

## 2.1 Congress/House and Senate

### **Describe the different structures, powers and functions of each house of Congress.**

Early in our history, Alexander Hamilton was giving a tour of the nation's capital to a group of foreign visitors. When they arrived to witness Congress in action he opened the door and was to have said, "Here sir, the people govern." Our representative democracy finds agency through our Congress, our representative body. **The republican ideal in the United States is manifested in the structure and operation of the legislative branch.**

The enumerated powers of Congress are found in Article 1 Section 8 of the U.S. Constitution. Congress declares war; collects taxes; regulates interstate commerce; coins money; and establishes courts. Broadly speaking, Congress makes laws; conducts oversight of the entire government; and provides for constituent service.

If the president has the "power of the sword," the Congress has the "power of the purse." The greatest power the Congress can wield is their control of the Federal budget. The Congress oversees our government's fiscal policy. They raise money through taxes and spend money through their appropriations. The greatest challenge facing federal budgets today is the ever-growing entitlement programs, namely Social Security and Medicaid. Discretionary choices made by our Congress make up less and less of the federal budget. Raising revenue through taxation is never a popular option. It is for this reason that federal budgets are notable for their deficits and not their discipline.

It is the informal powers of Congress, however, that increasingly express its 21<sup>st</sup> century authority. More and more of Congress' work are legitimized by the commerce clause and the necessary and proper clause. These two constitutional provisions allow Congress to go beyond the letter of the law.

The Constitution's enumerated power to regulate all interstate commerce has been used to expand the size and scope of the federal government. Congress uses this provision more than any other to justify its regulatory prerogative. In a recent Court argument, a Justice asked if there were any limits to what could be regulated under the commerce clause. Before the attorney could answer another Justice quipped, "Don't give anything away here. They might want to do it next." Conservatives in recent years have tried to reign in the use of the commerce clause. With little success, the commerce clause continues to be at the epicenter of political debate over the role played by our government in our lives.

There is a reason the necessary and proper clause has been dubbed the elastic clause. This constitutional provision has allowed the Congress and subsequently the government of the United States to expand far beyond what the Founders had envisioned. In all fairness, however, the Founders never could have imagined what our world would be like today. It was for this reason they wrote into law a provision that would allow the Constitution to be a living letter. Some argue it lives too gregariously. It is necessary and proper for “we the people” to decide whether or not the Congress abuses its authority.

The legislative branch is ultimately responsible to make laws. The time taken in the legislative process varies enormously. The complexity of the legislative process always gives the opponents an advantage. Only members of Congress can introduce a bill or propose a piece of legislation. Bills must pass both chambers of Congress in order to become a law. Bills can originate in any chamber except all revenue bills, laws that affect taxes, must start in the House of Representatives. Remember we fought a revolution over “no taxation without representation.” It is for this reason that the root of public policy in American life was to be found in our legislative branch, the United States Congress.

Lawmaking has been frequently compared to sausage making. It is not pretty. It begins with an idea. Public policy ideas can come from a variety of places. Ultimately, however, ideas must be written into a formal proposal known as a bill. Only a member of Congress can introduce a bill into Congress.

Once a bill is introduced it is assigned to a committee where the bill is marked up. Committees study, hold hearings, and edit various details before voting on the bill. If the bill receives a majority vote in committee it is passed on to the next step. Helping Congress in the early stages of legislation is the Congressional Budget Office (CBO). This bipartisan agency scores the probable affect of proposed bills.

If the bill is defeated in committee, true for most, a member can call for a discharge petition. A discharge petition allows members from the floor of each chamber to reject a committee decision and bring a bill to a vote. Discharge petitions are highly unusual.

In the House of Representatives [only] there is a Rules Committee. The Rules Committee determines if a bill on the floor will have an open or closed rule. An open rule means a bill can be amended on the floor debate. A closed rule means a bill cannot be amended or changed during the floor debate.

Most bills in Congress involve the authorization of money. Authorizations set spending limits. Most laws in Congress appropriate money. An appropriation is the amount of money that is actually spent. Often appropriations are given inside large bills to small projects that affect only one congressional district. These earmarks are used to persuade single members to vote for a more controversial bill. This “greasing of the wheel” is often called a pork barrel project. Earmarks make up a small percentage of Congressional spending but have come under serious criticism in recent years.

Floor debate and voting is dramatically different in the House and Senate. In the House the majority party dominates floor activity. Debate is limited by time. If the leadership maintains party discipline, that is, if they stick together, the majority party in the House can pass everything they want.

The Senate floor is much different. There are no strict time limits. In fact, one member can stall or delay the entire Senate calendar by filibustering. Today almost every bill in the Senate must overcome a filibuster. To end a filibuster requires a cloture. A cloture vote requires sixty Senators to decide to end a filibuster. Rarely does the majority party have 60 votes. This means that the minority party can obstruct just about everything in the Senate.

If a bill were to pass both chambers of Congress it must go to a conference committee. A conference committee reconciles the differences between the House and Senate versions of a bill.

When a bill passes Congress it still needs a president's signature to become law. The president has 10 days to act. If he does nothing in 10 days the bill becomes law automatically. A presidential veto, however, ends it all. Congress can override a veto with a 2/3's majority vote. This is rare. Less than 4% of presidential vetoes are overridden. Occasionally the president might use a pocket veto. A bill is pocket vetoed if the president does not act and Congress adjourns within the 10-day limit. One thing is certain – the legislative process is never routine. The process varies enormously. The opposition always has the advantage. As the legislative process has grown more and more decentralized, with numerous hurdles and access points for officials to affect outcomes, opportunities for corruption and obstruction have proliferated.

Many of the duties and responsibilities of Congress have evolved with experience and certain new traditions. It is for this reason that our Congress should be seen as more than a legislative branch. The United States Congress fulfills three primary duties:

First, the United States Congress is, as we have already seen, a legislative branch. Here "we the people" make laws. Here "we the people" rule. But this is not their only responsibility.

Second, the United States Congress is given the power of oversight. The U.S. Congress is empowered to check the privileges and authority of the rest of the government. This is done through Congressional hearings where information is solicited. It is done through formal investigations. But it is also done through the budget process. The U.S. Congress controls the money collected and spent by our federal government. Congress can cut spending, cut appropriations, to those agencies of government that abuse their power.

Third, the United States Congress is ultimately made up of members who are charged with representing their constituents. Therefore, more and more time spent by members

of Congress revolves around constituent service. Constituents are the citizens who cast their votes for a member of Congress. Most members of Congress spend a majority of their time helping their constituents. This is done through direct representation of constituent interests but also by helping to resolve local concerns, coordinating services with state and local governments and making personal appeals to assure veterans receive their pensions and seniors receive promptly their Social Security benefits.