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7.1 Legislatures

PLEASE NOTE: This book is currently in draft form; material is not final.

LEARNING OBJECTIVES

In this section you will learn:

1. About the different kinds of legislatures.
2. How the U.S. Congress works.
3. How parliamentary systems work.

Basically, there are three kinds of legislatures:

- **Consultative**—in which the legislature advises the ruler or rulers on matters of law and policy. Members may be elected and/or appointed.
- **Parliamentary**—in which an elected legislature makes laws and also, through its leadership, serves as the executive branch of government.
- **Congressional**—in which one or more elected groups of legislators make law and share powers with other branches of government.

Legislatures typically perform a basic set of functions:

- **They make and revise laws.** This usually includes the sole or main authority to write budgets—to officially sanction the imposition and collection of taxes, and the spending of public money.
- **They engage in administrative oversight.** Legislatures usually are charged with ensuring that the laws are being carried out properly by the agencies of government. In a congressional system, they may also "advise and consent" with executives on

appointments to government and the making of treaties with other countries.

Effectively, this means that a legislature may deny a presidential appointment, or prevent the adoption of a treaty.

- **They represent constituents to the government.** In legislatures where elections are based on geographically defined districts, individual legislators will spend some time attempting to help out their constituents address individual problems they have with government, such as public pension benefits or securing appointments to military academies.

The biggest job of legislatures is making laws. Having legislatures make laws pushes power toward the people, who, in a functioning republic, have in some fashion elected the members of the legislature. That gives voters the power to recall legislators by electing somebody else next time around. Legislators typically have defined terms of office, usually from two to six years in length. In parliamentary systems, the term of office may be only until the next election, which could be anywhere from a month to five years. Elections can come quickly in parliamentary systems. The Earl of Bath served as British prime minister for two days in February 1746; the government collapsed when he refused to serve with him. George Canning served as prime minister for 119 days in 1827 before an election was called. In contrast, Sir Robert Walpole served as prime minister for 20 years, from 1721 to 1742. As explained in the previous chapter, legislators may be elected to represent certain districts, states or provinces within a nation, or elected in proportion to the number of votes received by their party in the election. And many nations use a combination of the two methods.

Consultative Assemblies

A handful of nations have consultative assemblies, which lack the lawmaking power of a traditional legislature. These include several Middle Eastern states such as Saudi Arabia, the United Arab Emirates, and Kuwait. Ostensibly communist states such as China, Vietnam, Cuba and Laos have national assemblies, which, on paper, have lawmaking power. In practice, however, as with the Chinese National People's Congress, they meet briefly each year and have very limited ability to make law. Consultative assemblies give the appearance of giving the people a voice, but they provide no real check on the power of the government, wherever it may actually be found.

China's legislature is worth a little examination, if only because it is so different than what is found in much of the rest of the world. At 2,987 members, it's the largest legislature in the world, and still means only one member of Congress for about every 400,000 people in China. In contrast, the New Hampshire state House (part of the world's fourth largest legislature), has 400 members representing about 3,000 people each. Members of the U.S. House of Representatives serve about 700,000 people each.

The People's Congress meets for a couple of weeks each year, at the same time as the Chinese People's Consultative Conference, which is supposed to represent various interest groups in the country. Its supporters say that it works to mediate disputes between different factions within China; its critics say it's still mostly a rubber stamp for the Chinese Communist Party, which still holds effective ruling power in the country. Technically speaking, the members of the People's Congress are elected by assemblies below them, and those assemblies are elected by the people. In reality, the members of the People's Congress are largely chosen by the party. Around 70 percent are party members, and while there are eight other political parties in China, they've all been approved by the Communists.

Legislatures in Congressional Systems

Most legislatures don't look like that. As the American poet John Godfrey Saxe once said, "Laws, like sausages, cease to inspire respect in proportion to how they are made." Frequently misattributed to 19th century German Chancellor Otto von Bismarck. Legislatures can be messy, cantankerous affairs, full of arguing, bargaining and general unease.

Let's consider the U.S. Congress, which has some differences from other legislatures but is not atypical of how the legislative process works in general.

In the United States, Congress is the body of government that makes laws. All federal laws start in Congress; neither the courts nor the president has the power to make law.

Congress, like most legislatures, is an arena for the articulation of conflict. That means it's a place where the people's business can be done without real violence. Although, in the pre-Civil War 1800s, physical attacks by one member on another were not unheard of.

While Congress' main job is making law, it must balance the needs of making policy and meeting constituent needs. This is at the heart of the internal conflict that drives Congress—how to balance the particular needs of one's state or district against the needs of the nation as a whole. These two things may not coincide, and sometimes it appears that members of Congress tend toward considering parochial needs over national ones. So, many members of Congress have railed against what they saw as excessive government spending, but didn't fail to direct federal funds to their home states and districts. Similarly, members of Congress may find themselves in conflict over the needs of the nation and the needs of particular constituents and interest groups. So a member of Congress likely would say that he or she is in favor of a balanced budget, but may still vote for spending that funds a local project or a defense contractor in his or her state or district.

Congress has a substantial constitutional mandate: It can levy taxes, borrow money, spend money, regulate interstate commerce, establish a national currency, establish a post office, declare war, raise and support an army and navy; establish courts; and pass all laws "necessary and proper" to implement this. It can propose amendments or call a constitutional convention; it can admit new states. The **House of Representatives** can elect a president. The **Senate** advises and consents on treaties and nominations to judicial posts. The House can impeach and Senate may try any officer of government. It can investigate whatever it likes, and discipline its own members.

The U.S. Congress has 535 members: 100 in the Senate, two for each state; and 435 in the House of Representatives, apportioned among the states by population (about 600,000 people per district). The House is capped at 435 by act of Congress in 1929. The House includes non-voting delegates from the District of Columbia, Puerto Rico, Guam, the Virgin Islands and American Samoa. DC voters don't get real representation because the national capital was put outside the boundaries of any state, as the states were all still pretty jealous of each other the late 1700s. While that's no longer as true, at various times in the nation's history, Republicans and Democrats each feared that giving congressional representation to the district would mean more seats for the other party. The most rational solution, simply letting D.C. residents vote in Maryland's congressional elections, hasn't cleared that hurdle either.

Having a two-chambered legislature—the House and Senate are coequal branches of government—slows down the legislative process. For any bill to become law, it must pass both chambers in exactly the same version. This is further complicated by the nature of the Senate. As the Senate is based on states and not on population, it disproportionately tips power toward less populous states. If you added up all the smallest states to get 51 seats (and hence a Senate majority), you'd have legislators representing about 17 percent of the nation. And being able to block something in the Senate means being able to stop nearly everything. The Senate has unlimited debate, which means that even the threat of filibuster—talking without end on the floor of the Senate—can derail any piece of legislation. It's pretty rare for any party to have 60 seats in the Senate anymore, so invoking cloture and ending debate is not a simple task.

If Senate apportionment by state wasn't in the Constitution, it wouldn't last a day in court. In decisions in the 1950s and 1960s, U.S. federal courts ruled that legislative districts need to be fairly equal in terms of population, usually within 1 percent. Prior that, districts often had wildly uneven populations—a good thing in a smaller district, not so good in a larger one. In Arizona, for example, the state House was apportioned by population, while the state Senate was divided by county. With the great majority of the state's population in only two counties (centered around Phoenix and Tucson), rural interests dominated the Legislature. That's not necessarily wrong, but it wasn't fair to the majority of the state's residents.

Now, following the U.S. Census, every 10 years states must redistrict, both for state legislative and U.S. House districts. Some states let legislative majority parties draw new districts, which is usually bad news for whichever party isn't in the majority; other states appoint technically non-partisan redistricting commissions to do the job. Even there, that often means partisan appointees will try to get an edge in redistricting for their side.

House members are elected to two-year terms; from the start, it was intended to be the chamber of the people (although state legislatures commonly had annual elections before the adoption of the Constitution). Members of the Senate are elected to six-year terms. The original design was a more deliberative body to put a check on the temporary passions of the masses. With a six-year term, members of the Senate can afford to take a slightly longer, broader view of issues without having to face re-election quite so soon. Also, for that reason, originally they were elected by state Legislatures. By the late 19th century, this system had run into problems. State legislatures frequently couldn't agree on whom to send, and seats sometimes went vacant. The lack of popular control on the Senate also meant that it tended to be dominated by the interest groups, such as railroads, much to the displeasure of many voters. The 17th amendment was passed in 1913 to provide for direct election of U.S. senators.

The vice president serves as President of the Senate, and can in fact vote to break a tie. The Speaker of the House leads the House, and the Senate Majority Leader is the boss of the Senate. The majority party typically elects both positions.

The majority party also controls the committee system, which is where the work in Congress is done. Often as not, by the time something gets to the floor, the issue is decided. This should be called McCrone's rule, after the eminent political scientist Don McCrone, who said that nothing comes to a vote that hasn't already been decided. Typically, if you know you don't have the votes to get something passed, you don't bring it to the floor, unless you want to make a statement. Statements are fine, but they don't get bills passed.

The speaker has some ability to control floor debate, make committee assignments and assign bills to committee. This can be effective in finding out whether a bill has a future or just a past. Committee chairmen have similar power with regard to their committees.

Congress convenes in early January and, with occasional recesses, will meet until anywhere from August to October. Most of the work is done in committees.

The Committee System

There are 21 standing committees in the House and 17 in the Senate, though the numbers change from year to year. They cover everything from the budget and taxes to agriculture to science. Members of Congress vie for choice committee assignments. If you're from a farm area, you don't need a guidebook to know you should be on the agriculture committee. If you've got military bases in your district, then the armed services committee would be a prudent choice. A successful member of Congress will find a specialization and become an expert. This gives the representative or senator some power, something to trade with other members, and something to hang her or his hat on when she or he goes home to the district.

Committees divide labor and allow specialization. It would be difficult for any member of Congress to be an expert on everything; committee specialization allows members of Congress to be good at something, and, hopefully, share that expertise with others.

Committees are further broken down into subcommittees. Subcommittees typically are where the nuts and bolts work of legislating is done. For a bill to become law, some member of Congress must sponsor it. Most bills can start in the House or the Senate, where they will be assigned to at least one committee, and maybe more if there's a revenue or spending impact. The bill may get scheduled for a hearing, and maybe even a vote in the subcommittee. If it survives that, it must be voted out by committee, and then on to the House or Senate floor. If it survives all that, it goes to the other chamber, where it must go through the same process all over again. For the bill to become law, it must pass both chambers in exactly the same version. If House or Senate amendments change one version, the two sides may call a conference committee featuring members of both parties, who may be able to hammer out a compromise. And then it must be signed by the president.

Given that gauntletThat's not a misspelling: A gauntlet is not a punishing line of people whacking the person who has to run the length of the line, it's a kind of glove. of challenges, most bills die long before they become law. But like the villains in a zombie movie, a bill is never really dead. If you're a member of the minority party, the majority party is less likely to let you push legislation through. A skillful legislator finds a friend across the aisle and lets her or him sponsor the legislation. Alternatively, a dead bill can rise from the grave as an amendment to a bill that's still alive. The Senate has no germaneness rule, which states that an amendment must be germane (relate) to the subject of the original bill. The House has such a rule. So, in the Senate, you can hang any amendment on any measure, and some bills get so many amendments that they get called "Christmas tree bills," as everyone has hung an ornament on them. But even with those potential lifesaving measures, most bills are doomed to fail. Congress gets 10,000 bills a year—most from the executive branch—but only 3-5 percent will ever become law.

One of Congress' most important jobs is among the least glamorous: administrative oversight. Congressional committees spend a lot of time talking and listening with

members of the executive branch to try to figure out if everything is working the way the law said it was supposed to. But there are few immediate rewards for the important but unexciting task of oversight. An incumbent seeking re-election can't go home and get much mileage out of "Vote for me; I oversaw the routine handling of road repair and bridge building." And yet that's actually a more important task than some high-profile issues.

Among the most important committees is the House Rules Committee. This is typically chaired by the speaker or by someone he really trusts, and it sets the terms and conditions of debate, and the path through which legislation must travel. Contrast that with the Senate and its unlimited debate, and where the threat of filibuster can hold up even innocuous legislation if somebody has his knickers in a twist over something. A single senator can hold up a judicial or other federal appointment for any reason as well. One school of thought suggests that the Senate needs some reform, but its ability to stop the train may look better or worse depending on your point of view. If you're a conservative and the Senate is blocking a liberal agenda, this might look OK, and vice versa. Absent a constitutional amendment, the Senate writes its own rules, so it would take something dramatic to force a change.

The Senate "advises and consents" on presidential appointments, including high administrative officials and federal judges, and on treaties with foreign nations. That means the Senate conducts hearings on appointments and treaties, and either approves or denies them. **McCrone's Rule** comes into play once again, as the Senate will signal to the president that a nominee or a treaty isn't up to standard long before it comes to a vote. And unlike congressional parties, presidents are much less interested in making a statement; if the Senate just says no, the president looks bad.

Members of Congress are not alone. Committee staff work on policy; legislative (personal) staff work on constituency concerns. Congress has about 31,000 staffers. Constituency service is an important part of what members of Congress do—everything from meeting the home folks, both at home and in the capital, to helping citizens sort out their issues with federal agencies. Members of Congress who are seen as too remote from their states or districts typically have a harder time getting re-elected. So they maintain offices back home as well as in Washington. Despite a travel allowance, serving is easier for members from East Coast states than for those from the west, who have a lot longer to travel and still maintain some kind of residence back home. An average member works more than 60 hours a week, at a salary of \$174,000 a year, plus a travel allowance and office support. The travel allowance is good if you live close by, less good if you don't, and the salary would be comfortable if you lived in one place instead of two.

Congress and the President

The president must sign bills into law. He can veto them. Congress can override the veto by a two-thirds vote. But that has happened only 4 percent of the time since George Washington was president. Presidents don't actually use veto all that often; Richard Nixon vetoed a few dozen bills in his entire term in office and that was regarded as a lot. The two sides must work together, and so there's a lot of give and take, and Congress will take care in sending the president bills he is less likely to veto unless they're specifically trying to embarrass him. Meanwhile, Congress has resources with which to challenge the president: The General Accounting Office, the Congressional Budget Office, and the Office of Technology Assessment. Information is power in government, and typically is seen as more impressive than money.

Congress tends to have more power in domestic policy than in foreign affairs. Foreign policy often requires quick and decisive action; Congress is not designed for this. Domestic policy, on the other hand, can be more careful and deliberative, and Congress excels at this.

Members of Congress frequently form caucuses of members concerned about a variety of issues, from economic interests to ethnicity. These can form blocs within Congress. In recent years, for example, moderate Republicans have forced Republican leadership to back down on sweeping changes to environmental laws.

Congress isn't like the rest of the country. Congress is older, whiter, richer than the nation as a whole. In 2012, it was 8 percent African-American, 5 percent Hispanic-American and less than 2 percent Asian-American, so that is now whiter than it was 20 years ago even as the nation has become more diverse. Only 17 percent of members are women, and that's the highest ever. Nearly 16 percent of members are over 70, and only 4 percent are under 40. The average age is 58. The average House member has served for 10 years, and the average Senator has served 13. Eighty-five percent of members are married, and fewer than 8 percent are not some flavor of Christianity. Nearly all have college educations, with professions most often listed as public service/politics, business and law.

Congress' Lack of Popularity

The conundrum of Congress is that this symbol of American democracy is, and long has been, wildly unpopular. In July 2012, Congress' approval rating was only 16 percent, although it's generally on the low side when the economy is bad. But even in good years, Congress' approval rating hasn't moved north of 50 percent in the last half century. Studies have shown that Congress generally follows the popular will, broadly speaking, and it costs you less than the price of dinner at a fast-food restaurant, once a year. And yet people don't like it.

Congress is a convenient repository for national blame and popular regret. Why? This, in some ways, the heart of the American system of government of which U.S. citizens are so justly proud.

Some possible reasons:

People think Congress wastes money. Among the things it is famous for is pork barrel legislation: The phrase comes from the 18th century practice of keeping pork in a barrel, and letting slaves and farmhands have a grab, and they would grab for all they could get. Hence it can be with legislators at all levels, who will grab for all the morsels they can in terms of getting money for projects in their districts. But one person's pork is another person's paradise. Where do you draw the line? Then again, **earmarks**—amendments to bills to fund projects in home states and districts—account for less than 1 percent of the federal budget. So the issue is probably somewhat overstated. You could make all the earmarks disappear, and the federal budget would not be much closer to being balanced.

Figure 7.1 [To Come] Federal Budget and Revenue Pie Charts



Some earmarks do look a bit silly, such as nearly \$1 million in 2010 to get more poetry in

zoos. Consider a somewhat famous example from the 2000s. The late U.S. Sen. Ted Stevens, a conservative Republican who still managed to bring home billions in federal aid to Alaska, helped get federal funding for a \$398 million bridge in Ketchikan in Southeast Alaska. As Ketchikan has a population of only about 15,000, the project acquired the nickname of “the bridge to nowhere.”

In fact, the bridge would have connected to Gravina Island, home of about 50 people and to Ketchikan’s airport, which serves about 200,000 passengers a year. Ketchikan, a lovely town, sits at the foot of impassible mountains and is connected to nowhere else by road. So the only way in or out of the self-proclaimed “Salmon capital of the world” is by boat or by plane, and you have to take a ferry to the airport (which takes about 15 minutes). That complicated the structure of the bridge, since it had to be long enough to reach the island and high enough to allow ship traffic to pass underneath. Bridge proponents also argued that it would allow development of more land on the island. Developable land is, somewhat ironically, in short supply in many parts of the country’s largest state.

The issue was controversial everywhere, even in Ketchikan. On one visit, I asked a friend of mine who lives there what locals thought about the bridge, and he responded, amid a local store, “Do you want to see me start a fight, right here?”

Criticism of the project mounted, both in Congress and in the national discussion, and the project became something of a poster-child for wasteful federal spending. Then-Alaska Gov. Sarah Palin, originally a staunch proponent of the project, cancelled it after Sen. Stevens’ earmark was excised from the federal budget. Palin then became the Republican vice-presidential nominee, and started claiming that she had stopped the project herself. She also went ahead and accepted \$25 million in federal highway funds to build the Gravina Island highway, which would have connected with the bridge. It sits there now, largely unused, appropriately dubbed “the road to nowhere.”

Whether the bridge project was a good idea or a bad one, it underscores people’s feelings about federal spending—one person’s boondoggle is another person’s vital civic improvement. If you had to take a ferry to the airport—and if you’ve ever had to wait in a ferry line, the question changes in scope and dimension—would you rather have a bridge?

Congress vs. itself: Part of the problem is that candidates have been running against Congress for much of the last 40 years. Even incumbents may rail against the institution, even as they ask voters to send them back. If you keep telling people that “the system is broken,” in one currently popular phrase, eventually they’ll believe you. And yet incumbents win more than 90 percent of the time, year in and year out. Voters appear to like their own members of Congress; it’s those other guys who are causing all the trouble. Part of that may relate to what political scientists have called the case of the vanishing marginals: Why have so many races become less competitive over the years? More often than not, since the second half of the 20th century, congressional elections are not close. In part this may be due to redistricting efforts that have created congressional districts that are predominantly Republican or Democrat, leaving the other party with a diminished chance of ever winning the seat. Parties respond by failing to invest in campaigns in those districts, knowing they have little chance of winning.

The evidence isn’t entirely conclusive as to why incumbents win so often. But if you’re so unhappy with Congress, why keep sending the same people back, over and over again?

Misinformation: The internet, that great font of misinformation, probably hasn't helped. You don't have to look very far to find some version of the endlessly forwarded e-mail calling on Congress to have to adhere to its own laws (it does), to cut its pay (which would encourage either real corruption or make it impossible for anybody but a billionaire to serve), and make them pay into Social Security (they do). The list goes on, and it's all bunk.

Lack of understanding: The fact that Congress was designed to deliberate and work slowly seems to be lost on too many people. Like that tingling sensation from your dandruff shampoo, when you see the president and Congress at an apparent impasse, that means it's working, and working the way it was supposed to. Congress was supposed to be a check on the presidency, the courts, and, above all, on the momentary passions of the electorate. When national consensus is achieved, Congress acts. Failing that, Congress deliberates. It's not very pretty, but that's what was supposed to happen.

Legislatures in Other Countries

Nations in North and South America tend to have congressional-style governments, with separately elected presidents who are not entirely tied to the whim of the legislature. The alternative to a congressional-style legislature is the parliamentary style, an approach more common to Europe, Africa and Asia.

And Canada, which is a good example of how parliamentary legislatures work. The Canadian Parliament is divided into two chambers, the House of Commons and the Senate. More power and authority ride in the 308-member House of Commons. The members are elected in winner-take-all elections in districts known as ridings, which may derive from an old British term, which may derive from an old Norse term. The number of seats is expected to rise for the next election, tentatively scheduled for Oct. 19, 2015. At one seat per 110,000 people, the level of representation is much higher than in the U.S. at one seat per 650,000 people. Terms are up to five years or until the next election, which is one key difference for parliamentary systems. The ruling party or coalition of parties may call for an election whenever they want, or an election may be forced by a no-confidence vote in the Commons.

The biggest difference between parliamentary systems and congressional systems is in the structure of government. In the congressional system, power is shared and divided between the different branches of government, including the legislative, executive and judicial. In a parliamentary system, the chief legislative body serves as both the executive and legislative branches. The head of government is the prime minister, who is chosen either by the majority party or by the coalition that builds a majority in the legislature. All of what in the United States would be cabinet secretaries appointed by the president are in Canada simply members of Parliament, appointed by the prime minister and the majority party. So instead of a secretary of defense and chairmen or women of the House and Senate defense committees, they have a defense minister who is not only in charge of the agency, he or she can vote on its budget and policies.

Canada's government has some vestiges of its British ancestry. The governor general is the representative of the British crown in Canada. He or she is appointed by the British monarch on the advice of the Canadian prime minister. Although governors general take their roles seriously, they are largely ceremonial. The 105-member Senate is appointed by governor general, again on the recommendation of the prime minister. The Senate is somewhat like the British House of Lords. It can debate and amend pieces of legislation,

but cannot introduce any measures relating to spending and taxes. Once appointed, Senators may remain in office until age 75. The Senate does, on occasion, block legislation from the House of Commons, at various times holding up or rejecting bills relating to trade, abortion, greenhouse gases and taxes. The House of Lords in Great Britain has no say on revenue or spending measures.

As with the congressional system, parliamentary systems divide work by committees. Unlike congressional systems, a change in government via election can mean rapid change in government policy. With most power vested in one chamber, the only serious check on the power of the majority is elections, although court systems provide some check on power in some parliamentary states. But typically, in Canada, a victory by the Conservatives or the Liberals will mean a definite turn toward that party's priorities. Contrast that with the United States, where a new congressional majority may face presidential vetoes, or where Republican control of one chamber and Democrat control of another may provoke disagreement and stalemate. In the British House of Commons, debate is severely limited, so that unlike in the U.S. Congress, for example, the minority party is less able to hold up legislation it doesn't like. So things may happen more quickly in a parliamentary system.

KEY TAKEAWAYS

- Members of the U.S. Congress, and legislators in general, have three basic duties: Making law, overseeing the efficient operations of government, and serving constituents.
- Congressional systems are used in nations where government power is divided and shared by more than one branch. Parliamentary systems place executive and legislative power in one branch.
- The basic work of legislatures of all types is often done in committees and subcommittees, where legislators and their support staff can specialize in particular policy subject areas.

EXERCISE

1. Look up your local state or congressional representative. What committees does this person serve on? How long has she or he been in office? Contact them and ask a question about a policy issue that you are interested in.