

24. Structure of Congress



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THE functions of Congress are carried out by a corps of men and women operating within a structure and according to established procedures. This chapter is concerned with the structure of Congress, which may be viewed as the bare framework of the body. It is followed by a chapter discussing the organization of Congress, which may be regarded as an analysis of the organs of Congress that give it motive power. The distinction between *structure* and *organization*, then, is roughly similar to that between skeleton on the one hand and musculature combined with nervous system on the other. These two chapters on structure and organization, which in a sense treat of anatomy, are followed by a description of the procedure of Congress, which is akin to its physiology. In all, the reader may obtain a description of what is probably one of man's most complex creations which, like other ingenious institutions, is not fully responsive either to its own will or that of its creators.

BICAMERALISM

The nature of bicameralism

Congress is a bicameral, or two-chambered, legislature, consisting of the House of Representatives and the Senate. At the time that the Constitution was drafted, most of the States had comparable bicameral assemblies; the majority of the colonial assemblies before the Revolution had also been bicameral. The authors of the Constitution, then, were probably doing little more than imitating that legislative form which was most familiar to them. At the same time they may have been reacting against the unicameral, or single-chambered, national Congress under the Articles. It seems also probable that by providing different constituencies, methods of election, lengths of term, and qualifications for members in the two houses, the Founding Fathers planned that the Senate and the House should represent distinct interest groups, just as the contemporary House of Lords and House of Commons did in England. Indeed, these distinguishing traits were so assigned that the Senate was to be unmistakably an "upper house," and the House of Representatives a "lower house," in terms of membership, groups represented, and prestige.

Also, the coexistence of two legislative chambers, especially since they would represent differing interest groups, was designed to contribute one more barrier against despotic government, for the two houses would check and balance one another. Finally, the bicameral Congress afforded a means whereby the conflicting demands of the large and the small States might be reconciled, in that one chamber could represent population and the other, the States. However, it is important to remember that the Virginia Plan, which proposed a bicameral legislature, was approved by the majority at the Philadelphia Convention during its first few days; the Connecticut Compromise was simply adapted to a legislative structure that had already been accepted.

The results of bicameralism

The results of bicameralism have been significant, although perhaps not so much so as either the Founding Fathers planned or the modern critics of Congress declare. It is true that some bills have passed in one house but failed in the other, and that some constitutional amendments have been proposed by one house but rejected by the other. It would be somewhat presumptuous to attempt an estimate of what good or harm this apparent blocking of legislation may have done the country; most of these bills probably would have served some interests well and others' ill. However, the very fact that they failed of enactment suggests that there was not an outstanding majority of the national electorate that positively wanted them enacted; most congressmen are too interested in reelection to be deaf to a loud call from the voters. It has also been charged that in the event of an emergency the existence of two houses might delay needed

legislation. This complaint is somewhat academic; an emergency almost always demands action from the executive, not from the legislature. Too, when emergency legislative action has been required, as a declaration of war against Japan after the attack on Pearl Harbor, it has been produced in a single meeting of Congress.

It is occasionally urged that Congress be transformed into a unicameral body; most cities now have unicameral councils and the State of Nebraska has a single-chambered assembly. However, tradition and the many vested interests in the bicameral system—notably, the committee chairmanships in each house—militate against any such change in the near future. It should, finally, be observed that the Senate was designed to serve as a check upon impulsive action by the House. Through American history, however, the House has often reined in what it deemed radical proposals on the part of the Senate.

DISTINGUISHING TRAITS OF THE TWO HOUSES

In most details of their respective structures the two houses of Congress are similar or even identical. However, in certain matters they are different from one another. The principal distinguishing traits are the constitutional qualifications for the members; the terms of the members; and the geographic areas which the members represent. Furthermore, owing to the difference in the size of the two houses, the chambers in which they meet are somewhat dissimilar. This section describes the two branches of Congress with regard to these distinctions.

The Senate

The Senate Chamber: The Senate chamber is located in the north wing of the Capitol. On the floor of the chamber are ninety-six seats and desks arranged in four rows about a semi-circle, with a center aisle. At the beginning of a session each Senator is assigned to one of the desks. Facing the Senators is a dais supporting the chair of the presiding officer—the Vice President or the President *pro tem*—and desks for the Sergeant at Arms, the Parliamentarian, and the various secretaries and clerks. The Senators are seated so that the Republicans are at the left hand of the presiding officer and the Democrats at the right; the seats can be moved from one side of the aisle to the other for a changed party distribution after an election. For the many who regard the Democrats as “liberals” and the Republicans as “conservatives” the congressional seating arrangement is the reverse of that which arose during the French Revolution and is currently employed in continental European legislatures, in which “liberals,” or the Left, sit on the presiding officer’s left, whereas “conservatives,” or the Right, sit on his right. In the typical multiparty continental parliament the numerous factions make up a rainbow of doctrines shading from Right to Center to Left.

The American system also differs from that of Great Britain; for seats in Parliament are ranged along two opposite walls in the chamber so that

the majority and the minority parties face each other. Arguing fervently in behalf of this system before Commons underwent the rebuilding necessitated by bombings during World War II, Prime Minister Winston Churchill contended that since the members face one another they are more likely to discuss than to orate; he also argued that the clear separation between the two parties discourages ready shifting from one side to the other and the rise of a multiparty system. One other remarkable trait of the House of Commons is that there are insufficient seats for all the members; hence deliberation does not take place in the air of vacancy that sometimes characterizes both houses in the American Congress.

Outside the chamber proper are the coatrooms, lobbies, and other areas to which members may retire to discuss issues among themselves and with interested private citizens. Elevated above the floor about fifteen feet are balconies on all four sides of the chamber, known as galleries; these hold several hundred persons. Admittance to the galleries has been strictly regulated since a handful of Puerto Rican fanatics sprayed the House of Representatives with gunfire in 1953.

Constitutional Qualifications: The Constitution provides that a Senator must be at least thirty years of age, have been a citizen of the United States for at least nine years, and be an inhabitant of the State from which he is elected (Art. I, sec. 3, cl. 3). There have been instances in which persons under thirty years of age have been appointed or elected to the Senate, for instance, Henry Clay in 1806 and Rush D. Holt in 1934. However, such instances are rare; the odds are great that an individual must be considerably more than thirty years old before he is politically "available" for the Senate. Likewise, the qualifications of citizenship and residence, because of political considerations, seldom operate so as to block a candidacy.

One other constitutional requirement is that no Senator may hold "any office under the United States" (Art. I, sec. 6, cl. 2). This provision, which is designed to ensure the separation of powers, forbids a Senator to hold any permanent position in the executive or judicial branch of the federal government. He may, for example, like Senators Arthur Vandenburg and Tom Connally—each of whom was at one time chairman of the Senate Foreign Relations Committee—serve as a presidential appointee to an international conference. However, he may not be a member of the Cabinet or a military officer. This requirement helps to bar the introduction of the parliamentary cabinet system into the United States.

Term: The term of office for Senators is six years. This term, the longest for any federal elective official, was doubtless instituted to guarantee that the Senate would be an essentially conservative body, again like an upper house. Furthermore, because the authors of the Constitution wanted to block any sudden change in Senate membership, they made the terms of Senators overlap one another. Hence there are elections for the Senate every two years; but, excluding deaths, resignations, or removals, only one-third of the seats will be at stake. Thus the entire membership of the Senate can be replaced only after three elections, or a lapse of four years.

The Constitution provided that the first Senate elected should at once divide itself into three classes of equal size, made up respectively of those who would serve two, four, and six years (Art. I, sec. 3, cl. 2). At this time the Senate arranged that the Senators from the same State would not fall into the same class; and Senators from the States thereafter admitted to the Union were similarly classified. Hence normally a State does not choose more than one Senator at a given election.

Geographic Area Represented: The Senate was designed to represent the States; hence each State has two Senators. Indeed, the Senate was intended to be in limited respects an assembly of ambassadors from the States, somewhat akin to the Congress under the Articles. Actually, popular election of Senators has placed them on virtually the same plane as that of Representatives so far as their relationship to the voters is concerned; yet it is noteworthy that members of the Senate are still referred to as "the Senator from Ohio" or "the Senator from Colorado."

Whereas the Senators from any given State in a legal and a constitutional sense equally represent the people of that State, by no means do they necessarily represent the same interests in the State. It is true that in some States, particularly in the South and the Midwest, a single interest or coalition of interests may so dominate State politics that it can succeed in electing both Senators. In the Eighty-fourth Congress, for instance, Senators Homer Capehart and William Jenner of Indiana could be said to represent the same groupings; the same also was true of Senators Walter George and Richard Russell of Georgia.

By contrast, Senators Joseph McCarthy and Alexander Wiley of Wisconsin, although of the same party, stood for policies that sometimes clashed. Where the two members came from opposing parties, as in the case of Paul H. Douglas and Everett M. Dirksen of Illinois, they quite commonly represented antagonistic groups. Where a State is divided into two geographic sections each party may try to elect one Senator from each section. This practice is normal where a State contains one vast metropolitan district and an agricultural hinterland; in Michigan, for example, Democratic Senator Patrick V. McNamara was from Detroit, and Republican Senator Charles Potter came from Cheboygan. Northern and southern California have such diverse interests that almost invariably one Senator is named from metropolitan Los Angeles and the second from in or near San Francisco. It should be quite apparent from these examples that although Senators may be elected by the voters of the whole State they cannot be said to represent all the voters of the State, or even all those of their party.

The House of Representatives

The House Chamber: The House chamber is located in the southern wing of the Capitol. On the floor of the chamber are 444 seats, with no desks, arranged in eight semi-circular rows, with parts of a ninth row in each of the two far corners. These seats are divided into eight more or less equal wedgelike sections by the center aisle and the three lesser aisles at like

intervals on either side. Representatives are not assigned to seats, but merely take a seat to their liking upon entering the chamber. As in the Senate, Democrats sit at the Speaker's right, Republicans at his left. However, members of the majority party may sit on either side if they wish; it is rare that there are enough members of the majority party present to overflow their own side. Whereas the members do not have individual desks, there are two large desks on each side of the center aisle in the third row of seats, to accommodate the floor leaders and the members of a standing committee charged with a bill that is being considered. As in the Senate, there is a large dais containing the House officers and the clerks. The House, too, has its coatrooms, lobbies, and galleries.

Constitutional Qualifications: The Constitution provides that a Representative must be at least twenty-five years of age, have been a citizen of the United States for at least seven years, and be an inhabitant of the State from which he is elected (Art. I, sec. 2, cl. 2). The lesser age and shorter citizenship requirements for the House show the intention of the Founding Fathers that this be the lower house, reflecting the interests of the less powerful and wealthy groups. As in the Senate, these minimal requirements can be said to have seldom barred entry to House membership; most Representatives are native-born citizens of the United States and of the State from which they are elected, and their average age is more than twice twenty-five. Interestingly enough, the average age of Senators is about five years greater than that of Representatives, just as there is a five-year difference in the constitutional requirement. Representatives like Senators may not hold any office in the executive or judicial branch of the government.

Term: The term for Representatives is two years. It was set at this length in keeping with the doctrine that members of the lower house, or popular assembly, should be subject to frequent checking by the electorate. However, this short term has greatly contributed to the fact that many Representatives, especially those from areas in which both major parties are strong, tend to mirror local rather than national interests; only by bringing about legislation favorable to their own constituencies may they hope for consistent reelection. Not only do Representatives seek to limit the duration of congressional sessions in order to devote their time to campaigning; they also are apt to modify their congressional decisions according to the wants of their constituents, and thus in a sense campaign from Capitol Hill.

Geographic Area Represented: Properly speaking, Representatives do not speak for a geographic area but for the people in general; they differ from Senators, who are chosen to represent specific areas—that is, the States—and who were once named by the elected assemblies of the States. Representatives are assigned to the States in proportion to the population of the States; then, because most of them have more than one Representative, the States in turn usually are divided into districts, from which the Representatives are named. However, these districts do not have distinct governments of their own unless, as rather infrequently occurs, their boundaries happen to coincide with those of a county or a State. Moreover, the State legislature may change the boundaries of the districts at any time. Hence the

Representative has never been viewed as the delegate of a government, in the way Senators were, and sometimes are, even today.

RELATIVE STATURE OF THE TWO HOUSES

Today there does not appear to be much difference in the stature of the two houses of Congress. It has already been shown how the electorate and the qualifications for membership in the two houses are either very similar or identical to one another. Also, there are only a few noteworthy distinctions in the functions of the two houses. The Senate does have major executive powers, such as consenting to treaties and confirming presidential appointments—powers reminiscent of the exceptional position of the upper houses of colonial and early State governments. On the other hand, the House alone may initiate bills for the levying of taxes, in keeping with the pattern set by the English House of Commons. In practice, however, the leaders of each house sometimes consult informally with leaders of the other before exercising what are only theoretically its exclusive powers.

The statement that the two houses are approximately equal in stature sets the American Congress off from almost all other national legislatures, for during the past century most upper houses have become virtually impotent by contrast with lower houses. In Great Britain, for instance, the House of Lords has practically no legislative power. The Council of the Republic in the French Fourth Republic (analogous to the Senate in the Third Republic) may initiate bills only under special conditions, and also has only a suspensive veto. It is true that constitutionally the two houses of the Soviet national legislature, the Supreme Soviet of the USSR, have equal powers; however, most observers agree that these powers are small. Hence the American Senate is without question the most powerful upper house in the world.

So far as congressmen themselves are concerned, the Senate appears to be by far the more attractive body. As an illustration, in the Eighty-fourth Congress more than one-fourth of the Senators had been members of the House; a smaller fraction had been State Governors. A handful had been both Representatives and Senators. By comparison, the House included neither a former Governor nor a former Senator. This obvious preference probably arises from the greater public respect accorded Senators, the more leisurely pace of the Senate, the smaller degree of party dictation and management in the Senate, and the security of the six-year term.

COMPENSATION, PERQUISITES, STAFF

Compensation

Congressmen receive an annual salary for their services. Beginning with March 1, 1955 members of both the House and the Senate have been paid \$22,500 per year; they are also allowed, for tax purposes, to list up to \$3,000 of this sum as a business expense incurred through maintaining a second residence in Washington. The presiding officers—the Speaker of

the House and the Vice President or the President *pro tem* of the Senate—each receive \$45,000 annually.

The Constitution provides that Senators and Representatives shall be paid for their services (Art. I, sec. 6, cl. 1); Congress itself by law fixes the amount of its members' compensation. Whereas a regular stipend for legislators today is more or less taken for granted, it should be borne in mind that at the time the Constitution was adopted this was a revolutionary provision. It made holding a seat in Congress neither a privilege nor an obligation, but a salaried vocation. What was revolutionary was the fact that it made it at least in theory possible for a man with no other means of support to become a national lawmaker; in practice today a congressman has such large expenses that he is almost compelled to have an outside income. By contrast, members of the British House of Commons received no stipend until 1911; before that time they had to live entirely on their own resources, so that only the wealthy could afford a seat in Parliament. Moreover, even as late as 1955 their salary was only about \$4,200 per annum, with few of the perquisites attached to a seat in Congress.

It is often urged that congressional salaries be raised much higher, so that the country might have "better" Senators and Representatives. Aside from the fact that this suggestion is a gratuitous insult to the present members of Congress, there is no concrete evidence that a higher salary would necessarily induce a "better type" of person to campaign for office. There are many persons who might make desirable legislators who would not seek office regardless of its financial attractiveness. On the other hand there are occasional mediocrities in Congress today who would be even more firmly attached by a higher income. Certainly the cost of living for a congressman in Washington is so high that no Senator or Representative grows rich on his salary alone; many, in fact, go into debt. Yet congressmen, particularly lawyers, make associations that can be extremely profitable once they leave Capitol Hill. Finally, the rewards in the form of such intangibles as influence and prestige can be very important.

Perquisites

Congressmen enjoy many perquisites of office apart from their salary. One of the most significant, and one that has only recently been devised, is a retirement system. Under this system, established by the Legislative Reorganization Act of 1946, Senators and Representatives each contribute six per cent of their annual salaries to a retirement fund. Those who hold office for six years or more, and who at some time after reaching the age of sixty-two no longer hold a seat in Congress or any other position under the federal government, may then draw a pension based upon the length of their tenure.

Members of Congress are also granted an allowance of twenty cents per mile for one round trip annually from their homes to Washington. They are given a certain amount of stationery and of air mail stamps; they also receive up to a specified maximum of free telephone and telegraph service—a limit, it might be said, that is usually exceeded. One of the more note-

worthy perquisites is the postal frank, enabling them to send an unlimited amount of railroad mail free. Congressmen from time to time utilize the frank quite openly to assist themselves in campaigns; for example, in 1954 Congressman Sam Yorty of California, seeking the Democratic nomination in the primary as a candidate for the Senate, mailed under his frank four million copies of one of his speeches to the voters of California. Another important perquisite is the office space furnished to congressmen in the House and Senate Office Buildings. (Incidentally, members of the British House of Commons do not have free office space.) A congressman desires this privacy where he may be closeted with a constituent to discuss matters of only State or district importance.

Staff assistance

One of the outstanding developments in Congress over the past half-century has been the emergence of a professional staff system. This "legislative bureaucracy," as it might be termed, includes clerks, secretaries, and experts in a host of fields related to different types of legislative activity. A prime function of this personnel, especially the experts, has been to give Congress and its members sources of information that are at least formally independent of other branches of the government and of outside interests. Previously, when congressmen sought the facts regarding an issue destined for legislation, they were compelled to resort either to experts in the executive branch or to lobbyists, or to both. Under such circumstances the data provided would often carry the impress of forces external to Congress and perhaps even hostile to its purposes.

Starting in the twentieth century, however, Congress has instituted several organizations of its own to furnish data to its members. These organizations may be said to exist on three levels. First are those for Congress as a whole: the Legislative Reference Service and the Office of Legislative Counsel. Second are the staffs of the standing and special committees. Third are the staffs of the individual congressmen. This section will treat of the first and the third categories, for a discussion of committee staffs can be better understood in conjunction with the later discussion of committees themselves.

Staff Assistance for Congress as a Whole: What may be called staff assistance for Congress as a whole is so termed chiefly because these staffs are employed by the entire Congress, and are responsible to the whole body. They do not advise Congress as a unit, but their services are available to all members of Congress and to every legislative committee. One of these staff bodies is the Legislative Reference Service. Now a department of the Library of Congress, the Service was created in 1914. It comprises seven groups: history and general research, foreign affairs, economics, government, American law, senior specialists, and library services; the staff numbers over 150 persons. Its purposes are to gather and analyze materials bearing upon proposed legislation, to aid members and committees of Congress in such undertakings, and to publish summaries of committee hearings and digests of bills. Specialists from

the Service may be retained as advisers to congressional committees. Another staff body is the Office of Legislative Counsel, established in 1918. The Office is divided into two branches, one for each house of Congress. Its staff includes about thirty lawyers, their assistants, and clerks; the two chief counsels, one for each house, are named by the presiding officers of the houses. The function of this Office is to assist members in the drafting of bills, so that they may reach the floor in appropriate legal terminology.

Staffs of Individual Congressmen: Each member of Congress receives an allowance for clerical help. Every Representative is granted a basic sum of \$12,500, which is sufficient to hire one secretary and two clerks. Senators receive considerably more; those from the more populous States receive larger allowances than those from the less populous. Since a Senator from California normally is sent more correspondence than one from Idaho, he is presumably entitled to a larger staff for answering this correspondence. Furthermore, this arrangement in a very rough way tends to equalize the allowance given to Senators and to Representatives from any given State. Beyond their clerical help, Senators may each employ one administrative assistant, at a base annual salary of \$10,000. Bills authorizing Representatives to hire similar assistants have been several times proposed but never enacted.

The degree to which a congressman's staff provides him with expert advice depends largely upon the individual congressman; it is he, after all, who chooses his staff members. Very commonly these staffs are named on a patronage basis; also, many members name wives and relatives to their staffs. The assistants to the Senators in a few cases have afforded outstanding research and counselling advice; yet it appears that many if not most Senators simply promoted their secretaries to the new and higher status when it was created by the Legislative Reorganization Act of 1946. Even without professional experts, these staffs can relieve and have relieved congressmen of many trivial duties in connection with meeting the public.

IMMUNITIES

A seat in Congress grants to a Senator or a Representative, at least in theory, immunity from certain types of judicial action. These immunities may be ascribed to the somewhat higher rank in society occupied by congressmen than that held by private citizens. However, it would perhaps be more nearly accurate to attribute them to the fear that was present in the eighteenth century that legislators must be protected from arbitrary acts of the executive. It is probably because this fear has vanished that some of these immunities are virtually inoperative today.

Immunity from arrest

The Constitution provides that congressmen "shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to

and returning from the same. . . ." (Art. I, sec. 6, cl. 1.) This immunity today is practically meaningless, for "breach of the peace" has been interpreted to cover almost any violation of the law. A congressman today may be held to trial for a traffic offense, regardless of this immunity.

Immunity from suits for libel or slander

The Constitution states that ". . . for any speech or debate in either house [congressmen] shall not be questioned in any other place." (Art. I, sec. 6, cl. 1.) A Representative or Senator, then, may make any sort of statement he wishes about any person from the floor of Congress, without fear of being sued for libel or slander. This immunity extends to committee hearings and to materials published in the *Congressional Record*. Indeed, newspapers, periodicals, books, and any other type of publication may freely quote the *Record*, with complete immunity from prosecution. This protection, which is as valid today as it was in 1789, was designed to assure congressmen freedom of debate respecting legislative matters. However, certain members of Congress—the most notable case in recent days being Senator McCarthy of Wisconsin—have been accused of exploiting this immunity so as to utter statements from the floor that they would not express without the immunity.

There are limits on this protection. One limit is that a congressman may be brought to court for statements made off the floor, just as any private citizen. Another limit is that congressmen may not criticize each other in the same terms as those used against persons outside Congress; as will be seen below, each house has extraordinary, if rarely used, means for punishing its own members. Finally, a congressman must be wary of arousing public opinion against himself through his utterances, for what he says may cost him his seat. Of course, after he has been voted out of office, he may not be held for what he said as a congressman.

DISCIPLINING OF CONGRESSMEN

The Constitution empowers each house of Congress to ". . . punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member" (Art. I, sec. 5, cl. 2). The canons of behavior that the houses of Congress enforce upon their members may often appear strange to the onlooker. It has already been noted that congressmen are permitted unusual liberties in what they may say about persons who are not members of Congress. In a sense they are permitted almost equally great liberties in speaking of other members of Congress and of the executive and judicial branches, provided that certain restraints are carefully observed. The principal restraint is that on the language used; that is, insults must be phrased in courtly terms.

Also, it is considered extremely reprehensible to insinuate that a fellow member had improper motives for a given act. When Senator McCarthy was condemned by the Senators in November, 1954, it was in part for calling the Senate session that had gathered to consider disciplining him

a "lynch party" and a "lynch bee," and for having termed the special committee that investigated his behavior the "unwitting handmaiden," "involuntary agent," and "attorney-in-fact" of the Communist Party. So far as actions are concerned, congressmen are perhaps most alert to detect and punish any that might cast discredit upon their house. However, as Professor H. H. Wilson has pointed out in *Congress: Corruption and Compromise*, strict disciplining of members is a very rare occurrence.

There are three forms that discipline may take, which, in an ascending scale of severity, are: calling a member to order; censure; and expulsion. A member can be called to order simply by the presiding officer, for an utterance that the Speaker or Vice President may feel crosses the bounds of propriety. A censure is considerably more formal; it customarily includes the filing of specific charges by one or more members, a committee investigation of the charges, a report to the whole house, and finally a majority vote of those present. The Senate followed this pattern in disciplining Senator McCarthy in 1954, save that at the last the verb "condemn" was substituted for "censure." The vote was sixty-seven to twenty-two, with all forty-four Democrats voting for condemnation. A censure is the customary punishment for an act that congressmen feel may reflect upon the honor of their house. Expulsion, the extreme penalty, requires formal charges, a committee investigation and report, and a two-thirds vote in the house concerned. It is resorted to only in exceptional cases such as disloyalty to the country; some congressmen were expelled at the outbreak of the Civil War.

QUESTIONS AND PROBLEMS

1. What are the origins and effects of the bicameralism of Congress?
2. Compare the qualifications for membership in the House and in the Senate.
3. What can you suggest as the possible effects of the equal apportionment of States in the Senate? How can the present arrangement be changed?
4. Does membership in the Senate or in the House carry more prestige among most people? How do you explain your answer?
5. Compare the congressional retirement system with that in use among the faculty of your college. Which is more generous to its beneficiaries?
6. Compare the staff assistance given the individual congressman with that provided the President.
7. Compare the immunities of congressmen with those of the President.