

CONGRESS AND ITS WORK PART III

Congress may carry on the most wicked and pernicious of schemes under the dark veil of secrecy. The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them.

Patrick Henry



FUNCTIONS OF CONGRESS: CONSTITUENT SERVICE

The Constitution makes no mention of **constituent service** (the provision of direct government assistance to constituents by their representatives in Congress) but it is one of Congress members' most important tasks.

The need of members to be responsive to their voters is illustrated by a story told by a former intern in then Representative Barbara Boxer's office. Boxer required her staff to answer phones by the third ring. Once, when a phone rang for a fourth time, Boxer charged out of her inner office to yell at her staff that they should never let the phones ring that long because "those are my constituents on the line."

It is not uncommon for a congressional office to receive thousands of requests for help each year and casework can quickly become overwhelming if the staff is not prepared for it. Elected officials who handle casework quickly and effectively have become an important part of our system of government.



FUNCTIONS OF CONGRESS: CONSTITUENT SERVICE

- Constituent service can include the following:
 - **casework**: personal work for constituents (track down a missing Social Security check, explain the meaning of a particular bill, promote a local business interest, intercede with a regulatory agency on behalf of constituents, recommendations for military academies, help veterans obtain VA benefits or farmers get temporary work visas for immigrant agricultural workers, etc)
 - act as an **ombudsperson**: person who investigates complaints against government agencies or employees
 - spend as much **time in district** as possible, performing community service, attending the openings of new businesses, meeting with local leaders to discuss key issues, etc
- Each office has staff tasked specifically with doing casework. **Caseworkers** usually work in a member's district office with the staff member assigned to help with constituent requests, with helping resolve problems presented by constituents that involve federal agencies and with preparing replies for the member's signature. There often several caseworkers in a district office.



FUNCTIONS OF CONGRESS: CONSTITUENT SERVICE

- results of good constituent service:
 - builds *goodwill* with the constituents
 - helps members win *re-election*, can make a difference in close races
 - connects *government as a problem-solver* directly to individual citizens in need of assistance
 - an indicator of *democratic responsiveness* and accountability
 - fills an important *humanitarian* need



- gives members a direct line to the *needs and concerns of constituents*
- provides members with opportunities to *evaluate* whether a program is functioning as Congress intended and suggests areas in which policy changes require additional oversight or further legislative consideration



FUNCTIONS OF CONGRESS: CONSTITUENT SERVICE

- Constituent service is arguably **more important for members of the House than for Senators.**
 - House members serve 2 year terms and voters are more likely to remember help - or a lack of it - for two years. Research shows that failure to help a constituent may result in the matter being mentioned to up to 20 people, which can influence the way people vote.
 - Because most House districts are smaller, both geographically and in population, a happy or angry constituent can probably influence a larger percentage of voters in a re-election race for the House than for the Senate.
 - This doesn't mean, though, that Senators can afford to ignore constituent service. Every member of Congress, House or Senate, has a link on their website through which constituents can request assistance, and they will all respond to letters and phone calls as well.



FUNCTIONS OF CONGRESS: LAW-MAKING



In today's partisan climate, legislating takes determination and sustained effort. Beyond actually constructing policy, it takes time to *build relationships*. It takes time to *negotiate compromises*. And it takes time to *convince leadership and other lawmakers* to be supportive.

Unfortunately, given the time it takes for and the importance attached to constituents, members don't have the time required to negotiate, build relationships and construct good policy.

Historically, 8,000-26,000 bills have been introduced during each two-year Congress. Fewer than 3-7% made it into law and that says nothing about the quality of those bills. Of course, many members were elected based on their promise to do something about _____. Once they've introduced a bill, many don't care if it becomes law as long as they can tell constituents they tried.

Once a bill is introduced, its chances of survival are grim. The law-making process is a system of multiple vetoes, with power dispersed as the Framers intended. In all, there are 23 ways a bill can die.



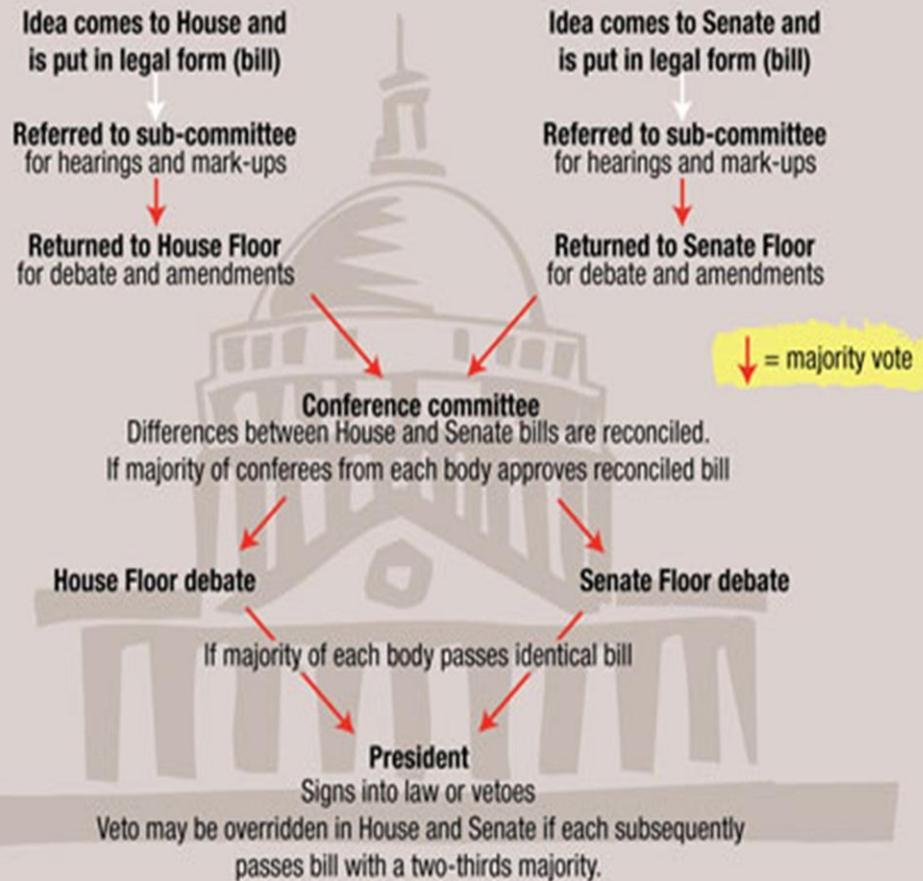
THE LAW-MAKING PROCESS

law-making: setting policy for the country

Introduction

- Only members of the House or Senate can submit a bill.
- A bill / resolution is introduced by a congressional **sponsor** and one or more co-sponsors.
- In the House, bills are officially introduced by placing them in a special box known as the **hopper**, which is located at the rostrum (Speaker's platform).
- In the Senate, a bill is introduced by placing it on the presiding officer's desk or by formally introducing it on the Senate floor.

THE LAWMAKING PROCESS





THE LAW-MAKING PROCESS

Referral to Committee

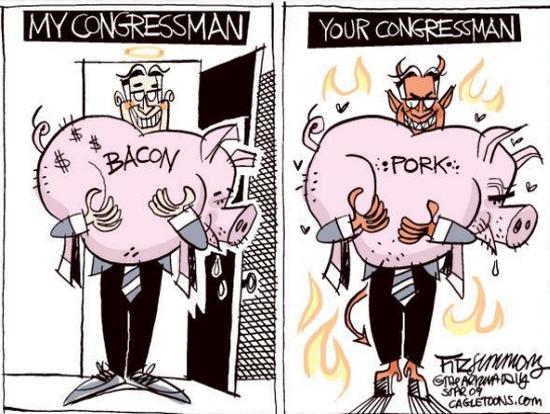
- The introduced bill is sent to the clerk where it is given a number, printed and distributed.
- The House Speaker or Senate presiding officer, advised by the parliamentarian, refers the proposal to the appropriate committee.
- The 20 House committees and 16 Senate committees each have jurisdiction over different areas of public policy, such as agriculture, education, the workforce, international relations, etc.
- **multiple referral:** process through which a bill is referred to a second committee after the first is finished acting ... In the House, proposed legislation can be sent to more than one committee due to a 1975 rules change.
- The bill is placed on the committee's **calendar**.
- Once a bill goes to committee, the chair gives it to the appropriate subcommittee. The real work begins here.



THE LAW-MAKING PROCESS

Committee Action

- If the **subcommittee** takes the bill seriously it will:
 - **research** appropriate issues, schedule **hearings** (provide opportunity for each side of an issue to voice their opinion)
 - **markup**: revisions, additions, deletions, reparation for report to full committee
 - return bill to full committee with *majority vote* otherwise bill dies
- **Full committee** may repeat the process or accept the work of the subcommittee.
 - The committee **debates** and may or may not make **changes**.



- **Earmarks** (given as political favors to members who vote to support certain pieces of legislation and utilized by members to get pet projects funded in their district) demonstrate during elections that members' time has directly benefited their area in terms of federal resources. (Banned in 2011 but members attempting in 2017 to bring back.)

- Committee members **vote to accept or reject any changes** made during the markup session.
- If a bill includes many amendments, the committee may decide to introduce a **clean bill** with a new number.



THE LAW-MAKING PROCESS

Committee Action

- The committee **votes** on the bill after it has been debated and/or amended. A *majority* vote sends it to House or Senate floor with a recommendation.
- A committee may stop action / table / pigeonhole a bill it deems unwise or unnecessary ... In other words, it will take no further action on the bill, not even reporting it to the floor. Unless a bill is reported out of committee, it is dead.
- Committees decide which bills and resolutions move forward to consideration by the House or Senate as a whole. **Committee chairmen** have enormous influence over the process.
- **GovTrack** lists all House and Senate committees and their membership. It tracks scheduled meetings, bills under consideration at each meeting, and committee changes to each bill as they happen.
- House committee hearings and meetings, live or recorded, may be viewed [here](#).
- Senate committee hearings and meetings, live or recorded, may be viewed [here](#).
- *The House and Senate processes diverge at this point.*



THE LAW-MAKING PROCESS



House Rules Committee

- In the House, a committee-reported bill is placed on the **calendar** and sent to the **Rules Committee** (except budget bills). Rather than being responsible for a specific area of policy, as most other committees are, Rules is in charge of determining under what rule bills will come to the floor. It is one of the most powerful committees and is often described as *an arm of the leadership* and as *the traffic cop of Congress*.
 - may limit number or types of **amendments** and/or **debate** time for each bill
 - determines whether bill considered by the **Committee of the Whole** (allows deliberation with only 100 of the 435 members present) or on the **floor of the full House**
 - Rules has the authority to do virtually anything during the course of consideration of a bill, including deeming it passed.
 - If the Rules Committee recommends a rule, the floor then chooses to accept or reject it. In essence, *as long as a majority of the House is willing to vote for a rule, there is little that the Rules Committee cannot do.* (Rules are usually accepted as the Rules Committee anticipates what the floor will tolerate.)



THE LAW-MAKING PROCESS

House Floor Action

- On the House floor, members **debate** bills and offer **amendments** (if allowed). Most frequently, the House operates under a **suspension of the rules** procedure, which requires a 40-minute limit on debate, a prohibition against floor amendments, and a 2/3 vote of those present and voting for passage.
- Bills that are *not controversial* can be called up and passed unanimously, with little/no debate.
- House rules for debate and voting can be quite complicated. If you'd like a more detailed description, go [here](#).
- Bills that do not receive sufficient votes die on the floor.
- If a bill receives enough votes on the floor and survives, it is sent to the Senate for consideration - if it was not considered there already.

[Note that the discussion on law-making refers only to bills. Resolutions are also often introduced and their omission here is only for simplicity's sake.]



THE LAW-MAKING PROCESS

Senate Floor Action

- Because the Senate is much smaller and less formal than the House, Senate procedures are a bit simpler.
- Bills reported out of committee are placed on the legislative **calendar**.
- **Unanimous consent** is requested to lay a bill before the Senate.
- If consent is granted, the presiding officer instructs the legislative clerk to report the title.
- The bill is **debated** and **amendments** are proposed.
 - **Debate is not limited in the Senate.** When Senators are recognized by the presiding officer, they may speak for as long as they wish and lose the floor only when they yield it or take certain parliamentary actions that forfeit the right to the floor.
 - Senators may not speak more than *twice* on any one question in debate on the same legislative day without leave of the Senate.
 - **Debate ends when a Senator yields the floor and no other Senator seeks recognition**, or when a **unanimous consent agreement** limiting the time of debate dictates that debate is concluded.





THE LAW-MAKING PROCESS

Senate Floor Action

- In the Senate, bills may be held up by:
 - a **filibuster**: Senate rules permit a senator or series of senators to speak for as long as he/she wishes and on any topic he/she chooses, unless 3/5 of senators (60 out of 100 senators) end debate by invoking **cloture** (Rule 22, the only formal procedure that Senate rules provide for breaking a filibuster). And since debate continues until all senators have finished speaking, there can be no vote on the bill as long as someone speaks.
 - Louisiana Senator Huey P. Long was famous for his filibusters, frustrating colleagues while entertaining spectators with his recitations of Shakespeare and his reading of recipes for "pot-likkers."
 - The record for the *longest* individual speech goes to South Carolina's J. Strom Thurmond who filibustered for 24 hours and 18 minutes against the Civil Rights Act of 1957.
 - a **hold**: In the Senate, *no motion to proceed to the consideration of any bill...shall be entertained...unless by unanimous consent*. That's not a problem because bringing bills to the floor usually has unanimous consent. But 1 senator's refusal to agree blocks consideration of a bill.





THE LAW-MAKING PROCESS

Senate Floor Action

- regarding **holds**:
 - If a senator provides notice privately to the party leadership, then the hold is known as a *secret / anonymous hold*.
 - If a senator objects on the Senate floor or the hold is publicly revealed, then the hold is more generally known as a *Senatorial hold*.
 - Holds can be defeated through a successful **cloture** motion but that's not always easy to obtain.
- Once the time for debate and amendments has passed, the presiding officer instructs the legislative clerk to read the title a third and final time, and calls for a **vote**.
 - For legislation that's *not controversial*, a motion to pass a bill by unanimous consent is all that's necessary.
 - More important and controversial legislation requires committee and party leaders to negotiate **unanimous-consent agreements** (complicated bargains analogous to the rules granted by the House Rules Committee).
- If a bill receives enough votes on the floor and survives, it's sent to the House for consideration - if it was not considered there already. Otherwise, it dies.



THE LAW-MAKING PROCESS

Conference Committee (if required)

- A bill must pass both the House and the Senate in *identical* form.
- What happens when the two approve different versions of the same bill? Unless one chamber is willing to defer to the other, the two must iron out their differences.
- **conference committee**: congressional committee, composed of members of both the House and the Senate, the sole purpose of which is to resolve the differences between two bills
 - members appointed by the leadership of the House and Senate
 - usually composed of senior members of the committees of the House and Senate that originally considered the legislation
- If the conference committee cannot agree on a version, the bill dies. If the committee can reach a compromise and **report out a bill**, it goes to the **floors of the House and Senate for votes** (without amendments).
- If the bill fails to pass one or both votes, it dies. If it passes both, it is sent to the president.





THE LAW-MAKING PROCESS

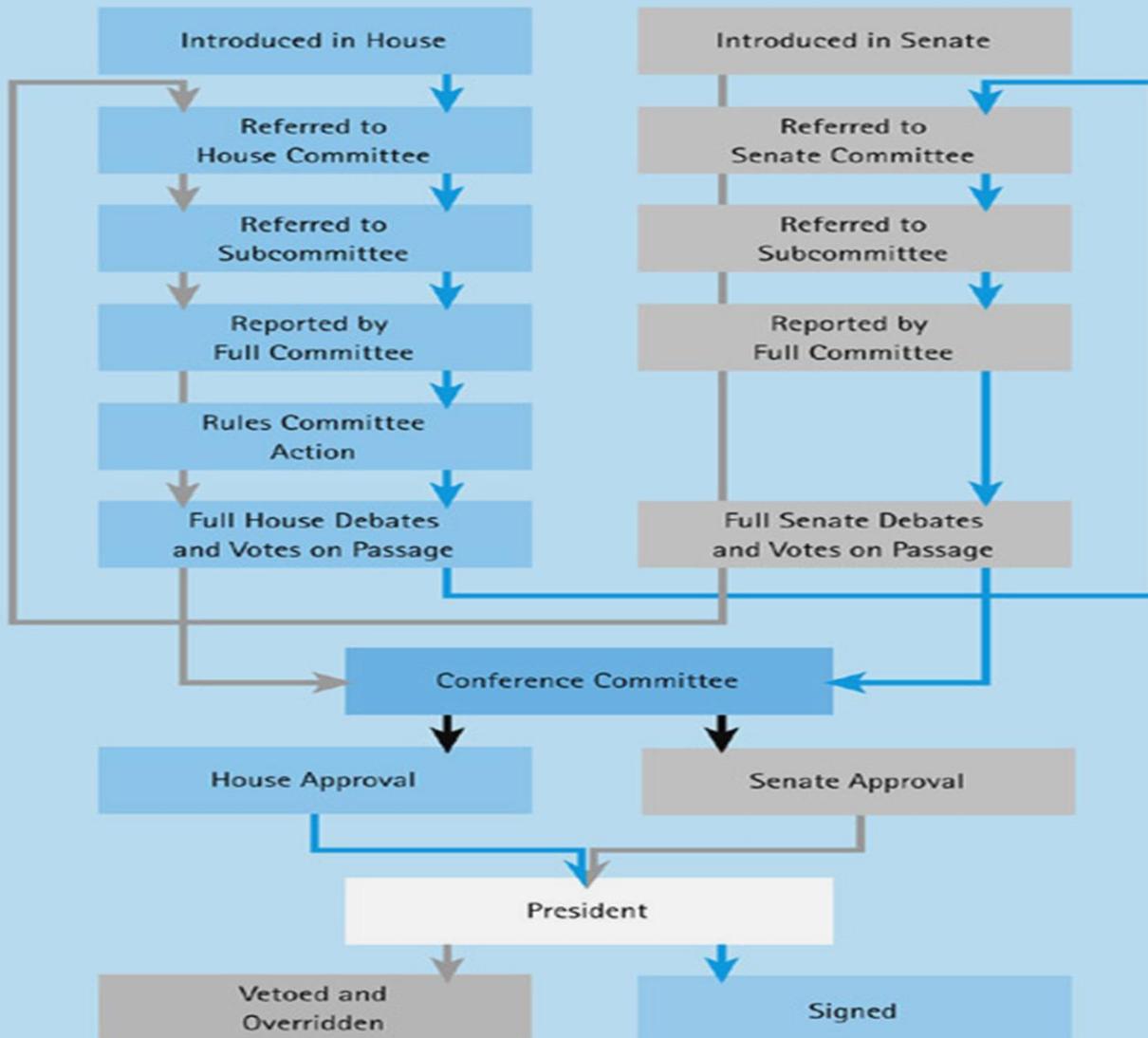
Summary of Bills Vetoed, 1789-present			
return vetoes	pocket vetoes	total vetoes	vetoes overridden
1508	1066	2574	111

Presidential Action

- The president has **10 days to consider** a bill and 4 possible actions.
 - The president can **sign** the bill, at which point it becomes law.
 - **return veto**: The president sends a bill, along with his objections, back to the house of Congress from which it originated ... If Congress can **override the veto** with a 2/3 vote in *both* the House and Senate, the bill becomes law. If not, not.
 - law **without signature** or **pocket veto**: The Constitution reads: *If any bill shall not be returned by the President within 10 days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.* If Congress prevents the bill's return by being adjourned during the 10-day period, and the president does not sign the bill, a pocket veto occurs and the bill does not become law.
 - The only way for Congress to circumvent the pocket veto is to reintroduce the legislation as a new bill, pass it through both the House and Senate, and present it to the president again for signature.



THE LAW-MAKING PROCESS





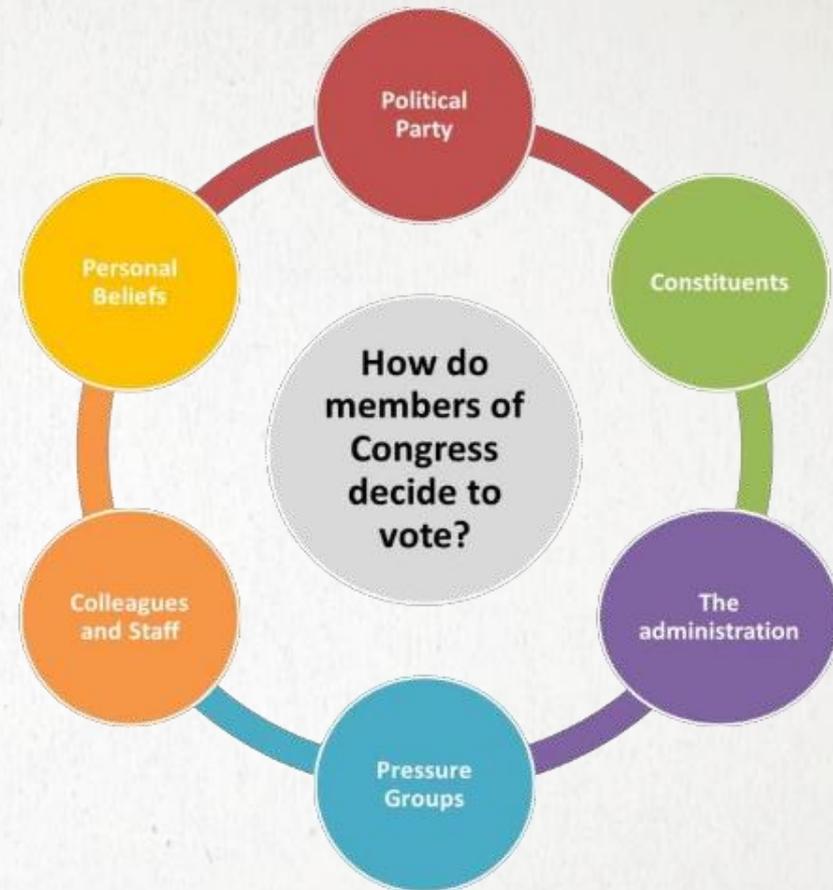
INFLUENCES ON MEMBERS' DECISION-MAKING

- **political party:**

- can be most important factor
- on contentious issues, often call for *party vote* (vote in which a substantial majority of members of a party vote the same way, usually in opposition to the other party)
- parties have few punishments or incentives to use with members
- party labels don't always mean entire party voting together (regional ideologies)
- internal party groups

- **constituents:**

- *locality rule*: requires members to be resident in the congressional district they represent
- failing to look after / represent constituents can result in electoral defeat
- phone, email, local news, visits, letters from constituents influence how members view their constituency, which in turn shapes their decision-making





INFLUENCES ON MEMBERS' DECISION-MAKING

- **constituents:**

- visits home for party/town hall meetings, *surgeries* (series of one-to-one meetings with constituents at which they may raise issues of concern, make voters feel they are getting attention), local TV and radio, interviews with local media, addressing groups, visiting schools, hospitals, etc
- Members' views of constituents can be wrong or limited, and must be balanced with the general welfare and members' desire to be re-elected.
- Constituents often take different positions on issues ... Who does a member represent?

- **administration:**

- members of executive branch including president, vice president, cabinet members, etc
- administration interested in legislation it initiated so in touch with members/committees to influence votes
- two-way street of cooperation
- supporting unpopular legislation/administration can be costly



INFLUENCES ON MEMBERS' DECISION-MAKING

- **pressure/interest groups, lobbyists, PACs:**
 - try to influence members and votes
 - personal contact with members - phone calls, visits
 - attempt to generate public support
 - provide evidence to committees
 - organize rallies, demonstrations, petitions
 - fundraising and campaigning on members' behalf
 - campaign donations
- **colleagues, caucuses, staff, support agencies:**
 - huge number of bills ... impossible to be an expert on all issues and policies
 - rely on others for help: colleagues (of same party, philosophy, views), mentor's advice/suggestions, senior staff (chief of staff or legislative director)
 - *logrolling*: vote trading
- **personal beliefs:**
 - applicable on certain votes – usually abortion, capital punishment, etc
 - generally members' personal beliefs are similar to the majority of their constituents, especially if a member adopts a trustee model of representation





FUNCTIONS OF CONGRESS: LAW-MAKING

In today's partisan climate, legislating takes determination and sustained effort. Beyond actually constructing policy, it takes time to *build relationships*. It takes time to *negotiate compromises*. And it takes time to *convince leadership and other lawmakers to be supportive*.

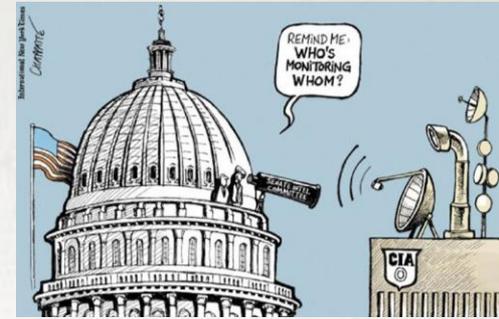
The evolution of the congressional schedule into one in which members are in DC only a couple of days per week may work well regarding constituents but not for law-making. If a bill falls through, members are already flying home before there is time to build another strategy. The window for legislating in Washington is simply too brief to accommodate the governing needs of the country.



The schedule is poorly arranged to get things done. It's a series of starts and stops, punctuated by flights to and from fundraisers and districts. What's needed is a schedule that encourages members to spend more time in DC, providing opportunities for relationship-building and sustained attempts to address difficult legislative and regulatory matters



FUNCTIONS OF CONGRESS: OVERSIGHT



Congress exercises oversight as one part of the system of checks and balances to make sure that the executive branch stays within its proper constitutional boundaries and faithfully administers the laws. Both chambers of Congress exercise oversight authority but the Senate has some specialized oversight powers that the House does not have.

Congressional oversight over the executive branch occurs almost exclusively in **congressional committees**. It is a rare thing for an entire chamber to be actively engaged in a particular oversight issue. Committees each have a subject matter jurisdiction and, for each of these jurisdictions, there are one or more executive branch agencies tasked with carrying out the policies set by Congress. A part of the authority and responsibility of the House and Senate committees is to oversee those agencies. However, oversight may be scaled back during periods of unified government.

Principal-agent theory is useful in understanding oversight. The basic concept in principal-agent theory is that someone who needs to get something done (*principal*) will often hire or appoint someone else (*agent*) to complete the task. Both the principal and the agent have their own **goals**.



FUNCTIONS OF CONGRESS: OVERSIGHT

For example, suppose you hire someone to mow your lawn for \$20. Your goal, as the principal, is to have the lawn mowed well. The goal of the person you hire as your agent may be to put in as little time as possible to earn the \$20, which may result in a poorly mowed lawn. How do you ensure that your agent is not putting his goals ahead of yours?

The problem isn't always goals. Sometimes the **directions given to the agent aren't clear**, so the agent has to use his own judgment. Even when he's trying his best, his judgment may end up conflicting with the principal's judgment.

For these reasons, Congress *must* exercise oversight over executive branch agencies. Congress is the principal, and the agencies are the agents. Congress has authority to set federal policy, but sometimes the agencies attempt to **substitute their own policy preferences**, not usually by direct refusal to comply, but through creative interpretations of the rules. At other times Congress writes **policies that are vague**, so agencies have to make their own interpretation, at least until Congress clarifies the policy.

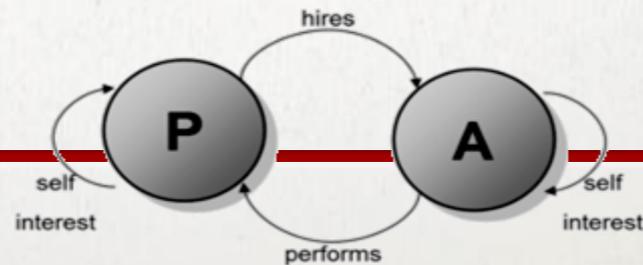


FUNCTIONS OF CONGRESS: OVERSIGHT

Why would Congress write such vague policy?

Congress often **lacks the technical expertise** that the specialized bureaucratic agencies have, and while they want to determine the general policy, they may prefer to defer to those with more specialized knowledge to choose the best means of getting there.

Too, it is **easier to get agreement** on a general policy goal than to get agreement on the specific details. In order to get legislation passed, Congress members may prefer to settle for broad but somewhat vague policies that obscure the areas of disagreement rather than get themselves bogged down in endless debate over particular details that highlight their areas of disagreement.





FUNCTIONS OF CONGRESS: OVERSIGHT

Police-patrol Oversight and Fire-alarm Oversight

Police-patrol oversight is oversight activities *initiated by members of Congress and conducted by committees acting on their own initiative*, like police choosing which areas of a city to patrol. There are several forms which this can take, such as reading *documents*, commissioning *scientific studies*, conducting *field observations* and holding *hearings* to question officials and citizens. Police-patrol oversight is congressionally-centered and requires members of Congress to take notice and take action.

Fire-alarm oversight is a process Congress sets up to *allow people outside Congress to call attention to problems in agencies*. For example, Congress can create *whistleblower laws* that protect employees within agencies who want to bring attention to violations of law or bad performance. It can explicitly authorize *citizen lawsuits* to challenge agency actions. When issues are brought to the attention of Congress, it can engage in formal oversight to *investigate* the criticisms of an agency.



FUNCTIONS OF CONGRESS: OVERSIGHT



Police-patrol Oversight and Fire-alarm Oversight

Police-patrol oversight more closely *matches the traditional conception* of a congressional constitutional check on the executive, but fire-alarm oversight is *more effective*.

Committee meetings with government departments allow committees to monitor how legislation is implemented (efficiency, competence, compliance with law, appropriate expenditures, etc) in departments where performance is a concern. Members can call for relevant documents and hold hearings if there's a concern.

But because there are only several hundred members of Congress, they can only look at a small set of all agency actions, even with specialized committees. And without some pre-existing awareness of potential problems, they are effectively searching randomly, so that many agency actions they examine will not be ones that are problematic.

With average citizens, agency employees and organized interest groups observing agency actions, more problems are likely to be caught and Congress can use that awareness to better focus its own efforts on likely problems.



FUNCTIONS OF CONGRESS: OVERSIGHT

Specialized Oversight: Impeachment

Impeachment is the *nuclear option* of oversight, in which a president's actions are considered so egregious as to meet the constitutional standard of **high crimes and misdemeanors**. Both chambers play a role in impeachment, but their roles are separate and distinct. The House has the power of impeachment, which is equivalent to an *indictment*. It files charges against a president alleging he has committed high crimes and misdemeanors. The Senate has the power of *holding the trial*, and of declaring the impeached president either *guilty or not guilty*. The judiciary even has a role here, as the *Chief Justice of the Supreme Court* presides over the Senate's trial.

It's not clear what constitutes high crimes and misdemeanors. The Constitution does not provide us any real guidance, so as a practical matter, the definition of high crimes and misdemeanors is whatever the House (in impeaching) and the Senate (in convicting) agree it is.



FUNCTIONS OF CONGRESS: OVERSIGHT

Specialized Oversight: Impeachment

It is not at all clear that impeachment is an effective deterrent against presidential misbehavior. Only two presidents have been impeached, because it is seen as such a drastic step that Congress is reluctant to use it often.

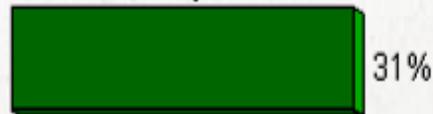
But ironically, both of those impeachments - of Andrew Johnson in 1868 and Bill Clinton in 1998 - were more a product of spiteful political opponents than of great abuses of power, and so neither was convicted.

No president has ever been convicted of high crimes and misdemeanors and removed from office. So it remains unclear that impeachment has served as an effective check on the executive.

Majority Thinks Impeachment Decisions Not Motivated by Concern for Country

Do you think that most members who voted in favor of impeachment were mainly trying to do what is best for the country, or do you think they were motivated by some other reason?

best for country



some other reason





THE EIGHT STAGES OF THE IMPEACHMENT PROCESS

Stage 1. Resolution: A resolution, known as an inquiry of impeachment, is referred to the Judiciary Committee. Or, among other alternatives, a member may introduce a bill of impeachment, to be referred to the committee.

Stage 2. Committee vote: After considering evidence, the Judiciary Committee votes on a resolution of inquiry stating whether there is enough evidence for impeachment.

Stage 3. House vote: In this case, the full House would vote whether to approve a Judiciary Committee decision to proceed to a full-blown impeachment hearing.

Stage 4. Hearing: The Judiciary Committee holds hearings into the accusations, possibly broadening the inquiry into other subjects.

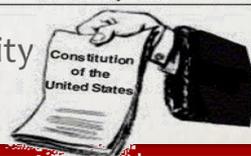
Stage 5. Report: The committee votes on one or more bills of impeachment and issues a report to the House, setting forth articles of impeachment.

Stage 6. House vote: The House votes on the bill of impeachment. A simple majority decides whether to bring the case before the Senate. The House can overturn a Judiciary Committee vote in which the majority recommended against impeachment.

Stage 7. Senate trial: In a trial conducted on the Senate floor, the House Judiciary Committee brings the case against the President, who is defended by his own lawyers. The Senate acts as the jury, and the Chief Justice of the Supreme Court presides over the trial.

Stage 8. Senate vote: The Senate votes on each article of impeachment. If a two-thirds majority supports impeachment, the President is removed from office.

Above Any Office





FUNCTIONS OF CONGRESS: OVERSIGHT

Specialized Oversight: War Powers Resolution

Congress has the **power to declare war** but modern fighting can erupt quickly which means there is rarely a declaration. (The last time was the day after the attack on Pearl Harbor.) The check on how the president uses the armed forces has effectively fallen into disuse and attempts to restore it (War Powers Resolution) have been ineffective.

The War Powers Resolution was passed by Congress in 1973. It **limits the president's deployment of troops overseas** to a sixty day period in peace time, unless Congress explicitly gives its approval for a longer period.

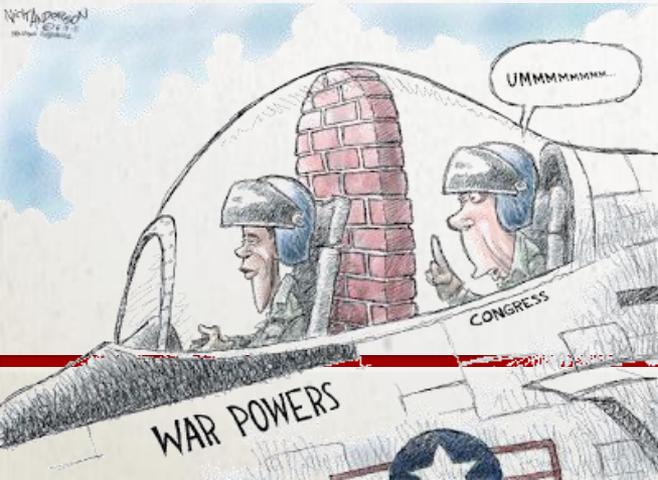
Congress passed the War Powers Resolution in the aftermath of the Vietnam War to provide a set of procedures for both the President and Congress to follow in situations where the introduction of US forces abroad could lead to their involvement in armed conflict. The law was intended to check the president's power to commit the US to an armed conflict without the consent of the Congress, thus reasserting congressional authority.



FUNCTIONS OF CONGRESS: OVERSIGHT

Specialized Oversight: War Powers Resolution

The need for congressional approval has been generally resisted or ignored by subsequent presidents. After troops are in the field - whether formally authorized by Congress or not - it can appear unpatriotic to call for the abandonment of their mission. Thus, the formal need for congressional approval is superseded by the political impossibility of Congress withholding that approval once the president has unilaterally committed troops.





FUNCTIONS OF CONGRESS: OVERSIGHT

Special Oversight Powers of the Senate

The Senate has two specialized oversight powers that fall under the general term of **advice and consent**. This language comes from Article II, §2, paragraph 2 of the Constitution, which specifies these special Senate oversight powers.

[The President] shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States...

So the Senate has the power of advice and consent over treaties and appointments of executive branch officials (ambassadors and other public ministers - meaning a great number of officials in the executive branch agencies) and members of the federal judiciary (not only Supreme Court justices, but all other federal judges as well).



FUNCTIONS OF CONGRESS: OVERSIGHT



Special Oversight Powers of the Senate: Appointments

Consent - and the ability to withhold consent - matters much more than advice. Whatever the framers of the Constitution may have expected, presidents do not seek advice from the Senate. They do, however, have to seek its consent, so they do pay attention to whether particular treaties or appointments are likely to receive Senate approval.

The concept of advice suggests a politics of coordination, of president and Senate collaborating to enact treaties and choose appointed officials, but because the advice role is rare, and the consent (or withholding of) role dominates, this is more often a politics of conflict.

One way presidents try to avoid getting Senate consent is to make **recess appointments**. A president who cannot get Senate approval of one of his appointments can wait until Congress is in recess and appoint his nominee, who can then serve without Senate approval until the end of that session of Congress. At that point, the appointment ends, and the president must re-appoint, and once again play the game of trying to get the Senate's consent.



FUNCTIONS OF CONGRESS: OVERSIGHT

Special Oversight Powers of the Senate: Appointments

The recess appointment rule was created at a time when people expected Congress to meet for only a few months each year, and travel time to get to the capital could be days or even a week or more. If an executive branch official resigned or died, getting all senators to the capital to vote on a replacement would not be worth the effort, so the framers gave the president authority to act on his own, but only as a temporary measure. Today, Congress meets almost year-round - with breaks in August, at holidays and for time to run for re-election - and even the most distant senators in Hawai'i can get to the capital in less than a day. Consequently, the recess appointment power has become less a tool for maintaining effective governance and more a tool for bypassing congressional control.



FUNCTIONS OF CONGRESS: OVERSIGHT

Special Oversight Powers of the Senate: Treaties

Presidents have an end-run around Congress in regard to treaties, also: **executive agreements** (international law similar to treaties that only need a simple majority in both houses to be enacted). These are agreements made directly with the heads of states of other countries and because the Constitution makes no mention of such things—the Framers never anticipated them—they do not need Senate approval. To some extent they can be said to receive *tacit* approval of the Senate, because if enough Senators strongly disapproved of an executive agreement they could potentially force a change through the legislative process.





FUNCTIONS OF CONGRESS: OVERSIGHT

Special Oversight Powers of the Senate: Treaties

But as much as we might expect Senators to disapprove of presidents using executive agreements instead of treaties, so that they can cut the Senate out of the process, the Senate generally approves of the president's use of executive agreements because of their efficiency.

They can usually be negotiated more quickly than treaties (in part because they can be more easily changed or terminated, so it's not as necessary to get all the terms precisely right), they can promote the country's international interests without getting bogged down in legislative politics, and the Senate does not have to devote time to considering whether or not to approve them.

So although the innovation of executive agreements as a substitute for treaties is in effect a shift of power from the legislative to the executive branch, the Senate is happy to give away that power.



FUNCTIONS OF CONGRESS: OVERSIGHT

Congressional Oversight of the Judiciary

- Congress exercises its control over the judiciary in several ways.
 - Congress can establish the size of the **Supreme Court**, its appellate jurisdiction and the structure of the federal court system.
 - Senate also has the authority to accept or reject presidential **nominees** for the federal courts.
 - **senatorial courtesy**: process by which presidents, when selecting district court judges, defer to the senator in whose state the vacancy occurs





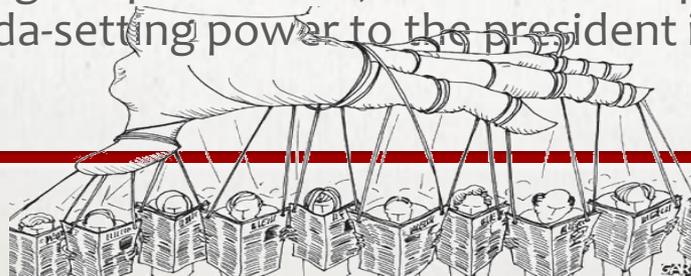
FUNCTIONS OF CONGRESS: PUBLIC EDUCATION

- **Educating the public** is a function that is performed whenever Congress holds public hearings, exercises oversight over the bureaucracy, or engages in committee and floor debate on major issues and topics.
 - Congress presents a range of viewpoints on national questions
 - Congress decides what issues will come up for discussion and decision.
- mailings, websites, public hearings, committee and floor debate on major issues and topics (immigration, global warming, aging, illegal drugs, concerns of small businesses), etc
- examples
 - A member hosted financial aid workshops each year, bringing US Department of Education officials to his district to help parents of college-bound students figure out the federal financial aid forms.
 - During an outbreak of avian flu, a member hosted several meetings in his district for poultry farmers, bringing in officials from the Department of Agriculture, Centers for Disease Control and the Fish and Wildlife service to provide information critical to the protection of their livestock.



FUNCTIONS OF CONGRESS: PUBLIC EDUCATION

- Research has found that **members are eager to educate the public** about the issues and the policy-making process. Members do not, however, take any responsibility for explaining Congress or the broader political system to the public. On the contrary, **Congress-bashing** is standard operating procedure in the districts. Members take the easy way out and reinforce rather than counter public prejudices.
- Public education is also referred to as **agenda setting** (determining which public policy questions will be debated or decided). Congress discusses issues about which the public may not have information in an attempt to make the public aware of issues that need attention.
- In modern times, the **president has acted as an agenda setter**. This was not the norm for American presidents but has come to be so, and Americans expect their presidents to be active agenda setters. Of course agenda setting is a political act, an exertion of power and control, and the shift of agenda-setting power to the president is a shift of political power.





FUNCTIONS OF CONGRESS: PUBLIC EDUCATION

- In some ways Congress has explicitly given agenda-setting power to the president by statutorily requiring him (through the Budget and Accounting Act of 1921) to **propose a budget to Congress**. This allows the president to (usually, not always) set the agenda on budget negotiations.
- The president also has legislative agenda-setting power through the constitutionally-required **SOTU addresses**.
- The **veto** can also be used for agenda setting. The president's threat of a veto can sometimes deter Congress from considering a bill. Of course presidents must use this power strategically. They can only effectively deter legislation by threatening a veto when congressional support for a bill is weak enough that Congress will not have enough votes to override a veto.



FUNCTIONS OF CONGRESS: CONFLICT RESOLUTION

- the **conflict resolution function**: Congress acts as an institution to resolve conflicts within American society.
- attempts to **resolve differences among competing points of view** (racial, religious, economic, ideological, etc groups) by passing laws to accommodate as many interested parties as possible
 - Organized interest groups and representatives of different racial, religious, economic and ideological interest look on Congress as an **access point** for airing their grievances and seeking help.
- Congress is commonly seen as an **institution for resolving conflicts within American society**, brokering between opposing viewpoints or resource demands.





FUNCTIONS OF CONGRESS: CONFLICT RESOLUTION

- **centrifugal forces:** forces that pull populations apart ... can include physical features (water bodies, mountain ranges, sheer size and distances that limit interaction, etc) or cultural differences (differences in religious belief, culture, economic activity, political ideology, etc)
- **centripetal forces:** forces that pull populations together ... a common religion or culture, nationalism, a common enemy, governmental institutions, etc
- People more or less accept decisions (laws) of Congress even when they disagree and fail to respect Congress in general.
 - *What happens if people stop accepting or obeying decisions made by Congress in mass?* Civil disobedience? This is the major reason the behaviors and reputations of Congress members are so important.
- *Weakening of centripetal forces leads to strengthening of centrifugal forces and vice versa ...* When the things that hold us together get weaker, the things that separate us grow stronger.



EVALUATING CONGRESS: CRITICISMS



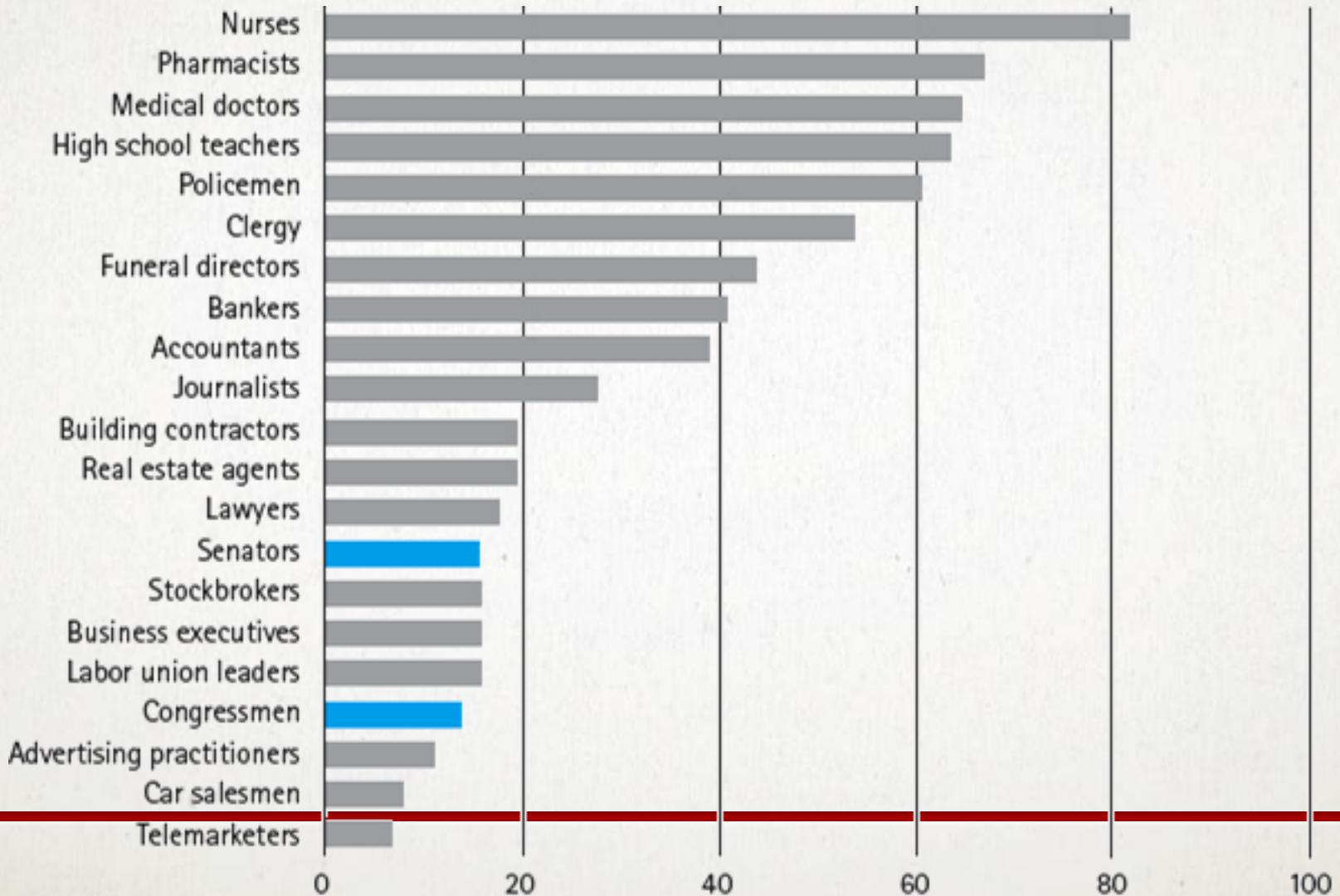
- The US Congress remains the most influential and independent legislature among Western democratic nations but that doesn't mean it's without faults.
- The congressional process is *slow and inefficient*.
- The congressional process works to the advantage of policy minorities, especially those content with the status quo.
- Members of Congress are constantly tempted to use their positions to extract constituency benefits, even when important national legislation is at stake.
- Sometimes, the very process of passing legislation ensures that it will not work.
- Americans tend to approve of their own representatives and senators, but have low regard for Congress as an institution.
 - rising incivility and blatant partisanship
 - power of narrow interests
 - failure to address important problems
- popular distaste for the inherent messiness of the legislative process

By giving the government unlimited powers, the most arbitrary rule can be made legal; and in this way a democracy may set up the most complete despotism imaginable.

Friedrich Hayek



EVALUATING CONGRESS: PERCENTAGE INDICATING VERY HIGH OR HIGH LEVELS OF ETHICS AND HONESTY





WHY AMERICANS LIKE THEIR MEMBERS OF CONGRESS MORE THAN CONGRESS ITSELF

- Congress as a whole suffers from a negative public image.
 - irony: It is the national government's most electorally sensitive institution.
 - puzzle: Why are members of Congress elected at such a high rate if we are so critical of the institution?
 - answer: Americans judge their own representatives by different standards from those by which they judge the collective Congress.
- Members of the public say they *prefer a trustee* but *demand that their own representatives serve as a delegate*.





EVALUATING CONGRESS

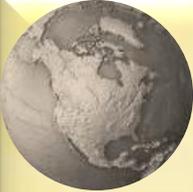
Surveys of public attitudes about Congress find profound negative evaluations about its performance. The public grades Congress as an underperforming institution on all criteria, including on dealing with key issues facing the country, keeping excessive partisanship in check, conducting its business in a careful and deliberate way, holding its members to high standards of ethical conduct, and controlling the influence of special interest groups.

On the broadest-gauge question – “Overall, do you approve or disapprove of the way Congress is handling its job?” – 84% disapprove.

That’s not surprising, given its seeming inability to conduct business, its hyperpolarization and its propensity for (at least) verbal nastiness.

How to fix Congress isn’t a secret. There are many studies and realistic recommendations available. For example, the Bipartisan Policy Center’s [Healthy Congress Index](#) provides Americans with crucial metrics for evaluating the ability of Congress to effectively legislate and govern. It compares results against past Congresses and is updated on a quarterly basis.

The question is whether or not Congress and its members are *willing* to begin acting and working like professionals in a respected institution. That’s anyone’s guess.



THE END

