

PART VI

Congress

23. Functions of Congress



Photograph by The New York Times

CONGRESS performs several broad functions. Presumably the legislative, or law-making, is the most important. However, partly because of the principle of checks and balances, and partly because it requires aid in performing its legislative powers, Congress possesses other types of functions. It enjoys wide powers of investigation. It has certain executive and judicial powers. It possesses duties in conjunction with national elections. It has administrative functions, in that it creates and supervises all administrative agencies of the federal government. It plays a significant role in the formal and the informal amending of the Constitution. Finally, it has a major representative function; as much as, or more than, any other organ of the government, it may be said to speak and act for all the people.

THE REPRESENTATIVE FUNCTION

The representative function of Congress in a sense underlies all its other functions. The government of the United States is often termed a "representative government"; it was Congress more than any other branch of the government that was originally designed to fulfill this representative

function. Of course, the President too may be said to represent the people; so, likewise, may the officials of the executive branch and the justices of the federal courts. A working man, for example, might claim to be represented by the Secretary of Labor; however, he is also represented by the Secretary of Health, Education, and Welfare to an almost equal degree, by every other member of the Cabinet, and by the chiefs of the independent agencies, only to a lesser degree. Many of the agencies of government have so sprawled out that citizens sometimes are in closer contact with their officials than with their congressmen. In addition, millions of people have come to see their pressure groups as their genuine, direct contact; and they leave it to their pressure group leaders to deal with congressmen and officials alike. Yet each individual living at a definite address in any one of the forty-eight States may claim to be represented by two Senators and one Representative. And these representatives have a unique power over, and relationship to, their constituents.

Congress, then, represents the people of the United States in and to the national government. Presumably in carrying out any of its other functions it operates at the behest of those it represents. It expresses public opinion; in return, through its words and acts Congress contributes to the formation of public opinion. Although the Founding Fathers probably intended that Congress be the chief organ of the national government, today Congress certainly does not govern the country; the administration, under the President, does the actual governing. Congress, however, stands between the people and the administration, often acting as a buffer to lessen or prevent the shock of collisions.

THE CONSTITUENT FUNCTION

The constituent function is that which is associated with amending the supreme law, or the Constitution. "Constituent" in this sense has a different meaning from that of a "constituent" of a congressman. Congress has a hand in each of the formal means for amending the Constitution: it proposes amendments by joint resolutions adopted by a two-thirds majority in each house; and it summons a constituent convention on petition of the legislatures of two-thirds of the States (Art. V). Also, by enacting laws to fill out the framework of government and to execute the general principles of the Constitution, Congress has an important part in the informal amendment of the supreme law.

THE ELECTORAL FUNCTION

Congress has several duties connected with the election of federal officials. It may make regulations concerning the "... times, places, and manner of holding elections for Senators and Representatives ... except

Joint Session of Congress to Hear a State of the Union Message. The President of the Senate and Speaker of the House sit directly behind President Eisenhower.

as to the places of choosing Senators" (Art. I, sec. 4, cl. 1). Moreover, "Each house shall be the judge of the elections, returns and qualifications of its own members, . . ." (Art. I, sec. 5, cl. 1). With respect to presidential elections, "The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States" (Art. II, sec. 1, cl. 4). The Electors cast their votes, then send them "sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted" (Art. II, sec. 1, cl. 3).

In the event some electoral votes are contested, as in the Hayes-Tilden race in 1876, Congress arranges for a commission to settle the dispute, or enacts legislation providing for another mode of settlement. In the event no candidate for the presidency receives a majority of the electoral vote, the House of Representatives shall choose the President from among the candidates receiving the three largest numbers of votes. If no candidate for the vice presidency secures a majority of the electoral vote, the Senate shall choose as Vice President one of the two candidates receiving the largest numbers of votes (Twelfth Amendment). Congress also determines by law who shall succeed to the presidency in the event there is neither a President nor a Vice President (Art. II, sec. 1, cl. 6).

THE LEGISLATIVE FUNCTION

The legislative function of Congress includes chiefly the powers associated with framing and declaring the policy of the national government. The legislative powers of Congress, at least with respect to internal affairs, comprise almost all the stated powers of the national government. It is apparent from the structure of the Constitution that its authors intended that any undertaking of the government in domestic matters should be initiated by Congress. Article I, section 8 of the Constitution lists the bulk of these powers, such as levying taxes, borrowing money, regulating commerce, coining money, establishing a postal system, and the like.

Today, whereas the proposals for legislation may not originate from Congress, the formal enactment of laws still must take place there. Congress may not delegate legislative power to any other agency of the government. One of the reasons for which the federal Supreme Court ruled that the National Industrial Recovery Act of 1933 was unconstitutional was that through it Congress had provided for the delegation of legislative functions to the President in the matter of drafting codes for manufacturers. Congress may empower agencies to lay down the details of their procedure; for instance, it has authorized the Interstate Commerce Commission to fix railroad rates. But Congress must always set forth the general rules under which the agencies are to function; it cannot abandon its policy-making role to an administrative office.

THE INVESTIGATIVE FUNCTION

The investigative function embraces the authority of Congress to examine the behavior and value of any agency in the federal government, and any activity in which the federal government is engaged or which it proposes to undertake. For instance, if Congress must legislate on interstate commerce, it, or one of its committees, must learn all it can about the problems of interstate commerce. Often, when Congress has not passed laws on a certain subject at all, as, for example, on the question of connections between gamblers in Nevada and Louisiana, it must and can, through one of its committees, look into the subject and perhaps develop laws governing interstate gambling rings. Thus the range of congressional inquiry can be very wide; it can gather written materials, seize records, and question witnesses under oath, to collect information that may be useful for amending or evaluating present laws and for proposing new ones. In addition to these overt functions of the investigation of social questions, congressmen can, in the course of their investigations of controversial issues, stir up public attention and indignation that may be helpful to their reelection.

THE EXECUTIVE FUNCTION

The executive function of Congress comprises its activities with relation to two particular fields: presidential appointments, and treaties with foreign powers. The executive function, in name at least, is limited to the Senate, which in that respect was modeled after the upper house, or governor's council, in many of the colonial assemblies. Actually the House often enters into this function. In the case of appointments, when there is no Senator from a given State who belongs to the President's party, the President may consult with a Representative from his party concerning an appointment. Moreover, in the negotiation and ratification of treaties, the President must consider the willingness of the House to appropriate money for the execution of the treaty. With respect to presidential appointments, there are more than twenty thousand positions whose appointees must be confirmed by a simple majority vote of the Senate. In regard to treaties, all treaties must be approved by a two-thirds majority vote of the Senate. In the area of international affairs the competence of Congress reaches beyond the approving of treaties; only Congress may declare war, provide funds for the armed forces, and establish rules for the government of the armed forces (Art. I, sec. 7, cls. 11-14).

THE ADMINISTRATIVE FUNCTION

The administrative function of Congress includes congressional creation of all administrative agencies, its statement of their purposes, and its supervision of their operations. It bears repeating that a law is not self-executing; an agency must be established to enforce the law. For example,

the passage of the Clayton Antitrust Law in 1913 necessitated the erection of the Federal Trade Commission to implement the provisions of the Law. Only Congress can appropriate the money for the operations of these agencies; furthermore, Congress can, as it did in the case of the National Youth Administration, terminate the existence of such an agency by refusing to vote funds for its continuance.

Congress also sets the rules which the agencies shall observe in their operations, and in one or another fashion Congress oversees these operations. The House Committee on Appropriations is especially equipped, by virtue of an unusually large staff, to function as an overseer. Too, Congress may create a standing, so-called "watchdog," committee to supervise the administration; for example, the Joint Committee on Atomic Energy supervises the Atomic Energy Commission. Individual congressmen frequently engage directly in relations with officials of the executive branch. Such contacts are for many purposes. Often congressmen call to point out specific "abuses" of administration, or to draw attention to needs of their constituents, or to introduce friends and constituents to officials, or to ask advice on pending legislation. Finally, Congress exercises some control over administration by confirming, or refusing to confirm, presidential appointments to administrative agencies.

THE JUDICIAL FUNCTION

The judicial function of Congress has two important aspects. First, Congress, as authorized by the Constitution (Art. I, sec. 8, cl. 9), establishes all federal courts below the Supreme Court, and defines the geographic areas of their jurisdictions. Furthermore, Congress fixes the number of judges in all federal courts, determines the justices' salaries, and appropriates funds for the operation of the judicial branch of the government. However, this aspect of the judicial function of Congress in fact is but another phase of the congressional power to work out structural details of the government that were only roughly sketched by the Constitution. Congress has another judicial function that contributes to the system of checks and balances that is fundamental to the American way of government: impeachment, or the legislative method of removing corrupt or incapable executive and judicial officers.

The grounds for impeachment

The Constitution provides (Art. II, sec. 4) that "The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." The nature of treason and bribery are clear enough. Whereas "high crimes and misdemeanors" may be variously defined, they have been usually held to denote acts involving moral turpitude. Owing to this constitutional definition, impeachment proceedings may not be instituted for solely partisan causes; if they could, executive and judicial officers would be subordinate to Congress.

Persons who may be impeached

The term "civil officers" in practice has come to include only the civilian officials of the executive and judicial branches of the government. Military officers are subject, not to Congress, but to courts-martial; when President Truman dismissed General Douglas MacArthur in 1951, he did so not in a civilian role but as Commander in Chief of the United States Army. Members of Congress are not "civil officers." The first impeachment case in the United States was brought against Senator William Blount of Tennessee in 1797. After being charged with treason, he was expelled from the Senate. Subsequently the House voted to impeach Blount, but the Supreme Court ruled that since Blount had been expelled from the Senate he was out of the jurisdiction of the House. Actually the tedious procedure of impeachment is quite needless in Congress, for either house may far more easily expel a member by a two-thirds majority vote, without recourse to the other house. Since Blount's case there has never again been an attempt to impeach a congressman.

The impeachment procedure

The impeachment procedure must be initiated by the House, which shall by a majority vote adopt specific articles of impeachment. Having declared its intention to impeach an official, the House now appoints certain of its members to serve as "managers" to present the case. In a sense the whole House functions as a prosecuting attorney, but the managers do the actual legal work. Once the House has prepared its case, it brings it before the Senate, which must hear the case. In the proceedings, then, the Senate functions as judge and jury. The Vice President holds the chair during impeachment trials save when the President is being impeached; then the Chief Justice of the United States holds the chair, since the Vice President might be prejudiced. At the trial the House first seeks to show cause why the accused should be convicted. The accused, who at all times is entitled to legal counsel, may then present evidence in an effort to prove his innocence. After all the evidence has been offered, the Senators vote for or against conviction. A two-thirds majority is necessary to convict.

Penalties upon conviction

Since an impeachment trial is essentially a political affair, the penalties that may be imposed also are political. An official convicted by impeachment may only be removed from office, and disqualified from holding any other "office of honor, trust or profit under the United States" (Art. I, sec. 3, cl. 7). Conviction in impeachment cases, then, cannot result in fine or imprisonment. However, after removal from office the individual loses any legal immunities that he may have previously enjoyed, and he may thereupon be tried and sentenced as any other private citizen. In fact, the articles of impeachment may be brought as the ground for legal action, without exposing the individual to double jeopardy.

Impeachment trials in American history

Only twelve persons have been impeached in the United States. Of these, four, all members of the judiciary, were convicted. In each of five remaining cases, the defendant was a federal judge; in the sixth, Senator Blount; the seventh, a Cabinet member; and the eighth, President Andrew Johnson. Johnson escaped conviction by only one vote; his acquittal can be attributed to the votes of seven Republican Senators, who by supporting Johnson effectively terminated their political careers. The impeachment of Johnson was inspired solely by partisan motives; consequently it is not difficult to imagine that, had the Senate voted to convict, the presidential system would have been replaced by a parliamentary system in which a President who clashed with Congress would be removed by impeachment. The threat of impeachment has persuaded certain other officers to resign. However, impeachment is a lengthy and expensive proceeding, taking time that the Senate today can ill afford to withdraw from its other concerns. Only grave offenses or a great partisan crisis can excite the cumbersome machinery into motion.

QUESTIONS AND PROBLEMS

1. If a congressman is elected by a plurality of votes in his district, what forces can operate upon him to make him concerned with the fate of other parts of the nation?
2. Could Congress set up a bureau to administer all federal elections? Explain your answer.
3. List the functions of Congress and describe each in one sentence.
4. What are the reasons why only twelve persons have been impeached in the history of the United States?