



## Chapter 5 Interactions Among Branches of Government

## CONGRESS

### Concepts

- Why do congressional incumbents have an advantage over challengers?
- Why did the Supreme Court strike down majority-minority voting districts?
- Why does Congress continue to maintain the seniority system?
- What is it about the way Congress operates that promotes factionalism?
- Why has it been argued that Congress contributes to the fragmentation of policy making?
- Why do we hate Congress but love our congressperson?
- Why would members of Congress vote against campaign finance reform?
- Why would members of the Senate engage in a filibuster?
- Why is the House Rules Committee so important?
- How does politics enter into the nomination process for independent agencies and the judiciary?
- What impact has the high cost of campaigning had on the legislative process?
- What are the powers of the leaders in the House and Senate?

### Congressional Structure

**Congress** is the bicameral (two-house) legislature responsible for writing the laws of the nation. Congress also serves other functions, such as overseeing the bureaucracy, consensus building, clarifying policy, legitimizing, and expressing diversity. It is made up of a **House of Representatives** of 435 members and a **Senate** of 100 members.

Every 10 years, a **census** is taken by the federal government to count the population to determine the number of each state's **congressional districts**. Each state must then redraw its congressional boundaries to ensure that each district is equal in population. Congressional **redistricting** is done by each state legislature. Therefore, the political party in control of the state legislature controls how the districts are drawn. As much as is legally possible, the legislature will **gerrymander** the district boundaries to give the majority party an advantage in future elections. This is true in every state with the exception of Iowa, which uses an independent commission to form districts. In some states, such as Alaska and Wyoming, the populations are so small that the entire state becomes a congressional district; all states are guaranteed at least one seat in the House.

## Congressional Elections

Elections for all the 435 seats of the House of Representatives occur every two years. House members must reside in the district they represent, be a citizen of the state, and be at least 25 years old. Election to the House takes place within each congressional district. The constituencies of representatives are relatively small compared with those of senators, and the House incumbent election rates are very high, averaging more than 90%. Many House members have safe seats and are not seriously challenged for reelection.

Elections for one-third of the Senate occur every two years, with a senator's term lasting six years. Prospective senators must be at least 30 years old. Every state is guaranteed two senators, elected on a staggered basis in statewide elections. Senate elections are generally more competitive, expensive, and high profile. In addition, they often draw candidates from other elected offices.

### Essential Case: *Baker v. Carr* (1962)

**Facts:** In 1960, Tennessee had not redrawn its state legislative districts since the turn of the century. Charles Baker sued the state as his county's population had grown considerably in that time without benefiting from increased representation in the state legislature. The defendant in the case was Tennessee's secretary of state.

**Issue:** Did Tennessee's refusal to redistrict violate the Fourteenth Amendment's guarantee of "equal protection of the law"? Lawyers representing Tennessee argued that redistricting was a state issue.

**Holding:** After nearly a year of deliberations, the Supreme Court ruled in a 6-2 decision that the federal government can force states to redistrict every 10 years after the national census. Dissenting justices claimed that the ruling imperiled the separation of powers between the legislative and judicial branches.

### Essential Case: *Shaw v. Reno* (1993)

**Facts:** After the 1990 national census, the federal government reapportioned seats in the House of Representatives to reflect changes in the population. The North Carolina legislature began to redraw its congressional map.

**Issue:** The proposal the North Carolina legislature submitted to the Department of Justice suggested that the state legislature was attempting to use gerrymandering to isolate African American voters into the 12th Congressional District. White voters living in the 12th sued. When a federal District Court dismissed their lawsuit, the case went to the Supreme Court.

**Holding:** In a 5-4 decision, the Supreme Court ruled that North Carolina's 12th Congressional District was a clear case of the state using racial bias in its congressional map. Dissenting justices noted that it was not the court's place to make this determination, as the plaintiffs were not African American. North Carolina was forced to redraw its congressional map.

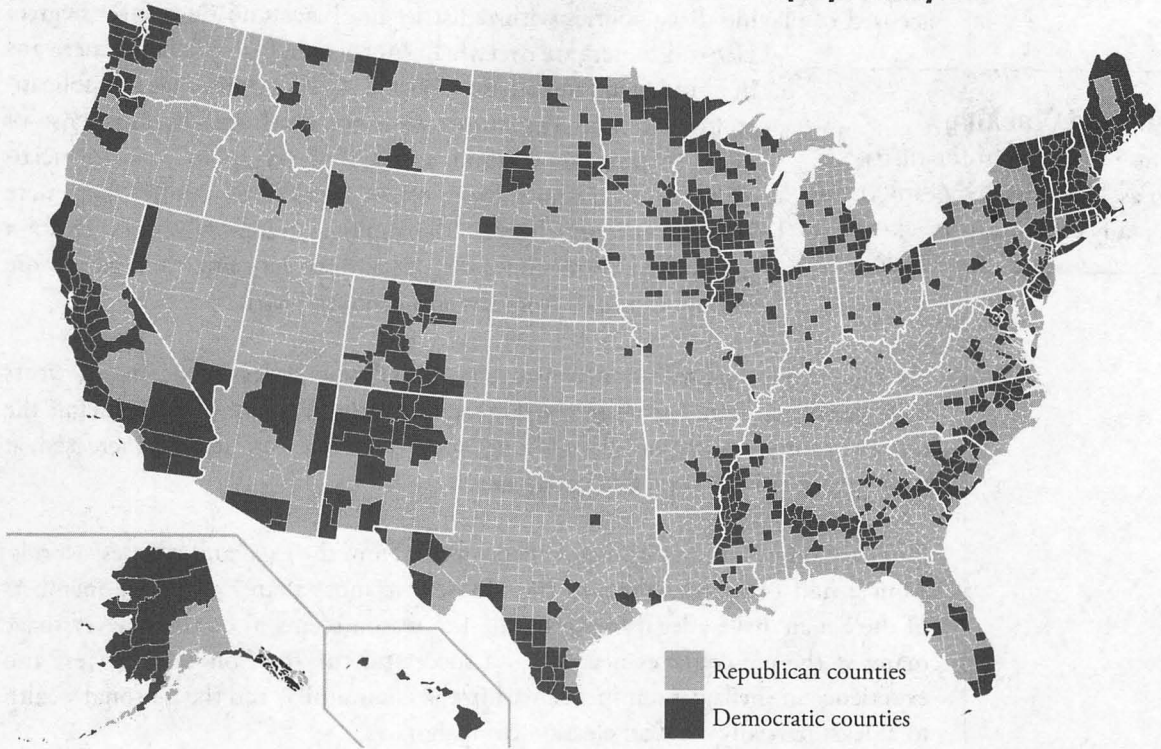
Compare the results shown on the next page to the actual outcomes to get an idea of where there might be a disparity between counties and the districts that are sometimes seemingly arbitrarily created through them.

## Congressional Districts and Representation

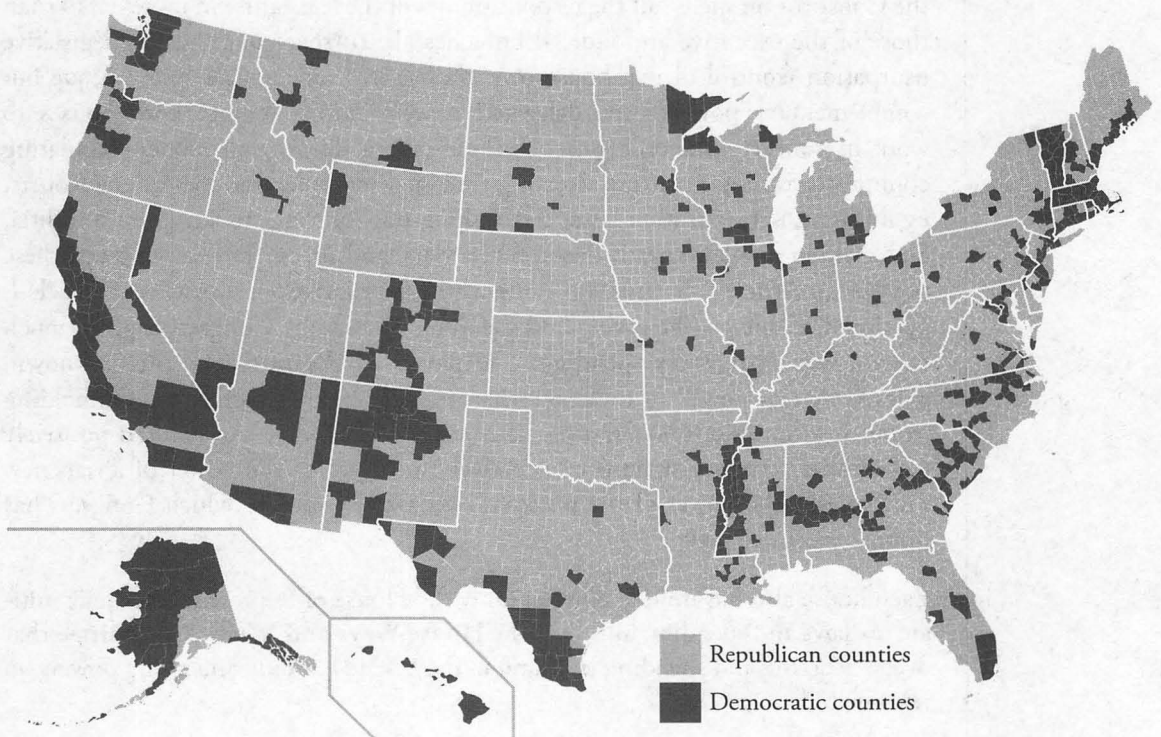
Descriptive representation means that the elected legislature should reflect the demographic characteristics of the constituency. Minorities and women have always been underrepresented in Congress and state legislatures, which is the reason that the **Voting Rights Act of 1965** encouraged states to take measures to increase minority representation in Congress. Into the early 1980s, little progress had been made. Women and minority groups continued to be underrepresented. In 1982, Congress amended the Voting Rights Act to encourage states to create majority-minority districts, concentrating Black and Hispanic populations into distinct congressional districts. These districts were created to make it more feasible for minority candidates to get elected.

Following the 1990 census, many states redrew their congressional districts, which resulted in an increase of Black representation by 50% and Hispanic membership by 70%. Various districts were drawn to conform to the Voting Rights Act. However, the shape of these districts was sometimes quite bizarre. North Carolina District 12, for example, stretched in a narrow band 160 miles down Interstate Highway 85. A Duke University professor joined with four other white plaintiffs to challenge the constitutionality of District 12. In *Shaw v. Reno* (1993), the Supreme Court surprised many with a split decision. The court invalidated the district in question because its boundaries were neither contiguous nor compact and were drawn with the intent to discriminate through the use of racial gerrymandering. The court ruled that any racial gerrymandering by the state required a compelling state interest, and it did not see such a compelling interest in this district. On the other hand, the Supreme Court has heard other redistricting cases like this one, and has upheld the redistricting or simply declined to take the challenge. The following maps show how the individual counties voted for the 2012 and 2016 elections.

### 2012 Presidential Election Map by County



### 2016 Presidential Election Map by County



### Packing and Cracking

Isolating minorities in the district is known as “packing.” Dividing them across many districts is “cracking.”

Legislators in North Carolina, Georgia, Texas, and many other states have been accused of playing dirty politics with redistricting. Black and (to a lesser degree) Hispanic voters are overwhelmingly Democrat. (Cuban Americans in Florida tend to vote Republican.) Critics claim that Republican-controlled state legislatures were not motivated by any sense of duty. Instead, they stand accused of trying to remove racial-minority Democrats from other districts to ensure that more Republicans get elected. The political trade-off was to create a guaranteed Democratic district and at the same time gain more Republican seats from the surrounding districts.

To add to the representation controversy, population shifts in the last 20 years have given additional seats in the House to southern states while reducing the number from other regions. In addition, suburban representation has increased, at the expense of both rural and urban areas.

Finally, Congress draws its members primarily from the legal and business worlds. Almost half of the members in the House and more than half of the members in the Senate have a legal background. The reason seems to be that lawyers have many of the prerequisites needed for a successful run for Congress: interest and experience in the law, prominence within the community, and the personal wealth to at least partially fund an election campaign.

## Congressional Powers

The framers had a fear of the power inherent in legislatures. Because of that fear, the Constitution spells out the responsibilities of the legislature in more detail than those of the executive and judicial branches. To further guard against legislative usurpation (control of one house over the other), both houses have unique but complementary powers. The delegated powers, which require both houses to work in concert with each other, include taxing, borrowing money, regulating commerce, raising an army, creating and making rules for the federal courts, establishing naturalization laws, establishing post offices, providing for a militia, and making any law that is deemed necessary and proper for carrying out these powers. In Article I, Section 9, Clause 7 (the appropriations clause) and Article I, Section 8, Clause 1 (the taxing and spending clause), the Congress is given much control over **budgetary** spending. The **power of the purse**, as this is known, gives Congress power to influence the president or bureaucrats by withholding or putting conditions on funding. The power of the purse can be used positively to promote certain programs or negatively to diminish the power of an agency. Historically, the power of the purse has been a key tool by which Congress has limited executive power.

Each house also has unique powers. Only the House of Representatives may initiate tax laws and spending bills. It is the **House Ways and Means Committee** that oversees taxing and spending legislation. The Senate has only amending powers on revenue bills.

The Senate's unique powers include confirmation of presidential nominations to the federal courts and ambassadorships to foreign countries. The Senate must also ratify all treaties signed by the president.

## The Nonlegislative Tasks of Congress

Congress's primary responsibility is to fulfill the legal needs of the nation by writing laws. However, Congress also performs other equally important functions. These include the following:

- **Oversight.** Through its committees and subcommittees, Congress reviews the work of the federal agencies. This helps check the executive branch. It investigates charges of corruption and waste, and it holds **hearings** in which experts and citizens discuss the government's problems and suggest solutions. All committee chairs have the power to subpoena (legally compel) witnesses to appear and testify. It is also the role of the Senate to confirm the members of the president's cabinet as well as to approve nominees for all positions in the federal court system.
- **Public education.** Committee hearings and floor debates increase public awareness of government and societal problems. Floor debates over issues such as gun control, tax cuts, Social Security reform, health care reform, and sending armed troops abroad all help to focus national attention.
- **Representing constituents within the government.** As representatives of their electorates, also known as **politicos**, members of Congress not only vote on laws but also help constituents in their dealings with the government. They receive and can act on complaints about federal services, sponsor voters who seek scholarships or federal contracts, and solicit constituents' suggestions on how to improve the government. In performing this last task, some members of Congress consider themselves **delegates** whose job it is to mirror the views of their home districts. This is known as the Delegate Model or representational view. Others see themselves as trustees who should consider their constituents' views but should ultimately use their best judgment as experts when deciding how to vote. This is known as the **Trustee Model**, or attitudinal view.

## The Legislative Process

The legislative process is, by design, slow and complicated. This is to prevent Congress from acting hastily. The framers intended for the process to foster compromise. The result has been that the final versions of bills are often radically different from the initial versions. Without compromise, there would be no legislative process.

As many as 10,000 bills are introduced on the floor of Congress each year. Some are written by members of Congress and their staffs; others are drafted by the executive branch and are introduced by a sympathetic member of Congress. Many are suggested or written by interest groups and their lawyers. Regardless of who authors a bill, a bill can be proposed only by a member of Congress. Whoever introduces a bill is called the **sponsor** of the bill.

The legislative process requires the two houses to work cooperatively with each other. All bills must pass both houses in exactly the same form. While the bills must be the same, the debate and voting processes in the two houses differ. Because there are 435 members of the House of Representatives, the process by which bills are debated is limited. The Senate, which is smaller, has fewer rules governing the legislative process.

Unlike the Senate, the House has a **Rules Committee**, which is responsible for determining how long a bill will be debated and whether to allow an open or closed rule for amending the bill. Open rules allow amendments; closed rules prohibit amendments. When Republicans gained control of the House of Representatives in 1994, they promised most bills would be debated under open rules. Allowing 435 members an opportunity to add amendments to bills became so cumbersome, however, that the House leadership returned to the closed rule process. Because the House Rules Committee controls crucial aspects of the legislative process, it is considered the most powerful committee in the House. The Rules Committee can kill a bill by delaying a vote or by making it easy for opponents to add **poison-pill** (or “**killer**”) **amendments**. The House Rules Committee can also bring bills up for an immediate floor vote.

While the House strictly controls debate, the Senate does not. There are no time restraints placed on senators. A **filibuster** is a tactic used to delay a vote on a bill and tie up the work of the Senate, usually by a senator making a speech that continues for hours on the Senate floor. A filibuster can also happen without actual continuous speeches, although the senate majority leader may require an actual traditional filibuster if he or she so chooses. The only way to end a filibuster is to vote for **cloture**, but this requires the votes of 60 members, which is difficult to achieve when the two parties are evenly represented.

The Senate has no closed rules for amending legislation. Amendments, called riders, do not have to be relevant to a bill. This allows individual senators an opportunity to add amendments, such as “pet” issues or projects for their home state, or to prohibit the actions of executive agencies. “Pet project” riders designed to bring federal money to a home state are called **pork barrels**. **Earmarks**—provisions within legislation that appropriate money to a specific project—appear

### Meat Lovers

“Bringing home the bacon” is one of the reasons incumbent reelection rates are so high. The members of both houses love pork-barrel legislation.



in appropriation bills and authorization bills. There are a few groups that monitor earmarking in the U.S. Congress, but earmarks are no longer allowed by the House.

After debates, bills usually end up passing the House and Senate in different forms, so both versions are sent to a **conference committee**. The members of these conference committees come from the respective committees of the two houses that wrote the bill. The conference committee tries to negotiate a compromise bill, acceptable to both houses of Congress. Once a compromise version has been written, the bill is returned to the two houses for a vote. Failure to pass a bill from a conference committee will kill a bill. If the bill is passed in both houses, it is sent to the White House for the president's signature.

The president has options. If the president does nothing for 10 days, the bill becomes law without his or her signature. However, there is an exception. If a congressional session ends during those 10 days, the president must sign every bill into law. If the president doesn't, the bill will be **pocket vetoed**, requiring that the bill go through the entire legislative process again. If there are more than 10 days left in a congressional session, and a president wants to prevent a bill from becoming law, he or she may veto the entire bill. The president must then give the reasons in writing and return the bill to the house of origination.

At that point, Congress has choices. The two houses may make the required changes, or they may attempt to override the president's veto by a two-thirds vote. If the bill passes both houses by the required two-thirds vote, the bill becomes law without the president's signature. If the house of origination (where the bill was originally introduced) does nothing with the presidential veto, the bill is dead.

In 1996, Congress gave President Clinton the **line-item veto**, empowering the president to veto individual parts of a bill. The constitutionality of the line-item veto was immediately challenged in the Supreme Court (*Clinton v. City of New York*). The court struck down the line-item veto as an unconstitutional delegation of legislative authority to the president.

Congress has also attempted to give itself veto power over the actions of the president. In specific instances, Congress would write legislation giving the president broad powers to act but reserve the right to void presidential actions by a vote of one or both houses. This legislative veto was declared unconstitutional by the Supreme Court in *INS v. Chadha* (1983). The only form of veto mentioned in the Constitution is that used by the president.



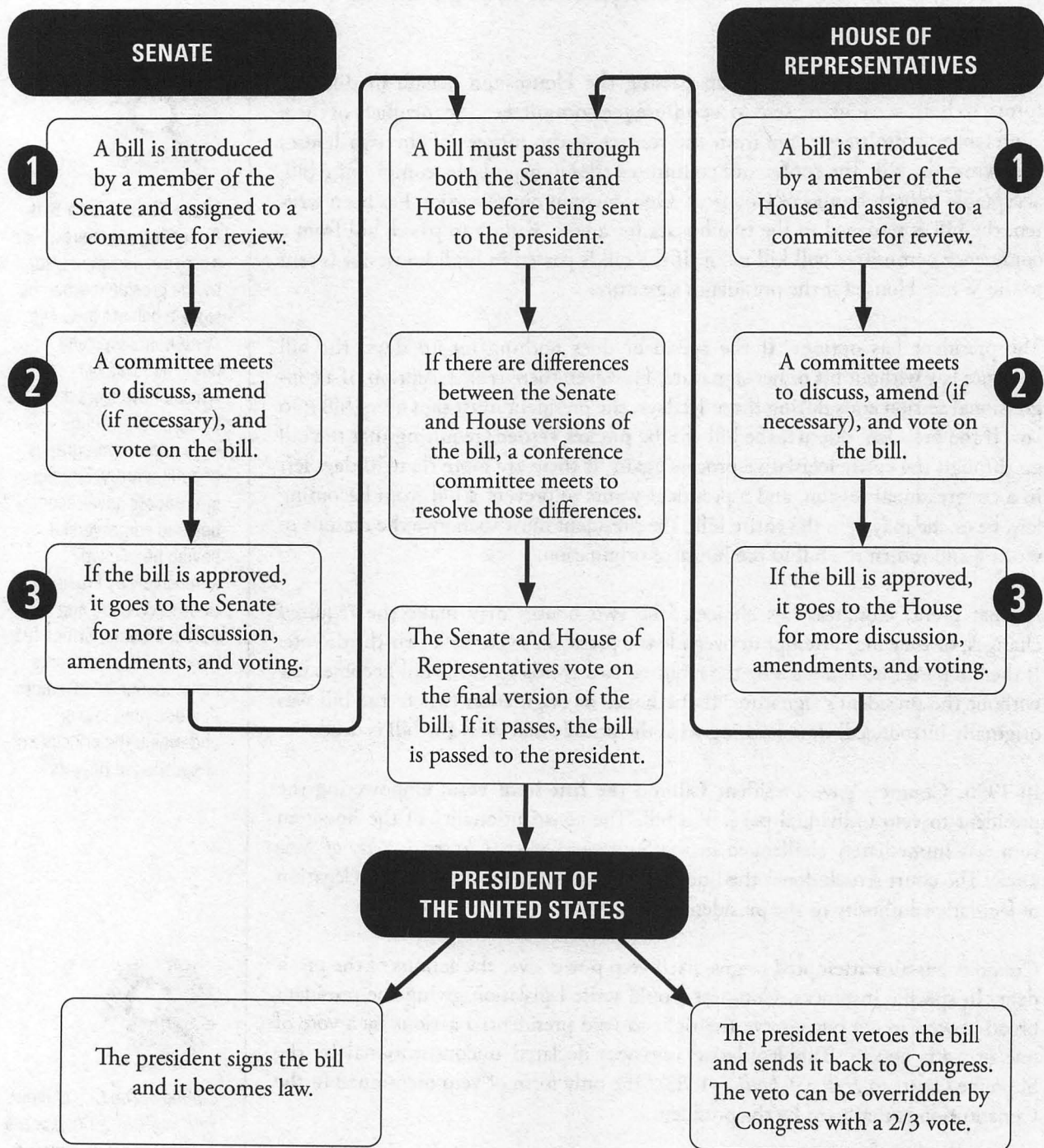
### More Than Just a Bill

A **signing statement** is a written message issued by the president when he signs a bill into law. The statements typically begin as "This bill, which I have signed today" and continue with several paragraphs of commentary. Signing statements have recently become controversial, having been used extensively by Presidents George W. Bush and Barack Obama. Critics fear that signing statements may function as attempts to modify the law or undermine the principle of separation of powers.



*Clinton v. The City of New York* and *INS v. Chadha* are not on the list of required court cases for the test.

The following chart summarizes the legislative process.



## Legislation by Committee

Most of the legislative business of Congress occurs in committees. Who serves on which committee and what position they hold is determined by a number of factors. The majority party of each house holds all the committee chairs. The majority party will also hold a majority of the seats on each committee, effectively controlling all the business of the committee. On the important committees, the majority usually holds two-thirds of the committee seats.

Generally, the committee member of the majority party with the most seniority becomes the chair and the senior member from the minority party becomes the ranking member. The ranking member becomes chair if the minority party becomes the majority party. This happened in 2001 when a member of the Republican-controlled Senate left the Republican Party to become an Independent. All Democrat ranking members of Senate committees became the chairs, while the Republican chairs became the ranking members. The same principle applies in the House of Representatives.

Committee assignments in the House and Senate are determined by the House and Senate leadership and a caucus of the two political parties. Members of Congress attempt to get on the committees that will allow them to do the most constituent service and help them get reelected. For example, representatives and senators from farm states try to get assigned to agriculture committees.

Committees serve as mini-legislatures, performing the tasks of investigating and debating bills that, due to time constraints, could never otherwise receive the consideration of Congress. Often, the congressional committee assigns the bill to an even smaller group, called a **subcommittee**, for initial consideration. Recently, there has been a proliferation of subcommittees. Subcommittees, which often determine how money is spent, have therefore become very powerful.

The fate of a new bill depends on much more than its content. The membership of the committee and subcommittee that first considers the bill is crucial. Bill sponsors attempt to draft bills in such a way as to steer them toward sympathetic committees. Supporters of a bill must also decide which house of Congress should consider their bill first, because with the exception of revenue bills, federal bills may originate in either house. To build political momentum, supporters attempt to have the bill introduced in the house most sympathetic to their cause.

The House has more committees than the Senate. House members, however, tend to become more specialized because they serve on fewer committees. As a result, they are considered to have more expertise than senators.

There are four types of committees in Congress.

1. **Standing committees** are permanent, specialized committees. Examples include the House Ways and Means Committee, the Senate Judiciary Committee, and the Senate Armed Services Committee. There are 20 standing committees in the House and 17 in the Senate.
2. **Joint committees** are made up of members of both the House and the Senate. These committees are normally used for communicating to the public or for investigations but generally do not send bills to the floor for votes.
3. **Select committees** are temporary committees organized in each house for some special purpose. These committees usually carry out investigations for the purpose of writing special legislation. The House Watergate Committee and the Senate Select Committee on Unfair Campaign Practices are examples from the Nixon era. The work of these committees eventually led to campaign reform.
4. **Conference committees** are temporary and include members from the committees of the two houses who were responsible for writing a bill. These committees try to negotiate compromise bills, which are then submitted to the two houses for an up or down vote without amendments. Once a compromise bill has been negotiated, the conference committee disbands.

Most bills die almost immediately in a subcommittee due to lack of interest from committee members; unless a committee member takes a special interest in a bill, the bill will either be quickly rejected or ignored until it dies a natural death at the end of the congressional session.

Committees and subcommittees function by calling interested parties and expert witnesses who have some information to give. Lobbyists often testify as expert witnesses. Congress can subpoena reluctant witnesses, forcing them to appear in hearings and can grant immunity to compel them to testify. Once their investigations have concluded, committees begin amending and rewriting sections of bills in meetings called markup sessions.

Committees will sometimes refuse to vote a bill out, hoping to keep it from being considered by the House. A bill stuck in a House or Senate committee is said to be **pigeonholed**. The parliamentary mechanism to force a bill out of committee for a floor vote is called a **discharge petition**.

Committees have responsibilities in addition to writing laws. For example, they are responsible for the oversight of many bureaucratic agencies and departments. Heads of regulatory agencies, which are responsible for enforcing the laws, often

appear to give testimony before congressional committees with oversight jurisdiction. If the agency has not followed the intent of the law, the agency head will be in for a rough time. A recent example comes from a congressional investigation of the Secret Service and subsequent resignation by Director Julia Pierson after multiple security lapses involving President Obama and the White House.

Committees also hear testimony from agency heads pleading for money and personnel. Congressional budget cutting and agency reorganization can have a profound impact on an agency's ability to carry out its responsibilities. This is one way that Congress can use the budget to shape policy.

## Congressional Leadership

### The House

The leader of the House of Representatives is the **speaker**, who is chosen by the majority party in a special election. The Speaker is powerful because he or she can direct floor debate and has influence over committee assignments and over the Rules Committee. The speaker can also control which bills go to which committees. The **majority leader** of the House keeps party members in line and helps determine party policy and the party's legislative agenda. The **minority leader** keeps the minority party members in line and helps determine the minority party's legislative agenda. The House majority and minority whips also help their respective party leaders keep the members loyal to the party's legislative agenda. They coordinate members of each party and help garner support for proposed legislation.

### The Senate

The vice president is the president of the Senate, and this is his or her only constitutionally delegated responsibility. However, the vice president is rarely on the floor of the Senate and votes only to break a tie. When the vice president is absent during Senate sessions, the **president pro tempore** is the presiding officer. The president *pro tempore* is largely an honorary position and is usually given to the most senior member of the majority party of the Senate. The majority leader has the real power in the Senate because he or she controls the legislative agenda and acts as a power broker and policy initiator. The minority leader can act as a power broker but usually cannot initiate policy or control the agenda.

### Why Do They Vote That Way?

Congresspersons are always cross-pressured to influence their vote. These pressures come from their own party and from the opposition. They also come from the president through jawboning (trying to influence) and from their colleagues by **logrolling** ("you help me on this bill, and I'll help you on yours"). PACs try to influence votes through contributions, as do constituents and interest groups.

Personal ideology and religious beliefs can also impact a congressperson's judgment. The most important factor in determining the vote of a congressperson is party affiliation. Members of Congress usually—but not always—vote with their parties.

## NOTABLE LEGISLATIONS

### National Growth, Expansion, and Institution Building

- **Northwest Ordinance (1787, 1789).** One of the few successes of the Articles of Confederation, providing clear guidelines for the settlement of new territories and a path to statehood. Reaffirmed by Congress under the Constitution in 1789.

### Regulation of Government and Industry

- **Pendleton Act (1883).** Eliminated the spoils system of patronage in selection for government jobs and set up an exam-based merit system for qualified candidates.
- **Sherman Anti-Trust Act (1890).** Provided Congress with authority to regulate and break up monopolies—or trusts—in the United States. Abused, however, to break up labor unions.
- **Hatch Act (1939).** Permitted government employees to vote in government elections but forbade them from participating in partisan politics.
- **Freedom of Information Act (1966).** Declassified government documents for public use.
- **Air Quality Act (1967).** The beginning of a series of acts to regulate impacts on the environment.
- **Federal Election Campaign Acts (1971, 1974).** Established the Federal Election Commission and required disclosures of contributions and expenditures, as well as limitations on contributions and presidential election expenditures.
- **War Powers Act (1973).** Limited president's power to use troops overseas in hostilities, put a time limit on use, and gave Congress final power to withdraw troops. Since 1973, all presidents have declared this act unconstitutional and it has been repeatedly ignored.
- **Budget and Impoundment Control Act (1974).** Established congressional budget committees and the Congressional Budget Office, as well as gave Congress the power to prevent the president from refusing to fund congressional initiatives (known as “impoundment”).
- **Gramm-Rudman-Hollings Bill (1985).** Set budget reduction targets to balance the budget. Failed to eliminate loopholes.

## Rights and Freedoms

- **Espionage Act (1917), Sedition Act (1918).** Severely curtailed the civil liberties of Americans during wartime and greatly increased the power of the federal government in controlling public activity. The Sedition Act was repealed by Congress in 1921.
- **Immigration Act (1924).** This law stringently limited the number of immigrants admitted into the United States and set strict quotas for entry.
- **Voting Rights Act (1965).** Suspended literacy tests, empowered federal officials to register voters, and prohibited states from changing voting procedures without federal permission.
- **Age Discrimination in Employment Act (1967).** Banned age discrimination in jobs unless age is related to job performance.
- **Civil Rights Act or Fair Housing Act (1968).** Title II banned discrimination in public places on the basis of race, color, national origin, or religion. Title VII prohibited employment discrimination based on gender.
- **Title IX Education Act (1972).** Prohibited gender discrimination in federally funded education programs.
- **Americans with Disabilities Act (1990).** Protected civil liberties of disabled Americans and mandated “reasonable accommodations” to public facility use.
- **National Voter Registration Act (1993).** Also known as **The Motor Voter Act**, this law allowed people to register to vote when applying for driver’s licenses.
- **Patriot Act (2001).** In response to the terrorist attacks of September 11, 2001, Congress granted broad police authority to the federal, state, and local government to interdict, prosecute, and convict suspected terrorists. This law is formally known as the USA-PATRIOT Act, an acronym for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.”

## Government Aid to the People

- **New Deal Legislation (1933–1939).** Legislation that expanded the role of government in the economy and society. Created entities like Social Security, the Securities and Exchange Commission, and the Tennessee Valley Authority. These laws also dramatically expanded the role and size of the federal government.
- **Personal Responsibility and Work Opportunity Reconciliation Act (1996).** The Welfare Reform Act signaled a change in the role of the federal government in the relationship with the states. This law sought to increase the role of personal responsibility in welfare recipients and shifted many responsibilities for welfare provision to state governments.

- **Bipartisan Campaign Reform Act (2002).** Often known as the **McCain-Feingold Bill**, this law banned soft money contributions to national political parties and raised hard money limits to \$2,000. In a controversial decision in the case of *Citizens United v. Federal Election Commission* (2010), the Supreme Court struck down several provisions in this law, especially those related to contributions made by corporations to political campaigns.

## THE PRESIDENT

### Concepts

- How do presidents use their formal and informal powers to get their legislative agenda passed?
- How can Congress curb the foreign policy-making powers of the president?
- How does the president use the appointment power to ensure that policies are carried out?
- What techniques can presidents use to promote their legislative agenda in the face of divided government?
- What impact does the White House staff have on policy making?
- Why would Congress give the president a line-item veto?
- Do executive agreements go against the intent of the framers of the Constitution?

### The Formal Powers of the Presidency

The powers delegated by the Constitution to the executive branch are in Article II, Section 2, but they are less specific than the formal powers of Congress. The broadly defined powers were intended to give flexibility but have instead resulted in greatly expanded power.

The president is responsible for enforcing the laws, handling **foreign policy**, and serving as the ceremonial head of state. He or she is also the administrative head of the government. He or she can force Congress into session, must brief Congress on the State of the Union, and can **veto** legislation, as well as grant reprieves and pardons. But regardless of these expansive powers, he or she must cooperate with Congress because the powers of the presidency are intermingled with the powers of the legislature. The president's appointments of federal judges, Supreme Court justices, ambassadors, and department secretaries all require Senate approval. The president negotiates treaties, but they must be ratified by two-thirds of the Senate. Because Senate ratification is sometimes difficult to achieve—a good example is



the defeat of the Treaty of Versailles in 1919—the broad powers of the president to initiate foreign policy came to include **executive agreements** (which do not require Senate approval). These are agreements between heads of countries; under international and U.S. law, they are as binding as a treaty. However, executive agreements usually deal with more routine, administrative matters.

## The President as Commander in Chief

The president also serves as **commander in chief** of the armed forces. But the framers created a complex institutional situation regarding armed conflict. Only Congress has the power to declare war, but only the president can make war. The last official declaration of war by Congress was against Bulgaria, Hungary, and Romania during World War II. While the United States has been in numerous wars since that time, no declarations of war have been made.

While the president is the chief strategist and director of the military forces of the United States, he or she is at the mercy of Congress for the money to wage war. However, once the president has committed troops in conflict, it is unlikely that Congress would refuse to fund the weapons needed for the military. For members of Congress, such an action would mean political suicide and probably lead to a constitutional crisis within the U.S. government.

In a national crisis, the other branches of government and the American people look to the president for leadership. Initially, presidents will have strong support for their policies. This helps explain why Congress, in 1964, passed the **Gulf of Tonkin Resolution**, giving the president the broad powers to commit unlimited numbers of troops for an unlimited length of time in the Vietnam conflict. President Johnson was unable to bring that war to a conclusion. Strong criticism of his handling of the war led to a general lack of support for his policies, undermining his ability to govern. The same thing happened to President Carter when he was unable to successfully end the Iranian hostage crisis. As president during the Gulf War, George H. W. Bush's ability to quickly bring the war to a conclusion while suffering relatively few casualties resulted in the second-highest approval rating of any president, at 89%.

### Presidential Powers in Wartime

In the post-Vietnam War era, Congress has attempted to place controls on the war-making powers of the president. Congress passed the **War Powers Act** in 1973 in an attempt to force the president to seek congressional approval before making war. The act specifically limits the president to 10,000 troops for 60 days, with 30 additional days to withdraw the troops, unless Congress grants an extension or declares war. The Supreme Court has never ruled on the War Powers Act, and Congress has never invoked it, although whenever the president commits troops overseas, members of Congress have threatened the president with imposition of the War Powers Act.

## The Informal Powers

The presidential powers that are not enumerated in the Constitution are referred to as the informal powers, and they are sometimes more important than the formal ones. How well presidents use the informal powers can determine the success of their presidencies.

Presidents are supposed to be morale builders. President Carter's failure to improve the morale of the country contributed to his reelection defeat. President Reagan was a master at morale building, and this characteristic helps explain why he remained popular with the American people.

Presidents serve as legislative leaders and coalition builders. Failure to set and lead the legislative agenda and build coalitions in Congress can doom presidents, particularly when there is divided government (when one or both houses of the legislature are controlled by the opposition party). George H. W. Bush became the "foreign policy president" when he was unable to get his domestic policy agenda passed in a Democrat-controlled Congress. Ronald Reagan and his advisers were experts in building coalitions with Republicans and southern conservative Democrats. This coalition of Republicans and southern Democrats gave Reagan his legislative agenda.

Perhaps the president's most important informal powers are as a policy persuader and communicator to Congress and the American people. Clinton and Reagan were superior communicators. The ability of a president to communicate well with the American people by way of the **bully pulpit** is a very powerful tool for pressuring Congress. Communicating with Congress is also important. Having the congressional leadership down to the White House for lunch and a photo op is another way that presidents try to persuade members of Congress to pass their legislative agenda.

## Executive Office of the President

The Executive Office of the President helps carry out the president's administrative responsibilities. It is made up of more than half a dozen agencies involved in the day-to-day operations of the White House and is basically divided into three areas: domestic, foreign, and military affairs. It is staffed by hundreds of personnel located in the White House and the Executive Office Building. All are directly responsible to the president or his designees.

- **The chief of staff** is the top aide to the president. He or she is a person in whom the president has complete trust and is probably a longtime associate and friend. Considered one of the most powerful persons in Washington, the chief of staff is responsible for managing the Executive Office and can control access to the president, thus potentially controlling the information that the president receives. Some presidents, such as Bill Clinton, permitted easy access; others, such as Richard Nixon, tended to insulate themselves. Whoever the president chooses as chief of staff can have a tremendous impact on presidential effectiveness. Clinton's first chief of staff, Thomas McClarty, a Washington outsider and Clinton friend, ran an undisciplined White House, prone to many errors. He was replaced by a Washington insider, former Congressman Leon Panetta, who established order and discipline, emerging as a key policy player in the Clinton administration. In 2009, Panetta became Director of

the Central Intelligence Agency. He later resigned from that post to become Secretary of Defense. In 2010, Barack Obama's first chief of staff, former Congressman Rahm Emanuel, left the position to run for mayor of Chicago, an election he won.

- **The National Security Council (NSC)** is headed by the national security advisor, who has direct access to the president in matters relating to military and foreign policy. The NSC has been involved since the late 1940s in the decision-making process during national emergencies. President Kennedy used the NSC during the Cuban missile crisis, President Reagan during the Iran-Contra affair, and President George H. W. Bush during the Gulf War. Unlike the State Department, the NSC is largely free from congressional oversight. For this reason, it has become one of the most favored institutions for many presidents.
- **The Domestic Policy Council** assists the president in formulating policies relating to energy, education, agriculture, natural resources, economic affairs, health and human resources, welfare reform, drug abuse, and crime.
- **The Office of Management and Budget (OMB)** is responsible for preparing the budget of the United States and can be used to control and manage the executive agencies for the president. The OMB has enormous power because of its ability to allocate money to the cabinet departments through the budget process of the executive branch. Increasing or decreasing a department's budget affects how it carries out its responsibilities.
- **The Council of Economic Advisors** is responsible for helping the president make national economic policy. The council is usually made up of economists who advise the president on policies that are designed to increase prosperity.
- **The U.S. Trade Representative** is responsible for negotiating complex trade and tariff agreements for the president. Trade agreements such as GATT and USMCA are negotiated by the Trade Representative on behalf of the president, with the guidance of the White House.

## The Cabinet

The **cabinet** is not mentioned in the Constitution but was created through custom and usage. Each cabinet department was instituted by an act of Congress to help administrate the responsibilities of the executive branch.

Each cabinet secretary is appointed by the president and confirmed by the Senate. **Secretaries** can be dismissed at the president's will. Cabinet secretaries are supposed to run their departments and carry out the president's policies.



### A New Addition

Homeland Security is the first top-level government position created since the Energy Department was formed in 1977 and the first large-scale government reorganization since Harry Truman created the Department of Defense in 1947.

Those who disagree with presidential policy are expected to resign. Secretaries tend to be lightning rods to be used for deflecting criticism and are responsible for explaining and promoting presidential policies. Over time, secretaries have tended to represent their own departments more than the president's policies. They are expected to fight for their department's budget, jurisdiction, and personnel. This creates competition and friction between departments and accounts for the reason presidents usually do not hold full cabinet meetings. Presidents just don't have the time or inclination to listen to the bickering and arguing between department heads.

Still, despite these institutional shortcomings, cabinet secretaries do rule over vast departmental bureaucracies—each containing numerous powerful government agencies. With the recent addition of the **Department of Homeland Security**, there are now 15 cabinet departments. After the September 11 attacks, it was felt that a cabinet-level department was necessary to counter possible threats to the United States, and more than 22 agencies were consolidated into the new department, making it the third-largest executive branch department. Agencies as disparate as the Bureau of Citizenship and Immigration Services (formerly the INS), the Coast Guard, and the Secret Service were consolidated to shape a coherent agenda to protect the United States against potential attacks. The Department of Homeland Security has four functions: to protect the borders; to support local agencies like police and fire departments; to detect chemical, biological, and nuclear weapons; and to analyze intelligence.

## Impeachment

The Constitution gives Congress the power to remove the president from office for “treason, bribery, or other high crimes and misdemeanors.” The Constitution does not define high crimes and misdemeanors, leaving those definitions to politicians. The only direction in the Constitution is that the House of Representatives impeaches the president (or brings the charges) by a simple majority vote, and if the impeachment passes, the Senate holds a trial with the Chief Justice of the Supreme Court presiding. Removal of the president requires a two-thirds vote of the Senate. The entire process in Congress has been developed as a result of guesswork, custom, and usage.

Because the definition of an impeachable offense is left to the House, **impeachment** is a highly charged political process. Most constitutional scholars place the standard for impeachment as an act against the government or the Constitution, but there seems to be political disagreement over what standard should be used. Conservatives seem to have one standard, while liberals seem to have another. Every impeachment, or near-impeachment, has divided the Congress along party lines, and some scholars have accused members of Congress of using the process to try to undo the result of an election.

No president of the United States has been removed from office. While the House successfully impeached Andrew Johnson for his violation of the Tenure in Office Act, the Senate fell just one vote short of removing him from office. This act was later invalidated by the Supreme Court. The **Watergate** scandal caused Richard Nixon to resign before imminent impeachment proceedings could begin. He knew

that the Senate would convict if given the opportunity to vote. The impeachment of President Clinton for lying under oath was very political. All parties knew before the trial began that there was little chance of a Senate conviction. Clinton's defenders claimed that while Clinton's behavior had been improper and had brought dishonor to the Office of the President, his conduct had not risen to the level of an impeachable offense. The same result occurred for President Trump, who the House impeached for abuse of power and obstruction of Congress. However, the Senate did not convict.

Federal judges are appointed for life and can be removed only by the impeachment process. Only eight federal judges have ever been removed by the Senate. One of them is Alcee Hastings, who was impeached for bribery and perjury, and is now a member of the same House of Representatives who voted for his impeachment.

## THE JUDICIARY AND THE LAW

### Concepts

- What circumstances are required for a case to be brought before the Supreme Court?
- How do politics enter into Supreme Court decisions?
- Why can it be said that all judicial decisions are activist?
- Why can it be said that a president's strongest legacy is found in the judiciary?
- What control does Congress have over the judiciary?

### American Legal Principles

Although the United States plays host to the interlocking systems of state and federal law, a few underlying principles make up the foundation of our legal system. They are **equal justice under the law**, **due process of law**, the **adversarial system**, and **presumption of innocence**.

All who appear in court in the United States must be treated as equals. The founders were very concerned that the new nation avoid the hierarchical legal systems that plagued many other nations and, as a result, enshrined many amendments in the Constitution that establish **equal justice under the law**. For example, whenever jurors hear a criminal case, they are instructed not to privilege the testimony of a police officer over that of a defendant.

**Due process** can be divided into two types: **substantive due process** and **procedural due process**. Substantive due process law deals with the question of *whether laws are fair*. Fairness is determined by looking at the Constitution,



In his *Commentaries on the Laws of England*, English jurist and professor William Blackstone said, “Better that ten guilty persons escape than that one innocent suffer,” and this number became known as the Blackstone ratio. Benjamin Franklin expanded this, writing “that it is better [one hundred] guilty Persons should escape than that one innocent Person should suffer.”

specifically the Bill of Rights and the Fourteenth Amendment. A law that made it illegal for people with blue eyes to ride motorcycles would constitute a violation of substantive due process. Procedural due process law is concerned with the question of *whether laws are fairly applied*. This might seem less important than substantive due process, but procedural issues are actually at the heart of our legal system. If suspects in certain types of crimes were held for 10 years before they ever had a trial, this would be a violation of procedural due process, because the law guarantees everyone a speedy trial. Even if a nation has laws that are fair and just, if they are not applied fairly, they are meaningless.

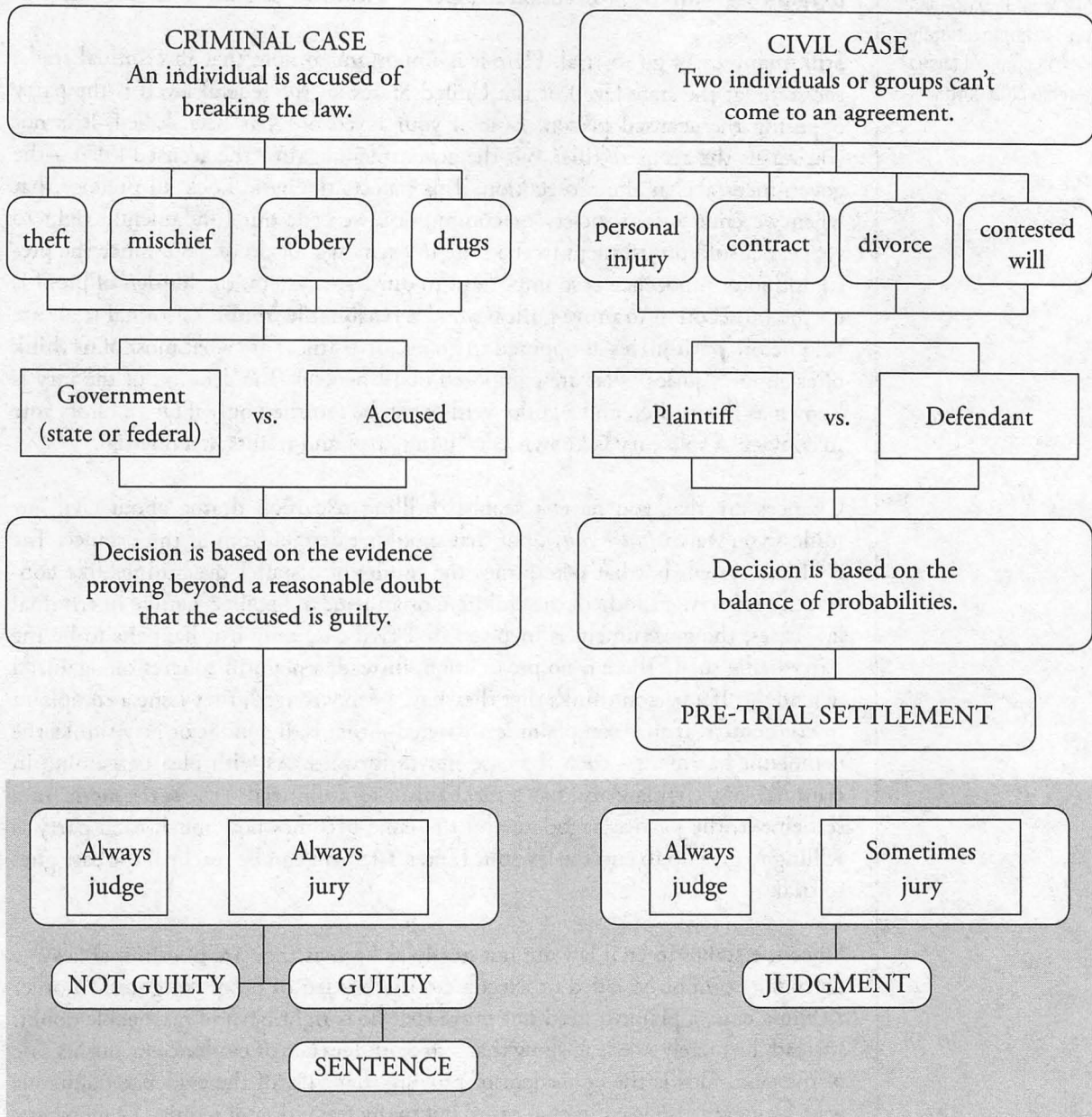
Strange as it may seem to those of us raised in the United States, many nations do not require both sides of legal cases to be represented by advocates. This inquisitorial system, as it is known, is alien to the United States, where we use the adversarial system. As you can probably guess from the name, this principle is based on the premise that the best way to work out questions of fact is to have two sides—or adversaries—debate the burden of guilt or liability in a situation. Some critics say that this system creates too many conflicts—particularly in areas such as family law and divorce, and recommend an increased role for mediators who seek rapprochement and can make legally binding decisions.

In both England and America, the idea that accused individuals are innocent until proven guilty—the presumption of innocence—is one of the bedrock principles of the legal system. As a result, the burden of proof is on the prosecutor in criminal cases, and if there is any reasonable doubt as to a person’s innocence, juries are instructed to acquit.

## Types of Law

In the United States, most legal cases involve either **civil law** or **criminal law**. The distinction between these two types of law is very important, and knowing the differences and similarities can help a great deal when you are taking the AP exam. The chart on the following page highlights the different processes involved in criminal and civil cases.

### Criminal Law vs. Civil Law



Anyone who watches television police or law dramas has at least some familiarity with the trappings of criminal law. This type of law deals with serious crimes that harm individuals or society. If physical violence is involved, the action will probably end up in the criminal justice system, but fraud and extortion are also crimes. In criminal law, a suspect is arrested and must be indicted. This is done (in most states and at the federal level) by a **grand jury**: a group of 24 to 48 jurors who decide only one thing—whether a trial should commence. Since the grand jury is not deciding guilt or innocence, an accused person does not have many protections at the grand jury level. The prosecution usually has to meet a certain standard of evidence. In fact, defense attorneys are not even allowed to address

**Yes, Pleas**

Despite what law dramas show on TV, approximately 95% of all criminal cases end in plea bargains.

grand juries. Once the accused is indicted, that person then has the option of **plea bargaining** with the prosecution to agree to a less serious crime and sentence.

Still, many cases go to trial. Here it is important to note that in criminal trials, the state (at the state level) or the United States (at the federal level) is the party opposing the accused person. Even if your loved one has been killed, it is not you versus the accused killer, but the government against the accused killer—the government acts as the prosecution. This reflects the basic Lockean premise that when we enter into a society or community, we cede our fundamental right to vengeance and punishment to the state in exchange for protection. Since the presumption of innocence is so important to our legal system, the burden of proof is on the prosecution to prove guilt beyond a **reasonable doubt**. Criminal trials are held before **petit juries** as opposed to grand juries (these are what most of us think of as simply “juries” that are composed of 12 people). The decision of the jury is known as the verdict, and a guilty verdict can be returned only if all 12 jurors vote to convict. A split jury is known as a “hung jury” and results in a mistrial.

Chances are that you haven’t seen a thrilling television drama about civil law (unless you watch *Judge Judy*), but that shouldn’t detract from its importance. The civil law system is what determines the results of disputes over things like contracts, property, custody of the children, or an issue of liability. Unlike in criminal law cases, the government is involved in a civil case only if it happens to be the party being sued. There is no prosecution; instead, a plaintiff squares off against a defendant. If a person thinks that they have been wronged, they issue a complaint in **civil court**. If that complaint is answered—that is, if a judge or jury thinks the complaint has merit—then the case moves forward. As with plea bargaining in criminal law, civil law also has a mechanism to avoid trial—the **settlement**. In a settlement, the parties negotiate and the issue becomes how much each party is willing to give up to end the lawsuit. If no settlement can be reached, the case goes to trial.

Since the stakes in civil law are not nearly as high as they are in criminal law—a defendant cannot be jailed or executed—the burden of proof is lighter. In order to win a case, a plaintiff need not prove that he is right beyond reasonable doubt. Instead, he merely needs to show that a **preponderance of evidence** favors his side of the case. This is the equivalent of proving that 51% of the evidence points his way. Juries are also used in civil cases, but many states do not require 12 members; some allow as few as 5 or 6. Winning can mean either the payment of monetary damages or **equity**, in which the loser may be forced to stop doing something that was annoying or harmful to the winner.

## Structure and Jurisdiction

The federal courts are responsible for interpreting and settling disputes arising out of federal law; state courts are responsible for interpreting and settling disputes arising out of state law. It is possible for a citizen to commit a single act that violates both state and federal law—trading in drugs and tax evasion are two examples.



There are three levels of federal courts: the Federal District Courts, which have **original jurisdiction**; the Federal Circuit Courts of Appeals, which hear cases on appeal from the District Courts; and the **Supreme Court**, which hears appeals of cases dealing with constitutional questions from the Circuit Courts and, in rare instances, original suits between states. The Supreme Court also has original jurisdiction in cases involving foreign ministers, which is intended to prevent states from deciding such cases.

The Supreme Court does not have a jury. It is considered a collegial court because its decisions are made by the nine justices. When the court acts in **appellate jurisdiction**, it can decide only issues of law and never the facts of a case.

There are 94 **Federal District Courts**, created by Congress to fulfill its delegated responsibility of creating courts inferior to the Supreme Court. Federal District Courts decide both civil and criminal cases in original jurisdiction. The trial court that determines guilt or innocence is the court of original jurisdiction. These courts hear evidence and can use juries to decide the verdict. Federal District Courts can also decide liability in civil cases in which monetary losses have occurred. Civil cases can also have juries. It is always possible for a defendant to ask a judge to decide a case, but a judge can refuse the request and force the defendant to have a jury trial. (The Constitution guarantees a jury trial but not a trial decided by a judge.)

There are 13 **Circuit Courts of Appeals**, which hear cases on appeal from the Federal District Courts or from a state Supreme Court. In these cases, someone has to claim that a federal constitutional right has been violated. The Circuit Courts decide issues of law and never issues of fact. Circuit courts have no juries. The decisions of these courts are made by panels of appointed judges. In almost every case, the Circuit Court of Appeals is the court of last resort because the Supreme Court rarely agrees to hear cases appealed from the Circuit Courts. Additionally, most Supreme Court justices rise from the Circuit Courts.

## The Politics of the Judiciary

All judges in the federal judiciary (only those on the Supreme Court are called justices) are appointed by the president for lifetime terms. Appointees must go through a **confirmation** process in the Senate. To maintain judicial neutrality and integrity, impeachment is the only method of removal.

The appointment process has become very political. Some presidents have required potential appointees to fill out a judicial questionnaire to determine their political and judicial ideology. Nominees are almost always of the same party as the president. In nomination hearings before the Senate Judiciary Committee, members of both parties try to determine how potential judges would rule in cases dealing with issues such as abortion rights, affirmative action, or school prayer. The American Bar Association is asked to evaluate a nominee's qualifications and interest

groups often present their opinions. Senators in a state where an appointee will sit have traditionally exercised **senatorial courtesy**—they submit a list of acceptable names of nominees to the president. Presidents usually choose a nominee from the list submitted. Senatorial courtesy is expected only when the president and senators are of the same party.

Liberals and conservatives often argue over a nominee's judicial philosophy or level of judicial activism. The central point of the argument is whether the nominee is more or less inclined to second-guess a legislative enactment. As the conservatives see it, the courts are the least democratic branch of government (because judges are appointed, not elected), and when they overturn an act of a legislature, they are overruling the will of the people, as expressed in the most democratic branch of government (the legislature). Judges who are reluctant to overturn the acts of a legislature are said to practice **judicial restraint**. Liberals often see judges as constitutional interpreters who should reflect current values. A judge who has no qualms about overturning a legislative action is considered a **judicial activist**. Compromise over these two positions is sometimes very difficult to achieve. The nomination of Robert Bork to be a Justice of the Supreme Court was defeated by liberals because of his judicial philosophy on civil rights. Clarence Thomas was confirmed by the closest Senate vote in U.S. history, over concerns related to his conservative judicial philosophy, lack of experience, and the allegation that he sexually harassed an aide.

## Process by Which Cases Reach the Supreme Court

The process that the Supreme Court uses to hear cases is not part of the Constitution. The process is a result of custom and usage, time and tradition.

The Supreme Court will not grant an appeal until all opportunities have been exhausted in the lower appellate courts. In the vast majority of cases, the court refuses to hear the appeal because it agrees with the lower court decision. However, the court may choose to review the decisions of lower courts. If four justices agree to this review, the court issues a **writ of certiorari**, a legal document used to request the lower court transcripts of a case.

The Supreme Court will rule only in cases that are real and adverse, which means that the case must involve an actual legal dispute. Such cases are said to be **justiciable**. Disputes over political issues cannot be decided by courts—that is, political disputes are not justiciable. The Supreme Court cannot give advisory opinions. It can rule only in an actual legal case involving litigants. In other words, the court will not rule on hypothetical cases.

The court also places limits on who may bring cases before it. Simply disliking or disagreeing with a law is not sufficient to bring a case. The petitioner (the person who brings the case) must have some vested interest in the outcome of the case. Such petitioners are said to have **standing**.



One of the issues surrounding *Roe v. Wade* (1973) was that the plaintiff, Roe, was no longer pregnant by the time the case made it to the Supreme Court. The court determined that due to the slow nature of the legal process, she still had standing to pursue the case.

## Judicial Review

The Constitution does not specifically grant the Supreme Court the right to judge the constitutionality of laws. That power was established by the case of *Marbury v. Madison* (1803). This extremely important power is called **judicial review** and was established by John Marshall, the fourth Chief Justice of the Supreme Court (he served from 1800 to 1835). Marshall was a Federalist who worked to increase the powers of the federal government over the states.

## Essential Case: *Marbury v. Madison* (1803)

**Facts:** In the closing hours of his presidency, John Adams commissioned William Marbury as a Justice of the Peace in the District of Columbia. Although the commission was approved by the Senate, President Thomas Jefferson, upon taking office, ordered Secretary of State James Madison not to deliver the commission.

**Issue:** What was the extent of the Supreme Court's power regarding judicial review as outlined in Article III, Section 2 of the Constitution? Although Marbury filed his suit with the Supreme Court, did it have original jurisdiction over the case?

**Holding:** In a unanimous decision, the Supreme Court ruled that although Marbury was entitled to his position as Justice of the Peace, the provision of the Judiciary Act allowing the Supreme Court to grant this position was unconstitutional. The ruling, therefore, set a precedent that future courts have followed: when a law comes into conflict with the Constitution, the Supreme Court considers that law unconstitutional. This practice is the foundation of judicial review.

## How the Court Hears Cases

Once the Supreme Court decides to take a case, a complicated legal dance swings into motion. Both sides of the case submit summaries of their arguments and legal foundations for them. These summaries are known as **briefs**. At the same time, interest groups affiliated with both sides of the case submit their own briefs to the Supreme Court. These *amicus curiae* ("friend of the court") **briefs** constitute an effort to sway the justices to one side or the other and can be quite influential in determining the outcome of the case.

Every year from October to April, the court hears **oral arguments** for the cases it has chosen to take. Usually in oral arguments, lawyers for each party have a half hour each to stand before the nine justices and present their arguments. Often, the federal government will take one side or the other, and in these cases the **solicitor general** gets a portion of that half hour to argue on the government's behalf. The solicitor general is the second-ranking member of the justice department (after the attorney general) and typically makes many appearances before the high court—so much so that the solicitor general is sometimes called the "tenth justice." After the oral arguments, the justices meet for a highly secretive conference. At this point, all the justices cast votes, and opinion-writing duties are handed out.



You may see the Latin term **stare decisis** on the AP exam. This is simply a synonym for **legal precedent**. Black's Law Dictionary defines "precedent" as a "rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases."

There are four different types of **opinions**: unanimous, majority, concurring, and dissenting. A **unanimous opinion**, as was the case in *Brown v. Board of Education*, occurs when all of the justices agree—this opinion carries the most force in future legal cases and when legislatures draft new laws. When the justices split, the opinion with the most votes is the **majority opinion**, and it is the opinion that decides the result of the case. Sometimes justices may vote with the majority but take issue with its legal reasoning; these are called **concurring opinions**. Those justices in the minority on an opinion can write a **dissenting opinion**, questioning the reasoning of the winning side. Though these dissents have no immediate significance, if the ideological composition of the court changes, they can sometimes become the legal foundation for future majority opinions.

## THE BUREAUCRACY

### Concepts

- To what degree is the bureaucracy able to maintain political neutrality?
- How do iron triangles and issue networks foster democratic principles?
- How does Congress control the bureaucracy?
- How does the bureaucracy act to implement the intent of Congress?
- How do regulatory agencies work to protect society?
- How do presidents control their policy preferences through the bureaucracy?

The **bureaucracy** is responsible for ensuring that the policies and programs enacted by Congress and the executive departments are carried out. Because the bureaucracy is responsible for executing the laws, providing for defense, and administering social programs, it is considered part of the executive branch of government. To ensure impartiality, bureaucratic agencies are supposed to function above partisan politics and also ensure that the laws are administered without prejudice.

Bureaucrats are not elected. The 15 cabinet secretaries and the heads of independent agencies are appointed by the president with the consent of the Senate. Most of the hundreds of thousands of civilian employees who work for the government work for one of the 15 executive departments or one of the other “cabinet level” agencies considered by the White House to be part of the cabinet (such as the Director of Management and Budget or the Director of the Drug Control Office). These other cabinet level offices are not actual cabinet departments.

The largest department, the Department of Defense, is administered by the **Secretary of Defense**. This person, who must be a civilian, reports directly to the president. Each of the five military services is headed by a uniformed chief of staff, and the five chiefs work together as the **Joint Chiefs of Staff**, headed by a chairman. The Joint Chiefs and their chairman are responsible for carrying out defense policy and report directly to both the Secretary of Defense and the president. The military is therefore subject to civilian control.

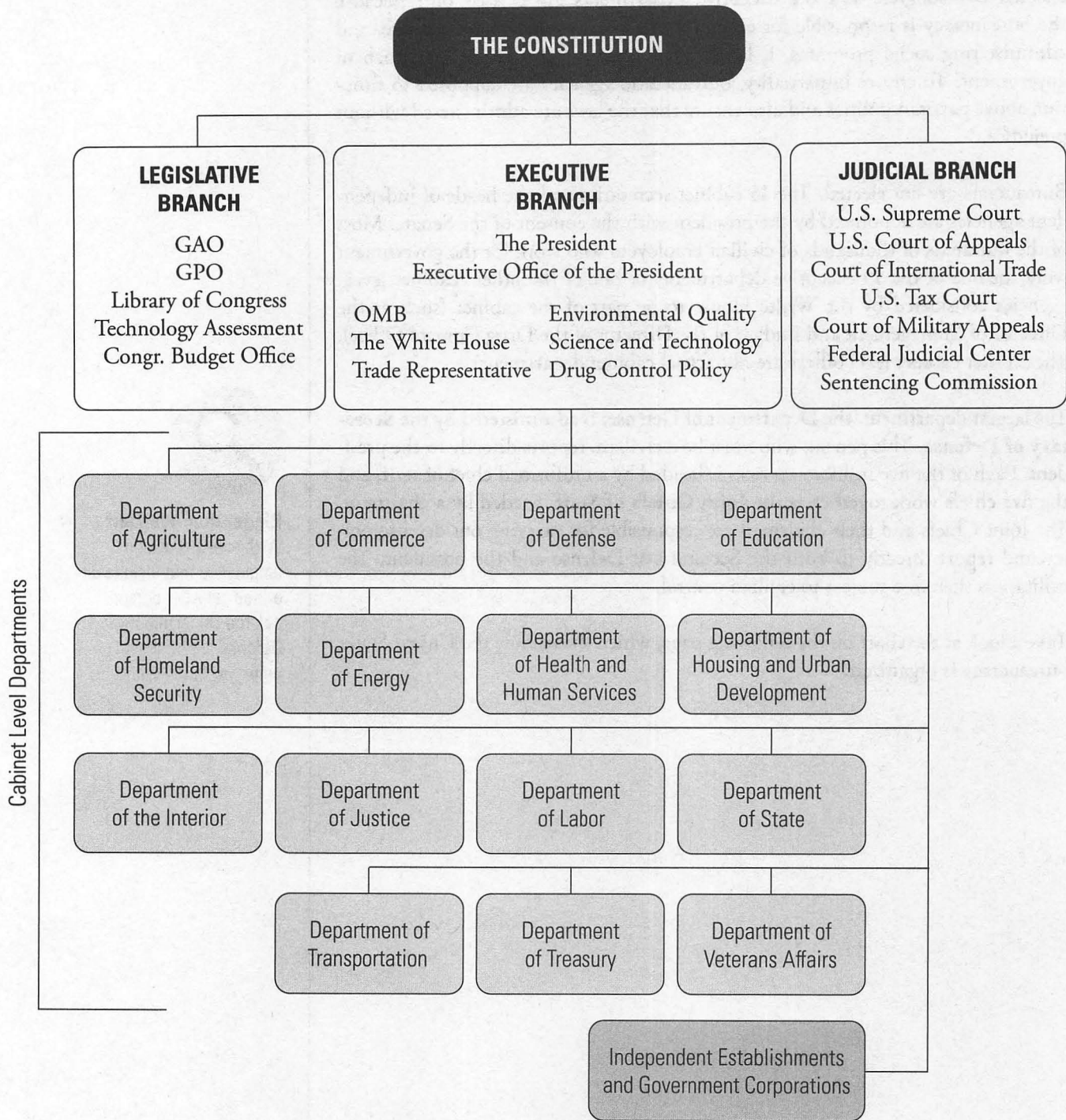
Take a look at the chart on the following page, which shows how the United States bureaucracy is organized.



### **Bigger than Walmart**

With over 2.8 million employees that include all armed services personnel, the Department of Defense is the largest employer in the world.

## Bureaucratic Structure of the U.S. Government



As shown by the chart, the bureaucracy is organized as a hierarchy of 15 pyramids, representing the 15 executive branch departments:

- Department of State
- Department of the Treasury
- Department of Defense
- Department of Justice
- Department of the Interior
- Department of Agriculture
- Department of Commerce
- Department of Labor
- Department of Health and Human Services
- Department of Housing and Urban Development
- Department of Transportation
- Department of Energy
- Department of Education
- Department of Veterans Affairs
- Department of Homeland Security

At the top of each pyramid is the secretary of the department, who is appointed by the president and confirmed by the Senate. Directly subordinate to the secretary is the undersecretary, who is appointed by the president without Senate confirmation. Because secretaries and undersecretaries are presidential appointments, they are replaced at the end of a president's term. The position of undersecretary attracts young professionals. Because the pay is low compared with private industry, and the position is temporary, undersecretaries often use the appointment to step up to better positions in the private sector.

Below the secretaries are the personnel of the **Senior Executive Service**, including both appointees and non-appointees. Senior Executive Service appointees do not need Senate confirmation. These career officials are supposed to be responsive to the policy goals of the White House and help bureaucrats implement the policy preferences of the chief executive.

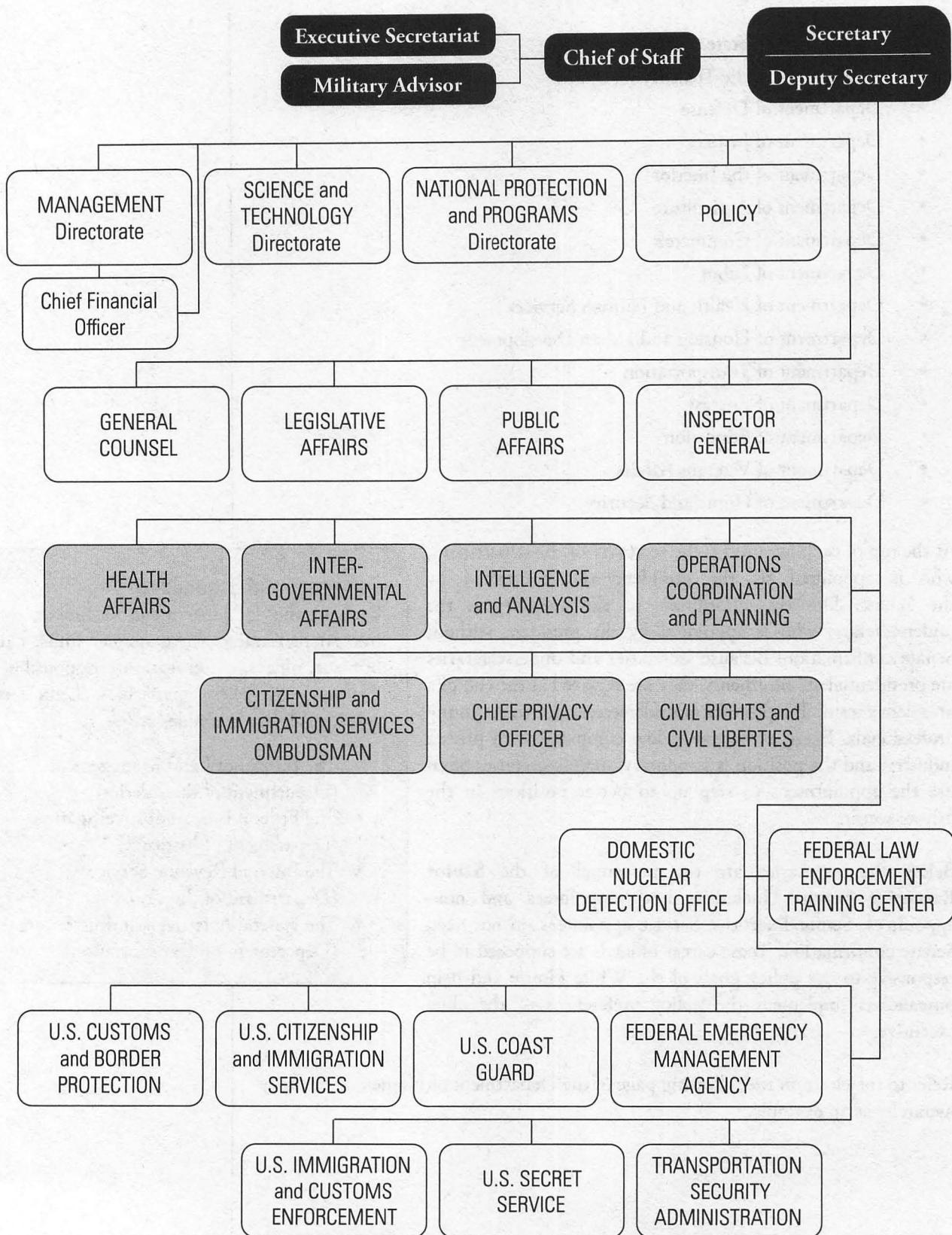
Refer to the chart on the following page of the Department of Homeland Security hierarchy as an example.

### Departmental Breakdown

Each of the 15 departments is broken down into smaller units. These smaller units, called bureaus, offices, or services, are responsible for dealing with either a particular clientele or a specific subject. Examples are

- The Bureau of Land Management (Department of the Interior)
- The Federal Bureau of Investigation (Department of Justice)
- The Internal Revenue Service (Department of the Treasury)
- The Federal Aviation Administration (Department of Transportation)

### Bureaucratic Structure of the U.S. Department of Homeland Security





## Government Corporations

Government corporations are hybrid organizations. They are a cross between a private business corporation and a government agency. Corporations are supposed to have freedom of action and flexibility and produce at least enough revenue to support themselves. Amtrak, the government corporation created to provide railroad passenger service, is an example. Unfortunately, Amtrak has never made a profit and must ask Congress for subsidies to keep itself from declaring bankruptcy and ending intercity passenger rail service in the United States.

Originally created as a cabinet position, the United States Postal Service has become a government corporation. The intent of Congress was to create a mail delivery system that pays its own way without government assistance. Because of electronic messaging systems and competition from package delivery companies, the post office has had to increase its fees, but it is no longer solvent.

More successful, but at times controversial, is the Corporation for Public Broadcasting, which produces and airs both television and radio programs. Funding for the Public Broadcasting System (PBS) comes from both private and government subsidies. Most of its programming is related to public affairs, news, and culture. The controversy often occurs when groups object to the content of programs. Still others object to the government being involved in any service that could be provided by private sector corporations.

## Regulatory Agencies and Commissions

Government entities that are not within the 15 cabinet departments fall into two categories: the **independent agencies** and the **regulatory agencies**, sometimes called **independent regulatory commissions**. While independent agencies are generally run-of-the-mill bureaucracies with broad presidential oversight, regulatory commissions are given an extraordinary degree of independence to act as watchdogs over the federal government. Congress and the president are not supposed to become enmeshed in the workings of regulatory commissions. The safety regulations for nuclear power plants or securities exchange should not be regulated by politics.

In contemporary societies, the difficulties and complexities of writing legislation are often beyond the abilities and expertise of lawmakers. The result is that legislation is often written in general terms with many gaps that need to be filled in by the agency with jurisdiction. Independent agencies who have the responsibility for filling in these gaps and writing rules are referred to as **quasi-legislative agencies**. Those responsible for rule enforcement and punishing violators are **quasi-judicial agencies**.

Members of Congress do not have the education to deal with the scientific details that are often required to implement legislation. For example, House and Senate members who sit on committees that deal with environmental issues do not generally have advanced degrees in chemistry. It is the experts who work in

the enforcing agencies who have that knowledge. Compounding the problems for Congress are the many competing interests that surround every major issue. Environmentalists have their agenda, while the petroleum industry, electric utilities, and lumber interests have theirs. Even the regulating agency with jurisdiction has its own agenda. These competing interests often delay or prevent legislation. This is the clash of the special interests.

In an age of science and technology, it is the faceless bureaucrat the public knows nothing about who often has the answers for Congress. These bureaucrats, on the one hand, are asked for advice and expertise, and on the other hand, are often ignored because of the pressures from interest groups. Working within the regulatory commissions, they are the people responsible for writing and enforcing rules that regulate the environment, the economy, or industry. If they fail to implement the intent of Congress, they are criticized by Congress and the parties regulated, usually for being too restrictive with their rules and too strict in their enforcement policies.

Examples of regulatory agencies include the following:

- **The Federal Trade Commission** is responsible for preventing fraud in the marketplace by preventing price fixing and deceptive advertising.
- **The Securities and Exchange Commission** protects investors by regulating stock markets and policing corporations to prevent false and misleading claims of profits in an effort to increase stock prices.
- **The Nuclear Regulatory Commission** controls how electric power companies design, build, and operate nuclear reactors.
- **The Federal Communications Commission** is responsible for assigning broadcast frequencies, for licensing radio and television stations, and for regulating the use of wireless communication devices.
- **The Food and Drug Administration** is responsible for ensuring the health of the American people by inspecting the food supply for contaminants and spoilage. The agency is also responsible for regulating the sale of over-the-counter drugs and patent medicines.
- **The Federal Energy Regulatory Commission** is responsible for preventing price fixing and price manipulation in electric utilities, interstate oil and gas pipelines, and natural gas suppliers.
- **The Occupational Safety and Health Administration** is responsible for ensuring workers are employed in a safe work environment. For example, OSHA can regulate the type of ventilation in a factory, as well as the type of clothing worn and tools used.

## Case Studies

Considered to be one of the most controversial government bureaucracies, the **Environmental Protection Agency (EPA)** was created in 1970 as an independent body. Its mission is the enforcement of the environmental laws passed by Congress. One of the agency's first responsibilities was to enforce the **1970 Clean Air Act**. The intent of the law was to reduce automobile pollution and increase automobile gasoline mileage. The automobile industry lobbied hard to defeat the bill and claimed that they could not meet the requirements of the law by the time specified. They were granted extensions and eventually complied, although trucks and SUVs are still exempt from the law.

The Clean Air Act was amended in 1990 as a result of scientific evidence indicating that the refrigerants used in air conditioners were instrumental in depleting the ozone layer. The EPA successfully pressured chemical companies and air-conditioning manufacturers to find alternatives to the ozone-destroying chemicals. The EPA has also been successful in reducing the pollutants that cause acid rain.

Clean air is not the EPA's only problem. It is responsible for enforcement of the **Endangered Species Act**. This highly controversial law is intended to protect endangered wildlife habitats from human encroachment. To implement this goal, environmental impact statements are required whenever construction projects are planned. If there is any possibility that an endangered species could be adversely affected, the EPA has the power to prohibit construction. The EPA's ban on lumbering in areas of the Pacific Northwest—the habitat for the spotted owl—and its decision to block the construction of a dam in Tennessee because of the endangered snail darter fish are two examples. In the Tennessee dam case, Congress overruled the decision of the EPA, even though the Supreme Court had sided with the EPA to stop construction. In addition, Congress further weakened the EPA's enforcement powers by amending the Endangered Species Act to permit exemptions in the future.

Another agency that provokes political contention is the **Equal Employment Opportunities Commission (EEOC)**. Created by the 1964 Civil Rights Act, the EEOC is responsible for enforcing the antidiscrimination laws of the United States. This commission has been susceptible to political pressure from both Congress and the White House. It is the EEOC's responsibility to implement affirmative action programs for minorities, to bring suits in cases of racial or sexual discrimination, and to enforce the **Americans with Disabilities Act**. The head of the EEOC is a presidential appointment and is supposed to carry out the policies of the president. If the law conflicts with presidential policy, the EEOC has a problem.

The critics of affirmative action claim the policy is a form of reverse discrimination. Feeling pressure from voters, Congress, and the president, the EEOC first promoted affirmative action and then discouraged the policy. The attempts by this agency to implement the will of Congress have been complicated because both Congress and the White House seem to change their mind at will.

### Congress and the EPA

The EPA can sometimes become a foe of Congress, which originally gave the EPA its mandate to act.

The Americans with Disabilities Act requires the EEOC to enforce laws against employers who discriminate against disabled employees or job seekers. In addition, part of the Disabilities Act requires that public buildings and large businesses be accessible to the disabled. Critics claim that this attempt at helping the disabled live normal lives has cost taxpayers hundreds of millions of dollars and the cost is too high in relation to the number of persons benefited.

## Who Runs Regulatory Agencies?

Independent regulatory agencies are run by panels of administrators called Boards of Commissioners. These commissioners are appointed by the president with the consent of the Senate. The terms of these commissioners usually overlap the term of the appointing president. The staggered term is intended to minimize political pressure from the White House. Depending on the commission, terms can range from 3 to 14 years.

Perhaps the best-known regulatory board is the **Federal Reserve Board** (the Fed) because its policies directly affect the buying power of the public. The Fed accomplishes this by regulating banks, the value and supply of money, and interest rates. Its members serve 14-year terms. Its chairman serves a four-year term.

Because the Fed is an independent agency, its policies can sometimes conflict with the policies of the president. In 1993, in the first weeks of the Clinton administration, Fed Chairman Alan Greenspan told the president that the condition of the economy was worse than the previous Bush administration had told the American people. In addition, the national debt, as bad as it was perceived to be, was actually even greater than anyone realized. Clinton wanted an economic stimulus tax cut to get the economy out of recession. Greenspan told the president a tax cut should not be pursued, and if the White House went forward with the plan, the Fed would raise interest rates. Clinton was forced to break his campaign pledge to lower taxes. Even though the chairman and the president disagreed over economic policy, the president was powerless to do anything about it. In time, the Greenspan policy helped to get the economy out of the recession and into the longest economic boom in American history. Things went so well that Clinton reappointed Greenspan as chairman. Greenspan's legacy would later come into question as a result of the economic collapse of 2008–2009.

## Who Controls the Bureaucracy?

Because most boards of commissions and regulatory agencies are appointed by the president with Senate consent, political considerations always play a part in the appointment process. However, presidents come and go with great regularity, as do the appointed governing boards and commissions. It is the rank and file bureaucrats who are permanent, and they do not like political meddling.



### Fede-really!

Janet Yellen, appointed by Barack Obama in 2014, was the first woman to hold the position of Fed Chairperson.

While in office, presidents do have the power to promote their supporters and to use the budget to increase or decrease the influence of an agency. Reducing an agency's budget reduces its staff, which reduces its effectiveness. Increasing the agency's budget can have the opposite effect. Presidents can also reorganize an agency.

Congressional power over the bureaucracy is greater than that of the president. The Senate can affirm or reject presidential appointments. Congress can also abolish an agency or change its jurisdiction if it is unhappy with policy implementation. Finally, it is the Congress, through the appropriations process, that has the final say over how much money agencies will receive.

## Rule Setting, Alliance Building, and Iron Triangles

The regulatory agencies carry out their responsibilities by setting rules and regulations that industry must follow. Setting regulations is a participatory process in which industry becomes actively involved in determining the rules. Agencies welcome public participation by holding public hearings for testimony and advice. In most instances, the law requires agencies to consult with industry before rules and regulations can go into effect.

The groups that make up an iron triangle work together to formulate and implement policy in their area of interest. Lobbyists representing industries promote their special-interest agendas by claiming each is in the best interest of the American people. For example, drug companies may lobby the Food and Drug Administration to speed up the certification process for a medication because it will benefit the sick faster. Patients and drug companies will pressure Congress, which then pressures the FDA. These are powerful arguments, but speeding up the process can cause the FDA to overlook something dangerous about the medication.

Special interests also contribute money to congressional campaigns, and large contributors are never shy about asking for help from congressional representatives, who are asked to help put pressure on regulators, or at a minimum, to listen to the arguments that the special interests put forward for their cause.

Political scientists have recently seen a more complex political process at work. When issues affect many groups, pro and con coalitions of interest groups, members of Congress, and bureaucrats form a close working relationship. This political process is called either an **alliance network** or an **issue network** and is far more complicated than a simple three-part iron triangle.

For example, if a large factory was a polluter but had marginal profits, it would probably fight expensive environmental regulations. Compliance might drive the company into bankruptcy. But more is at stake than just the company. There are

### Iron Triangles

The rule-making process has fostered the creation of **iron triangles**. Typically iron triangles are informal alliances made up of three groups: (1) a particular industry and its lobbyists (for example, weapons manufacturers), (2) the congressional committee dealing with that industry (the Armed Services Committees of the Senate and House), and (3) the agency that actually is affected (in this case, the Pentagon).

jobs involved and secondary industries that supply the raw materials for production at the company. A local government, which relies on the tax revenues from the company, also has something at stake. Environmental groups are going to be involved. This complicated situation would certainly result in the creation of issue networks for the purpose of influencing the regulatory agency's decisions.

After all the opportunities for input and debate have been exhausted, the regulatory agency writes and publishes the rules (this is its quasi-legislative function). If the industry still objects to the regulation, it can seek remedies in the courts by suing the regulatory agency. In the above example, if the company is forced to comply with the environmental laws, it could appeal the decision to the courts.

Because regulatory agencies invite so much controversy, there has been a recent trend toward deregulating the marketplace (removing government restrictions and regulations). Those in favor of **deregulation** claim that the competition of the marketplace is all the regulation that is needed. The deregulators say that regulation is too expensive and time-consuming and involves too much unnecessary red tape. They note that over the past 25 years, the **Civil Aeronautics Board**, which was responsible for regulating the airline industry, and the **Interstate Commerce Commission**, which regulated railroads and the trucking industry, were successfully phased out with little negative impact on consumers.

## The Civil Service and Maintaining Neutrality

Today, the majority of government jobs are filled through the competitive **civil service system**. This system was established in 1883 with the passage of the Pendleton Act, a law that ended the "**patronage system**," or the practice of handing out government jobs in exchange for political support. The Office of Personnel Management (OPM) acts as the bureaucracy's employment agency. OPM administers the civil service examination, publishes lists of job openings, and hires on the basis of merit. The intent is to create a competent, professional bureaucracy instead of one based on the "patronage system." A Merit Systems Protection Board investigates charges of agency corruption and incompetence and is supposed to protect "whistle blowers."

To ensure bureaucratic neutrality, Congress passed the Hatch Act in 1939. This law permitted bureaucrats the right to vote but not the right to actively campaign for political candidates, work for parties, or run for office. The act's revision of 1993 is less restrictive, allowing bureaucrats to join political parties, make campaign contributions, and display political advertising in the form of buttons and bumper stickers. Bureaucrats still cannot run for public office at any level, solicit campaign funds from subordinates, or make political speeches.

## CHAPTER 5 KEY TERMS

House of Representatives	Adversarial system
Senate	Presumption of innocence
Census	Substantive due process
Congressional districts	Procedural due process
Redistricting	Civil law
Gerrymander	Criminal law
Voting Rights Act of 1965	Grand jury
House Ways and Means Committee	Plea bargaining
Hearings	Reasonable doubt
Politicos	Petit juries
Delegates	Civil court
Trustee Model	Settlement
Sponsor	Preponderance of evidence
Rules Committee	Equity
Poison-pill/killer amendments	Original jurisdiction
Filibuster	Supreme Court
Cloture	Appellate jurisdiction
Pork barrels	Federal District Courts
Earmarks	Circuit Court of Appeals
Conference committee	Confirmation
Signing statement	Senatorial courtesy
Pocket veto	Judicial restraint
Line-item veto	Judicial activist
Subcommittee	Writ of <i>certiorari</i>
Pigeonhole	Justiciable
Discharge petition	Standing
Speaker	<i>Marbury v. Madison (1893)</i>
Majority leader	Judicial review
Minority leader	Legal precedent
President <i>pro tempore</i>	Briefs
Logrolling	<i>Amicus curiae</i> briefs
McCain-Feingold Bill	<i>Oral arguments</i>
Foreign policy	<i>Solicitor general</i>
Veto	Opinions
Executive agreements	Unanimous opinion
Commander in chief	Majority opinion
Gulf of Tonkin Resolution	Concurring opinions
War Powers Act	Dissenting opinion
Cabinet	bureaucracy
Secretaries	Secretary of Defense
Department of Homeland Security	Joint Chiefs of Staff
Impeachment	Senior Executive Service
Watergate	Independent agencies
Equal justice under the law	Regulatory agencies
Due process of law	Independent regulatory commissions

Quasi-legislative agencies  
Quasi-judicial agencies  
Environmental Protection Agency  
(EPA)  
1970 Clean Air Act  
Endangered Species Act  
Equal Employment Opportunities  
Commission (EEOC)  
Americans with Disabilities Act

Federal Reserve Board  
Iron triangles  
Alliance network  
Issue network  
Deregulation  
Civil Aeronautics Board  
Interstate Commerce Commission  
Civil service system  
“Patronage System”



# Chapter 5 Drill

See Chapter 9 for answers and explanations.

## Questions 1 and 2 refer to the passage below.

Why does a judge swear to discharge his duties agreeably to the Constitution of the United States, if that Constitution forms no rule for his government? If it is closed upon him, and cannot be inspected by him?

If such be the real state of things, this is worse than solemn mockery. To prescribe, or take this oath, becomes equally a crime.

It is also not entirely unworthy of observation that, in declaring what shall be the *supreme* law of the land, the Constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the *Constitution*, have that rank.

Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void; and that *courts*, as well as other departments, are bound by that instrument.

—John Marshall, Chief Justice of the Supreme Court (1801–1835)

- Which of the following statements best summarizes the whole passage?
  - Justices must interpret the Constitution although they do not explicitly have this power.
  - There are many questions about why justices have the power to interpret the Constitution.
  - Marshall is unsure about how to properly perform his job.
  - Justices are loyal to the Constitution because they swear an oath of allegiance.
- It can be inferred from this passage that Marshall was arguing for which legal doctrine?
  - Ex post facto* laws
  - Judicial restraint
  - Judicial review
  - Amicus curiae* briefs
- Which of the following is an accurate comparison of the bureaucratic responsibilities of the Executive and Legislative Branches?
 

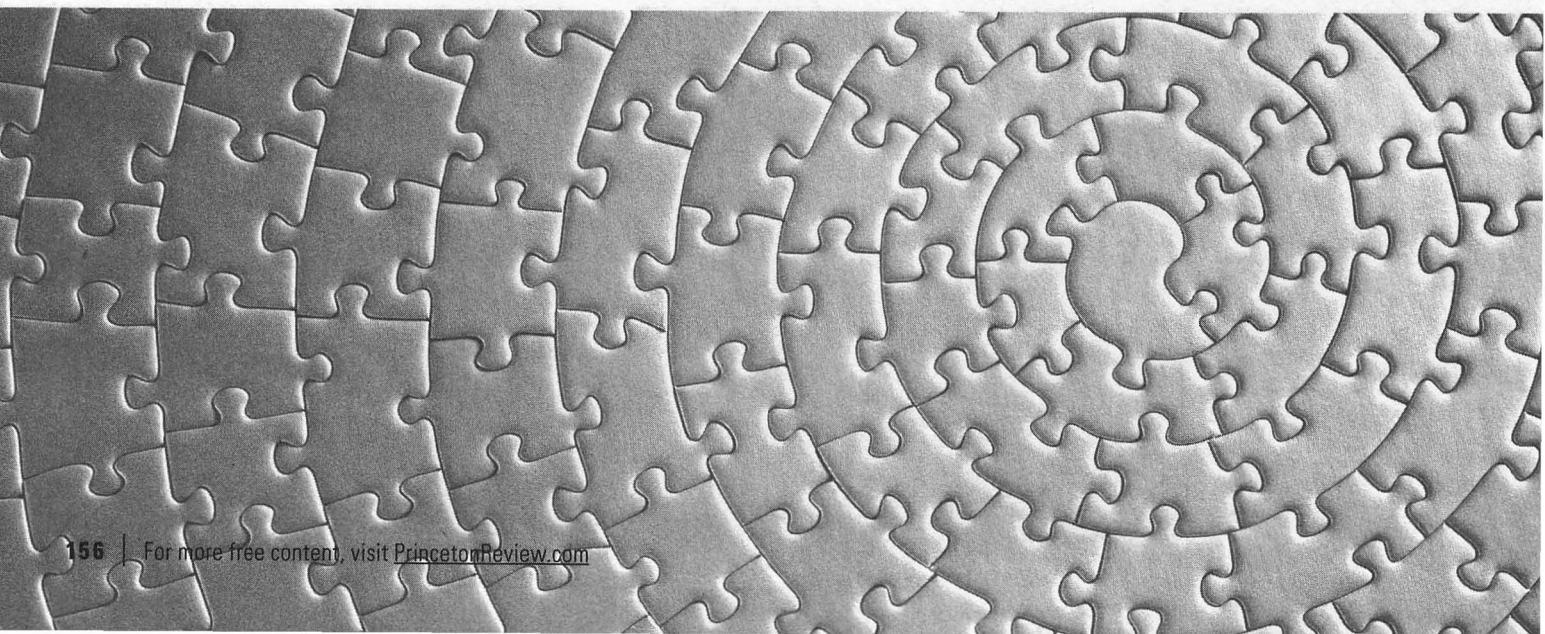
	Legislative Branch	Executive Branch
(A)	Library of Congress	Technology Assessment
(B)	Department of Energy	Government Publishing Office
(C)	Department of Justice	Department of State
(D)	Government Accountability Office	Drug Control Policy
- Who is the official head of the Senate?
  - President of the United States
  - Vice president of the United States
  - President *pro tempore*
  - Chief whip
- Which of the following is one of the most important legislative powers of Congress?
  - The ability to tax and spend
  - The power to choose a president
  - The ability to propose amendments to the Constitution
  - The power to ratify treaties (in the Senate)
- How do House congressional districts gain their shapes?
  - A vote held in the Senate by the majority party
  - An executive order of the president
  - A census and the various state legislatures
  - A nonpartisan commission
- How are cabinet members chosen?
  - By the president and then confirmed by the Senate
  - By the president and then confirmed by both houses of Congress
  - By the Supreme Court
  - By the president alone, without confirmation

# Summary

- Remember that Congress is a bicameral (two-house) legislature, split into the Senate (in which all states receive equal representation) and the House of Representatives (in which representation is proportionate to population).
- The number of House seats a state gets is based on its population as determined by a census. Once the number of seats is determined, the state legislature draws the districts—often using partisan gerrymandering to ensure a majority for one party or the other.
- Congress has numerous powers that range from creation of all law, to funding all executive agencies, to declaring war. It is the first institution defined in the Constitution, and most scholars think that the Founders intended it to be the most powerful of the branches.
- How does a bill become a law? It is introduced to the House or Senate, referred to a committee, amended and debated, reintroduced to the general House and Senate, debated and amended once more, harmonized with its counterpart that has traveled through the other legislative body, voted on again, and signed by the president.
- Given the large size of both houses of Congress, committees do most of the work of legislating. Committees can be standing, select, or joint, and are often further divided into subcommittees.
- The House is led by the speaker, while the Senate has two ceremonial leaders (the vice president and the president *pro tempore*) and one actual power broker—the majority leader.
- This chapter has a ton of laws. Try to remember them by using the four categories: (1) National Growth, Expansion, and Institution Building; (2) Regulation of Government and Industry; (3) Rights and Freedoms; and (4) Government Aid to the People.
- The president is the chief executive of the nation and is responsible for enforcing all laws. Over the years, the power of the presidency has grown dramatically—often at the expense of Congress.
- Even though the Constitution gives Congress the power to declare war, the nature of modern warfare has given the president control of this area. Though Congress does have tools to stop a wartime president, using them would generally be tantamount to political suicide.

- Being a good president often means going beyond the powers explicitly listed in the Constitution. Mastery of these “informal powers”—like consensus building or boosting the morale of the nation—often determines presidents’ successes.
- The president relies a great deal on the Executive Office of the President (EOP)—his personal staff, which is ensconced within the West Wing of the White House. The EOP is also home to a number of agencies that serve the president and are largely free from congressional oversight.
- America has 15 cabinet departments, and each contains a huge array of agencies and bureaucracies designed to help enforce the law of the land. The cabinet secretaries are supposed to advise the president, but due to conflicting loyalties most presidents have kept them out of the loop and relied on the EOP and other informal advisors when making policy decisions.
- If a president has committed “treason, bribery, or other high crimes and misdemeanors,” he or she can be impeached by a majority vote in the House and then removed from office with a two-thirds vote in the Senate.
- Remember that America has two legal systems—state and federal—and all people are under the jurisdiction of both. The federal system was created by the Constitution—all federal judges are appointed by the president and approved by the Senate, and the nation is divided into 91 federal districts.
- The Supreme Court rules on some very divisive social issues, and the battle to appoint new members has become more intense. Increasingly, presidents are looking to appoint younger and more ideological candidates who share their political philosophies.
- The Supreme Court is America’s court of last resort. Most of its cases come through appeals from lower courts or by granting writs of certiorari, which cause cases to jump straight to their chambers.
- Though it is not mentioned in the Constitution, the Supreme Court’s most important power is judicial review: the ability to strike down any state or federal law that is unconstitutional. This power was established in the case of *Marbury v. Madison* in 1803.
- Often called “the fourth branch of government,” bureaucrats staff the large executive agencies that run the federal government. To get these jobs, applicants must take competitive exams. Bureaucrats play a huge role in creating public policy by making rules that flesh out vague laws passed by Congress.

- We see four different types of bureaucracy in Washington: cabinet departments, independent agencies, regulatory commissions, and government corporations. Regulatory commissions are largely free of political control and have broad oversight responsibilities, while government corporations like the Postal Service are expected to turn a profit in the free market.
- Because the issues dealt with by bureaucrats are so technical and often pertain to a small interest group, we see the formation of iron triangles—cooperation between a bureaucracy (like the Department of Defense), a congressional committee (like the Senate Armed Services Committee), and a special interest group (like weapons and aircraft manufacturers).
- Bureaucrats are supposed to be politically neutral and stable while their political overlords shift due to election results. Still, many suspect that they may take sides, and laws like the Hatch Act were designed to prevent this from happening.



## REFLECT

Respond to the following questions:

- For which content topics discussed in this chapter do you feel you have achieved sufficient mastery to answer multiple-choice questions correctly?
- For which content topics discussed in this chapter do you feel you have achieved sufficient mastery to discuss effectively in an essay?
- For which content topics discussed in this chapter do you feel you need more work before you can answer multiple-choice questions correctly?
- For which content topics discussed in this chapter do you feel you need more work before you can discuss effectively in an essay?
- What parts of this chapter are you going to re-review?
- Will you seek further help, outside of this book (such as a teacher, tutor, or AP Students), on any of the content in this chapter—and, if so, on what content?