

CONGRESS AND THE PRESIDENT

THE CONSTITUTION ENVISIONED that the Congress and the president would have discrete powers and that one branch would be able to hold the other in check. Over the years, and especially since the 1930s, the president often has held the upper hand. In times of crisis or simply when it was unable to meet public demands for solutions, Congress willingly has handed over its authority to the chief executive. Even though the chief executive has been granted greater latitude, legislators do, of course, retain ultimate legislative authority to question executive actions and to halt administration activities by cutting off funds. Congress also wields ultimate power over the president, since it can impeach and even remove him from office.

The Shifting Balance of Power

The balance of power between Congress and the executive branch has seesawed over time. The post–Civil War Congress attempted to regain control of the vast executive powers that President Abraham Lincoln, recently slain, had assumed. Angered at the refusal of Lincoln’s successor, Andrew Johnson, to go along with its radical “reforms” of the South, Congress passed the Tenure of Office Act, which prevented the president, under the threat of civil penalty, from removing any Cabinet-level appointees of the previous administration. Johnson accepted the challenge and fired Lincoln’s secretary of war, who many believed was guilty of heinous war crimes. The House voted to impeach Johnson, but the desertion of a handful of Republican senators prevented him from being removed from office. (The effort fell short by one vote.) Nonetheless, the president’s power had been greatly weakened, and the Congress again became the center of power and authority in the federal government.

Beginning in the early 1900s, however, a series of strong presidents acted at the expense of congressional power. Theodore Roosevelt, Franklin D. Roosevelt, and Lyndon B. Johnson, especially, viewed the presidency as carrying with it enormous powers.

Over the years, especially since the presidency of Franklin D. Roosevelt, Congress has ceded to the president a major role in the legislative process. Today, Congress often finds itself responding to executive branch proposals. Critics of Congress point to its slow and unwieldy nature as well as the complexity of national problems as reasons that Congress often doesn’t seem to act on its own.

oversight

Congressional review of the activities of an agency, department, or office.

■ Condoleezza Rice testifies before the U.S. Senate Foreign Relations Committee during her confirmation hearing to become Secretary of State. The often heated questioning in January of 2005 was fully televised and created such sparring between Rice and some Democratic senators that it was even parodied in a skit on Saturday Night Live.

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Congressional Oversight of the Executive Branch

Since the 1960s, Congress has increased its **oversight** of the executive branch.⁵⁹ Oversight subcommittees became particularly prominent in the 1970s and 1980s as a means of promoting investigation and program review, to determine if an agency,

department, or office is carrying out its responsibilities as intended by Congress.⁶⁰ Congressional oversight also includes checking on possible abuses of power by members of the military and governmental officials, including the president.

Key to Congress’s performance of its oversight function is its ability to question members of the administration to see if they are enforcing and interpreting the laws as intended by Congress. These committee hearings, now routinely televised, are among Congress’s most visible and dramatic actions.

The hearings are not used simply to gather information. Hearings may focus on particular executive branch actions and often signal that Congress believes changes in policy need to be made before an agency next comes before the committee to justify its budget. Hearings also are used to improve program administration. Since most members of House and Senate committees and subcommittees are interested in the issues under their jurisdiction, they often want to help and not hinder policy makers.

Although most top government officials appear before various House and Senate committees regularly to update them on their activities, this is not necessarily the case for those who do not require Senate confirmation, such as, in the George W. Bush administration, National Security Advisor

Condoleezza Rice. Sometimes members of the administration are reluctant to appear before Congress.

Legislators augment their formal oversight of the executive branch by allowing citizens to appeal adverse bureaucratic decisions to agencies, Congress, and even the courts. The Congressional Review Act of 1996 allows Congress to nullify agency regulations by joint resolutions of legislative disapproval. This process, called **congressional review**, is another method of exercising congressional oversight.⁶¹ The act provides Congress with sixty days to disapprove newly announced agency regulations, often passed to implement some congressional action. A regulation is disapproved if the resolution is passed by both chambers and signed by the president, or when Congress overrides a presidential veto of a disapproving resolution. This act was not used until 2001, when Congress reversed Clinton administration ergonomics regulations, which were intended to prevent job-related repetitive stress injuries.

Foreign Affairs Oversight. The Constitution divides foreign policy powers between the executive and the legislative branches. The president has the power to wage war and negotiate treaties, whereas the Congress has the power to declare war and the Senate has the power to ratify treaties. The executive branch, however, has become pre-eminent in foreign affairs despite the constitutional division of powers. This supremacy is partly due to a series of crises and the development of nuclear weapons in the twentieth century; both have necessitated quick decision making and secrecy, which are much easier to manage in the executive branch. Congress, with its 535 members, has a more difficult time reaching a consensus and keeping secrets.

After years of playing second fiddle to a series of presidents from Theodore Roosevelt to Richard M. Nixon, a “snoozing Congress” was “aroused” and seized for itself the authority and expertise necessary to go head-to-head with the chief executive.⁶² In a delayed response to Lyndon B. Johnson’s conduct of the Vietnam War, Congress passed in 1973 the **War Powers Act** over President Nixon’s veto. This act requires presidents to obtain congressional approval before committing U.S. forces to a combat zone. It also requires them to notify Congress within forty-eight hours of committing troops to foreign soil. In addition, the president must withdraw troops within sixty days unless Congress votes to declare war. The president also is required to consult with Congress, if at all possible, prior to committing troops.

The War Powers Act has been of limited effectiveness in claiming a larger congressional role in international crisis situations. Presidents Gerald Ford, Jimmy Carter, and Ronald Reagan never consulted Congress in advance of committing troops, citing the need for secrecy and swift movement, although each president did notify Congress shortly after the incidents. They contended that the War Powers Act was probably unconstitutional because it limits presidential prerogatives as commander in chief.

In 2001, when Congress passed a joint resolution authorizing the president to use force against terrorists, the resolution included language that met War Powers Act requirements and waived the sixty-day limit on the president’s authority to involve U.S. troops abroad. This action prompted two senators who served in Vietnam, John McCain (R–AZ) and John Kerry (D–MA), to express concern over handing the president such open-ended use of military force. These concerns may have been valid, as some critics say President George W. Bush took the congressional resolution as a blank check. Said one high-ranking Department of Justice official, “the president enjoys broad unilateral authority to use force in the war on terrorism—with or without specific congressional authorization.”⁶³

Confirmation of Presidential Appointments. The Senate plays a special oversight function through its ability to confirm key members of the executive branch, as well as presidential appointments to the federal courts. As discussed in chapters 9 and

congressional review

A process whereby Congress can nullify agency regulations by a joint resolution of legislative disapproval.

War Powers Act

Passed by Congress in 1973; the president is limited in the deployment of troops overseas to a sixty-day period in peacetime (which can be extended for an extra thirty days to permit withdrawal) unless Congress explicitly gives its approval for a longer period.

10, although the Senate generally confirms most presidential nominees, it does not always do so. A wise president considers senatorial reaction before nominating potentially controversial individuals to his administration or to the federal courts.

The Impeachment Process. As discussed earlier, the impeachment process is Congress’s ultimate oversight of the U.S. president (as well as of federal court judges). The U.S. Constitution is quite vague about the impeachment process, and much of the debate about it concerns what is an impeachable offense. The Constitution specifies that a president can be impeached for treason, bribery, or other “high crimes and misdemeanors.” Most commentators agree that this phrase was meant to mean significant abuses of power. In *Federalist No. 65*, Alexander Hamilton noted his belief that impeachable offenses “are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to society itself.”

House and Senate rules control how the impeachment process operates (see Table 7.7). Yet, because the process is used so rarely, and under such disparate circumstances, there are few hard and fast rules. Until 1998, the U.S. House of Representatives had voted to impeach only sixteen federal officials—and only one of those was a president, Andrew Johnson. (Of those, seven were convicted and removed from office and three resigned before the process described below was completed.)

Until late 1998, only three resolutions against presidents had resulted in further action: (1) John Tyler, charged with corruption and misconduct in 1843; (2) Andrew Johnson, charged with serious misconduct in 1868; and, (3) Richard M. Nixon, charged with obstruction and the abuse of power in 1974. The House rejected the charges against Tyler; Johnson was acquitted by the Senate by a one-vote margin; and Nixon resigned before the full House voted on the articles of impeachment. Four articles of impeachment against President Bill Clinton were considered in the House in 1998; two of these were sent to the Senate, where the president was found not guilty of the charges contained in both articles.

TABLE 7.7 The Eight Stages of the Impeachment Process

1. **The Resolution.** A resolution, called an inquiry of impeachment, is sent to the House Judiciary Committee. Members also may introduce bills of impeachment, which are referred to the Judiciary Committee.
2. **The Committee Vote.** After the consideration of voluminous evidence, the Judiciary Committee votes on the resolution or bill of impeachment. A positive vote from the committee indicates its belief that there is sufficiently strong evidence for impeachment in the House.
3. **The House Vote.** If the articles of impeachment are recommended by the House Judiciary Committee, the full House votes to approve (or disapprove) a Judiciary Committee decision to conduct full-blown impeachment hearings.
4. **The Hearings.** Extensive evidentiary hearings are held by the House Judiciary Committee concerning the allegations of wrongdoing. Witnesses may be called and the scope of the inquiry may be widened at this time. The committee heard only from the independent counsel in the Clinton case.
5. **The Report.** The committee votes on one or more articles of impeachment. Reports supporting this finding (as well as dissenting views) are forwarded to the House and become the basis for its consideration of specific articles of impeachment.
6. **The House Vote.** The full House votes on each article of impeachment. A simple majority vote on any article is sufficient to send that article to the Senate for its consideration.
7. **The Trial in the Senate.** A trial is conducted on the floor of the Senate with the House Judiciary Committee bringing the case against the president, who is represented by his own private attorneys. The Senate, in essence, acts as the jury, with the chief justice of the United States presiding over the trial.
8. **The Senate Vote.** The full Senate votes on each article of impeachment. If there is a two-thirds vote on any article, the president automatically is removed from office and the vice president assumes the duty of the president. Both articles issued against President Clinton, charging him with lying to a grand jury and encouraging a grand jury witness to lie or mislead, were defeated in the Senate.

CONGRESS AND THE JUDICIARY

AS PART OF OUR SYSTEM of checks and balances, the power of judicial review (discussed in chapters 2 and 10) gives the Supreme Court the power to review the constitutionality of acts of Congress. This is a potent power because Congress must ever be mindful to make sure that the laws that it passes are in accord with the U.S. Constitution. That is not to say, however, that Congress always does this. In spite of a recent Supreme Court case that indicated that a Nebraska state law banning partial birth abortion was unconstitutional, the U.S. Congress passed its own version outlawing the procedure despite extensive commentary that it would also be declared unconstitutional. Proponents wanted to get other members on record about their support or lack of support before the 2004 elections so that the issue could be used by Republicans to highlight the votes of Democrats—including John Kerry and John Edwards, who voted against the bill.

Congress exercises its control over the judiciary in a variety of ways. Not only does it have the constitutional authority to establish the size of the Supreme Court, its appellate jurisdiction, and the structure of the federal court system, but the Senate also has the authority to accept or reject presidential nominees to the federal courts (as well as executive branch appointments).

In the case of federal district court appointments, senators often have considerable say in the nomination of judges from their states through **senatorial courtesy**, a process by which presidents generally defer to the senators who represent the state where the vacancy occurs. The judicial nominees of both Presidents Bill Clinton and George W. Bush have encountered a particularly hostile Senate. “Appointments have always been the battleground for policy disputes,” says political scientist Calvin MacKenzie. But now, “what’s new is the rawness of it—all of the veneer is off.”⁶⁴ (Nominations to the Supreme Court and lower federal courts are discussed in chapter 10.)

An equally potentially potent form of congressional oversight of the judicial branch, which involves both the House and the Senate, is the setting of the jurisdiction of the federal courts. Originally, the jurisdiction, or ability of the federal courts to hear cases, was quite limited. Over time, however, as Congress legislated to regulate the economy and even crime, the caseload of the courts skyrocketed. No matter how busy federal judges are, it is ultimately up to the Congress to determine the number of judges on each court.

In 2004, several members of Congress, unhappy with Supreme Court decisions and the Senate’s failure to pass a proposed constitutional amendment to ban same-sex marriage, began to push for a bill to prevent federal courts from hearing challenges to the federal Defense of Marriage Act. In the House, the majority leader pledged to promote similar legislation to bar court challenges to the Pledge of Allegiance and other social issues, including abortion. When Congress rears the ugly head of jurisdiction, it is signaling to the federal courts that Congress believes federal judges have gone too far.

senatorial courtesy

A process by which presidents, when selecting district court judges, defer to the senator in whose state the vacancy occurs.

SUMMARY

THE SIZE AND SCOPE OF CONGRESS, and the demands put on it, have increased tremendously over the years. In presenting the important role that Congress plays in American politics, we have made the following points:

1. The Constitution and the Legislative Branch of Government

The Constitution created a bicameral legislature with members of each body to be elected differently, and thus to represent different constituencies. Article I of

the Constitution sets forth qualifications for office, states age minimums, and specifies how legislators are to be distributed among the states. The Constitution also requires seats in the House of Representatives to be apportioned by population. Thus, after every U.S. Census, district lines must be redrawn to reflect population shifts. The Constitution also provides a vast array of enumerated and implied powers to Congress. Some, such as law-making and oversight, are shared by both houses of Congress; others are not.

2. How Congress Is Organized

Political parties play a major role in the way Congress is organized. The speaker of the House is traditionally a member of the majority party, and members of the majority party chair all committees. Because the House of Representatives is large, the speaker enforces more rigid rules on the House than exist in the Senate. In addition to the party leaders, Congress has a labyrinth of committees and subcommittees that cover the entire range of government policies, often with a confusing tangle of shared responsibilities. Each legislator serves on one or more committees and multiple subcommittees. It is in these environments that many policies are shaped and that members make their primary contributions to solving public problems.

3. The Members of Congress

Members of Congress live in two worlds—in their home districts and in the District of Columbia. They must attempt to appease two constituencies—party leaders, colleagues, and lobbyists in Washington, D.C., and constituents in their home districts. Members, especially those in the House, never stop running for office. Incumbency is an important factor in winning reelection.

4. How Members Make Decisions

A multitude of factors impinge on legislators as they decide policy issues. These include political party, constituents, colleagues and caucuses, staff and support agencies and interest groups, lobbyists, and political action committees.

5. The Law-making Function of Congress

The road to enacting a bill into law is long and strewn with obstacles, and only a small share of the proposals introduced become law. Legislation must be approved by committees in each house and on the floor of each chamber. In addition, most House legislation initially is considered by a subcommittee and must be approved by the Rules Committee before getting to the floor. Legislation that is passed in different forms by the two chambers must be resolved in a conference before going back to each chamber for a vote and then to the president, who can sign the proposal into law, veto it, or allow it to become law without his signature. If Congress adjourns within ten days of passing legislation, that bill will die if the president does not sign it.

6. Congress and the President

Although the Framers intended for Congress and the president to have discrete spheres of authority, over time, power shifted between the two branches, with Congress often appearing to lose power to the benefit of the president. Still, Congress has attempted to oversee the actions of the president and the executive branch through committee hearings where members

of the administration testify. Congress also uses congressional review to limit presidential power. Congress also has attempted to rein in presidential power through passage of the War Powers Act, to little practical effect. Congress, through the Senate, also possesses the power to confirm or reject presidential appointments. Its ultimate weapon is the power of impeachment and conviction.

7. Congress and the Judiciary

Congress exercises its control over the judiciary in a variety of ways. Not only does it have the constitutional authority to establish the size of the Supreme Court, its appellate jurisdiction, and the structure of the federal court system, but the Senate also has the authority to accept or reject presidential nominees to the federal courts (as well as executive branch appointments).

KEY TERMS

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 bicameral legislature, p. 238
 bill, p. 240
 cloture, p. 266
 conference committee, p. 250
 congressional review, p. 271
 delegate, p. 260
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 majority leader, p. 246
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 party caucus or conference, p. 246
 pocket veto, p. 266
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 redistricting, p. 240
 select (or special) committee 250
 senatorial courtesy, p. 273
 seniority, p. 254
 speaker of the House, p. 243
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SELECTED READINGS

- Bianco, William T., ed. *Congress on Display, Congress at Work*. Ann Arbor: University of Michigan Press, 2000.
- Campbell, Colton C., and Paul S. Herrnsen. *War Stories from Capitol Hill*. New York: Pearson, 2003.
- Davidson, Roger H., and Walter Oleszek. *Congress and Its Members*, 9th ed. Washington, DC: CQ Press, 2003.
- Deering, Christopher J., and Steven S. Smith, *Committees in Congress*, 3rd ed. Washington, DC: CQ Press, 1997.
- Dodd, Lawrence C., and Bruce I. Oppenheimer, eds. *Congress Reconsidered*, 7th ed. Washington, DC: CQ Press, 2000.
- Fenno, Richard F., Jr. *Going Home: Black Representatives and Their Constituents*. Chicago: University of Chicago Press, 2003.
- Fenno, Richard F., Jr. *Home Style: House Members in Their Districts*, reprint ed. New York: Longman, 2002.
- Gertzog, Irwin N. *Women and Power on Capitol Hill: Reconstructing the Congressional Women's Caucus*. Boulder, CO: Lynne Rienner, 2004.
- Hibbing, John R., and Elizabeth Theiss-Morse. *Congress as Public Enemy: Public Attitudes Toward American Political Institutions*. New York: Cambridge University Press, 1996.
- King, David C. *Turf Wars: How Congressional Committees Claim Jurisdiction*. Chicago: University of Chicago Press, 1997.
- Mayhew, David R. *Congress: The Electoral Connection*. New Haven, CT: Yale University Press, 1974.
- Oleszek, Walter J. *Congressional Procedures and the Policy Process*, 6th ed. Washington, DC: CQ Press, 2004.
- Polsby, Nelson W. *How Congress Evolves: Social Bases of Institutional Changes*. New York: Oxford University Press, 2003.
- Price, David E. *The Congressional Experience: A View from the Hill*, 2nd ed. Boulder, CO: Westview, 2000.

- Rosenthal, Cindy Simon, ed. *Women Transforming Congress*. Norman: University of Oklahoma Press, 2003.
- Schickler, Eric. *Disjointed Pluralism: Institutional Innovation and the Development of the U.S. Congress*. Princeton, NJ: Princeton University Press, 2001.
- Swers, Michele. *The Difference Women Make: The Policy Impact of Women in Congress*. Chicago: University of Chicago Press, 2002.
- Thurber, James A., ed. *Rivals for Power: Congressional Presidential Relations*. Lanham, MD: Rowman and Littlefield, 2001.

WEB EXPLORATIONS

- To find out who your representative is and how he or she votes, see <http://www.thomas.loc.gov>
- To learn more about the legislative branch, see www.senate.gov/ and www.house.gov/
- To evaluate your own representative, see <http://scorecard.aclu.org/scorecardmain.html>
- To learn more about the 109th Congress, see <http://clerk.house.gov/>
- For more on the offices of the Congress, including the speaker of the House and his activities, see <http://speakernews.house.gov/>
- To get up-to-date data on House leaders, see <http://tomdelay.house.gov/> and <http://democraticleader.house.gov/>
- For information on specific committees, see www.senate.gov/ and www.house.gov/