on committee work. The remainder is devoted to a number of tasks, but in particular consulting with interest groups, meeting with constituents and preparing legislation. To help the legislator to perform all these functions, Congress has voted for itself a quite extraordinary number of services.

Office space, furnishings, stationery and postal allowances are generous. All communication with constituents, primarily by mail, is free for senators, and representatives are given generous mailing privileges. All of these benefits pale into insignificance compared with the provisions made for congressional staff. In 2011 a staggering 11,800 people worked for members of the House and around 4,000 for senators. In addition some 8,000 people work in congressional support agencies such as the Library of Congress and the Congressional Research Service. Each representative has approximately 17 people working for him or her, and each senator enjoys the assistance of no fewer than 38 aides. This is vastly more than in comparable legislatures, including the Japanese Diet and the British and Canadian Houses of Commons. Some of these positions are secretarial, but many are professionals, including some (about two for each member in the House and five in the Senate) directly

assigned the job of drafting and amending legislation. In addition, over 1,000 staff work for House committees and about 800 for Senate committees. Note how the growth in congressional staff was rapid until the 1980s since when it has levelled off and, under Republican leadership in the House, was reduced sharply after 1995 (figure 8.3).

Between the early 1970s and 1995 there was also a rapid increase in the number of sub-committees, reflecting both an increase in the legislative workload and the increasing independence of members of Congress. Committee staff numbers rose correspondingly. However, as the incoming Republican Speaker in 1994, Newt Gingrich reduced the number of sub-committees and their staffs. We return to this point in chapter 9.

Conclusions

There is no question that the typical member of Congress is a man or woman under pressure. Members are constantly campaigning – raising money, appearing on television, taking very carefully prepared stands on a range of issues. At the same time they are increasingly obliged to seek the lowest-common-denominator issue stance in order to please the largest number of constituents and displease the fewest. It is common to claim that in their scramble for votes members of Congress are widely perceived as self- rather than public-interested, and this is reflected in a growing public disenchantment with the institution (see figure 9.4). To understand the full dynamics of this process and in particular how it interacts with those aspects of the job which are only remotely related to constituency pressures, it is necessary to examine how Congress actually influences the policy process. Are the laws made in a responsible and representative manner? To what extent does it check executive power? In sum, to what extent does Congress defend and promote the public interest?

Summary

The US Congress is the most powerful legislative body in the world, a fact that derives from its wide range of formal powers and from a constituency base separate from the presidency. Control of Congress was firmly in the hands of the Democrats for the 60 years to 1994, when it passed to the Republicans. After a brief period of Democratic control (2007-11), the Republicans regained control of the House and managed to retain control in 2012. They made dramatic gains in the 2014 mid-term elections, capturing the Senate and making significant gains in the House – gains that they largely maintained in 2016. While members of Congress strive to act as direct representatives of their constituents, institutional and other factors mean that they more resemble trustees of the voters' interests. The strong representative-voter link in the US means that members of Congress work hard to please their constituents by claiming credit for constituent benefits and taking sympathetic positions on issues close to voters' hearts. The internal dynamic of Congress means that members can indeed deliver benefits, or 'pork', to constituencies. Members of Congress (most of whom are professional white males) devote much of their time to these tasks, although party and ideology can sometimes trump constituency service.

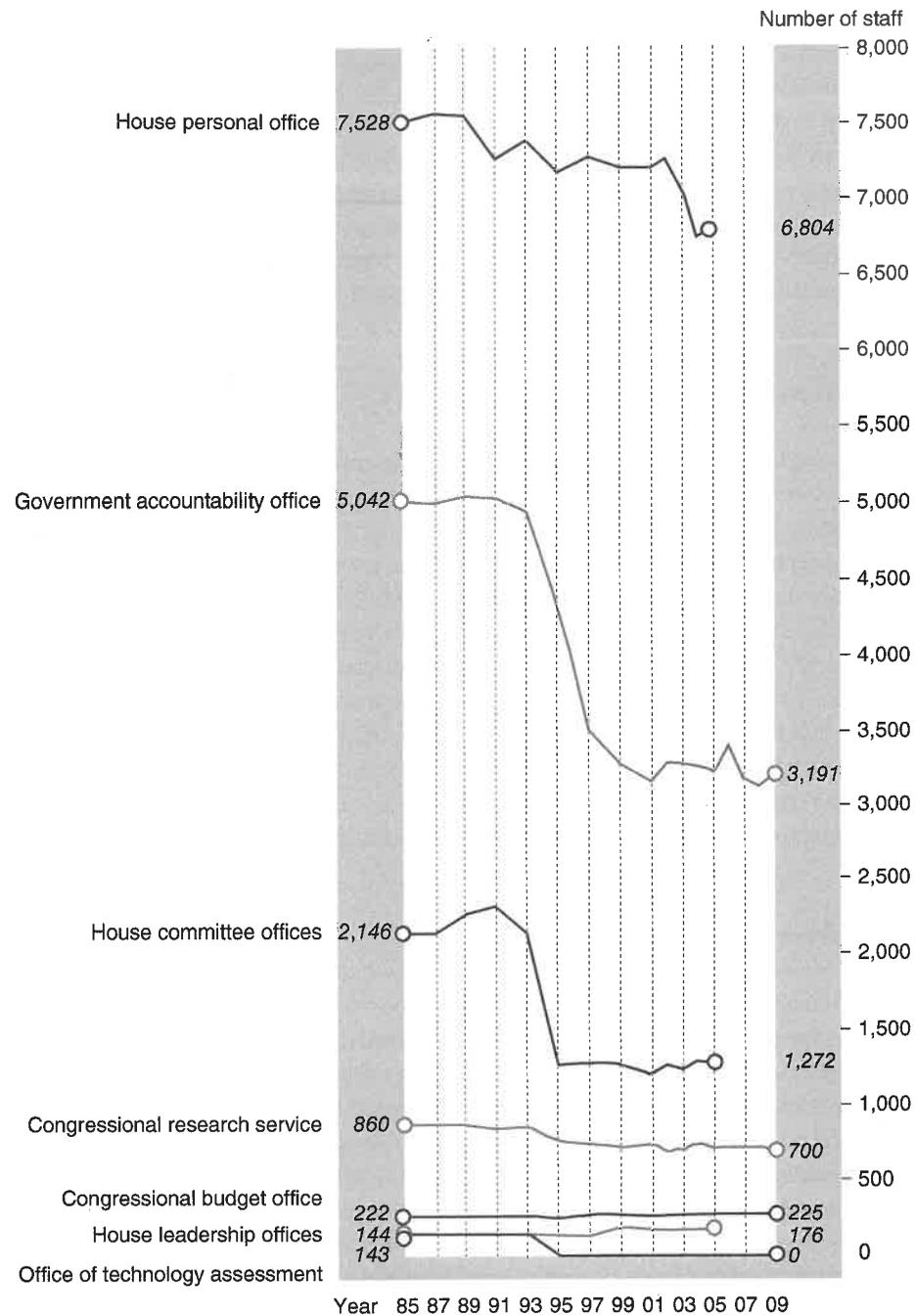


Figure 8.3 Number of Hill staffers, 1985–2009

Source: Sunlight Foundation, http://sunlightfoundation.com/policy/documents/keeping_congress_competent/ (CC BY 3.0).

Questions for Discussion

- 1 What is 'earmarking'? Why did the House impose a moratorium on the practice in 2011 and what have been the consequences?
- 2 Account for the fluctuating fortunes of the Republicans in congressional elections since 1994.
- 3 Why is Congress often labelled the most powerful legislature in the world? Is it becoming more or less powerful?
- 4 Why are so few minorities and women represented in Congress? Answer with reference to the representation of these groups in other national assemblies.

Glossary

bicameralism Rule by two legislative chambers such as the House and the Senate

direct primaries Primaries that directly nominate candidates for office

earmarking Guaranteeing funding for specific constituency projects or benefits as attachments to bills

Electoral Connection (Mayhew) Servicing constituencies in ways that will maximize the legislator's chance of re-election

first past the post electoral systems Electoral arrangements based on plurality rather than proportional voting

impeachment The formal accusation of wrongdoing by an officeholder

party government Rule based on the dominance of parties in government

political action committees (PACs) Pressure-group organizations designed to represent interests in the political sphere

pork-barrel politics Legislation designed to benefit individual constituencies

rational actors Political actors behaving in ways that maximize power and financial and status benefits

shrinking middle (legislators) The decline of politically moderate legislators in the House and the Senate

soft money Political advertising funded not by political parties but by other interests

Notes

- 1 Only very exceptionally do British MPs survive the removal of party endorsement; they may survive on personal appeal for one election, but rarely longer.
- 2 There are 435 members of the House of Representatives, 100 senators, three delegates (District of Columbia, Guam and Virgin Islands) and a Resident Commissioner from Puerto Rico. The latter four cannot vote on the floor, but can serve as committee members.
- 3 Gary C. Jacobson, *The Electoral Origins of Divided Government: Competition in US House Elections, 1946–1988* (Boulder, CO: Westview, 1990).
- 4 For a discussion of this point, see Gary C. Jacobson, *The Politics of Congressional Elections*, 4th edn (New York: Addison Wesley, 1996).
- 5 Burdett A. Loomis, *The Contemporary Congress* (New York: St Martin's Press, 2006).
- 6 David Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1986).
- 7 Both quotes *ibid.*, p. 51.
- 8 An up-to-date compilation of ratings can be found in Michael Barone and Grant Ujifusa, *The Almanac of American Politics 2008* (Washington, DC: National Journal Group, 2007).
- 9 Richard E. Fenno, *Home Style: House Members in their Districts* (Boston, MA: Little, Brown, 1978).

Further Reading

David Mayhew's *Congress: The Electoral Connection* (New Haven: Yale University Press, Second edition, 2004) remains the classic statement of the electoral connection. *Home Style* (Boston, MA: Little, Brown, 1978), by Richard E. Fenno Jr, is a book rich in anecdote on the same theme. See also Roger H. Davidson, Walter J. Oleszek and Frances E. Lee, *Congress and its Members*, 15th edn (Washington, DC: Congressional Quarterly Press, 2015). Congressional elections are examined in Gary C. Jacobson, *The Politics of*

Congressional Elections, 4th edn (New York: HarperCollins, 1996). A textbook treatment of Congress is provided by Donald Ritchie, *The US Congress: A Very Short Introduction* (Oxford and New York: Oxford University Press, Second Edition, 2016). A good comparative analysis of the electoral connection is Anthony King, *Running Scared: Why America's Politicians Campaign Too Much and Govern Too Little* (New York: Free Press, 1997).



CHAPTER 9 CONGRESS II FUNCTIONS AND POWERS - THE BROKEN BRANCH?

Outline

- The Functions of Congress
- The Structure of Power in Congress
- Congress Under Fire
- Biography: Jack Abramoff – Master Lobbyist and Convicted Felon
- Controversy 9. Divided Government: For and Against
- Biography: Paul Ryan – Speaker of the House and Republican Unifier?
- Reform and Change in Congress
- Is Congress the 'Broken Branch'?
- Summary
- Questions for Discussion
- Glossary
- Notes
- Further Reading

Let me say this about congress.... A congress is not a president.... A congress should not be a president.... A congress should be nothing more, nothing less than what it is: a reflection of the will of our people and the problems that disturb them and the actions they want taken. The congress ought to improve its ability to serve that function.

– SENATOR EDMUND S. MUSKIE, QUOTED IN STEELE,
THE ROLE OF CONGRESS II

The Broken Branch: How Congress is Failing America

– TITLE OF 2006 BOOK ON CONGRESS BY THOMAS E. MANN AND
NORMAN J. ORNSTEIN

As we stressed in chapter 3, Congress was originally intended to be the key institution in the federal government. It was only through Congress that the people were given a direct control over policy. Members of the House of Representatives were directly elected. Senators, president and vice president were not. Moreover, Congress was meant to formulate and pass laws – the president's main job being merely to implement them. Popular control of government was, of course, limited by the presidential veto and the territorial base of appointed senators. But it was the House of Representatives that controlled the purse strings, and it was Congress as a whole that stood, as legislature, at the apex of the constitutional system.

The actual functioning of the institution never quite worked as intended. During the first 30 years of the nineteenth century, state legislatures voted to adopt what became effectively the direct election of the president, and as the country grew and demands on government increased, presidents took on the major responsibility for formulating legislation. This trend has occurred in almost every country and is an almost inescapable consequence of the vast information and power resources available to modern executive bureaucracies, but not to legislatures. Yet, unlike most national legislatures, Congress retains formidable power. It remains an indisputably important actor in the policy process. It is also an institution whose powers and internal operations are constantly changing. Most recently it has been accused of being too partisan, too intent on serving particular interests rather than the national interest and of failing to oversee the executive. The main purpose of this chapter is to analyse the nature and significance of these changes so that an accurate understanding of the policy-making role of Congress can be achieved.

The Functions of Congress

As indicated in chapter 8, the first and most general function of Congress is one of representation. At its simplest this means that members of Congress are held accountable for their actions through the electoral process. In complex societies the citizen–representative relationship must necessarily be limited, however, so when we talk of the ‘representative function of Congress’ we are actually referring to a number of different functions, most of which are at least one step removed from the direct influence of the voters. So the business of formulating and passing laws – the legislative function – involves constant interaction between members, and between members and staff, interest groups, executive officials, the courts and the media. Clearly, the individual voter's influence in this process is limited, although, as we have already established, the constant threat of electoral defeat does oblige US legislators to tend to the general pastoral needs of their constituencies. A second major function of legislatures, and especially the Congress, is to oversee the executive branch. Constitutionally and by convention, Congress has a number of established oversight powers. It controls finance, so appropriations bills originate in the House of Representatives and have to be approved by both houses. As we develop below, it is the president who initially

produces the annual budget, so the appropriations process is an opportunity for Congress to approve, modify or criticize the executive's spending plans and also to monitor them during implementation. The Senate also approves presidential appointments and treaties, and both houses have the power to investigate inefficiency or wrongdoing in the executive branch, including impeachment of executive officers (the House impeaches and the Senate tries).¹ Finally, Congress has the power to approve all administrative re-organizations in the executive branch. Before we look at these functions in detail, it is necessary to outline the formal structure of power in the two houses.

The Structure of Power in Congress

Two major foci of power exist – committees and party leadership. Table 9.1 lists the standing committees and the more important select committees of Congress. Committees have always been central to the business of legislation in Congress, and if anything their importance has increased over the years. As table 9.1 shows, the permanent committees are distinguished by function, and as government has become more complex, so the number of committees and sub-committees has tended to increase. Consolidation and reorganizations do occur – indeed both the Democrats in the 1980s and 1990s and the Republicans after

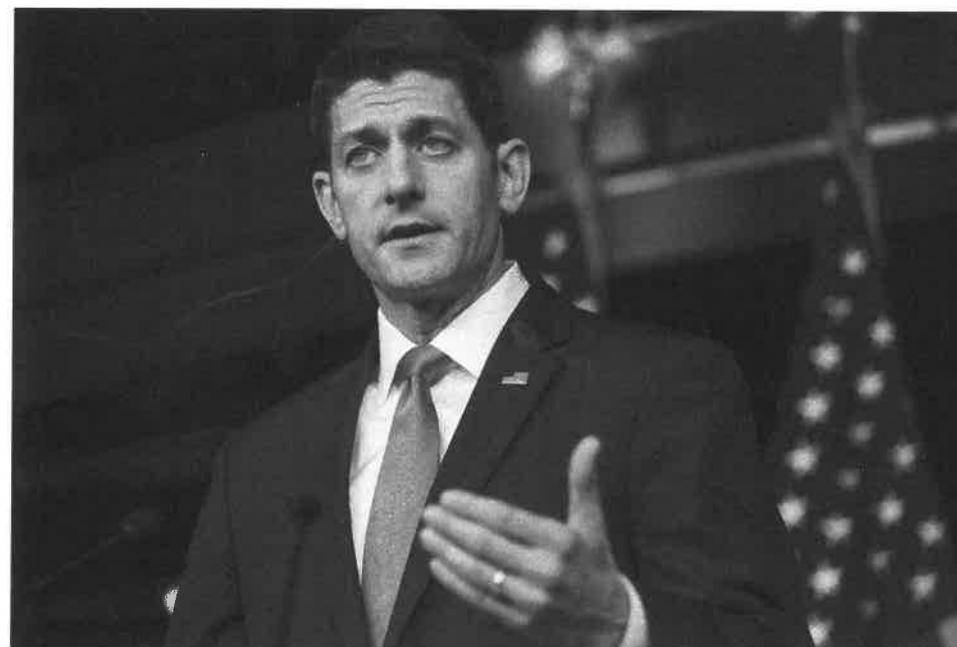


Plate 9.1 Speaker of the House Paul Ryan holds his weekly press conference and answers questions about his first meeting with Republican Presidential Candidate Donald Trump at the US Capitol in Washington, USA on 12 May 2016
Source: Anadolu Agency/Getty, www.gettyimages.co.uk/license/530979532.

Table 9.1 House and Senate committees listed by preference motivations of new House members and senators, 110th Congress (2007–9)

House	Senate
Prestige committees	Policy committees
Appropriations	Homeland Security and Governmental Affairs
Budget	Budget
Rules	Foreign Relations
Ways and Means	Governmental Affairs
	Judiciary
	Health, Education, Labor, and Pension
Policy committees	Mixed policy/constituency committees
Financial Services	Armed Services
Foreign Affairs	Appropriations
Education and Labor	Banking, Housing, and Urban Affairs
International Relations	Finance
Government Reform	Small Business and Entrepreneurship
Judiciary	
Homeland Security	
Constituency committees	Constituency committees
Agriculture	Agriculture, Nutrition, and Forestry
Armed Services	Appropriations
Energy and Commerce	
Natural Resources	Commerce, Science and Transportation
Transportation and Infrastructure	Energy and Natural Resources
Science	Environment and Public Works
Small Business	Indian Affairs
Veterans' Affairs	
Other committees	Other committees
Oversight and Governmental Reform	Select Committee on Intelligence
Permanent Select Committee on Intelligence	Select Committee on Ethics
House Administration	Select Committee on Aging
Standards of Official Conduct	Veterans' Affairs

Source: Various including Steven S. Smith and Christopher J. Deering, *Committees in Congress*, 3rd edn (Washington, DC: Congressional Quarterly Press, 1997), updated from House and Senate websites, www.senate.gov and www.house.gov.

1994 managed to reduce the number of sub-committees substantially (figure 9.1 – since 2009 the number of committees has remained roughly constant). It remains the case, however, that both the House and the Senate have a large number of working groups – especially in comparison with other legislatures. Both internal and external pressures are at work to maintain this need. Internally, individual legislators build reputations by specializing in a particular subject. Often this specialization is linked to constituent needs. Moreover, Congress's own bureaucracy has to match developments in the executive branch, and as

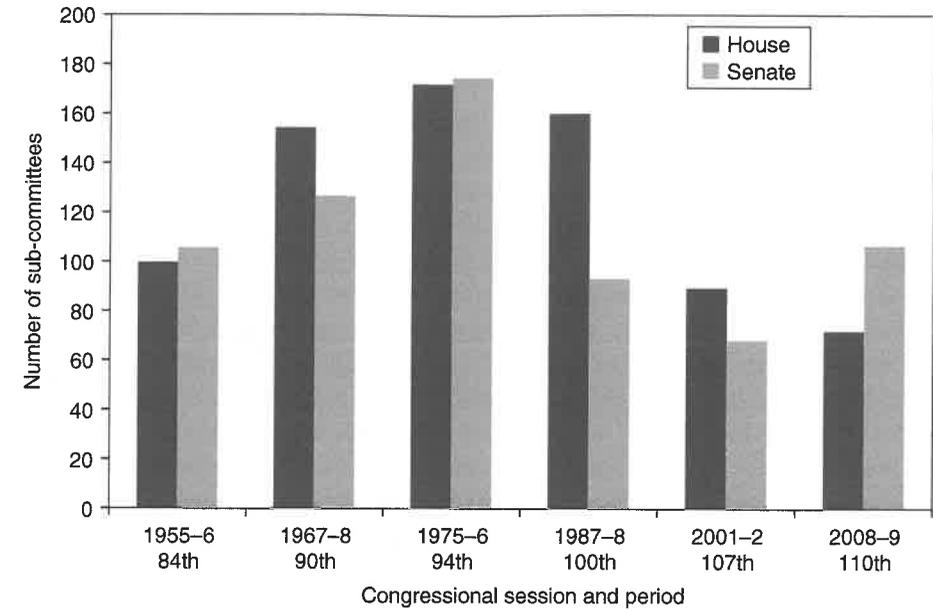


Figure 9.1 Number of House and Senate sub-committees, selected Congresses, 1955–2009
 Source: ‘Vital statistics 1993–1994: *Congressional Quarterly’s* players, politics and turf of the 104th Congress’, *Congressional Quarterly*, special issue (25 March 1995). Updated from N. Ornstein, T. E. Mann and M. J. Malbin, *Vital Statistics on Congress, 2001–2002* (Washington, DC: AEI Press, 2002), tables 4.2 and 4.3, and Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics, 2007–2008* (Washington, DC: Congressional Quarterly Press, 2008). Reprinted with permission of SAGE.

departments and agencies have increased in number and function, so Congress has been obliged to respond. For example, the House Select Committee on Homeland Security was created in direct response to the establishment of the Department of Homeland Security in 2002. Often this is a two-way street. Members’ career and constituency needs may benefit from executive fragmentation, which legislation often encourages.

Note also the distinctions drawn in table 9.1 between policy committees, which are primarily concerned with general policy, and committees that are devoted mainly to servicing constituencies. In addition, the House has what might be called ‘prestige’ committees, which are primarily concerned with money – an area where the House has special responsibilities – and with procedural rules.

It is in the committees that the business of framing, amending and rejecting legislation occurs. Most committees authorize legislation while others provide funds to finance programmes. Hence the House Appropriations, House Ways and Means, House and Senate Budget, and Senate Finance Committees are concerned with approving income (taxation) and expenditure bills. We examine the budgetary process in more detail in chapter 18. By no means are all committees equal in power. The finance committees are particularly prestigious and influential, especially so in the case of the House Appropriations Committee

(which is the source of all appropriations bills), the House Ways and Means and Senate Finance Committees (which are responsible for tax bills), and the two Budget Committees. Of the authorizing committees, the Senate Foreign Relations Committee is of central importance in foreign policy, while the Homeland Security, Banking, and Judiciary Committees are prominent in both Houses. An equivalent hierarchy applies to most sub-committees with, for example, the House Appropriations sub-committee on Defense being markedly more important than the Military Construction sub-committee.

Because the House of Representatives is a larger and, by tradition, more formal body than the Senate, a number of complex rules have been formulated to govern day-by-day business. The Rules Committee is responsible for interpreting these regulations and in particular for helping to decide which bills, and in what form, come before the floor of the House. This power to withhold bills or to allow them to proceed only if certain amendments or provisions are omitted or included gives the Rules Committee considerable political clout. Indeed, during the late nineteenth and early twentieth centuries, the Rules Committee was at the very centre of congressional power. Today, although it continues to perform a gatekeeper function, it is less powerful, in part because the House is less formal than it was (of which more below), and in part because the committee tends to be the voice of the majority party leadership rather than being an independent source of power in Congress.

Clearly, membership of committees is an important determinant of the status and influence of individual representatives and senators, and accordingly the processes whereby members are selected to sit on committees and eventually appointed as chairpersons have long been the subject of debate and controversy. The most basic rule is that the party with a majority in the chamber automatically achieves a majority in the committees, with the minority party represented in rough proportion to its delegation in the chamber as a whole. Committee and sub-committee chairpersons are drawn exclusively from the majority party. In the House members are allowed to sit on a maximum of two standing committees, although House members assigned to the important Rules, Ways and Means, and Appropriations Committees are not normally permitted further assignments. Typically, senators will sit on three standing committees. In both houses party committees selected by party caucuses (meetings of all party members in each House) choose the members of the standing committees. This process is predictably political, with seniority, experience, reputation and connections being the main determinants of assignments. Since the late 1950s the Senate has ensured that all freshmen (new) senators are given at least one major committee assignment (the so-called 'Johnson Rule' introduced under the influence of the then Senate Majority Leader, Lyndon Baines Johnson). By winning prestigious committee jobs, members can enhance their institutional reputations, gain access to legislative programmes of direct interest to their constituents and, occasionally, attract national attention.

During her first term in the Senate, Hillary Rodham Clinton (Democrat, New York) used her position on the prestigious Senate Armed Services Committee to sponsor legislation designed to improve the position of serving members of the forces and their families. For example, in 2004 she introduced a bill designed to provide a small pension (\$125 a month) for so-called 'Gold Star' parents or the parents of service personnel killed in combat. In this way she was able to raise her personal profile not so much among her constituents but nationally.

Within individual committees and sub-committees status is no less important, with the chairperson of each workgroup at the very top of the pecking order. Both ranking within committees and the assertion of power by the chairpersons over committee members is largely determined by seniority. Until the early 1970s the seniority rule was condemned by liberals because of the enormous advantage it gave to the solidly Democratic – but conservative and often racist – one-party South. Indeed, the caricature image of elderly, white-haired southerners lording it over all and sundry on Capitol Hill was not far from the truth, as such figures as Richard Russell of Armed Services, Russell Long of Finance and James Eastland of Judiciary in the Senate, and Carl Vinson of Armed Services and Howard Smith of Rules in the House, testified.

Since the 1970s there have been three distinct waves of reform affecting committee power. Until the mid-1970s chairpersons were particularly powerful because of their control of the agenda. They could decide the order in which bills were discussed, the timing of committee meetings, the frequency of public hearings and the management of bills on the floor of the House. They used also to have a major say in the number and composition of sub-committees, together with the selection of sub-committee chairs. During the 1970s the Democrats instituted reforms that removed committee chairs from the very pinnacles of power. Their control of the work and membership of sub-committees was weakened. Moreover, seniority was removed as the only criterion for advancement within committees. In 1975 the House Democratic caucus, caught up in a general atmosphere of reform, removed three of the most powerful committee chairpersons at a stroke (Wight Patman of Texas, Banking and Currency; W. R. Poage of Texas, Agriculture; and F. Edward Hébert of Louisiana, Administration). In fact, seniority remained central to any promotion within committees. From 1975 to 1994 chairpersons were obliged to treat sub-committee chairs (and committee members generally) more as equals than as feudal vassals. This was part of a general democratization and dispersal of power in both the House and (to a lesser extent) the Senate, which we return to below.

This decentralization of power in the House (and to a lesser extent in the Senate) led many commentators to conclude that Congress was incapable of making quick decisions. Worse, decentralized committees were likely to pander to particular (or constituency) rather than general (or public) interest. Republican presidents and congressional opposition spokespersons pointed to the fact that the Democrats' apparently permanent control of the House made it impossible to cut the budget deficit or to pass much-needed reforms in such areas as health care and the economy. Although these criticisms were almost certainly exaggerated, they helped to inspire a second major wave of reforms instituted by the Democratic leadership in the 1980s, which were designed to relocate power away from the committees and return it to the leadership. Although sub-committee powers were reduced (especially in the Senate), the Democrats were less than successful in transforming the system. However, following the Republicans' capture of Congress in the 1994 mid-term elections, Newt Gingrich, the new Speaker, and Dick Armey, the new Majority Leader, were determined to push through the legislative programme outlined in their 'Contract with America'. As a result they persuaded the Republican Conference (the committee representing all the House Republicans) to push through a number of changes in committee operations.

The major objective of these reforms was to strengthen party control over the committees. Judging by the success enjoyed by the Republicans in passing much of the Contract with America legislative programme (although some of it was eventually defeated in the Senate, by presidential veto or invalidated by the Supreme Court), this objective seems to have been achieved. However, as is discussed below, the reforms produced changes in the 'folk-ways' of the House that may have had negative rather than positive consequences. Furthermore, the enthusiasm and determination of the Republican leadership in the 104th Congress began to flag after the Democratic advances in the 1996 and 1998 elections, and by the time the Democrats won back Congress in 2006 much of the steam had gone out of the reform attempts.

In addition to the standing committees in each House, a number of other workgroups exist, including the Conference Committees. These are, simply, ad hoc bodies created to reconcile the differences that occur in the House and Senate versions of the same piece of legislation. Membership is drawn from those members in each House who have been most closely involved with the legislation, usually the relevant committee members – who then vote *en bloc* so as to represent the wishes of their chamber. A great deal of politicking goes on in conference, with bills often amended considerably, and not always in line with the wishes of the House or Senate as a whole.

Conference decisions can, however, be rejected by a subsequent vote on the floor of each chamber, and sent back to the committee (see figure 9.2). In addition, ad hoc committees can be formed by the Speaker of the House to reconcile standing committees with

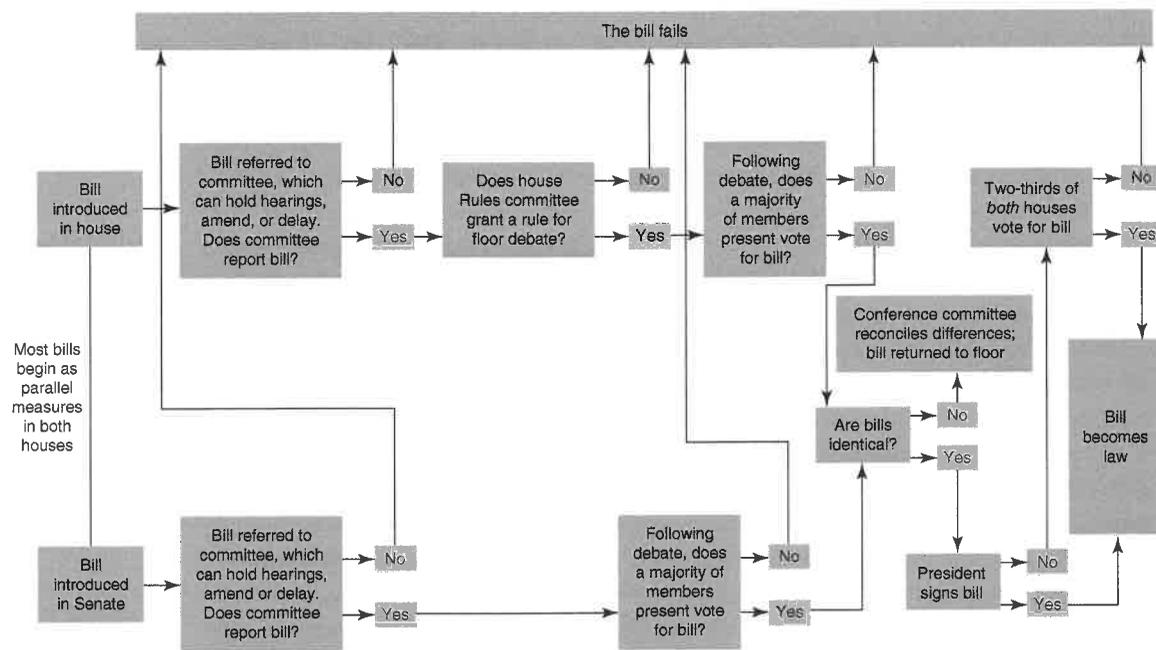


Figure 9.2 How a bill becomes law: the obstacle course for legislation in Congress

overlapping jurisdictions, and select committees appointed by presiding officers can be created in either House to expedite a particular problem, often in association with a congressional investigation. In recent years, for example, select committees on ageing and ethics have been formed in the Senate. Such committees have to be renewed every two years and they cannot report legislation to the floor. In most cases select committees emerge as a forum for airing currently controversial issues. Sometimes, as with the House Select Committee on Intelligence, they are given permanent status.

The second focus of power in Congress is the party leadership. In the House the key figures are the Speaker and Minority Leader, and the key groups are the party caucuses, in particular the majority party caucus (presently the Republican Conference). The Speaker of the House used to have quite substantial formal powers. Until 1911, he was also chair of the Rules Committee and he appointed committee chairpersons. This combination enabled Speakers to control the flow of legislation onto the floor. Concentration of such power in the personage of one particularly assertive Speaker, Joseph Cannon, led to a revolt in 1910–11, which resulted in the removal of the Speaker's control of the Rules Committee and of committee assignments. But the Speaker retains considerable authority. He continues to help to control the flow of legislation, recognizes who is to speak on the floor, can create ad hoc committees, gives advice on assignments to conference and select committees, helps in assigning bills to committees and votes in the event of a tie. While the Speaker has the greatest formal power of any individual in the House, his potential informal power is much greater. As both leading parliamentarian and party leader he can become a crucial link between other centres of power – particularly committee chairpersons – as well as be the person most able to muster often disparate party forces behind a particular bill or the programme of a president. Whether these powers are utilized to the full depends on the personality, capabilities and political skills of the incumbent.

Over the past 70 years, for example, the office has come full circle as incumbents have changed. Between 1940 and 1960 the office was dominated by the forceful and highly political Sam Rayburn (with breaks in 1947–8 and 1953–4 when the Republicans had a majority in the House). Between 1961 and 1978 first John McCormack and then Carl Albert became Speakers, neither of whom had the skills or the charisma of Rayburn. Between 1978 and 1986 the highly partisan and politically astute Thomas (Tip) O'Neill partly returned the office of Speaker to its former glory. O'Neill's personality was ideally suited to the brokerage politics of the House, and he was aided by the 1975 reforms which gave to the Speaker the power to appoint Democratic members to the Rules Committee and to the Democratic Steering Committee, which assigns new committee members within the party. Given the Democratic dominance of the House, these amounted to considerable powers. On his resignation in 1986, O'Neill was replaced by Jim Wright of Texas, a long-time O'Neill supporter and until 1986 Democratic House Majority Leader. In June 1989 Jim Wright was forced to resign after allegations of financial irregularities were brought against him by the House Minority whip, Newt Gingrich. He was replaced by Tom Foley, who had a more accommodating style than the often feisty Wright. Following the 1994 mid-term Republican victory, Speaker Newt Gingrich took on a legislative leadership role unprecedented since the days of Joe Cannon. In addition to the committee reforms (see below), Gingrich's formal powers were enhanced. He was also widely perceived as a major influence on the

Republican victory, so he had built up considerable political capital with House members. His dominance was dented, however, when in 1996 he faced a number of ethics charges and was only narrowly re-elected Speaker in early 1997. As a result, during the 105th Congress (1997–8) his parliamentary position was weakened and some power returned to the committee chairpersons. Gingrich resigned after the Republicans' poor showing in the 1998 mid-term elections. His eventual successor (the first choice, Bob Livingston, was forced to withdraw after he admitted to extramarital affairs) was Dennis Hastert of Illinois, who was elected by the Republican caucus on 6 January 1999. Hastert proved to be a highly partisan Speaker and presided over many of the changes that have brought the House into disrepute. With the Democratic victory in 2006, Hastert was replaced by Nancy Pelosi of California, who became the first female Speaker. (Ironically, Hastert was subsequently convicted of child sex abuse in 2016 and sentenced to 15 months in prison.) With the dramatic defeat of the House Democrats in 2010, the Republicans returned with John Boehner as the new incumbent. Boehner was in many respects a traditional politician willing to strike deals with political friends and foes alike. However, as will be discussed below, he was thwarted in many of these attempts by the Freedom Caucus in his own party and was obliged to resign in October 2015. He was replaced by Paul Ryan of Wisconsin (see biography below).

After the Speaker, the most important offices are the Majority and Minority Floor Leaders, who are elected by the party caucuses and whose main job is to monitor and organize party business on the floor of the House. In fact the Minority Leader is often a more crucial figure than the Majority Leader, largely because the Speaker is the effective majority spokesperson. Finally, both parties appoint whips to help to control floor business. These are in no way equivalent to British parliamentary whips; they have no effective sanctions at their disposal to oblige members to toe the party line. Instead their job is to persuade, negotiate, bargain and cajole members into broad agreement on particular items of legislation. Nancy Pelosi was elected Democratic Minority Leader after the Republican takeover of the House in 2010. The party caucus meets infrequently, and then usually to agree on procedure rather than to discuss substantive policy issues. As important today are the informal caucuses that have emerged over the past 20 years. These are usually organized around a particular interest, such as the Democratic black and Hispanic caucuses, or around an ideological orientation, such as the Democratic Study Group, representing liberal causes, or the conservative Republican Tea Party caucus. In 2016 the typical House member belonged to 16 caucuses and the typical senator to 14.

Leadership in the Senate roughly parallels that in the House, but there are some important differences. Unlike in the House, the presiding officer – formally the vice president of the United States – is an honorific position carrying with it few powers, of which the main one is being able to vote in the event of a tie. Nor does the President Pro Tempore, which position goes by tradition to the longest-serving senator from the majority party, have many powers. On a day-to-day basis, the members of the majority party preside over the chamber in rotation. Real power lies with the Majority and Minority Leaders, although even they can often do little to control the behaviour of just 100 fiercely independent senators. Again, much depends on the personality of the incumbents. Some Majority Leaders, such as Lyndon Johnson (1956–61), built reputations as power brokers, as did Republican Howard Baker, whose management of the Republicans' fragile majority in 1981–5 showed

great political skill. Robert Dole of Kansas, who succeeded Baker in 1985, had to use all his political skill to hold together an even narrower Republican majority until the Democrats regained control of the Senate in 1986. In contrast to Johnson and Baker, some recent leaders, such as Mike Mansfield (1961–78), have been either unwilling or less able to assert authority over fellow party members. Following the Republican victory in 1994, Bob Dole became Majority Leader. Although he was a skilled parliamentarian, Dole's energies were diverted by his race for the presidency in 1996. His replacement, Senator Trent Lott of Mississippi, was more in the mould of an old-style party leader. A strong partisan devoted to good organization, Lott was able successfully to exploit the more ideological agenda that came to dominate Congress by the late 1990s. However, like his counterpart in the House, Newt Gingrich, Lott was eventually obliged to resign (in December 2002), although for very different reasons. He made a speech to the effect that he had a liking for the social arrangements of the old segregation South. This made his position untenable. He was replaced by Tennessee Senator Bill Frist, who in turn was replaced by Democrat Harry Reid of Nevada in 2006. Reid was known for his integrity and his knowledge of Senate 'insider' politics. His position became particularly important after 2010 when the Republicans won control of the House of Representatives. With the Democrats continuing to hold the Senate, he became a key player in negotiations over the budget in 2012 and 2013. With the stunning Republican victory in the 2014 mid-term elections, the position passed to Mitch McConnell of Kentucky, an erstwhile centrist, but, like most of his congressional party, more recently a convinced champion of conservative causes. Meanwhile, Chuck Schumer of New York replaced Harry Reid as Minority Leader in November 2016.

So far in our discussion we have concentrated on describing the formal powers of committees and party leaders. This tells us little about the dynamics of the policy-making process, however, and how the institution can be assessed in terms of its performance and effectiveness. One way to examine these questions is first to look at the validity of the criticisms, which have been directed at Congress over recent years, and then to discuss the reform measures adopted in response to these criticisms.

Congress Under Fire

At least since the Second World War, Congress has been the subject of sometimes-intense criticism. Very generally we can divide these criticisms into broad categories: those that are historically specific and those that identify structural features of Congress that persist through time. Of course, the two sets of critiques are related, especially as the institution is constantly changing, but this simple distinction does facilitate a more subtle understanding of how the institution works.

Critique 1: fragmentation and the electoral connection

Perhaps the most common and persistent criticism was that Congress was fragmented and unresponsive; that it was not a 'coherent' policy-making body representing the people, but was instead a forum for the defence and promotion of disparate, unrelated interests. That

the policy-making process in Congress is fragmented cannot be disputed. Power is dispersed to committees and sub-committees and the legislative process itself is cumbersome. When a bill is introduced it faces a formidable number of potential veto points before it actually becomes law, and this is true even of those bills which are part of the president's programme, have substantial support in Congress and are recognized as important public questions. Figure 9.2 shows the major obstacles that confront any bill when introduced into Congress. Committee action is the most difficult stumbling block, with less than 10 per cent of bills actually reported out. The presidential veto used to be a much rarer barrier, but since the advent of divided government it is now exercised more frequently on important items of legislation (see chapter 11). Even less common are successful attempts to override a veto. The president can also exercise a pocket veto by failing to sign a bill passed within the last 10 days of a legislative session.

Figure 9.2 also omits reference to the Senate filibuster – a debating device that has ended the life of several controversial bills. Filibustering is the practice, allowed only by Senate rules, of speaking in unlimited debate and eventually forcing the death of a bill through the expiry of parliamentary time. During the 1950s and 1960s many civil rights bills were killed by this method, with segregationist southern senators speaking for many hours against the reform measures. A device does exist for ending a filibuster, known as a cloture (or closure) rule; this can be invoked to end debate if three-fifths of the senators agree. Between 1917 (when the cloture rule was introduced) and about 1970 very few cloture votes were attempted because of the in-built veto power of the southern Democratic senators. However, the decline of this group plus a rule change in 1975 that reduced the percentage needed for successful cloture from 66 per cent to 60 per cent has meant that the measure is now frequently invoked and is often successful. The 60 per cent rule means that if one party wins 60-plus seats in the chamber it can effectively control the agenda (notwithstanding maverick senators who may not vote the party line). This became especially relevant between 2008 and 2010 when the Democrats narrowly failed to reach the magic 60 seats necessary effectively to control parliamentary procedure in the Senate. After 2010 their majority was reduced, thus making it very difficult to pass bills sponsored by Democrats. Indeed in 2013/14, the ideological divide between the parties was so great that 287 cloture votes were invoked of which 187 were successful. During the 114th Congress (2015–16) the position was reversed with the Republican majority of 54 to 46 (including two independents who caucused with the Democrats) – a majority that was reduced to 52 to 48 following the 2016 elections. In 2013, Democrats, frustrated by the use of the filibuster against Obama appointees changed the rules so that a simple majority could approve all executive appointments bar those to the Supreme Court. In 2017 the Republicans extended this to Supreme Court appointments.

In the House, the Rules Committee can constitute a further barrier to the passage of a law. Until 1975, southerners dominated the committee and frequently refused to grant rules to bills they disliked, irrespective of the support the measures may have won in the legislative committees. Again, liberal, and especially civil rights, legislation was the victim. In 1975, however, the Democratic caucus voted to give the Speaker the power to appoint Rules Committee members. As a result, although the committee can still stop bills, it acts more in accordance with the general wishes of the House – and particularly with the relevant legislative committee – than before. Interestingly, debate on the floor used to be one of the

least significant aspects of the legislative process, for by the time a bill reached this stage it was already roughly in its final form. Recent reforms, however, have increased floor activity, with individual legislators now more able to attach riders and amendments to bills. Floor votes can also be crucial, of course.

Figure 9.2 gives the slightly misleading impression that bills either proceed past a number of legislative hurdles or are simply killed off. The reality is that most bills are non-starters because they lack the support of key members – although some are initiated simply to attract public attention to an issue – and the remainder embark on a course that is beset with problems and pitfalls. But these do not always involve the possibility of a sudden death. As likely are the possibilities of amendment and delay. Delay can occur at almost any stage of the process, but it is in the committees that bills most often become buried, sometimes never to reappear. Given that Congress has a heavy workload and is constantly under pressure, delaying a bill is often an expedient course to follow. For a bill's supporters, including presidents, this can be highly frustrating.

Few bills emerge from Congress in the precise form in which they entered it. They are amended – sometimes dramatically – from their original form, and this amendment process is the very essence of congressional politics, for it is by changing the detailed provisions of bills that members can indulge in log-rolling, or the exchange of favours which is so crucial to their electoral survival. So items are added to or deleted from bills in accordance with bargains struck between key legislators, usually within or between committees. Committee hearings, open to public scrutiny, also allow organized interests to air their views and generally to advertise particular points of view. And, of course, executive departments and agencies usually have a crucial interest (with positions to defend or promote) in the detail of legislation. Finally, committees may compete one with the other, for, as can be inferred from the list of committees in table 9.1, there are a number of areas where overlapping jurisdictions occur.

When all these influences are at work, as they are in major items of legislation, the potential for delay, obstruction and even confusion can be appreciated. A classic example of what can happen to a vital piece of legislation is provided by President Clinton's health-care reforms introduced in Congress in 1993. Given the enormous complexity of the bill – a fact that resulted from the need to consolidate a large number of existing federal health and welfare programmes – it was assigned to multiple committees. Two of these, the House Education and Labour and the Senate Labour and Human Resources Committees, agreed on a reform package, but only one that was too liberal for the Congress as a whole to accept. In addition, the key finance committee chairs found it difficult to win sufficient committee support for the reforms. As Burdett Loomis has noted, these failures tell us a great deal about congressional power, given that the chairs of the committees involved included some truly formidable legislators – Representatives John Dingell (Energy and Commerce) and Dan Rostenkowski (Ways and Means) and Senator Daniel Patrick Moynihan (Finance). In the end Congress found it impossible to reconcile all the conflicting bureaucratic, health-care and insurance company interests in a way that would produce a coherent legislative package. The bill died a year later during the 1994 mid-term election campaign.² A not dissimilar sequence of events characterized President Obama's health-care reforms, although the outcome was successful. The original version included a 'public option' provision or a health programme directly funded by the federal government. This proved unacceptable

to all the Republicans and a minority of Democrats in the House. Meanwhile, the Senate passed a more limited version without the public option but including an 'individual mandate' or requirement that the uninsured buy health insurance from a list of government approved providers. Eventually this bill passed both houses – although every Republican member of the Senate voted against it and one Republican representative voted in favour – and then after the bill was already assured passage. In fact, passage came only through the parliamentary device called 'reconciliation' that enables the Senate to vote through a simple majority thus by-passing the filibuster device that allows a 40 per cent minority to block a bill. There have, in fact, been remarkably few occasions when a major legislative package has not been delayed or obstructed by Congress. The early New Deal (1933–5) and Great Society (1965–6) periods are usually mentioned as the notable exceptions (see chapters 15 and 16). In addition, the first two years of the Reagan administration and the 18 months following the 9/11 attacks qualify as periods when Congress was unusually compliant. In the latter case, Congress passed tax cuts in 2002 and 2003, and approved the Patriot Act and the creation of the Department of Homeland Security, in a period when the Bush administration was able successfully to appeal to patriotism and national solidarity.

A further development that demonstrates well the tendency of Congress to serve the particular rather than the public interest is the rapid growth of the pork barrel in the post-1994 period. As Mann and Ornstein point out, 'earmarking', or the allocation of funds for specific constituency projects, increased from \$10 billion in 1995 to nearly \$23 billion in 2004. So serious had this problem become that the House imposed a moratorium on the practice in 2011. While this dramatically reduced the overt use of the device, the pork barrel remains in other forms. For example, instead of the \$533 million earmarked for the Army Corps of Engineers in 2010 bills, the 2012 budget set aside \$507 million in 26 slush funds, along with a set of guidelines for making sure the money went to favourite pet projects. A further development since the 1990s has been the rise of partisanship in Congress and especially in the House. As can be seen from figure 9.3, party unity voting increased markedly between 1980 and 2014 reflecting the ideological polarization of the period. Accompanying this, however, came much more blatant use of party to manipulate parliamentary rules and procedures to push through legislation. Hence party leaders have used all means possible, including veiled threats, to ensure legislation was passed (or blocked). So, instead of careful deliberation and the cumulative 'marking up' of bills in committee (allowing committee members of both parties to contribute amendments), partisan legislation has been pushed through with undue haste.

Critique 2: failure of oversight

Congress has failed to perform the oversight function effectively. In addition to passing legislation, Congress is charged with the job of overseeing the executive or holding the president, executive departments and agencies accountable for their actions. The appropriations process in part involves this job and this is dealt with elsewhere (chapter 15). In addition, Congress is responsible for monitoring executive appointments and holding formal investigations into the executive branch, and, as a last resort, it has the authority to impeach executive officers. The Constitution requires the Senate to approve presidential

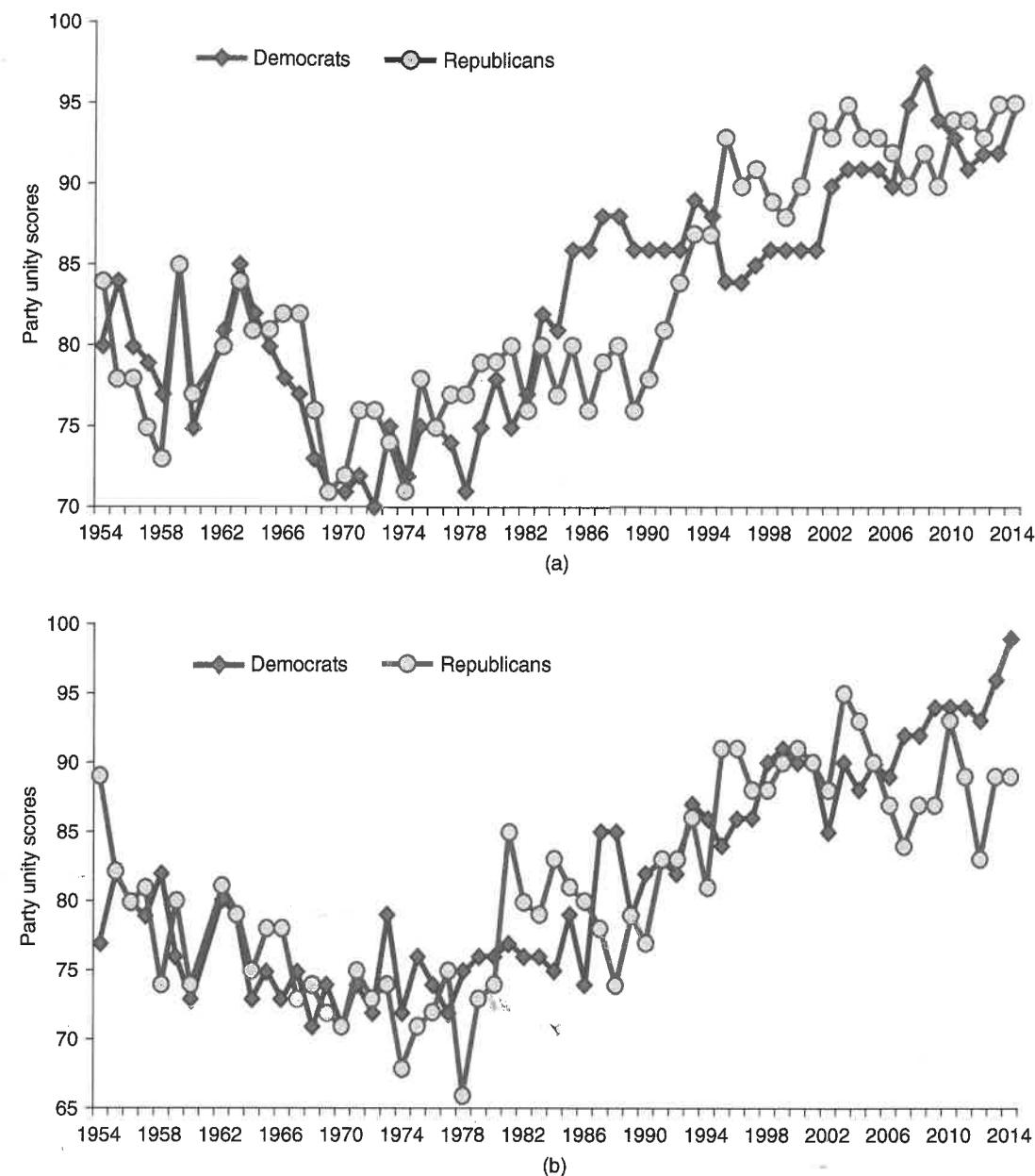


Figure 9.3 Party Unity Scores in the House (a) and Senate (b), 1954–2014. Data show the percentage of all record votes where a majority of Democrats opposed a majority of Republicans. Source: Computed from data provided by the *Congressional Quarterly* magazine at <https://library.cqpress.com/cqweekly/toc.php?mode=weekly-date>, reprinted with the permission of SAGE.

appointments, but it is not a power that the Senate has used in the strictly ethical sense, i.e. rooting out inefficient, incompetent or corrupt appointees. As often, senators are concerned to ensure that incumbents in the more than 1,500 major posts subject to Senate confirmation are men and women who are sympathetic to the legislators' political or constituency interests, or who are likely to defend an organized interest (such as labour or business) which senators are known to identify with. The appointment process is, in other words, not unlike the legislative process – it is highly politicized and subject to similar constituency interest-group pressures. Only rarely are nominations withdrawn and even more rarely are they rejected. Between 1989 and 2003, for example, only two nominations were rejected out of more than 600,000 submitted – although around 1,200 were withdrawn.³ One notable exception occurred in 2014 when the Senate rejected Debo Adegbile, President Obama's nominee to head the Civil Rights Division of the Department of Justice because he had once defended the murderer of a police officer.

So Congress is accused of two failings in this area. First, it favours many appointees not because they are likely to serve the public interest, but because they will support particular or special constituency and group interests. And second, independently of this problem, it has failed to root out some of the more obvious and colourful examples of incompetent presidential nominations. The Nixon administration was littered with such cases. But even the Carter presidency was able to produce its Bert Lance (the Budget Director who was eventually obliged to resign following exposure of illegal banking practices). The first Clinton administration also had its share of dishonest or incompetent appointees, with accusations levelled at a number of cabinet secretaries, including Secretary of Housing and Urban Development Henry Cisneros and Commerce Secretary Ron Brown. Most recently, many liberals had deep misgivings about the civil liberties record of John Ashcroft, the George W. Bush administration's Attorney General in his first term, and Bush's first Treasury Secretary, Paul O'Neil, was fired for incompetence and indiscretion. Even more scandalous was the resignation of Attorney General Alberto Gonzales in 2007, following accusations that he had abused his powers in pursuing the 'War on Terror'. By the end of his term, no major Obama nominee of cabinet rank had had to resign because of scandal or incompetence – although Attorney General Eric Holder was censured by the House in that year for allegedly failing to oversee a Justice Department 'sting' operation to apprehend gun running to Mexican drugs barons. This action was politically motivated, however, and Holder continued in office until he voluntarily resigned in 2015.

While all this is true, Congress does now examine the records of the most senior nominees more carefully than in the past. This is particularly true of Supreme Court nominees, who have the potential to shift the ideological complexion of the Court on a range of sensitive issues. Such perceptions certainly applied to Robert H. Bork, Reagan's 1987 nominee to the Court, who was opposed by the wide margin of 58 to 42 senators. Reagan's second nominee for the vacant position, Douglas H. Ginsberg, was obliged to withdraw following an admission that he had smoked marijuana while at law school. Eventually the president nominated a 'safe' candidate, Anthony Kennedy, who was quickly confirmed by the Senate. George Bush Senior had fewer difficulties with his appointees, although his nomination of Supreme Court Justice Clarence Thomas was confirmed by the narrow margin of 52 to 48 following allegations of sexual harassment against the judge. In addition, the Senate,

on a 47/53 vote, rejected Bush Senior's first-choice nomination as Defense Secretary, John Tower. George W. Bush also received short shrift from the Senate Judiciary Committee, whose initial enquiries into the nomination of Harriet Miers to the Court in 2005 revealed that she was totally unqualified for the job.

Most commentators agree that, in the context of divided government, presidents have experienced more partisan and ideological objections to their appointees. In particular, President Clinton's efforts to make the US District and Appeals courts look 'more like America' in terms of gender and ethnicity were partly thwarted by the Senate Judiciary Committee's delays on his nominations. Fearing that the Clinton appointments would lead to a more activist (i.e. liberal) judicial branch, the committee tied up many of the Clinton nominations for many months – and sometimes years – during both the president's first and second terms. Even though the Democrats controlled the Senate during Obama's first term, he still encountered problems over his judicial nominees, with Republicans able to use parliamentary manoeuvres to delay confirmations for many months. Perhaps most famously the Republican Senate refused to consider *any* nominee to the Supreme Court until after the 2016 election following the death of conservative justice Antonin Scalia in February of that year.

The investigative power of Congress consists of investigations by the standing committees, the work of special or select committees created for the specific purpose of inquiring into a particular problem, and the work of the General Accounting Office (GAO). GAO auditing of the executive spending is a continuous process, with the office reporting its findings to Congress. Congress can also require the GAO to investigate a particular programme or agency at any time. Standing committee investigations involve public hearings into alleged executive inefficiency or wrongdoing. One of the most famous series of hearings was the army-McCarthy hearings by the Senate Government Operations Permanent Investigations Sub-Committee into communist influence in the army, the Central Intelligence Agency (CIA) and the Department of State. Sub-committee chairman Joseph McCarthy became notorious as a red-baiter in this role, and his unfair and intimidating methods led eventually to his censure by the Senate in 1954.⁴

More typical are the several instances when Congress has created a select committee specifically to investigate a subject of public concern. In recent years, for example, the Senate Select Committee on Campaign Practices – known popularly as the (Sam) Ervin Committee after its chairperson – won great public attention through its inquiries into the Watergate scandal. This in turn spawned further investigations into the security agencies (FBI, CIA and Defense Intelligence), the legality of whose activities had been questioned during the Watergate exposures. In 1987 the Reagan administration was also investigated by congressional select committees set up in each House to investigate the origins and management of the Iran-Contra affair. In this case the House and the Senate decided to conduct joint hearings into the affair. This investigation led directly to a number of indictments and prosecutions, including the prosecution of former Defense Secretary Caspar Weinberger. Weinberger, together with four other former officials, was pardoned by President Bush in late 1992. Later in the 1990s, Congress investigated President Clinton and First Lady Hillary Clinton's involvement in the Whitewater property company, which operated in Arkansas during Bill Clinton's tenure as governor. Other notable congressional investigations include

inquiries into racketeering in trade unions, safety in atomic power stations, the conduct of the Vietnam War, and standards in the pharmaceutical industry. More recently Congress has launched a number of investigations into the intelligence failures associated with the 9/11 attacks and the failure to find weapons of mass destruction in Iraq. And in 2016 the Republican Senate launched an investigation into the deal made by the Obama administration over the concessions it granted concluding a nuclear deal with Iran.

Note that it is not only government activities that come under congressional scrutiny – although it is usually investigations into the executive branch that arouse the most feeling, and controversy. The reason for this is simple: investigations (and oversight generally) raise awkward questions about where executive power begins and ends. With the rise of big government and the vast bureaucracy that accompanies it, Congress has found it increasingly difficult to perform the oversight function because it has limited access to exactly what goes on within the executive. Information is a valuable commodity, and one jealously guarded by presidents and their bureaucrats. Even though Congress can subpoena witnesses and documents, presidents have repeatedly refused or been extremely reluctant to hand over information. In recent years they have claimed ‘executive privilege’ to certain information. Unfortunately, this concept has no clear constitutional status, so the legality of withholding information remains an open question. Since Watergate and Richard Nixon’s unprecedented reluctance to furnish evidence to congressional committees (he withheld information at least 19 times on matters unrelated to Watergate), presidents have been more pliant. But as the Iran–Contra affair confirmed, the executive continues to hold the trump card because the sheer volume and technical complexity of documentation often makes it difficult for a hard-pressed committee even to know what to ask for.

This problem has been compounded by institutional changes in Congress. A more confrontational Congress has led to a decline in institutional identity where members have little incentive to act collectively in ways that challenge the executive. The ideological polarization characteristic of the post-1994 period aggravated this problem. Why should members engage in cross-party cooperation against the executive when this may damage party interests? Such allegations were rife during the post-9/11 period, when Congress did little to investigate the abuses at Abu Ghraib (the US military prison in Iraq where torture of prisoners was common), Guantánamo Bay and other abuses relating to the war in Iraq. The response of Congress to the administration’s handling of Hurricane Katrina in 2005 was also feeble. Even with Democratic control returning after 2006, relatively few hearings were conducted, although important investigations into waste and corruption in Iraq were held. When the Republicans later assumed control of Congress, they launched two Senate and five House investigations into the causes and administration handling of the attack on the US embassy in Benghazi in 2012 when the US ambassador and other diplomats were killed. By 2016 no clear evidence of wrongdoing had been established and many Democrats considered the hearings to be a politically motivated attack on Hillary Clinton who was Secretary of State at the time.

Finally, Congress has the power to impeach executive officers. Impeachment is a formal accusation of wrongdoing that the House of Representatives carries out, while the Senate actually tries and convicts impeached officials. But on only 13 occasions has the House used this power, and on only four has the Senate convicted. One president, Andrew Johnson,

was formally impeached, although the Senate failed to convict (by one vote), and the House Judiciary Committee voted articles of impeachment against Richard Nixon, who resigned before further action could be taken. Most famous of all, of course, was the impeachment of Bill Clinton in 1998 and the subsequent Senate trial in 1999. Clinton’s impeachment demonstrated both the advantages and the disadvantages of the impeachment process. On the one hand, the House vote for articles of impeachment (by 258 to 176, with 31 Democrats voting against the president) was widely regarded as a hasty and partisan interpretation of the ‘high crimes and misdemeanors’ which the Constitution established as grounds for impeachment. On the other hand, the Senate trial, while also partisan, was conducted with great dignity. In the event, the president was acquitted of both charges: perjury, 55 to 45 for acquittal; obstruction of justice, 50 to 50 for acquittal. With a two-thirds vote needed for conviction, neither vote came close to removing the president.

Thus, the Clinton impeachment undermined one of the main criticisms of the impeachment process – that it is so cumbersome and formalized that it is rarely used – while bolstering one of its advantages – that it is very difficult to secure a conviction unless the offences are truly a threat to the integrity of the office and the Constitution.

In addition to these structural criticisms, Congress is at any one time criticized for its specific failure to deal with a contemporary crisis or problem, or observers infer that a structural feature of the institution is permanent when it is only temporary. So in the 10 years following the Second World War it was common to accuse Congress of excessive partisanship, and the red-baiting committees of the late 1940s and early 1950s did in part represent Republican attempts to indict the activities of past or present Democratic administrations. By the late 1950s and early 1960s the charge was somewhat different: Congress was dominated by conservative, segregationist southerners. Following the reforms of the 1970s, the criticism has shifted once again. Now the accusation is that Congress is the creature of increasingly vocal and influential special- and public-interest lobbies – or simply that members serve their own rather than the public interest. Recent events seem to have confirmed this view in the minds of the American public. In 1989 five senators were found to have intervened in favour of Charles Keating of the Lincoln Savings and Loan Association. In 1991 the Senate Ethics Committee found evidence of wrongdoing by Senator Alan Cranston of California, and the other four senators were reprimanded. During the 103rd Congress (1993–4), 267 House members were found to have used an interest-free overdraft facility from a bank set up specifically for use by members of Congress. The public outcry at the extensive use of these ‘rubber checks’ was considerable. In early 1997, Speaker Newt Gingrich was formally reprimanded and fined by the House for illegally using income from college courses he taught for partisan purposes. Although he was re-elected, this unprecedented action against a sitting Speaker weakened his position as House leader and Gingrich eventually resigned in 1998. In addition the Republican Congress changed the rules on lobbying by launching the ‘K Street Project’, an insistence that only lobbyists (whose offices are concentrated in K Street in Washington) who sympathized with the Republican agenda would be given full access to the House. The most colourful recent congressional scandal involved the former minority speaker Tom Delay, who in 2011 was sentenced to three years’ imprisonment for his part in the Jack Abramoff scandal (see Biography). As can be seen from figure 9.4, public regard for Congress has sunk like a stone in recent years, falling to under 20 per cent in 2016.

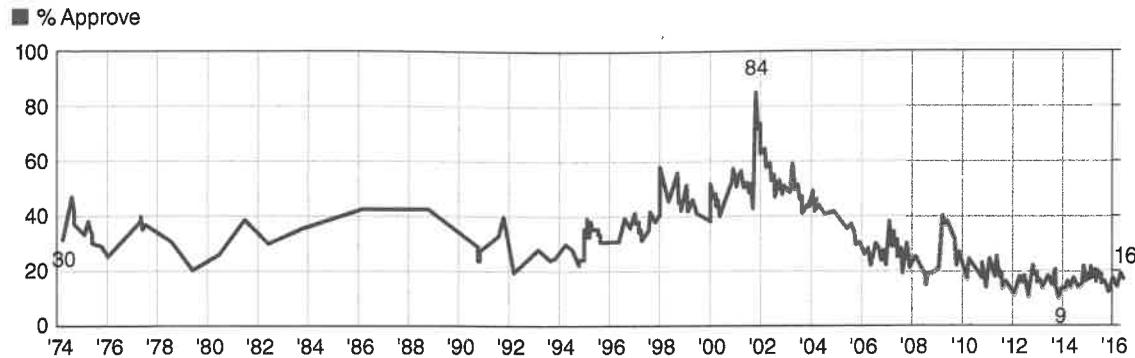


Figure 9.4 Approval rating of Congress, 1974–2016. *Question:* Do you approve or disapprove of the way the US Congress is handling its job?

Source: Congress and the Public, Gallup at www.gallup.com/poll/1600/congress-public.aspx.

Biography Jack Abramoff – Master Lobbyist and Convicted Felon

Jack Abramoff was a leading Republican supporter and lobbyist, who until his conviction and imprisonment in 2006 led what appeared to be a gilded existence. He had an elite education at Brandeis and Georgetown universities and at one time chaired the College National Republican Committee. After spells as a lawyer and film producer he courted many of the rising right-wing Republican members of Congress during the 1990s, including the future House majority leader Tom Delay. Working through various lobbying firms he offered gifts, campaign donations and other favours including golf trips to Scotland. At one time or another he represented Indian tribes, Russian energy companies and various sporting and gambling interests. Armed with inflated fees he spun a complex web of influence on Capitol Hill that was eventually to lead to

the trial, conviction and imprisonment of former representatives Bob Ney and Tom Delay. A number of other officials in the Bush administration and especially those in the Department of the Interior were also convicted.

Abramoff was perhaps the most egregious example of a whole breed of lobbyists who worked on Capitol Hill and in the executive branch during the 1990s and 2000s. A culture of influence peddling pervaded Washington – a culture that was largely tolerated by the Bush administration. On his release from prison Abramoff worked for a year in a pizza parlour and later became a crusader against corruption in government. *Casino Jack*, a biopic of Abramoff's life starring Kevin Spacey, was released in 2010. In 2012 he was given his own talk radio show devoted to the reform of politics.

CONTROVERSY 9 DIVIDED GOVERNMENT: FOR AND AGAINST

Until 1968 divided government (DG) was very much the exception in the US. Indeed, in the twentieth century there were only 12 years of DG down to 1968. However, from 1969 to 2017 unified government prevailed for just eight years (1977–81, 1993–5 and 2009–2011; although from 1981 to 1987 the Republicans controlled the presidency and the Senate but not the House). Scholarship in this area usually distinguishes between the causes and the consequences of DG. As far as the causes are concerned most attention has been paid to whether DG is purposeful or structural. It could be that voters choose DG (or decide it on purpose). The usual reasoning here is that voters deliberately want to balance presidency and Congress. They may, for example, choose a Republican president because Republicans are traditionally stronger foreign policy leaders, but a Democratic Congress because the Democrats will typically be more generous with constituency benefits than the Republicans. More recently, voters may have chosen a Republican Congress to keep taxes low and eliminate the budget deficit, but opted for a Democratic president who was more liberal on the 'social' issues (health care, abortion, gun control and education). Other scholars have argued that DG is structural or unintended. Much of this work attempted to explain what until 1994 appeared to be the Democrats' permanent residency in the House of Representatives. In particular, they argued that incumbency in itself provided a range of advantages, such as familiarity, ability to raise money and a record of having delivered benefits (the pork barrel) to the constituents.

However, the election of successive Republican Congresses in 1994, a Democratic Congress in 2006 and then a dramatic return to the Republicans in 2010 and 2014 suggests that incumbency is not always a guarantee of success. In fact it may well be that the voters are choosing DG. Of course, this entire debate matters hardly at all if the consequences of DG are benign. Many believe that they are not. On the contrary, they argue that having Congress and the presidency controlled by different parties leads to 'gridlock' – inter-branch conflicts lead to a seizing up of the policy-making process – and also to an adversarial and vindictive politics of the sort that inspired the impeachment of Bill Clinton. While there seems to be some truth to these charges, DG may also have the result of limiting the size and scope of government, and this seems particularly true when the Republicans control Congress. Whatever the case, DG is unlikely to go away. An increasingly fickle electorate, the finely balanced distribution of party seats in Congress and the increasingly competitive nature of presidential elections will ensure this. This pattern was, however, broken in 2016 when the Republicans retained control of Congress and famously won the presidency. However, their majority in the Senate was small and Donald Trump did, of course, win the Electoral College vote but lost the popular vote by a margin of over 2.8 million. All this should lead us to believe that divided government will return sometime in the near future.

Biography Paul Ryan – Speaker of the House and Republican Unifier?

Paul Ryan (Republican, Wisconsin), who was elected Speaker of the House in October 2015, is typical of a new breed of conservatives elected after 1994 who are committed both to public service and to being loyal to the conservative cause. In fact Ryan who was first elected in 1999 was widely regarded to be on the right of the Republican caucus at the time but because the House Republicans have moved even further to the right since then is now regarded as only 'moderately conservative'. Even so, he is the most conservative Republican speaker in the modern era. He was, of course, Mitt Romney's running mate in 2012 when it was assumed that his rightist views would balance Romney's reputation for pragmatism. He was also chosen as speaker following the resignation of John Boehner, who was unable to accommodate the party's right wing Freedom Caucus on

budget and other matters. Ryan has the reputation of being a serious thinker who puts his principles before personal ambition – he accepted the speakership only reluctantly and also resisted the temptation of challenging Donald Trump for the nomination in 2016. While identified as one of the few politicians who have the potential for unifying the diverse constituency that makes up the modern Republican Party, the Trump candidacy posed awkward questions for Ryan. In early June 2016 Ryan effectively endorsed Trump by saying that he would vote for him. However, later he distanced himself from some of Trump's more controversial policy positions and even went so far as to condemn Trump on a number of occasions. However, once Trump was elected Ryan reverted to his earlier position and enthusiastically supported the new president.

Reform and Change in Congress

The major criticisms of Congress prevalent in the late 1960s and early 1970s stressed two failings: legislative business was dominated by a few senior committee chairpersons, and in its dealings with the executive Congress was failing either to provide realistic policy-making alternatives or to check the burgeoning growth of executive power. Commentators had long noted that, if these problems were to be solved, political party organizations in the two houses would have to take the lead. Indeed, if we think in terms of centralizing and decentralizing influences, party and party leadership are clearly centralizing forces, while the committee structure essentially disperses power. Party voting was particularly strong during the 1890–1910 period, when over half the roll calls (votes on the floor) involved 90 per cent of one party voting differently from 90 per cent of the other. As figure 9.4 shows, party unity has increased markedly in the past 20 years so that, as of 2016, most members of each party are voting with their party colleagues the vast majority of the time. These figures apply to the House where party voting has been most pronounced. Since 2008, however, the Senate too has moved further in the direction of party unity.

Part of the increase in party unity in recent years derives from the simple fact that, as a solid conservative voting block, the southern Democrats have declined in number and influence. In fact most of the South is now Republican and conservative.

The role of the southern Democrats as monopolists of almost all the leadership positions in Congress was the major cause of the reform movement in Congress that began in the 1970s. By the early 1970s frustration at this had reached such a point that a number of sweeping reforms were introduced, reaching a crescendo in 1975 following the election of the unusually liberal post-Watergate Congress in 1974. The major changes were:

- 1 In 1970, the House ended non-recorded teller voting and switched over to electronic voting on all roll calls. As a result, the number of roll calls increased dramatically from 177 in 1969 to 541 in 1978.
- 2 In 1973, all bill-drafting in committee was opened to public scrutiny, so exposing to organized interests and constituents the precise policy preferences of members.
- 3 The Democratic caucus in the House voted in 1971 to permit 10 or more members to demand a special vote on a disputed committee chairperson assignment. In 1975 all nominees for chairperson were subject to an automatic secret ballot by caucus members.
- 4 Also in 1975, the caucus voted to give the Speaker the power to appoint Rules Committee members, subject to caucus approval.
- 5 Since 1973 all Democratic House members have been guaranteed a major committee assignment, and since 1974 committee assignments have passed from the Ways and Means Committee (traditionally dominated by southerners) to the party's Steering and Policy Committee.
- 6 Sub-committees were greatly strengthened and increased in number by a series of measures, beginning with the 1970 Legislature Reorganization Act. In 1973, the subcommittees were provided with a 'Bill of Rights' that gave to the full committee caucus the power to set sub-committee jurisdictions and select chairpersons. Subsequently, subcommittees have been allocated extra staff.
- 7 Although the number of formal changes in the Senate was lower than in the House, reforms were taken in the same general direction and in some cases were quite radical. Committee meetings were opened up to the public, the Democratic caucus's power was strengthened in relation to the nomination of committee chairpersons, and it became much easier to end a filibuster than it was in the early 1970s. Moreover, the committee structure was rationalized, with the number of committees reduced and some overlapping jurisdictions eliminated.

All these reforms were designed to speed up the legislative process and to weaken the entrenched power of committee chairpersons. By so doing, members hoped to make Congress a more effective policy-making body and therefore enhance its position in relation to the executive. In fact, in the wake of the abuse of executive power represented by the conduct of the Vietnam War and Watergate, Congress passed a number of laws specifically designed to curb such excesses and to strengthen the legislative branch. The two most important of these measures were:

- *The 1973 War Powers Act.* Overriding a presidential veto, Congress acted in 1973 to limit the president's ability to conduct war without the prior approval of Congress.

Under this law the commitment of US armed forces could occur only if Congress declared war or authorized the use of forces or if the president acted in a national emergency. During emergency actions, presidents were required to win congressional support after 60 days, and a further 30 days could be granted. After the 90-day period Congress could act to stop the use of troops in a law that is not subject to a presidential veto.

- *The 1974 Budget and Impoundment Control Act.* A perennial complaint of Congress watchers in the post-war period was the failure of the institution to match the executive's budget-making capacity. Presidents presented annual budgets, which had effectively become national policy programmes. Congress, in contrast, seemed unable to see the budget as a coherent whole. Indeed, it dealt with finance in an incremental, piecemeal way, reflecting the fragmentation characteristic of bicameralism and the appropriations process. The 1974 Act attempted to compensate for these problems by creating budget committees in each House and a Congressional Budget Office to provide specialized technical information for both chambers and allow Congress to compete with the president as budget-maker.

The reform movement was fuelled by two main forces – the increasing electoral independence of individual members from party and regional ties which a more rapid turnover of members and other changes had produced, and the already noted disillusionment with the institution's ability to deal with executive power. Chapter 8 showed just how much constituency pressures have increased and how electoral success now depends less on traditional party organization and more on personal resources. In order to 'deliver the goods' to constituents, members needed two things: more control within Congress over legislation and more control over the executive policy-making process. While the reforms went a long way towards the achievement of both objectives, they also had the unintended effect of weakening party leadership in Congress.

During the early 1990s Democratic congressional leaders were only too aware that their control over members was all too limited. The experience of the 103rd Congress (1993–4), when much of President Clinton's programme died in a Democratic Congress, persuaded them of the need for further reform. However, given the entrenched power of large numbers of Democratic congresspersons, this was not possible, and reform had to wait until the arrival of a new cohort of Republican members in early 1995. As mentioned above, the new Speaker, Newt Gingrich, was intent on reform that would strengthen party leadership. His own powers were enhanced and serious efforts were made to weaken committee power in relation to party influence. The main changes were:

- 1 A one-third reduction in staff.
- 2 The control of all staff by the chair.
- 3 A three-term limit for committee and sub-committee chairs.
- 4 A limit of five sub-committees on most committees, and an overall reduction from 118 in the 103rd Congress to 77 in the 104th.
- 5 Abolition of the District of Columbia, Merchant Marine and Fisheries, and Post Office and Civil Service Committees.

- 6 Limiting most members to serving on two committees and a total of four sub-committees.
- 7 Requiring that all committee votes be published and no proxy voting be allowed.
- 8 Requiring that almost all committee meetings be open and allowing coverage on television and radio, if requested.
- 9 The Speaker may no longer, with modest exceptions, refer bills to multiple committees simultaneously.⁵

Although in total these reforms constitute a shift away from committee power, the committees do remain the focal point of activity in Congress. Moreover, any weakness in the party leaders was likely to result in some return of authority to the committees. It should be mentioned that, although parallel moves have occurred in the Senate, reforms were much less radical. As has always been the case, power in the Senate tends to reside in the influence of individual senators, rather than being determined by parliamentary rules and procedures. Although the Gingrich reforms look like a sensible rationalization of decision-making, they were criticized for undermining cross-party civility in the institution and thereby producing a much more combative and abrasive style of decision-making.⁶ Moreover, a more partisan Congress works against the sort of bargaining and compromise which, historically, has been necessary for the legislative and executive branches to cooperate effectively.

With the election of George W. Bush in 2000, partisanship increased further as the Democrats felt embattled by an assertively conservative Republican Party. Moreover, politics became notably more ideological, emphasizing a trend that had been ongoing since about 1980 (see figure 9.5). Increased partisanship in Congress can largely be explained by two factors. First, the number of southern Democrats has declined. These members were conservative and often

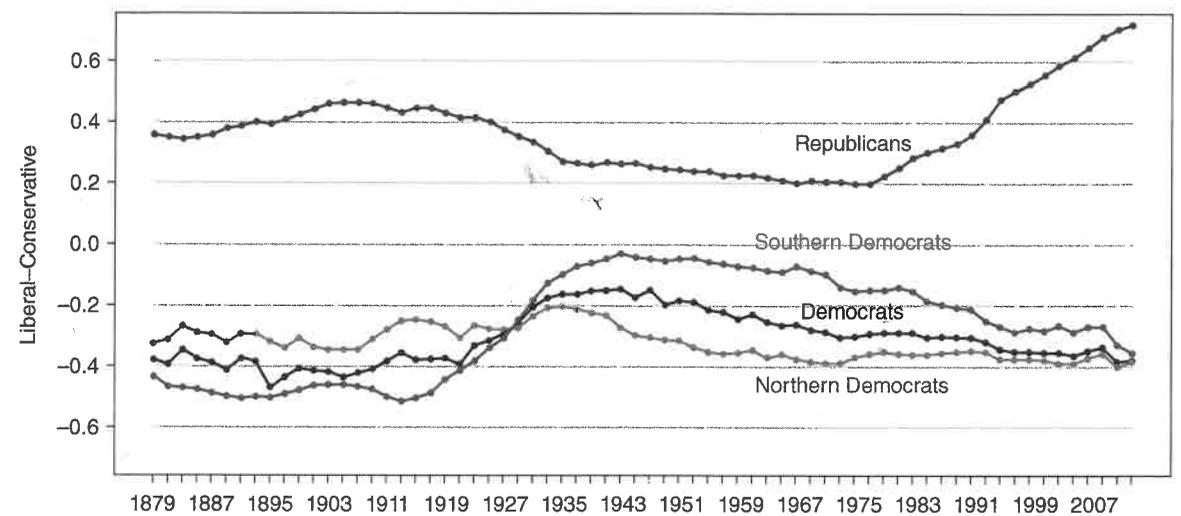


Figure 9.5 House of Representatives, 1879–2014: Chamber and party medians on liberal–conservative dimension
Source: The Polarization of the Congressional Parties, updated 21 March 2015, http://voteview.com/political_polarization_2014.html.

voted with the Republicans rather than their own party. In addition, the southern Democrats that remain have become markedly more liberal (figure 9.5 – the Senate has also polarized but slightly less than the House). Second, the Republicans in both houses have acquired a more cohesive ideology that combines conservatism on economic issues with conservatism on moral, civil liberties and foreign policy issues. As a result, Congress is now more ideologically charged, with personal and political animosities constantly being aired. We develop this point in the next chapters, but a more abrasive legislative environment has undoubtedly increased partisanship across the board in executive and state as well as legislative politics.

With the election of a Democratic Congress in 2006 a further wave of reforms was promised by Speaker Nancy Pelosi and Senate Majority Leader Harry Reid. In 2007 a bill was passed by both houses facilitating the identification of all ‘earmarks’ in spending bills so that wasteful pork-barrel projects could be identified and eliminated. In addition the bill called for ‘unprecedented disclosure of how lobbyists interact with lawmakers’, including a flat-out prohibition on lobbyists treating lawmakers to meals and trips; restrictions on the use by members of Congress of corporate jets; and a rule that barred former lawmakers from directly lobbying their old colleagues for two years after retiring, twice the old standard.

In spite of these good intentions, however, earmarking continued almost unabated during 2007 and 2008, with 11,000 earmarks worth more than \$15 billion being enacted in 2007. It was not until 2011 that the House declared a moratorium on earmarks that resulted in a significant decline in the practice. However, ever-resourceful members have found ways around this ban, mainly by leaving unallocated amounts in spending bills that can be used for constituency benefits.

In one sense Congress is more efficient, for although no more bills are passed, those that are tend to be more complex and comprehensive. In addition, committees do expedite bills more rapidly than before. But the assignment of bills to several committees cancels out these advantages. In other words, Congress remains an institution where blockages, delays and vetoes can happen at several stages in the legislative process. As a result it retains an inbuilt conservative bias – it is easier to prevent things happening than to pass bills. The increase in the number of ‘omnibus’ bills represents an attempt to please as many members as possible. But each of these bills is passed only after an enormous amount of members’ time and effort has been spent on them. In other words, coalition-building – always a defining characteristic of Congress – has assumed an even greater importance. Partly as a result of this institutional characteristic, although also because of the electoral changes outlined in chapter 6, a conservative coalition continues to exercise considerable influence. Until the early 1970s this consisted of southern Democrats and northern Republicans. During the 1980s it consisted of southern Democrats and Republicans from every region. Since 2006 it has consisted of all Republicans and an ever-dwindling band of Democrats.

Is Congress the ‘Broken Branch’?

In some respects, Congress reflects the moods and wishes of the nation more accurately than for many years. This is a direct result of a new, much more intimate congressperson–constituency relationship and the easier access to legislators which organized interests now

enjoy. Since the 1980s, public opinion has, at least on some issues, moved to the right, and Congress has accurately mirrored this trend. Indeed surveys repeatedly show that, although members of the public are deeply disillusioned with Congress as an institution, they actually hold their own members in relatively high regard.

However, none of this should blind us to the fact that the essential character of Congress remains. For while the House and Senate can respond to outside pressures or to perceptions that the collective interest must take precedence over particular interests – as was amply shown in the aftermath of 9/11 – collective action of this sort remains rare. The budget battles during 2011 and 2012, when no agreement on spending and tax increases was reached between the warring parties in Congress illustrates this point well. In its everyday business, party and particular interest dominates, for the central dilemma for Congress today is that building coalitions in a highly partisan but fragmented institution involves many trade-offs, with costs in terms of time, coherence and efficiency mounting steadily as the legislative process lumbers on, and, although reforms have to a degree streamlined decision-making, serving party ideology – and thus indirectly constituents – remains the major focus of individual legislators. In other words it is difficult to build a clear *institutional* identity in Congress. This greatly undermines some of the important institutional functions of Congress, including careful deliberation of legislation and oversight of the executive branch. In the late 1990s, amid much fanfare, Congress claimed some responsibility for balancing the national budget. Yet just a few years later the deficit ballooned once more. And while some of the blame for this must lie with a presidency preoccupied with issues of national security, neither Republicans nor Democrats in Congress have done much to hold back federal government spending. Indeed House and Senate Republicans endorsed the Bush administration’s tax cuts of the early 2000s that had the effect of reducing government income. And, following the aftermath of the economic dislocation of the 2008–10 period, Congress was once again unable to act decisively. The Obama administration’s attempts to build a consensus on how to bring the deficit under control foundered on the rocks of partisan squabbling and an inability of the two parties to agree on even the rudiments of a plan to achieve this objective. Given that Congress had agreed on automatic cuts and tax increases to trigger at the end of the 112th Congress should no agreement be concluded, the economy was in danger of falling off a ‘Fiscal Cliff’ at the start of the 113th Congress in 2013. In the event a last minute compromise was reached but only at the price of more brinkmanship in 2014 and 2015. Indeed, the resignation of John Boehner in 2015 was in part caused by a battle over spending – on this occasion the federal funding of Planned Parenthood, an organization that the Republicans regard as a champion of women’s right to abortion.

Summary

Congress performs a number of vital functions, including representing constituency interests, passing all legislation, confirming nominations to the executive branch and the Supreme Court, approving international treaties, declaring war and overseeing the executive. In both houses power is dispersed to the committees with parties and party leadership provided a countervailing influence. Since the 1960s three main waves of reform have

occurred. In the 1970s the main aim was to democratize the House and to reduce the power of the southern Democrats by undermining seniority. After 1994, the aim was to concentrate power in the Republican leadership and reduce the power of the committees. Most recently, after 2006, first the Democrats and then the Republicans tried to control 'earmarking' and the power of outside lobbyists. The chapter concluded with the claim that Congress continues to fail to act as an *institution* that can represent the public interest rather than to serve party ideology and the particular interests of constituents and lobbyists.

Questions for Discussion

- 1 What are the main powers of Congress? How well does it perform them?
- 2 What are the advantages and disadvantages of divided government? Answer with reference to the post-2010 period.
- 3 Why do presidents have such difficulty getting Congress to agree with their proposals? Answer with respect to the period since 2012.
- 4 What are the main responsibilities of the Speaker of the House of Representatives? Why has the position been so difficult to fill in recent years?

Glossary

Appropriations Committee The House committee responsible for spending money

cloture (closure rule) The Senate parliamentary device that allows the overturning of a Senate filibuster (see below). Sixty senators are needed to implement the device

Conference Committees Cross-house committees designed to reconcile House and Senate versions of a bill

conservative coalition The combination of southern Democrats and northern Republicans that had a built-in majority in Congress for much of the first two-thirds of the twentieth century

divided government Party control of Congress and presidency split between the two parties

earmarking Guaranteeing funding for specific constituency projects or benefits as attachments to bills

Floor Leaders (Majority/Minority) Party leaders in the House and Senate

impeachment The formal accusation of wrongdoing by an officeholder

investigative power (Congress) The power of Congress to investigate the executive branch

Johnson Rule As Senate Majority Leader Lyndon Johnson established that every freshman senator should have a committee assignment

Log-rolling The exchange of political favours, or 'I'll scratch your back if you scratch mine'

oversight The power of Congress to oversee the implementation of policy by the executive branch

pork-barrel politics Legislation designed to benefit individual constituencies

President Pro Tempore The honorary position held by the Vice President of the United States, who votes in the Senate in the event of a tie

presidential veto The ability of presidents to veto legislation that can only be overturned by a two-thirds majority in both houses

purposeful voting Voting deliberately designed to seat or unseat a candidate based on a rational calculation

Rules Committee The House committee that decides on important parliamentary procedures, including agendas

select committees Ad hoc committees established to investigate particular areas of public policy such as ageing or intelligence

Senate filibuster The parliamentary device that allows a senator to speak without break until the time allotted to the debate is used up

Speaker, House The leading party spokesperson in the House of Representatives

standing committees The permanent committees in both houses

subpoena A legally enforceable requirement that witnesses and evidence be available to congressional committees

War Powers Act 1973 The law that placed formal limits on the president's ability to wage war

Ways and Means Committee The House committee responsible for taxation matters

Notes

- 1 Impeachment is a formal act of accusation similar to indictment. The impeachment process involves the gathering of evidence. If sufficient evidence is found, the Senate then tries the impeached person.
- 2 Burdett A. Loomis, *The Contemporary Congress* (New York: St Martin's Press, 1996), chapter 10.
- 3 Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics, 2003-2004* (Washington, DC: Congressional Quarterly Press, 2004), table 6.10. See also G. Calvin Mackenzie, *The Politics of Presidential Appointments* (New York: Free Press, 1981), table 8.1.
- 4 The institution of red-baiting, if not the actual practice, continued with the House Un-American Activities Committee (later the Internal Security Committee) until its abolition in 1975.
- 5 Loomis, *The Contemporary Congress*, p. 81.
- 6 Richard F. Fenno Jr, *Learning to Govern: An Institutional View of the 104th Congress* (Washington, DC: Brookings Institution, 1998).

Further Reading

A good textbook treatment of Congress is Burdett A. Loomis and Wendy A. Schiller, *The Contemporary Congress*, 6th edn (New York: Rowman and Littlefield, 2015). A comprehensive treatment is also provided by Roger H. Davidson, Walter J. Oleszek and Frances E. Lee, *Congress and its Members*, 15th edn (Washington, DC: Congressional Quarterly Press, 2015). The reforms of the 1970s and 1980s are covered in James L. Sundquist, *The Decline and Resurgence of Congress* (Washington, DC: Brookings Institution, 1981), and

Roger H. Davidson (ed.), *The Post-Reform Congress* (New York: St Martin's Press, 1992). A recent critique of Congress is Thomas E. Mann and Norman J. Ornstein, *The Broken Branch: How Congress is Failing America and How to Get it Back on Track* (New York: Oxford University Press, 2006). Facts and figures on the institution can be found in Norman J. Ornstein, Thomas E. Mann and Michael J. Malbin, Andrew Rugg and Rafaella Wakeman, *Vital Statistics on Congress 2017* (Washington, DC: Brookings Institution, 2017).



CHAPTER 10 THE PRESIDENCY I POWERS AND SELECTION

Outline

- Formal Sources of Power
- Briefing: The American Presidency: A Unitary Institution
- Informal Powers
- Presidential Selection
- Controversy 10. Primaries: For and Against
- Briefing: The Role of Money
- Presidential Selection: Faults and Foibles
- Summary
- Questions for Discussion
- Glossary
- Notes
- Further Reading

There should be no bitterness or hate where the sole thought is the welfare of the United States of America. No man can occupy the office of President without realizing that he is President of all the people.

– FRANKLIN D. ROOSEVELT

In the American political system the president is the only national unifying force. Only the president is elected by a single national constituency, and *all* executive power is vested in the office. He has, therefore, both great responsibilities and great power. Because the chief executive is so centrally placed, public expectations of the office are high.¹ But in recent years few incumbents have possessed the qualities necessary to carry out the job efficiently and responsibly. Every president between the mid-1960s and 2016 was associated