

Interactions Among the Branches of Government (Unit 2)

2

BIG IDEAS

→ CONSTITUTIONALISM

→ COMPETING POLICY-MAKING INTERESTS

Unit 1 established the foundations of American democracy, the founding documents written by the founding fathers. Unit 2 establishes how the three branches of government interact with each other, how they use the powers given by the Constitution, how checks and balances prevent any one branch of government from becoming too strong, and how, ultimately, they must cooperate and compromise in order to govern effectively. This unit will cover the characteristics of each branch and the powers given to the legislative, executive, and judicial branches of government.

The first of four institutions to be explored in this unit, Congress can be viewed as the citizens' direct link to the branch of government that is responsible for public policy. It has a number of functions including, but not limited to, representing the interests of constituents, lawmaking through consensus building, oversight of other governmental agencies, policy clarification, and ratification of public policies.

The presidency has evolved into the focal point of politics and government in America. This institution is the political plum for those seeking elected office. The president plays a predominant role in government, having formal and informal relationships with the legislative and judicial branches and the bureaucracy. Other roles that involve the president more than any other individual or institution in politics and government will be evaluated. Potential conflicts and the reasons why the institution has been criticized for an arrogance of power are important areas to explore.

The constitutional basis of power as well as how the president has used executive agencies such as the cabinet, the executive office, and the White House staff demonstrates the growth of the executive branch. Additionally, the shared legislative relationship the president has with Congress points to the complex issue of whether the institution has developed into an imperial presidency, a presidency that dominates the political agenda.

This unit also explores the third branch of government, the judicial branch, its characteristics, functions, and how it uses judicial review to interpret the Constitution and limit the power of the Congress and president.

The unit explores the evolution of the judiciary, how it makes decisions regarding constitutional issues, and the ideological battles between the liberal and conservative members of the court. The terms "judicial activism" and "judicial restraint" are also explained in the context of the past and of today's court.

The federal bureaucracy, sometimes referred to as the fourth branch of government, plays an important linkage role in Washington. The bureaucracy is primarily responsible for implementing policies of the branches of government. Some bureaucracies also make policy as a result of regulations they issue.

This unit also focuses on four types of governmental bureaucratic agencies—the cabinet, regulatory agencies, government corporations, and independent executive agencies. We will also look at the various theories regarding how bureaucracies function. By tracing the history of civil service, you will be able to understand the role patronage has played in the development of government bureaucracies. You will also see how the permanent government agencies became policy implementers and how they must function in relation to the executive branch, legislative branch, and judicial branch.

QUESTIONS STUDENTS MUST ANSWER

1. How do the three branches of government interact with each other to achieve policy goals?
2. How has the nature of the relationship and power among the branches of government changed and how has the national government responded to these changes?

Big Ideas

Constitutionalism provides for the separation and interaction of the branches of government. **Competing Policy-Making Interests** of the branches of government are essential to the development and implementation of public policy.

KEY TERMS STUDENTS MUST KNOW

Bully pulpit	Logrolling
Cloture	Mandatory spending
Committee of the whole	Necessary and proper clause
Congressional oversight	One person, one vote
Delegate	Pocket veto
Discharge petition	Policy agenda
Discretionary spending	Politico
Divided government	Pork-barrel legislation
Entitlement	Precedent
Enumerated power	Rider Amendment
Executive order	Rules committee
Filibuster	Signing statement
Gerrymandering	Stare decisis
Holds	Trustee
Implied power	Unanimous consent
Judicial activism	Veto
Judicial restraint	Whips
Lame duck	White House staff

REQUIRED PRIMARY DOCUMENTS STUDENTS MUST KNOW

Federalist No. 70
Federalist No. 78

REQUIRED SUPREME COURT CASES STUDENTS MUST KNOW

Baker v Carr (1962)

Shaw v Reno (1993)

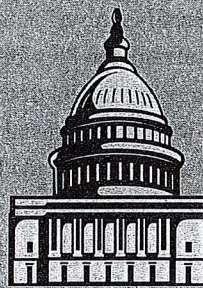
KEY CONCEPT 2.A: THE LEGISLATIVE BRANCH

The House of Representatives and Senate, the legislative branch, are directly responsible to the people. Their function is carried out through their structures and operations.

The **Big Idea, Constitutionalism**, is reflected by this concept.

CONTEMPORARY CONNECTION

Speaker of the House Paul Ryan and Senate Majority Leader Mitch McConnell coordinated legislative priorities with newly elected President Trump. One of their first priorities was the failed attempt to repeal and replace the Affordable Care Act.



CONSTITUTIONAL REVIEW OF CONGRESS

- Basis of constitutional authority is found in Article I.
- A House member must be at least 25 years old, an American citizen for seven years, and an inhabitant of the state the representative represents. Representatives serve two-year terms.
- A Senate member must be 30 years old, an American citizen for nine years, and a resident of the state the senator represents. Senators serve six-year terms.
- Common powers delegated to Congress, listed in Article I Section 8 include the power to tax, coin money, declare war, and regulate foreign and interstate commerce.
- Implied congressional power comes from the “necessary and proper” clause, which has been referred to as the “elastic clause.”
- The House of Representatives has the power to begin all revenue bills, to select a president if there is no electoral college majority, and to initiate impeachment proceedings.
- Senate has the power to approve presidential appointments and treaties and to try impeachment proceedings.
- Congress may overrule a presidential veto by a two-thirds vote of each house.

Apportionment, Reapportionment, and Gerrymandering Reflect Partisanship

According to the 2010 United States Census report, the Constitutional basis for conducting the decennial census of population is to reapportion the U.S. House of Representatives. Apportionment is the process of dividing the 435 memberships, or seats, in the U.S. House of Representatives among the 50 states. With the exception of the 1920 Census, an apportionment has been made by the Congress on the basis of each decennial census from 1790 to 2010.

The apportionment population for 2010 consists of the resident population of the 50 states plus overseas federal employees (military and civilian) and their dependents living with them, who were included in their home states. The population of the District of Columbia is excluded from the apportionment population because it does not have any voting seats in the U.S. House of Representatives. The 2010 Census apportionment population was 309,183,463.

Guarantees of voting equality through “one person, one vote” representation, the recognition that the size and makeup of congressional districts should be as democratic as possible, has achieved this goal. Gerrymandering, how legislative districts are drawn for political purposes, has undermined the equal representation principle. Each state has its own laws dictating who is responsible for redrawing districts after the U.S. Census is completed every ten years. In most states the legislatures have that responsibility. So, if a state legislature has a Democratic majority, districts can be drawn to favor Democratic incumbents. The same principle applies to a state that has a Republican legislative majority. If there is a dispute over this process, the courts step in. The Supreme Court heard arguments related to a Wisconsin case. Even though there was less than a majority vote for the Republican party in the 2016 election, the Republicans gained a majority in the legislature. The court had to decide whether the reapportionment done by the Wisconsin legislature was done strictly for political reasons. There is also the issue of racial gerrymandering whereby states created majority-minority districts. The Supreme Court has ruled that this practice is unconstitutional. The court did, however, allow the Voting Rights Act of 1965 as a means of allowing race to be used as a factor in drawing districts.

Required Supreme Court Cases

Baker v Carr (1962)

Essential Fact: Charles Baker challenged Tennessee’s apportionment law claiming that when reapportionment was done by the state legislature it did not take into account population shifts that favored rural areas.

Constitutional Issue: Can federal courts decide the political issue of state apportionment procedures?

Majority Decision: The Court reformulated the political question doctrine of whether districts were apportioned for political reasons, identifying six factors to help in determining which questions were “political” in nature.

Dissenting Opinion: The minority said the Court cast aside history and judicial restraint and violated the separation of powers between legislatures and courts. The minority wrote: “Appellants invoke the right to vote and to have their votes counted. But they are permitted to vote and their votes are counted. They go to the polls, they cast their ballots, they send their representatives to the state councils. Their complaint is simply that the representatives are not sufficiently numerous or powerful.”

Shaw v Reno (1993)

Essential Fact: After North Carolina created three majority-minority districts when the U.S. Attorney General sued the state for creating one district that was gerrymandered, ensuring that a black candidate would win, the Voting Rights Act of 1965 was used to challenge how the districts were created.

Constitutional Issue: Whether the Voting Rights Act of 1965 and the equal protection clause of the Fourteenth Amendment mandated that legislative redistricting must use race as one of the factors to ensure minority representation.

Majority Opinion: In a 5-4 decision, the Supreme Court reversed the lower-court decision describing the shape of the new district as “bizarre” and said such a district “bears an uncon-

portable resemblance to political apartheid." The court found that if a redistricting map is "so bizarre on its face that it is 'unexplainable on grounds other than race,' that a claim for relief under the Fourteenth Amendment to the United States Constitution is available to plaintiffs." The court also ruled that race could be used to make districts that were racially balanced.

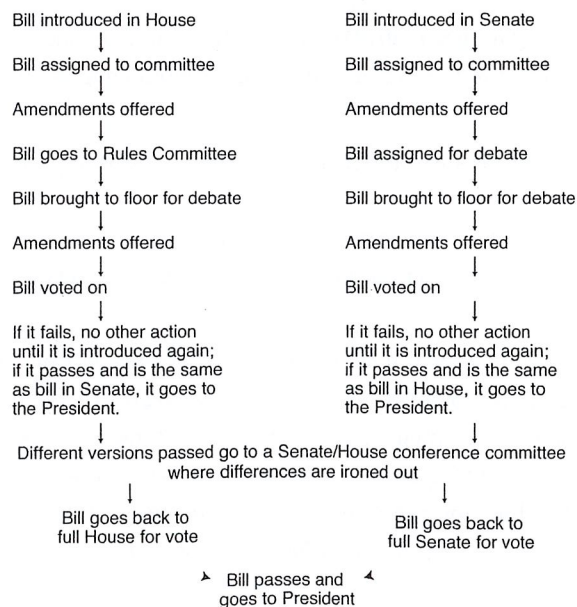
Dissenting Opinion: Allowing race-based voting blocs is distinct from other forms of affirmative action insofar as allowing race-based blocs does not deny another person her rights and privileges, as for example, race-based hiring and retention practices do.

POLICY-MAKING PROCESS OF CONGRESS

Unlike the House of Representatives, the Senate was created by the United States Constitution to represent the states equally. Each state has two senators. As a result of the significant difference in size—the House of Representatives with 435 members and the Senate with 100 members—each chamber operates differently. For example, rules allow much more extensive debate over legislation in the Senate compared to the House. How senators and representatives work with each other also differs because of the length of terms they serve, House members serve two years, senators six years. The longer term and smaller body enables senators to maintain friendships and potentially build relationships across party lines. House members must represent their districts, taking into account individual constituents, organized interests, and the district as a whole. For their individual constituents, representatives set up mobile offices and respond personally to written letters. They contact federal agencies, sponsor appointments to service academies, and provide information and services. For organized groups, they introduce legislation, obtain grants and contracts, give speeches, and attend functions. For the district as a whole, representatives obtain federal projects (sometimes from pork-barrel legislation), look for ways of getting legislation that will increase employment or tax benefits, and support policies that will directly benefit the geographic area of the district.

Through such public relations practices as sending out a congressional letter highlighting a reference in the *Congressional Record* of individuals or the achievements of people in their districts, representatives attempt to get close to the people they represent. By far the most important function of Congress is the legislative responsibility. Before explaining the different approaches to lawmaking, it is important that you understand the way a bill becomes a law.

How a Bill Becomes a Law



Obviously, this is a simplified version of the process. And if the president vetoes the bill, the houses of Congress must vote separately to determine whether each has a two-thirds majority to override the veto. In an attempt to increase legislative output, Congress can use several techniques to move legislation along. Logrolling (or “I’ll vote for your legislation, if you vote for mine”) coalitions, consensus building, and pork-barrel deals (legislation that only favors a small number of representatives or senators) often result in agreement to pass bills.

Budget-Making Responsibility of Congress Includes the Debate Over How Much Discretionary and Mandatory Spending Should Be Included

The main legislative responsibility of Congress is passing an annual budget. In response to increased deficit spending, Congress passed the Gramm–Rudman–Hollings Balanced Budget and Emergency Deficit Control Act of 1985. This law was named after its cosponsors, Senators Phil Gramm of Texas, Warren Rudman of New Hampshire, and Ernest Hollings of South Carolina. The law set goals to meet the deficit. If these goals were not met, automatic across-the-board discretionary spending cuts must be ordered by the president. Mandatory programs such as Social Security and interest on the national debt were exempt. In 1989 cuts were made until a budget was approved by Congress. The law also gave direction that the 1993 budget would have to be balanced. Because these were goals, and a balanced-budget requirement would need a constitutional amendment, Congress has used this law as a guide for overall reductions.

Illustrative Example

2011 Debt Limit Agreement and 2013 Fiscal Limit Battle

According to the U.S. Treasury, the national debt has more than doubled over the past decade. Congress needs to vote to raise the debt limit (or debt ceiling) in order for the United States to meet its obligations. In 2011, the Republican majority in the House of Representatives threatened not to raise the debt ceiling unless President Obama made cuts in spending to offset the increase. A crisis was averted in the eleventh hour when a compromise was reached, and the debt ceiling was raised.

Illustrative Example

The Fiscal Cliff and Sequestration

The “fiscal cliff” was a date (January 1, 2013) by which the nation’s economy would be impacted if no action was taken by Congress. For example, that impact would happen in some of the following ways:

- The so-called Bush tax cuts would expire, and income tax rates would be raised for every taxpayer.
- Unemployment insurance would run out for millions of people who were out of jobs.
- There would be mandated cuts in discretionary spending and defense spending defined by law (sequestration).

Congress passed legislation avoiding the fiscal cliff by raising tax rates only on those earning more than \$450,000, extending unemployment benefits, and delaying the mandated cuts.

Sequestration was the mandated cuts in discretionary and defense spending passed by Congress for the purpose of reducing spending after President Obama and the House Republicans agreed to raise the debt ceiling and extended the Bush tax cuts in 2011. These cuts took place in 2013, and negotiations began to avert the harmful impact on military and discretionary programs that were cut.