



Walter J. Oleszek

Congressional Procedures and the Policy Process

FOURTH EDITION

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and the
Policy Process*

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Walter J. Oleszek



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Preface

Congress is constantly adapting to change. New procedures, processes, and practices come about in response to developing conditions and circumstances. Some procedural innovations are incorporated formally in the rules of the House or Senate; others evolve informally. For all their variability over time, the rules of the House and Senate are constant in this sense: they establish the procedural context within which individual members and the two chambers raise issues and make (or avoid making) decisions. Members of Congress, in sum, must rely upon rules and procedures to expedite or delay legislation, to secure enactment, or to bring about the defeat of bills.

Congressional Procedures and the Policy Process was first published in 1978, in the aftermath of major changes that affected legislative decision making and the political system. The result of many of these developments on Capitol Hill was to diffuse policy-making influence widely throughout Congress. The term often employed to describe this new environment was "subcommittee government." Six years later, when the second edition appeared, the House and Senate had undergone further procedural transformations. The House, for instance, began gavel-to-gavel television coverage of its floor proceedings. The third edition was published in the late 1980s and discussed important procedural and institutional changes in both chambers. Emulating the House, the Senate in 1986 began gavel-to-gavel television coverage of its floor proceedings. Congress revamped its budgetary practices with the enactment of Gramm-Rudman-Hollings I and II; the House Rules Committee crafted unique new "rules" for regulating floor decision making; and greater use was made of comprehensive bills, or "packages," to process much of Congress's annual workload. One effect of these and other changes has been to recentralize authority in fewer legislative hands.

The fourth edition has been updated during another time of momentous change on Capitol Hill. After forty years as the "permanent minority," Republicans captured control of the House in the November 1994 elections and reclaimed control of the Senate as well. Major procedural changes have occurred in both houses, and Congress is discussing fundamental questions of national governance. Today, the political parties, Congress, and the executive and judicial branches are debating which functions are national responsibilities and which can be returned to the states and localities or handled by the private sector. "Toward a New Federalism" is the overarching theme that orients many significant activities of the 104th Congress (1995-1997) and no

doubt legislative sessions to follow. That a great deal of change—the centralization of significant authority in the House Speaker, innovative rules from the House Rules Committee, or new types of filibustering tactics in the Senate, for example—has occurred in Congress is beyond doubt. Accordingly, I have incorporated in this edition discussion of new rules and practices and new examples and materials that highlight how Congress modifies its decision-making procedures.

The fundamental objective of the fourth edition of *Congressional Procedures and the Policy Process* is to discuss how the contemporary Congress makes laws and how its rules and procedures shape domestic and foreign policy. The theme of the book is that the interplay of rules, procedures, precedents, and strategies is vital to understanding how Congress works. I emphasize the rules and procedures most significant to congressional lawmaking; I do not attempt to survey all the rules and procedures used by Congress.

While the format and structure of the new edition closely follow that of the third, every chapter has been revised. Chapter 1 presents an overall view of the congressional process. In Chapter 2, the focus shifts to the organizational setting and political environment of Congress to examine differences between the House and Senate; the leadership structure in Congress; pressures exerted on Congress; and recent changes in Congress's operations. Chapter 3 examines Congress's budget process, which shapes much of the legislative decision making.

Chapter 4 turns to the initial steps of the legislative process—the introduction and referral of bills to House and Senate committees, and committee action on measures. Chapter 5 explains how legislation that has emerged from committee is scheduled for floor consideration in the House. Chapter 6 then examines the main features of floor decisionmaking in the House. In Chapter 7 the spotlight is put on the Senate, with discussion of how legislation is scheduled in that chamber. Senate floor action is the subject of Chapter 8.

Chapter 9 first describes how House-Senate differences are reconciled when each chamber passes a different version of the same bill and then discusses the president's veto power. Chapter 10 deals with how Congress monitors the implementation of the laws it has passed. The final chapter reexamines the legislative process, pulling together the major themes of the book.

My intellectual indebtedness extends to numerous scholars and colleagues, and I welcome the opportunity to acknowledge their generous assistance. My editor at CQ Press, John L. Moore, contributed greatly to the book's readability. Kerry Kern skillfully steered (or "floor managed") the book through the production stages; her production and editorial assistance was outstanding. My thanks, too, must go to CQ Books executives David R. Tarr, editor-in-chief; Nancy Lammers, director of book editorial design and production; and Brenda Carter, acquisitions editor for college texts, for their encouragement and support throughout this project.

Much credit for whatever understanding I have of the congressional process is due in large measure to my colleagues at the Congressional Research Service. Over the years I have learned the intricacies of the House and Senate from scores of CRS associates. Their research endeavors have expanded everyone's understanding of Congress's role and responsibilities. There are too many to acknowledge by name (it would constitute scores of outstanding colleagues in the American Law and Government divisions of the Office of Senior Specialists of CRS), but their ideas and insights permeate virtually every chapter of this book. CRS, I should note, bears no responsibility whatsoever for the views or interpretations expressed within these pages. I must also emphasize that whatever errors remain in this book are mine alone.

I am indebted also to scores of past and present House and Senate members and professional congressional aides who over the years have shared ideas and observations and deepened my understanding of the legislative process. The same can be said of numerous colleagues in academia whose research studies have provided us all with a reservoir of knowledge about congressional activities and operations. My intellectual debt also extends to University of Minnesota Professor Steven S. Smith and to Professor Charles Tiefer, currently at the University of Baltimore Law School and formerly the deputy general counsel and solicitor of the House of Representatives, for making useful suggestions for improvement of the manuscript.

Finally, I dedicate this fourth edition to family members. Above all, I am grateful to Janet, Mark, and Eric. They provided a loving and encouraging home environment, good humor, and family support throughout. This book is also dedicated to Missy and Lee Isgur, whose wit, wisdom, and acumen expanded our horizons in so many worthwhile ways.

Walter J. Oleszek

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LIMITED GOVERNMENT

The framers of the Constitution wanted a strong and effective national government, but at the same time they wanted to avoid concentrating too much power in the central government lest it threaten personal and property rights. The Constitution is filled with implicit and explicit "auxiliary precautions" (Madison's phrase), such as checks and balances and a bill of rights. Limitation of government, the framers believed, could be achieved by dividing power among three branches of national government and between the nation and the states. The division of power ensured both policy conflicts and cooperation because it made officials in the several branches responsive to different constituencies, responsibilities, and perceptions of the public welfare. The framers believed that the "accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny."² As men of practical experience, they had witnessed firsthand the abuses of King George III and his royal governors. They also wanted to avoid the possible "elective despotism" of their own state legislatures.³ Wary of excessive authority in either an executive or a legislative body, the framers also were familiar with the works of influential political theorists, particularly Locke and Montesquieu, who stressed concepts such as the separation of powers, checks and balances, and popular control of government.

SEPARATION OF POWERS

The framers combined their practical experience with a theoretical outlook and established three independent branches of national government, none having a monopoly of governing power. Their objective was twofold. First, the separation of powers was designed to restrain the power of any one branch. Second, it was meant to ensure that cooperation would be necessary for effective government. As Justice Robert Jackson wrote in a 1952 Supreme Court case (*Youngstown Co. v. Sawyer*, 343 U.S. 579, 635): "While the Constitution diffuses power the better to secure liberty, it also contemplates that the practice will integrate the dispersed powers into a workable government." The framers held a strong bias in favor of lawmaking by representative assemblies, and so viewed Congress as the prime national policy maker. The Constitution names Congress the first branch of government, assigns it "all legislative power," and grants it explicit and implied responsibilities through the so-called elastic clause (Section 8 of Article I). This clause empowers Congress to make "all Laws which shall be necessary and proper for carrying into Execution" its enumerated or specific powers.

In sharp contrast, Articles II and III, creating the executive and judicial branches, describe only briefly the framework and duties of these governmental units. Although separation of powers implies that Congress "enacts"

the laws, the president "executes" them, and the Supreme Court "interprets" them, the framers did not intend such a rigid division of labor. The Constitution, in short, creates a system not of separate institutions performing separate functions but of separate institutions sharing functions (and even competing for predominate influence in exercising them). The overlap of powers is fundamental to national decision making. The founders did grant certain unique responsibilities to each branch and ensured their separateness by, for example, prohibiting any officer from serving in more than one branch simultaneously. They linked the branches through a system of checks and balances.

CHECKS AND BALANCES

An essential corollary of separation of powers is checks and balances. The framers realized that individuals in each branch might seek to aggrandize power at the expense of the other branches. Inevitably, conflicts would develop. In particular, the Constitution provides an open invitation to struggles for power by Congress and the president.

To restrain each branch, the framers devised a system of checks and balances. Congress's own legislative power was effectively "checked" by the establishment of a bicameral body consisting of the House of Representatives and the Senate. The laws Congress passes may be vetoed by the president. Treaties and high-level presidential appointments require the approval of the Senate. Many decisions and actions of Congress and the president are subject to review by the federal judiciary.

Checks and balances have a dual effect; they encourage cooperation and accommodation among the branches—particularly between the popularly elected Congress and the president—and they introduce the potential for conflict. Since 1789 Congress and the president have indeed cooperated with each other and protected their own powers. Each branch depends in various ways on the other. When conflicts occur, they are resolved most frequently by negotiation, bargaining, and compromise.

FEDERALISM

Just as the three branches check each other, the state and federal governments also are countervailing forces. This division of power is another way to curb and control governing power. While the term *federalism* (like *separation of powers* or *checks and balances*) is not mentioned in the Constitution, the framers understood that federalism was a plan of government acceptable to the thirteen original states. The Constitution's "supremacy clause" makes national laws and treaties the "supreme Law of the Land"; however, powers not granted to the national government remain with the states and the people. The inevitable clashes that occur between levels of government are often

arbitrated by the Supreme Court or worked out through practical accommodations or laws.

Federalism has infused "localism" into congressional proceedings. As a representative institution, Congress and its members respond to the needs and interests of states and congressional districts. The nation's diversity is given ample expression in Congress by legislators whose tenure rests on the continued support of their constituents. Federalism is an especially prominent theme of the 1990s as many lawmakers seek to return federal functions to state and local governments.

Thus, the Constitution outlines a complicated system. Power is divided among the branches and between levels of government, and popular opinion is reflected differently in each. Both Congress and the president, each with different constituencies, terms of office, and times of election, can claim to represent majority sentiment on national issues. Given each branch's independence, formidable powers, different perspectives on many issues, and intricate mix of formal and informal relationships, it is apparent that important national policies reflect the judgment of both the legislative and the executive branches and the views of pressure groups and influential persons.

CONGRESS: AN INDEPENDENT POLICY MAKER

Much has been written about the growth of executive power in the twentieth century and the diminished role of Congress, but in fact there has been a dynamic, not static, pattern of activity between the legislative and executive branches. Witness, for example, how Speaker Newt Gingrich, R-Ga. (and not President Bill Clinton) became the national agenda-setter with his "Contract with America" during the first hundred days of the 104th Congress. First one branch and then the other may be perceived as predominant, and various periods are characterized as times of "congressional government" or "presidential government."⁴ Such descriptions often underestimate the other branch's strategic importance, however. President John F. Kennedy, who served during a period regarded by some observers as one of presidential resurgence, observed that Congress "looks more powerful sitting here than it did when I was there." From his position in the White House, he looked at the collective power of Congress and found it "substantial."⁵

In short, the American political system is largely congressional *and* presidential government. Or, as British historian Paul Johnson put it, "We refer to the British constitution as a parliamentary democracy . . . [and] I would call yours a presidential and congressional democracy."⁶

The strength and independence of Congress contrast sharply with the position of legislatures in other democratic countries. In most, policy making is concentrated in the hands of a prime minister and cabinet who normally are elected members of the legislature and leaders of the majority party. As a result, the policy of the prime minister and his cabinet typically is approved

by the legislature, with voting divided strictly along party lines. Conversely, if a prime minister loses a “vote of confidence” in parliament, he or she is expected to resign, and a general election is held to choose a successor government.

The U.S. Congress, by contrast, is elected separately from the president and has independent policy-making authority. As a result, a study of policy making in the United States requires a separate examination of the congressional process.

FUNCTIONS OF RULES AND PROCEDURES

Any decision-making body, Congress included, needs a set of rules, procedures, and conventions, formal and informal, in order to function. These rules and conventions establish the procedural context for both collective and individual policy-making action and behavior (see Box 1-1, “Major Sources of House and Senate Rules”).

In the case of Congress, the Constitution authorizes the House and Senate to formulate their own rules of procedure and also prescribes some basic procedures for both houses, such as overrides of presidential vetoes. Thomas Jefferson, who as vice president compiled the first parliamentary manual for the U.S. Senate, emphasized the importance of rules to any legislative body.

It is much more material that there be a rule to go by, than what that rule is; that there may be a uniformity of proceeding in business not subject to the caprice of the Speaker or captiousness of the members. It is very material that order, decency, and regularity be preserved in a dignified public body.⁷

Rules and procedures in an organization serve many functions. Among them are to provide stability, legitimize decisions, divide responsibilities, reduce conflict, and distribute power. Each of these functions will be illustrated by examples drawn from a college or university setting and by parallel functions in Congress.

STABILITY

Rules provide stability and predictability in personal and organizational affairs. Individuals and institutions can conduct their day-to-day business without having to debate procedure. Universities, for example, have specific requirements for bachelor's, master's, and doctorate degrees. Students know that if they are to progress from one degree to the next they must comply with rules and requirements. Daily or weekly changes in those requirements would cause chaos on any campus. Similarly, legislators need not decide each day who can speak on the floor, offer amendments, or close

MAJOR SOURCES OF HOUSE . . .

U.S. CONSTITUTION. Article I, Section 5, states: "Each House may determine the Rules of Its Proceedings." In addition, other procedures of Congress are addressed, such as quorums, adjournments, and roll calls.

STANDING RULES. The formal rules of the House are contained in the *Constitution*, *Jefferson's Manual*, and the *Rules of the House of Representatives*. The Senate's rules are in the *Senate Manual Containing the Standing Rules, Orders, Laws, and Resolutions Affecting the Business of the United States Senate*. Each chamber prints its rule book biennially as a separate document.

PRECEDENTS. Each chamber, particular the larger House, has scores of precedents, or "unwritten law," based upon past rulings of the Chair. The modern precedents of the Senate are compiled in one volume prepared by the Senate parliamentarian. It is revised and updated periodically, printed as a Senate document, and entitled *Senate Procedure, Precedents and Practices*. House precedents are contained in several sources. Precedents from 1789 to 1936 are found in eleven volumes: *Hinds' Precedents of the House of Representatives* (from 1789 to 1907) and *Cannon's Precedents of the House of Representatives* (from 1908 to 1936). Precedents from 1936 through 1988 can be found in the multivolume series entitled *Deschler-Brown Precedents of the United States House of Representatives*. Hinds, Cannon, Deschler, and Brown were parliamentarians of the House. Further, the precedents now are updated periodically and published as *Procedure in the U.S. House of Representatives*. It is prepared by the House parliamentarian.

BOX 1-1

debate. Such matters are governed by regularized procedures that continue from one Congress to the next and afford similar rights and privileges to every member.

To be sure, House and Senate rules change in response to new circumstances, needs, and demands. The history of Congress is reflected in the evolution of the House and Senate rules. Increases in the size of the House in the nineteenth century, for instance, produced limitations on debate for individual representatives. As veteran Democratic senator Robert C. Byrd, W. Va., said about Senate proceedings:

... AND SENATE RULES

STATUTORY RULES. There are many public laws whose provisions have the force of congressional rules. These “rulemaking” statutes include, for example, the Legislative Reorganization Act of 1946 (PL 79-601), the Legislative Reorganization Act of 1970 (PL 91-510), and the Congressional Budget and Impoundment Control Act of 1974 (PL 93-344).

JEFFERSON’S MANUAL. When Thomas Jefferson was vice president (1797-1801) he prepared a manual of parliamentary procedure for the Senate. Ironically, the House in 1837 made it a formal part of its rules, but the Senate did not grant it such status. The provisions of his manual “govern the House in all cases to which they are applicable and in which they are not inconsistent with the standing rules and orders of the House.”

PARTY RULES. Each of the two major political parties has its own set of party rules. Some of these party regulations directly affect legislative procedure. The House Republican Conference, for example, has a provision that affects the Speaker’s use of the suspension of the rules procedure.

INFORMAL PRACTICES AND CUSTOMS. Each chamber develops its own informal traditions and customs. They can be uncovered by examining sources such as the *Congressional Record* (the substantially verbatim account of House and Senate floor debate), scholarly accounts, and other studies of Congress. Several committees and party groups also prepare manuals of legislative procedure and practice.

The day-to-day functioning of the Senate has given rise to a set of traditions, rules, and practices with a life and history all its own. The body of principles and procedures governing many senatorial obligations and routines . . . is not so much the result of reasoned deliberations as the fruit of jousting and adjusting to circumstances in which the Senate found itself from time to time.⁸

Procedural evolution is a hallmark of Congress. The modern House and Senate differ in important ways from how they operated only a few decades ago. For example, the House today operates with more procedural and polit-