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PREFACE

In the fall of 2001, H el ene Potter, director of development at Macmillan Reference, asked me to serve as editor in chief of an encyclopedia of major acts of Congress. I found the offer enormously exciting, because the world of reference books had seemingly neglected this area that is so central to American law, government, and history. Moreover, I helped to write, interpret, and enforce laws while at the U.S. Department of Justice Civil Rights Division, and I had taught and written about civil rights legislation. These experiences led me to appreciate how useful a clear and authoritative description of major American legislation could be. My duties as associate dean at the University of Pacific, McGeorge School of Law, initially precluded my undertaking this project. However, the publishing schedule for the encyclopedia changed, and in March of 2002 I enthusiastically signed up.

By the spring of 2002 an outstanding board of editors had agreed to join the project, and we were well underway. Each of the associate editors brings a rich understanding of legislation to the project, but each also contributes a different perspective. Professor Al Brophy of the University of Alabama School of Law is an accomplished and well-recognized legal historian. Professor Thomas Sargentich of American University's Washington College of Law has written extensively about the legal issues of the separation of powers; he serves as codirector of his law school's program on law and government. Professor Nancy Staudt of the Washington University School of Law (St. Louis) teaches and writes on tax law and social programs and has become known for her critical analyses of both tax and social policy.

Courses in American government typically teach students about the roles of the three branches established by the Constitution. Students learn that the Congress makes laws, the executive branch executes laws, and the courts apply laws. Often, however, that lesson may seem abstract. Students may fail to see the connection between these principles and their lives, the lives of their families and friends, or the history of the nation. *Major Acts of Congress* helps make concrete the law-making function of Congress and also casts light on the role of the other two branches in enforcing and applying law. It brings together for the first time, in one work, a selection from the product of the one hundred and seven Congresses which preceded this encyclopedia, as well as the current Congress.

In its first year, 1789, Congress enacted twenty-seven laws. The acts from its first ten years occupy 755 pages, in one volume of the *U.S. Statutes At*

Large. By 2002, in the second and last year of the 107th Congress, we find 260 acts, occupying 3115 pages of volume 116 of the *U.S. Statutes*. The laws of the First Congress were mainly devoted to setting up the national government, which must have seemed quite distant to most Americans. By contrast, the 107th Congress enacted laws covering such subjects as agriculture (the names of fourteen laws begin with that word), education, the environment, foreign relations, intelligence, immigration, defense, crime, voter registration, radiation, securities, employment, social security, and so on. Today few aspects of our lives are untouched by federal law.

The acts described in this work demonstrate the range of congressional legislation, from the very first Congress's adoption of the Judiciary Act to the 108th Congress's enactment of legislation regulating so-called partial birth abortions. Described in more detail than one finds in most history books are landmarks of American history, such as the Fugitive Slave Act, the various civil rights acts, legislation from the New Deal and the Great Society, as well as acts that respond to such contemporary issues as terrorism and the rise of electronic technology.

Major Acts of Congress contains entries on 262 acts selected by the editorial board based on such criteria as historical significance, contemporary impact, and contribution to the understanding of American government. Hundreds of other laws are discussed in the entries and can be found through use of the comprehensive index. The entries vary in length from 2500 words down to 300 words. Entries describe the law, but they do much more than that. They typically explain the circumstances that led Congress to consider the law and the issues Congress discussed during its consideration of the law. They also provide information about the subsequent history of the law, including amendments or repeal, enforcement, and court cases.

As the list of contributors reflects, the 159 authors include legal scholars, historians, political scientists, economists, and lawyers from public and private practice. Some played a significant role in the adoption or enforcement of the act they wrote about. Others have literally written the book on the act or area of law.

The essays have been written to make accessible to students and lay persons the frequently complex, technical, arcane concepts and language of legislation. We have included brief excerpts from acts in those entries where a direct quotation would give a flavor of the law. Accessibility is enhanced by the use of sidebars to explain terms and historical allusions, as well as illustrations that help demonstrate the political and human dimension of these laws. Same-page definitions of terms and a glossary in the back matter further enhance access. Entries typically end with a short bibliography of books, articles, and Web sites, for those who wish to delve more deeply. To place the entries in perspective, *Major Acts* begins with an introduction that explains the role of the Congress and other branches. It also contains an in-depth time line in the back matter, showing who was president, the composition of each Congress, and what major events were taking place during the time when each law was enacted.

Major Acts has been a true team effort. The editorial board has worked closely with the publisher. Hélène Potter has skillfully guided the project. Jeff Galas, assistant editor at Macmillan Reference, has been invaluable in helping

recruit authors and organize the work. And Kristin Hart has ably supervised the copyediting and the selection of illustrations.

*Brian K. Landsberg
September, 2003
Sacramento, California*



INTRODUCTION

In a democracy like the United States, congressional action reflects the will of the people. The impetus for acts comes from members of the House of Representatives who stand for election every two years and senators who—after 1916—have stood for election every six years. (Before 1916, they were selected by their state legislature.) The acts discussed in this encyclopedia illustrate the concerns of Americans, from the early national period, through the antebellum period, the Civil War, Reconstruction, the Gilded Age, the Progressive Era, the Great Depression, World War II, and the civil rights eras, right up to the administrations of Presidents Nixon, Ford, and Carter in the 1970s, and Presidents Reagan and Bush in the 1980s, and Presidents Clinton and Bush in the 1990s and 2000s.

At times, the nation is concerned with certain issues—like civil rights—and takes action. That happened in the wake of the Civil War, when Congress proposed and the states ratified three Constitutional amendments, including the Fifteenth Amendment to guarantee all adult males the right to vote, regardless of race. Congress also passed numerous acts to ensure the newly freed slaves had civil rights. Yet, after 1877 those acts lay largely dormant, until the civil rights era of the 1950s.

Examination of the Voting Rights Act of 1965 illustrates how the nation, awakened to the cause of civil rights, again turned to Congress to seek a national solution. Each law described in this encyclopedia went through the process that American students study in increasing detail as they advance through elementary and secondary school, college, and graduate school. The process is established by Article I of the U. S. Constitution. It is not easy to pass legislation, because many actors, representing a range of interests and ideologies, must reach agreement. Rather than simply providing another abstract description of the process in this introduction, we seek to bring the process to life by describing the course of one bill from initial concept to final adoption and enforcement and subsequent amendment. You will find an entry on this law, the Voting Rights Act of 1965, in volume three of this encyclopedia.

Although the Fifteenth Amendment had been added to the Constitution in 1870 in order to forbid official actions abridging the right to vote based on race, by the middle of the twentieth century most Southern states had placed a variety of obstacles in the way of African-American voter registration. The result was that by 1952 only about 20 percent of African Americans of voting

age in the Deep South were registered to vote. Congress's first effort to address this problem came in the Civil Rights Act of 1957, the first modern federal civil rights law. It had been brilliantly steered through the United States Senate by Majority Leader Lyndon B. Johnson. It was, however, a bill with few teeth, principally the bare authorization for the Department of Justice to bring suits to remedy discrimination in official voting practices and race-based intimidation against potential voters. Johnson knew that it was not a strong bill, but regarded it as a start. "[I]t's only the first. We know we can do it now." As predicted, the 1957 act did not effectively end racial discrimination in voter registration. Congress tried again, in the Civil Rights Act of 1960, but again it was not politically possible to pass a strong bill. This time, Lyndon Johnson made the pragmatic argument that the legislation was "reasonable" and "the best that the able chairman of the House Judiciary Committee could get." After passage, Thurgood Marshall, the leading black lawyer in the country, said the 1960 act "isn't worth the paper it's written on." Congress made further very minor improvements in voting rights law in the Civil Rights Act of 1964, but that law primarily addressed other matters.

The weaknesses of the 1957 and 1960 acts stemmed largely from the political influence of Southern Democrats, who in those days regularly opposed all civil rights legislation. Though they were a minority in Congress, the availability of the filibuster in the Senate gave them added strength. To pass a bill over their objection required unusual consensus between Northern Democrats and the Republicans. You will see in the descriptions of many of the acts in this encyclopedia that compromises often are necessary in order to win passage and presidential approval of a bill.

Proponents of stronger legislation needed to find a way to convince Congress to abandon the approach of the prior acts. Civil rights groups believed that it would take very strong medicine indeed to effectively insure black voting rights. As you will see in Professor William Araiza's entry on the Voting Rights Act, the act interferes with state voter qualification laws, provides for federal officials to take over the registration process in some counties, and requires some changes in state law to be pre-approved by federal courts or officials before they may be implemented. Not since Reconstruction had such federal intervention into state law occurred.

Civil rights organizations mounted voter registration drives in Alabama, Mississippi, and Louisiana. The Department of Justice brought voter discrimination suits in federal court as Southern registrars turned away thousands of prospective voters. By early 1965, national newspapers and television networks began to report on events in such places as Selma, Alabama. In February 1965 during a civil rights demonstration in Marion, Alabama, Alabama State Troopers shot and killed an African American, Jimmie Lee Jackson, who had unsuccessfully tried in prior months to register to vote. To protest the killing and to dramatize the deprivations of the right to vote, civil rights organizations—the Student Nonviolent Coordinating Committee and Dr. Martin Luther King Jr.'s Southern Christian Leadership Conference—decided to march from Selma to the state capital, Montgomery. As the marchers left Selma and crossed the Edmund Pettus Bridge over the Alabama River, they were set upon by state troopers and sheriff's deputies, many of them mounted on horses. Many were beaten, all were tear-gassed, and they were pursued back to Selma by mounted men swinging billy clubs. The assault on the

Edmund Pettus Bridge in Selma occurred in broad daylight and was broadcast to an outraged nation. The following week President Lyndon Johnson gave a nationwide address in which he announced the outlines of the voting rights bill he was sending to Congress. In the flowery language of presidential addresses, he said that “the cries of pain and the hymns and protests of oppressed people have summoned into convocation all the majesty of this great Government—the Government of the greatest Nation on earth.”

President Johnson’s speech in the wake of the Bloody Sunday confrontation at the Edmund Pettus Bridge promised the country an effective voting rights act. The administration’s interest in a new voting law predated Bloody Sunday by several months. The Department of Justice had begun drafting such a law in November of 1964, at the direction of President Johnson. The attorney general had sent the president a memorandum outlining three possible proposals by the end of December, and the president’s State of the Union message on January 4, 1965, had already proposed that “we eliminate every remaining obstacle to the right and the opportunity to vote.” However, Johnson had planned to delay the voting rights proposal until his Great Society social bills had passed. The events on Bloody Sunday changed all that.

In the above events we can see four important aspects of the legislative process. First, legislation normally responds to some felt need. It is necessary to mobilize public opinion and demonstrate that the nation faces a problem and that the problem requires legislation. Second, it is not enough to simply place a bill on a president’s or a party’s legislative agenda. The president and Congress face a myriad of problems that need solving, and they cannot solve them all. So they establish priorities. Unless a bill is given high priority, it is unlikely that Congress will enact it even if it has merit. Third, Congress is not the only player. The president plays an important role in setting the legislative agenda. Even the initial drafting of some laws may be done by executive agencies rather than Congress. Finally, Congress often addresses issues incrementally, with small starts, such as the 1957 and 1960 Civil Rights Acts, later leading to more ambitious legislation.

Within two days of President Johnson’s speech, the administration proposal had been introduced in both the House and Senate. Each chamber referred the bill to its judiciary committee. The Committee on the Judiciary of the House of Representatives in turn referred the bill to a subcommittee chaired by Emanuel Celler of New York, with six other Democrats and four Republicans as members. The subcommittee began hearings the following day. It considered 122 bills dealing with voting rights, holding thirteen sessions, including four evening sessions. It then met in executive session for four days and substantially rewrote the administration bill and sent it to the full committee of twenty-four Democrats and eleven Republicans. The committee further rewrote the bill and then sent it to the House of Representatives, with a report and a recommendation that the House pass the bill in its amended form.

Meanwhile, the Senate faced a problem that flowed from the seniority system. The chair of the Senate Judiciary Committee was Senator James Eastland of Mississippi, a strong opponent of all civil rights legislation. And the committee’s senior Democrats were also from the Deep South. The Senate responded by sending the bill to the committee with the mandate to report back to the Senate no later than April 9. The full Senate Judiciary Committee held hearings for nine days. It met the April 9 deadline and recommended

that the Senate pass the bill, but instead of submitting a committee report submitted sets of “individual views” of the proponents and opponents.

The hearings before both the House and Senate committees began with testimony by Attorney General Nicholas Katzenbach, who presented voluminous exhibits, including the history of the fifty-one suits against voting discrimination and seventeen suits challenging intimidation against black voter registration that the Department of Justice had brought since adoption of the 1957 act. He argued that the litigation approach under these laws had not worked. He noted that the earlier laws “depended, as almost all our legislation does, on the fact that it is going to be accepted as the law of the land and is then going to be fairly administered in all of the areas to which it applies, by States officials who are just as bound as you and I by the Constitution of the United States and by Federal laws.” The attorney general continued:

I think, in some areas, it has become the theory that a voting registrar is not really required to do anything except what he has been doing until his records have been examined and he has been hauled into court and, at public expense, his case has been defended by the State, and all the delaying devices possible have been used, and then it has been taken on appeal, then appealed again with as much delay as possible. Then, when a decree is finally entered, that decree can be construed as narrowly as possible and he can do as little as he can get away with under that decree. Then that decree—what it means—can be questioned again in court, new evidence can be introduced, and meanwhile, election after election is going by.

After delivering his statement, Katzenbach was grilled for a day and half by the House committee and for three days by the Senate committee. Southern senators challenged him at every turn—on the need for legislation, the content of the legislation, and the constitutional basis of the legislation. Civil rights leaders, including the heads of the National Association for the Advancement of Colored People and the Congress for Racial Equality, testified in favor of the bill, as did religious leaders and other federal officials. Southern attorneys general and other public officials testified against the bill.

The hearings, in short, raised issues common to most legislation. First, does Congress have the authority under the Constitution to legislate on this issue? Here, the authority came from section 2 of the Fifteenth Amendment. In most cases Congress’ authority is found in Article I, section 8, which contains a laundry list of areas on which Congress may pass laws. Second, why is legislation needed? For example, why isn’t existing law sufficient to deal with the problem the bill addresses? Third, what should be the content of the new legislation? It is one thing to say that we need to solve a problem and quite another to agree on what are the appropriate means. For example, the act contains detailed criteria for determining which states will be subject to some of its provisions. One criterion is whether fewer than 50 percent of persons of voting age voted in the 1964 presidential general election. Why 50 percent, as opposed to 40 or 60 percent? Why the general election? These details must be worked out, usually at the committee level.

The Senate was the first chamber to debate the bill. The minority leader, Senator Everett Dirksen, Republican of Illinois, and the majority leader, Senator Mike Mansfield, Democrat of Montana, began the debate by describing the bill and supporting it. Each party had appointed other senators to lead the floor debate, Democrat Philip Hart of Michigan and Republican Jacob Javits of New

York. They spoke at length about the evidence of need. Southern opponents spoke at great length. In addition, Senator Edward Kennedy of Massachusetts proposed an amendment that would outlaw the poll tax, and Senators Robert F. Kennedy and Jacob Javits of New York proposed an amendment designed to protect the right of Puerto Ricans in New York to vote. The poll tax amendment was defeated; the Puerto Rico amendment passed. After over a month of debate, the Senate voted to impose cloture, thus preventing a full filibuster, and on May 26 the Senate adopted the bill with a vote of 79 to 18.

The House considered the bill for three days. It adopted an amendment outlawing the poll tax, and passed the bill on July 9, 328 to 74. Thus, at this point, overwhelming majorities in both chambers supported a voting rights bill, as did the president. However, the two chambers had passed different bills. Therefore the House and Senate appointed a conference committee, charged with the task of reconciling the two bills and agreeing on a final version. For example, what should be done about the poll tax? The conference committee decided that the bill would not outlaw the poll tax but would direct the attorney general to bring litigation challenging this barrier to voting. After almost a month of work, the conference committee reported on its work on August 2, 1965. As Representative Celler told the House of Representatives the next day, "The differences were many, wide, and deep. Mutual concession was essential otherwise there would have been ... no bill." The House adopted the conference bill on August 3, and the Senate did so on August 4. President Johnson signed it on August 6.

President Johnson had presented the legislation as having the highest urgency. Congress did act quickly, but the need for hearings and debates and conference committee meant that the legislative process occupied an enormous amount of the time of the members of Congress during the five months from introduction to passage. We see that, as is often the case, the House and Senate agreed on the general objective but not on the details of the bill. We also see the importance of bipartisan coalition building where, as here, a small group of senators opposes the general objective. And we see once again that compromise is often necessary in order to enact legislation.

This is the end of the story, right? Wrong! The story goes on. The attorney general had to enforce the law. The Southern states challenged its constitutionality, so the Supreme Court had to review the law's validity. Some provisions of the law were to expire after five years. Disputes arose as to the meaning of other provisions. For example, the law was silent as to whether private parties could bring suit to enforce the provision requiring preclearance of changes in voting practices. The Supreme Court therefore had to resolve that question, by trying to determine Congress's intent. Courts have interpreted and applied the act numerous times, while other provisions have been clarified by subsequent legislation, in which Congress has revisited and amended the law several times.

The history of the Voting Rights Act demonstrates that although Congress plays the primary role in enacting legislation, the president and the courts play important roles as well. The president may propose legislation and his signature is normally needed for a bill to become law. The courts may lay a legal and constitutional framework that guides the drafting of legislation, and they apply, interpret, and determine the validity of legislation once it has been enacted.

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