

26. Legislative Procedure in Congress



Wide World Photo

THE legislative procedure comprises the most important activity of Congress—the making of laws. This procedure involves essentially the introduction, study, possible amendment, and passage of a bill in one house; the same steps in the other house; the reconciliation of any differences in the two versions; final passage in identical form; and submission to the President for his signature, whereupon the bill becomes law. Figure 47 pictures these essential parts of the legislative procedure.

THE RULES

This procedure is ostensibly hedged about by two sets of detailed, standing rules, one for each chamber, those for the House being even more

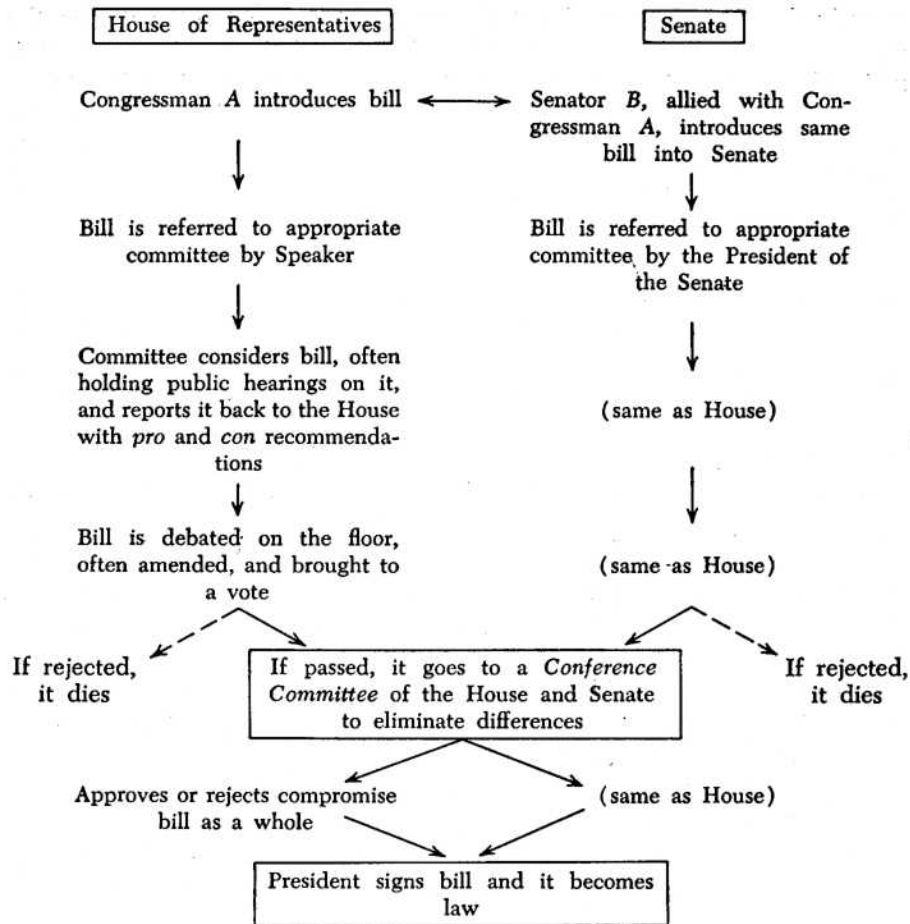


Figure 47. Career of a Bill in Congress (Simplified).

complex than those for the Senate. Actually, these rules may be amplified, superseded, or even contradicted at any time by special rules, which are devices that crop up far more frequently in the House than in the Senate.

The status of the rules in the House is somewhat different from that in the Senate. House rules are viewed as ending with every Congress. One of the first acts of a new House, therefore, is to acquire a body of rules. Usually one of the senior Representatives, often the chairman of the Rules Committee, moves that the rules of the previous House be adopted; and it is at this time that any insurgents have the best opportunity for procuring a change in the rules. However, since the bulk of the Representatives normally have a vested interest in the perpetuation of the old rules, any change even at this time is extremely difficult to accomplish. Conse-

Public Hearings of a Senate Investigating Committee. Under the chairmanship of Senator Estes Kefauver (Tenn.), the Senate Committee to Investigate Organized Crime in Interstate Commerce sits at the Federal Court Building in New York City, March 13, 1951. Television cameras brought tremendous publicity to bear upon the proceedings.

quently the old rules are almost always adopted. In the Senate, on the other hand, the rules are considered to be part of the continuous organization; hence there is no need to adopt the rules of the previous Senate.

Occasionally an uprising may break out at the first meeting of a new Senate, in which a Senator or group of Senators desirous of enacting certain legislation will argue that the rules of the Senate are not continuous, so that they can secure new rules that will assist their legislative project. Such an uprising took place at the beginning of the Eighty-third Congress, when a group of Democratic Senators, including Herbert Lehman of New York and Clinton Anderson of New Mexico, sought to bring about the adoption of new rules that would enable them to push a body of civil rights laws through the Senate. The attempt was voted down when Robert A. Taft, Republican floor leader, rallied the opposition to the proposals.

Sources of the rules

Congressional rules have numerous sources. One is the body of rules inherited from the Congress of the Confederation, a set of rules itself derived from those of early State legislatures, colonial assemblies, and finally the British Parliament. A second source is the federal Constitution. A third is a manual compiled by Thomas Jefferson, which was based chiefly upon British precedents. A fourth lies in the amendments that are adopted from time to time, especially in the House. A fifth consists of the decisions made frequently by the Speaker and other presiding officers. In the main the rules are the product of a long evolutionary process.

Function and nature of the rules

The official function of the rules is to provide a code for orderly legislative procedure in Congress. The unofficial function, which may be considered the more important, is to give the majority party, particularly in the House, a group of regulations that will furnish that party an additional means for enacting its program while fending off opposition from the minority party. The rules have a dual nature, formal and informal. The formal rules are extremely complex, so that even so skilled and experienced a congressman as the Speaker must occasionally refer to the Parliamentary for clarification of points of order. Actually Congress does a large part of its work under a second set of rules, which may be termed informal. Under the practice known as "suspension of the rules," the formal rules of the House may be made temporarily inapplicable, in order to expedite business. This suspension is possible, however, only if no member present offers an objection. The procedure for expediting business in the Senate is termed "unanimous consent"; under this procedure, all members agree to limit the length of debate on a measure.

TYPES OF LEGISLATIVE MEASURES BEFORE CONGRESS

A legislative measure is one that has to do with the process of law-making, or of framing policy. It is to be distinguished from an executive

measure, which is related to a congressional action such as the confirmation of a presidential appointment; or a judicial measure, which is related to a congressional action such as an impeachment. There are four principal types of legislative measures that come before Congress: a bill, a joint resolution, a concurrent resolution, and a simple resolution. Two of these, it will be seen, are concerned with the actual substance of the laws; the other two are more closely associated with the procedure of enacting laws. Figure 48 provides facsimiles of the first pages of all four types, and of a public law as well.

Bill (See Figure 48A)

A bill is the customary form taken by a legislative proposal, or a proposed law. The bill has a maximum life of two years—that of the Congress to which it is submitted. Bills submitted after the opening of a Congress are alive only during that Congress. There are two general types of bills: *public* and *private*. A public bill is one that is of general application, such as an income tax proposal. A private bill applies to one person or a few persons, or perhaps an institution; under President Cleveland, for example, there was a torrent of private bills to grant pensions for Union veterans of the Civil War who did not qualify under the general pension law. Today there are not so many private bills as there were in Cleveland's day, because of legal restrictions.

Normally a bill has eight parts: a title; a table of contents; an enacting clause; a definition of terms; the body of the proposed law; exceptions to the general principles of the proposed law; a so-called *separability clause*, providing that the invalidation of one part of the law will not affect the other parts; and a clause giving the date or dates at which the act would become effective.¹

Joint resolution (See Figure 48B)

A joint resolution is almost identical to a bill. Like a bill, it must win a majority vote from each house; however, a bill is thereby *passed*, whereas a resolution is *adopted*. Like a bill, a joint resolution must be signed by the President to become effective. Matters proposed in joint resolutions usually are planned to be of shorter duration than those encompassed in bills; for example, an emergency appropriation to carry on the activities of an agency when Congress has been unable to agree on a general appropriation bill is usually made by a joint resolution. One of the most important joint resolutions was that making peace with Germany after World War I, when the Senate refused to approve the Versailles Treaty. When the two houses of Congress propose an amendment to the Constitution, they do so in the form of a joint resolution. On this occasion the resolution does not require the President's signature, for an amendment is not a legislative measure.

¹ Cf. Galloway, George, *The Legislative Process in Congress* (New York: Thomas Y. Crowell Company, 1953), p. 51.

IN THE SENATE OF THE UNITED STATES

ANNO 1903

Mr. LEAHMAN (for himself, Mr. QUINN, Mr. HICKMAN, Mr. KENNEDY, Mr. MOHR, Mr. MURPHY, Mr. PIERCE, and Mr. MURPHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend and revise the laws relating to immigration, naturalization, nationality, and citizenship, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representatives*
- 2 *in the United States of America in Congress assembled,*
- 3 *That this Act, divided into titles, chapters, and sections*
- 4 *according to the following table of contents, may be cited*
- 5 *as the "Immigration and Citizenship Act of 1903."*

TABLE OF CONTENTS

TITLE I—GENERAL	
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Sec. 102. Definitions	2
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A. A Bill introduced in the Senate (First page).

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1903

Mr. McMANUS introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to abolish the electoral college system and to provide for the election of the President and Vice President.

- 1 *Resolved by the Senate and House of Representatives*
- 2 *of the United States of America in Congress assembled*
- 3 *(two-thirds of each House concurring therein), That the*
- 4 *following article is hereby proposed as part of the Constitu-*
- 5 *tion of the United States, which shall be valid to all intents*
- 6 *and purposes as part of the Constitution when ratified by the*
- 7 *legislatures of three-fourths of the several States:*

"ARTICLE —

- 8
- 9 "SECTION 1. The executive power shall be vested in a
- 10 President of the United States of America. He shall hold
- 11 his office during the term of four years, and together with

I

B. A Joint Resolution (First page).

Figure 48.

AN ACT

To amend the National Labor Relations Act to provide additional facilities for the mediation of labor disputes affecting commerce, to equate legal representation of labor organizations and employers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND DECLARATION OF POLICY

SECTION 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947."
(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and alone and together, observe and enforce such rights in accordance with public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employers and employees in labor relations and commerce, to provide orderly and equitable procedures for protecting those rights, to protect the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and prescribe practices on the part of labor organizations, to define and prescribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

"PURPOSE AND POLICY

"SECTION 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of interstate commerce, or (b) occurring in connection with the manufacture, transportation, or distribution of the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or

C. A Public Law (First page).

A Congressional Bill and Resolutions, and a Public Law.

S. CON. RES. 1

IN THE SENATE OF THE UNITED STATES

JANUARY 2, 1958

Mr. JAVORS submitted the following concurrent resolution, which was considered and agreed to.

CONCURRENT RESOLUTION

- 1 *Resolved by the Senate (the House of Representatives*
- 2 *concurring), That the two Houses of Congress shall meet*
- 3 *in the Hall of the House of Representatives on Tuesday, the*
- 4 *6th day of January 1958, at 1 o'clock postmeridian, pur-*
- 5 *suant to the requirements of the Constitution and laws re-*
- 6 *lating to the election of President and Vice President of the*
- 7 *United States, and the President of the Senate shall be their*
- 8 *presiding officer; that two tellers shall be previously appointed*
- 9 *by the President of the Senate on the part of the Senate*
- 10 *and two by the Speaker on the part of the House of*
- 11 *Representatives, to whom shall be handed, as they are*
- 12 *opened by the President of the Senate, all the certificates*

V

D. A Concurrent Resolution (First page).

H. RES. 5

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1958

Mr. SMITH of Virginia submitted the following resolution, which was considered and agreed to.

RESOLUTION

- 1 *Resolved, That the rules of the House of Representatives*
- 2 *of the Eighty-third Congress, together with all applicable*
- 3 *provisions of the Legislative Reorganization Act of 1946,*
- 4 *as amended, be, and they are hereby, adopted as the rules*
- 5 *of the House of Representatives of the Eighty-fourth*
- 6 *Congress.*

V

E. A Resolution of the House.

Concurrent resolution (See Figure 48D)

A concurrent resolution is a measure adopted by both houses that is usually designed either to express the feelings of each house or to establish some rule fixing the behavior of the two houses. For example, Congress may by concurrent resolution tender its congratulations to a foreign monarch for achieving twenty-five years of rule. The House and Senate generally set the date for their adjournment by this means. This sort of resolution does not require the signature of the President; hence it can be used on occasion to bypass the will of the chief executive.

The Reorganization Act of 1945 (which, of course, was a regular bill, signed by the President) provided that certain plans might be drafted by the President concerning the reorganization of administrative offices and that these plans were to take effect unless Congress by concurrent resolution should disapprove of them. Congress had thus inserted a method for preventing the President from vetoing congressional rejection of his reorganization plans; on the other hand, the method described transferred great powers of legislative initiative to the President in the area of administrative reorganization. Indeed, it is this latter fact that may have the greater importance for the future. It is possible that the President might be delegated wide discretion to make law on many subjects, limited only by what would turn out to be in fact a "congressional veto."

Resolution (See Figure 48E)

A resolution is similar to a concurrent resolution in aim, but is adopted by only one house. For example, a special rule proposed to the House by the House Committee on Rules is submitted in the form of a resolution. As in the case of the concurrent resolution, Congress has used the simple resolution to block a presidential veto of a congressional act; thus the Reorganization Act of 1949 stated that either house could reject an executive project by a simple resolution to that effect adopted by a majority vote of the entire membership of the house concerned.

PROCEDURE IN THE HOUSE

The continuous restraints imposed by the rules accompany a bill throughout its career. This can be seen in tracing the passage through Congress of a bill that has been introduced in the House. (The House example, rather than a Senate one, is chosen solely for convenience.) Every recent session has seen hundreds of bills that have successfully passed both houses of Congress. Some even refer to Congress as a legislative mill, grinding out bill after bill. As Figure 49 shows, the mill has been increasingly busy as time has gone by; its passage of bills has grown tenfold since the first decade of the Republic.

Introduction and referral of a bill

The introduction of a bill to the floor of either chamber begins the process of enacting a law. Any type of bill may be introduced into either

house, save for bills levying taxes, which the Constitution states must originate in the House (Art. I, sec. 7, cl. 1), and bills providing for expenditures, which custom dictates shall start in the House. Generally, when a bill is so important that it has sponsors in both houses, its introduction into one or the other house is often the consequence of long reflection and debate over legislative tactics and strategy, since the position assumed by one house may have considerable influence over that assumed by the other. For example, when a bill is very controversial, its sponsors may feel that it should be introduced into the house with the larger proportion of supporters on the theory that passage in one house may convert enemies in the other house into friends.

Every bill, whatever its source, must be introduced by a congressman. A bill drafted by a single congressman will be introduced by him. A bill prepared by a congressional committee (and many important ones are) is usually introduced by the chairman of the committee. Bills written in the executive branch are turned over to a friendly congressman for introduction. Bills drafted by people outside the government will be introduced on occasion by the congressman from the district of the person or persons affected, by the chairman of the committee handling bills in this legislative area, or perhaps by one of the several members of both chambers who are known to introduce privately drafted bills readily. The mechanics of introduction in the House are simple: the member merely places the bill in a box, or "hopper," at the Speaker's desk.

The bill is then referred to a standing committee by the House Parliamentarian, under the supervision and ultimate authority of the Speaker. Since the Legislative Reorganization Act of 1946 describes in detail the types of

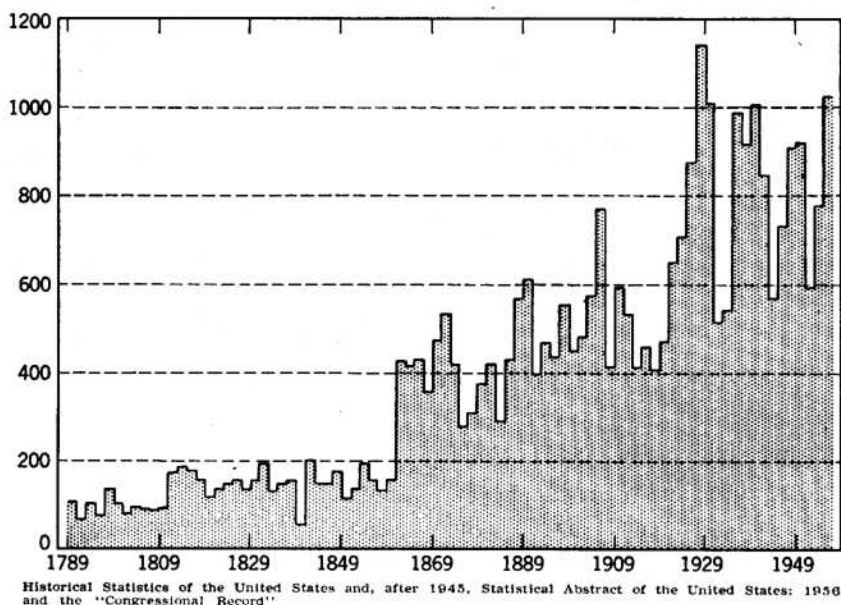


Figure 49. The Number of Public Bills and Resolutions Passed by Congress, 1789-1956, First Through Eighty-Fourth Congress.

legislation that the committees are to handle, the referring is usually quickly determined by the contents of the bill. On occasion, however, a bill may deal with matters that fall within the province of more than one committee; hence a contest may arise between supporters and antagonists of the proposed measure as to which committee shall deal with it, the supporters hoping for a sympathetic committee and the antagonists seeking a hostile one. Meanwhile the chairmen of the committees involved themselves may struggle over the bill, since having it referred to their committee may add to their prestige. The House can, by a majority vote, override the Speaker's decision and refer a bill to a committee of its own choice; however it does so rarely.

At the time that the bill is referred, it receives the first of its three readings, generally by title only. It gets a designation—"H.R." for a bill, and "H.J.Res.," "H.Con.Res.," or "H.Res.," if a joint, concurrent, or simple resolution; it also acquires a number. It is then printed, with copies made available to all members of Congress, and turned over to the committee.

Committee treatment

The action of the committee almost always determines the fate of the bill. Inasmuch as members of the House cannot expect to know more than a few bills very well, and inasmuch as they tend to regard committee members as comparative experts in their especial field, Representatives customarily accept the decisions of the standing committees. Hence it is in and during committee functioning that one finds perhaps the most intense form of the legislative struggle. In dealing with a bill a committee has a number of choices. It may give it only a cursory examination, then "pigeon-hole" it, or even disregard it completely; this is the commonest choice made, and almost always is a death sentence for the bill. On the other hand, the committee may devote more attention to the bill, and finally report it to the floor of the House with a recommendation for passage; report it to the House in amended form, with a similar recommendation; report it to the House with no recommendation; or report it entirely rewritten after the enacting clause.

Which choice the committee makes is the product of many forces. In the case of a relatively insignificant bill, if the committee concerns itself at all it usually makes a rapid decision. In the case of more important proposals, the committee may hold hearings, either open or closed. Often it summons to open hearings those persons who are presumably best informed about the aims and probable consequences of the bill, notably members of the executive branch, interested private citizens, and even congressmen from other committees.

To carry out their work effectively, committees may secure from the House the power to subpoena witnesses in order to compel their attendance. Actually, in the instance of a contested bill, the problem for the committee may not be so much the forcing of persons to testify as the sifting out of those who wish to speak. The selection of the persons to be heard, and the manner in which their testimony is received, is ordinarily settled by the

party attachments and the economic and sectional interests of the committee members. Indeed, the very time at which the hearings are held—the lapse of time between the introduction of a bill and its consideration—is often a matter of political tactics.

At the conclusion of the open hearings the committee may hold closed, or executive, sessions, to decide its action on the bill. It is now that the bill may be amended or rewritten. Eventually, the committee reaches its decision by a majority vote of its members. Usually, whether or not the decision is to bring the bill to the floor, the details of the open hearings are ordered to be printed and made available to members of Congress. If the committee decision is favorable, the bill is reported to the floor. Only a small minority of all bills introduced survive committee treatment. In the first session of the Eighty-fourth Congress, 5,361 public bills were introduced into the House, and 1,758 into the Senate. Yet Congress in this session enacted only 390 public laws. Of course, bills introduced in one session are “active” during the whole of a Congress; if not reported out in the first session, they may be in the second. Hence some of these bills did become laws during the second session. The vast majority of them, however, were buried in committee.

Action on the floor

The House Calendars: When a bill is reported out of committee, it is placed on one of the calendars that the House maintains for pending business. Public bills and resolutions that provide for the levying of taxes or the expenditure of money are placed on the Union Calendar. Other public bills are listed on the House Calendar. Private bills are put on the Private Calendar. When a bill is not controversial—that is, when passage by unanimous vote appears a certainty—it may be removed from any of these calendars and placed on the Consent Calendar.

A fifth calendar, the Discharge Calendar, is related to the process of dislodging a bill from a committee whose majority does not want to report it to the floor. The discharge process, which was inaugurated in 1910 and has since been amended several times, is effected in two stages. First, a congressman files with the Clerk of the House a petition signifying his wish to have a committee discharged of further consideration of a bill that has been in the custody of the committee for at least thirty days. Then, when and if 218 Representatives—a quorum, or one-half of the membership of the House—sign the petition, the bill is taken from the committee and placed on the Discharge Calendar. This proceeding is usually initiated several times during each session, but is rarely completed. Only one bill that has been discharged from a committee has ever been enacted into law: the Fair Labor Standards Act of 1938.

Bringing a Bill to the Floor: Although the calendars appear to be devices for arranging the order in which business comes to the floor, actually public bills are withdrawn from them with little regard for numerical sequence; private bills, it is true, are normally taken from their calendar in sequence. Certain types of bills enjoy precedence, or privilege, under the standing

rules of the House. Resolutions of the Rules Committee, which lead to the adoption of special rules for legislating, take precedence over almost all other business. Bills from certain committees, such as that on Ways and Means and that on Appropriations, are privileged business.

Moreover, certain days are set aside for dealing with classes of bills not otherwise privileged. On the first and third Monday of every month, bills may be called from the Consent Calendar and passed by the House so long as no Representative objects. On the same days, after the Consent Calendar business has been completed, any Representative may move that the standing rules be suspended and that a certain bill be passed; if the members concur by a two-thirds majority vote, the rules are suspended and the bill passed at the same time. Special days are similarly reserved for matters on the Private and Discharge Calendars. On the second and fourth Mondays, Congress may function almost as a city council, in that it deals with District of Columbia affairs. On Calendar Wednesday, each standing committee is called upon in alphabetical order, at which time a committee may bring from the calendars any bill not otherwise privileged.

Actually, most bills, apart from those on the privileged days, come to the floor on the basis of a legislative schedule drafted by the leaders of the majority party. Even reports from such privileged committees as that on Ways and Means are brought forward only when the leaders deem the moment propitious. Legislative timing is the product, then, of frequent conferences among the Speaker, floor leader, whip, committee chairmen, policy and steering committees, and, if the administration is of the same party as the majority in Congress, deputies from the executive branch or even the President himself. It is the special rules drawn up by the Rules Committee and adopted by a majority vote that pave the way for bills coming to the floor.

Treatment on the Floor: The prospect of the House floor is usually rather disappointing, if not actually depressing, to the spectator. Often many seats are empty; those Representatives who are present may appear to be paying little if any attention to the speaker. The contents of the debates may sound absurd. It should be apparent by now, however, that the real work of Congress takes place in committee meetings. The purpose of floor treatment has come to be little more than formal endorsement of committee work, the strengthening of partisan bonds, or the justification of a congressman's stand to his supporters.

To expedite its work, Congress uses an efficient legislative device, originally English, known as the Committee of the Whole. This Committee, which today is used almost solely by the House, is fundamentally an implement of the House. It consists of the total membership of the House operating under different rules from those of the House. All bills on the Union Calendar must be discussed in the Committee of the Whole; in practice, most bills are so treated.

The House is converted into the Committee of the Whole when a single member moves that the House shall resolve itself into this Committee, and the motion is carried by a majority vote. The Speaker now appoints another

Representative to serve as chairman, then steps down. In the Committee a quorum consists of only 100 members; the time for speaking is limited, and no roll-call votes are taken. First the bill concerned is debated; time for the debate is divided equally between supporters and opponents of the bill, whose forces usually are captained, respectively, by the chairman and ranking minority member of the standing committee in charge of the bill. After debate has been concluded, the bill is read, section by section or article by article, by the Clerk—the second reading of the bill. At this time amendments may be proposed for any of the sections, with those for and those against the amendment each being allotted five minutes for speaking. After the bill has been debated and amended, some member moves that the Committee of the Whole rise and report to the House. The Speaker then resumes the chair, and the House is again in session.

The House must now pass upon the bill as debated, amended, and reported by the Committee of the Whole. Thereupon, the question is put as to whether the bill shall be read a third time and “engrossed,” or reprinted as amended. Whatever debate occurs in the House sessions proper almost invariably takes place at this point. Debate, which is often designed solely to slow proceedings, and other delaying maneuvers, are rather strictly limited in the House; for example, a Representative must speak to the point, and is, in fact, duly recognized by the chair only after having stated his purpose for wishing to speak. It is now that one Representative—generally the standing committee chairman—addresses the whole House in behalf of the bill; and the leading opponent likewise presents his cause. However, no member may speak for more than an hour. Normally delegates from the two major parties have agreed about the apportionment of discussion time.

However, those who wish to delay have several instruments at their disposal. One of the commonest delaying tactics is to demand a quorum call, to determine the presence of the necessary 218 members for the conduct of business. Should a call of the roll show that there is not a quorum in the chamber, the Speaker may order the doors locked and the Sergeant at Arms with his aides to arrest all absent members; meantime all business is suspended. Those who seek to delay the proceedings do so under the assumption that in the additional time they may convince some waverers to adopt their side. Yet, it is possible for a member of the House to halt all debate, by “moving the previous question.” If the motion is adopted by a majority of those present, the House must proceed without further debate to vote on the measure before it.

Methods of Voting: There are four methods of voting in the House. The first is a simple voice, or *viva voce*, vote, wherein the Speaker calls first for the “Ayes,” then the “Noes,” and declares which have a majority. Should any single member dissent, the Speaker may order a standing vote, or “division,” again announcing his conclusion, by rough estimate of the numbers standing, as to which side carried the vote. At this point, if one-fifth of a quorum (forty-four in the House, twenty in the Committee of the Whole) require, he may call a “teller” vote. The members leave their

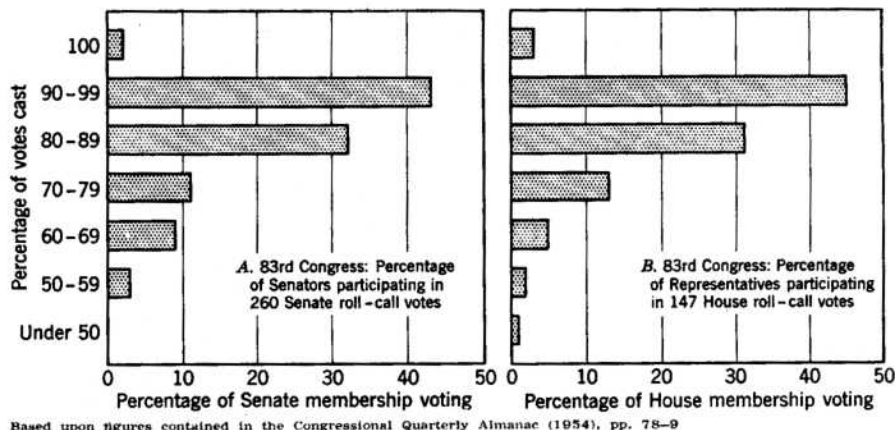


Figure 50. Participation in Roll-Calls by Members of the 83rd Congress.

seats and gather in the "well" of the chamber before the Speaker's desk. Two tellers are appointed, one for each side. First the members favoring the measure pass between the tellers to be counted; those opposed follow. Finally, in the House but not in the Committee of the Whole, if one-fifth of those present ask it, the Speaker may order a roll-call vote, in which each member is to state his position. According to the rules, every member present must vote "Aye" or "No." However, no means has ever been discovered to force a member unwilling to commit himself to declare himself. Actually it is not necessary to run through the entire gamut of voting methods; if one-fifth of those present demand it immediately after a *viva voce* vote, the Speaker must at once order a roll-call vote.

The roll-call vote can be of great importance. It is the only one of the four types of voting in which each member's position on a specific bill may be determined (except, of course, in the case of non-controversial bills passed under unanimous consent agreements). One group in the House may demand a roll-call vote in the belief that certain members will change their votes in order to placate their constituents, or to prove that they are keeping faith with their party leaders.

The proportion of Representatives declaring themselves on roll-call votes is quite high; the average Representative responded to about 90% of the approximately 150 such votes. Figure 50 shows that only a small percentage averaged below 70%. It is somewhat dangerous to criticize Representatives very harshly for being absent from a number of roll-call votes. Indeed, some of those who are most punctual are viewed by their colleagues as relatively unimportant members of the House. Absences may be occasioned by exceptional attention to committee tasks, which may keep the Representative out of Washington. It should be noted that a House roll takes about three-quarters of an hour to call; the Clerk calls each name in alphabetical order once, then calls again the names of all those absent. Hence, on being notified of the imminence of a vote, a member may make his way across the whole District of Columbia to the Capitol in time to state his position.

Some observers have deplored the fact that this method of voting uses a great deal of time that might be employed more profitably, and have urged that Congress install electrical voting devices like those now employed in numerous State assemblies. However, the roll-call vote as it now stands is adaptable to delicate political stratagems that would be obliterated by mechanical appliances; hence congressmen are apt to continue the present voting system.

Once a bill has been passed by the House, it is certified by the Clerk of the House, renamed an "act," and sent to the Senate.

PROCEDURE IN THE SENATE

The legislative procedure in the Senate is very similar to that in the House. There are, however, a few notable differences, which are based largely upon the smaller number of members in the Senate and the lesser degree of party management and dictation there; the latter fact is quite evident from the comparative impotence of the Senate Committee on Rules and Administration.

Introduction and committee handling of an act

A bill passed by the House and thereby converted into an "act" is transmitted to the desk of the presiding officer of the Senate. It is then, as in the House, referred to a standing committee. Committee hearings in the Senate have the same purpose as those in the House, that of ascertaining the desirability of the proposed law. When the Senate is the second chamber to deal with projected legislation, however, its committee hearings may be somewhat different. On occasion a bill originating outside of Congress, especially one drafted in the executive branch, is introduced simultaneously into each house of Congress. The two houses, then, may have held their committee hearings at about the same time. If this be the case, a House-passed bill that has been delivered to the Senate may be stricken out after the enacting clause, and the bill that has emerged from the Senate hearing inserted in its stead. Sometimes, with a bill introduced into each house at the same time, the two chambers may hold joint committee hearings. When the House has held lengthy hearings on a bill, the Senate hearings may be abbreviated inasmuch as the Senators can rely upon the printed accounts of the House hearings for their information.

Senate committee hearings otherwise resemble those in the House, with the testimony of witnesses for and against the proposed legislation. Ralph K. Huitt, analyzing Senate committee operations in "The Congressional Committee; a Case Study," an investigation of hearings before the Senate Committee on Banking and Currency in 1946 respecting price control legislation, concluded that members of a committee in these proceedings tend to adopt specific roles for themselves, such as defenders of sectional interests, protectors of their own economic fields, and the like. Professor Huitt also noted how committee members tend to shift roles according to the subject matter being dealt with, and the position of the person being

interrogated. As a fact-finding agency, "quantitatively" the committee did "an impressive job." However, two sets of "facts" emerged: one set for the advocates of price control, and one for its enemies, each based upon the frame of reference of the individual committee members.

When the committee has finished debating, amending, and rewriting the act, it may report it to the floor. In the event a committee will not return an act to the floor, a Senator may move that the committee be discharged; if the motion is adopted by a majority vote, the act is brought to the floor. However, the Senate more often takes the bill from one committee and refers it to another that will treat it more favorably. The act can now be placed on a Senate calendar: for ordinary legislative matters there is but one, the Calendar of General Business. Once on this calendar, the act becomes part of the pending business of the Senate.

Floor maneuvers

Maneuvers on the Senate floor are in general much less restrained than those on the House floor. The Senate does not have an elaborate schedule of days for privileged business like that in the House. Furthermore, for legislative business the Senate does not resolve itself into a Committee of the Whole, which, because of its peculiar rules, imposes considerable limitations upon House debate. Members of the Senate do not have the power to "move the previous question." In fact, save for the temporary rule of unanimous consent, adopted for handling single, particular bills, resolutions, or acts within a specified time, the Senate permits virtually no limits on debate. Since World War II an average year has seen the rule of unanimous consent used a score of times. The usual absence of restrictions on speaking has led to the institution of filibustering.

Filibustering: Filibustering is simply the effort made by one man or several, through protracted speaking, so to delay business in the Senate that his or their opponents, who may be in the vast majority, will yield on a given point or group of points in order to be able to undertake other business. It can flourish in the Senate because the rules do not compel Senators to speak to the point on a measure unless the rule of unanimous consent has been adopted. Filibustering is a very old practice. Plutarch, the biographer of Greeks and Romans who lived more than two thousand years ago, recounts how Julius Caesar sought to campaign for the consulship, the highest executive office in the Roman Republic, without appearing in person in Rome as the law required him to do. Plutarch says that Marcus Porcius Cato, one of Caesar's foes, seeing that Caesar's supporters numbered a majority in the Senate and would be able to exempt him from the law, "wasted the whole day of the Senate in talking." This filibuster succeeded, for ultimately Caesar yielded and came to Rome.

Filibustering in the American Senate has been especially common during the twentieth century. The longest individual filibustering speech in American history was twenty-two hours, twenty-six minutes long; it was delivered April 25, 1953, by Wayne Morse of Oregon, who sought to block enactment of a law giving oil-bearing lands off the coasts to the States. Fittingly,

Morse had been one of the severest critics of filibustering. A small faction, by carefully maintaining unity, can delay business for days or even weeks, with one speaker following another to the floor. Custom forbids the presiding officer to call a Senator to order for discussing irrelevant matters. Hence the contents of a filibustering speech may be almost anything; one Senator once read the telephone directory of Washington, D.C.

Through the years a number of measures have been the targets of filibusters. In recent times the commonest object has been proposed federal legislation aimed at curtailing racial discrimination in the South. One of the most celebrated filibusters was that delivered in 1917 against the proposed arming of merchant ships. The outcome of a filibuster appears to depend to a considerable degree upon the actual forces against the debated measure. At one time, Senator George Malone of Nevada filibustered for more than eleven hours against a bill aimed at limiting the interstate shipment of gambling devices; Malone's effort failed for lack of concurring sentiment among the other Senators, and lack of support from private interests. On the other hand, when a number of durable Senators attempted to filibuster in behalf of a veto by President Truman against an internal security act, the pressure from certain groups such as veterans' organizations in favor of the act drove the majority to wear down the filibusters and override the veto.¹

Closure: After the success of the 1917 filibuster over the arming of merchant ships, and President Wilson's denunciation of those concerned, the majority in the Senate introduced a means for shutting off Senate debate, known as *closure*. As amended in 1949, the adoption of closure requires two distinct steps. First, a petition for closure, to end debate on a certain matter, signed by one-sixth of the Senate membership—now sixteen Senators—must be submitted to the chair. Then, two calendar days after the petition is filed, the Senate must indicate by a roll-call vote whether debate shall be closed. Adoption of closure needs a two-thirds majority vote of the entire Senate membership—now sixty-four Senators. Closure is effective not only with regard to legislative measures but also with motions or other matters before the chamber; however, motions to change the Senate rules are exempted, so that any move to make closure more easy could itself be filibustered to death. Between 1917 and 1953, twenty-three closure petitions were filed, but in only four instances was the required majority attained. Furthermore, each of these instances occurred prior to 1949, at a time when the vote needed to be only two-thirds of those present.

The probability of instituting an effective curb on Senate debate is very slender. Many Senators regard unlimited debate as the principal bulwark for a minority against a potentially despotic majority, and they know that a turn of fate may bring them into the ranks of the minority. Senator Morse is not the only member of the upper house to have once denounced unlimited debate, then exploited it himself when the occasion demanded. Supporters of the filibuster contend that it may serve to introduce delay where

¹ Cf. Gross, Bertram, *The Legislative Struggle* (New York: The McGraw-Hill Book Company, 1953), pp. 376-377.

haste might be fatal. Opponents reply that much desirable legislation has been blocked; supporters contend that the only bills that have been permanently blocked have been those designed to curtail racial discrimination, a field of law which, they argue, falls in the province of the State and local governments. Since any plan to alter the closure proceeding itself could be filibustered, it seems that only an extraordinary parliamentary coup at the beginning of a Senate session, when the issue of the continuity of Senate organization may arise, could ease the adoption of closure. So long as a majority of Senators, for various reasons, wish to preserve the institution of filibustering, no such coup could be carried out.

Voting

The Senate has three means of voting: *viva voce*, division, and roll-call. There is no teller vote in the Senate as in the House. Like Representatives, Senators average nearly ninety per cent on roll-call votes. Although their percentage is slightly below that of Representatives, it should be remembered that Senators are members of two or more standing committees, but most Representatives are members of only one. As with members of the House, some Senators show comparatively low percentages probably because of their devotion to committee work. Figure 50 shows that senatorial attendance at roll-call votes is quite high.

Disposition of an act after passage in the Senate

What happens to an act after it has been passed by the Senate depends largely upon whether that body has passed the measure in the same form as the House. If it is in the same form as that passed by the House, the bill is returned to the House, enrolled on parchment, signed first by the Speaker and then by the presiding officer of the Senate (even if the bill originated in the Senate it is signed first by the Speaker), and finally transferred to the President for his signature. If, however, the Senate passes the bill in an amended form, it may at once ask for a conference committee to remove the differences between its version and that of the House. On the other hand, it may return the amended bill to the Speaker's desk to await House action. In the latter case, when the amendments are minor, the House may accept them. Certainly there is enough intercommunication between the two houses for the Senate to be fairly well advised as to the probable reaction in the House. If the House does accept the amendments, the bill is enrolled and signed by the presiding officers. If, on the contrary, the House rejects the Senate amendments, or if the Senate at the outset has requested a conference, the bill must go to a conference committee.

THE CONFERENCE COMMITTEE

The function of conference committees is apparently no more than that of removing differences from the House and Senate versions of a bill. However, because of their membership and their proceedings, and because most important bills must be dealt with in conference, these committees occupy a singularly important place in the legislative process.

Membership

Each major party in each house is represented on a conference committee. Officially the presiding officer in each chamber appoints the members of these committees; actually, custom has almost entirely relieved the Speaker and the Vice President of this function. Congressional practice dictates that each house shall have at least three deputies to a conference committee: the chairman, ranking majority member, and ranking minority member, from the standing committee that has handled the bill in each house. These members are chosen habitually to serve as managers for the position assumed by the majority in their house. Actually it often happens that the personal views of these managers do not coincide with the will of the majority; in such cases they do not truly represent that will. Yet efforts to select more representative managers usually surrender to custom. At his discretion the presiding officer may send more than three deputies, or he may be directed to do so by a majority vote of his house. It is not necessary that the two houses be equally represented, for the delegates from each house vote separately from those of the other house. The decision of a conference committee, then, is carried by a majority vote of the deputies from each chamber.

Proceedings

Perhaps the most striking aspect of the proceedings of a conference committee is that they are conducted in executive session, or behind closed doors. Behind this wall of secrecy a conference committee can, and often does, act as a third legislative chamber. Presumably a conference committee is empowered only to adjust differences between the two houses; in practice, however, it sometimes writes what amounts to a new bill. The House, at least, may give instructions to its appointees; however, these instructions must be adopted by the House before the managers are named. In the committee sessions, if the managers for the two houses cannot reach a compromise on the differences, the bill is dead. If, on the other hand, the differences are reconciled, the committee drafts a report of its proceedings and submits it along with the amended bill to each house.

It is an interesting problem to determine which of the two houses yields more to the other in a conference committee. It is generally assumed that the House is apt to yield more than the Senate, because Senators on the average admittedly have more experience than Representatives, and because the ranking Senator becomes chairman of a conference committee. Yet Gilbert Y. Steiner, after examining conferences dealing with fifty-six major bills between 1927 and 1949, concluded that the House carried substantially more weight than the Senate in determining the final version of these bills; he credited the House with nearly sixty per cent of the victories and the Senate with less than thirty per cent; he found in roughly fifteen per cent a drawn contest.¹ Yet the House is still very sensitive about its al-

¹ Cf. Steiner, Gilbert Y., *The Congressional Conference Committee: Seventieth to Eightieth Congresses* (Champaign: University of Illinois Press, 1951).

leged inferiority; Representative Fred Hartley has been quoted as saying that the House deliberately made its version of the Labor-Management Relations (Taft-Hartley) Act of 1947 as severe as possible, so that after the Senate had finished cutting it down in conference there would still remain an effective law.

Conference committee reports on the floor

In each house a conference committee report, including the bill, is highly privileged business. Once on the floor, the report may be debated; the chairman of the standing committee that dealt with the bill manages the debate. However, the bill cannot be amended save by concurrent resolution, for amendment by one house would produce again two versions of the bill. It is partly for this reason that a conference committee may function as a lawmaking agency; the Senate and the House may accept a bill, no matter how repugnant they may find the conference committee report, rather than reject the report, which would kill the measure. At the conclusion of debate, the members of each house vote on the report. If each house adopts it by a majority, the act then goes through the stages prescribed for a bill initially passed in the same form by each house, terminating with the President's signature.

PROCEDURE WITH REGARD TO PRESIDENTIAL VETOES

Any bill vetoed by the President, unless by pocket veto, is returned to the house in which it originated, with a message stating the President's reasons for his disapproval. The vetoed bill and the message take precedence over almost any other legislative matter in the house. Perhaps the most important considerations for supporters of the bill are that a two-thirds majority vote is needed to override the veto and that the vote of each member present must be recorded. Hence, if it appears that such a majority will not be forthcoming, the supporters may move to "table" the bill, or, in other words, to postpone indefinitely its consideration, in which case the veto actually is sustained. Proponents of the measure can tacitly admit defeat by this maneuver without the embarrassment of failing to secure the needed majority. If, on the other hand, an overriding majority appears certain, congressional leaders will call for a vote at once. If the veto is overridden in one house, the bill is transmitted to the other house to be voted on similarly. If the veto is overridden likewise in the second house, the bill becomes law without the President's signature.

PUBLICATION OF CONGRESSIONAL PROCEEDINGS

The proceedings of Congress appear in several different publications. The Constitution states that "Each house shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; . . ." (Art. I, sec. 5, cl. 3). This Journal, however, is a bare record of official acts such as the introduction

of bills and the taking of votes. Since 1873 what purports to be a detailed account of all debates has been published daily in the *Congressional Record*. Actually the *Record* does not recount precisely what occurred on the floor. Members of both houses can and do edit their speeches, and introduce material never heard on the floor, such as newspaper editorials, magazine articles, and correspondence. Representatives, but not Senators, may even procure the insertion of speeches that they did not deliver. Laws after their passage are sent to the General Services Administration to be placed in the national archives. At the end of each year the government publishes a two-volume text, the *Statutes at Large of the United States*, containing all laws enacted during the year, with the public acts and joint resolutions in one volume and the private acts, concurrent resolutions, resolutions, treaties, and presidential proclamations in the other.

QUESTIONS AND PROBLEMS

1. Name and describe briefly the elements of a congressional bill.
2. What do you think accounts for the great increase in the number of bills passed over the history of Congress (as shown in Figure 48)?
3. What are the several forms of legislation that can be passed by one or both houses of Congress?
4. To what extent do outside groups contribute to the legislation passed by Congress?
5. Describe the procedure for passing a bill through the House.
6. Describe the procedure for passing a bill through the Senate.
7. What are the functions of legislative debate? What might happen if all debate were simply cut out of the legislative process?
8. Describe the various forms of voting on questions before the House.
9. What reasons do some people have for retaining the filibuster, and others for abolishing it? How steadfast are these reasons? Are they matters of principle or of expediency?
10. What is the importance of the work of the conference committee?