

The Congressional Maze: Legislative Process in a Nutshell

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Far more so than the presidency, Congress is a creature of rules, written and unwritten. Mastery of the rules is an important aspect of wielding power in Congress, and it's no easy task. The American Congress does not work by *Robert's Rules of Order*, which are used in your simulations and most business and fraternal organizations in the United States. Formal rules of the House of Representatives are contained in the *Constitution of the United States*, in *Jefferson's Manual*, and in *Rules of the House of Representatives*. Formal rules of the Senate are found in *Senate Manual Containing the Standing Rules, Orders, Laws, and Resolutions Affecting the Business of the United States Senate*. In both chambers the formal rules are supplemented by many volumes of precedents.

A superficial knowledge of the rules of procedure is useful for understanding how Congress accomplishes the task of legislation and why it accomplishes that task so infrequently. This handout should serve as a useful supplement to the material presented in your textbooks.

The election of November 8, 1994, brought Republican control of the Congress for the first time in four decades. The new Republican majority promised big changes in how Congress works. The most consequential was a six-year term limit for committee chairs in the House. This innovation was continued when Democrats won control of the House twelve years later. Institutions are hard to change, however, and the thirteen propositions set forth below describe a Congress that has been shaped, for the most part, by Democratic majorities but somewhat modified under the Republican control from 1995 to 2007.

1. Authorization Is Not Appropriation. It will be helpful to distinguish between authorization and appropriation. Authorization legislation is generally a grant of authority to the government or to some specific officer of the government to carry out a task or mission. The Bureau

of Customs may be authorized to collect an import duty or to search individuals entering the country. The Department of Education may be authorized to provide specified services to public elementary schools. The Environmental Protection Agency may be authorized to make construction grants to local communities for municipally owned waste treatment plants.

All these tasks, and in fact most of the tasks government undertakes, require money to be expended if they are to be meaningful. You can't search people or provide educational services without employees in the field, and you certainly can't administer a grant program without any dollars to grant. Frequently authorization legislation contains spending limits, but authorization legislation does not actually make any money available for the purpose authorized.

When money is required, and generally it is, appropriations are required. Simply stated, appropriations legislation provides "X" amount of dollars from the Federal Treasury in order to pursue some purpose which has already been authorized by Congress. In the early sixties, President Kennedy pledged that the nation would put a man on the moon by the end of the decade. Congress had already created a National Aeronautics and Space Administration. But, whatever a moon shot is, it isn't a cheap shot, and the President's pledge would have been quite worthless without the willingness of Congress annually to appropriate millions of dollars to continue the effort. Authorization may last forever, but with the exception of certain programs which are paid for through trust fund arrangements like Social Security, few appropriations last for more than two years.

The significance of this distinction is just this. The legislative process is an incredible labyrinth. Passage of a law borders on miraculous. Yet most governmental programs must survive the process repeatedly, once in the form of an autho-

rization, and annually as an appropriations measure. One more layer is added to the inefficiencies created by the framers of the Constitution.

2. The Legislative Process Is Stacked Against Success. In recent years about five percent of the bills introduced in Congress have become law. Furthermore, the passage of a given law may constitute only one step in a long chain which must be unbroken if government is to accomplish the desired task. An example will make the point most clearly.

Early in the term of President Nixon there was interest in Congress making federal grants to localities for sewage treatment plants. The following list covers the major hurdles which this idea was required to survive before any money could reach any city or town for the specified purpose. A bill must be introduced in the House, referred to Committee, survive the House Public Works Committee and a Subcommittee thereof, receive a rule from the Rules Committee, and survive floor debate and consideration by the Committee of the Whole. It must be passed by a majority of the House and sent on to the Senate where it will require approval of the Senate Public Works Committee and a Subcommittee thereof. From the Committee it must find some mechanism for reaching the floor where it must receive a majority vote. If any changes are made in the House bill, and generally there are some, the bill must be returned to the House. The House may agree to the changes--generally it doesn't--or it may request a conference with the Senate. If the Senate agrees to the request for conference, conferees will be chosen from each chamber to meet and iron out the differences between House and Senate versions of the bill. If this is accomplished, both Houses must re-pass the measure in its final form, at which time it can be submitted to the President for his signature. In this case, the President signs, and the E.P.A. is authorized to make construction grants. HOWEVER, we have not yet given the E.P.A. any money to grant.

The whole process must begin again. Every step listed above must be repeated, except that the committees involved in both Houses will now be Appropriations Committees instead of Public

Works Committees. Eventually a bill passes both chambers in identical form appropriating six billion dollars for the task, but the President refuses to sign the appropriations measure. He says it's inflationary. He vetoes the bill. The measure returns to the chamber which first passed it where it must now be supported by a two-thirds vote if it is to remain alive. Vetoes are rarely overridden in even one chamber, but this one receives the required two-thirds vote in the House. The Senate also gives it the necessary two-thirds approval. The measure has become law without the Presidents' signature.

It would appear that the E.P.A. could begin making grants, but it can't because the President impounds the funds. He refuses to spend them. Can he do that? Did the Founders intend the President to have a power of veto that was beyond the power of Congress to override? The battle begins in the federal courts, and it takes months. Eventually the Supreme Court rules that the President has exceeded his Constitutional authority in this matter, and that he must release the funds. At long last the E.P.A. has the money to make the grants. How they handle the job the rest of the way is a story for another day, or another class, but the E.P.A. works for the President too.

3. The Differences Between the Senate and the House Are Mostly a Function of Relative Size. The differences between Senate and House procedures will make more sense if you keep constantly in mind that there is an enormous size differential. The Senate is small and intimate. (Ha! One hundred members is not small and intimate, but it is compared to 435 [a good crowd in King Chapel].) The smaller Senate is less formal and less hierarchical. It is more personal, more prestigious, more flexible in its rules, and more egalitarian. It also has a smaller percentage of safe seats.

4. The Legislative Highway Has Bottlenecks and Toll Booths; It's Important Who Controls Them. The legislative process is an obstacle course, a long and torturous road with dangerous passes and bottlenecks and frequent toll booths. Getting a bill through requires luck, skill, votes, and generally a willingness to pay the tolls at each station. To understand which bills arrive at

their destination we must understand the nature of the passes and bottlenecks, who controls the toll booths and what sort of payments they extract in return for unobstructed passage. Refer to the table which appears at the end of this document.

5. Committees Are Powerful, and Committee Memberships Are Stacked to Bring Home the Bacon. Committees are not random samples of the membership. Committee memberships are stacked in favor of certain types of legislation. The resources committees of the [House](#) and [Senate](#), for example, consist disproportionately of members from the public lands states west of the Mississippi. They are there because in that assignment they can work to authorize irrigation and reclamation projects and general economic development for their region. (Remember, the president can be counted upon to appoint the Interior Secretary from the same region.) Individual members of Congress seek committee assignments where they can please their constituents and thus enhance their reelection prospects. The party committees that make committee assignments try to accommodate the members' preferences because having their members reelected is in the interest of the party as well as the member. Given the way they are stacked, we might anticipate that legislative committees would recommend greater expenditures on goodies for their constituents than the full Congress would approve. Interestingly, the full Congress usually goes along. Members practice what political scientists call "reciprocity." The popular term is "log rolling." Everyone is a member of some committee. You can't expect others to vote for your committee's recommendations unless you vote for theirs, so you vote for theirs even if you don't really agree.

The result is what is sometimes called "subsystem dominance." The parent institution, Congress, is dominated by its component parts. The work of the Congress is really the work of the two chambers. The work of the chambers is really the work of their respective committees. The work of the committees is really the work of their respective subcommittees. The work of the subcommittees may be dominated by the preferences of their respective chairs. Thus a small number of members, strategically located, are

sometimes the real policy makers for Congress on any particular issue. This situation of subsystem dominance is the norm on "distributive issues" where Congress is spending public money for programs that benefit targeted individuals and groups. Subsystem dominance is less likely to apply to high-visibility, controversial issues implicating many groups with conflicting interests.

6. Powers of Committee Chairs Are Great in Senate, but Greater in the House. The majority party in each chamber controls the chamber's organization and rewards itself with all the committee and subcommittee chairs. Among the powers that reside with the chair are significant control over the number, membership, and jurisdiction of his/her subcommittees, substantial control over the committee budget and staff, the ability to determine if and when hearings will be held and who will be allowed to testify, the ability to call and cancel committee meetings, and to control the committee's agenda. In addition the chair exercises all the normal powers of a presiding officer and is in a position to select floor managers for legislation his/her committee reports and to influence the choice of the conferees when one of his/her bills go to conference committee.

I have stated all these powers in deliberately vague terms. This is necessary because the powers of the chair are partly a function of formal and partly a function of informal rules and norms. In many cases the committee could legally overrule a decision of the chair, but it would require an expenditure of scarce political capital that few members would be willing to make except on a matter of the utmost gravity.

It should be noted that both the dominance of the chair over the committee and the dominance of the committee over the whole chamber are stronger in the House than in the Senate. This is largely a function of chamber size. In the Senate virtually every member of the majority is a committee or subcommittee chair. This creates a tendency for reciprocal respect and greater equality in the Senate. Also, the more informal Senate rules allow one aggrieved Senator to create a degree of chaos which everyone would rather avoid. When it comes to standing in the

way of majority rule, every Senator is a potential tyrant, and the Senate often reconsiders committee recommendations because some individual member insists on it. Note, however, that the power of House committee chairs may be on the decline. As a part of the Republican Revolution under the leadership of Speaker Newt Gingrich, the House in 1995 placed term limits of six-years on committee chairs. In January of 2001 the term limits produced a major reshuffling of committee chairs. Instead of relying on the seniority system, there was real competition for these leadership positions. The result was considerable intra party strife.

7. Getting from Committee to Floor is Tough. Once a bill is reported from committee--and committees only report about ten percent of the bills they get--it must somehow get on the agenda for floor action, that is for consideration by the whole chamber. In the Senate the process is informal and relatively simple; in the House it is just the opposite.

Bills reported by a Senate committee go on the Calendar of Business [previously General Orders], one of two Senate calendars. The other, the Executive Calendar is for reports on confirmation of appointments, treaties, and other executive branch business. These are not conventional calendars but rather lists of agenda items. In theory items are added at the bottom of the list and work their way to the top, but nothing ever gets to the floor that way. If it is noncontroversial, it may be whisked off the calendar and passed by unanimous consent agreement. If it is considered to be of sufficient importance by the Senate leadership, especially the majority leader, it may be taken off the calendar and placed on the schedule for debate. The formal procedure by which this is usually done is a unanimous consent agreement (you can do anything by a unanimous consent agreement in the Senate and frequently do), but as a practical matter what gets scheduled is a matter of negotiation which centers on the majority leader.

In the House there are multiple calendars. Again getting off a calendar and onto the floor for debate and decision is a matter of life and death for a bill. The relatively noncontroversial and unimportant bills placed on the Private and

Corrections calendars are privileged on certain days each month. The Corrections Calendar was a 1995 innovation of Speaker Gingrich, who wanted an efficient way to repeal stupid laws. The Speaker controls which reported bills go on the Corrections Calendar. A 3/5ths vote is required for passage. Another strategy for moving bills to the floor is suspension of the rules. The speaker controls the use of this tactic through his power to recognize members. Although bills require a two-thirds vote to pass under suspension of the rules, in recent years about half the bills passed have been considered under suspension of the rules. (Suspension has become the rule.)

The more important and controversial bills on the Union (raising and spending money) and House (other matters) calendars generally will die unless the committee that reported them is successful in convincing the House Rules Committee to allow them to be considered. The Rules Committee plays the agenda setting role which is performed by the majority leader in the Senate. This makes the Rules committee extraordinarily powerful. Virtually all controversial legislation must pass its way. In years past, southern control of the Rules Committee was a major obstacle to civil rights legislation in the House, but since 1975 the committee has been tamed and tends to function as an arm of the leadership, taking direction from the Speaker. There are in fact few things that the Rules Committee cannot do to shape the way the bill is considered in the House. It can even make points of order out of order, and thus allow the House to violate its own rules. Generally the resolution produced by the Rules Committee indicates what bill is to be considered, whether or not amendments are to be allowed, and how long the House will allow debate to continue before the vote is ordered.

8. Floor Consideration Is Fairly Orderly in the House but Sometimes Chaotic in the Senate. When it comes to floor consideration the House lives up to its reputation for achieving a degree of efficiency through a complex of formal procedures which are dispensed with in the Senate. To begin with House floor consideration usually takes place in two stages, and the first stage is something of a ruse. You will recall that the typical device by which an important bill

comes to the floor of the House is a resolution from the Rules Committee, usually simply called a rule. A typical rule calls for the House to resolve itself into the Committee of the Whole for the purpose of conducting a debate. Simply put, this is a streamlining device used to get around the quorum requirement of 218 members which is set in the Constitution. By calling itself a committee, the House can set its own quorum requirements and operate by a set of committee rules, which are less cumbersome than the rules of the House per se. After the debate has run its course, the Committee of the Whole "rises" and reports the legislation back to the House with any amendments that have been adopted. Only the final passage is handled under the more strenuous requirements of the House rules.

In the Senate floor consideration like most everything else is greased with the use of unanimous consent agreements. Most of the time this makes for reasonable efficiency. However, the basic rule in the Senate is unlimited debate, and this allows a committed minority--sometimes even a minority of one--to hold the entire chamber hostage by preventing the Senate from getting on with its business until this minority's wishes have been met. This filibuster tactic is so difficult to overcome that even the threat of filibuster is frequently sufficient to gain concessions from the majority. Today Senators routinely ask their party leaders not to schedule some item of business to which they object. This is called a "hold." That is a very dignified word for what amounts to a threat by an individual senator to use his or her substantial powers to bring Senate business to a standstill if it proceeds against his or her wishes. In March 1999 Republican and Democratic leaders of the Senate agreed to end the practice of secret holds. Now holds are often reported in media coverage of the Senate.

It was not until 1917 that the Senate had any means to stop debate. In that year the Cloture Rule (Senate Rule XXII) was adopted allowing 2/3 of the members present and voting (since amended to three-fifths of the total membership) to limit debate. In most settings a successful cloture vote (calling the previous question) produces an immediate end to debate and a vote. In the Senate voting cloture means that there will

be ONLY 30 more hours of debate before a vote.

9. Conference Committees Reinforce the Seniority/Committee Elite, and They Can Be Sneaky. This is one of the most misunderstood aspects of the legislative process. Conferees are technically appointed by the presiding officers who actually ratify the selections of the committee chairs whose committees reported on the legislation. There may be any number of conferees beyond the minimum three required by the rules. Decisions in conference requires separate majorities, one for the Senate and one for the House, so it is of no consequence whether the two chambers appoint the same number of conferees.

Conference committees can exert enormous power largely unchecked. They operated in secret until 1975, and when they report a compromise bill, it cannot be amended by either chamber. The Senate and House are confronted with a take-it-or-leave-it choice, and leaving it is frequently nearly unthinkable. Because conferences have great power, and because they are controlled by committee chairpersons, they give the last word on legislation to the same Congressional seniority elite that dominated the committee consideration stage. Amendments to the committee's work made on the floor may be quietly shelved in conference thus restoring the committee's policy preferences. Conferences have even reported bills which contain new provisions neither chamber has ever seen before. This is a violation of the Congressional rules, but this has not prevented the practice from occurring--and not just on trivial matters. America's system of national forests was created in just that fashion.

10. O.M.B. Watches the Congress for the President. A White House system of Congress watchers (the Office of Management and Budget in the Executive Office of the President [OMB]) constantly assesses Congressional output for consistency with the President's program, economic impact, and so forth, and provides the data base which the President utilizes to determine whether a signature or a veto is in order.

11. Informal Rules and Norms Lubricate the Process. With all the potential pitfalls, it is a

minor miracle that anything at all is passed. That miracle is achieved, when it is, largely through the operation of a complex set of informal rules and norms which restrain members in their use and abuse of the formal rules. These norms include courtesy to fellow members, a willingness to reciprocate when favors are granted, devotion to a legislative specialty, and willingness to defer to the wisdom of other specialists. It is all pretty well summarized in the advice House Speaker Sam Rayburn always gave to freshmen members. "If you want to get along, go along." Informal rules are never repealed, but they do change. Some years ago "apprenticeship" (the notion that junior members of Congress ought to have a low profile in Congress and pretty much leave things to their older and wiser colleagues) was a well established informal rule. That rule was badly eroded during the latter years of Democratic control, and the Republican Freshman who helped their party capture the House in 1994 finished it off completely. Today new members become immediately active in the work of Congress--for better or for worse. The Republican majority elected to the House in 1994 eroded other informal norms that had allowed for a degree of civility and bipartisanship. Most scholars agree that in recent years both chambers have become more partisan in behavior and more shrill in tone. It's probably a lot less enjoyable to be a member of Congress than it used to be.

12. Congress May Be Inefficient, but It Is Not Futile--Or--Making a Fuss May Be as Important as Making a Law. At the dawn of the 21st Century most legislation is formulated and proposed by agencies within the executive branch. Ninety percent of those bills that eventually pass come from the executive. Perhaps this is inevitable given the complexity of modern life and the resultant complexity of the lawmaking task. Members of Congress numbering 535, even with 40,000 assorted assistants, cannot really compete in terms of expertise with an executive branch employing 2.5 million civilians. Today the process begins and ends with federal bureaucrats. They write the bills. After passage they write the regulations which put flesh on the legislative skeleton. Eventually they interpret and administer them. But Congress has not become totally futile. Lawmaking and oversight of bureaucracy are both powerful tools for the

control of the bureaucrats, who in turn control us. And so is information. Over the years, Congress may do as much to keep the government responsive to the interests of its citizens by generating news as it does by pursuing the tasks of legislation and oversight. The recent impeachment of President Clinton--for better or worse--exemplifies both the oversight of executive functions and the generation of news that informs public opinion.

13. Things Change, but Not As Much As You'd Think. Most of the structures and processes of the modern Congress were evolved during a period of Democratic Party control. These structures and processes could have been radically changed when the Republican Party gained control over both chambers following the election of 1994. Changes have come to pass. Speaker of the House Newt Gingrich exercised more power than his predecessors, but he resigned after the 1998 Congressional election. The House Republican Caucus exhibited more party unity than its Democratic predecessor, but that was Gingrich's doing. Direct funding was ended to intramural interest groups like the Congressional Black Caucus. Congress ended its own exemption from various laws regulating the workplace, and some committees have new names. So far the most significant change has been the redistribution of power in the House brought about by term limits for committee chairs.

HOUSE	MAJOR STAGES	SENATE
Any MC may introduce a bill by dropping it in the hopper. Referral is by Speaker following specific rules.	(1) Introduction and Referral	A Senator must be recognized to introduce a bill. Referral is by presiding officer following specific rules. A simple majority may overrule the presiding officer's decision.
Committee and Subcommittee chairs have had extraordinary clout at this most important stage. Term limits for chairs, adopted in 1995, may reduce their relative influence.	(2) Committee and Subcommittee Consideration a. Hearings b. Mark Up c. Reporting	Committee and Subcommittee chairs have the greatest influence, but they do not exercise the clout their House counterpart historically have.
Multiple calendars are used, but the Rules Committee plays the dominant role in scheduling important legislation. Since 1975 Rules Committee decisions have reflected the interests of the Speaker and the majority party.	(3) Scheduling	There is a Calendar of Business for legislation and an Executive Calendar for presidential matters. The real agenda is the result of negotiations that center around the Majority Leader. Member power to introduce non-germane amendments limits the influence of Senate leaders.
Limitations on debate and amendment give great power to Speaker, Floor Manager, and Rules Committee. Committee of the whole is used to streamline debate.	(4) Floor Consideration	Unlimited debate (filibuster) gives extraordinary influence to any member with a strong commitment to cause.
Each MC has one vote.	(5) Passage	Each Senator has one vote.
Speaker and committee chairs are influential in selecting conferees.	(6) Conference Committee and Repassage	Majority and minority leaders and committee chairs are influential in selecting conferees.
	(7) Presidential Signature or Veto	
Each MC has one vote. Two-thirds approval required.	(8) Presidential Veto Override	Each Senator has one vote. Two-thirds approval required.