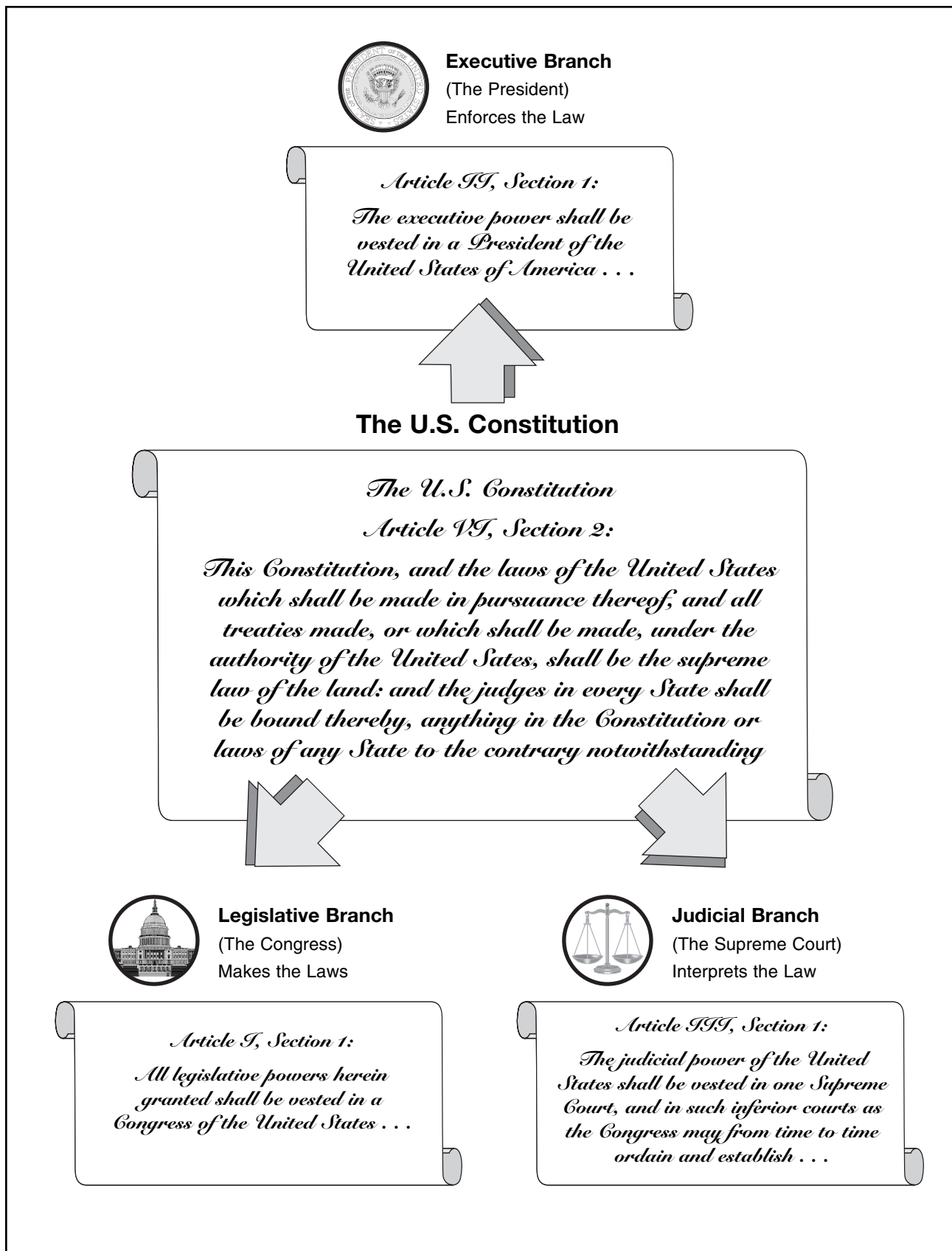
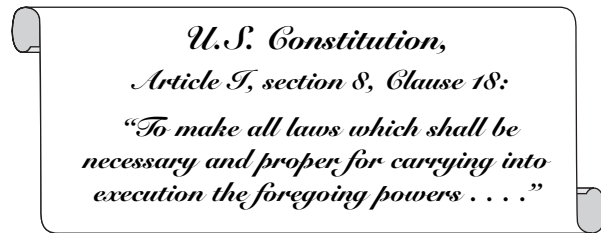


Legislative Power and Function: Overview



Legislative Powers: Expressed and Implied

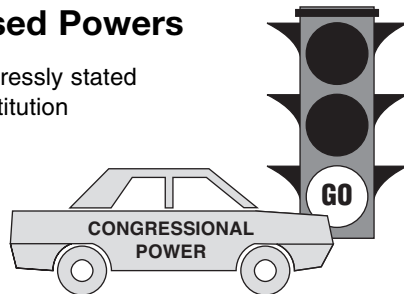


The Necessary and Proper Clause, also called the “Elastic Clause,” is the constitutional basis for “implied powers.”

Overview: Congress has some powers that are expressly 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.

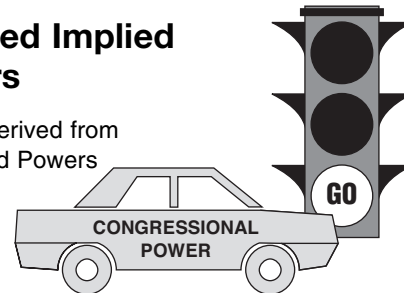
Expressed Powers

Powers expressly stated in the Constitution



Selected Implied Powers

Powers derived from Expressed Powers



Sovereign Powers

- Power to declare war
- Power to raise and support armed forces
- Power to regulate the naturalization of citizens
- Power to approve treaties with foreign nations
- Power to acquire, manage, and dispose of federal territories

In 1947, through its expressed power to raise armies, Congress created the Air Force.

Financial Powers

- Power to borrow money
- Power to impose and collect taxes
- Power to establish bankruptcy laws
- Power to “coin” money and set its value

Alexander Hamilton, the first secretary of the treasury, urged Congress to create a national bank. He argued that the powers to create such a bank were implied by Congress’s expressed financial powers.

In 1862, Congress established the Internal Revenue Service to collect taxes and punish tax evaders.

Commerce Powers

- Power to regulate trade:
 - with foreign nations
 - between states
 - with Indian nations

In 1995, the World Trade Organization is created as a successor to the General Agreement on Tariffs and Trade.

Judicial Powers

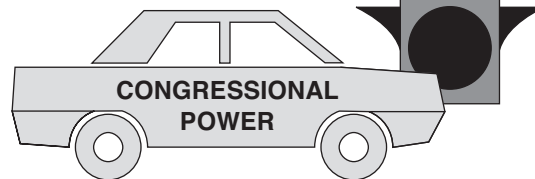
- Power to create all federal courts below the Supreme Court
- Power to organize and compose a federal judiciary
- Power to define federal crimes and establish punishment for such crimes

Congress expanded the judicial system through its expressed power to create all federal courts lower than the Supreme Court. In 2003, a comprehensive network of courts exists, including 12 Courts of Appeals and 94 federal district courts.

Legislative Powers: Denied Powers

Denied Powers

The Constitution and the Bill of Rights expressly deny certain powers to Congress.



Examples of Powers Denied by the Constitution

Article I, Section 9

Congress cannot

Suspend the writ of habeas corpus (the right of a person to go before a judge and question his or her imprisonment)

Pass any bill of attainder (law convicting a person of felony or treason) or ex post facto law (a law making something illegal "after the fact")

Tax exports

Pass laws that favor the trade of one state over another

Spend money on items not established by law

Grant any titles of nobility

Examples of Powers Denied by the Bill of Rights

(These limit Congress's powers in relation to individuals)

Congress cannot

Establish any religion or bar the exercise of any religion

*Bill of Rights, Amendment I:
Congress shall make no law respecting
an establishment of religion, or
prohibiting the free exercise thereof*

Limit free speech, the press, or the ability of people to assemble and protest government action

*Congress shall make no law . . .
abridging the freedom of speech, or
of the press, or the right of the
people peaceably to assemble, and to
petition the Government for a
redress of grievances.*

Pass laws that allow unreasonable searches and seizures

*Bill of Rights, Amendment IV:
The right of the people to be secure
in their persons, houses, papers, and
effects, against unreasonable searches
and seizures . . .*

Non-Legislative Functions: Advice & Consent and Investigation & Oversight

EXPLANATION

Advice & Consent

The Senate advises and approves the actions of the executive branch in certain instances. The appointments of Supreme Court justices, Cabinet members, and other officials undergo serious scrutiny by Senate committees.

CONSTITUTIONAL FOUNDATION

This power comes from Article II, Section 2, Clause 2 of the Constitution, which reads,

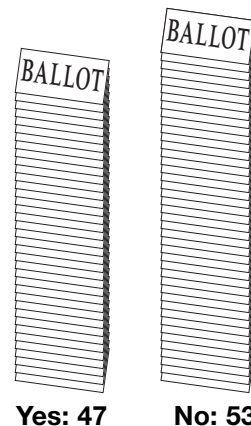
... and [the president] shall nominate and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers, and consuls, judges of the Supreme Court and all other officers of the United States . . .

EXAMPLES

Between 1834 and the present, the Senate has voted 12 times to reject a Cabinet nominee.

Rejection of John Tower as Secretary of Defense:

Vote March 9, 1989



Investigation & Oversight

Congress examines the actions of the executive branch and reviews its effectiveness in implementing laws passed by Congress.

This is an implied power, drawn from Article I, Section 1 of the Constitution, which states,

All legislative powers herein granted shall be vested in a Congress of the United States . . .

Congress's investigation of wars. On March 27, 1792, the first congressional investigation was approved by the House. A select committee was given the task of investigating an Indian victory over U.S. troops commanded by Maj. Gen. Arthur St. Clair. The Spanish American War (1898) was the only war in U.S. history not investigated by Congress.

One of the most famous investigations was conducted by the Senate Select Committee on Presidential Campaign Activities (Watergate Committee) into the illegal campaign practices of the 1972 presidential election.

In 1946, the Legislative Reorganization Act authorized congressional committees to "exercise continuous watchfulness" over administrative agencies and their execution of the laws of the country.

In 1970, the Reorganization Act made the standing committees of each house responsible for monitoring the laws implemented in their areas.



Non-Legislative Functions: Impeachment and Ratification

EXPLANATION

Impeachment

The accusation of official misconduct
The House presents formal charges against a government official and the Senate investigates the allegations and tries the official.

CONSTITUTIONAL FOUNDATION

Article I, Section 2, Clause 5:

The House of Representatives . . . shall have the sole power of impeachment.

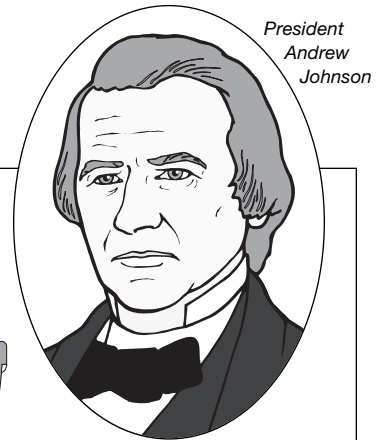
Article I, Section 3, Clause 6:

The Senate shall have the sole power to try all impeachments.

EXAMPLES

Presidents Andrew Johnson and Bill Clinton were the only presidents to be impeached by the House.

Since 1789, 16 government officials have been tried on impeachment charges and seven have been convicted. Two-thirds of the senators present at an impeachment trial must approve removal.



Impeachment of Federal Officials 1789 to 2003

Convicted: 7



Tried: 16



Ratification

Congress's approval of a treaty with a foreign power

Article II, Section 2, Clause 2:

[The President] shall have the power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur . . .

From 1821 to 2002, only 21 treaties were rejected by the Senate. The 1920 Treaty of Versailles to end World War I was one of the most famous of the rejected treaties.



Non-Legislative Functions: Amending and Admission of States

EXPLANATION

Amending the Constitution

The ability to change the Constitution

CONSTITUTIONAL FOUNDATION

Article V:

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution . . .

EXAMPLES

The 19th Amendment, passed in 1920, gave women the right to vote.

State legislatures may also propose amendments, but none has ever succeeded in gaining enough support to ask Congress to call a vote.

Over 9,000 amendments have been introduced in Congress, many of which have been similar proposals. Congress has formally proposed amendments only 33 times.

Introduction of Amendments vs. Final Proposal

Amendments introduced: 9000+



Amendments proposed: 33



Admission of New States

Territories may be admitted as new states to the Union.

Article IV: Section 3, Clause 1:

New States may be admitted by Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State . . .

37 states were added to the Union after the original 13. Alaska and Hawaii were the last two states admitted, in 1959.



House of Representatives and Senate: Comparing Powers and Functions



U. S. Congress Capitol Hill

<u>House</u>	<u>Senate</u>	<u>Powers and Functions</u>
✓	✓	Power to introduce, pass, and reject legislation
✓	✓	Power to override the president's veto
✓	✓	Power to censure and, if necessary, expel its members with a two-thirds vote
✓	✓	Power to propose constitutional amendments
	✓	Power to advise and consent to treaties negotiated by the president
✓		Power to raise money or propose revenue bills to carry out the functions of the federal government
✓		Power to impeach federal officials
	✓	Power to try federal officials on impeachment charges
✓	✓	Power to address succession problems if a candidate should die or if the president should become incapacitated or resign
	✓	Power to approve the president's appointees to federal judgeships and executive departments
✓	✓	Power to choose a president (Congress is in charge of counting electoral votes in a joint session.)
✓		If no presidential candidate has a majority of electoral votes, the House chooses the president from the three candidates with the most votes.

Conflict and Agreement between House and Senate

Areas of Conflict



U. S. Congress
Capitol Hill

HOUSE

Different Reelection Cycles

Representatives serve two-year terms and must always be concerned about the next election; therefore, they may be more eager to get legislation passed.

Appropriation Abilities

The House has been delegated the exclusive right to initiate revenue bills. Thus the House Ways and Means Committee, created in 1811, became a powerful force.

Influence on Appointments and Foreign Affairs

House members have no power over presidential appointees and much less power than the Senate over foreign affairs.

SENATE

Senators serve six-year terms that give them more flexibility in their agendas and more time to carry out their programs.

The Senate Finance Committee was regarded as the House's much weaker partner until the Legislative Reorganization Act was passed in the 1970s; this Act weakened the House Ways and Means Committee. Still, the Senate attaches major tax amendments to minor House tax bills as a way to exert more financial control.

The Senate was given the power to "advise and consent" for foreign treaties and in the confirmation of presidential appointees to federal positions, making it stronger than the House in foreign affairs and in its check on presidential power.

Areas of Agreement



U. S. Congress
Capitol Hill

Focus on Constituencies

Because House and Senate members can be reelected an unlimited number of times in many states, they have many opportunities to address the needs of their constituents. They tend to focus on serving their constituents rather than on national policies.

Regional Members Work Together

Members of Congress from the same geographic regions work together to push through legislation that benefits their states. For example, senators and representatives from Midwestern states usually work together on agricultural policies.

Party Members Work Together

Senators and representatives of the same political party cooperate in passing legislation that is endorsed by their party leadership. For example, Republicans in Congress cooperated to push through bills to reform the Medicare system in 1995.

Powers and Functions Shared with Executive Branch

The Congress shares certain functions with the president. In many instances, one branch's power augments or complements the other branch's. Below is a chart showing the areas of shared functions with fictional daily agendas for President George W. Bush and the 108th Congress (2003–04) illustrating these functions.

Fictional Agendas of the President and Congress

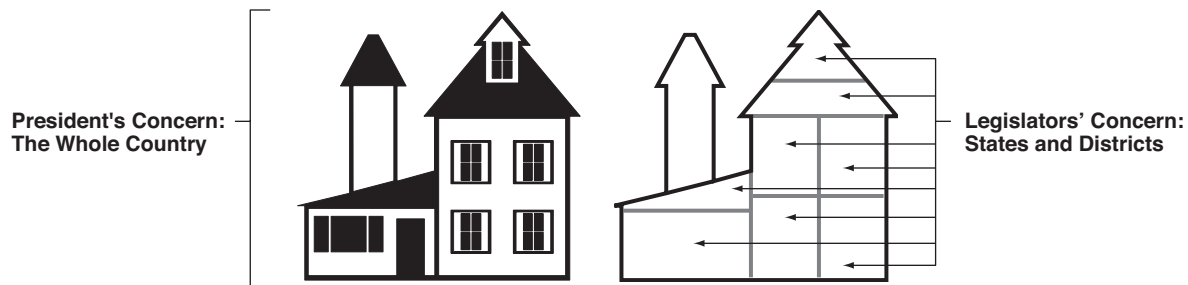
	Pres. George W. Bush's Daily Agenda	108th Congress's Daily Agenda	
	SEPTEMBER 24, 2003	SEPTEMBER 24, 2003	
Legislation President recommends	9:00 A.M. <i>Recommend that Congress pass the Patriot Act; send staff to convince legislators</i>	9:00 A.M. 9:15 9:30 9:45 10:00 <i>Introduce and debate Bush and Ashcroft's recommended Patriot Act</i>	Legislation Congress reviews & passes or turns down proposed legislation
Treaties President negotiates	10:15 <i>Revise the Jobs and Growth Act with economic advisers</i>	10:15 <i>Bush's proposed tax cuts in the Jobs and Growth Act</i>	Treaties Congress ratifies
Federal Judges President nominates	11:00 11:15 11:30 11:45 12:00 P.M. <i>LUNCH</i>	11:00 <i>Debate the benefits of Bush's proposed tax cuts in the Jobs and Growth Act</i>	Federal Judges Congress reviews & confirms
Other Officials President nominates	12:15 12:30 12:45 1:00 <i>Appoint judge to U.S. District Court; send to Congress for confirmation</i>	12:00 P.M. <i>Senate to debate ratification of Bush's Middle East peace treaty</i>	Other Officials Congress reviews & confirms
Defense President commands armed forces	1:15 1:30 1:45 2:00 <i>Nominate new energy secretary; send to Congress for confirmation</i>	1:00 <i>LUNCH</i>	Defense Congress declares war & funds defense operations
Government Operations President is chief executive	2:15 2:30 2:45 3:00 <i>Evaluate crisis in Iraq with advisers. (Note: as commander in chief, president can send troops without Congress's approval for 60 days.)</i>	2:00 <i>Consider Bush's U.S. District Court judge appointee, vote to confirm</i>	Government Operations Congress funds government operations
	3:15 3:30 3:45 4:00 4:15 4:30 4:45 5:00 <i>Reorganize White House staffing</i>	3:00 <i>Consider Bush's nomination for energy secretary, vote on confirmation</i>	
	5:15 5:30 5:45 6:00 6:15	4:00 <i>Maintain stability in postwar areas; send appropriate funds to U.S. forces in Iraq and Afghanistan</i>	
		5:15 5:30 5:45 6:00 <i>Pass Appropriations Bill to finance government funding for the next fiscal year, send to President</i>	

Conflict between Executive and Legislative Branches

Congress and the President are often in conflict for three main reasons:

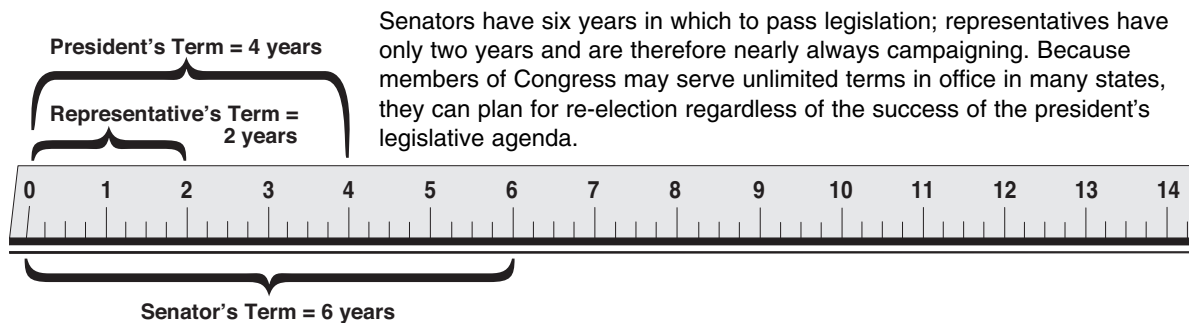
1. They Have Different Constituencies

Members of Congress are elected by constituents in their states or districts. The interests of the constituents are much narrower than those of the broad electorate that chooses the president. Thus senators and representatives may have viewpoints that differ considerably from the president.



2. They Have Different Political Timetables

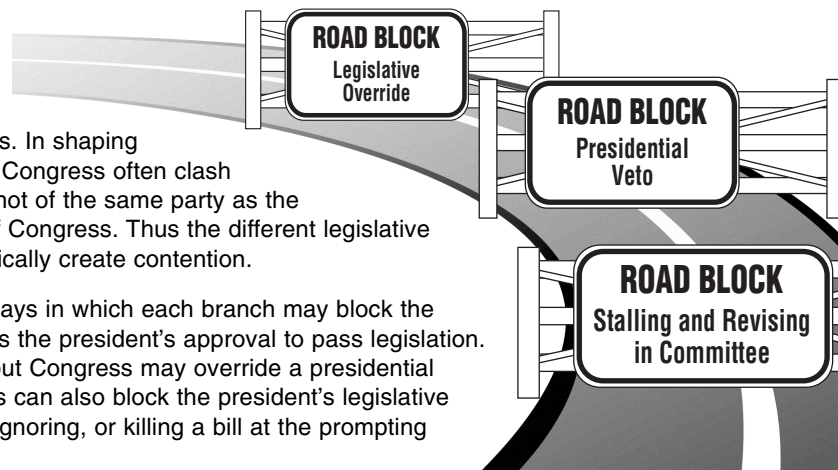
The election cycles of the president, senators, and representatives are all different. A president has at most, if he/she is re-elected, eight years to pass a legislative agenda. Midway through the first four-year term, a president may be concerned about the next election.



3. Party Politics

Party politics is a major source of conflict between the branches. In shaping public policy, the president and Congress often clash because the president is often not of the same party as the majority party in both houses of Congress. Thus the different legislative agendas of each party automatically create contention.

Adding to this conflict are the ways in which each branch may block the other's powers. Congress needs the president's approval to pass legislation. The president may veto a bill, but Congress may override a presidential veto. Congressional committees can also block the president's legislative proposals by stalling, revising, ignoring, or killing a bill at the prompting of a strong chairperson.



The Job of Congresspeople

Washington Chronicle

HELP WANTED

EXCITING CAREERS IN PUBLIC SERVICE

Member, U.S. House of Representatives

U.S. House seeks ambitious new Representative.

Requirements

☆ Must be at least 25 ☆ Must be a U.S. citizen for 7 years ☆ Must live in district of state you will represent ☆ Position lasts 2 years ☆ May reapply for position during elections in November of even-numbered years ☆ Must be available to start on January 3 of year following election ☆

Send resume and cover letter, citing qualifications, to the people of your district

U.S. Senator

U.S. Senate seeks ambitious new Senator.

Requirements

☆ Must be at least 30 ☆ Must be a U. S. citizen for 9 yrs ☆ Must live in state you will represent. ☆ Position lasts 6 years ☆ May reapply for position in November of even-numbered years ☆ Must be available to start on January 3 of year following election ☆

Send resume and cover letter, citing qualifications, to the people of your state

For Both Positions

Duties

☆ Pass nation's laws without seeking fame or publicity ☆

Salary & Benefits

☆ \$154,700 per year, non-negotiable, no outside speaking fees permitted ☆ Free postage, office space, stationery; low-cost life insurance ☆ Free on-site medical clinic, gym, hair salon, cleaners ☆ Large allowances for staff, trips home, phones, telegrams, and newsletters ☆ Tax deductions for your residence in home state and in Washington, D.C. ☆

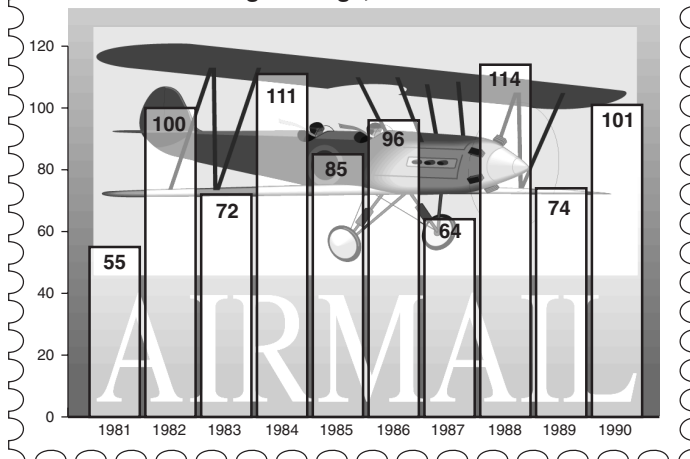
Special Privileges

☆ If chosen you will be free from arrest "in all cases except treason, felony, and breach of the peace" when in Congress or on the way to or from Congress ☆ You will be granted immunity from lawsuits for anything you may say when in Congress ☆

Rules of Conduct

☆ If selected, you will be subject to judgment by your fellow members ☆ You may be denied a seat or punished for disorderly conduct ☆ Bribery and treason are grounds for expulsion ☆ Lesser crimes may result in "censure" or "formal disapproval" ☆

Cost of the Franking Privilege, 1981 to 1990 in millions of dollars



Members of Congress are allowed to mail official business postage free; this privilege (called "franking") has generated much criticism recently. The criticism comes not just from the escalating costs in recent years but the apparent prevalence of abuse among some members of Congress, who use the privilege for campaign and re-election strategies as well as other personal mail. The graph here shows the cost of this "franking privilege" throughout the 1980s.

State Representation in Congress

How State Representation Is Determined

Senate

Two senators are selected from each state, for a total of 100 senators. Senators represent the entire state from which they are elected.

House

Apportionment

House seats are apportioned among the states according to each state's population, which is subject to change. State populations are determined by a census (taken every 10 years). Every state is guaranteed at least one representative. The number of House members has been fixed at 435 since 1929.

Redistricting and Gerrymandering

After a census, each state sets up congressional districts, and a representative is elected from each district.

Gerrymandering occurs when district lines are manipulated to give one party a political advantage in the next election.



States and Their House of Representatives Apportionment, 2000



Congressional Rules and Procedures

The Constitution authorizes the House and Senate to establish their own rules of procedure.

Article 1, Section 5, Clause 2

Each House may determine the rules of its proceedings . . .

Thomas Jefferson wrote the first parliamentary manual for the U.S. Senate:



Excerpt: *It is much more material that there should be a rule to go by, than what the rule is: that there may be uniformity of proceeding in business not subject to the caprice of the Speaker or [capriciousness] of the members. It is very material that order, decency and regularity be preserved in a dignified public body.*



Congressional historian Walter J. Oleszek describes congressional rules thus:

Excerpt: *"[They] are not neutral devices, they help to shore up the more powerful members as well as protect the rights of the minority."*

Current Rules

The House and Senate print their rules every two years. The rules in both houses require a simple majority for most votes.



House Rules

The House's rules run to more than 650 pages.

Since the House is so large, it is more unwieldy; consequently more rules are needed.

The spirit of the House is reflected in its rules: they define the specific actions of members.

Examples of rules of the House

Rule I

Duties of the Speaker

Rule X

Establishment and Jurisdiction of Standing Committees

Rule XIV

Of Decorum and Debate



Senate Rules

The Senate's rules number only 90 pages.

The Senate is a small, more exclusive body; rules are less needed.

The spirit of the Senate is reflected in its rules: they enhance the freedom of the senators.

Examples of rules of the Senate

Rule I

Appointment of a Senator to the Chair

Rule V

Suspension and Amendment of the Rules

Rule XXIII

Privilege of the Floor

Congressional Rules: Precedents and Informal Rules

Aside from the formal rules established by each chamber of Congress, lawmakers are governed by two kinds of unwritten rules: precedents and folkways.

Precedents are “accumulated past decisions on matters of procedure.” They are the “common law” of Congress and govern many procedures not explicitly covered in the formal rules. Precedents permit variations in the rules through the “unanimous consent” of its members. When either the speaker of the House or the president of the Senate makes rulings, these become part of the large body of “precedents” and are given formal status. The parliamentarians in each chamber print and distribute these precedents to members.

Folkways are accepted modes of behavior that members are expected to observe. When these “folkways” are violated, news is often made. Here are six examples:

1. Focus on Legislative Work

Members of Congress should concentrate on lawmaking and not seek publicity. This can be difficult because lawmakers are often in the public spotlight.



2. Courtesy or Civility

Lawmakers should be solicitous of other members and should avoid personal attacks on one another.

3. Specialization

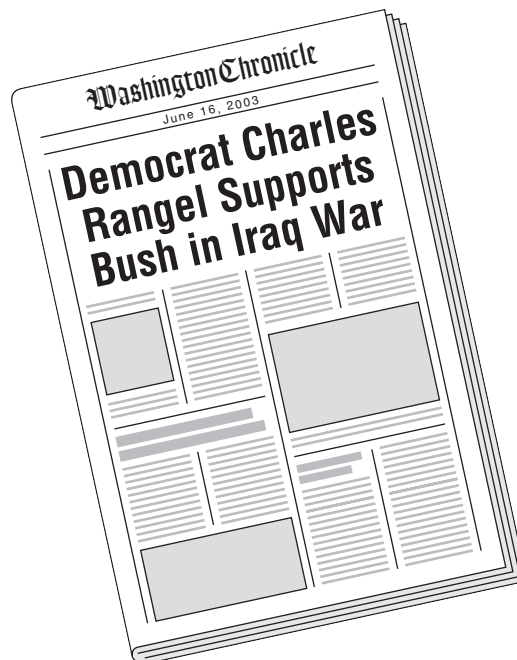
Members should become experts in a few areas, rather than try to be “jacks of all trades.”

4. Compromise and Reciprocity

Members of Congress must be willing to compromise to expedite the law making process. Reciprocity is a part of compromise—members must be willing to trade legislative favors to get bills passed.

5. Loyalty

Members are expected to show loyalty to their parties in Congress in certain key legislative votes. Loyalty to one's constituents is also expected, and these two obligations may sometimes create a conflict.



6. Seniority

Longer service in Congress makes one eligible for more prominent positions on committees and in leadership.