



“Five Key Take-Away Points about Congress”

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 POLS 4620E
 Lecture #2
 University of Georgia

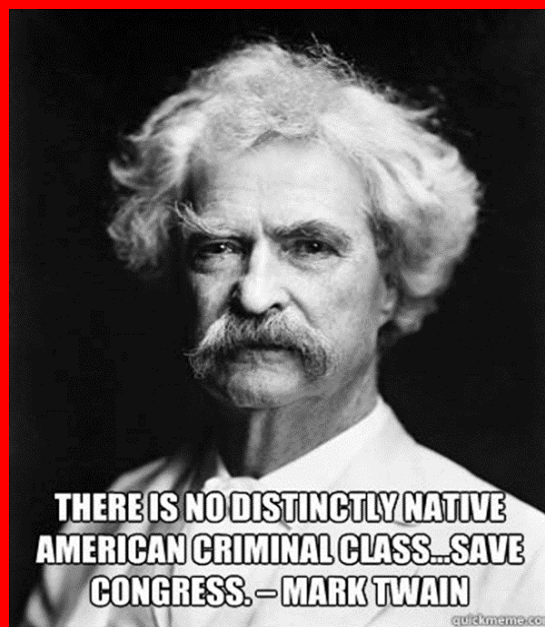
Outline

I. Introduction

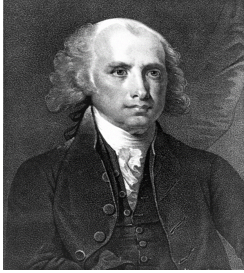
II. Five Key Take-Away Points

- a. An Unpopular Branch
- b. Facilitate Conflict
- c. Necessitates Compromise
- d. Re-Election: A Proximate Goal
- e. Rules Matter
- f. Blindingly Transparent
- g. Conclusion

III. Conclusion



Congress: An Unpopular Branch



Above: James Madison, who authored Federalist #51.

Below: Abraham Baldwin, UGA founder and critical vote during the Constitutional Convention.



Debate at the Constitutional Convention centered on the powers and structure of the U.S. Congress. If not for “the Great Compromise,” the convention would have broken up over it.

In contrast, there was comparably far less debate over the Executive Branch, which was assumed to be weak. Similarly, the delegates essentially “punted” debate over the Judiciary to the first Congress.

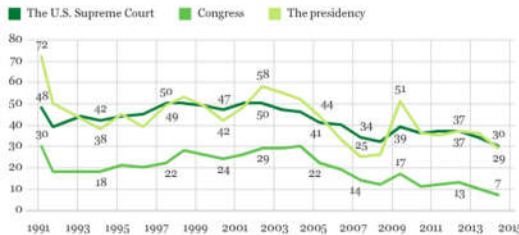
This was not surprising, as it was generally assumed that a legislative branch closely tied to the public through regular elections would wield the most power in the nation.

Afterwards, Madison would write in Federalist #51 that: “[I]t is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates.”

Congress: An Unpopular Branch

Americans' Level of Confidence in the Three Branches of Government

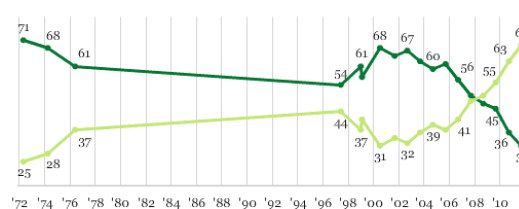
% Great deal/Quite a lot



GALLUP

Trust and Confidence in the Legislative Branch of the Federal Government, Consisting of the U.S. Senate and House of Representatives

% Great deal/Fair amount | % Not very much/None at all



GALLUP

A great deal has changed since then. While Congress still formulates and debates major policies, other branches have played increasingly important roles.

The executive branch has greatly expanded in size and influence. And Americans have increasingly looked towards unelected judges to solve the nation's problems.

While Congress was never popular, it has continued to fall in the eyes of the public.

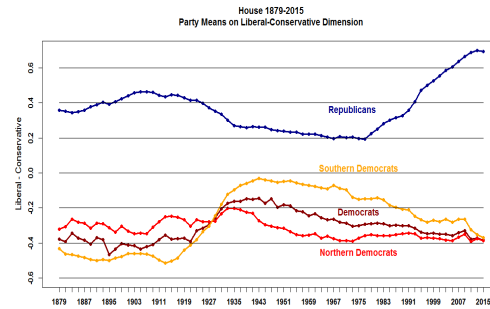
As former Senator John McCain (R-AZ) liked to say: “We’re down to paid staffers and blood relatives.”

Congress: An Unpopular Branch

There are a number of factors that account for the general public's aversion to Congress. These include it being a collective body, high levels of polarization, and a perceived decrease in effectiveness...

In this (brief) introduction, I'm going to focus on five key, overlapping factors about the U.S. Congress that I hope you take away from this course and likely contribute to the public's attitude towards the U.S. Congress:

1. Designed to facilitate conflict.
2. High transaction costs force compromises.
3. Re-election is a "proximate goal" for members.
4. Rules, procedures and agenda-setting matters.
5. Congress is blindingly transparent.



Above: House polarization via Voteview.com

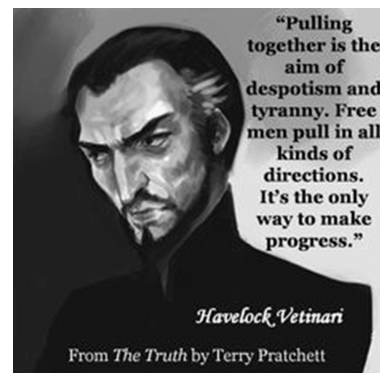
Facilitate Conflict

As Madison noted in Federalist #10, conflict in a political system was expected: "So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts."

His preferred solutions to problems posed by it was to "extend the sphere" of influence to mitigate the possibility of permanent conflict on one issue, as well as providing for a separation of powers system so "ambition [could] counteract ambition."

Regular, open elections and a bicameral legislature were a result of this.

They combined with other factors (geographic districts, first-past-the-post voting systems and open primaries) to create exceptionally weak political parties and provide for a legislative branch that meant for conflict.



Above: Lord Havelock Vetinari on the benefits of conflict. If you haven't read Terry Pratchett, you should.

Facilitate Conflict



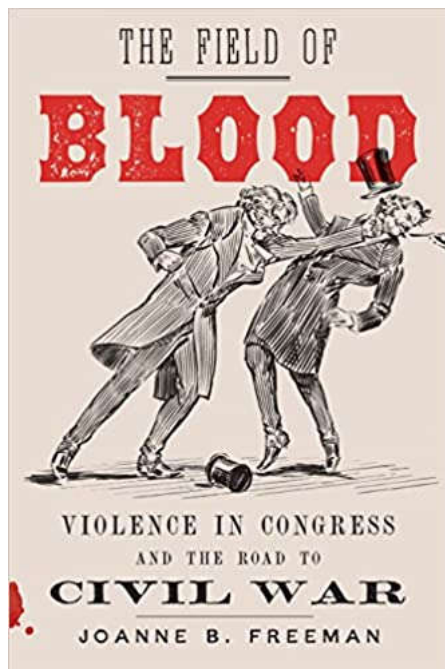
Left: Senator "Pitchfork" Ben Tillman (D-SC), you can probably guess his political positions; Center: Reps. William Graves (W-KY) and Jonathan Cilley (D-ME). The former famously killed the latter in a 1838 duel. Right: Rep. John Bennett Dawson (D-LA) who was quoted by observer Charles Dickens as telling another member during a floor debate: "Damn your eyes, Sir, if you presume to call me to order, I'll cut your damnation throat from ear to ear."

This point is often overlooked by commentators who bemoan the "fall of Congress." Congress often featured strong disagreements and conflict. 20th century congress featured fights, duels and the occasional caning.

It included rough men with names like "Pitchfork" Ben Tillman (D-SC), who earned his nickname when he threatened use one to attack that "bag of beef," President Grover Cleveland; John "Bowie Knife" Potter (R-WI) who when challenged to a duel agreed on these terms--"bowie-knives [in] a dark room, and one of us to die"; and "Cranium" Jack McGraw (D-VA), who kept the skull of a man he killed in a duel in his boarding house.

So I made up the last guy, but it's tough to tell, right? And the point here still holds.

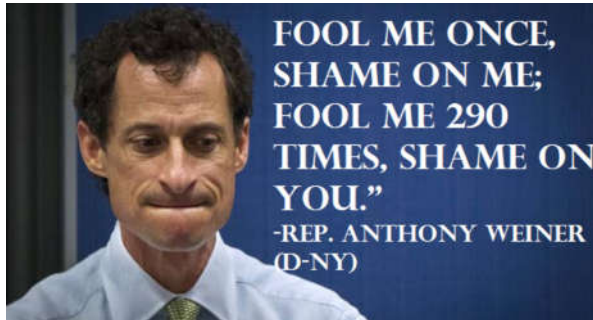
Facilitate Conflict



"Professor Madonna, where can we learn more about 19th Century Congressional Violence?"

"Great question, Billy (assuming your name is Billy). Here's another book recommendation:"

Facilitate Conflict



Left: Former Rep. Anthony Weiner (D-NY) complaining about the 300 bills passed by the House that the Senate has not taken up.

It's important to keep in mind that "the good old days" was rarely that good.

Even when Congress isn't physically fighting with itself, the system forces conflict within political parties, between other chambers and branches.

This internal conflict is not something we see in the Executive branch, which is controlled by one party, or the Courts, which are not responsive to an electorate.

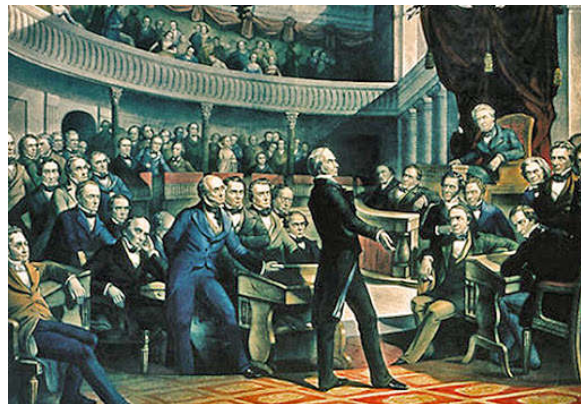
And it differs from other legislatures that frequently feature parliamentary systems that encourage strong political parties.

In this respect, Congress truly is "the people's branch." And "the people" frequently disagree.

Necessitates Compromise

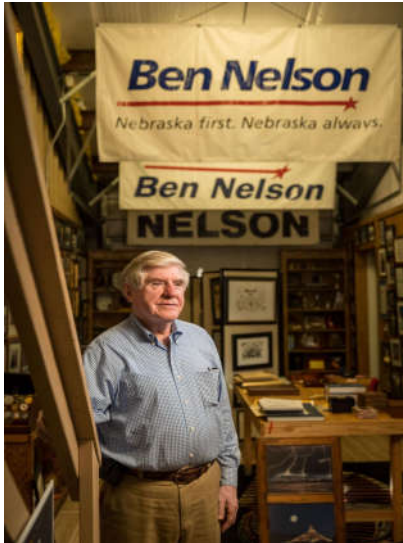
The large number of veto players in the American political system and especially within the U.S. Congress has other, significant effects. It makes policy change in the U.S. slow and also necessitates substantially compromises be made in the legislative process.

While we frequently consider compromising as being a normatively "good" feature of lawmaking, there are significant drawbacks that need consideration.



Above: "The Great Compromiser," Senator Henry Clay (W-KY) and the Compromise of 1850.

Necessitates Compromise



Above: Former U.S. Senator Ben Nelson (D-NE), whose "cornhusker kickback" during the passage of the Affordable Care Act sparked public backlash.

(1) They are frequently made on "off-dimension" issues. This means an unrelated provision might be inserted into a bill to satisfy a key member or block of members even though it would lack majority support on its own.

(2) Legislative compromises often occur late in the process and can have unanticipated consequences. Often times, the inability to anticipate consequences stems from inadequate resources.

(3) They can often turn off the general public, who view them as sleazy. More commonly, they will confuse the general public who don't recognize a compromise has been made. This may sour them on the entire policy.

(4) Policies, like rules and institutions, often follow path dependent processes.

Necessitates Compromise

The Equal Access Act:

In 1983, conservatives got concerned about restrictions on prayer in schools. Accordingly, members of the House, working with President Reagan, introduced HR 5345. That bill provided protections for only religious groups that wanted to meet on high school premises. Critics asserted it was an "unconstitutional attempt" to bring religion into the classroom. HR 5345 did not receive a special rule for HR 5345 and tried to pass it via suspension in the House, which requires 2/3rds support. They fell 11 votes short.



Above: That probably doesn't need a caption.

However, a version of the bill was proposed as an amendment to S 1285, a bill that provided improvements to math and science education. Faced with a filibuster, the amendments sponsors—Senators Jeremiah Denton (R-AL) and Mark Hatfield (R-OR) opted to modify the measure. This modification was a compromise that provided protections for all "student groups." The Senate then substituted S 1285 for HR 1310—which had already passed the House. The House then adopted Hres 554 (introduced on page 20682, passed on page 20932) via suspension on a voice vote (so no PQ motion on the rule), which made it in order to offer two motions to suspend the rules to concur in Senate amendments to HR 1310. Those motions to concur were agreed to via roll call on pages 20951 and 20956. The bill was then signed into law.

Interestingly, that modification would prove to be particularly important. While the original intent of the bill was to protect religious groups, the Equal Access Act is probably most known for providing protections for LGBT student groups. These groups sued high schools in the 90s and early 2000's when they were barred from meeting on campus under that act.

Re-Election: A “Proximate Goal”



Above: Former Senator Paul Douglas (D-IL). Below: Former Senator Frank Graham (D-NC).



If they don't get re-elected, they can't impact policy, attain higher office, etc. In short, contrary to the view that Congress is out of touch with voters, they annoyingly do the opposite. Members watch polls, fundraise continuously, and listen to constituent and interest group correspondence.

“Former Senator Paul Douglas (D., Ill) tells of how he tried to persuade Senator Frank Graham (D – NC) to tailor his issue positions in order to survive a 1950 primary.

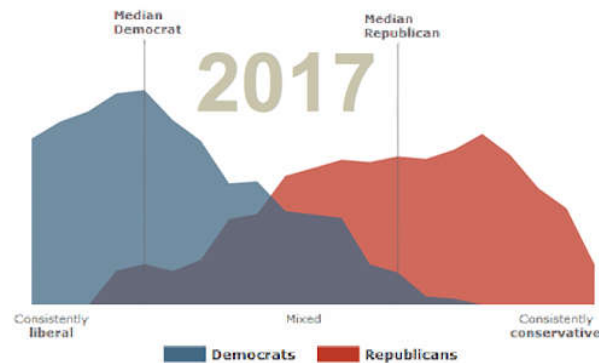
Graham, a liberal appointee to the office, refused to listen. He was a “saint,” says Douglas. He lost his primary. There are not many saints...

[Scholars often] assign three primary goals to congressmen – getting reelected but also achieving influence within Congress and making ‘good public policy...’

[The electoral goal] has to be the proximate goal of everyone, the goal that must be achieved over and over if other ends are to be entertained.” – David Mayhew, 1974

Re-Election: A “Proximate Goal”

Below: The general public by ideology.



Primary Elections:

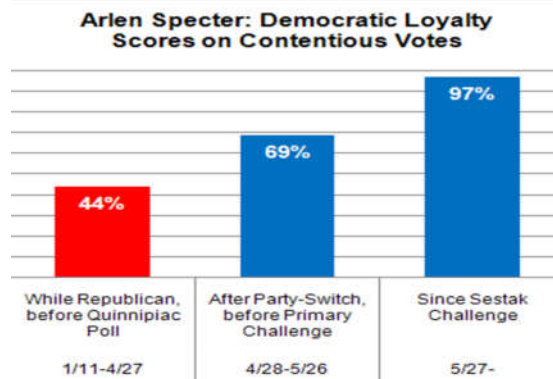
Unlike virtually every other nation, members in the U.S. Congress also have to worry about pleasing two distinctly different electoral constituencies. While the Median Voter Theorem predicts ideological convergence to a moderate position in a two-party general election, more extreme voters participate in primaries.

As a result, members are forced to either taken different positions or emphasize different policies to appeal to primary and general election voters.

Re-Election: A “Proximate Goal”



Above: Former Sen. Arlen Specter (D/R/D-PA)



An Extreme Example:

“In the first month or so after becoming a Democrat, Specter was voting with his new party about two-thirds of the time on these Contentious Votes. While there are some less loyal Democrats -- say, Ben Nelson of Nebraska -- who only vote with their party about half the time, this was certainly less than what most Democratic observers were hoping for. But since then, indeed, something has changed. Well, a couple of things have changed. On May 27th, Congressman Joe Sestak announced that he intended to challenge Specter for the Democratic nomination. And since that time, Specter has voted with his party on 28 out of 29 Contentious Votes, or 97 percent of the time.” – Fivethirtyeight.com, 7/25/2009

Rules and Agenda-Setting Matter

Congress is governed by often archaic rules of procedure (both endogenous and exogenous) that have followed path dependent processes. They have a massive impact on policy formulation.

See the previously mentioned Equal Rights Act for an example of the impact the filibuster has.

Civil Rights legislation was likely backed by congressional majorities for decades but thwarted by a combination of the House Rules Committee and the Senate filibuster.

Knowledge of rules and formal agenda-setting power has been increasingly centralized towards party leadership.



Above: Former Rep. John Dingell (D-MI), being awesome.

Rules and Agenda-Setting Matter

Why Rules?

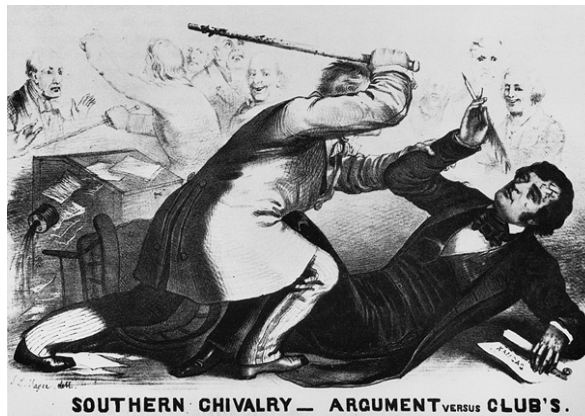
1. Protect minority rights
2. They can temper passions from factions—people are more likely to engage in violence if they feel cheated
3. Lawmaking is often dependent on continuity
4. Protect majorities from themselves
5. Help maintain faith in institutions

Below: "...it is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power, are the forms and rules of proceeding..." — Thomas Jefferson Jefferson's Manual of Parliamentary Practice



Left: UGA WR Tyler Simmons being incorrectly called off-sides after blocking a punt in the 2018 National Championship Game against Alabama. How did this call make you feel at the time?

Rules and Agenda-Setting Matter



Left: The caning of Charles Sumner; Right: A 2011 fight in the National Assembly of South Korea.

There are always limits to rules and precedents.

On one extreme these limits can be imposed by violence

Less extreme limits can come from altering endogenous rules by majority vote

Regardless, such changes do impose costs on majority coalitions

Rules and Agenda-Setting Matter



Everyone is a hypocrite when it comes to legislative procedure.

Politicians do not get elected because they care about the motion to recommit, or the filibuster, or congressional debate rules. And these issues do not resonant with voters.

Blindingly Transparent

Finally, rules and technological advances have made many levels of Congress blindly transparent.

This does make internal deal-making in Congress and other legislative bodies difficult. Members know they're being watched by voters and interest groups and may not want to compromise to appear weak.

The Framers acknowledged that balance was needed between being able to hold members electorally accountable and allowing them the flexibility to enact compromises.

Indeed, Madison has argued the Constitution would not have been adopted if not for secrecy.

In contemporary Congressional politics, issues stemming from transparency has led to a further centralization of lawmaking. Deals, like those over the recent COVID-19 response legislation, are hammered out informally by a handful of party leaders.



Above: James Madison, who would later declare: "No Constitution would ever have been adopted by the convention if the debates had been public (Hoffman 1981, 21)."

Blindly Transparent

The increase in transparency is a point that can broadly be applied to the entire government (and most Democratic governments).

It's counter-intuitive in a way, as many assume the government is trying to hide or bar information. And as with compromises, we often associate transparency with being normatively "good."

A substantial problem stemming from increased transparency, however, is information overload. Governments produce so much information on rules, policies, floor debates, committee debates, bureaucratic rules, etc., that it's impossible to keep track of all of it.

In short, the "sunlight" former Supreme Court Justice Louis Brandeis called for, can be so bright it blinds.

A primary goal for this course is to learn how to overcome this.



"Sunlight is the best disinfectant."

-LOUIS BRANDEIS

Above: Former Supreme Court Justice Louis Brandeis.

Moving Forward



Above: An 1858 brawl in Congress ended in laughter after a member accidentally ripped a hairpiece off of Rep. William Barksdale (D-MS) (he didn't realize Barksdale was wearing one).

In this class, we'll be talking about all of these issues in greater detail: why conflict isn't necessarily a bad thing, how compromise impacts policies; how re-election effects lawmaking; the development and impact of rules and agenda-setting and how to overcome "information overload" when it comes to studying Congress.

I won't kid myself into thinking I can get you to ***like*** the U.S. Congress (though I might get some of you). But I do want you to understand why it makes the decisions it does and the difficult position members are in.

I also think I can get you to like parts of it.

Some parts.

Probably the conflict and violence parts.

Questions, Concerns, Angry Rants?



Questions? Concerns? Angry rants? E-Mail me!

Survey Due



Again, please complete the qualtrics survey I sent out by Monday at 5 pm. Should be free points, folks.