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The American Congress

Modern Trends

CONGRESS IS AN EXCITING PLACE. REAL POWER RESIDES IN ITS MEMBERS, real social conflicts are tamed or exacerbated by its actions, and thousands of people – most of them good public servants – walk its halls every day. Much good work is done there. In recent years, Congress has passed widely applauded bills that have, among other things, approved new security measures for airports and funding for the war against terrorism; granted important civil rights to women, minorities, and the disabled; given parents job protection so they can care for sick children; forced states to reduce barriers to voter registration and supported reforms of voting processes; expanded funding for college students; and limited what lobbyists can give to legislators.

Congress is a frustrating place as well. It is not easy to understand. Its sheer size – 535 members and more than 25,000 employees – is bewildering. Its system of parties, committees, and procedures, built up over 200 years, is remarkably complex and serves as an obstacle to public understanding. Perhaps most frustrating is that its work product, legislation, is the product of a process marked by controversy, partisanship, and bargaining. Even some members of Congress are uncomfortable with the sharp rhetoric and wheeling and dealing that are hallmarks of legislative politics.

But Congress also is important. No other national legislature has greater power than the Congress of the United States. Its daily actions affect the lives of all Americans and many people around the world. It checks the exercise of power by the president, the courts, and the bureaucracy. If you want to understand the forces influencing your welfare, you must understand Congress.

Congress is always changing. It changes because it is a remarkably permeable institution. New problems, whatever their source, invariably create

new demands on Congress. Elections bring new members, who often alter the balance of opinion in the House and Senate. Elections also frequently bring a change in majority party control of Congress, which leads to a transfer of agenda control on the floor and in committees from one party to another. And, each new president asks for support for his policy program. Members of Congress often respond to these demands by passing new legislation. But as lawmakers pursue their personal political goals, compete with one another for control over policy, and react to pressure from presidents, their constituents, and lobbyists, they sometimes seek to gain advantage or to remove impediments to action by altering the procedures and organization of Congress itself. The result is nearly continuous change within the institution.

Explaining the ongoing changes in Congress is the central focus of this text. We begin in this chapter by highlighting several developments in American politics that have changed congressional politics. These developments – including changes in the way Congress is covered by the media, evolving standards for public ethics, the rise of plebiscitary politics and new information technologies, new forms of organized efforts to influence Congress, new kinds of issues, and the war on terrorism – have altered the context of congressional policy making in basic ways.

Low Public Confidence

The popularity of Congress ebbs and flows with the public's confidence in government generally. When the president's ratings and trust in government improved after the tragic events of September 11, 2001, Congress's approval ratings improved too. Still, Congress's performance ratings are almost always lower than those of the president and the Supreme Court. The legislative process is easy to dislike – it often generates political posturing and grandstanding, it necessarily involves compromise, and it often leaves broken promises in its wake. Also, members of Congress often appear self-serving as they pursue their political careers and represent interests and reflect values that are controversial.

Scandals, even when they involve a single member, add to the public's frustration with Congress and have contributed to the institution's low ratings in opinion polls. Some of the highlights are provided in the box "Highlights of Recent Congressional Ethics Scandals." A consequence is that Congress is a never-ending source of comic relief, like the joke about the senator who dozed off during a roll-call vote, was jerked awake when his name was called, and reflexively yelled out, "Not guilty." There also is the joke about

HIGHLIGHTS OF RECENT CONGRESSIONAL ETHICS SCANDALS

- In 1989, House Speaker James Wright (D-Texas) resigned after Republicans charged him with ethics violations for receiving extraordinarily large royalties on a book.
- In 1991, Senator David Durenburger (R-Minnesota) was condemned in a unanimously approved Senate resolution for a book deal and for seeking reimbursement for expenses for staying in a condo that he owned.
- Questions about the propriety of campaign contributions were raised in the "Keating Five" affair, which concerned the relationship between five senators and a prominent savings-and-loan owner seeking to block an investigation of his financial dealings.
- In 1995, a long investigation of sexual harassment charges against Senator Robert Packwood (R-Oregon) led to his forced resignation from office.
- In 1995, Representative Dan Rostenkowski (D-Illinois), former chairman of the House Ways and Means Committee, was found guilty of illegally receiving cash for personal use from the House post office. He later served a prison term.
- In 1997, Speaker Newt Gingrich (R-Georgia) agreed to pay $300,000 in fines based on charges that he used nonprofit organizations for political purposes and misled the House Committee on Standards of Official Conduct.
- In 1998, Representative Jay Kim (R-California) pleaded guilty to charges involving more than $250,000 in illegal campaign contributions.
- In 2002, Representative James A. Traficant, Jr. (D-Ohio), was convicted of receiving bribes in exchange for helping businesses get government contracts and of engaging in a pattern of racketeering since taking office in 1985.
- In 2004, House Majority Leader Tom Delay (R-Texas) was issued letters of admonition by the House ethics committee for improperly promising to endorse the son of Representative Nick Smith (R-Michigan) in exchange for Smith's vote on a bill and for attending a fundraising event with lobbyists for a company that was lobbying him on pending legislation.
- In 2005, Representative Duke Cunningham (R-California) resigned and pleaded guilty to taking more than $2.4 million in bribes and related tax evasion and fraud, the largest financial sum involving an individual member.
- In 2006, Representative Tom Delay (R-Texas) resigned after being indicted in Texas for laundering money through a national party committee in his effort to redistrict Texas congressional districts. He was convicted in 2010.
- In 2006, Representative William Jefferson (D-Louisiana) won reelection to the House but was denied a Ways and Means Committee assignment

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HIGHLIGHTS OF RECENT CONGRESSIONAL ETHICS SCANDALS (*continued*)

after FBI agents videotaped him appearing to solicit a bribe and later found $90,000 of the marked cash in his freezer – making this the cold cash scandal. Jefferson was defeated for reelection in 2008. The prosecution continues at this writing.

- In 2006, Representative Mark Foley (R-Florida) resigned after it was disclosed that he sent sexually explicit email messages to underage House pages.
- In 2006, Representative Bob Ney (R-Ohio) pleaded guilty to making false statements and participating in a conspiracy, receiving thousands of dollars in gifts from lobbyist Jack Abramoff. A Ney aide pleaded guilty to receiving gifts. Separately, Abramoff pleaded guilty to charges of conspiracy, fraud, and tax evasion.
- In 2008, Senator Ted Stevens (R-Alaska) was convicted of seven counts of failing to disclose gifts related to the renovation of his Alaska home on his Senate financial disclosure forms. His conviction was later overturned due to prosecutorial misconduct.
- In 2008, Representative Tim Mahoney (D-Florida) confessed that he had had an extra-marital affair with a staff member. Shortly after, news reports indicated that Mahoney attempted to buy the staff member's silence, his wife filed for divorce, and he was defeated for reelection.
- In 2010, Representative Charles Rangle (D-New York) was censured for violating House rules for using his office to raise money for a college building named after him and failing to disclose financial assets and for violating New York City rules by housing his campaign committees in rent-controlled apartments.
- In 2011, Senator John Ensign (R-Nevada) resigned his seat before a Senate investigation into his activities following an extra-marital affair with a staff member was completed. The activities included payments to the staff member's family and arranging for the employment as a lobbyist for the staff member's father. The Ethics Committee referred the matter to the Justice Department.

the member who kept referring to the presiding officer as "Your Honor."[1] But seriously . . . it seems fair to say that a large majority of today's members behave ethically. It is even reasonable to argue that today's cohort of members is at least as ethical as any past cohort. No doubt the ethical standards applied by the public, the media, and Congress itself are higher today than at any other time. Yet, there is no denying that the seemingly regular flow of scandals harms Congress's standing with the American people.

1 Paul Boller, *Congressional Anecdotes* (New York: Oxford University Press, 1991), 18.

Congress suffers generally from low ratings, which some observers believe represents a long-term trend. Political scientist Norman Ornstein notes that changes in the electronic and print media have led to a greater emphasis on the negative and sensational side of Congress. He refers to this as the "tabloidization" of media coverage:

> The drive to emulate the *National Enquirer* and the *Star* has spread to the most respectable newspapers and magazines, while network news divisions have begun to compete with tabloids like "Inside Edition" and "Hard Copy" with their own tabloid shows like "Prime Time Live" and "Dateline: NBC," and with changed coverage on the nightly news.

Stories or rumors of scandal – both individual and institutional – have dominated news coverage of politics and politicians in recent decades more than at any time in modern history, and not just in terms of column inches or broadcast minutes, but in emphasis as well:

> The expansion of radio and cable television talk shows also seems to have increased the speed with which bad news about Congress is disseminated and the frequency with which bad news is repeated. On many of these programs, there is a premium on a quick wit and a good one-liner and little time for sober, balanced commentary.[2]

Groups supporting term limits for Congress and other reforms probably have influenced public opinion too. Term-limit advocates argue that congressional incumbents are a privileged class. Incumbents, in this view, have created a system in which various benefits of office – including biased districting, free use of official resources, fundraising leverage, and cozy relations with lobbyists – give them an unfair advantage that can be overcome only through radical reform. The more extreme versions of this argument suggest that incumbents have been corrupted by their experience in Washington. Incumbents are said to have developed an "inside-the-beltway" mentality (the Beltway is the freeway that encircles the District of Columbia and its inner suburbs) or to suffer from "Potomac fever" (presumably a condition brought on by proximity to the famous river).

Politicians, of course, quickly latch on to themes that resonate with the public. As a result, running for Congress by running *against* Congress, an old art form in American politics, has gained an even more prominent place in recent campaigns. Indeed, many recent arrivals on Capitol Hill promised to end "business as usual" in Washington and to push through reforms

2 Norman J. Ornstein, "Congress Inside Out: Here's Why Life on the Hill Is Meaner Than Ever," *Roll Call*, September 20, 1993, 27.

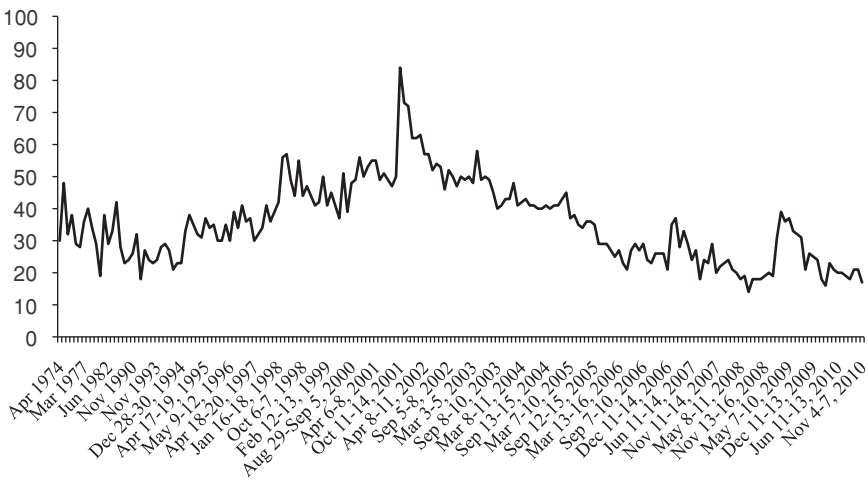

Figure 1.1. Percent Approving Congressional Performance, 1974–2010. *Source:* Gallup Poll.

to "fix" Congress – to end the system of congressional perks, to stop the influence of special interests, and so on. The repetition of anti-Congress themes undoubtedly contributes to the low ratings for Congress and its members in public opinion polls.

The public's generally low evaluations of Congress have been observed for years. The Gallup Poll has regularly asked the question, "Do you approve or disapprove of the way Congress is handling its job?" Figure 1.1 shows that less than a majority of the public approves of Congress's performance most of the time. In the last few decades, the only time Congress's approval rating reached significantly more than 50 percent was in the months following the terrorist attacks of September 11, 2001, during which anti-terrorist legislation was quickly approved.

While Congress languishes with low approval ratings, individual members of Congress continue to do quite well. Typically, Gallup finds that about 70 percent of the public approves of the way its own U.S. representative is handling his or her job. Running *for* Congress by running *against* Congress works well.

Plebiscitary Politics

Political scientist Robert Dahl argues that Congress suffers from the increasingly plebiscitary nature of American politics. By a movement toward plebiscitary politics, Dahl is referring to the trend toward more direct communication between the public and elected officials and the demise of

intermediaries – such as parties and membership organizations – that once served to represent or express public opinion to elected officials. Directly observed, rather than mediated, public views are more important than ever – which could not be further from Madison's aspirations for the national legislature.[3]

Plebiscitary politics is facilitated by new technologies. Advances in transportation allow most members of Congress to be back home in their districts or states most weekends. Public opinion polls, which allow the public's views to be registered with legislators, have become more affordable because of advancements in digital technology. Leaders and parties sponsor focus groups to learn about nuances and shadings in public attitudes. Radio and television call-in shows enable nearly every constituent to talk directly to a member of Congress from time to time. Satellite technology allows members to communicate easily and inexpensively with groups in their home state or district from Washington. All members of Congress maintain websites with press releases and other publications, most have some form of streaming media on their sites, and some maintain blogs.

Social networking media puts members' daily routines and thoughts on display with instant public reactions. In early 2011, about one-third of representatives and senators were reported to be on Twitter (www.tweetcongress.org/) and many maintained Facebook pages (www.facebook.com/congress). Communications staffs for the parties and many individual legislators tweet and blog on behalf of their principals.

Members of Congress, and certainly candidates for Congress, find the new information technologies irresistible. Members love to demonstrate their commitment to keeping in touch with their constituents by being among the first to use a new innovation in communications. To be sure, members face real problems reaching constituents in districts and states with ever-growing populations. The average House district is more than 700,000 people, up from about 300,000 in 1940 and 400,000 in 1960. Still, the political value of appearing to be connected to constituents drives elected officials to exploit new technologies.

On its face, plebiscitary politics might seem to be a good thing: It seems better to have public opinion influencing members' decisions than to have highly paid lobbyists representing organized interests swaying their votes. But as Dahl notes, the effects of direct communication between the people and their representatives on Capitol Hill may not be so desirable. For one

3 Robert A. Dahl, "Americans Struggle to Cope with a New Political Order that Works in Opaque and Mysterious Ways," *Public Affairs Report* (Institute of Governmental Studies, University of California, Berkeley, September 1993), 1, 4–6.

thing, elected officials and special interests might manipulate direct communication to their advantage. If the politicians are the ones who choose the time and place for direct communication, the process may create nothing more than a deceiving appearance of responsiveness.

More important, plebiscitary politics may undermine both representation and deliberation in legislative policy making. With respect to representation, the "public" that is likely to communicate directly to members may not be representative of members' larger constituencies. They will be people who are intensely interested in politics, generally or in a single issue, and can afford and know how to use new information technologies. If so, then members' impressions of public opinion may be distorted by such communication.

With respect to deliberation, direct communication with more constituents could lead members to make premature public commitments on more issues and reduce their flexibility in negotiating compromises in the legislative arena. The possible result is that demagoguery and grandstanding would take precedence over resolving conflicts and solving problems. Public opinion may win out over the public interest, which is what Madison sought to avoid.

Governing as Campaigning

A close cousin to the rise of plebiscitary politics is the weakening distinction between governing and campaigning. Of course, we hope that there is a strong linkage between governing and campaigning. Elected officials' desire for reelection underpins our ability to hold them accountable. Broadly speaking, campaign promises are (and should be) related to governing, and election outcomes are (and should be) shaped by performance in office. Inevitably, then, the line between governing and campaigning becomes blurred.

In recent decades, campaigning has become more fully integrated with governing. No longer is governing done in Washington and campaigning done at home. The daily routines of members and top leaders are now geared to the demands of campaigning.

Few members retire from Congress without complaining about how much it costs to mount a campaign for reelection. Returning members may not have time to complain. In recent years, the average victor in a Senate race spent more than $8 million, and the average House victor spent more than a million dollars. Many races were far more expensive. For an incumbent seeking reelection, that is an average of more than $25,000 for each week

served during a six-year Senate term and almost $10,000 for each week served during a two-year House term. These sums do not include additional millions spent by parties and independent groups on congressional campaigns. Competitive pressures, between incumbents and challengers and between the two parties, have produced a never-ending search for cash.

Congressional leaders have changed their ways, too. To assist their party colleagues, most party leaders spend many evenings and weekends at fundraising events. Many leaders have developed their own political action committees (leadership PACs, they have been called) to raise and distribute money. Leaders have formed public relations task forces within their parties, and the campaign committees of the congressional parties have greatly expanded their activities. Perhaps most important, congressional leaders now often use technology developed for campaigning in legislative battles. Professional consultants and pollsters help fashion legislative priorities and tactics. The parties' congressional campaign committees conduct opposition research – digging up dirt on your election opponent – against congressional incumbents of the opposite party. Media campaigns are now planned for major legislative proposals with the assistance of television advertising specialists. Money, media, and partisanship feed on each other.

New Forms of Organized Influence

The number of interest groups in Washington and the rest of the country multiplied many times in the last half century. By one count, the number of groups increased from about 1,000 in the late 1940s to well more than 7,000 in the early 1980s.[4] Because of lobbying registration requirements that were enacted in 1995, we know that the number of registered lobbyists has more than doubled since 2000 to more than 35,000. This increase is primarily a by-product of the expanding scope of the federal government's activity – as federal programs, tax policies, and regulation have affected more people, more organized representation of those people has emerged in Washington. Technological developments in transportation, information management, and communications have enabled scattered people, corporations, and even state and local governments to easily organize, raise money, and set up offices and staff in Washington. Organized interests breed new organized

4 Robert H. Salisbury, "The Paradox of Interest Groups in Washington – More Groups, Less Clout," in *The New American Political System*, 2nd ed., ed. Anthony King, 203–229 (Washington, DC: American Enterprise Institute, 1990). For an analysis of the effects of these developments on Congress, see Barbara Sinclair, *The Transformation of the U.S. Senate* (Baltimore: Johns Hopkins University Press, 1989), 57–64.

Congressionally Speaking . . .

Each Congress has a two-year life span. Federal law sets the date for federal elections, but the Constitution specifies the starting date for each Congress. Before 1935, congressional elections in November of an even-numbered year preceded the convening of a new Congress the following March. Since 1935, after the ratification of the Twentieth Amendment to the Constitution, a new Congress convenes on January 3 unless Congress otherwise provides by law, as it often does to avoid weekends. Each two-year Congress is given a number – the 112th Congress convened in January 2011 – and is divided into two one-year sessions. Congressional documents are often numbered 111–1 or 111–2 to combine the Congress and session numbers.

interests as new groups form to counter the influence of other groups. The result has been a tremendous increase in the demands placed on members of Congress by lobbyists from organized groups.

Not only have interest groups proliferated, they also have become more diverse. Economic interests – corporations, trade associations, and labor groups – greatly outnumber other sectors among lobbyists. In addition, many groups represent new industries, and "citizens" groups sprouted in the 1960s and 1970s and continue to grow in number. These groups are often outgrowths of national movements – such as those for civil rights, women's rights, children's rights, the elimination of hunger, consumers' rights, welfare rights, gay rights, environmental protection, and the homeless. Many of these groups now enjoy memberships numbering in the hundreds of thousands.

Along with their increasing number and diversity, groups have become more skilled in camouflaging their true identity. For most major legislative battles, coalitions of interests form and take all-American names, pool their resources to fund mass media campaigns, and often dissolve as fast as they were created. Many of the coalitions are the handiwork of entrepreneurs in law firms, consulting outfits, and public relations shops who are paid to coordinate the activity of the coalitions they spearheaded.

The roots have been taken out of grassroots lobbying. New technologies and consumer and membership databases give lobbyists the capacity to make highly targeted, efficient appeals to stimulate constituency demands on Washington. By the late 1980s, computerized telephone messages allowed groups to communicate with many thousands of people within a few hours. Technology now allows a group to telephone its own members,