

Congress: Beginnings and Today

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Establishing a government in which laws are made by an assembly of elected representatives is one of the great achievements in the last several centuries of human history. Yet most people today have a low regard for our legislative branch. Congress has become more democratic since the Founding, and yet today people think their representatives care about their opinions less than ever. The Constitution places the lawmaking power in Congress, yet people look more to the president as our chief legislator. What accounts for these contradictions? Examining the ideas that inspired the creation of our legislative branch and the history of its development helps us to answer these questions.

Constitutional Convention

At the Constitutional Convention, the structure of the legislative branch was the most contentious issue that the delegates faced. The amount of representation that would be granted to the large and the small states nearly tore the Convention apart. One side favored equal representation in the legislature – an arrangement befitting a league or confederacy of equal and independent sovereign states where each distinct sovereignty gets a single vote. Others advocated for proportional representation based on the idea of a republican government. After much debate, the issue was settled by a compromise which exists to this day: one house of Congress provides proportional, the other, equal representation.

Ratification Debate

During the ratification debate over the Constitution, other aspects of the legislative branch prompted criticism. Opponents of the Constitution, known as Anti-Federalists, objected that the legislature would be too far removed from the people, and would become an aristocracy that would betray the people the legislators were supposed to serve. The term lengths were too long. The lack of term limits would allow representatives to serve for very long periods of time, becoming removed from the day-to-day concerns of their constituents. There would be too few representatives (the Constitution allowed *no more* than one representative per 30,000 inhabitants) and each representative would have too large a district, detaching the representative from personal contact and intimacy with his constituents. These arrangements, Anti-Federalists feared, would produce a legislative body that is aristocratic, elitist, and out of touch.

Federalists, those who supported the Constitution, responded by pointing to the problems occurring in the states during the 1780s as evidence that representatives needed time and space in order to “refine and enlarge the public views,” not simply reflect them. Sometimes majorities are tyrannical and representatives must protect the people from themselves. Longer term lengths would provide this space, and the opportunity for indefinite re-election would ensure the people get to decide, at intervals,

whether to keep their legislators in office. A smaller representative body would prevent the legislature from turning into mob rule. The Federalists' vision for Congress differed significantly from the Anti-Federalists', and the debates they had are still part of today's debates over how our legislators should behave and be held accountable.

In one of his most famous writings, *Federalist No. 10*, James Madison described an additional benefit of having a Congress covering a large territory and divided into local districts. This would prevent a majority faction from taking over the government and infringing the rights of the minority. By representing all of the different districts throughout the country, the diversity of the country would be brought into the deliberations in the legislative branch. This view of Congress would ensure that disagreement, and hopefully compromise, would be part of the legislative process. Individual members of Congress are *supposed* to represent the interests of their local constituencies. No single member is elected by the whole country, yet through bringing together all of the various interests some sort of compromise that advances the common good can be reached.

Federalists ultimately won the debate and the people ratified the Constitution through their state ratifying conventions. Federalists rejected the Anti-Federalists' view that the powers of the new Congress would be broad and expansive, focusing on the limited nature of Congress's powers under the Necessary and Proper Clause and the General Welfare Clause. They barely mentioned the Commerce Clause because, at the time of the Founding, nobody believed that power to be very broad. As Madison explained in *Federalist No. 45*, "The regulation of commerce, it is true, is a new power, but that seems to be an

addition which few oppose, and from which no apprehensions are entertained."

Federalists also advanced a new theory of separation of powers that included checks and balances. Prior to 1787, most people thought separation of powers would be preserved by simply laying out the three branches and mandating that no branch trample on the others. However, experience demonstrated that such "parchment barriers" would not be very effective. In a republic, the strongest branch of government is the legislature, and the Federalists were concerned that it would gradually usurp the powers of the other branches. Their remedy was to divide the legislature into two chambers and check each against the other. The House and the Senate, in other words, were designed to work against each other, not together. This would be accomplished by (to quote *Federalist No. 51*) giving each house "different modes of election and different principles of action" in order to make them "as little connected with each other" as possible. The internal division of Congress, the Federalists argued, would maintain the checks and balances needed to preserve separation of powers.

While Federalists won the major debates about Congress, the Constitution said very little about how Congress would function in practice. Many of the rules of Congress were left to be worked out through experience. As a result, Congress has been shaped by historical developments that have changed how it operates, resulting in the "Three Congresses" we have experienced throughout American history.

The First Congress

The "First Congress" was in place during the early decades of American history. From today's perspective it probably looks chaotic,

unpredictable, and disorganized. In these years Congress didn't use committees to specialize in specific policy areas. Most bills were worked out collectively on the floor of the chamber, then referred to a special committee to be written and sent back to the whole assembly for passage. There were advantages and disadvantages to this arrangement. Everyone had an equal opportunity to contribute to every bill. This encouraged deliberation and ensured that every representative, reflecting the views of each part of the country, could influence the laws. Debate was extensive, and the speeches made during debates affected the outcome and were enlightening to the citizens who read them. Since strong and disciplined parties had not yet developed, legislators changed their minds frequently and were free to bargain and compromise. On the other hand, this setup was extremely inefficient, and leadership was lacking to coordinate policies. Because every legislator was a generalist, policy expertise was absent.

The Second Congress

This arrangement worked while Congress was small. After the 1800 census there were 142 representatives in the House and even as late as 1833 there were only 48 senators. But as the nation grew, the Congress expanded and its business became more complex. These changes produced a new kind of Congress by the middle of the nineteenth century, very different from what came before. Two main parties had developed with extensive tools to ensure party discipline. Representatives were nominated by their parties, and therefore had to follow the party leadership to stay in office. Party platforms were carefully constructed and widely read, so that citizens knew where each party stood on

the major questions of the day. Permanent standing committees were created to ensure policy specialization, and these committees were supervised by the leaders in each chamber to ensure that the committees pursued the priorities of the party.

Especially in the House, party leaders became the most powerful members of the government. The Speaker of the House – not the president – was the center of power in the late nineteenth century. Speakers became so powerful that they were called “czars,” and the epitome of the strong Speaker was Joseph Cannon of Illinois. The Speaker's power over the House ensured that the party set the agenda in Congress. Today most are skeptical of party leadership and control, but there were significant advantages. Parties prevented Congress from becoming too fragmented, where all of the local interests simply clashed with each other and gridlock ensued. Because they were elected by a majority of the whole country, these parties reflected the will of the majority, were efficient in implementing that will, and ensured that elections mattered. Congress became a highly coordinated and responsive institution as a result of party leadership – at the expense of independent members representing their constituents' local interests.

The Third Congress

This “Second Congress” came to a sudden end in 1910. In a dramatic sequence of events the Speaker was stripped of most of his powers over members. Similar events occurred in the Senate. This produced a very different, “Third Congress.” Just as power became centralized under party leaders during the “Second Congress,” it filtered back down in this new setup. But the committee

structure remained in place, so committee leaders, rather than all of the legislators, controlled the legislative process. Because committees could refuse to send bills to the floor for votes, the chairs of these committees could ensure (or prevent) the passage of a proposed law. If power was exercised collectively in the “First Congress” and by party leaders in the “Second Congress,” the “Third Congress” is characterized by committee leadership. Power was dispersed from party leaders, but centralized in the hands of the committee chairs.

At the same time, Congress changed the very nature of its functions. Originally designed as a legislative body, Congress began to transfer that power to administrative agencies by delegating its powers over to these agencies. But, just as Madison had predicted, legislators did not want to relinquish control over public policy. Therefore, Congress organized itself to maintain oversight and control over the programs it was delegating to administrative agencies. It did this by maintaining its organization into numerous committees whose members had the specialized knowledge to oversee these programs.

Challenges for Today and Tomorrow

Today, we live in the world of the “Third Congress” that was set in place back in 1910. Some important changes have occurred, but the basic dynamic is the same. Power became even more decentralized in the 1970s, as reformers seized control from conservative Southern Democratic senators who used their powers to block important civil rights laws. They succeeded in placing more power and autonomy into subcommittees, which now can set their agendas without permission from the chairs of the committees that oversee them. More recently,

leaders of both parties have tried to regain control of the agenda in Congress by reclaiming powers to control debate and which bills are voted on. Their efforts have met with limited success, and it is an open question whether Congress will remain a decentralized, committee system where party leadership is weak, or whether party leaders can regain leadership and influence over their members.

Some of the aspects of Congress we dislike so much are rooted in these recent developments. The lack of party leadership and control, for example, has produced a Congress where representatives have more to gain by asserting their own districts’ interests than by bargaining and compromising. Because of the arrangement of Congress into districts, as Madison described in Federalist No. 10, there are very few incentives for members to work together without strong party leadership. The decentralization of power, moreover, has provided more access points for lobbyists and more checkpoints where an individual can stop even the majority in Congress from acting. The “Second Congress” was a responsive, majoritarian institution because of its centralized structure, but today Congress is decentralized, fragmented, and vulnerable to special interest influence.

There is no simple way to think about Congress. It is a complicated institution which raises critical questions about the nature of a republican form of government, and ultimately whether and under what conditions self-government is possible. Congress is the centerpiece of this American experiment in self-government. For that experiment to succeed, it is imperative that citizens understand how their legislature was meant to function, and how it actually functions today.

CRITICAL THINKING ACTIVITY

1. Read the essay and underline the main sentence or two in each paragraph.
2. Next, use those main sentences to write a summary of the essay.
3. Finally, work with a partner or two to discuss the essay, compare your summaries and team-write an outline that traces the changes in Congress from its beginnings to the present.