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Congress

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ON FEBRUARY 6, 2002, REPRESENTATIVE NANCY PELOSI (D–CA) broke through a glass ceiling when she was sworn in as the Democratic House whip, becoming the first woman in history to win an elected position in the formal House leadership.¹ The whip position has long been viewed as a stepping stone to becoming the speaker of the House. House Speakers Tip O’Neill (D–MA) and Newt Gingrich (R–GA) were both former whips. As whip, it was Pelosi’s responsibility to convince Democratic members of the House to vote together on the full range of bills before the 107th Congress.

First elected to Congress from California in 1986, Pelosi quickly made her mark as an advocate for human rights in China and as an effective fundraiser. Her fund-raising skills and years of experience in the House, in fact, helped her win the hotly contested race for the whip position. As part of the House leadership, she became the first woman to attend critical White House meetings, where, said Pelosi, “Susan B. Anthony and others are with me.”²

Although the president’s party traditionally loses seats in midterm elections, in 2002 House Republicans actually increased their majority. Critics charged that the Democrats lacked a consistent message. Therefore, soon after the election results were in, House Minority Leader Richard Gephardt (D–MO) resigned from his position, leaving Pelosi in line to succeed him. Representative Harold Ford (D–TN), one of the youngest members of the House, threw his hat into the ring to oppose Pelosi’s campaign for the leader’s position. Ford, a moderate, charged that Pelosi, who already was being referred to by conservatives as a “San Francisco liberal,” was simply too liberal to lead the Democrats back to political viability in the 2004 elections. A majority of the members of the Democratic House Caucus, however, did not appear fazed by these charges; Pelosi was elected minority leader by an overwhelming majority of the caucus members. Steny Hoyer (D–MD), who initially had run against Pelosi for the whip position in the 107th Congress, was elected Democratic whip in the 108th Congress.


The election of Pelosi as Democratic leader sharply alters the look of power in the House of Representatives. As the leader of all House Democrats, Pelosi automatically is accorded tremendous respect, as well as media attention as the face of Democrats in the House. Thus, more than 150 years after

CHAPTER OUTLINE

- The Constitution and the Legislative Branch of Government
- How Congress Is Organized
- The Members of Congress
- How Members Make Decisions
- The Law-making Function of Congress
- Congress and the President
- Congress and the Judiciary

women first sought the right to vote, a woman member of Congress now leads one party in the House of Representatives. The representation of women in Congress has also come a long way since 1917, when

Jeanette Rankin (R-MT) became the first woman elected to Congress. Women currently make up over 50 percent of the population but only 15 percent of the members of Congress.³

 THE FRAMERS' ORIGINAL CONCEPTION of the representational function of Congress was much narrower than it is today. Instead of regarding members of Congress as representatives of the people, those in attendance at the Constitutional Convention were extremely concerned with creating a legislative body that would be able to make laws to govern the new nation. Over time, Congress has attempted to maintain the role of a law- and policy-making institution, but changes in the demands made on the national government have allowed the executive and judicial branches to gain powers at the expense of the legislative. Moreover, although the Congress as a branch of government has experienced a decline in its authority, the power and the importance of individual members have grown. Thus, the public doesn't think much about Congress itself, but somewhat ironically, citizens hold their own elected representatives in high esteem.

The dual roles that Congress plays contribute to this divide in public opinion. Members of Congress must combine and balance the roles of lawmaker and policy maker with being a representative of their district, their state, their party, and sometimes their race, ethnicity, or gender. Not surprisingly, this balancing act often results in role conflict.

In this chapter, we will analyze the powers of Congress and the competing roles members of Congress play as they represent the interests of their constituents, make laws, and oversee the actions of the other two branches of government. We will also see that, as these functions have changed throughout U.S. history, so has Congress itself.

- First, we will examine what *the Constitution* has to say about Congress—the *legislative branch of government*.
- Second, we will describe *how Congress is organized*. We will compare the two chambers and how their differences affect the course of legislation.
- Third, we will look at *the members of Congress*, including how members get elected, and how they spend their days.
- Fourth, we will examine the various factors that influence *how members of Congress make decisions*.
- Fifth, we will outline *the law-making function of Congress*.
- Sixth, we will discuss the ever changing relationship between *Congress and the president*.
- Finally, we will review the relationship between *Congress and the judiciary*.

THE CONSTITUTION AND THE LEGISLATIVE BRANCH OF GOVERNMENT

ARTICLE I OF THE CONSTITUTION describes the structure of the legislative branch of government we know today. As discussed in chapter 2, the Great Compromise at the Constitutional Convention resulted in the creation of an upper house, the Senate, and a lower house, the House of Representatives. Any two-house legislature, such as the one created by the Framers, is called a **bicameral legislature**. Each state is represented in the Senate by two senators, regardless of the state's population. The number of representatives each state sends to the House of Representatives, in contrast, is determined by that state's population.

bicameral legislature

A legislature divided into two houses; the U.S. Congress and the state legislatures are bicameral except Nebraska, which is unicameral.

The U.S. Constitution sets out the formal, or legal, requirements for membership in the House and Senate. As agreed at the Constitutional Convention, House members are to be at least twenty-five years of age; senators, thirty. Members of the House are required to have resided in the United States for at least seven years; those elected to the Senate, nine. Both representatives and senators must be legal residents of the states from which they are elected.

Senators are elected for six-year terms, and originally they were elected by state legislatures because the Framers intended for senators to represent their states' interests in the Senate. State legislators lost this influence over the Senate with the ratification of the Seventeenth Amendment in 1913, which provides for the direct election of senators by voters. Then, as now, one-third of all senators are up for reelection every two years.

Members of the House of Representatives are elected to two-year terms by a vote of the eligible electorate in each congressional district. The Framers expected that the House would be more responsible to the people because they were elected directly by them and more responsive to the people because they were up for reelection every two years.

Apportionment and Redistricting

The U.S. Constitution requires that a census, which entails the counting of all Americans, be conducted every ten years. Until the first census could be taken, the Constitution fixed the number of representatives in the House of Representatives at sixty-five. In 1790, then, one member represented 30,000 people. As the population of the new nation grew and states were added to the union, the House became larger and larger. In 1910, it expanded to 435 members, and in 1929, its size was fixed at that number by statute. When Alaska and Hawaii became states in the 1950s, the number of seats was increased to 437. The number reverted back to 435 in 1963. In 2004, Congress began to consider a plan to increase that number temporarily to 437. Under the plan, the Democratic District of Columbia would get one permanent voting representative. Utah, a largely Republican state, would get one extra representative, having fallen short by fewer than 90 residents of getting one after the 2000 Census.

Each state is allotted its share of these 435 representatives based on its population. After each U.S. Census, the number of seats allotted to each state is adjusted by a constitutionally mandated process called **apportionment**. After seats are apportioned, congressional districts must be redrawn by state legislatures to reflect population shifts to ensure that each member in Congress represents approximately the same number of residents. This process of redrawing congressional districts to reflect increases or decreases in the number of seats allotted to a state, as well as population shifts within a state, is called **redistricting**. The effects of redistricting are discussed in chapter 13.

Constitutional Powers of Congress

The Constitution specifically gives Congress its most important power: the authority to make laws. (See Table 7.1.) Both houses share this law-making power. For example, no **bill** (proposed law) can become law without the consent of both houses. Examples of other constitutionally shared powers include the power to declare war, raise an army and navy, coin money, regulate commerce, establish the federal courts and their jurisdiction, establish rules of immigration and naturalization, and “make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers.” As interpreted by the U.S. Supreme Court, the necessary and proper clause, found at the end of Article I, section 8, when coupled with one or more of the specific powers enumerated in Article I, section 8, has allowed Congress to increase the scope of its authority, often at the expense of the states and into areas not necessarily envisioned by the Framers.

Congress alone is given formal law-making powers in the Constitution. But, it is important to remember that presidents issue proclamations and executive orders with the force of law (see chapter 8), bureaucrats issue quasi-legislative rules (see chapter 9),

apportionment

The proportional process of allotting congressional seats to each state following the decennial census.

redistricting

The redrawing of congressional districts to reflect increases or decreases in seats allotted to the states, as well as population shifts within a state.

bill

A proposed law.

The Living Constitution

The Congress shall have Power. . . To establish an uniform Rule of Naturalization.

—Article 1, Section 8, Clause 4

This article reiterates the sovereign power of the nation and places authority to draft laws concerning naturalization in the hands of Congress.

Congress's power over naturalization is exclusive—meaning that no state can bestow U.S. citizenship on anyone. Citizenship is a privilege and Congress may make laws limiting or expanding the criteria. The word *citizen* was not defined constitutionally until ratification in 1868 of the Fourteenth Amendment, which sets forth two kinds of citizenship: by birth and through naturalization. Throughout American history, Congress has imposed a variety of limits on naturalization, originally restricting it to “free, white persons.” “Orientals” were excluded from eligibility in 1882. At one time those affiliated with the Communist Party and those who lacked “good moral character” (which was construed to exclude homosexuals, drunkards, gamblers, and adulterers) were deemed unfit for citizenship. Most of these restrictions no longer exist, but they do underscore the power of Congress in this matter.

Congress continues to retain the right to naturalize large classes of individuals, as it did in 2000 when it granted automatic citizenship rights to all minor children adopted abroad as long as both adoptive parents were American citizens. Naturalized citizens, however, do not necessarily enjoy the full rights of citizenship enjoyed by other Americans. Congress at any time, subject only to Supreme Court review, can limit the rights and liberties of naturalized citizens, especially in times of national crisis. In the wake of the September 11, 2001, terrorist attacks, when it was revealed that of the forty-eight al-Qaeda-linked operatives who took part in some sort of terrorist activities against the United States, one-third were lawful permanent residents or naturalized citizens, Congress called for greater screening by the Immigration and Naturalization Service for potential terrorists.

and the Supreme Court and lower federal courts render opinions that generate principles that also have the force of law (see chapter 10).

Reflecting the different constituencies and size of each house of Congress (as well as the Framers' intentions), Article I gives special, exclusive powers to each house in addition to their shared role in law-making. For example, as noted in Table 7.2, the Constitution specifies that all revenue bills must originate in the House of Representatives. Over the years, however, this mandate has been blurred, and it is not unusual to see budget bills being considered simultaneously in both houses, especially since, ultimately, each must approve all bills, whether or not they involve revenues. The House also has the power to impeach: the authority to charge the president, vice president, or other “civil officers,” including federal judges, with “Treason, Bribery, or other high Crimes and Misdemeanors.” Only the Senate is authorized to conduct trials of **impeachment**, with a two-thirds vote being necessary before a federal official can be removed from office.

impeachment

The power delegated to the House of Representatives in the Constitution to charge the president, vice president, or other “civil officers,” including federal judges, with “Treason, Bribery, or other high Crimes and Misdemeanors.” This is the first step in the constitutional process of removing such government officials from office.

TABLE 7.1 The Powers of Congress

The powers of Congress, found in Article I, section 8, of the Constitution, include the power to:

- Lay and collect taxes and duties
- Borrow money
- Regulate commerce with foreign nations and among the states
- Establish rules for naturalization (that is, the process of becoming a citizen) and bankruptcy
- Coin money, set its value, and fix the standard of weights and measures
- Punish counterfeiting
- Establish a post office and post roads
- Issue patents and copyrights
- Define and punish piracies, felonies on the high seas, and crimes against the law of nations
- Create courts inferior to (that is, below) the Supreme Court
- Declare war
- Raise and support an army and navy and make rules for their governance
- Provide for a militia (reserving to the states the right to appoint militia officers and to train the militia under congressional rules)
- Exercise legislative powers over the seat of government (the District of Columbia) and over places purchased to be federal facilities (forts, arsenals, dockyards, and "other needful buildings")
- "Make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the government of the United States" (Note: This "necessary and proper," or "elastic," clause has been interpreted expansively by the Supreme Court, as explained in chapter 2 and the Annotated Constitution.)

TABLE 7.2 Key Differences Between the House and Senate

<i>Constitutional Differences</i>	
<i>House</i>	<i>Senate</i>
Initiates all revenue bills	Offers "advice and consent" on many major presidential appointments
Initiates impeachment procedures and passes articles of impeachment	Tries impeached officials Approves treaties
Two-year terms	Six-year terms (one third up for reelection every two years)
435 members (apportioned by population)	100 members (two from each state)
<i>Differences in Operation</i>	
<i>House</i>	<i>Senate</i>
More centralized, more formal; stronger leadership Rules Committee fairly powerful in controlling time and rules of debate (in conjunction with the speaker of the House)	Less centralized, less formal; weaker leadership No rules committee; limits on debate come through unanimous consent or cloture of filibuster
More impersonal	More personal
Power distributed less evenly	Power distributed more evenly
Members are highly specialized	Members are generalists
Emphasizes tax and revenue policy	Emphasizes foreign policy
<i>Changes in the Institution</i>	
<i>House</i>	<i>Senate</i>
Power centralized in the speaker's inner circle of advisers	Senate workload increasing and informality breaking down; threat of filibusters more frequent than in the past
House procedures are becoming more efficient Turnover is relatively high, although those seeking reelection almost always win	Becoming more difficult to pass legislation Turnover is moderate

The House and Senate share in the impeachment process, but the Senate has the sole authority to approve major presidential appointments, including federal judges, ambassadors, and Cabinet- and sub-Cabinet-level positions. The Senate, too, must approve all presidential treaties by a two-thirds vote. Failure by the president to court the Senate can be costly. At the end of World War I, for example, President Woodrow Wilson worked hard to get other nations to accept the Treaty of Versailles, which contained the charter of the proposed League of Nations. He overestimated his support in the Senate, however. That body refused to ratify the treaty, dealing Wilson and his international stature a severe setback.