I. **THE FUNCTIONS OF CONGRESS**

The types of governments that were prevalent at the time influenced the authors of the Constitution. On the whole they feared that power in the hands of a single individual would be abused and the people would suffer. This, in part, explains why they placed a considerable amount of power in the legislative branch. The national legislative power was vested in Congress that was to be a bicameral institution. Each house was intended to serve different constituencies. The House was to be elected by the people and would, therefore, represent the views of the people. The members of the Senate were selected by the state legislatures and would be at least one step removed from the people. Furthermore, the House would represent the people because it was apportioned on the population of each state. The Senate was to represent the interests of the states and each state would receive two senators. Bicameralism also was a reflection of the class structure during our country’s founding. The constituencies of the House members were the masses, whereas the Senate was to represent the elites within society. In 1913, however, the Seventeenth Amendment provided that the people of the various states would elect the senators of the states. Bicameralism was designed to enable the legislative body and its members to perform certain functions for the political system. The two most important and the ones that are most often in conflict are lawmaking and representation.

A. **The Lawmaking Function**

The prime function of Congress is **lawmaking**: i.e., the process by which the legal rules that govern our society is decided. In this function Congress may establish broad national policies, including budgetary priorities.

B. **The Representation Function**

Members of Congress also function as representatives of their constituents. Generally there are three roles elected officials can assume when representing their constituents: (1) the trustee role, (2) the instructed delegate role, and (3) as the politico (a combination of trustee and constituent).

1. **The Trustee View of Representation.** The elected official attempts to consider the whole of society as opposed to simply being an agent of the constituents.

2. **The Instructed Delegate View of Representation.** The elected official is a mere agent for the constituents, doing exactly what a majority of the constituents want on issues.

3. **The Politico Representation.** The elected official combines both perspectives in a pragmatic mix.

C. **Service to Constituents**

Members of Congress are expected to assist their constituents in dealings with the government. Constituent service, also called **casework**, includes assisting
constituents in procuring governmental services that were denied to them. The member of Congress is seen as an ombudsperson, or an investigator of constituent problems who uses his or her staff to “cut through the red tape” of the federal bureaucracy. Casework provides a benefit to both constituents and to the representative, who typically gains the grateful constituents’ support during reelection.

D. The Oversight Function

Congress is responsible for reviewing actions of the executive branch, especially the implementation of policy or legislation. Inquiries are made to determine whether implementation reflects legislative intent, about the effectiveness of the federal bureaucracy, and whether the bureaucracy is fulfilling the needs of the public.

E. The Public-Education Function

This also is referred to as agenda setting. Congress discusses issues that the public may not have information about in an attempt to make the public aware of issues that need attention. In recent years, Congress has greatly improved access to information through the use of the Internet.

F. The Conflict Resolution Function

Advocacy groups and representatives of different racial, religious, economic, and ideological interests look on Congress as an access point for airing their grievances and seeking help. Congress acts as an institution to resolve these conflicts and others within American society.

II. THE POWERS OF CONGRESS

The Constitution is both highly specific and extremely vague about the powers that Congress may exercise.

A. Enumerated Powers

The enumerated powers are set forth in Article I, Section 8. Enumerated powers, or expressed powers, are specific grants of power to Congress. These powers include taxing, spending, borrowing, and coining; regulation of foreign trade and trade among states; regulation of the military (state militias, an army and navy, and declaring war); as well as the power to define the court structure.

1. Powers of the Senate. The Senate must advise and consent to treaties and the appointment of top officials.

2. Constitutional Amendments. Congress has received other grants of power through amendments (such as the Sixteenth Amendment that allows Congress to levy an income tax).
B. The Necessary and Proper Clause

Implied powers emanate from the Necessary and Proper Clause of Article I, Section 8. This clause allows Congress to make laws that are deemed necessary to carry out the enumerated powers. In *McCulloch v. Maryland*, the Supreme Court ruled that this clause allows Congress considerable discretion and authority to enact laws.

C. Checks on the Congress

Congress is the most powerful branch of government. But checks on congressional power include the presidential veto, judicial review by the Supreme Court, the need to face reelection, and bicameralism.

III. HOUSE-SENATE DIFFERENCES

Congress is composed of two chambers: the lower chamber, the House of Representatives, and the upper chamber, the Senate. There are major differences between the two chambers.

A. Size and Rules

The size, length of term, and constituencies of the House and the Senate are different, and in turn, these generate more differences. The House has 435 members. In the House, members are elected from essentially equally populated districts, and their term is two years. The Senate has 100 members, two elected from each state. Senators serve a six-year term. Originally, members of the Senate were elected by each state’s legislature. In 1913, the Seventeenth Amendment provided for the direct popular election of senators. In the Senate, one-third of the seats are up for election every two years, so that the entire chamber does not face simultaneous reelection. The rules governing each chamber also are different. Because of the large number of members in the House, there are many formal rules to govern activity on the floor and in committees. As there are considerably fewer members in the Senate, there are fewer restrictions on members on the floor and in committees. Debate on the floor of the House is strictly limited to the time allotted by the Rules Committee. On many bills not every member will be allotted time to debate.

B. Debate and Filibustering

The Senate has a tradition of unlimited debate. The use of such debate to block a bill is known as a *filibuster*. Cloture is a way to stop a filibuster, requiring the approval of 60 senators. If a vote for cloture is approved, debate is limited to a maximum of one hour per senator.

C. Prestige

The houses also differ in prestige. Senators, because of their longer term and fewer numbers, can achieve a level of personal recognition that is almost impossible to achieve unless one is a leader in the House of Representatives.
IV. CONGRESSPERSONS AND THE CITIZENRY: A COMPARISON

In comparison to the general population, the members of Congress are significantly different both demographically and economically. The members of Congress are older, wealthier, and better educated than the general public. There are relatively few women and members of minority groups in Congress, although this situation is improving. Finally, there exist a disproportionate number of lawyers in both houses of Congress. The current congressional salary is $169,300.

V. CONGRESSIONAL ELECTIONS

Congressional elections are conducted by the individual states in accord with rules established by the Constitution and national statutes. The Constitution states that representatives are to be elected every second year, and the number of seats awarded to each state is determined every ten years by the results of the census. Senators are elected every six years.

A. Candidates for Congressional Elections

Candidates for congressional seats can be self-selected or recruited by the local political party. Usually the party attempts to select a candidate who possesses many of the social characteristics of the population in the district. It is also likely that a person will be picked who has been successful in elections at the local or state level.

1. Congressional Campaigns and Elections. The importance of fundraising has increased in the past twenty years. Victorious candidates for the Senate have recently spent an average of $5 million, whereas successful House candidates have averaged almost a million. The capacity for fundraising is now an important consideration both for the political parties and for the potential candidates themselves. In every state, nominations for Congress are determined by the voters in a direct primary election. In this election, candidates vie for the nomination among voters who are party identifiers. If a candidate wins the nomination, he or she will go on to run under the party label in the general election in November.

2. Presidential Effects. Congressional elections are influenced by many factors. One important factor is presidential elections. If a strong presidential candidate is on the ticket, that candidate may have coattails that benefit down ballot candidates. However, the presidential coattail effect in recent years has been modest or nonexistent. In the past in midterm elections, the party controlling the White House normally lost seats in Congress.
B. The Power of Incumbency

Incumbents have a huge advantage in congressional elections. In recent decades over 90 percent of the members of the House were reelected, and only a slightly smaller proportion of senators were reelected. Clearly the incumbent has a significant advantage. One of the major reasons for this is the free publicity the member of Congress receives. As an elected official, the media constantly reports on events that involve the members of Congress. The public usually knows much more about members of Congress than they do about the challenger. Incumbents are able to run based on their record of casework and obtaining federal money and projects for their constituents. Incumbents also have the advantage when it comes to fundraising.

C. Party Control of Congress after the 2008 Elections (See text for 2010 update.)

The Democratic Party gained six seats in the Senate and nearly 30 seats in the House. The Senate’s composition of 58 Democrats, 40 Republicans, and 2 Independents meant that it is not “filibuster proof” and that the Democrats need moderate Republican support to move legislation forward. In the House, there were 255 Democrats to 173 Republicans leaving Democrats with a comfortable margin to enact their agenda. In both cases, the party in power needs to work collaboratively as not all members vote with the leadership on every bill.

VI. CONGRESSIONAL APPORTIONMENT

House seats are apportioned among the several states every ten years, following the census. Key terms: reapportionment—the allocation of seats in the House of Representatives to each state after each census and redistricting—the redrawing of the boundaries of the congressional districts within each state. Historically, House districts within states often had wildly disproportionate populations, usually to the benefit of rural areas. The same was true of districts established to elect state legislators. In 1962, the Supreme Court ruled that legislative districts for the lower houses in state legislatures had to be of equal population. In 1964, it extended that logic to state senates and to the U.S. House.

A. Gerrymandering

A second problem with drawing district lines is gerrymandering, the practice of drawing lines to favor one party over the other. This may be done by packing the other party’s supporters into the fewest number of districts to ensure that many of their votes will be wasted. The remaining supporters of the other party are then cracked or split up among the remaining districts in numbers too small to affect an election. Gerrymandering is almost universal today, and it became much more efficient when computers are applied to the task. The Supreme Court has ruled that in principle partisan gerrymandering might become so extreme
that it violates the voters’ constitutional rights, but it has yet to find a single instance of partisan gerrymandering unconstitutional.

B. Redistricting after the 2000 Census

The party that controls a state legislature can undertake gerrymandering. As a result of the practice, only 30 to 50 of the seats in the House were truly competitive in 2002. The Supreme Court’s unwillingness to strike down obviously gerrymandered districts in Pennsylvania and Texas demonstrated with clarity that the Court would stand back and allow gerrymandering to continue with a vengeance.

C. “Minority-Majority” Districts

In the 1990s, in an effort to combat the effects of past discrimination, the federal government encouraged the creation of districts with enough minority group members to elect a minority group member to Congress. These were called minority-majority districts.

D. Constitutional Challenges

The Supreme Court, however, has held that states cannot construct districts on the basis of race alone. In 1995 it rejected a plan for a Georgia district on this basis.

E. Changing Directions

In recent cases, the Court has been willing to accept redistricting plans in areas that formerly practiced legal discrimination unless the plan left minorities worse off than before.

VII. PERKS AND PRIVILEGES

A. Permanent Professional Staffs

In addition to their own pay and privileges, members of Congress have large staffs. Several agencies have also been set up to assist Congress, such as the Government Accountability Office (formerly the General Accounting Office).

B. Privileges and Immunities under the Law

Representatives and Senators cannot be sued for slander for anything they say in Congress.

C. Congressional Caucuses: Another Source of Support

The key caucuses are the official caucuses of the two major parties. There are over 200 other caucuses, ranging from important bodies (the Congressional Black Caucus) to the less important (the Potato Caucus).

VIII. THE COMMITTEE STRUCTURE

A. The Power of Committees
The key to understanding how Congress operates is to understand congressional committees. These “little legislatures” determine whether a bill will reach the floor and be called for a vote. The obstacles to a bill reaching the floor are numerous, and the committee structure is the maze through which bills must pass to become legislation.

B. Types of Congressional Committees

1. **Standing Committees.** These are the most important committees in Congress because all bills are referred to a standing committee in each chamber. Each standing committee covers an area of specialization and is subdivided into subcommittees.

2. **Select Committees.** These are created to accomplish a particular task. Unlike standing committees, select committees are not permanent. Once the task has been accomplished the select committee may be abolished. Some select committees live forever, though, such as the Select Committee on Intelligence in each chamber.

3. **Joint Committees.** Joint Committees are established with members of each chamber serving on the committee. The tasks assigned to these committees are diverse.

4. **Conference Committees.** Conference Committees are special joint committees convened when a bill has passed both chambers but there are differences between the version approved by the House and the version approved by the Senate. The role of the conference committee is to reach a compromise between the different versions. After the compromise is reached, both houses must approve of the compromise bill before it is sent to the president.

5. **The House Rules Committee.** This is a very powerful standing committee in the House of Representatives. Once the appropriate standing committee in the House has approved a bill, it is sent to the Rules Committee. The Rules Committee makes rules that will govern what happens to the bill on the floor of the House.

C. The Selection of Committee Members

The political parties conduct the selection of committee members. Once assigned to a committee, the member is likely to remain on the committee for the remainder of his or her career in that chamber. The longer the member has served on the committee, the more seniority he or she has. The majority-party member with the longest term of continuous service on a standing committee can be, and often is, given preference when the party leadership nominates a committee chair. Such a seniority system rewards those who are from safe districts and can, therefore, be reelected numerous times. In the 1970s, however, the Democrats began to reserve the right to overturn the seniority system if it
IX. THE FORMAL LEADERSHIP

Congress is organized by party, and the limited amount of centralized power that exists in Congress is exercised through party-based mechanisms. Generally speaking, the leadership organizations in the House and the Senate look alike, but there are substantial differences.

A. Leadership in the House

1. The Speaker. The Speaker of the House of Representatives is the most powerful member of the House. The Speaker presides over meetings of the House, appoints members of joint committees and conference committees, controls scheduling legislation for floor action, decides points of order and interprets the rules with the advice of the House parliamentarian, and refers bills and resolutions to the appropriate standing committees of the House. However, the Speaker’s primary focus is to seek the enactment of his or her political party’s legislative ideas. In general, the powers of the Speaker are related to his or her control over information and communications channels in the House and the degree of support received from members.

2. The Majority Leader. This person is second in line in the majority party leadership structure. The primary responsibility of the majority leader of the House is to assist the Speaker in gaining the enactment of the majority party’s legislation. He/she fosters cohesion among party members in the House.

3. The Minority Leader. This person is the leader of the minority party in the House. The primary responsibility of the minority leader of the House is to seek the enactment of his party’s legislative proposals and to provide a source of loyal opposition to the majority party. If the minority party wins a majority of seats in the House in the next election, the minority leader would likely be selected as the Speaker of the House. This was the case with Nancy Pelosi when the Democrats captured the House in 2006.

4. Whips. Both the majority and minority parties have whips, whose job is to assist their party leaders and to encourage party loyalty among House members.

B. Leadership in the Senate

The president of the Senate is the Vice President of the United States. The vice president rarely actually presides over the Senate. On rare occasions, the vice president will be called upon to vote in the Senate to break a tie. The president pro tempore (usually referred to as the pro tem) is the member of the majority
who has the longest continuous term of service in the Senate. This is largely a
ceremonial position. The majority leader is the most powerful member of the
Senate. The minority leader represents the minority party in the Senate. As in the
House, both the majority and minority parties have whips whose job is to assist
their party leaders and to encourage party loyalty among Senate members.

X. HOW MEMBERS OF CONGRESS DECIDE

Party membership is a major determinant of how members vote, but it is not the only
factor at work.

A. The Conservative Coalition

In the 1950s and 1960s, a coalition between conservative (largely southern)
Democrats and Republicans often had a majority of the votes and could set
policy. Today, although there are some Democrats in Congress who represent
more moderate states or districts, there are not many conservative Democrats left
and the conservative coalition has been relegated to history.

B. “Crossing Over”

Members are especially likely to vote with the other party in cases where their
own party has adopted positions that conflict with the interests of their district.
Members may also have positions on cultural issues such as abortion that are
different from the majority position of their party.

C. Logrolling, Earmarks, and “Pork”

Sometimes leaders on either side of the aisle will offer incentives to get needed
votes for the passage of legislation. When a member trades his or her vote on a
particular bill with other members in exchange for their votes on other
legislation, the member is engaging in a tactic known as logrolling. Often
members request that special appropriations for projects back home are attached
to a bill, a practice called “earmarking.” Special projects and appropriations are
often referred to as “pork.” Although efforts have been made to force lawmakers
to reveal their special projects, the amounts now being earmarked equal more
than $30 billion in most years.

XI. HOW A BILL BECOMES LAW

For a bill to become law, it must pass through both houses of Congress. Each law begins
as a bill that must be introduced in either the House or the Senate. Often, similar bills are
introduced in both chambers. A “money bill,” however, must start in the House. In each
chamber, the bill follows similar steps. It is referred to a committee and its sub-
committees for study, discussion, hearings, and rewriting. When the bill is reported out
to the full chamber, it must be scheduled for debate. After the bill has been passed in
each chamber, if it contains different provisions, a conference committee is formed to
write a compromise bill that must be approved by both chambers before it is sent to the
president to sign or veto.
XII. HOW MUCH WILL THE GOVERNMENT SPEND?

The Budget Impoundment and Control Act of 1974 required the president to spend the money that Congress has appropriated and attempted to make Congress examine total national taxing and spending.

A. Preparing the Budget

Preparing the budget begins eighteen months before the start of the fiscal year. The federal fiscal year, used for accounting, begins on October 1 and ends September 30. The Office of Management and Budget (OMB) conducts a spring review and a fall review of spending. The fall review—conducted a year before the relevant fiscal year begins—is the important review. At this time, the OMB cuts back executive agency budget requests and begins preparing the executive budget. The president submits an extremely detailed executive budget to Congress in January. This budget attempts to estimate all the revenue the government will generate (through taxes, fees, duties, and so on) and all of the expenditures of the federal government.

B. Congress Faces the Budget

Congress then takes over. Key concepts: Authorization, a formal declaration by a legislative committee that a certain amount of funding may be available to an agency. Some authorizations terminate in a year; others are renewable automatically without further congressional action. Appropriation is the passage, by Congress, of a spending bill specifying the amount of authorized funds that actually will be allocated for an agency’s use.

C. Budget Resolutions

The Congress is supposed to pass the first budget resolution in May. This resolution sets overall revenue and spending goals, thus determining the size of the deficit or surplus for the next fiscal year. In September, Congress is scheduled to pass the second budget resolution. This resolution sets binding limits on taxes and spending for the fiscal year (FY) beginning October 1. Frequently, Congress does not make the October 1 deadline. It must then pass a continuing resolution, a temporary measure that allows government agencies to continue operating with the same funding as last year.