

## The Legislative Branch

*"I served with, not under, eight presidents."*

—Sam Rayburn, Speaker of the House (D-TX, b.1882, d.1961)

**Essential Question:** How do the structure and operation of the legislative branch reflect the United States' republican ideal?

The United States Congress is one of the world's most democratic governing bodies. Defined in Article I of the Constitution, Congress consists of the Senate and the House of Representatives. These governing bodies meet in Washington, D.C., to craft legislation that sets out national policy. Congress creates statutes, or laws, that become part of the United States Code. Its 535 elected members and roughly 30,000 support staff operate under designated rules to carry out the legislative process, to build and enhance highways and other public works, and to protect American citizens. In January 2017, Speaker of the House Paul Ryan in the House of Representatives and Vice President Mike Pence in the Senate gaveled the 115th Congress to order for its new term.

The 535 voting members of Congress (with nonvoting House delegates from Washington, D.C., Guam, Puerto Rico, the Virgin Islands, and American Samoa) have become increasingly diverse and therefore increasingly representative of their constituents, but they by no means mirror the ethnic, gender, or socioeconomic divisions in America at large. At the start of the 115th Congress, 48 House members and three Senators were African American. There were almost as many Hispanics in the legislature as blacks, 46. Eighteen members were from the Asia-Pacific realm. Most all profess a religion; 56 percent are Protestant, 31 percent are Catholic, and about 6 percent are Jewish.

Men have dominated the seats in Congress since it opened in 1789, but female membership has grown since Jeannette Rankin of Montana became the first female representative in 1917. As of January 2018, 111 women serve in the Congress, 89 in the House and 22 in the Senate.

An overwhelming majority of members are college-educated and from households with above-average incomes. More than half of the members of Congress have a net worth of more than \$1 million. The average age in the House is 58; in the Senate it is 62. The dominant professions prior to serving are law, public service, and business. Nearly 100 of the current members worked at some point as a staffer on Capitol Hill.

BY THE NUMBERS Demographics of 115 <sup>th</sup> Congress (2017–2019)	
Classification	Total
Men	429
Women	111
African American	51
Protestant	299
Catholic	168
Jewish	30
Latino	46
Asian or Pacific Islander	18
Native American	2
Born outside U.S.	18
Service in military	102
With law degrees	222

*(Statistics largely self-reported. Totals include delegates from U.S. territories and account for four vacancies.)*

## Structure of Congress

After a war with Britain over adequate citizen representation, developing a republican form of government—a representative system that reflected citizen views as well as those of an elite class—was of top concern for Americans at the Constitutional Convention. For that reason, the framers designed Congress as the most democratic branch and the chief policymaking branch. The First United States Congress opened in 1789 in New York City.



**Source:** *Thinkstock*

The Senate meets on the left side of the Capitol Building; the House meets on the right.

## **Bicameral Design**

The **bicameral**, or two-house, legislature resulted from a dispute at the Constitutional Convention between small and large states, each desiring different forms of representation. The Great Compromise (page 14) dictated the number of House seats that would be allotted based on the number of inhabitants living within each state. Article I's provision for a census every 10 years assures states a proportional allotment of these seats. Together, the members in the House represent the entire citizenry. The Senate, in contrast, has two members from each state, so the states are represented equally in that chamber. With this structure, the framers created a republic that represented both the citizenry at large and the states.

The framers also designed each house to have a different character and separate responsibilities. Senators are somewhat insulated from public opinion by their longer terms (six years as opposed to two for members of the House), and they have more constitutional responsibilities than House members. Since each senator represents their whole state, senators typically face a more diverse electorate. In contrast, smaller congressional districts allow House members to have a more intimate constituent-representative relationship.

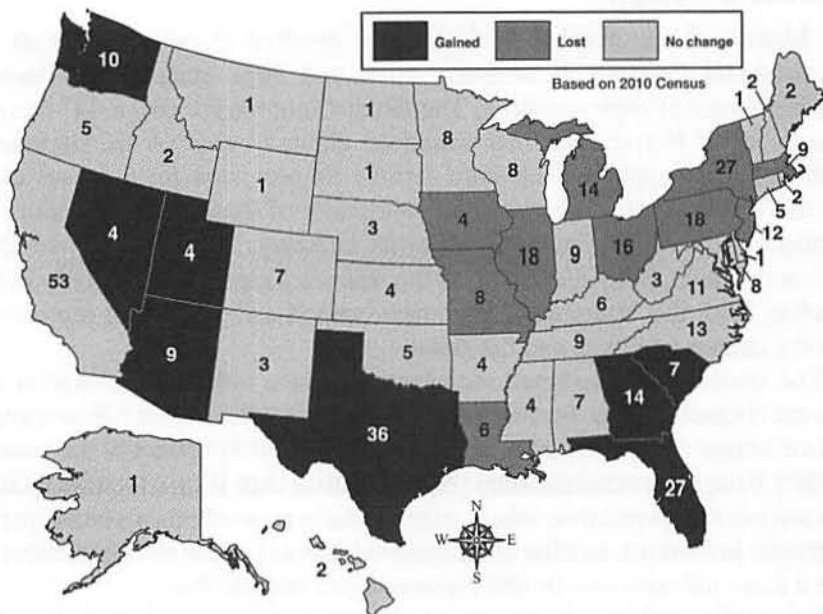
Originally, unlike House members, senators were elected by state legislators, but this practice changed with the **Seventeenth Amendment**, ratified in 1913, which broadened democracy by giving the people of the state the right to elect their senators.

The requirement that both chambers must approve legislation helps prevent the passage of rash laws. James Madison pointed out "a second house of the legislature, distinct from and dividing the power with the first, must always be a beneficial check on the government. It doubles the people's security by requiring the concurrence of two distinct bodies." **BIG IDEA:** The system of checks and balances in Congress helps keep an appropriate balance between majority rule and minority rights.

**Size and Term Length** The more representative House of Representatives is designed to reflect the will of the people and to prevent the kinds of abuses of power experienced in the colonial era. Most representatives are responsible for a relatively small geographic area. With their two-year terms, House members are forced to consider popular opinions lest the unsatisfied voters replace them. The entire House faces reelection at the same time.

Since 1913, the House has been composed of 435 members, with the temporary exception of adding two more for the annexation of Alaska and Hawaii. Each congressional district has more than 700,000 inhabitants. The Reapportionment Act of 1929 mandates the periodic **reapportionment**, or distribution, of U.S. congressional seats according to changes in the census figures. Each decade, the U.S. Census Bureau tabulates state populations and then awards the proportional number of seats to each state. Every state receives at least one seat. States gain, lose, or maintain the same number of seats based on the census figures.

## REAPPORTIONED HOUSE OF REPRESENTATIVES, 2012



**What do the numbers show?** In what regions of the country did states gain representatives? In what regions did states lose representatives? What conclusion can you draw about the population in those regions?

The Senate, in contrast, has 100 members. George Washington is said to have explained the character of the U.S. Senate through an analogy to cooling coffee so it can be consumed. “We pour our coffee into a saucer to cool it, we pour legislation into the senatorial saucer to cool it.” The framers wanted a cautious, experienced group as yet another check in the lawmaking process. Only one-third of the Senate is up for reelection every two years, making it a continuous body. In *Federalist No. 64*, John Jay argued, “by leaving a considerable residue of the old ones (senators) in place, uniformity and order, as well as a constant succession of official information, will be preserved.”

Senators’ six-year terms—in contrast to the two-year terms of members of the House of Representatives—give Senators some ability to temper the popular ideas adopted by the House, since Senators do not have to worry about being voted out of office so soon.

Collectively, these two bodies pass legislation. Bills can originate in either chamber, except for those that raise revenue, or tax laws, which must originate in the House. To become law, bills must pass both houses by a simple majority vote and then be signed by the president.



## Powers of Congress

The framers assigned Congress a limited number of specific powers, or **enumerated powers**. They are also known as **expressed powers** because they are expressly stated in Article I, Section 8 of the Constitution. Through the necessary and proper clause, the framers also assigned to Congress **implied powers**, those not directly stated but required to fulfill the obligations of the enumerated powers. These powers allow for the creation of *public policy*—the laws that govern the United States. Over the years, advancements in society, Supreme Court interpretations, and altered expectations of government have greatly expanded Congress’s authority.

### **Power of the Purse**

The congressional power enumerated first in the Constitution is the power to raise revenue—to tax. Article I also provides that no money can be drawn from the treasury without the approval of Congress. Congress appropriates, or allots, the public money it raises through taxes. Both chambers have committees for budgeting and appropriations. Congress also has the power to coin money.

The president proposes an annual budget while Congress members, who often differ on spending priorities, and their committees debate how much should be invested in certain areas. The budgeting process is complex and usually takes months to finalize. (See pages 96–101 and 542–544.)

### **Regulating Commerce**

Congress also has the power “to regulate commerce among the states, with other nations, and with Indian tribes.” In 1824 in *Gibbons v. Ogden*, a dispute about whether state or national government had authority over the regulation of navigable U.S. waterways, the Supreme Court sided with the national government and solidified Congress’s commerce authority. (See page 49.) This case began a debate on the breadth of Congress’s power over commerce that is ongoing even today. This congressional power has been contested in the Supreme Court more than any other. It came into contention when the Supreme Court struck down the National Recovery Act and the Agricultural Adjustment Act, two cornerstones of President Franklin Delano Roosevelt’s New Deal program intended to address the problems of the Great Depression in the 1930s. Congress’s authority over commerce was also the constitutional justification for the 1964 Civil Rights Act, as Congress required proprietors of lunch counters to accept customers of all races.

In recent years, Congress has assumed wide authority over nearly every type of both interstate and intrastate commerce. In an effort to protect the environment, for example, Congress has written regulations that apply to manufacturing and chemical plants to control the emissions these facilities might spew into our air. Congress can require gun manufacturers to package safety locks with the guns they sell. The commerce clause was the justification for the Patient Protection and Affordable Care Act, also known as Obamacare, which, among other things, requires citizens to purchase health insurance or pay a penalty.

However, there have been many legal challenges to wide-ranging Congressional authority based on the commerce clause. The landmark case of *United States v. Lopez* (1995) is one of a number of cases that has restricted this power (pages 59–60).

### **Foreign and Military Affairs**

Congress is one of the key players in U.S. foreign policy, and it oversees the military. It can raise armies and navies, legislate or enact conscription procedures, mandate a military draft, and declare war. Congress determines how much money is spent on military bases and, through an independent commission, has authority over base closings. It sets the salary schedule for all military personnel.

Foreign and military policy are determined jointly by Congress and the president, but the Constitution grants Congress the ultimate authority to “declare war.” The framers wanted a system that would send the United States to war only when deemed necessary by the most democratic branch, rather than by a potentially tyrannical or power-hungry executive making a solo decision to invade another country. Yet the framers also wanted a strong military leader who was responsible to the people, so they named the president the “commander in chief” of the armed forces. Congress does not have the power to deploy troops or receive ambassadors, leaving the primary influence on foreign policy to the executive branch.

<b>FOREIGN AND MILITARY POWERS</b>	
<b>Congress</b>	<ul style="list-style-type: none"><li>• Congress has the power to declare war.</li><li>• Congress funds the military, foreign endeavors, and foreign aid.</li><li>• The Senate must approve appointed ambassadors and high-ranking military personnel.</li><li>• The Senate must ratify treaties with other nations by a two-thirds vote.</li><li>• Congress has oversight of the State and Defense Departments and relevant agencies.</li><li>• Congress can institute a mandatory military draft to staff the Armed Forces.</li></ul>
<b>The President</b>	<ul style="list-style-type: none"><li>• The president is commander in chief of the Armed Forces.</li><li>• The president appoints ambassadors and receives foreign ministers.</li><li>• The president negotiates treaties with other nations.</li><li>• The president issues executive orders that can impact foreign policy.</li><li>• The president makes executive agreements with other heads of state.</li><li>• The president commissions the military officers of the United States.</li></ul>

**War Powers Act of 1973** The president and Congress have not always agreed on the balance of their military powers. In 1964, Congress gave the president wide latitude with the Gulf of Tonkin Resolution to stop the spread of communist control into South Vietnam. What resulted was America's longest war up to that point.

As the Vietnam War dragged on and public support for it dropped, Congress repealed this resolution and then passed the **War Powers Act** in 1973. This law tries to reign in the power the president gained in 1964 while still understanding the need for sudden, perhaps secret, emergency military action in the name of protecting the United States. The act gives the president 48 hours in which to engage in urgent combat without informing Congress. Congress, which had too quickly ceded its war authority to the president in 1964, had also abdicated the responsibility of checking the president. To correct this problem, the law mandates that within 60 days from the start of combat, with an optional 30-day extension, Congress must take positive action to continue funding the engagement if it is to continue. If Congress does not act, the combat cannot continue and the president's power is checked. This requirement forces Congress to take a position and guarantees the American people representation in military decisions.

The law strikes a balance between the framers' intended checks and balances and the need for quick action in the days of modern warfare. However, this relationship has been anything but clear since the law's passage. President Nixon vetoed the bill, only to be overridden. And no president has acknowledged the law's constitutional validity. In fact, most presidents have viewed it as an unconstitutional law that takes away powers the Constitution granted to them, yet some have followed it nonetheless.

### ***Implied Powers***

At the end of the list of enumerated powers in Article I is the necessary and proper clause. It gives Congress the power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers." Also called the elastic clause, it implies that the national legislature can make additional laws intended to take care of the items in the enumerated list.

The elastic clause first came into contention in the case of *McCulloch v. Maryland* in 1819 over whether or not Congress could establish a bank. (See pages 48–49). The Supreme Court ruled that the enumerated list implied that Congress could create a bank. Since then, the *implied powers doctrine* has given Congress authority to enact legislation addressing a wide range of issues—economic, social, and environmental.

If those who served in the First Congress could take part in the modern legislature, "they would probably feel right at home," says historian Raymond Smock. Other observers disagree and point to burgeoning federal government responsibilities. Because of the elastic clause, Congress has created a Department of Education, defended marriage, and addressed various other modern issues outside the scope of Article I's enumerated powers.

## ***Differing Powers for House and Senate***

Certain powers are divided between the House and the Senate. The House has the power to create revenue (tax) laws. In fact, *only* the House can introduce a revenue bill. The House was given this power because it is the most representative body, and people who oppose their actions have to wait only two years to vote them out of office. The House also has the privilege to select the president if no candidate wins the Electoral College. When it has sufficient evidence of wrongdoing, the House also has the power to **impeach** federal officers. Impeaching an officer means charging a person with offenses so serious that they are determined to be “treason, bribery, and high crimes and misdemeanors.”

The Senate, representing the interests of the states, also has several exclusive powers and responsibilities. Its **advice and consent** power allows Senators to recommend or reject major presidential appointees such as Cabinet secretaries and federal judges. Senators often recommend people for positions in the executive branch or as U.S. district judges to serve in their states. High-level presidential appointments must first clear a confirmation hearing, at which the appropriate Senate committee interviews the nominee. If the committee votes in favor of the nominee, then the entire Senate will take a vote. A simple majority is required for appointment. Over the years, the upper house has approved most appointees quickly, though there have been notable exceptions.

The Senate also has powers related to foreign affairs. The Senate must approve by a two-thirds vote any treaty the president enters into with a foreign nation before it becomes official.

While the House can level impeachment charges, only the Senate can try an official for wrongdoing, reach a judgment, and determine whether or not to remove the official from office.

Despite their different powers, both chambers have equal say in whether or not a bill becomes law, since both chambers must approve an identical bill before it is passed on to the president for signing.

## **Policymaking Structures and Processes**

The design of Congress and the powers the framers bestowed on the two chambers within that institution have shaped how the legislative branch makes policy. Elected lawmakers work to improve America while representing people of unique views across the nation. Formal groups and informal factions operate differently in the House and Senate.

Congress is organized by house, party, leadership, and committee. The parties create leadership positions to coach their own party members, to move legislation, and to carry out party goals. Congress’s formalized groups include both lawmaking committees and partisan or ideological groups. Some of the powerful committees are institutions unto themselves, since committees are where the real work of Congress is done, especially in the House.

## Leadership

The only official congressional leaders mentioned in the Constitution are the Speaker of the House, the President of the Senate, and the President *Pro Tempore* of the Senate. The document states that the House and Senate “shall choose their other Officers.” Both have done so.

At the start of each congressional term, the first order of business in each house is to elect leaders. The *party caucuses*—that is, the entire party membership within each house—gather privately days or weeks before to determine their choices for Speaker and the other leadership positions. The actual public vote for leadership positions takes place when Congress opens and is invariably a party-line vote. Once the leaders are elected, they oversee the organization of Congress, form committees, and proceed with the legislative agenda.

**House Leaders** At the top of the power pyramid in the House of Representatives is the **Speaker of the House**. In 2007, Nancy Pelosi, a Democrat from California, became the first female Speaker of the House when the Democrats were the majority party. Speaker Paul Ryan, a Republican from Wisconsin, began presiding over the Republican-controlled House in October 2015. The Speaker recognizes members for speaking, organizes members for conference committees, and has great influence in most matters of lawmaking.

On the next rung down in the House are the majority and minority leaders. These are the **floor leaders**; they lead debate among their party and guide the discussion from their side of the aisle. They are the first speakers recognized in debate. Party leaders have also become spokespersons for the party in press conferences and in interviews on Sunday talk shows.

The deputy floor leader, also known as the **whip**, is in charge of party discipline. The whip keeps the tally of votes among his or her party members, which aids in determining the optimum time for a vote. Whips have also strong-armed party members to vote with the party. Political favors or even party endorsements during an election can have a persuasive influence on representatives contemplating an independent vote. The whip also makes sure party members remain in good standing and act in an ethical and professional capacity. When scandals or missteps occur, the whip may ask a member to step down from a chair position or to leave Congress entirely.

Each party also has a **conference chair** below the whip. This chairperson takes care of party matters, such as heading the organization of party-centered groups in each house.

**Senate Leaders** In the Senate, a similar structure exists. The Constitution names the vice president of the United States as the nonvoting **President of the Senate**. In case of a tie, the vice president can vote to break it. The vice president is also meant to rule on procedure and to organize the Senate. For years, the vice president served a role like that of the Speaker, organizing committees and running floor debate. However, now the vice president is rarely in the Senate chamber and usually delegates the responsibility of moderating



debate to other members. The Constitution also provided for the **president *pro tempore***, or temporary president. The “pro tem” is traditionally the most senior member in the majority party. Often, however, even the pro tem assigns his or her role to junior members.

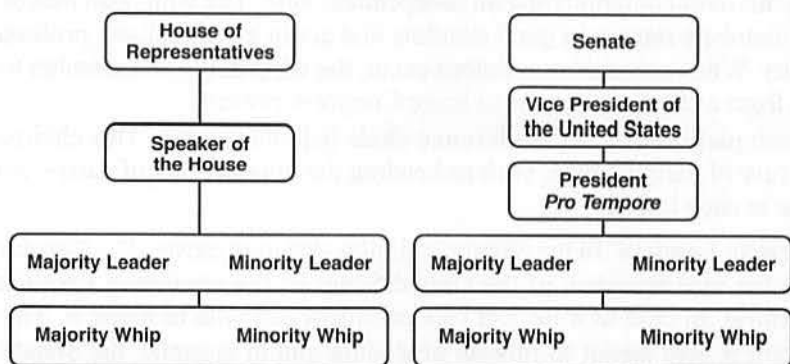
The **Senate majority leader** wields much more power in the Senate than the vice president and pro tem. The majority leader is, in reality, the chief legislator. As the first recognized in debate, the majority leader sets the legislative calendar, determining which bills reach the floor for debate and which ones do not. The majority leader also guides the party caucus on issues and party proposals. Senate leaders are not sovereign coaches of a party team; every member makes his or her own independent choice, and many members within the same party have different and specialized interests in framing legislation. Some former Senate leaders have expressed frustration over the effort to compromise even among party members. Senator Bob Dole (R-KS, 1974–1996), who served in a number of leadership positions in the Senate, once said the letter “P” was missing from his title, “Majority Pleader.”

The Senate whips serve much the same purpose as their House counterparts. They keep a tally of party members’ voting intentions and try to maintain party discipline. The conference chair also serves the same function in the Senate as in the House, overseeing party matters.

## Committees

Committees are not mentioned in the Constitution, but they have been fixtures in Congress since it first met. Smaller groups can tackle tough issues and draft more precise laws than the entire House or Senate can. Committees allow lawmakers to put their expertise to use, and they make moving legislation manageable. The intricate committee system handles a vast amount of legislation. Committees dealing with finance, foreign relations, the judiciary, and other common topics have become permanent. The Democrats and

### Leadership in Congress



The Congressional leadership represented above results from a mix of party- and constitutionally defined positions. The Speaker is in charge in the House, while the majority leader has much control and influence in the Senate.



Republicans can create their own private committees, such as the House Democratic Congressional Campaign Committee or the National Republican Senatorial Committee, to further party goals and help elect party members to each house, especially through fundraising. Those two groups cannot, however, create law or policy. The committees discussed below, however, are public, lawmaking groups that play key roles in the legislative process in both houses.

**Standing Committees** Permanent committees focused on a particular subject and authorized under the rules of each house are called **standing committees**. Members of Congress can specialize on a few topics and become experts in these areas. For example, the House Energy and Commerce Committee has wide authority on utilities and gasoline, as well as almost any business matter. The Committee on Transportation and Infrastructure oversees the creation and maintenance of U.S. highways.

Standing committee members discuss and either polish or reject a variety of bills. The committees are chaired by a senior experienced member in the majority party or someone assigned for political, ideological, or diversity-related reasons. The vice chair or “ranking member” is the senior committee member in the minority party. The majority party always holds the majority of seats on each committee and therefore controls the flow of legislation, because a bill must first clear committee with a majority vote before it can move to the entire House or Senate for a vote. (See *How a Bill Becomes Law* on page 97.)

The Senate’s committees often hold confirmation hearings for presidential appointments. For example, a nominated secretary of defense must appear before the Armed Services Committee to answer individual senators’ questions. After this hearing, a majority can recommend the nominee to the full Senate for approval. The **House Judiciary Committee** drafts crime bills that define illegal behavior and outline appropriate punishments. It also handles impeachments. In 1974, the House Judiciary Committee voted 27 to 11 to recommend impeachment of President Richard Nixon. He resigned before the entire House took a vote.

Many representatives and senators want to be appointed to the powerful Ways and Means Committee in the House and the Budget Committee in the Senate. However, they also seek appointments to particular committees because they likely arrive in Congress with an expertise in a certain field, or they come from a state or district that has a high interest in certain congressional matters. For example, more than 100 members of Congress have served in the Armed Forces and likely want to shape Congress’s military policy. Some lawmakers arrive with high-level business experience and therefore want to employ their experience in commerce or international trade law. Longtime members serve on a variety of committees and influence the decisions of some powerful ones.

The parties recommend certain members for committee assignments, but ultimately each full house votes to approve committee membership. The Democrats and Republicans each have a committee for the purpose of assigning members to standing committees to create favorable bills and to

develop legislative strategy. The Democrats' **Steering and Policy Committee** and the Republicans' **Committee on Committees** both determine which of their members are assigned to the standing committees. "The campaign for committee assignments," recalls Senator Sherrod Brown (D-OH, 2007–), "is the most important task a new member performs between November and January."

Most standing committees are within one chamber, but a few permanent **joint committees** exist that unite members from the House and Senate, such as one to manage the Library of Congress and the Joint Committee on Taxation. Members of these committees do mostly routine research-based activities.

**Temporary Committees** In addition to the standing committees, both houses form **select committees** periodically for some particular and typically short-lived purpose. A select or special committee is established "for a limited time period to perform a particular study or investigation," according to the U.S. Senate's online glossary of terms. "These committees might be given or denied authority to report legislation to the Senate." Notable select committees have investigated major scandals and events, such as the 2012 terrorist attack on the U.S. Consulate in Benghazi, Libya. These groups also investigate issues to determine if further congressional action is necessary. Recently the House created a select committee on Energy Independence and Global Warming. Select committees can be exclusive to one house, or they can combine members from both.

**Conference committees** are created temporarily to iron out differences on bills that passed each house but in slightly different forms. When two similar bills pass each house, usually a compromise can be reached. Members from both houses gather in a conference committee for a **markup session**, a process by which the bill is altered. The final draft must pass both houses to go on to receive the president's signature.

In addition to creating bills and confirming presidential appointments, committees also oversee how the executive agencies administer the laws Congress creates. Congress authorizes entire departments and agencies to carry out the law. Congress authorized the State Department in 1789 and defined its diplomatic mission. In the early 1900s, Congress authorized the Federal Bureau of Investigation to arrest federal criminals. More recently, Congress authorized the Transportation Security Administration (TSA) to inspect airline passengers and their belongings before takeoff.

Therefore, Congress, through its committees, conducts **congressional oversight** to ensure that executive branch agencies, such as the FBI or the TSA, are carrying out the policy or program as defined by Congress. When corruption or a less than adequate job is suspected, committees call agency directors to testify. Other oversight hearings may simply be fact-finding exchanges between lawmakers and cabinet secretaries or agency directors about congressional funding, efficiency, or just general updates. (See pages 172–174 for more on congressional oversight.)

COMMITTEE TYPES	
<b>Standing:</b>	Permanent committees that handle most of Congress's work
<b>Joint:</b>	Members of both houses that address a long-term issue or program
<b>Select or Special:</b>	Temporary committee that handles a particular issue or investigation
<b>Conference:</b>	House and Senate members who reconcile similar bills

**Caucuses** In addition to formal, policymaking committees, Congress also contains nongovernmental groups of like-minded people organized into **caucuses**. These groups usually unite around a particular belief. Each party has a group in each house—the Democratic Caucus or the Republican Party Conference—which includes basically the entire party membership within that house. These groups gather to elect their respective leaders, to set legislative agendas, and to name their committee members. Many other smaller caucuses are organized around specific interests, even some that cross party lines, such as agriculture, business, or women's issues. Members can belong to multiple caucuses. Caucuses can have closed-door meetings and can draft legislation, but they are not officially part of the lawmaking process. Since legislators are members of both caucuses and committees, they can formulate ideas and legislative strategy in the caucuses, but any bill becoming a law would first go through the official, public committee system.

With their longer terms, Senators can build longer-lasting coalitions and working relationships. Although reelection rates tend to be high, House members with their shorter terms have more changeable coalition members.

**Support Staff** Today, each senator employs an average of 40 staffers, and each House member has about 17. Some of these assistants answer constituents' phone calls from a district office in their home state. Most work on Capitol Hill in a complex network that supports the legislative process. Senators and representatives can assign various titles and responsibilities to their staffers. Most will have a chief of staff (the lawmaker's chief aide), one or more communications experts, and constituent liaisons. Legislative assistants familiarize their boss with details on large bills. Press secretaries connect with the media and schedule interviews. Most Washington staffers are willing to work long hours for relatively low pay. Some staffers become so experienced in the legislative process that they become members of Congress themselves.

### ***Committees and Rules Unique to the House***

While the House and Senate have much in common in their overall structure, key differences influence the policymaking process in each chamber. For example, the difference in size and constituencies influences the formality of debate on bills in each chamber. Both chambers follow the parliamentary procedure outlined in Robert's Rules of Order, guidelines for conducting discussion and reaching decisions in a group. With so many members representing so many legislative districts, however, the House has rules that limit debate. A member

may not speak for more than an hour. In certain situations, individual speaking time may be limited even more. In some cases, there is a limit set for debate on a measure by the entire membership. Further, speakers are required to offer only *germane* amendments to a bill, changes that relate specifically to the legislation under consideration.

The presiding officer—the Speaker of the House or someone he or she appoints—controls who speaks. House members address all their remarks to “Madam Speaker” or “Mister Speaker” and refer to their colleagues by the state they represent, as in “my distinguished colleague from Iowa.” The control the presiding officer enjoys and other structural practices help make the large House of Representatives function with some efficiency.

Central to this efficiency are the House **Ways and Means Committee** and the **Rules Committee**. Ways and Means, a committee exclusive to the House, determines tax policy. The Ways and Means Committee is first to outline details when proposals are put forward to raise or lower income taxes.

The Rules Committee is also very powerful. It can easily dispose of a bill or define the guidelines for debate because it acts as a traffic cop to the House floor. Nothing reaches the floor for debate unless the Rules Committee allows it. The Rules Committee generally reflects the will and sentiment of House leadership and the majority caucus. The majority members on the Rules Committee typically outnumber the minority by two to one.

The House Rules Committee has an impact on every House bill because it assigns bills to the appropriate standing committees, schedules bills for debate, and decides when votes take place. It helps centralize the power in the House and establish a hierarchy that increases the efficiency of such a large body of lawmakers. The Rules Committee has the authority to alter standing rules of procedure. And because debate time is limited in the House, the Rules Committee decides for how much time a bill can be debated and how many, if any, amendments may be added to the bill. It can itself amend or rewrite a bill. The entire House must vote to make it law, but the Rules Committee is powerful in that this small group wields great power in determining what other members can or cannot vote on.

The **Committee of the Whole** is also unique to the House. It includes but does not require all the representatives. However, the Committee of the Whole is more of a state of operation in which the House rules are relaxed than an actual committee. It was created to allow longer debate among fewer people and allow members to vote as a group rather than in an individual roll call. Additionally, the otherwise nonvoting delegates from U.S. territories can vote when present during the Committee of the Whole. Only 100 members must be present for the Committee of the Whole to act. When it has finished examining or shaping a bill, the Committee “rises and reports” the bill to the House. At that point the more formal rules of procedure and voting resume, and, if a quorum is present, the entire House will vote on final passage of the bill.

A modern device that functions as a step toward transparency and democracy in the House is the **discharge petition**. The discharge petition can bring a bill out of a reluctant committee. The petition's required number of signatures has altered over the years. It now stands at a simple majority to discharge a bill out of committee and onto the House floor. Thus, if 218 members sign, no chair or reluctant committee can prevent the majority's desire to publicly discuss the bill. This measure may or may not lead to the bill's passage, but it prevents a minority from stopping a majority on advancing the bill and is a way to circumvent leadership.

### ***Rules and Procedures Unique to the Senate***

The Senate is much less centralized and hierarchical than the House. With its smaller size, the Senate does not have the same restrictions on debate as the House. Senators can speak for as long as they like if the presiding officer—the vice president, a senator chosen for the job, or even a Supreme Court Justice—gives them the floor to speak. However, the presiding officer has little control over who speaks when, since he or she must recognize anyone who stands to speak, giving priority to the leaders of the parties. Like representatives, senators are not allowed to directly address anyone but the presiding officer. They refer to other senators in the third person (“the senior senator from Illinois,” for example).

Unlike House members, senators are not limited to proposing germane amendments. They can add amendments on any subject they want. Senators also have strategic ways to use their debate time. For example, they may try to stall or even kill a bill by speaking for an extremely long time, using the **filibuster**, to let the time run out on a deadline for voting for a bill or to wear down the opposition. In contrast, the only House members who are allowed to speak as long as they want are the Speaker of the House, the majority leader, and the minority leader. On February 6, 2018, House Minority Leader Nancy Pelosi spoke for eight hours straight in support of protections for people who were brought into the country illegally when they were children, the so called “DREAMers.” (See page 171.) She could not take a seat or a bathroom break for the entire time or else she would have had to yield the floor.

The Senate also uses measures that require higher thresholds for action than the House and that slow it down or speed it up. These include **unanimous consent**—the approval of all Senators—and the **hold**, a measure to stall a bill. When the Senate takes action, unanimous consent is typically requested as a way to suspend the rules and limit debate. If anyone objects, the motion is put on hold or at least stalled for discussion, because an objection often signals the possibility of a filibuster. For years senators abused this privilege, since a few senators, even one, could stop popular legislation. Then and now, senators can place a hold on a motion or on a presidential appointment.



Delaying legislation in this way brought about changes in the rules. As the United States stepped closer to war in 1917, President Woodrow Wilson called for changes in Senate procedures so that a small minority of senators could not block U.S. action in arming merchant ships for military use. A filibuster had blocked his armed neutrality plan before America's entrance into World War I. President Wilson was enraged. The Senate, he said, "is the only legislative body in the world which cannot act when its majority is ready for action. A little group of willful men," Wilson went on, "have rendered the great government of the United States helpless."

Wilson called the Senate into special session and demanded the rules change. The Senate created Rule 22, or the **cloture rule**, which enabled and required a two-thirds supermajority to close up or stop debate on a bill and call for a vote. In 1975, the Senate lowered the standard to three-fifths, or 60 out of 100 senators. Cloture for breaking a filibuster on nominees to courts requires just a simple majority. Once cloture is reached, each senator has the privilege of speaking for up to one hour on that bill or topic.

**Foreign Policy Functions** While both houses have a foreign affairs committee, the Senate has more foreign relations duties than does the House. The framers gave the upper house the power to ratify or deny treaties with other countries. The Senate also approves U.S. ambassadors. In *Federalist No. 75*, Hamilton argued for the Senate, not the House, to handle treaties and foreign affairs due to its continuity. "Because of the fluctuating and . . . multitudinous composition of [the House, we can't] expect in it those qualities . . . essential to the proper execution of such a trust." The chairman of the Senate Foreign Relations Committee works with the president and secretary of state to forge U.S. foreign policy.

SELECTED CONGRESSIONAL COMMITTEES AND KEY POLICY FOCUS IN THE 115 <sup>TH</sup> CONGRESS	
House	Senate
<b>Ways &amp; Means</b> Determines tax policy	<b>Finance</b> Oversees spending and budgeting
<b>Rules</b> Determines House proceedings	<b>Armed Services</b> Oversees the military
<b>Armed Services</b> Oversees the military	<b>Foreign Relations</b> Guides U.S. foreign policy
<b>Judiciary</b> Drafts crime bills, impeachments	<b>Judiciary</b> Confirms judges, oversees courts
<b>Energy &amp; Commerce</b> Regulates energy and business	<b>Agriculture, Nutrition, and Forestry</b> Addresses farming, food, and nature

In 2018, there were 21 standing committees in the House and 16 in the Senate.



## The Legislative Process

In addition to the customs and procedures of the leadership structure, formal committees, and informal groups in Congress, there are designed differences in the two houses, defined leaders, and lawmaking procedures each house has developed that guide policymaking and legislative mores. Both bodies have defined additional leaders that guide floor debate, assure party discipline, and serve as liaisons to the opposing party, to the president, and to the media. The framers declared in Article I that each house would determine its own rules as further assurance of a bicameral system. The House and Senate have done just that over the years to shape how ideas become federal policy.

### *Introducing and Amending Bills*

Only House or Senate members can introduce a bill. Today, however, the actual authors of legislation are more often staffers with expertise, lobbyists, White House liaisons, or outside professionals. When a bill's **sponsor** (the member who introduces it and typically assumes authorship) presents it, the bill is officially numbered. Numbering starts at S.1 in the Senate or H.R.1 in the House at the beginning of each biennial Congress. A bill can originate in either chamber (except for tax bills, which must originate in the House), but an identical bill must pass both houses and the president must sign it for the bill to become law. However, if the president vetoes a bill by not signing it within a certain time, Congress can override the veto and the bill can still become law. (See page 96 for more on the presidential veto and congressional override.)

Several events take place in the process, creating opportunities for a bill to drastically change along the way. Additional ideas and programs usually are attached to the original bill. How each house, the president, and the public view a bill will determine its fate. The rough-and-tumble path for legislation often leads to its death. In a typical two-year Congress, more than 10,000 bills are handled, introduced, and referred to committee, but only about 300 to 500 new laws are passed during that time.

In the House, amendments to bills typically must first be approved by the committee overseeing the bill. The amendments in the House must also be **germane**—directly related to the topic of the bill.

In the Senate, an individual senator can introduce an amendment to a bill on the floor. In the Senate, the additional points of a law may not even relate to the original. These are called **non-germane amendments**, or **riders**. These **riders**, additional bills that ride onto an often unrelated bill, are often added to benefit a member's own agenda or programs or to enhance the political chances of the bill. Morris ("Mo") Udall, a representative from Arizona from 1961 to 1991, once expressed frustration when he had to vote against his own "Udall bill," because with riders it had evolved into legislation he eventually opposed.

When a bill grows to mammoth size and takes care of several facets of law or addresses multiple programs, it is referred to as an **omnibus bill**. A long string of riders will earn the nickname "Christmas Tree bill," because it often

delivers gifts in the form of special projects a legislator can take home, and, like the ornaments and tinsel on a Christmas tree, the “decorations” so many legislators added to the bill give it an entirely different look.

One product of these legislative add-ons is **pork barrel spending**. When funds are directed to a very specific purpose, such as building a senior citizen center in a legislator’s district, the spending is called an **earmark**. Federal dollars are spent all across the nation to fund construction projects, highway repair, new bridges, national museums and parks, university research grants, and other programs. Members of Congress try to send federal dollars back to their district—which some people refer to as “bringing home the bacon.” Riders are sometimes inserted onto bills literally in the dark of night by a powerful leader, sometimes within days or hours before a final vote to avoid debate on them.

Constituents who benefit from pork barrel spending obviously appreciate it. Yet, in recent years the competition for federal dollars has tarnished Congress’s reputation. Citizens Against Government Waste reported an explosion of earmarks from 1994 to 2004. Congress passed more than five times as many earmark projects, and spending rose from \$10 billion to \$22.9 billion.

The most egregious example of pork barrel politics came when Alaska Senator Ted Stevens added a rider to a bill whose primary purpose was to fund and provide armor for U.S. troops in Iraq. The rider called for sending more than \$400 million dollars to Stevens’s state to build a bridge to connect the Alaska mainland to an island with 60 inhabitants. Critics dubbed the construction project “The Bridge to Nowhere.”

In 2011, President Obama said he would veto any bill with earmarks, and soon after that the Senate Appropriations Committee instituted a ban on them. In 2018, President Trump suggested that bringing them back might help bills get passed, but many conservatives disagreed, expressing a desire to see a continued ban on the “pet projects” that have led to wasteful government spending.

### ***Assigning Bills to Committee***

The Senate majority leader and the House Rules Committee assign bills to committees in their respective chambers. Sometimes multiple committees have overlapping jurisdiction. A military spending bill may be examined by both the Armed Services Committee and the Appropriations Committee. In that case, the bill may be given **multiple referral** status, allowing both committees to address it simultaneously. Or it might have **sequential referral** status, giving one committee priority to review it before others. Frequently, subcommittees with a more narrow scope are involved.

In committee, a bill goes through three stages: hearings, markup, and reporting out. If the committee is “ordering the bill,” the bill is under consideration. Hearings, expert testimony, and thorough discussion of the bill will take place. The chair will call for a published report, a summary,

and analysis of the proposal with views of the other participants, such as the executive branch or interest groups, also included. Then the bill goes through markup, a process by which committee members amend the bill until they are satisfied. Once the bill passes the vote in the committee, the ratio of “yeas” to “nays” often speaks to the bill’s chances when it is “reported out” on the House or Senate floor for debate. Further amendments are likely added. From this point, many factors can lead to passage, and many more can lead to the bill’s failure.

The committee chair can also “pigeonhole” a bill—decide not to move it forward for debate until a later time, if at all.

### **Voting on Bills**

Many legislators say one of their hardest jobs is voting. Determining exactly what most people want in their home state is nearly impossible. Legislators hold town hall meetings, examine public opinion polls, hold focus groups, and read stacks of mail and emails to get an idea of their constituents’ desires. Members also consider a variety of other factors in deciding how to vote.

“Very often [lawmakers] are not voting for or against an issue for the reasons that seem apparent,” historian David McCullough once explained. “They’re voting for some other reason. Because they have a grudge against someone . . . or because they’re doing a friend a favor, or because they’re willing to risk their political skin and vote their conscience.”



*Source: Department of Defense, Staff Sgt. Sean K. Harp*

Here the secretary of defense and another ranking Pentagon official testify before a House Appropriations subcommittee.

There are multiple views on what guides members' votes. Most members use a partisan model, following the general beliefs of their party. Party leaders encourage members to follow the party-line vote, especially if political favors are expected. Other members are ideologically aligned with certain groups who back them at election time. Those following the lead of their party or some other group are operating in an organizational way.

**Logrolling**—trading votes to gain support for a bill—is another factor affecting lawmaking. By agreeing to back someone else's bill, members can secure a vote in return for a bill of their own.

Those members trying to reflect the will of their constituency, especially in the House, follow the **delegate model**. At a town hall meeting in one member's district, an irritated and upset constituent shot down his representative's explanation for an unpopular vote. "We didn't send you to Washington to make intelligent decisions," the angry voter said, "we sent you to represent us." That representation can be *substantive*—that is, advocating on behalf of certain groups of constituents—or it can be *descriptive*, advocating not only for the views of constituents but also for the factors that make those constituents unique, such as geography, occupation, gender, and ethnicity.

Some members, especially in the Senate, use the **trustee model**. Representatives believe they are entrusted by their constituency to use their best judgment, regardless of how constituents may view an issue. This approach sidesteps any concern over an uninformed constituency reacting from emotion rather than reason and knowledge.

The **politico model** attempts to blend the delegate and trustee models. That is, they consider a variety of factors and decide their action or vote for whatever political calculations make the most sense to them at the time, especially when there seems to be a low degree of public opinion. On matters generating strong public opinion, the politico model would have representatives take those opinions strongly into account.

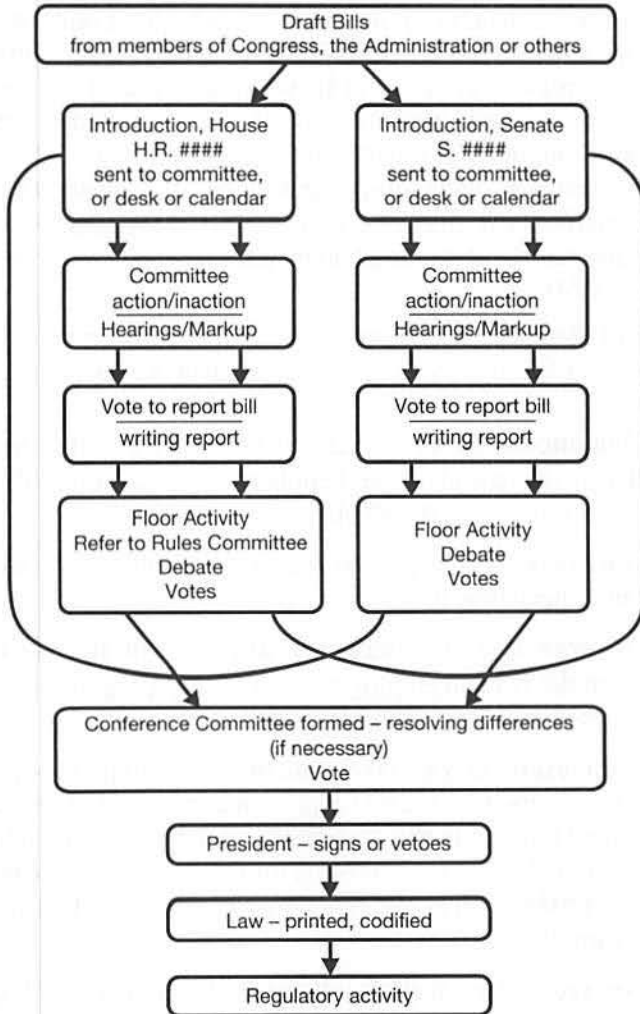
### ***Overriding a Presidential Veto***

Once both chambers of Congress have secured a majority vote on an identical bill, it goes to the president for signing. As part of the system of checks and balances, the president can veto (or reject) the bill by refusing to sign it within 10 days of receiving it (excluding Sundays). Congress can override a presidential veto if two-thirds of each house approve the bill. (For more on the presidential veto power, see page 129.)

### ***Generating a Budget***

One of the most important votes congressional members take is on the question of how to pay government costs. The budgeting process is a complicated, multistep, and often year-long process that begins with a budget proposal from the executive branch and includes both houses of Congress, a handful of agencies, and interest groups. (See pages 542–544 for how competing actors influence the national budget.)

## How a Bill Becomes a Law



In the 1970s, Congress created the Office of Management and Budget (OMB) and established the budgeting process with the Congressional Budget and Impoundment Control Act (1974). The OMB is the president's budgeting arm. Headed by a director who is essentially the president's accountant, the OMB considers the needs and wants of all the federal departments and agencies, the fiscal and economic philosophy of the president, federal revenues, and other factors to arrange the annual budget. This spending plan is for the fiscal year (FY), the time frame from October 1 through September 30. For example, FY 2018 began on October 1, 2017, and ended on September 30, 2018. The president typically makes the budget plan public and sends it to Congress in early February so it can be finalized by the time the new fiscal year begins on October 1.

The 1974 act also defines the stages in *reconciling* the budget—passing changes to either revenue or spending by a simple majority in both houses with only limited time for debate—a process that can be used only once a year. It calls for Congress to set overall levels of revenues and expenditures, the size of the budget surplus or deficit, and spending priorities. Each chamber also has an appropriations committee that allots the money to federal projects. The Senate Finance Committee is a particularly strong entity in federal spending. Congress also created a congressional agency made of nonpartisan accountants called the Congressional Budget Office (CBO). This professional staff of experts examines and analyzes the budget proposal and serves as a check on the president’s OMB.

**Sources of Revenue** For fiscal year 2019, the government expected to take in about \$3.4 trillion. Every year, government revenue comes from five main sources:

- **Individual income taxes**—taxes paid by workers on the income they made during the calendar year. People pay different rates of taxes depending on their income level.
- **Corporate taxes**—taxes paid by businesses on the profits they made during the calendar year
- **Social insurance taxes (sometimes called payroll taxes)**—taxes paid by both employees and employers to fund such programs as Social Security, Medicare, and unemployment insurance
- **Tariffs and excise taxes**—taxes paid on certain imports or products. The tariff on imports is meant to raise their price so U.S.-made goods will be more affordable and competitive. Excise taxes are levied on specific products—luxury products, for example, or products associated with health risks, such as cigarettes—as well as on certain activities, such as gambling.
- **Other sources**—these include interest on government holdings or investments and estate taxes paid by people who inherit a very large amount of money.

The table on the next page shows the percentage of revenue from each category between 1950 and 2020.



CATEGORIES OF GOVERNMENT REVENUE					
FY	Individual Income Tax	Corp. Income Tax	Social Insurance and Retirement (Payroll taxes)	Excise	Other
	% of total revenue	% of total revenue	% of total revenue	% of total revenue	% of total revenue
1950	39.9	26.5	11	19.1	3.4
1960	44	23.2	15.9	12.6	4.2
1970	46.9	17	23	9.2	5
1980	47.2	12.5	30.5	4.0	4.8
1990	45.2	9.1	36.8	3.4	5.4
2000	49.6	10.2	32.2	3.4	4.5
2010	41.5	8.9	40	3.1	6.5
2020 (est)	49.6	7.3	35.7	3.1	4.2

Source: US Government Publishing Office, 2019 Budget

As you can see, the highest percent of government revenue comes from individual income taxes.

**Government Spending** The budget for fiscal year 2019 called for spending \$4.4 trillion. Each year spending falls into three categories: mandatory spending, interest on debt, and discretionary spending.

**Mandatory spending** is expenditures required by law, or mandated, for certain programs. These programs include Social Security, Medicare, Medicaid, unemployment insurance, and other special funds for people in temporary need of help. Congress has passed laws determining the eligibility for these programs and the level of payments, so on the basis of those laws mandatory spending happens automatically. Of the \$4.4 trillion, mandatory spending for 2019 was expected to be \$2.7 trillion, more than 60% of the federal budget.

You may have noticed that the expected revenue for 2019 was \$3.4 trillion, while the expected outlay was \$4.4 trillion. The difference between spending and revenue, close to a trillion dollars in 2019, is the **deficit**. As in previous years, the government has to borrow money to pay that deficit, and each year's loans add to the already large national debt of \$20 trillion. The interest payments on that huge debt, \$363 billion in 2019, must also be paid out of each year's revenue. Some consider interest on debt as mandatory spending, since the government must pay its creditors or risk default, which would result in a serious financial crisis.

**Discretionary spending**—about 38 percent of the 2019 budget—pays for everything else. These are the funds that congressional committees debate and decide how to divide up. The chart on the next page shows the percentage of government spending from 1950 to 2020 in various categories.

CATEGORIES OF GOVERNMENT SPENDING						
FY	Defense (Military)	Human Resources*	Physical Resources**	Interest on Debt	Other Functions***	Undistributed offsetting receipts****
	% of total revenue	% of total revenue	% of total revenue	% of total revenue	% of total revenue	% of total revenue
1950	32.2	33.4	8.6	11.3	18.7	-4.3
1960	52.2	28.4	8.7	7.5	8.4	-5.2
1970	41.8	38.5	8.0	7.4	8.8	-4.4
1980	22.7	53	11.2	8.9	7.6	-3.4
1990	23.9	49.4	10.1	14.7	4.8	-2.9
2000	16.5	62.4	4.7	12.5	6.4	-2.4
2010	20.1	69	2.6	5.7	5.0	-2.4
2020 (est)	15.9	69.8	3.0	9.7	3.6	-2.0

Source: US Government Publishing Office, 2019 Budget

\* Includes Education, Health and Human Services, Housing and Urban Development, and mandatory spending on Social Security, Medicare, Income Security, and Veterans Benefits and Services

\*\* Includes Energy, Natural Resources and Environment, Commerce and Housing Credit, Transportation, Community and Regional Development

\*\*\* Includes International Affairs; Science, Space, and Technology; Agriculture; Administration of Justice; General Government

\*\*\*\* Includes government earnings on oil and gas leases and collection of funds from government agencies for their employees' retirement and other benefits



Source: U.S. Department of Veterans Affairs

In 2013, Senator Ted Cruz (R-TX) presented a flag in Austin, Texas, to the oldest living World War II veteran. Veterans' benefits are part of the Human Resources spending category in the government budget.

As the chart shows, military spending is the largest category of discretionary spending. In 2019 it accounted for more than half of discretionary spending. All the rest of discretionary spending needs must be met by what remains.

Between 1950 and 2020, government spending in the Human Resources category, most of which is mandatory, has grown from about 30 percent of revenue to about 70 percent. That increase needs to be balanced with a decrease in discretionary spending (a trend you can see in the chart in the Defense, Physical Resources, and Other Functions categories) or an increase in revenue or national debt. Conservatives tend to argue that people's tax burden is already significant and that instead of raising taxes or increasing debt, the government should pass laws that reduce the social programs that are responsible for most mandatory spending. Liberals tend to argue that rich people can bear a burden of higher taxes—historically the rich have paid taxes at a higher rate than they do today—and that the mandated social programs serve a vital function in an economy with a vastly unequal distribution of wealth. These principles, as well as pressures from a variety of interest groups (see pages 542–544), are behind the annual push and pull of budget negotiations in Congress.



#### THINK AS A POLITICAL SCIENTIST: EXPLAINING CAUSES AND EFFECTS

Political scientists use their knowledge of political processes and institutions along with data available each year to understand changes in the patterns of government revenue and spending. They identify trends and then look for causes for these trends, reasons for the causes and/or effects, the significance of the causes and/or effects, and the implications of the changes over time. Being able to explain causes and effects is necessary for devising solutions to the many challenges facing government.

**Practice:** Complete the following activities.

1. Study the table of revenue over time on page 99 and identify one downward trend and one upward trend.
2. Use your knowledge of governmental budgeting to explain the cause for each of those trends.
3. Study the table of government spending over time on page 100 and identify the only spending category that has consistently risen.
4. Explain why the other categories of spending decreased.
5. Explain the significance of the changes over time in federal spending and their effect on possible directions the federal budget might take in the future.

## DIFFERENCES BETWEEN HOUSE AND SENATE

	House of Representatives	Senate
Qualifications	<ul style="list-style-type: none"> <li>• At least 25 years old</li> <li>• Citizen for past 7 years</li> <li>• Resident of state they represent when elected</li> </ul>	<ul style="list-style-type: none"> <li>• At least 30 years old</li> <li>• Citizen for past 9 years</li> <li>• Resident of state they represent when elected</li> </ul>
Powers	<ul style="list-style-type: none"> <li>• Originates revenue bills</li> <li>• Impeachment</li> </ul>	<ul style="list-style-type: none"> <li>• Provides "advice and consent" on treaties and presidential appointments</li> <li>• Handles trial of impeached officials</li> </ul>
Members and Terms	<ul style="list-style-type: none"> <li>• 435 members</li> <li>• 2-year terms</li> </ul>	<ul style="list-style-type: none"> <li>• 100 members</li> <li>• 6-year terms</li> </ul>
Structures and Processes	<ul style="list-style-type: none"> <li>• Centralized and hierarchical</li> <li>• Rules Committee (majority party) controls agenda</li> <li>• Limited debate time</li> <li>• Powerful Speaker of the House</li> <li>• Focus on revenue and spending</li> </ul>	<ul style="list-style-type: none"> <li>• Less centralized</li> <li>• Committees do not have as much authority</li> <li>• Looser debate (filibuster allowed but limited by cloture vote)</li> <li>• Focus on foreign policy</li> <li>• Leaders less powerful except for the powerful majority leader</li> </ul>

## Influences on Congress

The effectiveness of Congress is determined by an array of factors. Some of the most important are the ideological division of its members, the changing nature of the job, the citizens lawmakers represent, and the way lawmakers represent them. Intensifying partisanship has caused **gridlock**—so much "congestion" of opposing forces that nothing can move forward—within each house and between the Congress and the president. Also, the reshaping of House voting districts has created one-party rule in several regions, making winning legislative seats too easy for some members and unreachable for those from the opposite party. Bitter election contests and longer campaign periods have put Republican and Democratic members at further odds. And legislators' differing approaches in determining their congressional votes has shaped the institution and influenced how Congress acts.

### *Partisanship and Polarization*


The legislature has developed into a partisan and sometimes uncivil institution. A variety of factors has driven a wedge between liberal and conservative members and has placed them at points farther from the middle on each end of the ideological spectrum. From the 1950s into the 1970s, political scientists

complained that on many issues it was difficult to tell the parties apart. As Republicans retired, more conservative Republicans replaced them. Southern Democrats, once a moderating force in the Congress, have all but disappeared. Party-line voting is much more common than it once was, and straying from party positions has become dangerous for those interested in reelection.

**Reduced Member Interaction** Changes in the law have enhanced members' ability to connect with their constituents, especially with regular taxpayer-funded flights from Washington back to their home states or districts. This allowance has discouraged elected members from moving families to the nation's capital. It takes lawmakers away from Washington and from colleagues in the opposite party on weekends. The constant travel allows for few bipartisan friendships to develop. Also, the need to constantly campaign has resulted in a hectic workweek, which ends with a weekend exodus from D.C. A generation ago, representatives and senators overlooked ideological difference in their personal encounters. "Despite our various disagreements in the House," Speaker Tip O'Neill once reflected, "we were always friends after six o'clock and on weekends."

**Redistricting** One phenomenon that affects House membership is the reshaping of congressional districts every ten years. State legislatures must alter congressional district maps to reflect population changes determined by the U.S. Census. The **redistricting** process in each state can be competitive and contentious and has increased partisanship and decreased accountabilities. The party in power in the state legislature ultimately determines the new statewide map of congressional districts and does so to benefit the party in the following election.

How district boundaries are drawn has an enormous impact on levels of democratic participation and the makeup of the House of Representatives, which in turn has an enormous impact on public policy. Until the 1960s, legislative districting was regarded as having too much political and partisan conflict for the Supreme Court to get involved, since the Court's reputation of neutrality is vital to its authority. However, a landmark decision in 1962 opened the door for the Supreme Court to play a role in making legislative districts as democratic as possible.



### MUST-KNOW SUPREME COURT DECISIONS: *BAKER V. CARR* (1962)

**The Constitutional Question Before the Court:** Can the Supreme Court render judgment on the constitutionality of legislative districts?

**Decision:** Yes, for Baker, 6:2

**Before Baker:** In 1946, the Court decided in *Colegrove v. Green* that if a state legislature wasn't dividing up congressional districts fairly, it was the people's duty to force the legislature's hand or to vote the legislators out

of office. Political scientist Kenneth Colegrove of Northwestern University had brought suit against Illinois officials to stop the upcoming election, because the congressional districts, Colegrove said, lacked "compactness of territory and approximate equality of population." The Supreme Court held that the districts were constitutional, since no law required districts to be compact and equal in population. Justice Frankfurter went further, stating the redistricting process was an issue that would take the court into the "political thicket," a place it shouldn't go.

**The Facts:** A Tennessee law from 1901 laid out guidelines for redrawing state legislative boundaries, and the state constitution required redistricting every 10 years based on census reports. However, the legislature had failed to redraw the state's 95 voting districts since the census of 1900 and instead had continued to apply the apportionment guidelines from the 1901 law. Over the years, the cities of Nashville, Memphis, Chattanooga, and Knoxville grew, while rural areas developed much more slowly. As a result, the rural areas kept much lower constituent-to-lawmaker ratios. This disparity strengthened some rural citizens' votes and diluted those of some urban voters. For example, one-third of the voters living in the rural areas were electing two-thirds of the state's legislators, so citizens in these districts had a stronger voice on Election Day than voters in the urban districts. In the most extreme cases, some voters had one-twentieth the voting power of other citizens. This practice resulted in minority rule, an outcome in conflict with democratic principles of majority rule and fair representation, since a minority of voters had the majority of voting power. Yet legislators were dissuaded from voting for new maps because they could lose power in the redistricting.

In 1959, Charles Baker and several other litigants sued the Tennessee secretary of state—typically a state's chief election official—because the populations in various state legislative districts varied greatly. The fact that one person's vote was not necessarily equal to another person's vote, Baker said, violated the equal protection clause of the Fourteenth Amendment.

**Reasoning:** Based on this political inequality, the petitioner wanted the question for the Court to be, "Do Tennessee's outdated and disproportionately populated legislative districts violate the equal protection clause of the Fourteenth Amendment?" But the Court, having decided in *Colegrove*, had to first address the question of its jurisdiction. Was the issue a *political* question, one for the legislature and ultimately the people to decide, or was it a *justiciable* question, a question capable of being answered with legal reasoning and therefore within the Court's jurisdiction?

The Court decided the matter was justiciable and ruled that the Court can intervene when states do not follow constitutional principles in defining political borders, since those practices undermine the democratic ideal of an equal voice for all voters. The Court also developed a set of six criteria for determining when a question is political and therefore outside of the realm of the Court. But it gave no judgment on the uneven districts and let the lower courts then determine if in fact an inequality existed.

Chief Justice Earl Warren served from 1953–1969, overseeing a number of dramatic landmark cases that protected civil liberties and promoted civil rights.



Yet he said after he retired that *Baker v. Carr* was the most important case during his tenure. It helped established the “one person-one vote” principle that greatly expanded democratic participation and the voting rights of minorities.

**The Court’s Majority Opinion by Mr. Justice William Brennan:**

... [W]e hold today only (a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief, and (c) because appellees raise the issue before this Court, that the appellants have standing to challenge the Tennessee apportionment statutes. Beyond noting that we have no cause at this stage to doubt the District Court will be able to fashion relief if violations of constitutional rights are found, it is improper now to consider what remedy would be most appropriate if appellants prevail at the trial . . .

... the 1901 statute constitutes arbitrary and capricious state action, offensive to the Fourteenth Amendment in its irrational disregard of the standard of apportionment prescribed by the State’s Constitution or of any standard, effecting a gross disproportion of representation to voting population. The injury which appellants assert is that this classification disfavors the voters in the counties in which they reside, placing them in a position of constitutionally unjustifiable inequality vis-a-vis voters in irrationally favored counties. A citizen’s right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution when such impairment resulted from dilution by a false tally, or by a refusal to count votes from arbitrarily selected precincts, or by a stuffing of the ballot box . . .

We conclude that the complaint’s allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision.

Justice Felix Frankfurter and Justice John Marshall Harlan II dissented pointedly, arguing that the decision overturned well established precedents and overstepped the separation of powers between Congress and the Court.

**Dissenting Opinion by Mr. Justice Felix Frankfurter with which Justice John Marshall Harlan II joined:**

The Court today reverses a uniform course of decision established by a dozen cases, including one by which the very claim now sustained was unanimously rejected only five years ago [in *Colegrove*] . . . Such a massive repudiation of the experience of our whole past in asserting destructively novel judicial power demands a detailed analysis of the role of this Court in our constitutional scheme. Disregard of inherent limits in the effective exercise of the Court’s “judicial Power” . . . presages the futility of judicial intervention in the essentially political conflict of forces by which the relation between population and representation has time out of mind been, and now is, determined . . . The Court’s authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court’s complete detachment, in fact and in appearance, from political

entanglements and by abstention from injecting itself into the clash of political forces in political settlements. . . .

To charge courts with the task of accommodating the incommensurable factors of policy that underlie these mathematical puzzles is to attribute, however flatteringly, omniscience to judges. The Framers of the Constitution persistently rejected a proposal that embodied this assumption, and Thomas Jefferson never entertained it.

**Since *Baker*:** The effect of the Court's decision in *Baker v. Carr* was widespread, since not only Tennessee but all states had to redraw legislative boundaries as a result because each person's vote had to be weighted equally. In the 1964 case of *Reynolds v. Sims*, the Court reaffirmed its role in apportionment issues.

**Political Science Disciplinary Practices:** Analyze, Interpret, and Apply the Decision

**Apply:** Complete the following tasks.

1. Identify the constitutional principle at issue in this case.
2. Explain how the Court's reasoning in the majority opinion supported the opinion.
3. Explain Justice Frankfurter's concerns in his dissent.
4. Explain differences between the opinion in *Colegrove v. Green* and the opinion in *Baker v. Carr*.
5. Predict what followed after the Court ruled on the principle that all votes must be weighted equally.
6. Research the California Citizens Redistricting Commission's proposals. Evaluate their effectiveness as a remedy for legislative boundaries that disadvantage some voters and give other voters a stronger political voice.

**Gerrymandering** Too often, there are illogical district lines drawn to give the advantage to one party, a process called **gerrymandering**. Districts in which a party consistently wins by more than 55 percent of the vote are considered **safe seats**; those districts with closer elections are referred to as **marginal seats** or **swing districts**. Countless districts across the United States have been carved out to guarantee safe seats and one-party rule through a process known as *partisan gerrymandering*. Each party has more than 180 safe seats in Congress, meaning there are only about 75 marginal seats up for grabs. Certain victory for incumbents or for candidates of the majority party of districts with safe seats lowers the incentive to compromise and raises the incentive to stick with party doctrine. As a result of the large number of safe seats, a vast proportion of Congress members fall far to the

left or far to the right on the ideological spectrum. Partly because of that divide, at the end of a legislative session, fewer policies that address and appease the middle—the vast majority of America—will ever get beyond a committee hearing.

This gerrymandering of safe-seat congressional districts has sometimes made the primary election the determining race and made the general election in November a mere formality. “Getting primaried” has become the new term explaining how an ideologically more extreme challenger can expose an incumbent’s record of compromise or tilt away from party positions in order to defeat him or her when the party faithful make that decision. Such challengers are often backed by special interests.

The result is a system of nominating the more conservative Republicans or more liberal Democratic candidates who will ultimately win the primary and face off with their extreme counterparts in their respective legislative chambers. This system has shrunk the number of moderates in Congress. To counter this tactic, several states through citizen ballot initiatives and state laws have created independent commissions to remove the parties’ dominance in the process of drawing the maps.

*Racial gerrymandering*—intentionally drawing legislative districts on the basis of race—has also been the subject of scrutiny for conflicting reasons. First, it has been used to dilute the votes of African Americans and therefore has been found to violate their Fifteenth Amendment voting rights. Second, in well-intentioned overcorrections of this problem, racial gerrymandering was found to violate other voters’ rights to equal protection under the Fourteenth Amendment. This latter issue was the focus of another landmark redistricting decision from the Supreme Court, *Shaw v. Reno* (1993).



#### MUST-KNOW SUPREME COURT DECISIONS: SHAW V. RENO (1993)

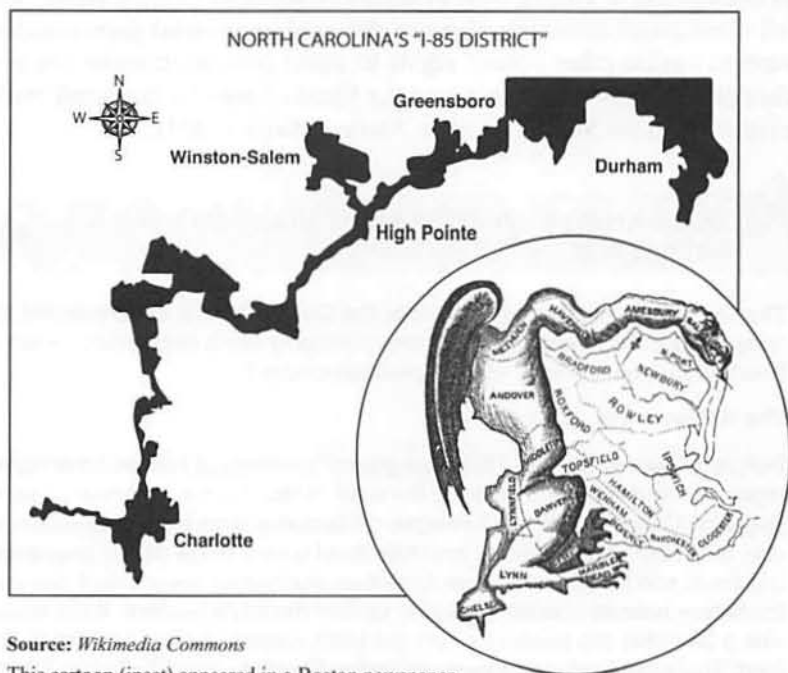
**The Constitutional Question Before the Court:** Does a congressional district, designed for the purposes of assuring a majority black population, violate the Fourteenth Amendment’s equal protection clause?

**The Answer:** Yes, for Shaw, 5:4

**Before Shaw:** In the late 1950s, as greater numbers of African Americans registered and voted in Alabama, the case of *Gomillion v. Lightfoot* came to the Supreme Court. The city of Tuskegee contained a large black population and was on a path to constituting the majority of voters in the city. In response to this trend and fearing an African American-dominated government, the state legislature passed special legislation to alter the city’s borders. What resulted was a 28-sided city border that placed black neighborhoods beyond the new city lines. Tuskegee Institute professor Charles Gomillion sued Tuskegee Mayor Phil Lightfoot. The Supreme Court decided the state, in its purposeful redesign of the city, had violated the litigants’ Fifteenth Amendment right to vote.

**Facts:** After the 1990 census, and in compliance with the 1965 Voting Rights Act (see page 315), North Carolina submitted to the federal Justice Department its new map of congressional districts for review. Decades of racial gerrymandering in the era before the Gomillion decision had effectively disfranchised black voters and kept them from serving in the halls of government. To correct that problem, the Court had ruled that using race as a basis in creating legislative districts, including so-called majority-minority districts that contained more black than white residents, was permissible in the interest of fairness. In the North Carolina map submitted for review, only one district was a majority-minority district. Federal directives and goals encouraged U.S. Attorney General Janet Reno to send the map back to the state and insist it redraw the map with a second black-majority district. North Carolina complied and created some oddly shaped districts in the process.

Early court filings and editorials commenting on the illogical districts compared them to a Rorschach ink-blot test and “a bug splattered on a windshield.” North Carolina’s serpent-like 12th district stretched and curved from inner city neighborhood to inner city neighborhood to accumulate a majority black population. At some points it was no wider than the Interstate it straddled. Dubbed the “I-85 District,” this district and another resulted in two African American candidates—Mel Watt and Eva Clayton—winning seats in Congress. The map called into question the degree to which race can or should be used as a factor in drawing congressional districts. North Carolina’s Republican Party and five white individual



Source: *Wikimedia Commons*

This cartoon (inset) appeared in a Boston newspaper in 1812 in response to a redistricting in Massachusetts created to favor the party of then-Governor Elbridge Gerry. The oddly shaped district resembled a salamander but in “honor” of the governor was dubbed the “Gerry-mander.”

voters brought suit—Ruth Shaw among them—suggesting the effort came as a result of separating citizens into classes by race in order to form the districts.

**Reasoning:** In a close vote, the Court ruled for Shaw, not because race was used as a factor in drawing district boundaries but rather that *only* race as a factor could explain the highly irregular district shape and its lack of other characteristics, including geography, usually considered when drawing boundaries. Using race as the only factor in drawing lines opposed the “colorblind” ideal of United States law, separating citizens into different classes without the justification of a compelling state interest and violating the Fourteenth Amendment.

#### **The Court's Majority Opinion by Mrs. Justice Sandra Day O'Connor:**

Our focus is on appellants' claim that the State engaged in unconstitutional racial gerrymandering. That argument strikes a powerful historical chord: It is unsettling how closely the North Carolina plan resembles the most egregious racial gerrymanders of the past . . .

This Court never has held that race-conscious state decision making is impermissible in all circumstances. What appellants object to is redistricting legislation that is so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of voting, without regard for traditional districting principles and without sufficiently compelling justification. For the reasons that follow, we conclude that appellants have stated a claim upon which relief can be granted under the Equal Protection Clause . . .

Accordingly, we have held that the Fourteenth Amendment requires state legislation that expressly distinguishes among citizens because of their race to be narrowly tailored to further a compelling governmental interest . . .

The message that such districting sends to elected representatives is equally pernicious. When a district obviously is created solely to effectuate the perceived common interests of one racial group, elected officials are more likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole.

Each of the four dissenting justices filed a dissenting opinion. The dissent focused in part on the idea that the 12th district did not dilute the votes of citizens in other districts, a consideration on which previous gerrymandering cases had relied for their resolution. Justice Stevens also dissented on the grounds that since minorities benefited from the redistricting, there were no constitutional conflicts. Justice White, joined by Justices Blackmun and Stevens, stressed that even with the oddly shaped 12th district, whites remained a majority in a disproportionate number of districts.

#### **Dissenting Opinion by Mr. Justice Byron White:**

The Court today chooses not to overrule, but rather to sidestep [prior precedents]. It does so by glossing over the striking similarities, focusing on surface differences, most notably the (admittedly unusual) shape of



the newly created district, and imagining an entirely new cause of action. Because the holding is limited to such anomalous circumstances, it perhaps will not substantially hamper a State's legitimate efforts to redistrict in favor of racial minorities. Nonetheless, the notion that North Carolina's plan, under which whites remain a voting majority in a disproportionate number of congressional districts, and pursuant to which the State has sent its first black representatives since Reconstruction to the United States Congress, might have violated appellants' constitutional rights is both a fiction and a departure from settled equal protection principles. Seeing no good reason to engage in either, I dissent.

**Political Science Disciplinary Practices:** Analyze, Interpret, and Apply the Decision

**Apply:** Complete the following tasks.

1. Identify two potentially conflicting constitutional principles at issue in this case.
2. Explain how the Court justified its reasoning in the majority opinion.
3. Explain Justice White's concerns in his dissent.
4. Describe a similarity and a difference between the opinion in *Shaw v. Reno* and the opinion in *Gomillion v. Lightfoot*.
5. Describe a similarity and a difference between the opinion in *Shaw v. Reno* and the opinion in *Baker v. Carr*.

**Divided Government and Senate Showdowns** Polarization is also a product of divided government. Government is divided when the president is from one party and the House and/or Senate is dominated by the other. Divided government can cause an inordinate amount of gridlock. Conflict in a divided government has become apparent, especially with judicial nominations. As the Supreme Court has become the arbiter of law on affirmative action, abortion, marriage equality, and gun rights, the fight between the parties about who sits on the Court has intensified.

In 2016, after the death of Associate Justice Antonin Scalia, Democratic President Barack Obama nominated Merrick Garland, Chief Judge of the United States Court of Appeals for the District of Columbia Circuit, to replace him. However, the Republican-majority Senate, in a rare though not unprecedented move, refused to consider his nomination during Obama's last year in office—his so-called “lame duck” year—highlighting the partisan divide in government. President Trump then nominated conservative judge Neil Gorsuch, who was quickly confirmed by a Republican-dominated Senate. (For more on the lame-duck year, see page 126.)

In both chambers, real floor debate has been replaced by carefully orchestrated speeches, while combative media-hungry lawmakers face off in head-to-head confrontations on cable TV news. As historian Lewis Gould put

it, "In this hectic atmosphere of perpetual campaigning, the older values of collegiality and comity, though rarer than senatorial memory had it, eroded to the point of virtual disappearance."

### ***Congress's Public Image***

When people asked humorist Will Rogers where he got his jokes, he replied, "Why I just watch Congress and report the facts." Critics from Mark Twain to comedian Jon Stewart have cast Congress in a bad light. The media have also contributed to its tarnished reputation. Controversial battles in the legislature receive prime coverage, while routine compromises do not. Members' conflicts of interest and an increased number of scandals have given the institution a black eye. Finally, the lawmaking process is simply slower and more complicated than what most citizens expect, despite its design to move cautiously. All of these factors help to create an image of an uncaring, "do nothing" Congress. The branch's approval rating, as measured by Gallup, hovered in the mid-30 percent range in the early 1970s. Over the past few terms, it has generally fallen below 15 percent.

Yet most individual members of Congress enjoy about a 60 percent approval rating from their constituents. Citizens view Congress as a faceless, bumbling, hyper-partisan institution, but they see their individual representative as a respectable official trying his or her best. This dynamic causes challengers to point to the "mess in Washington," but the composition of Congress changes very little every two years.

With enhanced technology, more people are watching Congress, and more constituents have access to their legislators. Congress now receives well over 50 million email messages and 200 million pieces of mail annually, whereas it received about 10 million letters in the late 1960s. Meanwhile the average population of House districts has risen 40 percent. Interest groups and political action committees have brought more participants into the policymaking arena. There is simply more pressure on members. This increased interest and visibility has made the race for reelection a never-ending battle.

The number of scheduled days in Washington and number of votes on the House and Senate floors has dropped. During the 1960s and 1970s, the average Congress (two-year term) was in session 323 days. Now Congress meets about 250 days per two-year period. But this change is largely due to the other business a member of Congress must take care of and the expectation of spending time in home districts. Veteran Congressman Lee Hamilton (D-IN, 1965–1999) once suggested this help-wanted ad to better define the job description: "Wanted: A person with wide-ranging knowledge of scores of complex policy issues. Must be willing to work long hours in Washington, then fly home to attend an unending string of community events. Applicant should expect that work and travel demands will strain family life, and that every facet of public and private life will be subject to intense scrutiny and criticism."

## REFLECT ON THE ESSENTIAL QUESTION

**Essential Question:** *How do the structure and operation of the legislative branch reflect the United States' republican ideal? On separate paper, complete a chart like the one below to gather details to answer that question.*

**Republican Ideals**

**House of Representatives**

**Senate**

## KEY TERMS AND NAMES

advice and consent/84	germane/93	redistricting/103
<i>Baker v. Carr</i> (1962)/105	gerrymandering/106	riders/93
bicameral/79	gridlock/102	Rules Committee/90
caucuses/89	hold/91	safe seats/106
cloture rule/92	House Judiciary Committee/87	select committees/88
Committee of the Whole/90	impeach/84	Senate majority leader/86
Committee on Committees (Republican)/88	implied powers,/81	sequential referral/94
conference chair/85	interest/98	Seventeenth Amendment/79
conference committees/85	joint committees/88	<i>Shaw v. Reno</i> (1993)/107
congressional oversight/88	logrolling/96	Speaker of the House/85
deficit/99	mandatory spending/99	sponsor/93
delegate model/96	marginal seats/106	standing committees/87
discharge petition/91	markup session/88	Steering and Policy Committee (Democratic)/88
discretionary spending/99	multiple referral/94	swing districts/106
earmark/94	non-germane amendments/93	trustee model/96
enumerated powers/81	omnibus bill/93	unanimous consent/91
estate taxes/98	politico model/96	War Powers Act/83
expressed powers/81	pork barrel spending/94	Ways and Means Committee/90
filibuster/91	President of the Senate/85	whip/85
floor leaders/85	president <i>pro tempore</i> /86	
	reapportionment/79	

## MULTIPLE-CHOICE QUESTIONS

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Questions 1–3 refer to the passage below.

We have before us one of the most important duties of the U.S. Senate and of the U.S. Congress, and that is to decide whether or not we will be involved in war. I think it is inexcusable that the debate over whether we involve the country in war, in another country's civil war, that this would be debated as part of a spending bill, and not as part of an independent, free-standing bill . . . . I think it is a sad day for the U.S. Senate. It goes against our history. It goes against the history of the country.

— Senator Rand Paul, Senate Floor Speech, September 18, 2014

1. Which of the following statements best summarizes this excerpt from Senator Paul's speech?
  - (A) The United States should not become involved in another country's civil war.
  - (B) The president should not have war-making authority except in an emergency.
  - (C) The military intervention the United States is considering needs a spending appropriation.
  - (D) The U.S. Senate should decide on war-like action on its merits, not along with other legislation.
2. Which power of Congress is Senator Paul probably most concerned about based on this passage?
  - (A) Congress's power to tax and spend
  - (B) The Senate's power to ratify treaties
  - (C) The expressed power to declare war
  - (D) The power to regulate interstate commerce
3. Which foreign policy reality might limit what the Senate can do in this scenario?
  - (A) The reserved powers clause requires House approval for military intervention.
  - (B) The president's power to declare war on foreign nations overrides the Senate's power to declare war.
  - (C) The Senate requires advice and consent power from the president to act in war.
  - (D) The War Powers Act gives the president freedom to act with the military for a limited time.

4. In what way did the Seventeenth Amendment broaden democracy?
- (A) It extended voting rights to women.
  - (B) It allowed citizens to alter the Electoral College.
  - (C) It gave citizens greater impact on lawmaking in the U.S. Senate.
  - (D) It extended voting rights to African Americans.
5. When the Senate Judiciary Committee passes a proposed crime bill by a vote of 11 to 10, which of the following scenarios is most likely to follow?
- (A) The Supreme Court will review the bill for constitutionality.
  - (B) The full Senate will consider the bill.
  - (C) The House of Representatives will take up the bill.
  - (D) The president will sign the bill.

Questions 6 and 7 refer to the table below.

HOUSE AND SENATE MEMBERS' AVERAGE AGE, 2011–2018				
Congress	Representatives	Newly Elected Representatives	Senators	Newly Elected Senators
112th	56.7 years	48.2 years	62.2 years	52.1 years
113th	57.0 years	49.2 years	62.0 years	53.0 years
114th	57.0 years	52.3 years	61.0 years	50.7 years
115th	57.8 years	50.8 years	61.8 years	54.8 years

6. Which of the following statements is reflected in the table above?
- (A) Newly elected members are older than the other members.
  - (B) Senators, on average, are younger than representatives.
  - (C) The 115th Congress had the youngest newly elected Senators.
  - (D) Newly elected senators were on average older than newly elected House members.
7. Which of the following is an accurate conclusion based on the data in the table above?
- (A) Older people vote more frequently, and they want older people serving them.
  - (B) It takes years to get through law school before one can run for Congress.
  - (C) Levels of reelection in both the House and Senate are high.
  - (D) The Constitution requires these lawmakers to be 50 or older.



**Obama Embraces New Media** On his way to the White House, President Obama forecasted his media presence when he hired a 30-year-old “new media director,” introduced a Twitter feed, and employed a videographer to upload segments on YouTube and, later, on WhiteHouse.gov. As president, Obama had a 14-member staff on the new White House Office of Digital Strategy, a crew slightly larger than George W. Bush’s press secretary’s office. By his second term, President Obama had essentially created his own news service, digitally transmitting a stream of photo images, videos, blog posts, and interviews for social media sites for his fans and skeptics alike. Twitter, Facebook, Snapchat, Instagram, and Flickr quickly became standard platforms to broadcast his message.

The Obama team found this digital bully pulpit useful in the constant effort to persuade the citizenry, who could then apply pressure on their representatives in Congress to accomplish the Obama agenda. His White House generated close to 300 infographics supplied with quick and digestible data. They worked hard to successfully compress complex ideas and goals into Twitter bites. They found it useful and easy to target certain audiences with certain messages. In his quest for a health care law and amid the GOP’s efforts to stop it, the White House established a “Reality Check” website which debunked rumors about the drawbacks of the health care plan that his opponents were spreading. (For more on Obama’s use of digital data, see page 459.)

**Image Control** Presidents for some decades have employed a taxpayer-funded photographer. Congress has allotted the money for this purpose for the good of the office, to create a record, and to connect people with government. Obama’s photographer, Pete Souza, and the new media team used photography in a way to legitimize his presidency, picture him as a man of the people, promote policy programs, and generally chronicle his presidency.

Social media lets presidents communicate directly with the public, daily and inexpensively, in ways that bypass unpredictable decisions of news outlets. Presidents have always tried to streamline, control, or shape information coming out of the White House. Prepared statements, packaged videos, and an avoidance of the press in times of scandal are nothing new. Much like Teddy Roosevelt’s efforts of shaping his image with expensive photography more than a century ago, Obama’s publicly distributed photos were carefully curated to show the president in a particular light. As photography has become affordable and common among media outlets, independent photojournalists want to show the presidency with their own original images and to tell the full story of the president, not the controlled story.

“Obama [took] unprecedented advantage of the digital revolution in photography,” says expert Cara Finnegan in an Illinois News Bureau interview. By the end of his administration, his Flickr feed had more than 6,500 quality and well-chosen images. The public had access to these, and more importantly, they and the news media picked these up and circulated them further. Meanwhile, the White House took steps to prevent independent journalistic photographs, hoping that a greater share of White House-released

both houses of Congress convene in the more-roomy House chamber and receive the president, his Cabinet, and his prepared words for about an hour, typically in late January or early February. Presidents realize they can command a large audience and a few news cycles to follow. Carefully crafted speeches include statistics and sound bites that will help propel presidents' initiatives. Presidents often follow the speech with some appearances in carefully chosen locations in the country. In these appearances, he sells ideas or takes credit for progress his administration has made.

**Communications Staff** Contemporary presidents have an entire communications office that includes speechwriters and public relations experts. Since the 1930s, the White House has had a day-to-day challenge responding to the 50 or more assigned journalists clamoring for the president's attention.

The expansion of the media has redefined the communications office and role. In the 1930s, Franklin Roosevelt pioneered the radio message with his fireside chats and John F. Kennedy did the first live televised press conferences in the early 1960s. In the White House, speechwriters and wordsmiths are nearly always hard at work. They work to control information coming out of the White House and try to shape the president's message that will ultimately define his policy agenda and its success or failure.

**Spin and Manipulation** The press conference is in many ways a staged event. Press secretaries and presidents anticipate questions and rehearse in advance with planned answers. President George W. Bush's critics complained that his press relations were an affront to the media. Reporter and media expert Eric Alterman and others reported how the Bush Administration was caught manipulating the news process. The president's administration distributed government-prepared "news reports" to local TV stations across the country to promote his programs, planted a fake reporter in the briefing room to throw softball questions at the president's press secretary, and paid large sums of public money to writers to promote their programs. The most notable example was a payment of \$240,000 that went to conservative columnist and radio host Armstrong Williams to promote Bush's No Child Left Behind initiatives.

### ***Modern Technology and a Social Media President***

From advances in the printing press to the advent of Twitter, presidents have had to keep pace with technology. From Eisenhower to Clinton, the president could cut into the big three television networks with an announced speech. Now, with the exception of the State of the Union address, many public addresses are aired only by lesser-watched cable TV channels. The 24-hour news cycle is always hungry for headlines. The recent explosion of immediate electronic communication, social media use, push notifications, and the reliance on the Internet for information has transformed how the president communicates with the people to accomplish his policy agenda.

the cloture motion has served a somewhat stabilizing function. (See page 92.) If a senator wants to block a judicial nomination, 60 or more senators would be required to prevent that. The cloture rule prevents the majority party from overrunning the minority party. Although the majority party may control the Senate, it is rare for one party to hold 60 or more seats. Senators in the majority party recognize that they may be in the minority after the next election.

## **Communicator in Chief**

In a democracy, the president's need to communicate with the citizenry and keep good relations with Americans is essential for success. To pass legislation, the constituents of individual Congress members must like the president's proposed bills and foreign policy plans—if they don't, they will pressure their representative or senator not to support it. The executive branch must publicize its reasons for proposed legislation and the benefits it will provide to people in the United States. Another function the president assumes, then, is "communicator in chief." Meanwhile, a free press in the United States entitles citizen-journalists to tell their readers, listeners, and viewers about the government. Among the government entities they are most interested in is the executive branch of the United States and its head, the president.

## ***Relationship with the Press***

In the early 1900s, as national newspapers grew, Theodore Roosevelt developed a unique relationship with the press. He referred to the presidency as a bully pulpit, from which he could speak to the people using his powers of persuasion, and the people would in turn persuade Congress. He sometimes spoke with reporters while getting his morning shave. With his colorful remarks, unique ideas, and vibrant persona, Roosevelt always provided a good story. He and his Cabinet officials distributed speeches and photos to journalists to use in their reports, and he saved the richest pieces of information for his favorite journalists.

**State of the Union Address** The Constitution requires the president to report to Congress from time to time on the state of the Union. The president explains the economic, military, and social state of the nation, proposes new policies or acts Congress should pass, and explains how he is administering government programs. George Washington and John Adams drafted their first reports and delivered these in person as a speech. Thomas Jefferson broke that pattern, declaring a speech looked too much like a British monarch opening Parliament, so he delivered his report on how the nation was doing in writing, a practice that endured for a century after that.

In 1913, Woodrow Wilson delivered the address in person, thus redefining the report as an event. Since then all presidents have followed suit, taking advantage of the opportunity through the expanding media to reach millions of Americans who listen on the radio, watch on television, or, more recently, stream online. The State of the Union address has become an annual tradition;

## ***Judicial Interactions***

Presidents interact with the judiciary in a few ways. As the head of the executive branch, presidents enforce judicial orders. For example, when the Supreme Court ruled in 1957 that Central High had to admit nine African American students into the school, President Eisenhower ordered the 101st Airborne Division into Little Rock, Arkansas, to ensure the school followed the court order. The branches also interact when courts check the executive if they find presidential action unconstitutional. For example, in 1952 the Supreme Court overturned President Truman's nationalizing of the steel industry during the Korean War. Truman had taken that step to mobilize resources for the Korean War and also to prevent a strike by steelworkers. The Court ruled, however, that the president lacked authority to seize private property.

A more frequent encounter of the two branches comes when presidents appoint federal judges. All federal judges serve for life terms, so only a fraction of the federal courts will have openings during a president's time in office, yet presidents see this opportunity as a way to put like-minded men and women on federal benches across the country. In fact, no presidential appointment has more influence than the appointment of lifetime judges who have the power to shape policy for years to come. Of course, like appointments in the executive branch, the Senate must approve these nominees.

While standoffs about Cabinet appointees are rare, judicial nominations are another story. The president appoints scores of federal judges during each four-year term, because in addition to the nine justices that serve on the Supreme Court, more than 650 serve on the 94 U.S. district courts across the country, and more than 170 serve on the U.S. appeals courts. Federal judges, especially those at the Supreme Court level, have a great impact on the nature of U.S. law, and with lifetime appointments, they serve a much longer time than do the heads of executive departments. Thirty Supreme Court nominees have been rejected by a Senate vote on their first try. Countless other lower court nominees have also been rejected or delayed to the point of their giving up on the job.

The interaction between the branches on these judicial nominees is complicated and sometimes contentious. Senate rules and traditions govern the process. Senators, especially those on the Judiciary Committee, expect to give advice to presidents on selecting these nominees and are slow to consent to the president's choices for a variety of reasons. They, too, realize the longevity of a federal judge's service. If the president appoints like-minded judges, senators on the opposite end of the ideological spectrum are unlikely to welcome the judges, since their future decisions could define controversial or unclear law.

As you read in Chapter 3, the Senate has some unique rules and customs that result in slow-moving action and require voting thresholds above the simple majority of 51 senators. As the divided electorate has caused majority control of the body to shift from one party to the other after congressional elections,

her nomination, with some exceptions. At her public confirmation hearing, many senators expressed concern about her priorities, her experience, and her high-dollar donations to Republican candidates. As she fielded questions before the Senate Health, Education, Labor, and Pensions Committee, her competence in the field seemed shaky. Exchanges on school choice, guns in schools, students with disabilities, and private or online school accountability raised eyebrows on Capitol Hill and in news reports that followed. In the end, two Republican senators voted against her, leaving the Senate in a dead tie. Vice President Pence's tie-breaking vote was the first time in U.S. history that a vice president cast the tie vote on a Cabinet secretary confirmation.

**Ambassadors** The Senate is also likely to confirm ambassador appointments, although those positions are often awarded to people who helped fund the president's campaign rather than people well qualified for the job. On one of the "Nixon Tapes" from 1971, Nixon tells his chief of staff, "anybody who wants to be an ambassador must at least give \$250,000." About 30 percent of ambassadors are political appointees. Some may have little or no experience to qualify them, though they are rarely rejected by the Senate. Hotel magnate George Tsunis, appointed by President Obama as ambassador to Norway, was questioned critically by Senator John McCain (R-AZ) in 2014 and shown to have limited understanding of Norwegian political issues; he withdrew his nomination after a year when confirmation seemed unlikely.

**Removal** The president can remove upper-level executive branch officials at will, except those that head independent regulatory agencies. (These will be discussed in the next chapter). A president's power of removal has been the subject of debate since the founding. Alexander Hamilton argued that the Senate should, under its advice and consent power, have a role in the removal of appointed officials. James Madison, however, argued that to effectively administer the government the president must retain full control of his subordinates. The Article II phrase that grants the president the power to "take care that the laws be faithfully executed" suggests the president has a hierarchical authority over secretaries, ambassadors, and other administrators.

This issue brought Congress and the president to a major conflict in the aftermath of the Civil War. President Andrew Johnson dismissed Secretary of War Edwin Stanton, congressional Republicans argued, in violation of the Tenure of Office Act. This act led to Johnson's impeachment.

The question of removal resurfaced in 1926—this time with regard to President Wilson's earlier removal of a postmaster in violation of an 1876 law. The Supreme Court concluded that presidential appointees serve at the pleasure of the president. The Court tightened this view a few years later when it looked at a case in which the president had fired a regulatory agency director. The Court ruled in that case that a president can dismiss the head of a regulatory bureau or commission but only upon showing cause, explaining the reason for the dismissal. The two decisions collectively define the president's authority: executive branch appointees serve at the pleasure of the president, except regulatory heads, for which the president must show cause if he wants to remove them.



The Senate invariably accepts presidential Cabinet nominations. The upper house swiftly confirmed every Cabinet-level secretary until 1834, when it rejected Andrew Jackson's appointee, Roger Taney, as secretary of the treasury over his opposition to a national bank. The makeup of the Senate changed with the next elections and Jackson appointed Taney as chief justice of the Supreme Court, who was confirmed for the position by a slim margin. Senator John Tyler soon became President Tyler and faced some opposition when forming his own Cabinet. To date, the Senate has rejected only nine department secretaries; four of those occurred during the Tyler administration.

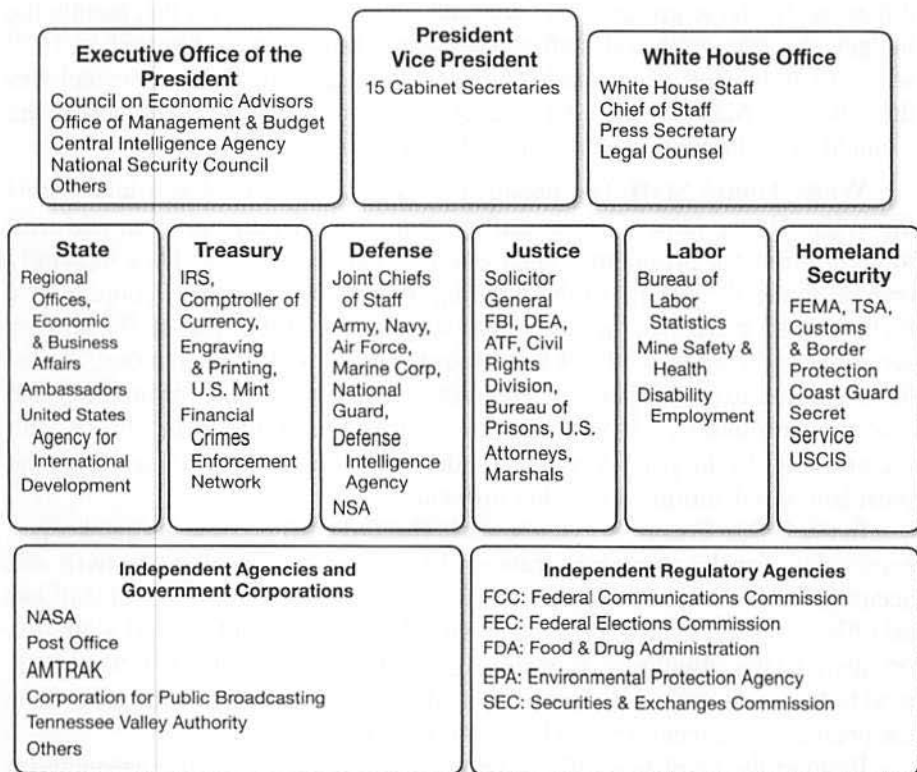
The typical acceptance of Cabinet appointees results from the custom of the Senate to let the president form his own team. The president won a democratic election and should therefore have the prerogative of shaping his administration. Presidents commonly choose senators to move over to the executive branch and serve in their Cabinet. In recent years, the president has selected one or more members of the opposite party. President Obama named three Republicans to serve as secretaries (though one declined the offer). Presidents and their transition teams do a considerable amount of vetting of potential nominees and connecting with senators to evaluate their chances before making official nominations. Though only nine nominations have been voted down, 13 Cabinet appointees have withdrawn their nominations (or the president did so) anticipating a losing vote. Many more officials were considered, their names floated about to test their viability among senators, and never officially nominated.

**Senate Standoffs** The two most recent standoffs on Cabinet appointments came in 1989 and in 2017. President George H.W. Bush named former Senator John Tower as secretary of defense, and President Donald J. Trump nominated Betsy DeVos as secretary of education. Senator Tower represented Texas in the Senate since Lyndon Johnson had vacated his seat to become vice president. Tower had the resume and experience to serve as defense secretary. He served in World War II and as the chairman of the Senate Armed Services Committee. Upon his nomination, even Democrat leaders anticipated his nomination would sail through. However, allegations of heavy drinking surfaced, as did his reputation as a playboy and "womanizer." With more scrutiny, Tower was found to own stock in corporations with potential future defense contracts, an obvious conflict of interest. President Bush stuck by his old congressional colleague (Bush had represented Texas in the House when Tower was in the Senate). In the end, the Senate voted Tower down in a 53 to 47 vote.

In 2017, President Trump nominated Betsy DeVos as education secretary. Her views tended to coincide with those of many Republicans, including Trump, who are interested in privatizing education, so her confirmation would help further that agenda goal. DeVos has much experience in the education world as a private school advocate, but she has never worked in any public school in any capacity, including as a teacher, and along with her billionaire husband she had invested in for-profit charter schools and pushed for online education. The educational community was generally against

## Executive Hierarchy

### Selected Cabinet Level Departments and Agencies



agenda, however, and tensions often arise between the branches. As chief legislator, the president directs the Office of Legislative Affairs to draft bills and assist the legislative process. (See page 129.) Sometimes the aides employ techniques to push public opinion in a lawmaker's home district in the direction of a desired presidential policy so that lawmaker's constituency can apply pressure. As the president enforces or administers the law, the courts determine if laws are broken, misapplied, or entirely unjust. For these reasons, a president regularly interacts with the legislative and judicial branches.

### ***The Senate and Presidential Appointees***

In addition to the more visible Cabinet appointees, a president will appoint approximately 65,000 military leaders and about 2,000 civilian officials per two-year congressional term, most of whom are confirmed routinely, many times approved *en bloc*, hundreds at a time. But each year, hundreds of high-level appointments are regularly subjected to Senate investigation and public hearing. Most are still approved, while a few will receive intense scrutiny and media attention, and some confirmations will fail.

**EOP** The **Executive Office of the President (EOP)**, an office that coordinates several independent agencies, carries out most constitutional duties, with a large group of advisers and supporting agencies that handle the budget, the economy, and staffing across the bureaucracy. Created in 1939 when FDR needed an expanded presidential staff, the EOP now includes the Office of Management and Budget, the Central Intelligence Agency, the Council of Economic Advisers, and other agencies.

**White House Staff** The president's immediate staff of specialists runs the White House Office. These staffers require no Senate approval and tend to come from the president's inner circle or campaign team. They generally operate in the West Wing of the building. Presidents sometimes come to rely on their staffs more than their Cabinets or agency heads because staff members serve the president directly. White House staffers, unlike secretaries, do not have loyalties to departments or agencies and do not compete for funding. The staff interacts and travels with the president daily and often has worked with the president in the past. A staffer's individual relationship and access to the president will determine his or her influence.

In the 1950s, President Eisenhower's **chief of staff** became his gatekeeper, responsible for the smooth operation of the White House and the swift and accurate flow of business, paper, and information. Though the chief of staff has no official policymaking power, a president seeks the chief of staff's opinion on many issues, giving the position a great deal of influence. Chiefs of staff tend to be tough, punctual, detail-oriented managers, and these qualities allow the president to concentrate on big-picture decisions.

Beyond the chief of staff, the president has an inner circle that includes the top communicator to the people, the White House press secretary; the president's lawyer, or chief counsel; and his point person on any issue of international safety, the national security adviser. This assistant coordinates information coming to the president from the CIA, the military, and the State Department to assess any security threat to the United States.

**National Security Council** The National Security Council is a statutorily defined group that includes the president, vice president, secretaries of defense, state, the head of the CIA, the president's national security advisor, the top uniformed military leaders, and a few other major principals of the executive branch. The group is defined in a 1947 law that ensures the president is adequately and regularly informed as to the dangers that America may face. It is an advisory group, but the president chairs this council and still remains the commander in chief who would make any wartime executive decisions.

## **Interactions with Other Branches**

Since Congress is the branch that authors most law, the cashier of the federal purse, and the interview committee for presidential appointments, presidents must stay in good graces with the members—representatives and senators—of that branch. The president's agenda is not always Congress's

and women to his senior executive positions—16 percent women and 11 percent ethnic minorities. The Cabinet has since included Latinos, Asian Americans, and nontraditional appointees to inner Cabinet positions, and 53 percent of Obama's first-term Cabinet appointees were either women or minority.

**State Department** The first department Congress created was the Department of State, headed by Thomas Jefferson. The State Department is the president's main diplomatic body. Deputy secretaries oversee U.S. relations in designated regions or continents. For each nation that the U.S. recognizes (nearly every nation in the world), the State Department employs an ambassador and operates an embassy in that country, and that country has an embassy in Washington. About two-thirds of U.S. ambassadors come from careers in foreign affairs or are international experts. About one-third are political appointees—former senators or celebrities the host country will receive well.

**Defense Department** The Defense Department is headquartered at the Pentagon, just outside the nation's capital. Secretaries of defense are civilian officers who serve the president and have not served in the uniformed military service for at least seven years. The Constitution and American tradition dictate that the leadership and policy-making apparatus of the military be distinct and separate from the uniformed divisions that carry out military missions. Ultimately, the people run the military through their elected and constitutional civil officers, in contrast to many dictatorships where a strong military leader takes over the military first and the government second.

The Defense Department includes the Army, Navy, Air Force, and Marines—all of the nation's military branches under one command. A council made up of the chiefs of staff of those organizations heads up the department. Defense comprises about one-fifth of the overall federal budget and the largest portion of the nation's discretionary spending, expenditures that are not fixed by law.

**Federal Agencies** Federal agencies are subcabinet entities that carry out specific government functions. Many fall within the larger departments. The Federal Bureau of Investigation (FBI)—a crime fighting organization—falls in the Justice Department. The Coast Guard falls in the Department of Homeland Security. Other agencies include the Food and Drug Administration (FDA), the Internal Revenue Service (IRS), the Central Intelligence Agency (CIA), and the Postal Service. Thousands of people in Washington and across the country staff these agencies. They carry out laws Congress has passed with funds Congress has allotted. The *Federal Register* currently lists 441 agencies working in the federal government.

### **President's Immediate Staff**

In 2008, there were 74 separate policy offices and 6,574 total employees (most not working in the White House). Ideally, all of the offices and agencies play a part in implementing the president's policy agenda.

reporter called their relationship a “mind-meld.” The president gave “Uncle Joe” a presidential medal of freedom and called him “the best vice president America has ever had.”

Before he was named the Republican presidential nominee, Donald Trump chose Indiana Governor Mike Pence to be his running mate. Vice President Pence has taken an active role supporting issues of concern to evangelical Christians.

### ***The Cabinet and Bureaucracy***

Article II refers to a **Cabinet** when it mentions “the principal officers in each of the executive departments.” Today, 15 Cabinet secretaries, such as the secretary of defense and secretary of transportation, advise the president, but they spend even more time running large governmental departments that take care of a wide range of national concerns. Presidents can add additional members to the Cabinet. President Trump has included the vice president, his chief of staff, and seven others beyond the 15 department heads to this formal group.

**Secretaries** When appointing Cabinet secretaries, modern presidents create some balance based on geography, gender, ethnicity, and even party membership. As James King and James Riddlesperger posit in their study of diversity and Cabinet appointments, “a public feeling underrepresented by an administration is less likely to support that administration’s broader policy agenda.” Therefore, presidents have found showcasing token minority appointments and stocking their team with a visible, diverse staff to be in the interest of accomplishing their agenda.

FDR appointed the first woman to the Cabinet, Secretary of Labor Francis Perkins, and Lyndon Johnson appointed the first African American, Secretary of Housing and Urban Development Robert Weaver. This tokenism to the Cabinet continued until President Jimmy Carter appointed substantial numbers of blacks



**Source:** *Lyndon Baines Johnson Library and Museum*

Robert Clifton Weaver was the first Secretary of Housing and Urban Development, serving from 1966–1968 under President Lyndon Johnson. Weaver was also the first person of color appointed to a cabinet-level position.



Because the founders did not anticipate that Congress would convene as frequently as it does in modern times, they provided for **recess appointments**. If the Senate is not in session when a vacancy arises, the president can appoint a replacement who will serve until the Senate reconvenes and votes on that official. This recess appointment is particularly necessary if the appointee is to handle urgent or sensitive work.

### ***The Vice President***

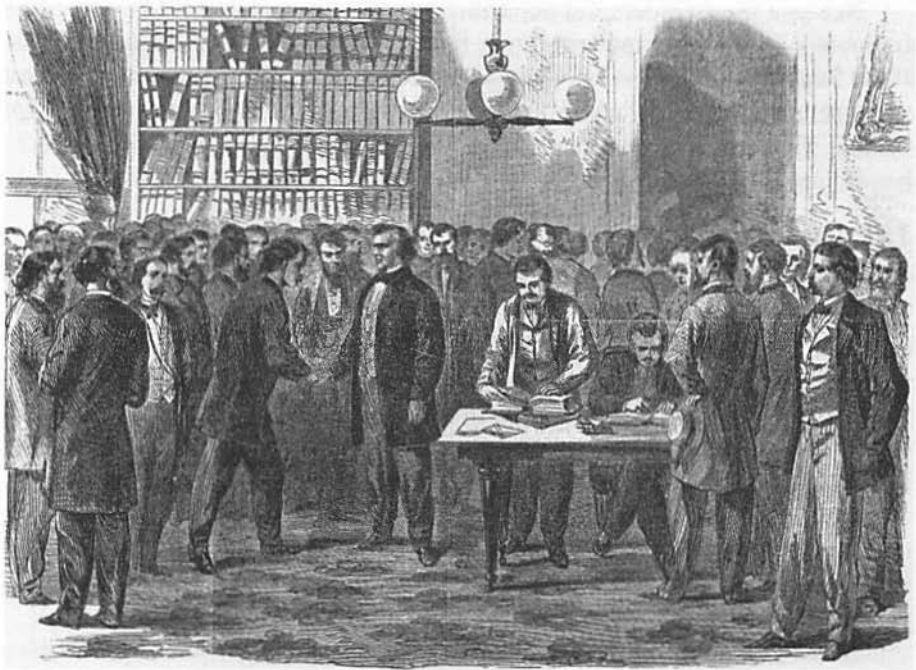
Unofficially, a president's first named assistant is the vice president because that decision and announcement are made before the president has been elected. To many, the vice presidency seems the second most powerful governmental officer in America, but in reality the vice president is an assistant to the president with little influence and a somewhat undefined job description. Different presidents have given their vice presidents differing degrees of authority and roles.

The Constitution names the vice president as the president of the Senate, a nonvoting member except in cases of a tie. Article II declares that in case of presidential removal, death, resignation, or inability, the president's duties and powers "shall devolve on the vice president."

Other than those constitutional duties, a vice president's role and influence are determined by the president. Some vice presidents have been leaders on both domestic and international causes. Others have kept their distance and had cool relations with the chief executive. The office is described as a "heartbeat away from the presidency" yet is actually relatively weak unless that unfortunate moment arrives.

**Shaping and Supporting Policy** In recent years, the position has been especially influential on presidential policy. Many saw George W. Bush's vice president Dick Cheney, a hawkish former defense secretary, as overly influential, at least in Bush's first term, in promoting a tough stance not only on terrorists but also on the nations that harbor them and in pushing for the 2003 invasion of Iraq to eliminate "weapons of mass destruction" that turned out not to exist. Others have questioned the reality of Cheney's influence, which appeared to diminish in the second term.

Vice President Joe Biden, serving under Obama, sustained his high influence for eight years. Obama attained several policy goals by assigning them to the affable former senator who had served in Washington since the mid-1970s. With Biden, he wrapped up the mission in Iraq, had what most economists praise as success with the economic stimulus in the opening months of his first term, and gained various budget deals with Republican congressional leaders. Biden was also the point man on other foreign policy matters. Insiders have reported on the friendship between these men and on Obama's forgiving attitude after Biden's public gaffes, such as the time he endorsed gay marriage before the president did and another time when he cursed on a hot mic at the signing of Obama's health care bill. Their casual exchanges proved their trust with each other and common policy beliefs. One



**Source:** *Harper's Weekly* October 14, 1865

A number of higher-ranking ex-Confederates were excluded from the general amnesty extended by both President Abraham Lincoln and President Andrew Johnson. Thousands applied for a special pardon during Johnson's term, signing an oath of allegiance in order to have full citizenship restored.

As presidents take on new roles, additional contemporary role titles surface. "Salesman in chief" might be a fair label when the president travels about the country pushing for one of his new initiatives. "Healer in chief" might apply when he visits a disaster-ridden area after a flood, hurricane, or mass shooting. The president is also the face of his political party, the "chief of party." During election season, the president campaigns for fellow party members, because such contests can have a direct effect on the success or failure of enacting presidential policy.

## The President's Team

The president's formal powers enable him to appoint a team to execute the laws and to accomplish his policy agenda. Some of those administrators are in positions as old as the Republic. Many more subordinate positions exist because Congress has since created them or has allotted funds for offices to support the president. A typical president will appoint about 2,000 executive branch officials during each Congress. Atop that list are the Cabinet officials, then the agency directors, military leaders and commissioned officers, and the support staff that works directly for the president. Most of these employees serve at the pleasure of the president and some are kept on when a new president is elected. Other positions are protected by statute or Supreme Court decisions.

**Signing Statements** Though the president cannot change the wording of a bill, several presidents have offered **signing statements** when signing a bill into law. These statements explain their interpretation of a bill, their understanding of what is expected of them to carry it out, or just a commentary on the law. A signing statement allows a president to say, in effect, "Here's how I understand what I'm signing and here's how I plan to enforce it." Critics of the signing statement argue that it violates the basic lawmaking design and overly enhances a president's last-minute input on a bill.

**Executive Privilege** Presidents have at times asserted **executive privilege**, the right to withhold information or their decision-making process from another branch, especially Congress. They have particularly asserted that they need not make public any advice they received from their subordinates. Sometimes staff input is offered confidentially, which presents a problem for a president if he is asked to reveal the source. Some presidents have declined to identify a source, claiming that the information is privileged. They argue that their right to executive privilege comes from the separation of powers, and they point out that nothing in the Constitution requires the president to reveal any part of the decision-making process en route to an official act. If controversial input from subordinates can simply be demanded by another branch, presidents argue further, then subordinates may refuse to give worthy advice and thereby weaken a president's ability to lead.

The right to assert executive privilege, however, has its limits. In the early 1970s, as the Watergate scandal developed, investigators subpoenaed the White House tapes that contained President Richard Nixon's confidential conversations. Nixon refused to hand over the tapes, claiming through executive privilege that his conversations were confidential. The Court disagreed. In a unanimous vote, the Court acknowledged a president's right to confidentiality in decision making, but declared that there is no absolute, unqualified presidential privilege of immunity from handing over prosecutorial evidence. Allowing a president to assert such a right in this instance would have thwarted law enforcement. Presidents can still withhold some information, but they cannot do so when it involves a criminal investigation.

### **Judicial Powers**

The president has some judicial powers and can shape the courts. In addition to appointing federal judges (see page 145), the Constitution gives the president the power "to grant reprieves and pardons for offenses against the United States." These checks on the courts make the president the last resort for those convicted of federal criminal offenses. On occasion, a president will issue an act of clemency through pardon, commutation (lessening sentences), or amnesty (pardoning a large group). President Ford pardoned Nixon after the ouster to put the Watergate scandal in the past. President Carter issued a general amnesty for Vietnam draft dodgers. On his final day in office, President Bill Clinton granted 140 pardons, including one for his brother Roger Clinton, who had been convicted of drug charges and other crimes. This additional role makes a president the "chief magistrate."

However, he faced strong opposition in the Senate and among the American people who believed that the United States paid for the canal and should keep it. In contrast to Teddy Roosevelt's big stick approach, Carter set in motion a carefully planned effort to win support in the Congress, relying on powers of persuasion and personal relationships to achieve his goals. Specifically, he and his legislative team provided extensive briefings and education to members of Congress and sent them to the region to gather information firsthand, and Carter got personally involved in discussions. His team was also meticulous about learning exactly which votes they could count on and which votes they needed to nurture. They developed an extensive public relations campaign to educate the American people on the issue and made visits to congressional districts where pressure from constituents might sway a member's vote.

Carter's patient diplomacy with Congress paid off, and in 1978 new treaties that allowed Panama to regain control of the Canal Zone on December 31, 1999, were ratified by a Senate vote of 68-32.

### ***Chief Executive and Administrator***

How the president implements or enforces a new law, the approach appointees take to implement that law, and their understanding of policies will all shape the administration's policy agenda. Executive orders, signing statements, and running the machinery of the vast executive branch mark how a president carries out his powers and functions as the chief executive. The Supreme Court has defined some of the gray areas associated with the president's largely confidential decision-making process. For example, the president can fire subordinates that have been approved by the Senate.

**Executive Orders** An **executive order** empowers the president to carry out the law or to administer the government. Unlike a criminal law or monetary appropriation, which requires Congress to act, a presidential directive falls within executive authority. For example, the president can define how the military and other departments operate.

Executive orders have the effect of law and address issues ranging from security clearances for government employees to smoking in the federal workplace. In 1942, for example, FDR issued the infamous Executive Order 9066, which allowed persons identified by the Secretary of War to be excluded from certain areas. This executive order was the basis for the internment of Japanese-Americans in West Coast camps during World War II. In 1948, through an executive order, President Harry Truman directed the military to racially integrate. More recently, President Trump issued an executive order outlining an immigration policy that limited travelers to the United States from six Muslim-dominated countries. Executive orders cannot address matters that have exclusive congressional jurisdiction, such as altering the tax code, creating new interstate commerce regulations, or redesigning the currency. Executive orders can also be challenged in court.

Roosevelt sent the naval ship *USS Nashville* in a show of support. Secretary of State Hay negotiated an agreement with the newly independent nation of Panama in 1903 to acquire control over the Isthmus of Panama to create the canal. Roosevelt's handling of Panama independence is sometimes used as an example of his "gunboat diplomacy"—foreign policy influenced by a show of naval force.

Some in the United States saw Roosevelt's participation in the rebellion as an act of piracy or worse. But Roosevelt defended his actions and use of executive powers, saying years later, "If I had followed traditional, conservative methods, I should have submitted a dignified state paper of probably two hundred pages to Congress, and the debate would have been going on yet. But I took the Canal Zone, and let Congress debate, and while the debate goes on, the Canal does also!" The treaty was finally ratified in 1904; the canal opened in 1914.

**Returning the Canal Zone to Panama** While favorable to the United States and its allies for shipping and military strategy, over the years the canal put a strain on relations between the United States and Panama. The canal cut Panama into two sections, with the Canal Zone under the control of the United States. Foreign policy attitudes changed over the decades as well. Roosevelt's big stick diplomacy, by which the United States justified its intervention in foreign countries in the Western Hemisphere to protect its interests, was replaced with softer diplomatic efforts and an interest in supporting independent democracies.

On January 9, 1964, violence erupted in the Canal Zone when a Panama flag flying next to an American flag was torn. A number of protesting students overwhelmed Canal Zone police and U.S. troops were brought in. Twenty Panamanians were killed. In Panama, that day has since become known as Martyrs Day. Panama broke off diplomatic relations with the United States and demanded a new treaty.

When Jimmy Carter became president, he articulated his approach to foreign policy, with an emphasis on morality. "Our policy is based on a historical vision of America's role. Our policy is derived from a larger view of global change. Our policy is rooted in our moral values, which never change. Our policy is reinforced by our material wealth and by our military power. Our policy is designed to serve [hu]mankind."

Returning the Canal Zone to Panamanian control was high on Carter's foreign policy objectives, for several reasons. First, he saw the control of the Canal Zone as a holdover from an imperial past and wanted to remove any symbolic representation of imperialism, believing it affected U.S. relations with all Latin American countries. On a more practical basis, he was also concerned about sabotage to the canal. Since the 1964 Martyrs Day, there had been concerns about protesters disrupting the operations of the canal. Finally, he believed it was the nation's moral responsibility to respect the complete self-governance of Panama.



Presidents have come to appreciate the power of the executive agreement. President Washington found conferring with the Senate during each step of a delicate negotiation extremely cumbersome and perhaps dangerous. It compromised confidentiality and created delays.

Executive agreements are a preferred diplomatic path to ensure secrecy or speed or to avoid senatorial egos. During the Cuban Missile Crisis in October 1962, President Kennedy discovered the Soviet Union's plan to install nuclear missiles in Cuba. Intelligence reports estimated these weapons would soon be operational. After days of contemplation, negotiation, and a naval standoff in the Caribbean, the United States and the USSR made a deal. The agreement stated that the Soviets would remove their offensive missiles from Cuba if the United States would later remove its own missiles from Turkey. Had Kennedy relied on two-thirds of the Senate to help him solve the crisis, a different outcome could very well have occurred. Time, strong words on the Senate floor, or an ultimate refusal could have drastically reversed this historic outcome.



#### **POLICY MATTERS: PRESIDENTS, POLITICS, AND THE PANAMA CANAL**

The policies of two presidents toward the Panama Canal show two very different ways of using the powers of the executive to advance a policy agenda and interact with Congress.

**Acquiring the Panama Canal Zone** “Speak softly and carry a big stick.” These words of President Theodore Roosevelt describe his foreign policy in relation to Latin America, where he wanted to assert U.S. power. However, the words might also describe his approach to Congress.

Shortly after he became president in 1901, Roosevelt spoke to Congress of the importance of building the Panama Canal, using his powers of persuasion. “No single great material work which remains to be undertaken on this continent,” he said, “is as of such consequence to the American people.” Roosevelt’s secretary of state, John Hay, drew up a treaty to acquire the canal zone from Colombia, the colonial power ruling Panama at the time, so the United States could build a canal to connect the Pacific and the Atlantic Oceans, providing a time- and money-saving shortcut for shippers who would no longer have to go all the way around the southern tip of South America. The Senate approved the treaty, but the government of Colombia balked.

Panamanians had long wanted their independence from Colombia, and a deal was struck with the United States: If American forces would support their independence effort, Panama would grant the U.S. the acquisition of the Panama Canal Zone it had sought from Colombia. Some Americans with a business interest in the canal then helped stage a revolt. Panamanian soldiers were bribed to lay down their guns so the rebels could prevail, and

The commander in chief's authority often shifts with the president. In the recent war on terrorism, President Obama developed his own policy for targeting top al-Qaeda enemies and operatives. On a somewhat regular basis, intelligence and military officers presented the president with a portfolio of names of these leaders in what one report said looked like a few pages in a high school yearbook, with profiles for each operative of their lives, families, and contributions to terrorism against the United States and their allies. In certain situations, taking into account knowledge of their whereabouts and calculations of "collateral damage," or innocent victims, Obama would give the order as commander in chief to carry out this micro war policy. Scores of terrorists were eliminated by armed drones with this policy.

### **Chief Diplomat**

The Constitution says the president shall have the power "to make treaties," and "he shall receive ambassadors and other public ministers" from other countries. **Ambassadors** are official diplomatic representatives of other countries. The framers argued that the executive, a liaison with appointed ambassadors, should have the primary role in foreign affairs. The U.S. secretary of state has become the president's main diplomat, overseeing U.S. ambassadors to foreign countries. The State Department, headed by the secretary of state, is one of 15 presidential cabinet departments (see page 139). Yet the president also remains active in diplomatic relationships, using informal interpersonal powers to advance U.S. interests with other nations. Nearing the end of his presidency, George W. Bush reportedly had more than 750 phone conversations with other chiefs or world leaders, participated in more than 675 face-to-face meetings, and conducted 15 video teleconferences.

The balance of power between the president and Congress on foreign relations, however, is sometimes uncertain. For example, Congress can fund or refuse to fund a diplomatic endeavor, such as aid for a country hit by a natural disaster. The Senate can also reject a president's appointed U.S. ambassadors and can ratify (by two-thirds) or reject the president's treaties.

**Treaties vs. Executive Agreements** Through treaties, presidents can facilitate trade, provide for mutual defense, help set international environmental standards, or prevent weapons testing, as long as the Senate approves. President Woodrow Wilson wanted the United States to join the League of Nations after World War I, but the Senate refused to ratify Wilson's Treaty of Versailles that established the plan.

An **executive agreement** resembles a treaty yet does not require the Senate's two-thirds vote. It is a simple contract between two heads of state: the president and a prime minister, king, or president of another nation. Like any agreement, such a contract is only as binding as each side's ability and willingness to keep the promise. And, to carry it out, presidents will likely need cooperation from other people and institutions in the government. These compacts cannot violate prior treaties or congressional acts, and they are not binding on successive presidents.

Senator Barry Goldwater proclaimed in the waning days of the Vietnam conflict, “We have only been in five declared wars out of over 150 that we have fought.” His point was fair, if his estimate was high. The issue remains: Should all troop landings be considered wars that require congressional declarations?

When a military operation is defensive, in response to a threat to or attack on the United States, the executive can act quickly. FDR ordered U.S. troops to Greenland in 1940 after the Nazis marched into Denmark but before any U.S. declaration of war. President Clinton bombed Iraq after finding out about the failed assassination attempt on his predecessor, the elder President Bush. President Obama authorized the U.S. mission in 2011 to capture or kill Osama bin Laden, the founder of al-Qaeda, the organization responsible for the 9/11/2001 attacks on the World Trade Towers and the Pentagon. A U.S. Navy Seal team was on the ground in Pakistan for only about 40 minutes. Some believe that actions such as these stretch the meaning of “defensive” too far. Yet how successful would this mission have been if Congress had to vote in advance on whether or not to invade the unwilling country that harbored bin Laden?

The Cold War era greatly expanded the president’s authority as commander in chief. In the early 1960s, one senator conceded that the president must have some war powers because “the difference between safety and cataclysm can be a matter of hours or even minutes.” The theory of a strong defense against “imminent” attack has obliterated the distinction the framers set and has added an elastic theory of defensive war to the president’s arsenal. As recent presidents tried to assume more power, they argued the world was figuratively much larger in 1789, meaning that travel and communication were much slower. This situation, some have argued, allowed the commander in chief time to react to perceived aggressors and to consult with Congress. Today, with so many U.S. interests abroad, an attack on American interests or an ally far from U.S. shores can directly and immediately impact national security.

**War Powers Act** President Johnson mobilized the U.S. Army into Southeast Asia in 1964. After reports of a naval skirmish off the coast of Vietnam in the Tonkin Gulf (which were later found to be untrue), Congress yielded some of its war-making authority with the Tonkin Gulf Resolution, allowing the president “to take all necessary measures to repel any armed attack against the forces of the United States to prevent further aggression.” Congressional leaders rushed through the resolution in a stampede of misinformation and misunderstanding. This rapid reaction to aggressive Communists led to a long and unpopular war.

In 1973, Congress decided to fix this political mistake and passed the **War Powers Act**. The law maintains the president’s need for urgent action and defense of the United States while preserving the war-declaring authority of Congress. The president can order the military into combat 48 hours before informing Congress. In turn, Congress can vote to approve or disapprove any presidential military action at any time, with the stipulation that the vote must take place within 60 days, although the president may take a 30-day extension if he wants.

his objections to the House in which it shall have originated.” This provision creates a dialogue between the two branches and encourages Congress to consider the president’s critique. This procedure requires some accountability on the part of the executive, and it also encourages consensus policies.

At times, a president will *threaten* a veto, exercising an informal power that may supersede the formal process. Congressional proponents of a bill will work cooperatively to pass it, reshaping it if necessary to avoid the veto. The use of the veto has fluctuated over presidential history. When there is a divided government—one party dominating Congress and another controlling the presidency—there is usually a corresponding increase in the use of the veto.

The president can also opt to neither sign nor veto. Any bill not signed or vetoed becomes law after the 10-day approval period. However, if a president receives a bill in the final 10 days of a congressional session and does nothing, the bill dies, an outcome known as a **pocket veto**. Since much legislation arrives at the end of a session, the president can eliminate congressional plans with a pocket veto. Presidents George W. Bush and Barack Obama both vetoed 12 bills. One of Bush’s was a pocket veto. Of the 12 bills Obama nixed, Congress overrode only one. Congress overrode four of Bush’s vetoes.

**Line-Item Veto** Since the founding, presidents have argued for the right to a **line-item veto**, a measure that empowers an executive to eliminate a line of spending from an appropriations bill or a budgeting measure, allowing the president to veto part, but not all, of the bill. Many state governors have the line-item veto power. In 1996, Congress granted that right to the president for appropriations, new direct spending, and limited tax benefits. As the chief representative of the nation, and unlike a Congressional member, the president has no loyalties to a particular district, except in swing states, and can thus sometimes make politically difficult local spending cuts without concern for losing regional support.

Under the new act, President Clinton cut proposed federal monies earmarked for New York City. The city sued, arguing that the Constitution gave Congress the power of the purse as an enumerated power, and New York City believed this new law suddenly shifted that power to the president. The Court agreed and struck down the act in *Clinton v. City of New York* (1998). Presidents and fiscal conservatives continue to call for a line-item veto to reduce spending. There is little doubt that such power would reduce at least some federal spending. However, it is difficult to convince lawmakers (who can currently send pork barrel funds to their own districts) to provide the president with the authority to take away that perk.

### **Commander in Chief**

The framers named the president the **commander in chief** with much control over the military. The Constitution, however, left the decision of declaring war solely to the Congress. The question of what constitutes a war, though, is not always clear.

Congress. FDR, for example, was the key architect of the New Deal legislation, using his informal powers of persuasion to ensure that Congress enacted the measures. The media's attention on the president provides a **bully pulpit**—a brightly lit stage to pitch ideas to the American people. FDR used the popular radio medium to address Americans during his “fireside chats.” He reassured a worried populace and articulated his solutions in a persuasive way. After each “chat,” letters from listeners poured in urging their Congress members to support the president's ideas.

**Staff** The president meets with the leaders of Congress on occasion to discuss pending bills or to compromise on proposals. But bringing ideas in congruence with those of lawmakers on Capitol Hill can be tricky. Modern presidents realize they need a staff to research, draft, and manage legislation, and most presidents have appointed liaisons with Congress to carry out those tasks. The current White House Office of Legislative Affairs works with senators and representatives and their staffs to promote the president's legislative priorities. This office is part of the vast bureaucracy that is under the control of the executive to help carry out laws and the presidential agenda. (Chapter 5 covers the bureaucracy in depth.) The Office of Legislative Affairs differs in approach with each president—sometimes it delivers completely drafted bills to Capitol Hill; sometimes it takes Congress's desires to the president.

President Obama's legislative affairs team had his full confidence. The people he put in charge of guiding the Patient Protection and Affordable Care Act through the House and Senate succeeded by bargaining and accepting input from both legislative houses. Obama was savvy enough to realize several members of Congress had been working toward a health care policy long before he arrived in Washington.

**Powers of Persuasion** President Trump's only notable bill to pass Congress in his first year was a major tax overhaul that reduced corporate taxes from 35 to 21 percent and changed federal income tax rates, lowering them, at least temporarily, for a vast majority of citizens. The Tax Cuts and Jobs Act passed only after Trump use his skills as a salesman to push for it. As *Politico* reported, “He has spent weeks wooing, prodding, cajoling and personally calling Republican lawmakers to pass sweeping tax legislation in time for Christmas.” He closed on this tax bill as he would have closed on a real estate deal decades ago, with a hard and convincing sell. Using his informal political powers, Trump personally called the moderate members of the Senate who were wavering. The White House organized a speech and presentation in the closing efforts, showcasing how the changes would impact some average families, personalizing the promised effects of the bill.

**Veto** The president has the final stamp of approval of congressional bills and also a chance to reject them with the executive **veto**. After a bill passes both the House and the Senate, the president has 10 days (not including Sundays) to sign it into law. If vetoed, “He shall return it,” the Constitution states, “with



### ***Constitutional Amendments Defining the Presidency***

- **Twelfth Amendment:** (1804) Electors vote for president and for vice president.
- **Twentieth Amendment:** (1933) Inauguration date moved from March 4 to January 20.
- **Twenty-Second Amendment:** (1951) Limits a president's tenure to two terms or ten years.
- **Twenty-Third Amendment:** (1961) Awards electors to the District of Columbia.
- **Twenty-Fifth Amendment:** (1967) Addresses presidential vacancy and disability.

## **Presidential Powers, Functions, and Policy Agenda**

The president of the United States has many powers and functions that enable him to carry out the policy agenda he laid out during the campaign. He exercises the **formal powers** of his office, those defined in Article II, as well the political power he wields with **informal powers**, those interpreted to be inherent in the office, to achieve his policy goals. Congress, too, has bestowed additional duties and limits on the presidency.

### ***Formal and Informal Powers***

A president cannot introduce legislation on the House or Senate floor but in many ways still serves as the nation's chief lawmaker. Article II also gives the president the option to convene or adjourn Congress at times. As the head of state, the president becomes the nation's chief ambassador and the public face of the country. As commander in chief, the president manages the military. Running a federal bureaucracy that resembles a corporation with nearly three million employees, the president is a CEO. And finally, as the *de facto* head of the party, the president becomes the most identifiable Republican or Democrat.

**Chief Legislator** The Constitution provides that the president "may recommend [to Congress] such measures as he shall judge necessary and expedient." Presidents may recommend new laws in public appearances and in their State of the Union address or at other events, pushing Congress to pass their proposals.

Presidents have asked Congress to pass laws to clean up air and water, amend the Constitution, create a national health care system, and declare war. A president with a strong personality can serve as the point person and carry out a vision for the country more easily than any or all of the 535 members of

president plans to fulfill campaign promises, appoint his Cabinet, and how the first family will decorate the White House. The honeymoon period also represents a period of good feeling and typically high rates of legislative success during the first 100 days.

Presidents who win with large margins claim the electorate gave them a mandate to fulfill their campaign promises and carry out their policy agendas. They begin by naming their chief administration officials, such as Cabinet secretaries and agency directors. They also create an inner circle of close advisers to help them form policies and programs to achieve their goals. Much depends on how they set up their White House and administration, as well as their relationship to Congress and the public.

**Succession** If a problem should arise—illness, impeachment, death—and the office of the presidency becomes vacant, the 1947 **Presidential Succession Act** prevents any doubt about who will assume the presidency. In fact, the law assigns a succession order to 18 positions beyond the president. The succession order goes from the vice president, to the congressional leaders, and then to the 15 Cabinet secretaries in the chronological order of each department's creation. The **Twenty-Fifth Amendment**, passed in 1967, provides for the vice president to assume presidential duties if the president is incapacitated or disabled. The amendment also provides for the president to officially hand over temporary decision-making authority to the vice president. This provision has been needed only three times, all for medical procedures.

PRESIDENTIAL SUCCESSION
Vice President
Speaker of the House
President Pro Tempore of the Senate
Secretary of State
Secretary of the Treasury
Secretary of Defense
Attorney General
Remaining Cabinet Secretaries

Based on the Presidential Succession Act of 1947, in the event of presidential vacancy, the next office assumes the presidency. All vacancies except the presidency are filled in the normal routine of such vacancies.

The foreign policy dilemma that resulted in war with Germany and Japan only strengthened his leadership and America's reliance on him as the federal government took on a greater role. As Roosevelt mobilized the nation for an overseas war, he overpowered civil liberties in the name of national security by authorizing the creation of "military areas" that paved the way for relocating Japanese-Americans to internment camps. At the time, FDR acted as a wartime commander in chief, not as an administrator concerned about constitutional rights. (See page 290 on *Korematsu v. United States*, a 1944 Supreme Court case that arose from the internment.) What would have seemed autocratic in peacetime was accepted as an appropriate measure during wartime. Americans rallied behind their commander in chief and accepted most of his measures, electing him to a fourth term, but he died just months after the election.

In the post World War II era, the presidency has grown even stronger. Cold War tensions, military engagements abroad, and greater expectation to protect Americans in the age of terrorism has also further imperialized the American presidency. Since that time, the **Twenty-Second Amendment**, ratified in 1951, prevents any president from serving more than two consecutive terms or a total of 10 years. If a person becomes president by filling a vacancy (see next page), that person can still serve two consecutive terms—hence the 10-year limit.

### ***Continuity, Transition, and Succession***

Despite sometimes widely differing views on governance and the role of the president, the United States has never experienced any bloodshed resulting directly from a disputed election or a major problem during a transfer of presidential power. Presidents have smoothly transitioned, whether at the dawn of the Civil War, at the end of World War II, after Nixon's resignation, or after the disputed election of 2000. Such presidential transitions are a result of both a reverence for constitutional provisions and a focus on the rule of law.

The **Twentieth Amendment** moved the presidential inauguration date from March 4 to January 20 in 1933. An outgoing president, especially an unpopular one, is sometimes referred to as a "lame duck"—that is, a duck that can't fly—because by that point in the term the president's power and ability to get things done have greatly diminished. The **lame duck period** typically begins after the nation has elected a new president and before the exit of the old one. The Twentieth Amendment shrank this period because the country no longer required as much time for presidential transition.

**Transition** The president begins his term by agreeing to the oath of office word for word from the Constitution before the chief justice of the Supreme Court at noon on January 20. The early days of the president's first term are known as the **honeymoon period** as the people get to know their new president. Typical news stories at this time include how the new

a big stick.” During his tenure, he sent troops to Cuba and the Philippines, and he sent the U.S. Navy around the world. He acquired property from Panama to build a canal. (See pages 133–135.)

Roosevelt’s so-called **stewardship theory** approach to governing presumed that presidential powers are only strictly limited by the actual limits listed in the Constitution. Like a good steward, Roosevelt insisted, the president should exercise as much authority as possible to take care of the American people, as Lincoln had done before him. “I have used every ounce of power there was in the office,” he wrote.

Democrat Woodrow Wilson became a strong leader with an international voice. When he delivered the **State of the Union** address to the Congress, the first such in-person delivery of the report since John Adams had done it, Wilson created for himself a platform from which to present and gain popularity for his ideas. His involvement in international affairs became inevitable as the United States entered World War I. Within two years, he led a successful American mission and became a world leader. His celebrity in Paris for the war-ending Treaty of Versailles elevated his stature in the United States and around the world. “We can never hide our President again as a mere domestic officer,” he wrote. “We can never again see him the mere executive he was in the [past]. He must stand always at the front of our affairs, and the office will be as big and as influential as the man who occupies it.” However, Wilson failed to use his powers of persuasion with Congress, and the Treaty of Versailles was never ratified, mainly over objections to United States membership in the League of Nations, of which Wilson was the founder.

***The Turning Point*** In a discussion of presidents who expanded the reach of the office, there is perhaps no better example than Theodore Roosevelt’s cousin, **Franklin Delano Roosevelt** (FDR) (1933–1945). He became president during the Great Depression (1929–1941), the most severe economic crisis in history. The large coalition that rallied behind him included people from nearly every walk of life who had been harmed by the Depression. His New Deal programs promised to bring the nation out of despair.

FDR arrived in Washington with revolutionary ideas that fundamentally changed not only the role of presidency but also the role of the whole federal government. He recommended and Congress passed laws that required employers to pay a minimum wage, created the Social Security system, and started a series of public works programs to stimulate the economy. These measures greatly expanded the role of government and required vast new additions to the bureaucracy that supports the executive branch in order to carry out the new policies. In trying to prevent a conservative Supreme Court from striking down his self-described liberal legislation, he moved to increase the number of seats on the Court with plans to place judges favorable to his proposals on the bench. His plan failed, but it illustrates Roosevelt’s imperial tendencies. He ran for and won an unprecedented third term as the United States moved closer to entering World War II.

**Personality and Popularity** The dominating personality and popularity of the headstrong **Andrew Jackson** brought about a noticeable shift in presidential power during his presidency (1829–1837). Jackson was a forceful military general who had led the Southern expedition that evacuated the Native Americans. As president, he blazed a path of executive dominance. He used the veto 12 times, more than any president had before. Jackson's opposition to a national bank, combined with his headstrong demeanor, created a rift between the president and other branches, while his popularity among farmers and workers in an age of expanded suffrage and increased political participation enhanced his power even more.

Under the presidency of chief executives who served after Andrew Jackson and before Abraham Lincoln, the powers of the presidency contracted. None of the eight presidents served more than one term, and two died in office. It was a time of relative peace, with the exception of the Mexican-American War. Franklin Pierce and James Buchanan, who preceded Lincoln, are noted for their lack of presidential leadership and clear policy agenda and for allowing the nation to drift toward Civil War. Historians rank Buchanan and Pierce at the bottom of the list of effective presidents.

**National Crisis** After the Southern states seceded, **Abraham Lincoln** (1861–1865) once again expanded the presidency as he assumed sweeping presidential powers to save the Union and to limit slavery. During the four years of the conflict, writes historian Arthur Schlesinger: "Lincoln ignored one constitutional provision after another. He assembled the militia, enlarged the Army and Navy beyond the congressional appropriation, suspended habeas corpus, arrested 'disloyal' people, asserted the right to proclaim martial law behind the lines, to arrest people without warrant, to seize property, and to suppress newspapers." Lincoln is generally excused for these constitutional violations because he stretched the powers of his office in the name of saving the United States and emancipating the slaves.

**On the World Stage** Through Reconstruction and after, a host of Union officers, mostly Republicans, served as chief executives. In the late 1800s, the United States began to compete on an international stage with the industrial and imperial powers of Europe. President **William McKinley**, for example, sent 5,000 American troops to China to help put down the Boxer Rebellion.

As the United States became a world military and industrial power, **Theodore Roosevelt** (1901–1909) and **Woodrow Wilson** (1913–1921) stretched presidential power in the name of advancing the nation and serving the people. Roosevelt's gallant Rough Rider background from the Spanish-American War and his brash, forward manner made people respect his strong persona. His progressive actions for environmental conservation against corporate giants contributed greatly to both his reputation and his legacy. He strengthened the Monroe Doctrine with his foreign policy motto that the United States would "speak softly and carry



Monroe established a foreign policy, the Monroe Doctrine, by which the United States dominated the Western Hemisphere. For the most part, however, these powerful men let Congress fill its role as the main policymaking institution while the presidents executed Congress's laws.

### **The Imperial Presidency**

Yielding to Congress, however, began to fade as stronger presidents came to office. The president's strength relative to that of Congress has grown steadily, with occasional setbacks, to create a kind of **imperial presidency**, a powerful executive position guided by a weaker Congress. *Webster's Dictionary* defines an imperial presidency as "a U.S. presidency that is characterized by greater powers than the Constitution allows." Historian Arthur Schlesinger Jr. popularized the term with his 1973 book of the same name. The book was published in the shadow of an overreaching Nixon presidency.

**Reasons for Expanded Powers** A century before the U.S. founding, John Locke argued that in emergencies reasonable rulers should be able to resort to exceptional power. Legislatures were too big, too unwieldy, and too slow to cope with crisis. On occasion, "a strict and rigid observation of the laws may do harm," Locke said. Every president, once in office, has agreed with this assessment. War and international conflict have necessitated the commander in chief's strong, rapid, and sometimes unilateral response to enemies and hostile nations. Economic and other domestic crises have raised popular expectations for strong leadership and new ideas. Sometimes a president's personality and popularity have also helped to expand executive powers.



Source: *Library of Congress*

President Andrew Jackson's critics often questioned if he had stepped outside his authority. What symbols does the cartoonist use to signal this accusation? What is at Jackson's feet? What does he hold in his hand?

**Checks on Presidential Powers** The framers took seriously the concerns of the Anti-Federalists and included specific roles and several provisions to limit the powers of the future strong, singular leader. **BIG IDEA** There are several constitutional checks on a president—the Senate has the power to provide advice and consent on appointments, for example, and the presidential salary cannot increase or decrease during the elected term.

The framers also expressly made the president subject to **impeachment**. The president “shall be removed from office on impeachment for and conviction of, treason, bribery, or other high crimes and misdemeanors.” The impeachment process, outlined in Article I, gives the House the sole power of impeachment (accusation), which it can declare with a simple majority. The impeached official then receives a trial in front of the Senate, with the Chief Justice of the Supreme Court presiding. After sitting as the jury, the Senate can vote to convict (and thus remove) or acquit the president. A two-thirds vote is required to remove the president. An impeached president cannot be pardoned.

Only two presidents have been impeached—Andrew Johnson for violating the Tenure of Office Act (1867) after the Civil War and Bill Clinton for perjury and obstruction of justice in 1998. Johnson escaped removal by one vote. When the Senate voted to remove Clinton, the votes did not reach the required two thirds to do so. The House nearly voted on an impeachment bill during Richard Nixon’s presidency in response to the Watergate affair. The measure cleared the House Judiciary Committee, but Nixon resigned before it reached the full House. To date, no president has ever been removed from office.

While some presidential powers, such as serving as commander in chief, appointing judges and ambassadors, and vetoing legislation, are explicit, presidents and scholars have argued about the gray areas of a president’s job description. Most presidents have claimed **inherent powers**, those that may not be explicitly listed but are nonetheless within the jurisdiction of the executive. This debate has taken place during nearly every administration. Presidents have fought battles for expanded powers, winning some and losing others. The debate continues today.

**Washington’s Example** For first President George Washington, the Constitution provided a mere five-paragraph job description. He took on the role with modesty and accepted being addressed as “Mr. President” as a title though some suggested more lofty labels.

Washington had some key accomplishments, primarily in instilling public confidence in the nation’s constitutional experiment. Though he surely would have won a third term, Washington chose to leave government after his second term to allow others to serve and to allay any fears of an overbearing executive.

The presidents that followed Washington had moments of questionable initiative and international confrontation, but most of the early presidents faithfully carried out congressional acts, exercised the veto minimally, and followed Washington’s precedent to serve no more than two terms. Thomas Jefferson purchased the Louisiana Territory without congressional approval, and James Madison led the nation in a second war against Great Britain. And

**Political Science Disciplinary Practices:** Analyze and Interpret  
*Federalist No. 70*

When Publius wrote the Federalist articles, the authors were trying to convince those in the Anti-Federalist camp to support ratification of the Constitution. For this reason, the arguments Hamilton presented reflected the concerns of the Anti-Federalists, those who feared the “fetus of monarchy” because of their recent experience with the British monarch. With this in mind, consider the perspective of each side of the debate.

**Apply:** Complete the activities below.

1. Describe the author's central claim about a chief executive.
2. Explain how the author's argument for that claim ensures a better government.
3. Explain how the implications of the author's argument may affect the behavior of the chief executive.

Then read the full text on page 660 and answer the questions that follow it.

**Article II** The Constitution requires the president to be a natural-born citizen, at least 35 years old, and a U.S. resident for at least 14 years before taking office. The president is the commander in chief and also has the power to issue pardons and reprieves and appoint ambassadors, judges, and other public ministers. The president can recommend legislative measures to Congress, veto or approve proposed bills, and convene or adjourn the houses of Congress. The framers also created a system by which the Electoral College chooses the president every four years.

**Article II: Qualifications, Duties, and Limits of the Presidency**

- Must receive a majority of Electoral College votes to win the office
- Shall hold office for a four-year term
- Must be a natural-born citizen, at least 35 years old, and have lived in the United States for 14 years
- Shall be the commander in chief of the Army and Navy
- May require opinions of advisers and department heads
- Shall have the power to pardon convicted persons for federal offenses
- Shall appoint ambassadors and judges, and make treaties with Senate approval
- May recommend measures he finds necessary
- May convene or adjourn Congress

## Framers' Vision

The delegates in Philadelphia in 1787 voted to make the presidency an executive office for one person. Fears arose because skeptics saw this office as a potential “fetus of monarchy.” One delegate tried to allay such fears, explaining “it will not be too strong to say that the station will probably be filled by men preeminent for their ability and virtue.”



### FOUNDATIONAL DOCUMENTS: *FEDERALIST No. 70*

Critics of the proposed Constitution questioned Article II and the creation of the presidency. A single person, the Anti-Federalists argued, in charge of the administration of government and the executive branch would be dangerous. In the 85 essays the Federalists penned, 25 of them address Article II, and 42 different passages across the collection of these essays make points about the chief executive, his powers, term, relationship to the other branches, and the method of elections. In *Federalist No. 70*, Alexander Hamilton, writing as Publius, foreshadows the “ingredients” of the presidency, “first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers.” In No. 70, he addresses his first point (he goes on to address the others in the following essays). *Federalist No. 70* focuses on the value of the unity in a single executive to avoid conflicts and to ensure accountability.

[The framers] have declared in favor of a single Executive, and a numerous legislature. They have, with great propriety, considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand . . . Wherever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion . . . And what is still worse, they might split the community into the most violent and irreconcilable factions, adhering differently to the different individuals who composed the Magistracy . . .

But the multiplication of the Executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author . . .

When power, therefore, is placed in the hands of so small a number of men, as to admit of their interests and views being easily combined in a common enterprise, by an artful leader, it becomes more liable to abuse, and more dangerous when abused, than if it be lodged in the hands of one man; who, from the very circumstance of his being alone, will be more narrowly watched and more readily suspected, and who cannot unite so great a mass of influence as when he is associated with others.