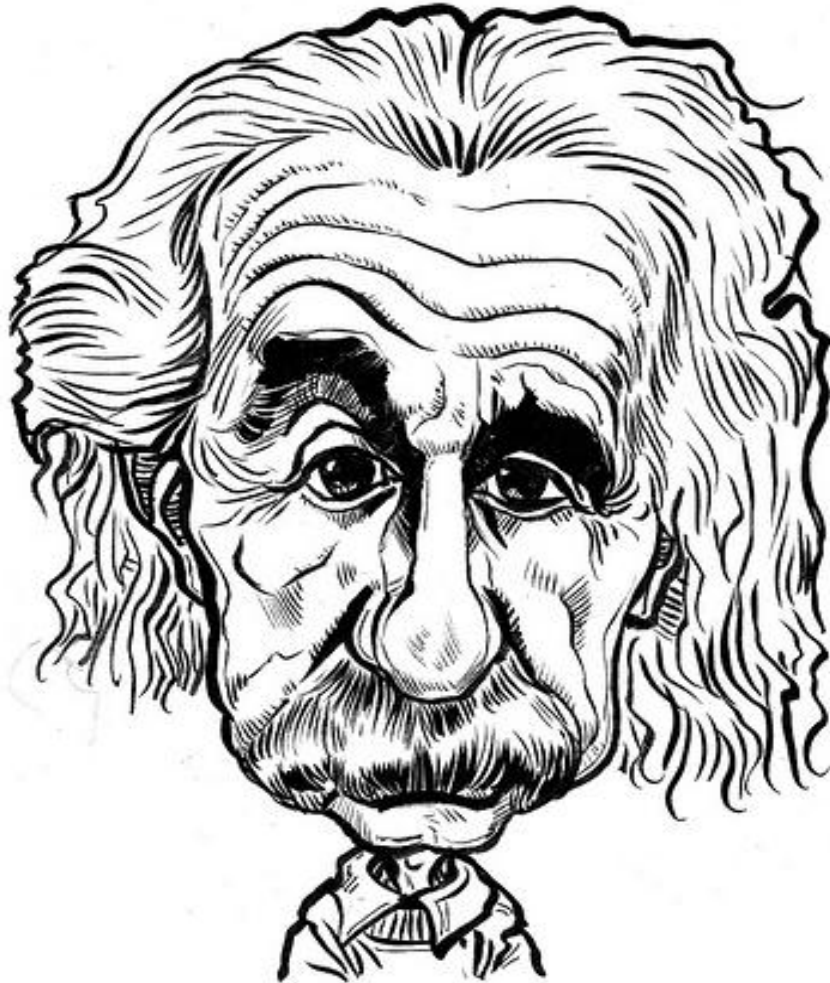


# **AP**

## **U.S. Government & Politics**

### **Quick Notes**



# **UNIT 5**

## **POLICYMAKING INSTITUTIONS: CONGRESS AND THE PRESIDENCY**

## OVERVIEW OF CONGRESS

### INTENTIONS OF FOUNDERS

- Fear of excessive power concentrated in single institution
- Fear of mob rule by impassioned majority
- Concern about manner of representation in Congress
- Belief that Congress would be the dominant branch of government
- Solution to these concerns: Bicameral legislature
  - Mob rule concern addressed by creation of "upper house" in which senators would be elected by state legislatures rather than the people, and which would check the passions of the people's representatives in the House
  - Representation concern settled by a Senate w/equal representation and House with representation based upon population

### TERM OF CONGRESS

- Term of Congress lasts two years
- Terms begin on January 3 of every odd-numbered year
- Terms numbered consecutively (113<sup>th</sup> Congress 2013-2015, 114<sup>th</sup> Congress 2015-2017)

### BICAMERALISM = TWO-HOUSE LEGISLATURE

- Purpose of bicameralism
  - To protect against an overly powerful legislature
  - House of Rep's was expected to reflect popular will of average citizen
  - Senate was to provide more stability, continuity, and in-depth deliberation
  - Acts as a moderating effect on partisanship, and prevents government from steamrolling ahead and infringing on people's rights
  - Part of the Connecticut (Great) Compromise at the Constitutional Convention
- Consequences of a bicameral legislature
  - Gridlock – designed to be slowed down
  - Compromise between houses (especially if controlled by different parties)
  - Additional check and balance

### HOUSE OF REPRESENTATIVES

### SENATE

	HOUSE OF REPRESENTATIVES	SENATE
<b>DESIGN</b>	<p>Closer to the people/more responsive to the people:</p> <ul style="list-style-type: none"> <li>• Members elected directly by the people (rather than indirectly elected, as were Senators until 1913)</li> <li>• Members are elected from smaller districts rather than on an at-large basis, like the Senate</li> <li>• Members elected for only a two-year term</li> <li>• Entire body elected every two years</li> <li>• Revenue bills (tax bills) must originate in the House</li> </ul>	<p>More removed from the people:</p> <ul style="list-style-type: none"> <li>• Members originally were indirectly elected by state legislatures (until the 17<sup>th</sup> amendment)</li> <li>• Members elected on an at-large basis by the entire state</li> <li>• Members elected for a six-year term</li> <li>• Only 1/3 of Senate is up for reelection every two years – more stability/continuity (staggered terms)</li> </ul>
<b>SIZE</b>	<ul style="list-style-type: none"> <li>• Determined by congressional act - 435 since 1911 (can be changed)</li> <li>• Members elected by districts, not states</li> <li>• Number of reps a state has is determined by population</li> <li>• Demographic trends show increase in Sun Belt state representation (e.g. 53 reps in California) &amp; decrease in Frost Belt representation</li> </ul>	<ul style="list-style-type: none"> <li>• 100 members, chosen in statewide elections ("at large")</li> <li>• Two from each state</li> <li>• With a smaller size, the Senate has been more informal body with less need than the House for as many strict procedures</li> </ul>
<b>QUALIFICATIONS AND TERM</b>	<ul style="list-style-type: none"> <li>• Terms of office are fixed                             <ul style="list-style-type: none"> <li>◦ Two years: Entire body up for re-election every two years - A more "responsive" and potentially "radical" body to be kept in check by the Senate</li> <li>◦ Term limits passed by some states, but ruled unconstitutional by Supreme Court</li> </ul> </li> <li>• 25 years of age</li> <li>• Citizenship for 7 years</li> <li>• State residency</li> </ul>	<ul style="list-style-type: none"> <li>• Terms of office are fixed                             <ul style="list-style-type: none"> <li>◦ Six Years. 1/3 up for reelection every two years</li> <li>◦ Staggering of terms ensures a more stable body</li> <li>◦ No term limits allowed here, either</li> </ul> </li> <li>• 30 years of age</li> <li>• Citizenship for 9 years</li> <li>• State residency</li> </ul>

## **APGoPo 5-2**

# **WHY DO INCUMBENTS WIN?**

During the last 50 years, incumbency has been the single most important factor in determining the outcome of congressional elections. Over 90% of House incumbents seeking reelection win. Over 75% of Senate incumbents seeking reelection win. Why?

Relatively few seats are seriously contested. Most are what are termed "safe seats." This leads to the public perception of a "permanent Congress." The counter to the "permanent Congress" argument is that reelection rates take into account only those incumbents who run for reelection. Retirements open up quite a few seats each year to new members.

## **ADVANTAGES OF INCUMBENCY**

### ***MONEY***

- Incumbents are usually able to raise more campaign contributions than their challengers
- PACs contribute more money to incumbents than to their challengers
- Incumbents outspend challengers by a ratio of more than 2 to 1

### ***NAME RECOGNITION***

- Incumbents are usually better known to voters than are their challengers
- Incumbents have opportunities to participate in highly visible activities that are covered by local newspapers and local television stations

### ***CONSTITUENT SERVICE***

- There is a close link between constituent service and reelection
- Members of Congress are able to win supporters by performing casework for their constituents
  - Casework consists of helping individual constituents, often by cutting through bureaucratic red tape
- Members of Congress are able to win supporters by bringing home money and jobs ("pork") for their district
  - Pork is legislation that allows representatives to bring money and jobs to their district
  - Incumbents often sit on committees that enable them to earmark or designate specific projects for their district
  - Pork helps representatives earn a reputation for service to their district

### ***THE FRANKING PRIVILEGE***

- The franking privilege refers to the right of members of Congress to mail newsletters to their constituents at the government's expense
- In recent years, members of Congress have extended the franking privilege to include e-mails and recorded phone calls

### ***GERRYMANDERING***

- Members of the House often represent districts that have been deliberately gerrymandered to include voting blocs that support incumbents
- Gerrymandered districts discourage strong challengers from trying to compete with incumbents

## **CONSEQUENCES OF THE INCUMBENCY ADVANTAGE**

- Consequences can be either positive or negative
  - Congress contains a large number of experienced leaders, thus enabling it to maintain continuity of leadership and policy
  - The continuity discourages radical change while encouraging close relations with interest groups
  - Because incumbents benefit the most from existing campaign finance laws, they have no incentive to reform them
  - Congress has more experienced political leaders
  - Discourages challengers
  - Policy specialization
  - Fewer women and minorities

## APGoPo 5-3

# REPRESENTATION & REAPPORTIONMENT – HOUSE OF REPS

### STEP 1: CENSUS

- Counting the population of every state
- Conducted every 10 years to show population changes in states (2010, then 2020)
- These changes must be reflected in state representation in House



### STEP 2: REAPPORTIONMENT

- The process of dividing up the seats in the House to determine the new number of representatives to which each state is entitled
- If a state gains significantly in population, it will probably gain some seats
- If a state loses population or does not gain as much as other states, it will probably lose some seats
- Many states will stay the same



### STEP 3: REDISTRICTING

- The process of setting up new district lines after reapportionment has been completed
- If a state has a change in the number of seats OR if the population has moved significantly within the state, its district boundaries must change. All districts within the state must be equal in population size.
- This is usually carried out by the party in power of the state legislature



### STEP 4: GERRYMANDERING

- Definition - the political party controlling the state government draws a district's boundaries to gain an advantage in elections
- State legislatures have abused their power to divide the state congressional districts by gerrymandering (form of redistricting)
- The party in power can get a majority of seats in the House by:
  - "Packing:" drawing the district lines in such a way as to concentrate the opposing party in a few districts, thus preserving a majority of seats for itself.
  - "Cracking:" drawing the district lines in such a way as to disperse the opposing party throughout the state and thus dilute that party's strength in order to preserve a majority of seats for the majority party.
- Goals of Gerrymandering
  - To enhance political party strength/to minimize the strength of the opposition party
  - To protect incumbents/to discourage challengers
  - To increase minority representation/to decrease minority representation
  - To punish foes/to reward friends
- Gerrymandering Effects
  - The party in power stays in power
  - "Safe" seats are created for incumbents, leading to further difficulties for challengers
  - Strangely-shaped districts
  - "Majority-minority" districts created by racial gerrymandering
  - Communities of interest may be broken up

POPULATION SHIFTS	SUPREME COURT REDISTRICTING REQUIREMENTS
<p><b>States gaining reps:</b></p> <ul style="list-style-type: none"><li>• South</li><li>• West</li></ul> <p><b>States losing reps:</b></p> <ul style="list-style-type: none"><li>• Northeast</li><li>• Midwest</li></ul> <p>Reasons for representative changes:</p> <ol style="list-style-type: none"><li>1. Loss of jobs in Midwest; Cheaper land and labor in South.</li><li>2. Baby-boomers moving to warmer areas in South and West for retirement.</li><li>3. Immigration in the South and West.</li></ol>	<ul style="list-style-type: none"><li>• Districts must be as near equal in population as possible<ul style="list-style-type: none"><li>◦ <i>Baker v. Carr</i>, 1962: "one man, one vote" principle applied to state legislative districts (no malapportionment)</li><li>◦ <i>Wesberry v. Sanders</i>, 1964: "one man, one vote" principle to House districts (no malapportionment)</li><li>◦ States redistrict to solve the problem of malapportionment</li></ul></li><li>• District lines must be contiguous or connected</li><li>• District lines cannot be drawn solely based upon race<ul style="list-style-type: none"><li>◦ Racial gerrymandering is prohibited (<i>Shaw v. Reno</i>, 1993)</li><li>◦ Race may not be the primary factor in drawing district lines, but it can be a factor</li></ul></li><li>• Cannot dilute racial minority voting strength</li><li>• "Communities of interest" must be protected</li></ul>

## POWERS OF CONGRESS

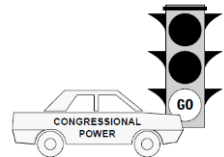
Overview: Congress has some **expressed powers** that are outlined in the Constitution, and others, called implied powers, that are not stated outright but that Congress may assume in order to carry out its expressed powers. This does not give Congress free rein. The **implied powers** must be “reasonably” drawn from expressed powers. Congress possesses a third type of powers — the so-called **inherent powers** of government. These powers, like the implied powers, are not explicitly listed in the Constitution, but they are said to be inherent to the very idea of national government.

### EXPRESSED (ENUMERATED, DELEGATED)

- Levy taxes
- Borrow money
- Regulate foreign, interstate, Indian commerce
- Establish naturalization and bankruptcy laws
- Coin money
- Establish weights and measures
- Punish counterfeiters
- Establish post offices
- Grant copyrights and patents
- Create courts inferior to Supreme Court
- Define and punish piracy
- Declare war
- Raise and support an army and navy

### INSTITUTIONAL POWERS, I.E., THAT RELATE TO SYSTEM OF CHECKS & BALANCES

- **Both Houses of Congress**
  - Proposal of constitutional amendments with 2/3 vote in both houses
- **House of Reps**
  - House votes for impeachment
  - House elects President if no electoral majority
- **Senate**
  - Senate ratifies treaties with 2/3 vote
  - Senate approves appointments with majority vote
  - Senate tries impeachment cases
  - Senate elects V.P. if no electoral majority



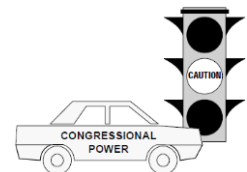
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### IMPLIED POWERS

- Based upon the necessary and proper clause (elastic clause)
- All implied powers come from an expressed power
  - The power to tax (expressed) gives Congress the power to set up an IRS (implied)
- Strict v. loose constructionist approaches

### INHERENT POWERS

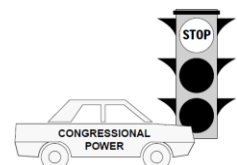
- Because the United States is a sovereign nation in the world >> possess certain powers that all sovereign nations possess and always have possessed
  - Control national borders
  - Regulate immigration
  - Acquire new territories
  - Defend the state from revolution



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### POWERS DENIED TO CONGRESS

- Passing ex post facto laws – Retroactive criminal law that works to the disadvantage of a person
- Passing bills of attainder – Law inflicting punishment without a trial
- Suspending habeas corpus (the right of a person to go before a judge and question his or her imprisonment) except in cases of rebellion or invasion



## **LEADERSHIP IN CONGRESS**

### ***SPEAKER OF THE HOUSE***

- ☆ Presides over House (MOST POWERFUL MEMBER) – always from majority party (selected by the majority party)
- ☆ Refers bills to appropriate House committees
- ☆ Appoints House members to select, joint, and House-Senate conference committees
- ☆ Appoints Rules Committee members and its chairman
- ☆ Assigns bills to committees
- ☆ Schedules legislation for floor action
- ☆ Influences agenda of the House
- ☆ Third in line for presidency after V.P.
- ☆ Informal powers, e.g., access to media

### ***HOUSE MAJORITY LEADER***

- ☆ Selected by the majority party
- ☆ Appointed by party to shape and direct the strategy on the House floor
- ☆ Maintain their parties' alliances to garner voting majorities to pass or defeat bills and amendments
- ☆ Formulate the party's legislative program in cooperation with the Speaker
- ☆ With other party leaders steer their program through the House
- ☆ Ensure that committee chairs take action on bills

### ***HOUSE MINORITY LEADER***

- ☆ Selected by the minority party
- ☆ Summarizes criticisms of the majority parties legislation
- ☆ Mobilizes support for minority party positions
- ☆ Acts as House spokesperson for the president if they are from the same party

### ***HOUSE MAJORITY WHIP & MINORITY WHIP***

- ☆ Each party elects a whip to aid the floor leader in implementing the party's legislative program
- ☆ Assistant floor leaders
- ☆ Inform party leaders on "mood" of House
- ☆ Liaison between party leadership and rank and file membership
- ☆ Transmit information to party members in the chamber
- ☆ Assist leaders in developing a count and a strategy for key vote
- ☆ Build coalitions to pass bills and amendments
- ☆ Gather intelligence, know where the key votes are, and use persuasive tactics to garner more votes

### ***PRESIDENT OF THE SENATE***

- ☆ Role of the Vice President of the United States
- ☆ Presides over Senate
- ☆ May not take part in debates (not an elected member of the Senate)
- ☆ May vote only in the event of a tie
- ☆ Ceremonial job

### ***PRESIDENT PRO TEMPORE OF THE SENATE***

- ☆ Usually the most senior member of the majority party
- ☆ Ceremonial job
- ☆ Presides in absence of the Vice President
- ☆ Fourth in line for presidency

### ***SENATE MAJORITY LEADER***

- ☆ Selected by the majority party
- ☆ MAJORITY LEADER IS THE TRUE LEADER IN SENATE
- ☆ Recognized first for all debates – w/power to filibuster, this gives Majority Leader strong influence on bills
- ☆ Leader of majority party
- ☆ Influences committee assignments of senators
- ☆ Influences Senate agenda, along with Minority Leader
- ☆ Informal powers, e.g., of using the media

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## INFLUENCES ON MEMBERS OF CONGRESS

### CONSTITUENT VIEWS

- ***If a member votes according to how his/her constituents want him/her to vote without regard for his/her own conscience***
  - Said to act in the **delegate** role and engage in representational voting
    - Vote do members vote as a delegate?
      - Members were elected to represent the people and enact their will
      - Fear of upsetting constituents and losing re-election

### MEMBERS' OWN VIEWS

- ***If a member votes according to his/her own beliefs as to what is best***
  - Said to act in the **trustee** role and engage in attitudinal voting
    - Why do members vote as a trustee?
      - Access to information
      - Expertise
      - Divided constituency
      - Uninformed constituency
      - Salience (extent to which the issue is relevant to you) of issue
      - Difficulty determining what voters want

### PARTY AFFILIATION

- ***If a member votes according to how his/her political party wants him/her to vote***
  - Said to act as a **partisan** and engage in partisan voting
  - Best predictor of congressional voting
  - Strong influence on economic and social welfare issues
  - Less influence on foreign policy and civil liberties issues
    - Vote as a partisan because of:
      - Pressure party leaders put on members to vote according to party views
      - Use of reciprocity among members (exchange of favors)
      - Use of logrolling among members (exchange of votes)

### THE PRESIDENT

- Can reward or punish members, particularly those within his own party
- He can campaign for or against members
- He can attend or not attend members' fund raisers
- He can speak out for or against members
- He can use his "electronic throne" to gain leverage

## HOW A BILL BECOMES LAW

BILL INTRODUCTION	<ul style="list-style-type: none"> <li>• Less than 10% actually pass</li> <li>• Most originate in the executive branch</li> <li>• Bills can be introduced in either house, except for revenue bills (House only)</li> <li>• Diffusion of power evident in this process: proponents need many victories, but opponents need only one. This was the intent of the Founders: to create a cautious and deliberate process</li> <li>• Two-step legislative process: <ul style="list-style-type: none"> <li>◦ <u>Authorization</u> allows for a program</li> <li>◦ <u>Appropriation</u> provides money for that program</li> </ul> </li> <li>• Passage of a bill requires only a <u>simple majority</u></li> </ul>
COMMITTEE ACTION	<ul style="list-style-type: none"> <li>• Importance of "correct" committee getting a bill</li> <li>• Committee actions <ul style="list-style-type: none"> <li>◦ Pass</li> <li>◦ Kill</li> <li>◦ Amend ("markup session")</li> <li>◦ Pigeonhole: most frequent fate of a bill</li> </ul> </li> <li>• Discharge petition (in the House of Reps) can be used when a bill is bottled up in committee <ul style="list-style-type: none"> <li>◦ Means of bringing a bill out of committee and to the floor for consideration without a report from the committee <ul style="list-style-type: none"> <li>– Usually without cooperation of the leadership by "discharging" the committee from further consideration of a bill or resolution.</li> <li>– Requires simple majority of the House</li> <li>– Rarely ever used</li> </ul> </li> </ul> </li> <li>• Importance of Rules Committee (House only) <ul style="list-style-type: none"> <li>◦ "Traffic cop" function</li> <li>◦ Issues <b>open rule</b> that allows amendments to a bill or <b>closed rule</b> that prohibits such amendments (esp. on tax bills)</li> <li>◦ Establishes rules on floor debate</li> </ul> </li> </ul>
FLOOR ACTION	<ul style="list-style-type: none"> <li>• Senate only allows filibusters. Can be ended by 3/5 vote of cloture</li> <li>• Senate only allows non germane amendments ("riders"). "Christmas tree" bills can result</li> <li>• Senate allows any member to place a <u>hold</u> on a bill or presidential nomination <ul style="list-style-type: none"> <li>◦ Not in the Constitution, but another example of a Senate tradition. In the past, this was a <u>temporary</u> delay so that, for example: <ul style="list-style-type: none"> <li>– a senator could have more time to consider a bill, or</li> <li>– a senator who was going to be absent when a bill was considered would request that the bill be delayed until he returned</li> </ul> </li> <li>◦ To exercise the hold, a senator informs the floor leader that he/she does not want the bill to be considered – the implied threat of a filibuster and the need for "unanimous consent" for the Senate to proceed on business result in the bill/nomination being held up</li> <li>◦ Holds can be placed <u>anonymously</u></li> </ul> </li> </ul>
CONFERENCE COMMITTEE ACTION	<ul style="list-style-type: none"> <li>• Comprised of members from both houses</li> <li>• Temporary conference committee reconciles different House-Senate versions of a bill, and then sends it back to each house for a vote</li> <li>• Each house must pass the same version of the bill</li> <li>• Yet another "third house of Congress"</li> </ul>
PRESIDENTIAL ACTION	<ol style="list-style-type: none"> <li>1) Sign the bill in full</li> <li>2) Veto the bill in full → can be overridden by 2/3 vote in each house</li> <li>3) Ignore the bill - After 10 days of sending the bill to the President, if Congress is in session the bill automatically becomes law</li> <li>4) Ignore the bill - After 10 days of sending the bill to the President, if Congress is NOT in session the bill is pocket vetoed</li> </ol> <ul style="list-style-type: none"> <li>• What is a line-item veto? <ul style="list-style-type: none"> <li>◦ Congress gave the president a line item veto in the mid-90s (veto individual parts of a bill)</li> <li>◦ Line item veto ruled unconstitutional in <i>Clinton v. New York</i> (1998) as a violation of separation of powers</li> <li>◦ Use of the line item veto would have enabled the president to <u>legislate</u>, a function reserved only for Congress</li> <li>◦ (Most governors do have the power of the line item veto)</li> </ul> </li> </ul>



## **THE LEGISLATIVE PROCESS**

### **How Bills Become Laws or Not**

As part of its legislative process, the United States Congress considers thousands of bills each session. Yet, only a small percentage of them will ever reach the top of the president's desk for final approval or veto. Along their way to the White House, bills traverse a maze of committees and subcommittees, debates, and amendments in both chambers of Congress.

#### **STEP 1: INTRODUCTION**

Only a member of Congress (House or Senate) can introduce the bill for consideration. The Representative or Senator who introduces the bill becomes its "sponsor." Other legislators who support the bill or work on its preparation can ask to be listed as "co-sponsors." Important bills usually have several co-sponsors.

Four basic types of legislation are considered by Congress: Bills, Simple Resolutions, Joint Resolutions, and Concurrent Resolutions. A bill or resolution has officially been introduced when it has been assigned a number (H.R. # for House Bills or S. # for Senate Bills), and printed in the Congressional Record by the Government Printing Office.

#### **STEP 2: COMMITTEE CONSIDERATION**

All bills and resolutions are "referred" to one or more House or Senate committees according to their specific rules.

#### **STEP 3: COMMITTEE ACTION**

The committee considers the bill in detail. For example, the powerful House Ways and Means Committee and Senate Appropriations Committee will consider a bill's potential impact on the Federal Budget. If the committee approves the bill, it moves on in the legislative process. Committees reject bills by simply not acting on them. Bills that fail to get committee action are said to have "died in committee," as many do.

#### **STEP 4: SUBCOMMITTEE REVIEW**

The committee sends some bills to a subcommittee for further study and public hearings. Just about anyone can present testimony at these hearings. Government officials, industry experts, the public, anyone with an interest in the bill can give testimony either in person or in writing. Notice of these hearings, as well as instructions for presenting testimony is officially published in the Federal Register.

#### **STEP 5: MARK UP**

If the subcommittee decides to report (recommend) a bill back to the full committee for approval, they may first make changes and amendments to it. This process is called "Mark Up." If the subcommittee votes not to report a bill to the full committee, the bill dies right there.

#### **STEP 6: COMMITTEE ACTION -- REPORTING A BILL**

The full committee now reviews the deliberations and recommendations of the subcommittee. The committee may now conduct further review, hold more public hearings, or simply vote on the report from the subcommittee. If the bill is to go forward, the full committee prepares and votes on its final recommendations to the House or Senate. Once a bill has successfully passed this stage it is said to have been "ordered reported" or simply "reported."

#### **STEP 7: PUBLICATION OF COMMITTEE REPORT**

Once a bill has been reported (See Step 6:) a report about the bill is written and published. The report will include the purpose of the bill, its impact on existing laws, budgetary considerations, and any new taxes or tax increases that will be required by the bill. The report also typically contains transcripts from public hearings on the bill, as well as the opinions of the committee for and against the proposed bill.

#### **STEP 8: FLOOR ACTION -- LEGISLATIVE CALENDAR**

The bill will now be placed on the legislative calendar of the House or Senate and scheduled (in chronological order) for "floor action" or debate before the full membership. The House has several legislative calendars. The Speaker of the House and House Majority Leader decide the order in which reported bills will be debated. The Senate, having only 100 members and considering fewer bills, has only one legislative calendar.

#### **STEP 9: DEBATE**

Debate for and against the bill proceeds before the full House and Senate according to strict rules of consideration and debate.

#### **STEP 10: VOTING**

Once debate has ended and any amendments to the bill have been approved, the full membership will vote for or against the bill. Methods of voting allow for a voice vote or a roll-call vote.

#### **STEP 11: BILL REFERRED TO OTHER CHAMBER**

Bills approved by one chamber of Congress (House or Senate) are now sent to the other chamber where they will follow pretty much the same track of committee to debate to vote. The other chamber may approve, reject, ignore, or amend the bill.

#### **STEP 12: CONFERENCE COMMITTEE**

If the second chamber to consider a bill changes it significantly, a "conference committee" made up of members of both chambers will be formed. The conference committee works to reconcile differences between the Senate and House versions of the bill. If the committee cannot agree, the bill simply dies. If the committee does agree on a compromise version of the bill, they prepare a report detailing the changes they have proposed. Both the House and Senate must approve the report of the conference committee or the bill will be sent back to them for further work.

#### **STEP 13: FINAL ACTION - ENROLLMENT**

Once both the House and Senate have approved the bill in identical form, it becomes "Enrolled" and sent to the President of the United States. The President may sign the bill into law. The President can also take no action on the bill for ten days while Congress is in session and the bill will automatically become law. If the President is opposed to the bill, he can "veto" it. If he takes no action on the bill for ten days after Congress has adjourned their second session, the bill dies. This action is called a "pocket veto."

#### **STEP 14: OVERRIDING THE VETO**

Congress can attempt to "override" a presidential veto of a bill and force it into law, but doing so requires a 2/3 vote by a quorum of members in both the House and Senate.

# THE COMMITTEE SYSTEM

## INTRODUCTION

- Real work of Congress is done in committees and subcommittees, not on the floor of the House or Senate.
- Before a bill even reaches the floor, it must first pass through a committee, unless the committee has resisted "reporting out" the bill and the House votes to "discharge" it (through a discharge petition) onto the floor for consideration by the full body.
- Committee functions:
  - Analyze legislation, conduct investigations of executive branch agencies, conduct oversight of executive branch agencies

## COMMITTEE MEMBERSHIP

Committee membership is controlled by the parties, primarily by the majority party. The chairman and a majority of each standing committee come from the majority party. The remaining committee members are from the minority party, but they are always a minority on the committee. Assignments are based on the personal and political qualities of the member, his or her region, and whether the assignment will help reelect the member. Getting on the right committee is very important to most members of Congress. A member from a "safe" district whose reelection is secure may want to serve on an important committee that promotes a power base in Washington. On the other hand, a member who has few ambitions beyond his or her current position and whose reelection is less secure may want to serve on a committee that suits the needs of constituents. For example, a less secure representative from rural Kansas may prefer to serve on the Agriculture Committee.

- Whichever party has majority in the House or Senate will have a majority on each committee in that house.
- Committee chairman is of majority party; ranking member is most senior member of minority party on a committee.

## COMMITTEE CHAIRMEN

Committee chairmen are the most important shapers of the committee agenda. From 1910 until the early 1970s, chairmen were strictly chosen by the seniority system, in which the member with the longest continuous service on the committee was placed automatically in the chairmanship. In the early 1970s, the House decided to elect committee chairmen by secret ballots from all the majority members. As a result, several committee chairmen were removed, and although most chairmen still get their positions through seniority, it is possible to be removed or overlooked.

- Power of chairmen is substantial over:
  - Setting committee agenda
  - Hiring staff
  - Membership on subcommittees
  - Jurisdiction of subcommittees
- Advantages of seniority system:
  - Experience
  - Stability
  - Expertise
  - Reduces infighting among those who would be rivals for chairmen

## IMPORTANT STANDING COMMITTEES

Standing committees are the permanent committees of Congress.

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>• <b>House</b><ul style="list-style-type: none"><li>◦ Rules<ul style="list-style-type: none"><li>▪ Most powerful of all</li><li>▪ Sets legislative calendar</li><li>▪ Establish "rules" for debate and amendments</li></ul></li><li>◦ Ways and Means<ul style="list-style-type: none"><li>▪ Deals with tax (revenue) bills</li></ul></li></ul></li></ul> | <ul style="list-style-type: none"><li>• <b>Senate</b><ul style="list-style-type: none"><li>◦ Foreign Relations<ul style="list-style-type: none"><li>▪ Highly prestigious</li><li>▪ Senate has larger role in foreign affairs than House because of treaty ratification, ambassador confirmation provisions in Constitution</li></ul></li><li>◦ Judiciary<ul style="list-style-type: none"><li>▪ Screens judicial nominees</li><li>▪ Careful scrutiny given because of the power of the modern judiciary and the fact that judges have life terms</li></ul></li></ul></li></ul> |
|--|--|

## OTHER COMMITTEES

- **Conference Committees**
  - Temporary committees comprised of members from both houses
  - Formed to resolve differences between bills passed through the House and Senate (only if the language of the bill is different)
  - Members are appointed by the party leadership and are selected from the House and Senate committees that originally considered the bill
  - After conference committee sends bill back to each house, no amendments are allowed, and the bill generally passes
  - The power of these committees is such that they are often called the "third house of Congress"
- **Select**
  - Appointed by a house for a limited, temporary purpose, e.g., to study and issue or to conduct an investigation
- **Joint**
  - Composed of members from both houses for similar temporary purposes

## EVOLUTION OF THE PRESIDENCY

DELIBERATIONS AT THE CONSTITUTIONAL CONVENTION	
Alternatives	<ul style="list-style-type: none"> <li>Some proposed a plural executive</li> <li>Some wanted an executive council to have veto power over presidential actions</li> <li>Some (e.g. Alexander Hamilton) wanted a President with a life term</li> <li>Eventually, compromises brought about a single, elected President with a fixed term of office</li> </ul>
Concerns of the Founders	<ul style="list-style-type: none"> <li>Fear of an excessively strong President               <ul style="list-style-type: none"> <li>Fear that the presidency would be the "fetus of monarchy"</li> <li>Concern over no term limits (no 22<sup>nd</sup> Amendment until 1950)</li> </ul> </li> <li>Fear of an excessively weak President who would become a "tool of the Senate" because of its ratification and confirmation powers</li> <li>The basic problem of creating a presidency               <ul style="list-style-type: none"> <li>Make him too weak: the legislature will usurp his powers</li> <li>Make him too strong: he will usurp the legislature</li> </ul> </li> </ul>
Election of the President	<ul style="list-style-type: none"> <li>Some wanted Congress to elect the President — fear of congressional dominance</li> <li>Some wanted direct election. Problems:               <ul style="list-style-type: none"> <li>Inordinate weight to large states</li> <li>Demagogues might appeal to masses</li> <li>Illiteracy was common</li> <li>Communication was poor</li> </ul> </li> <li>The compromise: The Electoral College (read below)               <ul style="list-style-type: none"> <li>The people had some input</li> <li>Large states had a good amount of influence, but small states were protected by having a minimum of three electoral votes</li> <li>Small states would also have a great deal of clout if the election were thrown into the House (and it was assumed that this would happen often). Under this scenario, each state has one vote.</li> </ul> </li> </ul>
Term of Office	<ul style="list-style-type: none"> <li>Fear of an unlimited number of terms of office was quieted when Washington decided not to run for a third term</li> <li>This precedent was followed until 1940 (FDR ran for a third term and fourth term in 1944)</li> </ul>

### THE ELECTORAL COLLEGE

The method of selection of the president was one of the most controversial topics at the Constitutional Convention. Most of the framers did not trust the public to directly elect the president, but under the checks and balances system, neither could Congress be allowed to select the head of the executive branch. The solution to the dilemma was to create an electoral college, a group of electors chosen by each state who would meet in their respective state capitals to vote for president and vice president. Many framers believed that states would vote for favorite sons and that often the election would be decided by the House of Representatives. It did not work out as they expected, largely because they did not foresee the important role that political parties would play in presidential selection.

Today, all major presidential candidates are selected by their political parties, even though Ross Perot tried to capture the presidency in 1992 without the backing of a party. In 1996, he proved the importance of political parties in the selection process when he tried to run again, but as head of a third party. Presidential candidates are chosen through presidential primaries, and are nominated at a party convention in the summer before a general election in November. The Electoral College members in each state vote - either by law or tradition - for the same candidate that the majority of voters in the state chose.

Until the election of 2000, the Electoral College was regarded primarily as a formality that didn't affect the outcomes of presidential election. However, in 2000 Democratic candidate Al Gore won the popular vote, but George W. Bush became President because he won the electoral vote. The situation opened a debate, with Electoral College supporters arguing that the system protects regional and local balance, and its critics claiming that the Electoral College voting system is undemocratic.

## OVERVIEW OF THE PRESIDENCY

### THE PRESIDENCY IN THE CONSTITUTION

Article II of the Constitution defines the qualifications, powers, and duties of the president and carefully notes some important checks of the executive branch by the legislature.

QUALIFICATIONS	<ul style="list-style-type: none"> <li>Natural-born citizen <ul style="list-style-type: none"> <li>Only individuals born as citizens may seek the presidency; all others are excluded from consideration</li> </ul> </li> <li>At least 35 years of age <ul style="list-style-type: none"> <li>In contrast to a minimum age of 30 for a senator and 25 for a representative</li> <li>This provision has never been seriously challenged, since presidents tend to be considerably older than 35 <ul style="list-style-type: none"> <li>Theodore Roosevelt (age 42 – youngest president), John F. Kennedy (age 43 – youngest to be elected president)</li> </ul> </li> </ul> </li> <li>Residency for at least 14 years <ul style="list-style-type: none"> <li>Years don't have to be consecutive</li> </ul> </li> </ul>
SELECTION	<ul style="list-style-type: none"> <li>Elected in November in years divisible by 4 <ul style="list-style-type: none"> <li>People &gt;&gt; Electors &gt;&gt; President</li> </ul> </li> <li>Electoral votes counted on January 6</li> <li>President inaugurated on January 20 (established by the 20<sup>th</sup> amendment)</li> </ul>
TERM OF OFFICE	<ul style="list-style-type: none"> <li>Four years</li> <li>Maximum of two elected terms <ul style="list-style-type: none"> <li>Amendment 22 institutionalized Washington's precedent</li> <li>Passage of 22<sup>nd</sup> Amendment was due to the Republican congress' concern over future FDR's</li> <li>Possible to serve just less than 10 years in office if a V.P. becomes President just after the midpoint of a President's term <ul style="list-style-type: none"> <li>If a V.P. serves <u>less</u> than half of a President's term, he can be elected to the presidency twice</li> <li>If a V.P. serves <u>more</u> than half of a President's term, he can be elected to the presidency only once</li> </ul> </li> <li>Lyndon Johnson succeeded JFK in 1963, and was therefore eligible to be elected twice</li> <li>Gerald Ford succeeded Nixon in 1974, and was therefore eligible to be elected only once</li> </ul> </li> </ul>
SUCCESSION	<ul style="list-style-type: none"> <li>If office of presidency is vacant due to death, resignation, or impeachment and removal, the V.P. becomes <u>President</u>. If V.P. dies before his inauguration as President, the line of succession is as follows: Speaker of the House, Senate President Pro Tempore, Secretary of State, Secretary of Treasury, Secretary of Defense, and then the other Cabinet secretaries in the order of the creation of their offices.</li> <li>If the President is <u>disabled</u>, the 25<sup>th</sup> Amendment applies: <ul style="list-style-type: none"> <li>The President informs the Congress of disability and the V.P. becomes <u>Acting President</u>.</li> <li>If the President is unable to inform Congress (e.g., coma), the V.P. and a majority of Cabinet secretaries can go to the Congress and receive approval for the V.P. to become Acting President.</li> <li>In either case, the President regains powers by informing the Congress of his intent to return. In case of dispute, Congress has the power to decide who shall be President.</li> </ul> </li> </ul>

### THE IMPEACHMENT PROCESS

The Constitution provides a way to remove a president before his term is over, but it is not an easy process. The House of Representatives may, by majority vote, impeach the president for "Treason, Bribery, or other high Crimes and Misdemeanors." Once the House impeaches the president, the case goes to the Senate, which tries the president, with the chief justice of the Supreme Court presiding. By a two-third vote, the Senate may convict and remove the president from office. Only two presidents have been impeached:

- Andrew Johnson was impeached by the House in 1868 in the wake of the post-Civil War politics, but the Senate failed to convict him (by a one vote margin), and he remained in office.
- Bill Clinton was impeached by the House in 2000 on two counts: committing perjury and obstructing justice in the investigation of sex scandals surrounding the President's relationships with Paula Jones and Monica Lewinsky.

Richard Nixon came close to impeachment when on July 31, 1974, the House Judiciary Committee voted to recommend his impeachment to the House as a result of the Watergate scandal. Nixon avoided impeachment by resigning from the presidency a few days later.

## ROLES OF THE PRESIDENT

### CONSTITUTIONAL ROLES

	<i>Power(s)</i>	<i>Check(s)</i>
<i>Chief Legislator</i>	<ul style="list-style-type: none"> <li>Proposes legislation</li> <li>Vetoes legislation (lacks line item veto -- struck down by Supreme Court)</li> <li>Calls special sessions of Congress</li> </ul>	<ul style="list-style-type: none"> <li>Congress need not pass suggested legislation</li> <li>Congress can override veto with 2/3 majority in both houses</li> </ul>
<i>Chief Executive</i>	<ul style="list-style-type: none"> <li>Enforces laws, treaties, and court decisions</li> <li>Appoints officials to office</li> <li>Issues executive orders (which have the force of laws) to carry out laws</li> </ul>	<ul style="list-style-type: none"> <li>Congress passes laws and has "power of the purse"</li> <li>Senate can reject appointments</li> </ul>
<i>Commander in Chief</i>	<ul style="list-style-type: none"> <li>Head of the armed forces</li> </ul>	<ul style="list-style-type: none"> <li>Congress appropriates funds for the military</li> <li>Congress declares war</li> <li>War Powers Act of 1973</li> </ul>
<i>Chief Diplomat</i>	<ul style="list-style-type: none"> <li>Sets overall foreign policy</li> <li>Appoints ambassadors</li> <li>Negotiates both treaties and executive agreements</li> <li>Gives diplomatic recognition to foreign governments</li> </ul>	<ul style="list-style-type: none"> <li>Congress appropriates funds for foreign affairs</li> <li>Senate can reject ambassadors and treaties</li> </ul>
<i>Chief of State</i>	<ul style="list-style-type: none"> <li>The ceremonial head of our nation (e.g., tosses out the first ball of the baseball season, visits the areas struck by natural disaster)</li> </ul>	
<i>Chief Jurist</i>	<ul style="list-style-type: none"> <li>Appoints federal judges</li> <li>Issues pardons (e.g., Ford pardoned Nixon for Watergate) and amnesty</li> </ul>	<ul style="list-style-type: none"> <li>Senate can reject judicial appointments</li> <li>Senators can place "holds" on appointments</li> <li>Senators can filibuster nominations</li> </ul>

### NON-CONSTITUTIONAL ROLES

<i>Chief of Party</i>	<ul style="list-style-type: none"> <li>Selects the party's chairman of the national committee</li> <li>Political patronage</li> </ul>	
<i>Chief Economist</i>	<ul style="list-style-type: none"> <li>Proposes budget</li> <li>Responsible for overall health of economy</li> </ul>	<ul style="list-style-type: none"> <li>Congress must approve budget</li> </ul>

## PRESIDENTIAL POWERS

Article II of the Constitution outlines the powers of the president. The checks and balances of the other branches of government limit them. The power of the modern presidency comes from the men who have held the office and have shaped the use of these powers. Historians have often rated presidents as strong or weak. After the 1960s and 1970s, it was argued that the presidency had become so powerful that an "imperial presidency" existed, applying the term to Richard Nixon and his administration in particular. Others contend that the president's powers lie in the ability to persuade others through negotiation, influence, and compromise.

Presidential powers can be categorized into the following six groups:

<p><b><i>EXECUTIVE POWERS</i></b></p> <ul style="list-style-type: none"> <li>Enforces laws, treaties, and court decisions</li> <li>Issues executive orders to carry out policies</li> <li>Appoints officials, removes officials</li> <li>Assumes emergency powers</li> <li>Presides over the cabinet and executive branch</li> </ul>	<p><b><i>LEGISLATIVE POWERS</i></b></p> <ul style="list-style-type: none"> <li>Gives annual State of the Union message (constitutionally required) identifying problems, recommending policies, and submitting specific proposals (president's legislative agenda). Expectations are that the president will propose a comprehensive legislative program to deal with national problems (the Budget and Accounting Act of 1921 requires the president to prepare and propose a federal budget).</li> <li>Issues annual budget and economic reports</li> <li>Signs or vetoes bills</li> <li>Proposes legislation and uses influence to get it passed</li> <li>Calls for special sessions of Congress</li> </ul>
<p><b><i>MILITARY POWERS</i></b></p> <ul style="list-style-type: none"> <li>Commander-in-chief of the armed forces</li> <li>Final decision-making authority in matters of national and foreign defense</li> <li>Provides for domestic order</li> </ul>	<p><b><i>DIPLOMATIC POWERS</i></b></p> <ul style="list-style-type: none"> <li>Appoints ambassadors and other diplomats</li> <li>Negotiates treaties and executive agreements</li> <li>Meets with foreign leaders in international conferences</li> <li>Accords diplomatic recognition to foreign governments</li> <li>Receives foreign dignitaries</li> </ul>
<p><b><i>JUDICIAL POWERS</i></b></p> <ul style="list-style-type: none"> <li>Appoints members of the federal judiciary</li> <li>Grants reprieves, pardons, and amnesty</li> </ul>	<p><b><i>PARTY POWERS</i></b></p> <ul style="list-style-type: none"> <li>Recognized leader of the party</li> <li>Chooses vice-presidential nominee</li> <li>Strengthens the party by helping members get elected (coattails)</li> <li>Appoints party members to government positions (patronage)</li> <li>Influences policies and platform of the party</li> </ul>

## **PRESIDENTIAL SUPPORT STAFF**

### **EXECUTIVE OFFICE OF THE PRESIDENT**

- White House Office/White House Staff
  - Immediate staff President
  - Office space in West Wing of White House → proximity to President.
  - Appointments to the White House Office
    - e.g. Chief of Staff, generally do not require Senate consent
    - Officials are less subject to testifying before Congress since they have a greater degree of executive privilege protection.
    - Presidents typically seek people who will be loyal – less divided loyalties are compared to Cabinet positions.
- OMB (Office of Management and Budget)
  - Prepares the annual budget and reviews federal programs
- NSC (National Security Council)
  - Coordinates foreign/military policy
  - Increasing importance of the National Security Adviser since the Nixon presidency
- CEA (Council of Economic Advisors)
  - Three-person advisory group on economic policy

### **CABINET**

- The 15 Secretaries and 5 others who hold "Cabinet rank" (OMB Director, CIA Director, White House Counselor, UN Ambassador, US Trade Rep).
- Each of these is appointed by the President w/Senate consent.
- Presidents can, of course, fire the political appointees within a department.
- In our system:
  - Cabinet officials are constitutionally banned from also being members of Congress.
  - The Cabinet meets irregularly. Only at the call of the President.
  - Cabinet officials are more interested in defending/enlarging their own departments than they are in meeting together to hammer out public policy. Many newly-elected Presidents speak of enlarging the Cabinet's role, but then think better of it as time goes on.
- Factors affecting selection of Cabinet Secretaries include party affiliation, interest group influence, race, gender, geographical diversity, and "confirmability"

### **THE VICE PRESIDENT**

The founders paid little attention to the office and assigned the position to 1) preside over the Senate, but without a vote except to break a tie and 2) help decide the question of presidential disability, as provided in the 25<sup>th</sup> Amendment in 1967. To date, the vice president has never had to decide a question of presidential disability.

The most important function of the vice president is to take over the presidency if the president is unable to fill his term. That has only happened nine times in history, but of course, the vice president must be qualified to take over the presidency.

A vice president's role in any administration is almost entirely up to the president. Although the original constitution designated the runner-up for the presidency as the vice president, the 12<sup>th</sup> Amendment was passed in 1804, which provided for electors to vote for a president/vice-president slate. Traditionally, a presidential candidate chooses a vice presidential partner, usually based on a "balance" to the ticket (region, age, popular base, party subgroup).

- Only two constitutional duties:
  - Become President or Acting President if the office of President is vacant.
  - Preside over Senate, voting only in case of ties.
- Traditionally, the V.P. is a dull, do-nothing job
- The job of a V.P. is basically what the President says it is:
  - V.P. is often selected not on basis of qualifications, but on basis of balancing the ticket.
  - After he has "done his job (i.e., helped win votes)," the V.P. is often "put out to pasture" for dull work.
- Importance of the office:
  - 9/43 Presidents have not finished their terms of office.
  - V.P. can become Acting President if the President is disabled.

## THE IMPERIAL PRESIDENCY

The concept of the "Imperial Presidency" first came about during the 1960's, and was later made popular by historian Arthur M. Schlesinger Jr., after he wrote a book on the subject entitled *The Imperial Presidency*. It is a term used to describe the modern executive branch, and the unconstitutional powers the office has gained since the early 1900's. The book itself was written as a result of Schlesinger's observations of recent presidents of his time, including Nixon, Coolidge, and Roosevelt, and commented in particular on abuses of executive power in regards to the armed forces. Recently, the "Imperial Presidency" term has come into usage once again following the George W. Bush administration, which took many actions qualifying it as an "Imperial Presidency".

The President wields an enormous amount of power. Vetoing bills in and of itself invests an enormous amount of power in the president. As the number of staff members has increased, so has the amount of people with personal loyalties to the president, thus increasing the influence the president has over his cabinet even further. The constitutional boundaries of the president do not restrict them, because of the powers that the president invokes are often "executive" in nature. From "executive orders" to "executive privilege" the president invokes many powers not granted them in the Constitution. During Nixon's presidency, the use of executive privilege to conceal the contents of tapes recorded in the oval office was specifically declared unconstitutional, yet both President Bush and Obama have invoked it on several occasions, usually when concerning the military.

Even though the president has many powers inherent through the Constitution, the extent to which he stretches them is often called into question. George W. Bush is one example of that. Bush is often thought of as an Imperial president as his presence in the Middle East was unprecedented and unsupported with such ferment in his two term presidency. Many conflicts were not officially wars, as they were on terrorists, and not quite a political group. The decades of war far surpassed the few months that a president is allowed to have non-verified presence in a foreign country on a military basis.

- Throughout much of this century, the President has been the "great engine of democracy"
- The President was supposed to exercise great power to meet his goals
- In the wake of the Vietnam War and Watergate, however, Congress reasserted itself against what came to be seen as an "Imperial Presidency"
- The "Imperial Presidency" suggested that presidential power had grown excessive ("imperial")
- Response:
  - Economic growth necessitated a strong executive branch
  - Congress itself delegated strong powers to the executive branch, esp. in area of foreign policy
- Areas of abuse
  - War powers
    - Constitutional conflict of Congress' power to declare war vs. President's power as Commander-in-Chief.
    - In the 18th century, Congress had more time to deliberate war issues; in the modern era, however, Presidents have argued that they need more flexibility to meet rapidly changing conditions.
    - Presidents have sent troops without a congressional declaration of war more than 125 times. This has happened very frequently since 1945.
    - Congress has in fact generally gone along with these operations, and has of course funded them, as well. When public opinion turns against the operations, however, Congress has often responded (e.g., Vietnam War).
    - One of the reasons Congress has gone along with these operations without a formal declaration of war is that such a declaration carries with it the transfer of great emergency powers to the President that the Congress may not want to grant him.
  - Emergency powers
    - In time of war or emergency, the President assumes great powers
      - Examples: Suspension of habeas corpus; Control of communication and transportation; Declaration of martial law; Patriot Act
  - Use of executive agreements rather than treaties
    - The former does not require Senate ratification, as does the latter. The former are "deals" between the President and the head of another nation (e.g., the destroyers-for-bases deal between FDR and Churchill in 1940).
    - Since WWII, the number of executive agreements has vastly outnumbered the number of treaties. Between 1980-1991, there were > 4100 of the former, and less than 200 of the latter.
    - What is particularly galling to Congress is that treaties are often on relatively trivial issues (e.g., archaeological artifacts in Mexico), but executive agreements are often on matters of great importance (e.g., military commitments to various nations)
  - Executive Privilege
    - Definition: The right of president to NOT divulge conversations between himself and his advisers.
    - Presidents claim that if such conversations were not "privileged," advisers would be hesitant to give straightforward advice.
    - Critics claim that Presidents have abused this privilege by claiming it under the guise of "national security."
    - In *U.S. v. Nixon* (1974), the Supreme Court stated that Presidents are in fact entitled to executive privilege most of the time, but not in criminal cases.
  - Impoundment
    - The refusal of the President to spend money that has been appropriated by Congress.
    - In the past, this was done when there was an obvious need, e.g., reducing defense spending after a war ended.
    - Nixon, however, impounded funds for policy objectives. Some members of Congress were livid that money was not spent when it had been lawfully appropriated by legislation. Such impoundment seemed unconstitutional.



## CONGRESS RESPONDS TO THE IMPERIAL PRESIDENCY

### BACKGROUND

- The Vietnam War, Watergate, and the resignation of Nixon was a reassertion of congressional authority in mid-1970s

<b>WAR POWERS ACT OF 1973</b>	<ul style="list-style-type: none"> <li>President can send troops overseas to an area where hostilities are imminent without a congressional war declaration only under these circumstances: <ul style="list-style-type: none"> <li>Must notify Congress within 48 hours</li> <li>Must withdraw the troops after 60 days (can be extended another 30 days if the safety of the troops requires it)</li> <li>Must consult w/Congress if troops are to engage in combat</li> <li>Congress can pass a resolution, not subject to presidential veto, to have the troops withdrawn</li> </ul> </li> <li>Criticisms <ul style="list-style-type: none"> <li>Unconstitutional – an abridgement of the President’s authority as Commander in Chief</li> <li>Ties the hands of the President – too inflexible</li> <li>Makes it easy on the enemy – just wait 60-90 days</li> </ul> </li> <li>Presidents have claimed the act to be unconstitutional, some have disregarded it, but there has been no lawsuit to determine its constitutionality. A “political hot potato”</li> </ul>
<b>EMERGENCY POWERS</b>	<ul style="list-style-type: none"> <li>Passage of National Emergencies Act of 1976 <ul style="list-style-type: none"> <li>President must inform Congress in advance of powers to be used in emergencies</li> <li>State of emergency automatically ends after 6 months</li> <li>President can declare another 6 months of emergency, subject to congressional review</li> </ul> </li> </ul>
<b>IMPOUNDMENT</b>	<ul style="list-style-type: none"> <li>Budget and Impoundment Control Act of 1974 <ul style="list-style-type: none"> <li>If President impounds funds temporarily (deferral), either house can override</li> <li>If President impounds funds permanently (rescission), that act is automatically voided unless both houses of Congress approve within 45 days</li> <li>Establishment of Congressional Budget Office (CBO) as a check on OMB</li> <li>Congress given three additional months to consider the President’s proposed budget</li> </ul> </li> </ul>
<b>CONFIRMATION OF PRESIDENTIAL APPOINTEES</b>	<ul style="list-style-type: none"> <li>Senatorial courtesy a long-established practice: if President makes an appointment within a state, he will consult with the two senators of that state</li> <li>Much closer scrutiny given by Senate to appointments</li> <li>“Rule of fitness” seems to no longer be sufficient; now a nominee’s policy preferences are fair game for much more senatorial scrutiny than before</li> <li>Long confirmation delays (through use of the “hold”) of <u>years</u> with some of Clinton’s judicial nominees due to the belief that the nominees were too liberal/out of the judicial mainstream. Democrats in Senate returned the favor in the Bush Administration by delaying confirmations.</li> </ul>
<b>LEGISLATIVE VETO</b>	<ul style="list-style-type: none"> <li>In the past: Congress passed a law, the relevant executive agency issued regulations to enforce the law, Congress could then analyze those regulations and veto them if it so desired.</li> <li>The legislative veto was a way of forcing the bureaucracy to conform to congressional intent.</li> <li>In the case of <i>INS v. Chada</i> (1983), however, the Supreme Court declared the legislative veto to be an unconstitutional violation of separation of powers.</li> </ul>
<b>FOREIGN AFFAIRS</b>	<ul style="list-style-type: none"> <li>Use of appropriations power to influence foreign policy in the 1970s and 1980s: Congress cut off aid to South Vietnam, Angola, and the Contras. Congress tried to force Bush 43 into a deadline for withdrawing troops from Iraq by using funding as a lever.</li> <li>Extensive debate over U.S. involvement in the Gulf War. Although Bush did not use the War Powers Act, he did go to Congress to get its approval for U.S. action.</li> <li>Congress gave strong support to Bush’s war on terrorism.</li> <li>Extensive debate over US involvement in war against Iraq in 2003. Although Bush did not use the War Powers Act, he did go to Congress to get its approval for U.S. action. Increasing criticism over war in Iraq.</li> <li>Criticism of Patriot Act and secret domestic surveillance programs of NSA without going through Foreign Intelligence Surveillance Act court for prior approval.</li> </ul>

## CONGRESS VS. THE PRESIDENT

### HISTORICAL BACKGROUND

- Founders' intent on Congress to be the dominant branch
- In the 20<sup>th</sup> century, the President has generally been more dominant

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">SOURCES OF CONFLICT BETWEEN THE PRESIDENT AND CONGRESS</p>	<ul style="list-style-type: none"> <li>• <b><i>Separation of powers and checks and balances</i></b> <ul style="list-style-type: none"> <li>◦ Constitution is "an invitation to struggle between the President and Congress"</li> <li>◦ There is <u>supposed</u> to be conflict</li> </ul> </li> <li>• <b><i>Each represents different constituencies</i></b> <ul style="list-style-type: none"> <li>◦ Members of Congress represent <u>state and local</u> interests ("All politics is local")</li> <li>◦ The President represents the <u>national</u> interest</li> </ul> </li> <li>• <b><i>Different times of election</i></b> <ul style="list-style-type: none"> <li>◦ Difficult for either to gain excessive power for any great length of time</li> <li>◦ e.g., Clinton was elected in '92 w/a majority of Democrats in Congress, but two years later the Republicans captured a majority of both houses</li> </ul> </li> <li>• <b><i>Partisanship</i></b> <ul style="list-style-type: none"> <li>◦ Since 1952, Presidents have often faced Congress that has had a majority of the opposing party (divided government)</li> <li>◦ Even when the Congress has a majority of the same party as the President, intra-party struggles are common</li> <li>◦ With the weakening of political parties, the President does not have a strong "hold" on members of his own party in Congress</li> </ul> </li> <li>• <b><i>"Two presidencies" thesis</i></b> <ul style="list-style-type: none"> <li>◦ Congress tends to be more cooperative with the President on foreign policy and national security issues (esp. in a crisis)</li> <li>◦ Less cooperative on domestic and economic issues</li> </ul> </li> </ul>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">SOURCES OF PRESIDENTIAL INFLUENCE ON CONGRESS</p>	<ul style="list-style-type: none"> <li>• <b><i>Use of media</i></b> <ul style="list-style-type: none"> <li>◦ Media focuses more on a single person than on 535 people</li> <li>◦ President can go directly to the people with his case</li> </ul> </li> <li>• <b><i>"Mandate from the people"</i></b> after winning election by a large margin</li> <li>• <b><i>Patronage</i></b> <ul style="list-style-type: none"> <li>◦ Enables a President to carry out policy his way</li> <li>◦ Enables a President to cultivate members of Congress by seeking their input on appointments</li> </ul> </li> <li>• <b><i>Chief of Party role</i></b> <ul style="list-style-type: none"> <li>◦ Convincing members of Congress to act in the interests of "party unity"</li> </ul> </li> <li>• <b><i>Personal lobbying of members of Congress</i></b> <ul style="list-style-type: none"> <li>◦ Use of both favors and punishment for cooperative or uncooperative members</li> </ul> </li> <li>• <b><i>Veto, or its threat</i></b> <ul style="list-style-type: none"> <li>◦ 93% of vetoes are not overridden, so even the threat of a veto carries weight</li> </ul> </li> <li>• <b><i>Presence of a national emergency</i></b> <ul style="list-style-type: none"> <li>◦ President benefits from rally point – spike in public approval following domestic or international crisis (such as 9/11)</li> </ul> </li> </ul>