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Outline of
U.S. GOVERNMENT

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CHAPTER 4
THE LEGISLATIVE BRANCH: THE REACH OF CONGRESS

"Government implies the power of making laws."

— Alexander Hamilton, *The Federalist Papers*, 1787-1788

Article I of the Constitution grants all legislative powers of the federal government to a Congress divided into two chambers, a Senate and a House of Representatives. The Senate is composed of two members from each state as provided by the Constitution. Its current membership is 100. Membership in the House is based on each state's population, and its size is therefore not specified in the Constitution. Its current membership is 435.

For more than 100 years after the adoption of the Constitution, senators were not elected by direct vote of the people but chosen by state legislatures and looked on as representatives of their home states. Their duty was to ensure that their states were treated equally in all legislation. The Seventeenth Amendment, adopted in 1913, provided for direct election of the Senate.

The delegates to the Constitutional Convention reasoned that if two separate groups — one representing state governments and one representing the people — must both approve every proposed law, there would be little danger of Congress passing laws hurriedly or carelessly. One house could always check the other in the manner of the British Parliament. Passage of the Seventeenth Amendment did not substantially alter this balance of power between the two houses.

While there was intense debate in the convention over the makeup and powers of Congress, many delegates believed that the legislative branch would be relatively unimportant. A few believed that the Congress would concern itself largely with external affairs, leaving domestic matters to state and local governments. These views were clearly mistaken. The Congress has proved to be exceedingly active, with broad powers and authority in all matters of national concern. While its strength vis-à-vis the executive branch has waxed and waned at different periods of American history, the Congress has never been a rubber stamp for presidential decisions.

QUALIFICATIONS OF MEMBERS OF CONGRESS

The Constitution requires that U.S. senators must be at least 30 years of age, citizens of the United States for at least nine years, and residents of the states from which they are elected. Members of the House of Representatives must be at least 25, citizens for seven years, and residents of the states from which they are elected. The states may set additional requirements for election to Congress, but the Constitution gives each house the power to determine the qualifications of its members. Each state is entitled to two senators. Thus, Rhode Island, the smallest state, with an area of about 3,156 square kilometers, has the same senatorial representation as Alaska, the biggest state, with an area of some 1,524,640 square kilometers. Wyoming, with an estimated 480,000 persons, has representation equal to that of California, with its population of 32,270,000.

The total number of members of the House of Representatives has been determined by Congress. That number is divided among the states according to their populations. Regardless of its population, every state is constitutionally guaranteed at least one member of the House. At present, seven states — Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont, and Wyoming — have only one representative. On the other hand, six states have more than 20 representatives — California alone

has 52.

The Constitution provides for a national census each 10 years and a redistribution of House seats according to population shifts. Under the original constitutional provision, the number of representatives was to be no more than one for each 30,000 citizens. There were 65 members in the first House, and the number was increased to 106 after the first census. Had the 1-to-30,000 formula been adhered to permanently, population growth in the United States would have brought the total number of representatives to about 7,000. Instead, the formula has been adjusted over the years, and today the ratio of representatives to people is about 1-to-600,000.

State legislatures divide the states into congressional districts, which must be substantially equal in population. Every two years, the voters of each district choose a representative for Congress.

Senators are chosen in statewide elections held in even-numbered years. The senatorial term is six years, and every two years one-third of the Senate stands for election. Hence, two-thirds of the senators are always persons with some legislative experience at the national level.

It is theoretically possible for the House to be composed entirely of legislative novices. In practice, however, most members are reelected several times, and the House, like the Senate, can always count on a core group of experienced legislators.

Since members of the House serve two-year terms, the life of a Congress is considered to be two years. The Twentieth Amendment to the U.S. Constitution provides that the Congress will convene in regular session each January 3, unless Congress fixes a different date. The Congress remains in session until its members vote to adjourn — usually late in the year. The president may call a special session when he thinks it necessary. Sessions are held in the Capitol building in Washington, D.C.

POWERS OF THE HOUSE AND SENATE

Each house of Congress has the power to introduce legislation on any subject except raising revenue, which must originate in the House of Representatives. The large states may thus appear to have more influence over the public purse than the small states. In practice, however, each house can vote against legislation passed by the other house. The Senate may disapprove a House revenue bill — or any bill, for that matter — or add amendments that change its nature. In that event, a conference committee made up of members from both houses must work out a compromise acceptable to both sides before the bill becomes law.

The Senate also has certain powers especially reserved to that body, including the authority to confirm presidential appointments of high officials and ambassadors of the federal government, as well as authority to ratify all treaties by a two-thirds vote. In either instance, a negative vote in the Senate nullifies executive action.

In the case of impeachment of federal officials, the House has the sole right to bring charges of misconduct that can lead to an impeachment trial. The Senate has the sole power to try impeachment cases and to find officials guilty or not guilty. A finding of guilt results in the removal of the federal official from public office.

The broad powers of the whole Congress are spelled out in Article I of the Constitution:

- To levy and collect taxes;
- To borrow money for the public treasury;
- To make rules and regulations governing commerce among the states and with foreign countries;
- To make uniform rules for the naturalization of foreign citizens;
- To coin money, state its value, and provide for the punishment of counterfeiters;
- To set the standards for weights and measures;
- To establish bankruptcy laws for the country as a whole;
- To establish post offices and post roads;
- To issue patents and copyrights;
- To set up a system of federal courts;
- To punish piracy;
- To declare war;
- To raise and support armies;
- To provide for a navy;
- To call out the militia to enforce federal laws, suppress lawlessness, or repel invasions;
- To make all laws for the seat of government (Washington, D.C.);
- To make all laws necessary to enforce the Constitution.

A few of these powers are now outdated, but they remain in effect. The Tenth Amendment sets definite limits on congressional authority, by providing that powers not delegated to the national government are reserved to the states or to the people. In addition, the Constitution specifically forbids certain acts by Congress. It may not:

- Suspend the writ of habeas corpus — a requirement that those accused of crimes be brought before a judge or court before being imprisoned — unless necessary in time of rebellion or invasion;
- Pass laws that condemn persons for crimes or unlawful acts without a trial;

- Pass any law that retroactively makes a specific act a crime;
- Levy direct taxes on citizens, except on the basis of a census already taken;
- Tax exports from any one state;
- Give specially favorable treatment in commerce or taxation to the seaports of any state or to the vessels using them;
- Authorize any titles of nobility.

OFFICERS OF THE CONGRESS

The Constitution provides that the vice president shall be president of the Senate. The vice president has no vote, except in the case of a tie. The Senate chooses a president *pro tempore* to preside when the vice president is absent. The House of Representatives chooses its own presiding officer — the Speaker of the House. The speaker and the president pro tempore are always members of the political party with the largest representation in each house.

At the beginning of each new Congress, members of the political parties select floor leaders and other officials to manage the flow of proposed legislation. These officials, along with the presiding officers and committee chairpersons, exercise strong influence over the making of laws.

THE COMMITTEE PROCESS

One of the major characteristics of the Congress is the dominant role committees play in its proceedings. Committees have assumed their present-day importance by evolution, not by constitutional design, since the Constitution makes no provision for their establishment.

At present the Senate has 17 standing (or permanent) committees; the House of Representatives has 19 committees. Each specializes in specific areas of legislation: foreign affairs, defense, banking, agriculture, commerce, appropriations, and other fields. Almost every bill introduced in either house is referred to a committee for study and recommendation. The committee may approve, revise, kill, or ignore any measure referred to it. It is nearly impossible for a bill to reach the House or Senate floor without first winning committee approval. In the House, a petition to release a bill from a committee to the floor requires the signatures of 218 members; in the Senate, a majority of all members is required. In practice, such discharge motions only rarely receive the required support.

The majority party in each house controls the committee process. Committee chairpersons are selected by a caucus of party members or specially designated groups of members. Minority parties are proportionally represented on the committees according to their strength in each house.

Bills are introduced by a variety of methods. Some are drawn up by standing committees; some by special committees created to deal with specific legislative issues; and some may be suggested by the president or other executive officers. Citizens and organizations outside the Congress may suggest legislation to members, and individual members themselves may initiate bills. After introduction, bills are sent to designated committees that, in most cases, schedule a series of public hearings to permit presentation of views by persons who support or oppose the legislation. The hearing process, which can last several weeks or months, opens the legislative process to public participation.

One virtue of the committee system is that it permits members of Congress and their staffs to amass a considerable degree of expertise in various legislative fields. In the early days of the republic, when the population was small and the duties of the federal government were narrowly defined, such expertise was not as important. Each representative was a generalist and dealt knowledgeably with all fields of interest. The complexity of national life today calls for special knowledge, which means that elected representatives often acquire expertise in one or two areas of public policy.

When a committee has acted favorably on a bill, the proposed legislation is then sent to the floor for open debate. In the Senate, the rules permit virtually unlimited debate. In the House, because of the large number of members, the Rules Committee usually sets limits. When debate is ended, members vote either to approve the bill, defeat it, table it — which means setting it aside and is tantamount to defeat — or return it to committee. A bill passed by one house is sent to the other for action. If the bill is amended by the second house, a conference committee composed of members of both houses attempts to reconcile the differences.

Once passed by both houses, the bill is sent to the president, for constitutionally the president must act on a bill for it to become law. The president has the option of signing the bill — by which it becomes law — or vetoing it. A bill vetoed by the president must be reapproved by a two-thirds vote of both houses to become law.

The president may also refuse either to sign or veto a bill. In that case, the bill becomes law without his signature 10 days after it reaches him (not counting Sundays). The single exception to this rule is when Congress adjourns after sending a bill to the president and before the 10-day period has expired; his refusal to take any action then negates the bill — a process known as the "pocket veto."

CONGRESSIONAL POWERS OF INVESTIGATION

One of the most important nonlegislative functions of the Congress is the power to investigate. This power is usually delegated to committees — either to the standing committees, to special committees set up for a specific purpose, or to joint committees composed of members of both houses. Investigations are conducted to gather information on the need for future legislation, to test the effectiveness of laws already passed, to inquire into the qualifications and performance of members and officials of the other branches, and, on rare occasions, to lay the groundwork for impeachment proceedings. Frequently, committees call on outside experts to assist in conducting investigative hearings and to make detailed studies of issues.

There are important corollaries to the investigative power. One is the power to publicize investigations and their results. Most committee hearings are open to the public and are widely reported in the mass media. Congressional investigations thus represent one important tool available to lawmakers to inform the citizenry and arouse public interest in national issues. Congressional committees also have the power to compel testimony from unwilling witnesses and to cite for contempt of Congress witnesses who refuse to testify and for perjury those who give false testimony.

INFORMAL PRACTICES OF CONGRESS

In contrast to European parliamentary systems, the selection and behavior of U.S. legislators has little to do with central party discipline. Each of the major American political parties is a coalition of local and state organizations that join together as a national party — Republican or Democratic — during the presidential elections at four-year intervals. Thus the members of Congress owe their positions to their local or state electorate, not to the national party leadership nor to their congressional colleagues. As a result, the legislative behavior of representatives and senators tends to be individualistic and idiosyncratic, reflecting the great variety of electorates represented and the freedom that comes from having built a loyal personal constituency.

Congress is thus a collegial and not a hierarchical body. Power does not flow from the top down, as in a corporation, but in practically every direction. There is only minimal centralized authority, since the power to punish or reward is slight. Congressional policies are made by shifting coalitions that may vary from issue to issue. Sometimes, where there are conflicting pressures — from the White House and from important economic or ethnic groups — legislators will use the rules of procedure to delay a decision so as to avoid alienating an influential sector. A matter may be postponed on the grounds that the relevant committee held insufficient public hearings. Or Congress may direct an agency to prepare a detailed report before an issue is considered. Or a measure may be put aside ("tabled") by either house, thus effectively defeating it without rendering a judgment on its substance.

There are informal or unwritten norms of behavior that often determine the assignments and influence of a particular member. "Insiders," representatives and senators who concentrate on their legislative duties, may be more powerful within the halls of Congress than "outsiders," who gain recognition by speaking out on national issues. Members are expected to show courtesy toward their colleagues and to avoid personal attacks, no matter how unpalatable their opponents' policies may be. Members are also expected to specialize in a few policy areas rather than claim expertise in the whole range of legislative concerns. Those who conform to these informal rules are more likely to be appointed to prestigious committees or at least to committees that affect the interests of a significant portion of their constituents.

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