



"How a Bill Becomes a Law"

Prof. Anthony Madonna
POLS 4790H Spring Semester
1/26/2020
University of Georgia

Outline

1/26/2020

I. Introduction

- a. Logistics
- b. Legislative History Groups
- c. Updates
- d. News

II. How a Bill Becomes a Law: House

III. How a Bill Becomes a Law: Senate and Resolving Differences

IV. For Thursday

- a. How to write a legislative history



Above: "My name is Alexander Hamilton. And there's a million things I haven't done. But just you wait, just you wait." — Alexander Hamilton (though probably not)

2

Course Logistics

POLS 4105: American Political Development

Room: Baldwin 301

Instructor: Anthony Madonna

Personal Email: ajmadonn@uga.edu

Phone: 314-313-9937

Website: <https://www.tonymadonna.com/pols-4105>

Zoom: <https://zoom.us/my/ajmadonn>

Office: Baldwin 407

Office Hours: TR 1:00-2:00pm

Syllabus will be e-mailed and on the class website.



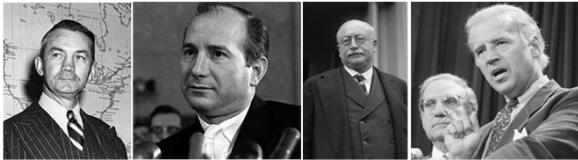
Above: Former House Speaker John Boehner (R-Oh) AFTER leaving the U.S. House.

Legislative History Groups (1/26)



Students	Group #	Congress	Year	Enactment
Anderson, Poteau, Zaleski, Ledet	1	112	2012	Violence Against Women Reauthorization Act of 2012
Doley, Cone, Zachary Williams	2	109	2005	USA PATRIOT Improvement and Reauthorization Act of 2005
Guzman, Leggett, Payan	3	91	1970	Comprehensive Drug Abuse Prevention and Control Act of 1970
Raley, Schiffmauer, Sorohan, Langfelder	4	92	1972	Title IX Amendment of the Higher Education Act of 1972
Ted Williams, Rademacher, Cook	5	81	1949	National Security Act Amendments of 1949
Greeson, Gagliano, Livsey, Snyder	6	93	1974	Federal Election Campaign Act Amendments of 1974
Fisher, Gregg, Cochran, Feyerabend	7	104	1995	Lobbying Disclosure Act of 1995
Pope, Campbell, Dulles, Noone	8	109	2005	Energy Policy Act of 2005
Khan, Canavino, Woodson, Ransom	9	90	1968	Civil Rights Act of 1968
Pinier, Cedarbaum, Wilson, Huberman	10	103	1993	Family and Medical Leave Act of 1993
Montoya, McMillin, Crane	11	101	1990	Americans with Disabilities Act of 1990
Bishop, Lazardi, Williamson	12	106	1999	Financial Services Act of 1999
Gouldby, Schmid, Tumelty, Hignite	13	104	1995	Antiterrorism and Effective Death Penalty Act of 1996
Levy, McCallar	14	94	1976	The Hyde Amendment
Kirby, Rahbany	15	65	1917	Sedition Act
Coughlin, Elmore, Higgins	16	103	1994	Violent Crime Control and Law Enforcement Act of 1994
Bozza, Decker, Edelson	17	108	2003	Medical Prescription Drug, Improvement and Modernization Act of 2003
Rogers, Solis, Kiefer	18	104	1996	Illegal Immigration Reform and Immigrant Responsibility Act of 1996

Legislative History Groups (1/26)



Again, you're in a group, but this is NOT a group assignment.

You'll be given a separate document with prompts to address. I'll have that to you this week.



Course Updates (1/26)

ELC:

Updated some things, should continue to post more.

Legislative Histories:

Summary Sections (Due 2/11)

EMAILS:

Should be caught up.

VIDEOS:

Coming along slowly. Don't hesitate to use selectively.



Above: Former Speaker John Boehner (R-OH). According to an interview in *Rolling Stone*: "His heckling once provoked Don Young, an Alaskan himself, to pin Boehner against a wall inside the House chamber and hold a 10-inch knife to his throat. Boehner says he stared Young in the eyes and said, 'Fuck you.' (Young says this account is 'mostly true,' but notes that the two became good friends, with Boehner later serving as his best man.)"

News 1/26



What do you guys have here? News items you want to discuss?

Filibuster fight in the Senate; Cabinet Confirmations; Portman announcement, Impeachment; Defense Production Act ; etc.



Hastert Rule

Sarah Binder, Monkeycage (2013): Most Congress watchers yesterday quickly noted the remarkable House vote to pass the Violence Against Women Act (VAWA): For the third time this year, the House passed an important bill over the objections of a majority of the majority party. Another "Hastert Rule violation," many reporters correctly observed.

Observers noted that the leadership brought the VAWA bill to the floor (knowing the GOP majority would be rolled on final passage) as a calculated move to repair damage done to the party's brand name in the last election. As the Los Angeles Times reported, many GOP strategists "feared that keeping the bill in limbo could expose the party to complaints they were hostile to women." I think the coverage of the VAWA bill has been right on the mark. Still, we should be cautious in writing the Hastert Rule's obituary. Some considerations:



First, as many reporters noted, the substance of the yesterday's bill mattered. Concern about the party's electoral reputation likely helped to encourage the GOP to bring the bill to the floor (on a nearly unanimous procedural vote). We see some evidence of that concern in the makeup of the sixty Republicans who broke ranks to vote against the conservatives' alternative bill: Roughly sixty percent of them hailed from blue states won by Obama in 2012. (Note: GOP women were more likely to stick with their conservative brethren on that substitute vote, with roughly 80 percent of the GOP women favoring the more limited bill.) Moreover, on final passage, nearly three-quarters of the Republicans who voted with the Democrats hailed from blue states. I think it's reasonable to expect that on other electorally-salient bills this Congress we might see the leadership allow party splitting measures on the floor, letting the chamber median work its will in favor of passage. As many others have noted, immigration reform could provide another such opportunity. In short, the terrain for future Hastert rule violations might be quite limited.

Hastert Rule

Second, keep in mind that all three of the Hastert Rule violations occurred on legislative measures already cleared by the Senate. Mitch McConnell and Joe Biden negotiated the fiscal cliff bill that was passed 89-8 with broad bipartisan support. Hurricane Sandy relief was first cleared by the Senate on a (narrower) bipartisan vote. And the Senate had also already endorsed the more expansive version of the VAWA bill, with a majority of Senate GOP joining every Democrat in voting for the bill. The support of Republican senators (albeit to varying degrees) for



Democratic measures makes it far harder for the Speaker to stick with his conservative conference majority. Instead, he offers them a vote to establish their conservative *bona fides* and then allows the Democrats to win the day. Split party control seems to limit the viability of the Hastert Rule, at least on those few measures on which Senate Democrats can attract GOP support to prevent a filibuster. Ironically, the new Boehner Rule of "Make the Senate Go First" (insert saltier language for full effect) undermines the Hastert Rule. Given the difficulty Boehner faces in assembling a chamber majority without Democratic votes on bigger issues of the day, perhaps we shouldn't be surprised to see this periodic scuttling of the majority of Boehner's majority.

Finally, yesterday's vote helps us to better identify the far right flank of the House GOP. Here, I consider the far right of the conference those Republicans who voted against waiving the debt limit for three months, against Hurricane Sandy relief, and against the VAWA bill. That group sums to 26 GOP. Given 232 House Republicans, Boehner can't bring party-favored bills to the floor without moving exceedingly far to the right. That's helps to explain why Boehner insists on letting the Senate go first on issues that evoke tough dissent within his party. He has no choice, even if that sets him up for potential majority rolls on important roll call votes. Ultimately, the fate of the Hastert Rule depends on how the Speaker balances his support within the conference with the responsibility of tending to the party's brand name (let alone to the will of the chamber).

Outline

1/26/2020

I. Introduction

a. Logistics

b. Legislative History Groups

c. Updates

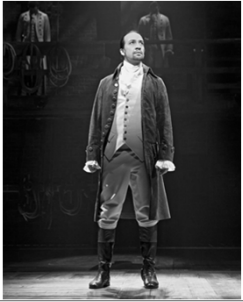
d. News

II. How a Bill Becomes a Law: House

III. How a Bill Becomes a Law: Senate and Resolving Differences

IV. For Thursday



a. How to write a legislative history



Above: "My name is Alexander Hamilton. And there's a million things I haven't done. But just you wait, just you wait." – Alexander Hamilton (though probably not)

10

Congress - Overview




The House and Senate occupy the center stage in national policymaking.

Electoral politics influences almost everything members of Congress do, collectively and individually. Reelection has to be a proximate goal.

The majority party, through party leaders, directs and dominates the action in the House and, to a lesser degree, the Senate.


It is always easier to stop things from happening in Congress than to make things happen.

Talk - Overview




Harry Reid
May 19, 2005

"THE DUTIES OF THE SENATE ARE SET FORTH IN THE U.S. CONSTITUTION. NOWHERE IN THAT DOCUMENT DOES IT SAY THE SENATE HAS A DUTY TO GIVE PRESIDENTIAL APPOINTEES A VOTE."




Harry Reid
March 1, 2016

"WE HAVE THAT NASTY LITTLE CONSTITUTION, WHICH SAYS THEY ARE OBLIGATED TO HOLD HEARINGS AND THEY ARE OBLIGATED TO VOTE."



Mitch McConnell - 2010

THE AMERICAN PEOPLE SHOULD HAVE A VOICE IN THE SELECTION OF THEIR NEXT SUPREME COURT JUSTICE. THIS VACANCY SHOULD NOT BE FILLED UNTIL WE HAVE A NEW PRESIDENT.



Mitch McConnell - 2001

MY VIEW IS THAT THE PRESIDENT WON THE ELECTION, NO MATTER WHAT THE MARGIN, AND IS ENTITLED TO TILT THE JUDICIARY IN THE DIRECTION THAT HE FEELS APPROPRIATE.

This "talk": A walk-through the modern legislative process. Some caveats/warnings:

1. This will come off "pro-politician." At least I'll try and convince you they're less to blame than you think.
2. Process IS substance. People hate process, but you can't untie it from substance. If you care about health care, taxes, immigration, etc., you need to understand process.
3. Everyone is a hypocrite when it comes to legislative procedure.
4. I will BORE you. Get over it.

4

Congress – An Unpopular Institution



Congress is unpopular.

A 2013 Public Policy Polling survey reported that Congress lagged behind the President, Supreme Court, root canals, head lice and the rock band Nickelback in head-to-head match-ups.

Congress – An Unpopular Institution

Why does the public dislike Congress?

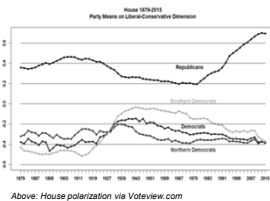
- General aversion to politics
- Polarized political parties
- Ineffective at legislating
- Too complicated
- Negative in substance and tone



Congress: An Unpopular Institution

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.



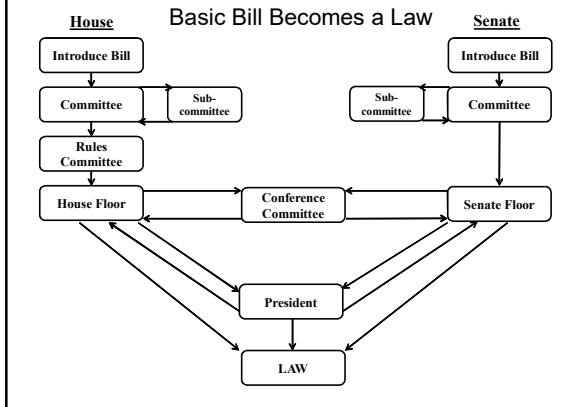
Congress – An Unpopular Institution

Other explanations?

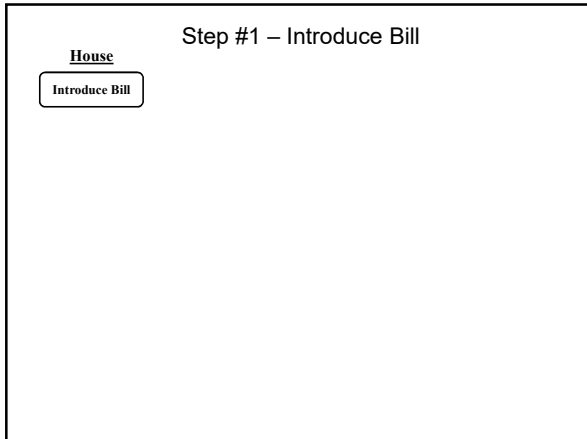
- We have done a poor job explaining how the legislative process works.
- Failing to understand the complex trade-offs necessary in the American legislative process breeds cynicism and disinterest.
- This is important, as campaigns and interest groups have seemingly gotten better and better at exploiting this lack of understanding during elections.
- Roll call votes, member effectiveness at passing legislation, partial statements, campaign contributions, member and staff salary information, etc., are frequently used in attack ads with no additional context or background.



Basic Bill Becomes a Law



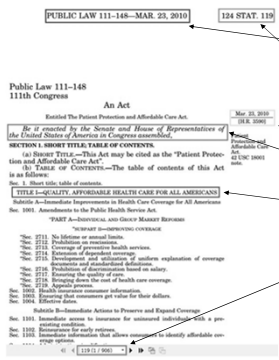
Step #1 – Introduce Bill



(This measure has not been introduced since it was passed by the Senate on December 20, 2009. The summary of that version is repeated here.)

[illegible]

Step #1 – Introduce Bill



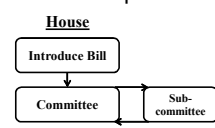
Reading bill text

- Public law # and date
- Statute number
- Date and bill #
- Enacting clause
- Short title—bill will have a number of subtitles
- A few points on bill length...

As a staffer, you'll be tasked with more work on amendments than bills

Most bills will amend some existing statutes.


Step # 2 – Committee/Subcommittee



```

graph TD
    A[Introduce Bill] --> B[Committee]
    B --> C[Sub-committee]
  
```

Step # 2 – Committee/Subcommittee



Most bills will die in Committee.

Referred by the Speaker which can be complicated. May also go to a subcommittee...Why? Specialization.

Committee marks up (or amends) the bill, holds hearing, invites witnesses. In short, the text of the bill WILL often change at the committee stage.

How do members get on committees? Who is the chair? Gets out of committee by a simple majority vote.

Step # 2 – Committee/Subcommittee

Changes in committee will be discussed and key aspects of the bill will be summarized in the committee reports. In recent decades, the minority and majority views are included in the same report, though historically, they have been reported separately.



Using Congress.gov, the committee reports can be found here.

Step # 2 – Where the Find Committee Reports

ProQuest | Legislative Insight

Home Quick Search Guided Search Search by Number Timeline Browse Legislative Process

PDF | Print | Export | Legislative Process

Options | Sort by pub type | Publication Filter | Show all

PL 95-504 contains 89 publications.

Find items on this page: [] Go

Find items in full text publications: [] Go

Airline Deregulation Act of 1978

Publication Type: Legislative History

DIGITAL PDF ID: PL95-504

PUBLIC LAW PDF ID: PL95-504T

DATE: 04/24/1978

ENACTED-BILL: 95 S. 385

STATUTE AT LARGE: 92 Stat. 1705

CONGRESS: 95

USC: 15 USC § 1911, 18 USC § 112, 18 USC § 871, more.

URL: <https://congressional-proquest.com/proxyremote.pdf?url=https://proquest.org/docid/11111111>

SUMMARY:

To amend the Federal Aviation Act of 1958, to encourage, develop, and attain an air transportation to determine the quality, variety, and price of air services, and for other purposes.

REGULATORY HISTORY:

View the administrative rule-making process related to this public law. Open in Regulatory Insight: Regulatory History of PL 95-504

SUPREME COURT CASE HISTORY:

View Supreme Court cases related to this public law, and their associated documents. Open in Supreme Court Insight: [American Airlines, Inc. v. Wright \(52-2493\)](#); [Alaska Airlines, Inc. v. Brock \(55-5225\)](#); [Northwest, Inc. v. United \(52-1402\)](#)

Legislative History of the Airline Deregulation Act of 1978, PL 95-504

By Washington: Covington & Burling, 1978

Washington: Covington & Burling.

Search this title

Cumulative Contents

1 (House, 95th, 1st, 1978)

Document

Table of Contents

Phase 1 (2)

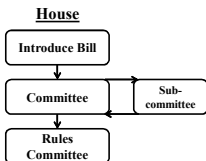
In addition to Congress.gov, committee reports can be found in other places.

Scrolling down on ProQuest Congressional will give you Committee Hearings transcripts as well as committee reports.

Hein's Legislative History library will also have some reports.

Other sources to identify what happened in Committee: Historical newspapers, CQ Almanac

Step # 3 – Rules Committee



I'll let you write the substance. You let me write the procedure, and I'll screw you every time. - Rep. John Dingell

[illegible]

Outline
1/26/2020

I. Introduction

a. Logistics

b. Legislative History Groups

c. Updates

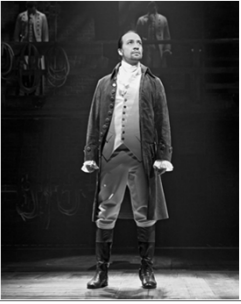
d. News

II. How a Bill Becomes a Law: House

III. How a Bill Becomes a Law: Senate and Resolving Differences

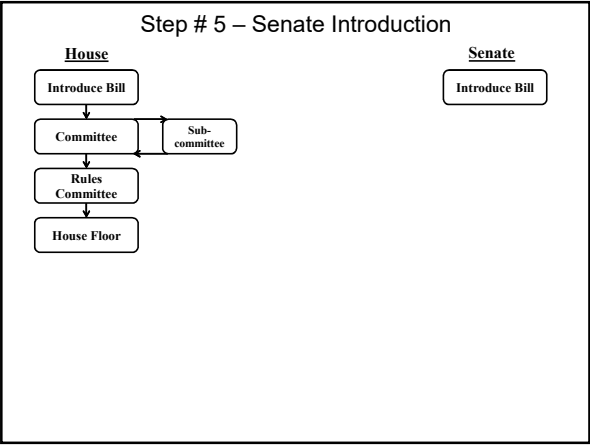
IV. For Thursday

a. How to write a legislative history




Above: "My name is Alexander Hamilton. And there's a million things I haven't done. But just you wait, just you wait." – Alexander Hamilton (though probably not)

34



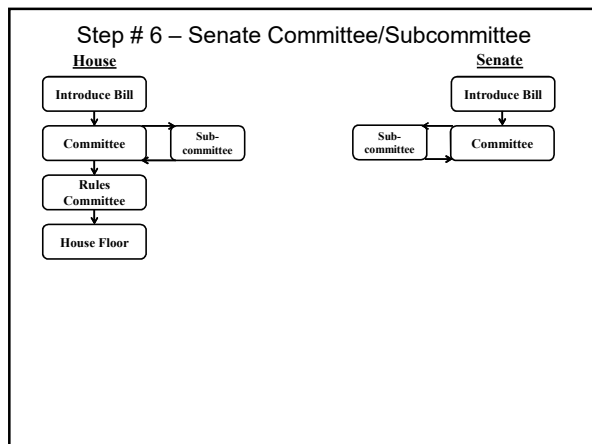
Step # 5 – Senate Introduction



There will often be a Senate companion bill introduced around the same time as the House.

Generally though, the Senate will wait for the House bill before it moves out of Committee.

Committee consideration can be bypassed in the Senate via Rule XIV.



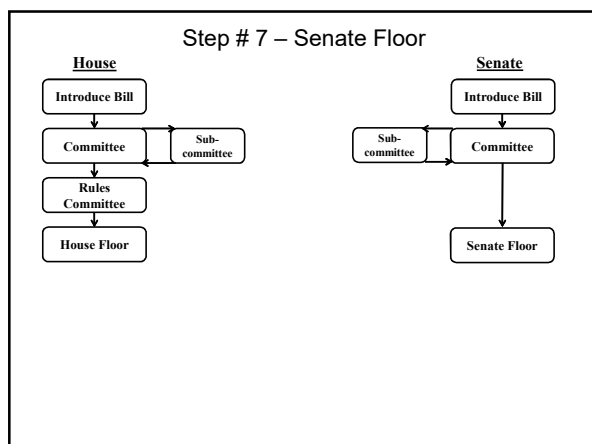
Step # 6 – Senate Committee/Subcommittee



Referred by the Majority Leader (with assistance). This can also be complicated. Additionally, the Majority Leader can put a bill directly on the calendar (bypassing the committee stage).

Similar to House Committee consideration...It may go to a subcommittee as well. Committee marks up the bill, holds hearing, invites witnesses.

Full text substitutes are common.



Step # 7 – Senate Floor

Here's where the process generally gets weird.

No feature comparable to the House Rules Committee. Lack of a simple-majoritarian method for ending debate makes the Senate extremely unique. So how does a bill get to the Senate floor? Leader will offer a motion to proceed. But ending debate on that is difficult.



Primarily two options:

(1) Cloture. 60 votes and extremely time-consuming. May need cloture on the motion to proceed and then on the bill itself.

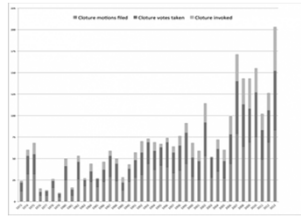
(2) Unanimous Consent. Necessitates even more compromises than cloture.

Step # 7 – Senate Floor

Understanding the filibuster

The Senate "filibuster" is not a rule in the Senate (sorry, Mr. President). It owes its existence to the absence of a rule allowing a simple majority to end a debate.

Rule XXII, or cloture, established in 1917, provides for a supermajority to end debate.



Cloture motions since 1973

Historically, floor time is so valuable in the Senate that measures subject to filibusters are not brought to the floor and cloture votes are not taken.

Because of this, determining when a filibuster has taken place—or providing a count of filibusters—is almost completely arbitrary.

Step # 7 – Senate Floor



Understanding the filibuster

Often times, obstruction through long speeches on the Senate floor are for "show." See recent speeches by Senators Paul (R-KY), Cruz (R-TX) and Merkley (D-OR).



Even when cloture is not invoked, the Senate's debate rules have an effect on policy output. See Senator Tom Coburn (R-OK) and the Zadroga Health Compensation Act of 2010.

Because of workload and time demands, the modern U.S. Senate is largely run by unanimous consent.

Want a longer discussion? E-mail me...

Step # 7 – Senate Floor

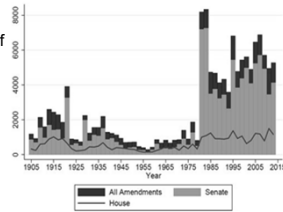
The amending process on the Senate floor is crazy.

Individual members have a great deal of leverage, so we see a large number of amendments offered and voted on in the Senate.

Most are of the position-taking variety. Why do this?

Some will be bills offered “as amendments.”

Can be offered as motions to strike, strike and insert, etc....A major job for staffers and interns is summarizing amendments and writing vote recommendations for their members. Unlike bills, where members have a great deal of notice and information from committee mark-ups, introductory speeches, lobbyists and party leaders, amendments are often offered with no supplemental information and very little time to process.



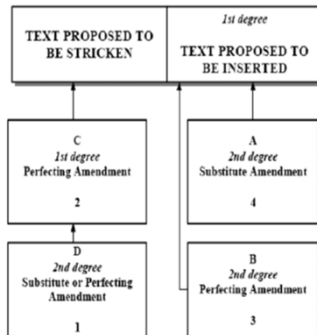
Amendment Tree

Depending on the kinds of amendments that members offer and the order in which they are recognized to offer their amendments, members can offer anywhere from three to 11 amendments before the Senate has to vote on any of them.

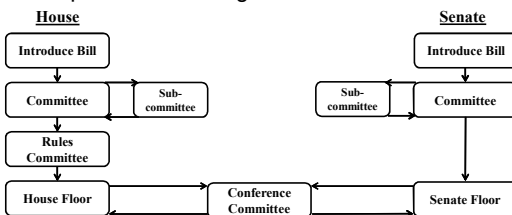
As a general rule, a measure being considered on the House or Senate floor is open to amendment in only two degrees.

Amendment trees are the graphic ways of depicting these possible situations.

One such tree is presented in the adjacent Figure.



Step # 8 – Resolving Differences/Conference



Step # 8 – Resolving Differences/Conference

Passes both Houses in different forms...Going to Conference be agreed to by both chambers. Can result in more votes.

Waning in usage. Amendment trading is more popular in unified congresses.

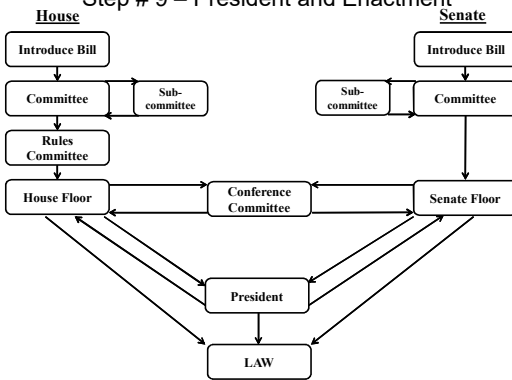
Who serves on a conference committee? Conferees have a great deal of freedom.

Up or down vote on the conference report.



"I say to my colleague from Wyoming, I used to teach political science classes. I have to tell you. You know, I feel guilty. I need to refund tuition to students for those 2 weeks I taught classes on the Congress. I was so off in terms of a lot of the decision-making. I should have focused on the conference committees as the third House of the Congress, because these folks can do any number of different things. And the thing that drives me crazy is you can have a situation where the Senate did not have a provision in the bill, the House did not have a provision in the bill, and the conference committee just puts it in the bill. Then it comes back for an up-or-down vote. No opportunity to amend." – Sen. Paul Wellstone (D-MN)

Step # 9 – President and Enactment



Step # 9 – President and Enactment



Veto is possible, override requires 2/3rds of both chambers.

The President is usually involved earlier in the process. The threat of a veto is usually enough to lead to policy concessions (assuming a policy motivation).

Vetoes have been used rarely. Last three presidents have vetoed 51 bills. Only 6 overrides. Ford had 48 vetoes in his nearly two years in office.

Conclusion

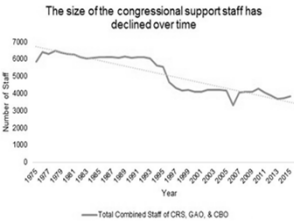
System was designed to make action difficult. It has evolved in a way that makes action even more challenging. Opponents need only to win at one stage in a process that is more complex than I've presented.

Policy status quos have shifted in such a way that this is problematic for both liberals and conservatives.

Electoral concerns present challenges for even the most well-intentioned members. This also diverts dwindling staff resources from policy formulation. Recent poll found that almost "two-thirds of DC staff" stated they were likely to look for another job in the next year.

Be wary of "sticking it" to Congress.

While polarization is a problem, institutions that provide expansive minority party rights further exacerbate it and reform should be considered.



Conclusion



Thank you for having me. Questions? Concerns? Angry rants?

Questions, Concerns, Angry Rants?



Thursday: Writing a Legislative History
