



Chapter 12

Congressional Lawmaking

How do laws really get made?

■ 12.1 Introduction

Some people have compared the making of laws to the making of sausage. It is a messy process that calls for mixing together many ingredients—some rather unpleasant—and stuffing them into one package.

Some diagrams can explain the lawmaking process in a straightforward manner. However, because lawmaking is so complex and chaotic in real life, any diagram of this process is far too neat, as one former member of the House of Representatives made clear:

[A] diagram can't possibly convey the challenges, the hard work, the obstacles to be overcome, the defeats suffered, the victories achieved, and the sheer excitement that attend the legislative process. It gives a woefully incomplete picture of how complicated and untidy that process can be, and barely hints at the difficulties facing any member of Congress who wants to shepherd an idea into law.

You don't just have an idea, draft it in bill form, and drop it in the House hopper or file it at the Senate desk. Developing the idea is very much a political process—listening to the needs and desires of people and then trying to translate that into a specific legislative proposal.

—Lee H. Hamilton, *How Congress Works and Why You Should Care*, 2004

The start of the 112th session of Congress

Speaking of Politics

congressional page

A high school junior who works as a messenger and errand runner in the House or Senate. Candidates for this position must be sponsored by a senator or representative from their home state.

seniority rule

The tradition that a congressional committee member's seniority—the number of years of unbroken service on a committee—determines that member's position on the committee.

filibuster

The tactic of using endless speeches on the Senate floor to delay or prevent passage of legislation. Filibusters are not permitted in the House.

cloture

The process used to end a filibuster in the Senate. At least 60 senators must support a cloture vote to overcome a filibuster.

hold

A request by a senator to delay action on a bill. A senator who puts a hold on a bill is, in effect, announcing an intention to launch a filibuster if the bill is sent to the Senate floor for a vote.

rider

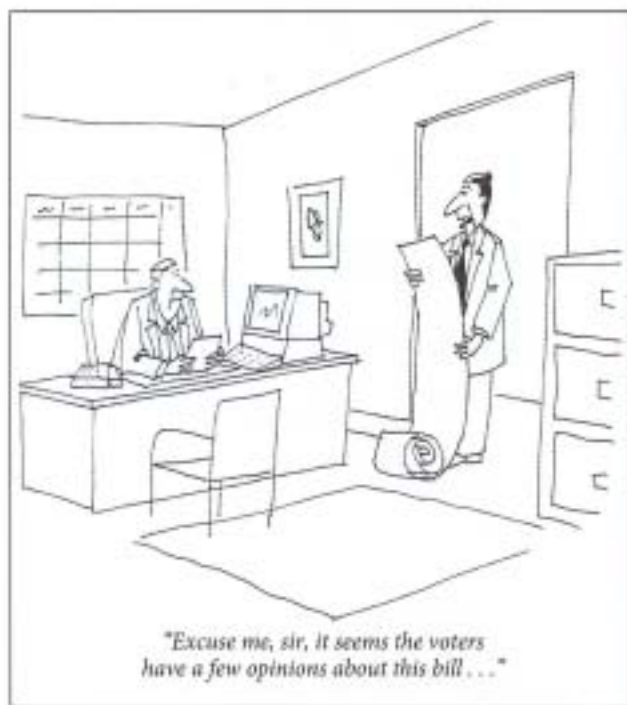
An amendment attached to a bill that has little or no relation to the subject of the bill.

Christmas tree bill

A bill with so many riders attached to it that it seems to offer something for everyone.

logrolling

The trading of votes among legislators to ensure the passage of different bills in which those legislators have a special interest.



Lawmakers have to consider many different factors as they compose a bill. Party leaders, lobbyists, and personal values all contribute to constructing legislation. Another factor, as this cartoon suggests, is the legislator's constituents, who may ask their representative to influence policy changes.

Once a bill is introduced in the House or Senate, the business of lawmaking begins. In theory, a proposed law first goes to a committee. If approved there, the bill goes to the floor of the chamber in which it was introduced for a vote. If it passes there, it goes to the other chamber of Congress for a second vote. After being approved by both the House and Senate, the bill goes to the president.

In reality, as Representative Hamilton observed, the legislative process is far more complex and filled with hazards. During the months it takes to move a bill through Congress, lawmakers can be pulled in several directions. Party leaders insist on loyalty to the party's position. Constituents may demand attention to local concerns. Lobbyists may clamor for consideration of their particular interests. And all the while, the news media watch and report lawmakers' every move.

In addition to these outside pressures, many lawmakers feel an inner pressure to make decisions based on their own principles. As one political scientist put it, "Members of Congress are inevitably caught in a crossfire of competing expectations."

12.2 Convening a New Congress

Congressional elections are held every two years on the first Tuesday in November. Incumbents and challengers vie for all the seats in the House. In the Senate, one-third of the seats are up for election every two years. Most elections bring new faces to Congress. On occasion, an election creates a new majority party in the House, Senate, or both. In January, federal lawmakers, old and new, travel to Washington, D.C., to convene, or organize, the next Congress.

Meeting to Choose Congressional Leaders

Before the new Congress holds its first formal meeting, lawmakers from each chamber meet with fellow party members in what is known as either a party caucus or a party conference. Four meetings are held in all, one each for the majority and minority parties of the House and of the Senate. Party members meet often during each two-year session of Congress. But the opening meeting is the most important.

At the first party caucus or conference, members begin to organize the new Congress. Their primary task is to elect their congressional leaders: the speaker of the House, majority and minority leaders, and whips. Over the next two years, these party leaders will work to achieve consensus, or agreement, on legislation, a task that will often tax their powers of persuasion.

Another vital task at this first meeting is the formation of party committees. Unlike congressional committees, these groups serve only their political party. Through their party committees, Democrats and Republicans research broad policy questions. They consider strategies for the upcoming session and determine party positions on legislation. They also nominate party members to serve on standing committees.

Making Committee Assignments

Leaders of both parties in the House and Senate work out the number of seats the two parties will have on each standing committee. As a rule, seats are assigned to Republicans and Democrats roughly in proportion to their numbers in the chamber as a whole. The majority party leaders, however, make all the final decisions. In this way, they ensure that their party maintains control of each committee.



Woodrow Wilson once observed that, "Congress in session is Congress on public exhibition, whilst Congress in its committee rooms is Congress at work." Those committee rooms are in House and Senate office buildings located on Capitol Hill, shown above. Journalists use "the Hill" as a shorthand term for the entire legislative complex.

Nearly all House members sit on at least one standing committee. Many sit on two or even three. In the smaller Senate, members must take on more committee responsibilities. Most of the 100 senators sit on three to five of the Senate's 20 committees.

A handful of these standing committees are the most sought-after by members, either because the committees control the federal purse strings or because they deal with crucial issues of public policy. The coveted assignments include the Appropriations, Budget, and Commerce committees of both chambers, as well as the Rules Committee and Ways and Means Committee in the House and the Finance Committee in the Senate.

Before a new Congress meets, newly elected members request committee seats. At the same time, returning incumbents may ask to be moved to a more prestigious committee. The party caucus or conference, as well as the full House or Senate, must approve the committee assignments.

Historically, party leaders in Congress used their power to assign committee seats as a tool to ensure party loyalty. Members who received a requested

assignment understood that they "owed" party leaders a favor. The leaders would expect to collect those favors in the future as votes on key issues. Party leaders today are less controlling, but they still use committee assignments to reward members of Congress who cooperate and to punish those who do not.

For new members, assignment of committee seats can be an especially trying experience. Like incumbents, they hope to join a committee that will allow them to serve their district's needs, while also making them look good in the eyes of voters back home. A representative from a district with an air or naval base, for example, might seek a seat on the House Armed Services Committee. Rarely, however, do lawmakers start their career with such a desirable committee assignment.

In general, new members accept whatever committee assignments they receive and try to improve their position in the future. Carl Albert, who first won election to the House of Representatives in 1946, took this attitude. Though assigned to the minor Committee on the Post Office and Civil Service, Albert was determined to start his congress-

In 2011, the Republican Party became the majority party of the House of Representatives, which gives it the power to select committee chairs. For the most part, seniority rule dictates that the majority party member with the most consecutive years of service on the committee becomes committee chair. However, party leaders do consider other factors. Here, republican leaders of the House hold a press conference.



sional career on the right foot. He marched into the office of Speaker of the House Sam Rayburn to thank him for the assignment. Rayburn's secretary mistook the youthful Albert for a teenage **congressional page**. She informed Albert that the congressman did not have time to talk to pages.

The First Day of a New Congress

Albert's dream of moving up in Congress eventually came true. In the 1970s, he served with distinction as speaker of the House. But back on January 3, 1947, he was thrilled just to be sitting in the House chamber for the first time. "With befitting solemnity," he remembered years later, "the clerk of the House began calling the alphabetical roll of members. The first called, Thomas Abernathy of Mississippi, did not respond. The second was Carl Albert of Oklahoma. 'Here,' I answered. It was the sweetest word in the English language."

The first day of any new Congress opens with a series of ceremonies. Once a quorum (a simple majority) is established, the House votes for speaker. Members vote along party lines, so the majority nominee always wins. Next the dean of the House, or the member with the most years of service, administers the oath of office to the speaker. The speaker then swears in all the members of the House at once.

Similar rituals take place in the Senate. There, the vice president swears in the members of the Senate, a few at a time. The Senate majority leader, however, receives no special swearing in.

All members in the House and the Senate take the same congressional oath of office. This oath has been used by Congress since 1868:

I, [name], do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

12.3 Working in Committee

After the opening-day ceremonies, the new Congress is ready to get to work. A great deal of that work takes place in committee—so much so that some observers describe Congress as a collection of committees that come together now and then to approve each other's decisions.

Choosing Committee Chairs and Ranking Members

Committee chairs are chosen by the majority party, mainly through a vote of its party caucus. Historically, the choice of chairs was governed by **seniority rule**. This rule automatically gave the position of committee chair to the majority party member with the most consecutive years of service on the committee. Likewise, the minority party used the seniority rule to select its top committee post—that of ranking member.

Beginning in the 1970s, however, party leaders began considering other factors, such as party loyalty, political skill, and trustworthiness, in choosing committee chairs. Even so, seniority remains the best predictor of leadership in Senate committees. It is the key factor in each party's choice of chairs and ranking members. In the House, however, fewer committee leaders are chosen based only on seniority, although it remains an important factor.

Assigning Bills to Committees

Bills come to a committee from a variety of sources, including individual citizens and interest groups. A

large number originate in departments and agencies of the executive branch. These bills are put forward to advance the policies advocated by the president. No matter where a bill originates, a member of Congress must introduce it. That member becomes the bill's primary sponsor.

According to the rules of the House, the speaker distributes proposed legislation to the various committees for study. In the Senate, the presiding officer handles this task. In actual practice, however, the House and Senate parliamentarians refer most bills to a committee. Each parliamentarian is an expert on the rules and procedures of either the House or the Senate.

Once a bill is sent to a committee, the chair decides what to do with it. One option is simply to ignore it. Former representative Lee H. Hamilton found this out during his first year in the House. Hamilton and a few other members decided to introduce a constitutional amendment that would increase House terms from two years to four. Hamilton later recalled how they approached the



The Senate Committee on Armed Services focuses on legislation that deals with military affairs, including the development of weapons systems, nuclear energy, petroleum reserves, and personnel. This committee also handles important oversight functions. In this photograph taken in 2010, a lieutenant general and a defense policy expert brief the committee on an operation in Afghanistan.

“awesome and fearsome” chair of the Judiciary Committee, Emanuel Celler, to ask him how he stood on the proposal. “I don’t stand on it,” he replied. “I’m sitting on it. It rests four-square under my fanny and will never see the light of day.”

Another option is to hold hearings on the bill, either in the full committee or in one of its subcommittees. Subcommittees are smaller groups of lawmakers that focus on particular areas within the full committee’s jurisdiction. The House has more than 100 subcommittees. The Senate has approximately 70. The committee chair can refer a bill either to a subcommittee that will give it a favorable reception or to one that will not. This is another source of a chair’s considerable power.

The Path of a Bill Through Subcommittee

A committee’s work on a proposed bill can be divided into three phases. At each point, the legislation can move forward or die.

Phase 1: Hearings. The first phase usually begins with a **legislative hearing** in front of the subcommittee to

which the bill was assigned by the committee chair. The purpose of the hearing is to listen to testimonies and gather information from individuals who are interested in or have expertise to share about the proposed legislation. The people called on to testify may include the bill’s sponsors, public officials, lobbyists, and private citizens. To shine the media spotlight on a bill, a chair may even invite a movie star to testify. “Quite candidly,” Senator Arlen Specter admitted, “when Hollywood speaks, the world listens. Sometimes when Washington speaks, the world snoozes.”

Hearings can be fairly short, or they can drag on for days. Subcommittee chairs, for the most part, control the selection and scheduling of witnesses. If they favor a bill, they can move the hearing along. If they oppose a bill, they kill it by scheduling hearings that never seem to end.

Phase 2: Markup. If a bill makes it through the hearings, subcommittee members gather to determine the bill’s final language. This meeting is known as a **markup session**, because this is when members mark up, or amend, the bill. At least one-third of



On December 4, 2009, the Senate Banking, Housing, and Urban Affairs Committee held a hearing to discuss a bill that sought to bailout the automobile industry. Here, the committee chair at the time, Christopher Dodd (left), greets Richard Wagoner, the CEO of General Motors, before the hearing. The committee listened to testimonies from auto executives to assess the proposed \$34 million federal bailout.

the subcommittee's members must be present at a markup session to make up a quorum.

The chair starts a markup session by noting the bill's title and opening it up to amendment. Amendment procedures vary by committee, but typically any change in a bill must be approved by a majority of those present. The committee members usually debate the merits of each proposed amendment before voting on it.

During markup, members are often torn between their roles as delegates and as trustees. As delegates, they want to address the particular interests of their home districts or states. As trustees, they want to shape a bill that will be good for the country while also attracting support from other lawmakers, the president, and the general public.

Phase 3: Report. Once subcommittee members deal with the last amendment to the bill, they vote on a motion to return the bill to the full committee. Those who do not want the bill to move on vote no at this point. However, if a bill has made it through markup, it will most likely be sent back to the full standing committee.

The standing committee can then accept the bill as is or amend it further—even holding more hearings and its own markup session. It then votes on whether to report the bill to the full House or Senate for a floor vote. If the vote is favorable, the committee staff prepares a written report explaining why the committee recommends the enactment of this bill. It is then up to the full House or Senate to agree or disagree with the committee's recommendation.

The Power of the House Rules Committee

In the Senate, a bill reported out of committee is ready to be voted on by the full chamber. But in the House, the bill's sponsors need to clear one more hurdle: the House Rules Committee. This powerful committee acts as a "traffic cop" for House legislation. It can move a bill ahead of others on the House schedule so that it can be considered quickly. Or it can delay a bill's arrival on the House floor.

The Rules Committee also sets the rules for debate on a bill. A bill's supporters usually ask for a **closed rule**. A closed rule severely limits floor debate and amendments to a bill. A closed rule makes it easier to get a bill through the House quickly, with



Committee hearings are used to gather information on bills submitted to Congress. However, as this cartoon suggests, hearings can also be used to delay decisions on difficult issues.

no damaging debate or changes. Opponents, in contrast, prefer an **open rule**. An open rule allows floor debate and the introduction of amendments that could cripple or kill the bill.

The Rules Committee does not act independently of the speaker of the House. The speaker often sets the guidelines for when and how a bill will be debated on the floor. Should the speaker desire changes in a bill, for example, he or she might arrange for an open rule. Former House member Porter J. Goss observed, "How much is the Rules Committee the handmaiden of the Speaker? The answer is, totally."

■ 12.4 Debating and Voting on the House and Senate Floor

Picture yourself in a room with dozens or even hundreds of other strong-minded people. Many of them disagree with your views on just about everything. And they are not shy about speaking up for their beliefs. Nonetheless, you need to work together, in a democratic fashion, to make some very complex decisions. This is the challenge facing members of the House and Senate every time they meet to debate and vote on legislation.



During debate in the House or Senate, a lawmaker can ask the person recognized to speak to yield the floor. It is up to the person holding the floor to decide whether to give up speaking time to someone else. In this cartoon, the answer is clearly no.

The Majority Party Controls Floor Debate

In both chambers, the majority party controls what happens on the chamber floor. Floor time is precious, and what is said on the floor can be used to create sound bites for the news and social media. The speaker of the House and the majority leader of the Senate determine which bills will be debated and who will be allowed to speak for how long.

Once floor debate on a bill begins, the speaker and majority leader both have the **power of recognition**. No member may rise to address the chamber without first being recognized, or given permission, by the leader. The power of recognition is so important that members of Congress do all they can to stay on good terms with their House and Senate leaders.

Armed with the power of recognition, the speaker and majority leader are usually able to run an orderly legislative process. That process has three main parts: (1) general debate on the bill, (2) debate and voting on amendments to the bill, and (3) voting on final passage of the bill.

House Debate: Keeping It Short, If Not Sweet

With 435 members, the House has to put limits on floor debate. On most bills, the Rules Committee often limits general debate to one hour—30 minutes each for the majority and the minority parties. The goal of this one-hour rule, like much that takes place on the House floor, is to keep the legislative process moving.

The bill's sponsor and main opponent usually control a bill's debate time. They dole out their precious minutes to colleagues who want to speak on the bill. Typically, House members are limited to just one or two minutes at the microphone, so they learn to make their points quickly. Still, with most floor debates now being televised on C-SPAN, members appreciate even this short amount of "face time" in front of the voters back home.

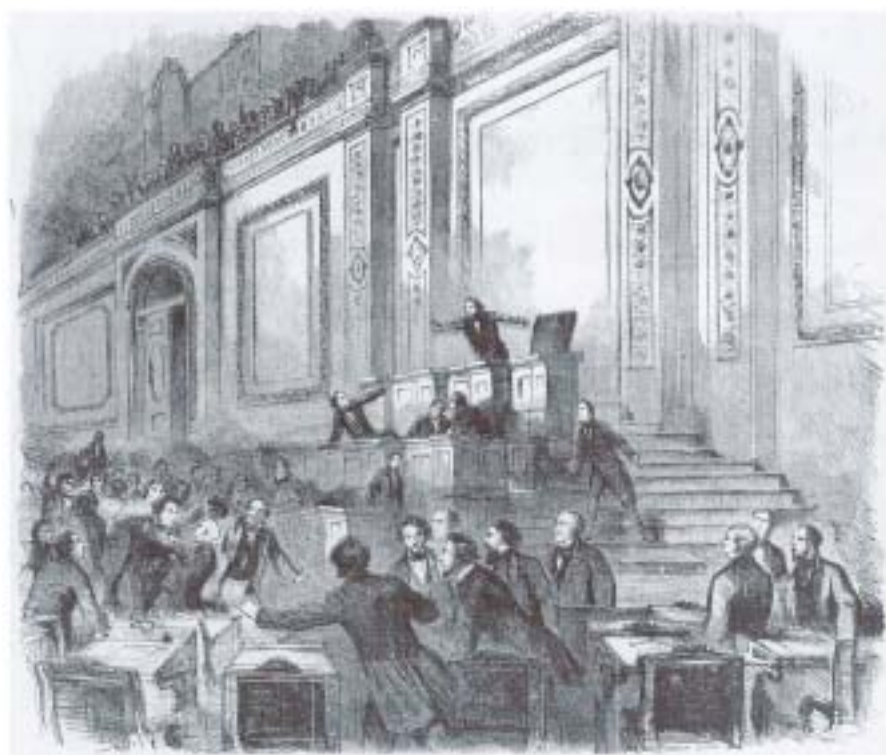
Unlimited Debate in the Senate: Filibusters and Holds

The Senate prides itself on its tradition of unlimited debate. With only 100 members, it can afford to be more relaxed about time. But sometimes, this tradition can bring the legislative process to a halt.

In contrast to the speaker of the House, the Senate majority leader has limited control over the legislative agenda. To schedule a bill, the majority leader often must work closely with the minority leader. The majority leader also has less control over floor debate. Senators must consent to limit debate. If they do not, any senator—once recognized—may speak on any subject at any length.

This right comes into play most vividly when a senator starts a **filibuster**. A filibuster involves prolonged debate or other delaying tactics aimed at blocking the passage of a bill favored by a majority of lawmakers. A Senate filibuster can go on for days, with one long-winded speaker following another. In 1957, the late Strom Thurmond of South Carolina set the record for the longest single speech. He spoke for 24 hours and 18 minutes in an effort to kill a civil rights bill. At first, Thurmond talked about civil rights. But as the hours rolled by, he read some of his favorite recipes. By the end of his marathon speech, he was reading names from a phone book.

In 1917, the Senate adopted a means of closing debate known as the **cloture** rule. At that time, this



Journalists often report about battles over bills in Congress. On February 6, 1858, a battle in the House of Representatives over the issue of slavery turned physical. More than 50 members joined in the brawl on the House floor. Such physical confrontations are rare in the history of Congress, however.

rule required a **supermajority** of two-thirds of all senators to cut off debate. Today, cloture requires only three-fifths of the Senate, or 60 votes.

A filibuster is not the only delaying tactic available to senators. They can also place a **hold** on bills to delay debate. A hold signals the lawmaker's intention of launching a filibuster if the bill is sent to the Senate floor. Because the identity of the person placing the hold may be kept secret, senators use this tactic when they do not want to openly oppose a bill.

Amendments: Riders and Christmas Tree Bills

Like the rules for debate, the amendment process also differs in the two chambers. In the House, when general debate ends, the measure is opened to amendment. Under the five-minute rule, members debate each proposed change. In theory, though not often in practice, this rule limits members who support and oppose an amendment to five minutes of debate time each. Once all amendments have been voted on, the full House is ready to vote on final passage of the bill.

The Senate follows a similar procedure, with one important difference. According to House rules, an amendment is supposed to be germane, or

relevant, to the content of the bill. In the Senate, however, senators can attach amendments that are totally unrelated to a bill. Known as **riders**, such amendments may be used as "sweeteners" to win more votes for a bill. Or they can serve as "poison pills" designed to make sure a bill fails. Riders are often used to get controversial legislation or bills favoring special interest groups through Congress.

Must-pass legislation, such as an emergency funding bill, tends to attract many riders because the president is unlikely to veto such a measure. The result is often described as a **Christmas tree bill**. In 1956, *Time* magazine ran an article with that title about a trade bill that had attracted more than 100 amendments. New Mexico senator Clinton Anderson said of the result, "This bill gets more and more like a Christmas tree; there's something on it for nearly everyone."

Voting on a Bill

Floor votes in the House and Senate can be taken in three ways. In a **voice vote**, supporters all together call out "aye," meaning "yes." Then opponents call out "no." The louder voices, in the judgment of the presiding officer, win the vote. In a **standing vote**,

first the supporters and then the opponents stand to be counted. Neither of these two methods records how each individual lawmaker voted.

In a **roll-call vote**, each member's vote is officially recorded. In the Senate, this is done by having a clerk call each name from the roll of senators and recording each one's vote. The much larger House uses an electronic voting system. Each member inserts his or her plastic Vote-ID card into a voting station slot and punches a button for "yea" ("yes"), "nay" ("no"), or "present." A vote of "present" means the member **abstains**, or chooses not to cast a vote on this bill.

Pressures and Influences on Legislators

Before voting on any bill, most legislators consider the views of their constituents, as well as their own personal convictions. They may also feel pressures and influences from several other, often conflicting, sources.

Interest groups. Interest groups are sometimes called pressure groups—and with good reason. Their lobbyists crowd committee rooms and the halls of Congress. They confront legislators who are undecided on how to vote on a particular bill. They can also be persistent. Senator Ben Nighthorse Campbell once said that being besieged by lobbyists is "like being attacked by a plague of locusts. Now I know what a grain of wheat feels like."

Party leaders. Leaders of each political party expect their members to support the party's public policy goal. To gain that support, leaders can pass out favors, such as the promise of a plum committee assignment or help raising campaign funds. They can also use persuasion. Lyndon Johnson, who served as Senate majority leader before becoming president, was a master of persuasion. Two journalists who followed Johnson's career described what came to be known as "the treatment."



There are three ways to vote in Congress, by voice vote, standing vote, and roll-call vote. But only the roll-call method records how each individual member voted. In the Senate, roll-call votes are done verbally. In the House, they are done through an electronic voting system. Each member's desk contains a keypad that the member uses to vote. The vote then appears on a large electronic "scoreboard." Since it was first introduced in 1973, the electronic voting system has been upgraded. However, how the system is used essentially remains the same.



During the Great Recession, lawmakers in both houses worked to create legislation that would stimulate the economy. However, the Senate and the House could not agree on a version of the bill. In 2009, the Senate and House Appropriations Committees met in a joint conference to hammer out a compromise. Ultimately, the conference settled on a stimulus package that would inject over \$780 billion into the economy.

The Treatment could last ten minutes or four hours . . . Its tone could be supplication, accusation, cajolery, exuberance, scorn, tears, complaint, the hint of threat. It was all of these together . . . He moved in close, his face a scant millimeter from his target, his eyes widening and narrowing, his eyebrows rising and falling. From his pockets poured clippings, memos, statistics. Mimicry, humor, and the genius of analogy made The Treatment an almost hypnotic experience and rendered the target stunned and helpless.

—Robert Evans and Robert Novak, *Lyndon B. Johnson: The Exercise of Power*, 1966

Colleagues. Members of Congress regularly yield to the pressure to trade votes. This kind of **logrolling**, or mutual support and cooperation, is a common way to get things done in Congress. Typically, two opposing groups each want a particular bill passed, so each promises to vote for the other's measure. Simon Cameron, a politician who served in President Abraham Lincoln's cabinet, aptly defined logrolling as "you scratch my back and I'll scratch yours."

12.5 Final Steps in the Legislative Process

Once the House or Senate passes a bill, the bill does not go directly to the president. Both chambers of Congress must vote to approve the bill in identical

form before it goes from Capitol Hill to the White House for the president's signature.

Congress Speaks As One—Eventually

A bill first passed by the House must be voted on by the Senate and vice versa. If the bill is changed in any way by the second chamber, the House and Senate will have to work out a compromise version. This often happens informally, and leaders from the two chambers iron out their differences and come to an agreement on any amendments.

About 20 percent of the time, however, especially with major or controversial legislation, House and Senate leaders cannot reach agreement informally. In such cases, the bill is sent to a joint conference committee. The task of this committee is to work out a compromise that a majority of lawmakers in both chambers can accept and that the president will sign into law.

The speaker of the House and the presiding officer of the Senate appoint members to a conference committee. These members are known as **conferees**. Typically, each chamber appoints about a half dozen conferees, mainly senior members of the committees involved with the bill. The conferees bargain face to face. To reach agreement, they may heavily revise a bill or even rewrite it completely. For this reason, conference committees are sometimes called "the third house of Congress."

An agreement reached by a conference committee must have the backing of a majority of each

Congress's Batting Average

The percentage of bills and joint resolutions introduced in Congress that have made it through the legislative process has dropped over time. In the first years of Congress, lawmakers had a "batting average" of nearly 100 percent. Today the average is well below 10 percent.

Introduced Measures That Were Passed, 1789–2011



Source: Harold W. Stanley and Richard G. Niemi, *What Statistics on American Politics 2011–2012*. Los Angeles: CQ Press, 2011.

chamber's conferees. That agreement, known as a conference report, goes back to the House and Senate for an **up-or-down vote**. This type of vote means that the revised bill must be adopted or rejected as is, with no further amendments, by a majority of the full House and Senate. Only if both chambers approve it can the bill be sent to the president.

The President Takes Action on a Bill—Or Not

Once the bill is delivered to the White House, the president has ten days (not counting Sundays) to do one of the following:

- Sign the bill into law.
- Veto the bill.
- Take no action on the bill. At the end of ten days, the bill becomes law without the president's signature.

A bill that has been vetoed by the president is delivered back to the first chamber that passed it. That chamber may decide that the bill cannot be saved. Or it may try to override, or cancel, the presidential veto. Historically, only a small percentage of bills approved by Congress have been vetoed.

Congress Can Try to Save Vetoed Legislation

Overriding a presidential veto is not easy. Two-thirds of the members present in each chamber must vote in favor of saving the legislation. If the first chamber fails to override the veto, the measure dies there. Otherwise, it moves on to the second chamber for a vote. If two-thirds of the lawmakers in the second chamber also approve the override, the bill becomes a law without the president's signature.

Congressional overrides are more likely when the president belongs to one party and Congress is controlled by the other, or when Congress and the president clash over a particular issue. Both conditions existed during Andrew Johnson's presidency in the 1860s. Johnson was a southern Democrat, while Congress was controlled by northern Republicans. Congress also disagreed with Johnson's plans for reconstructing the South after the Civil War.

Under these unusual circumstances, Congress was able to override 15 of Johnson's 21 vetoes. In contrast, during his four terms as president, Franklin Roosevelt vetoed a record number of 372 bills. Congress managed to override only 9 of his vetoes.



The president rarely signs a major bill without some sort of ceremony. The president often uses several pens to sign legislation and then passes those pens out to the bill's sponsors and other members. For the signing of the bill making Martin Luther King Jr.'s birthday a national holiday, President Ronald Reagan invited Coretta Scott King, the civil rights leader's widow, to the ceremony.

Summary

In theory, the lawmaking process in Congress is fairly straightforward. In reality, it is a complex struggle involving many traditions, rules, and competing interests. The rare measure that actually becomes law often bears little resemblance to the bill that was first introduced.

Convening a new Congress Before a new Congress opens, Democrats and Republicans in each chamber meet in party caucuses or conferences. There they elect party leaders, make committee assignments, and formulate strategies.

Working in committee Standing committees and their subcommittees do most of the work of Congress. Directed by powerful committee chairs, these committees study, revise, and sometimes completely rewrite bills.

Voting on bills The majority party leaders in each chamber direct the flow of bills through the process of debate, amendment, and voting. The House, because of its large size, restricts debate. The Senate allows unlimited debate.

Final steps to enactment Before a bill goes to the president, both chambers must pass it in identical form. The president can choose to sign a bill into law or veto it. To save a vetoed bill, both chambers of Congress must pass it again, but this time by a two-thirds majority of those present and voting.

Is divided government good for the nation?

The United States operates under a two-party system, which at times leads to divided government, a situation in which one party controls the White House and another party controls at least one house of Congress. Divided government forces the two branches of government to compromise, but it can also lead to gridlock.

In this article, William A. Niskanen discusses the virtues of divided government. As you read this article, ask yourself if divided government leads to balanced compromises that help the nation. Or does it create unnecessary roadblocks that impede progress in policy?

Give Divided Government a Chance

by William A. Niskanen

For those of you with a partisan bent, I have some bad news. Our federal government may work better (well, less badly) when at least one house of Congress is controlled by the opposing party. Divided government is, curiously, less divisive. It's also cheaper. The basic reason for this is simple: When one party proposes drastic or foolish measures, the other party can obstruct them. The United States prospers most when excesses are curbed, and, if the numbers from the past 50 years are any indication, divided government is what curbs them.

Let's look at some statistics. From the dawn of the Cold War until today, we've had only two periods of what could be called fiscal restraint: The last six years of the Eisenhower administration, and the last six years of the Clinton administration, both intervals in which the opposition controlled Congress. Under Clinton, the average annual increase in spending was at about 1 percent, while, under Ike, it was negative. By contrast, our unified governments have gone on fiscal benders. Harry

Truman, with the help of a Democratic Congress, sent the money flying, with spending increases of as high as 10 percent a year. Lyndon Johnson was almost as profligate. And . . . unfortunately, George W. Bush, with a GOP majority, is the heir to their legacies. To put this in plain numbers, government spending has increased an average of only 1.73 percent annually during periods of divided government. This number more than triples, to 5.26 percent, for periods of unified government. That's a hefty premium to pay for a bit of unity.

Equally striking is that these spending increases have generally found the same recipient: the Pentagon. It's not that unified governments love to purchase bombers, but, rather, that they tend to draw us into war. This may sound improbable at first, but consider this: In 200 years of U.S. history, every one of our conflicts involving more than a week of ground combat has been initiated by a unified government. Each of the four major American wars during the 20th century, for example—World War I, World War II, the Korean War, and

The Pros and Cons of Divided Government

Pros

- It forces both parties to compromise. This encourages politicians to take a moderate approach to major issues and keeps extremism in check.
- It provides incentive for legislators to come up with pragmatic solutions instead of radical fixes.
- It supports the system of checks and balances because the legislative and executive branches are motivated to limit each other's power.
- It forces the executive branch to govern from the center.

Cons

- It often leads to legislative gridlock, a situation in which both parties cannot agree upon an approach to solve problems in government, making it difficult to pass laws.
- It produces obstacles when government needs to create solutions for major problems.
- It slows down the decision-making process. This causes problems when there are time-sensitive issues that need solutions.
- It increases partisanship when Congress conducts politically motivated investigations of the executive branch.

the Vietnam War—was initiated by a Democratic president with the support of a Democratic Congress. The . . . war in Iraq, initiated by a Republican president and backed by a Republican Congress, is consistent with this pattern. It also stands as the only use of military force involving more than a week of ground combat that has been initiated by a Republican president in over a century. Divided government appears to be an important constraint on American participation in war. Needless to say, this reduces outlays in both

blood and treasure.

There's one more advantage to tension between our governmental branches: Major reform is more likely to last. Since passing any measure in divided government requires bipartisan support, a shift in majorities is less likely to bring on serious changes or adulterations. The Reagan tax laws of 1981 and 1986, for example, were both approved by a House of Representatives controlled by Democrats and have largely survived. The welfare reform of 1996 was approved by Clinton

and a Republican Congress and also endures. By contrast, any efforts during the past several years to reform the federal tax code, Medicare, or Social Security have faltered, and any changes forced through by the GOP would almost certainly be undone as soon as Democrats returned to power. Reforms of real magnitude will almost certainly depend on preventing immoderation and securing bipartisan support, and little of that seems likely in a GOP-only government.

American voters, in their unarticulated collective wisdom, seem to grasp the benefits of divided government, and that's how they've voted for most of the past 50 years. To be sure, divided government is not the stuff of which political legends are made, but, in real life, most of us would take good legislation over good legends. As a life-long Republican and occasional federal official, I must acknowledge a hard truth: I don't much care how a divided government is next realized.

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