**3.1 Federal Division of Power and Authority**

The Constitution was written in very general language, which has resulted in ambiguity about where national power and authority end and state power and authority begin, and vice versa. Figure 3.1 illustrates how state and national governments both have their own powers but also share the authority to perform some of the same functions. In other words, the Constitution has a built-in tension between the national government and the states. That tension has long been part of the American experience, and it continues to be the source of political conflict.

**National Power**

The U.S. Constitution sets up a system where national power is shared with state governments. This is called a federal system. The national government is part of a federal system. When addressing the national government, one is referring specifically to the highest level of government in a federal system. At the same time, the phrase “federal government” is used interchangeably with “national government” when referring to the highest level of government in a federal system. The two principal bases for national power are found in the Commerce Clause and the Supremacy Clause of the Constitution. The Commerce Clause, found in Article I, Section 8, gives Congress the power to “regulate Commerce with Foreign Nations, and among the several states,” which allows the national government to regulate various activities related to interstate commerce. For example, the national government may create environmental regulations because pollution crosses state lines.

The Supremacy Clause gives the Constitution and national laws authority over the states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to be Contrary notwithstanding.

The Supremacy Clause addresses those times when state or local laws conflict with national laws or the U.S. Constitution. In these instances, the Constitution and the national laws prevail.

**State Power**

The 10th Amendment states that all powers not delegated, or specifically given, to the federal government become powers held by the states. Put differently, if the authority to do something is not expressly given to the national government, that power falls to the states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Fittingly, this is known as the “reserved powers” clause. In contrast, federal powers are listed, or enumerated, in Article I, Section 8 of the U.S. Constitution. Many argue that these powers may be interpreted in a way that expands them beyond those listed in Article I, Section 8 through the Necessary and Proper Clause found at the end of Article I, Section 9. This means that state powers may be limited by the national government even if those federal powers are not enumerated in Article I, Section 8.

The 10th Amendment, put differently, says that if the authority to do something is not expressly given to the national government, that power falls to the states.

As we have seen, the defining feature of the American federal system is that states share power and authority with the national government. In fact, the Bill of Rights was intended to protect the civil liberties of the people and state sovereignty by imposing limitations on national authority. However, in 1925, the U.S. Supreme Court began applying key provisions of the 14th Amendment to the states and interpreting some state laws to be in violation of the Bill of Rights. These interpretations have expanded the power of the national government while limiting state power.

Federal–state relations often hinge on the tension between these national and state bases of power. Consider the national No Child Left Behind Act (2001). In an effort to improve students’ educational outcomes, this law limits states in how they regulate education, assess student learning, and respond to student learning gains among other concerns, even though public education has been provided and regulated by the states for more than 200 years. Regulating education has long been considered to be a reserved power under the 10th Amendment: Absent provisions that both grant express (or enumerated) powers to Congress and withhold them from the states, the 10th Amendment means that it is assumed that the states are given those powers unless those powers are given specifically to Congress.

**State Sovereignty Versus National Unity**

What are the limits of states’ rights? The answer is not clear, as the Supremacy Clause, the 10th Amendment, and the 14th Amendment all speak to national and state power. When a state’s interest interferes with a national interest, there are limits placed on state power. The language of the 10th Amendment appears to limit national authority unless that national authority is spelled out in the Constitution. According to this view, if the states are sovereign, there can be no national authority that interferes with that sovereignty. And yet, if there is no national authority to limit state sovereignty, then the United States cannot be a united nation.

Recall from the discussion in Chapter 2 that there was great concern among states’ rights advocates that the states might lose their sovereignty to the national government following constitutional ratification. This was apparent with the issue of representation and the division between free states and slave states when the Constitution was being designed. James Madison proposed that the Three-Fifths Clause be included in the Constitution to calm fears that Southern states would become more powerful than others when counting slaves as whole persons for the purposes of representation. Slave states were concerned that as more territories were admitted to the union as free states, power among slave states would become diluted. Beyond that concern, if the number of free states admitted to the union were to far outnumber slave states, then the free states might support a constitutional amendment outlawing slavery.

John C. Calhoun (1782–1850), a South Carolina statesman, wrote a famous pamphlet titled A Disquisition on Government, which was published shortly after his death. Calhoun expressed concern that over time the Southern states would be outnumbered. To preserve state sovereignty, he proposed two mechanisms to assert states’ rights: nullification and interposition. Both mechanisms would allow a state to effectively decide that a federal action does not apply to it.

Nullification would grant veto power to each state, similar to that held by the president. Calhoun suggested that for a bill to become law, a majority of each state legislature, in addition to a majority of both houses of Congress, would have to pass it. In other words, if the legislature of just one state voted against the measure, it would not become law.

Nullification would also allow any state to veto anti-slavery legislation. For example, the states would be able to veto the Missouri Compromise (1820), which allowed territories above the 368 30’ north parallel to be admitted as free states and those below it to be admitted as slave states.

Given that each state has different interests and priorities, the likely consequence of nullification would be to effectively paralyze and limit the authority of the national government. Nullification would make the national government under the U.S. Constitution no more powerful than it was under the Articles of Confederation.

Interposition was a less drastic proposal, but it too would have meant a weakened federal system. With interposition, a state would have the right to oppose federal actions that it considered unconstitutional. Interposition would allow a state to assert its sovereignty by placing a barrier between itself and the national government and deciding that a national law passed by both houses of Congress and signed by the president does not apply within that state’s borders. The state would, in effect, exempt itself from following that national law. Interposition would have allowed free states admitted above the 368 30’ north parallel to declare that the prohibition of slavery did not apply to them.

Neither nullification nor interposition ever took firm root, although the fact that the two ideas were even suggested demonstrates the tensions organized around state and national sovereignty. Calhoun’s argument highlights the tensions built into the U.S. Constitution.

**3.2 Understanding Federalism**

The last chapter outlined how separation of powers serves as the cornerstone of the U.S. Constitution. Federalism is another cornerstone. As suggested by its preamble, which begins with “We the People,” the Constitution declares that sovereignty, or the ultimate authority to govern, rests with the people. Through the Constitution, the people distribute their sovereignty to the units of government (national and state) in a federal system.

The concept of federalism can be interpreted in multiple ways. For example, federalism might suggest that the national government has supreme and equal authority over all 50 states. Alternatively, federalism can mean that the national government and states enjoy equal sovereignty. The second interpretation was the dominant approach taken in the United States from the Constitutional Convention up until the 1930s. During this period, the national government could not tell the states what to do, nor could the national government dominate the states. Rather, the states and the national government cooperated. Beginning in the 1930s, the federal government became more involved in domestic policy functions, and federalism came to be understood as a relationship where the states were subordinate to the supreme power and authority of the national government. This understanding, however, is not absolute; rather, federalism should be viewed on a scale where strict states’ rights are found on one end while absolute national authority is found on the other end. Depending on the public’s needs, a pendulum swings back and forth between the two ends of the scale.

By establishing a federal system, the Framers rejected the concentration of power and authority in the hands of a ­central government.

**The Framers’ Vision**

The idea of coequal state and national sovereignty lies at the core of the American constitutional system. Recall from Chapter 2 that the Constitution is a contract between the states and the national government. The 13 original states agreed to enter into that contract with the understanding that they would not surrender their sovereignty. The phrase “We the People,” which establishes the principle of popular sovereignty, also refers to the people of the original 13 states coming together, thus maintaining the concept of state sovereignty. Providing a common defense, as noted in the Preamble, required state governments to give up their power to a strong national government.

The Framers believed that a federal system would secure individual liberties. The division of power between a sovereign national government and individual sovereign states would distribute power while the separation of powers among three branches of government would ensure that citizen rights and liberties would not be easily violated. By establishing a federal system, the Framers rejected the concentration of power and authority in the hands of a central government. Each phase of federalism is discussed in detail later in this chapter.

**Contemporary Federalism as Intergovernmental Relations (IGR)**

If the Framers were alive today, they might not recognize the federal system, because they conceived of it as a formal division of power and authority between the states and the national government. Today, federalism is thought of less in terms of formal divisions and more in terms of working partnerships between the states and the national government. In fact, when we talk about federalism today, we talk in terms of intergovernmental relations (IGR), whereby the states and the national government must work together to achieve a common public purpose.

The working relationship is not always easy or smooth. The tension between state and national sovereignty continues, although states must work with the national government in order to fulfill citizen needs. Unless it is part of its enumerated constitutional powers found in Article I, Section 8, the national government should not direct state actions. The national government lacks authority other than to use the power of the purse to enforce compliance. Consider the vignette that opened this chapter. The federal government is obligated to enforce immigration policy by patrolling the borders.

**Grant-in-Aid**

Despite the built-in tension, the national government has several tools at its disposal to help ensure cooperation from the states. One tool is grant-in-aid, or sums of money the national government gives to the state or local governments to do something. If the national government gives the state of Colorado money to repair highways, for instance, that money is usually considered to be a grant-in-aid. Not all grants-in-aid are the same. There are two basic types: categorical grants and block grants.

A categorical grant is money given to a state by the federal government for a specific purpose or function, such as to build or repair roads. Categorical grants allow no flexibility or discretion. Through categorical grants, the federal government is able to wield influence over both states and localities. By contrast, block grants offer states more flexibility than categorical grants do. Whereas the categorical grant is single purpose, the block grant is multipurpose. A block grant is actually a group of several categorical grants that are related to one another. Within the block are several separate programs, and the recipient of the grant can choose which programs to fund and can move money around from one program to another.

**Preemption**

The national government can seek state compliance through the courts. A court that issues a judgment against a state has no real enforcement power, although states may comply with judgments against them if only because they have been ruled against. At the same time, the national government may utilize preemption, which is the federal government’s right to prevent state and local governments from enforcing their own laws because those state and local laws conflict with the Supremacy Clause. Either scenario is less likely today than it was in the early republic. A tradition of respecting and abiding by judgments of courts has evolved over time.

In 1957, President Eisenhower used federalized troops to force the Little Rock, Arkansas, schools to comply with the Supreme Court’s ruling in Brown v. Board of Education. Here, the troops are moving protestors away from the high school.

**Use of Federal Marshals**

The national government may, though not frequently, use troops as a last resort to enforce court decisions against state governments. As an example, the Supreme Court held in Brown v. Board of Education (1954) that Kansas’ racial segregation of the schools violated 14th Amendment equal protection guarantees and was therefore unconstitutional. A year later, the Court ruled that schools nationwide would have to integrate, which meant that there could no longer be separate schools for White and Black students.

Many states, particularly in the South, refused to comply with these Supreme Court rulings. One conflict came to a head in 1957 in Little Rock, Arkansas. Arkansas Governor Orval Faubus refused to comply with the U.S. Supreme Court’s 1954 decision in Brown v. Board of Education mandating school desegregation in Little Rock. Instead, he had the Arkansas National Guard block nine Black students from entering a local Little Rock high school. President Dwight D. Eisenhower “federalized” the Arkansas National Guard, which in effect shifted their command from the governor to the president. President Eisenhower then ordered the Arkansas National Guard to escort and protect the nine Black students integrating Central High School. Such events can add tension to the federal–state relationship.

**3.3 Historical Phases of Federalism**

Like the U.S. Constitution and core American values, approaches to federalism have changed over time. From the Dual Federalism (1789 to the 1930s) period through the Cooperative Federalism (1930s to 1960s) period (which included Creative Federalism [mid-1960s]), the balance of power shifted from the states to the national government. New Federalism is characterized by an attempt to rebalance the distribution of power between the states and the federal government in the 1970s and 1980s.

**Dual Federalism, 1789–1933**

Dual Federalism dominated between the time of the ratification of the Constitution and 1933, when the national government became more active during the time of the New Deal, a legislative package intended to help Americans suffering during the Great Depression. During the Dual Federalism period, there was a division of labor between the states and the national government. While the national government was responsible for national concerns such as securing borders, defending the nation, and maintaining foreign policy and mail delivery, states were responsible for local law enforcement, education, and maintaining roads and waterways.

**Cooperative Federalism, 1933–1960s**

As the national government assumed more responsibility for domestic policy during the Great Depression, the states were responsible for implementation. This Cooperative Federalism phase involved the states and the national government working together to implement public policy, which brought the era of intergovernmental relations.

As an example, when Social Security was enacted in 1935, it created a retirement program for senior citizens and public assistance for the poor originally called Aid to Dependent Children (ADC) (and in the 1960s came to be known as Aid to Families with Dependent Children [AFDC]). The national government created guidelines for implementing ADC and funded it while the states implemented it. States could determine who would be eligible to receive assistance and how much they would receive based on national criteria.

In the Dual Federalism period, the states and the national government operated separately, while under Cooperative Federalism the states and the national government worked together. Americans now looked to the national government for solutions to their problems largely because the states did not have the resources to address them, although the states also looked to the national government to address their concerns. One result was that the states lost power under Cooperative Federalism.

**Creative Federalism, 1963–1969**

Creative Federalism began in 1963 with the Johnson administration. Creative Federalism represented a shift of power from the states to the federal government through use of grants-in-aid and increased regulation. The national government sought to create new programs through numerous grants-in-aid programs to both states and localities under Creative Federalism.

But Creative Federalism also used crossover sanctions to achieve state compliance. A crossover sanction occurs when the national government withholds funding in one program area to ensure compliance in other areas. As an example, when Congress passed the Voting Rights Act in 1965 and prohibited racial discrimination in allowing people to vote, many states chose not to enforce it. Using the crossover sanction, the national government threatened to withhold promised subsidies, such as funding for highway repairs, for states that failed to enforce the act. Subsidies refer to special assistance from the government for a program or project, such as a social program. Initially, there were some strongly segregationist states that were adamantly opposed to allowing African Americans to vote and were thus willing to forfeit highway subsidies. Arguably, the national government could have sent in federal marshals to protect voting rights, but doing so would have heightened the tension between the national government and the states. Crossover sanctions persuaded Southern states to comply with the Voting Rights Act.

**New Federalism I, 1972–1980**

**Associated Press**

President Richard M. Nixon introduced New Federalism. In it, cities applying for federal categorical grants receive monies in a lump sum to allocate to their communities as they see fit.

In response to the growth in grants-in-aid, the Nixon administration introduced New Federalism, which was intended to restore the traditional balance between the states and the national government. The real objective was to cut many of the social programs that had been connected to President Johnson’s domestic policy and anti-poverty programs enacted during the 1960s under Creative Federalism.

Initially, the Nixon administration sought to combine categorical grants into block grants. But Nixon’s New Federalism introduced general revenue sharing, which involves the national government giving money to the states without restrictions on how those monies would be spent. Nixon reasoned that this approach would be politically feasible as, instead of cities applying directly to the national government for categorical grants, they could get lump sums to use for themselves. Suburban areas often received more money than central cities did.

**New Federalism II, 1982–Present**

Although states had more discretion under the New Federalism/general revenue sharing arrangement, the balance of power favored the national government. Governors complained that the traditional balance of power between the states and the national government was distorted because the states were limited in determining their spending priorities.

The Reagan administration (1981–1989) promised to end the big government era and restore the balance of power between the states and the national government. As with Nixon before him, Reagan confronted Democratic majorities in Congress who resisted cutting social programs. The means to reform this system came to be known as New Federalism II, which featured the Great Swap and the Super Trust Fund.

The Great Swap, as proposed, involved the national government trading responsibilities with the states. The national government would maintain responsibility for Medicare (health insurance for the elderly), while states would have responsibility for Medicaid (health insurance for the poor and people with certain disabilities). Until this point, Medicaid was jointly funded by both the national government and the states.

Further, the national government would provide temporary funding for the states’ new responsibilities through a Super Trust Fund, which would be established for almost $30 billion and expire after 4 years. After the funds ran out, states could either discontinue their programs or manage them with state funds.

Reagan reasoned that without national funding, governors would have no choice but to cut Medicaid and other state social programs. Governors initially liked the idea because they would have full discretion over their programs and budgets.

New Federalism II, however, never really emerged as New Federalism I did. States did assume responsibility for Medicaid while the national government maintained responsibility for Medicare. A trust fund was set up, but it was not easily phased out because a big recession set in during the early 1980s and the governors resisted losing federal funds. The states became increasingly dependent on the national government for support, as they could not meet the needs of the people. Figure 3.2 illustrates the rising costs of Medicaid for the federal and state government.

**Unfunded Mandates**

Arguably, New Federalism paved the way to the era of unfunded mandates. An unfunded mandate works similarly to Creative Federalism as, with unfunded mandates, the federal government does not provide the states with needed funding, which forces the states to pay for nationally mandated programs on their own.

As an example, each state provides unemployment benefits that its finances with its respective state unemployment insurance trust funds, into which employers have paid premiums. Most states provide unemployment benefits for 26 weeks, although during severe recessions the federal government may extend benefits for 13 weeks or more. When Congress votes to extend unemployment benefits, it appropriates money for the additional coverage, but not enough to cover the entire cost. The portion that is left to the states to pay is an unfunded mandate.

Congress passed the Unfunded Mandates Reform Act of 1995, which was intended to limit the number of unfunded mandates imposed upon the states. Under the law, mandates could not be imposed unless federal funding was included in the mandate to help state and local governments fulfill mandate requirements.

**3.4 The Meaning of Federalism Today**

Federalism has come to be understood as intergovernmental relations where the lines that divide national and state sovereignty are less clear than they were in the past. Multiple images help us understand contemporary American federalism.

**Layer Cake Theory of Federalism**

In constitutional terms, the national government interacts with the states and the states interact with their respective local governments. In traditional federalism, there is no interaction between the national government and localities. This type of a federalism system is often compared to a layer cake with three layers, one on top of the other. The reality is far more complicated, as both the national government and localities have found ways to bypass the states.

**Marble Cake Theory of Federalism**

Some argue that, because of the constant interaction between the states and the national government, the federal system can be thought of as a marble cake rather than a layer cake (see Figure 3.3). In a marble cake, the flavors are integrated and blend into one another. No one flavor stands on its own.

The federal system of government can be thought of as similar to a marble cake, because all levels (flavors) are mixed and one level cannot function without the other.

If we think of the different layers or parts of a layer cake (Dual Federalism) or marble cake (Cooperative Federalism, Creative Federalism) representing different strands of sovereignty and authority, it becomes clear that states cannot function without the national government and the national government cannot function without the states. This was certainly true in the era of Cooperative Federalism. To meet the needs of their citizens, the states needed the assistance of the national government, while the national government needed the assistance of the states to deliver goods and services to the people. Public policy in the form of public programs became a joint effort.

In contemporary federalism, formal divisions between national and state governments are harder to explain. Consider the following examples: With clear divisions, a person committing a state crime such as murder would be tried in state court after the crime had been investigated by local police. Meanwhile, if the same person had committed a federal crime, such as terrorism, the crime would be investigated by the Federal Bureau of Investigation (FBI) and tried in federal court. Here, there is a clear distinction between levels of government, like layers of a cake.

With the marble cake, however, it is not always clear who is responsible for what. When terrorists attacked the World Trade Center in New York City on September 11, 2001, there were questions as to who was responsible for the ensuing investigation. Because the attack occurred in New York City, it would normally fall under the jurisdiction of the New York City Police Department. But given the high-profile target, the motivation for the attack, and the great loss of life and destruction, the city needed additional resources, so the New York State police were called in. The fact that the attack was also an act of terrorism made it a matter of concern for the FBI and the Central Intelligence Agency (CIA).

The marble cake theory of federalism was exemplified in the aftermath of Hurricane Katrina, when the state of Louisiana and the city of New Orleans did not have enough resources to deal with the emergency. The Federal Emergency Management Agency (FEMA) stepped in to assist residents who were displaced from their homes.

One might hope that all levels of government would cooperate despite uncertainty over issues of jurisdiction, which speaks to the marble cake nature of the federal system. In most cases, there tends to be great confusion, while in other cases there are too few resources for states to address emergency situations. For instance, when Hurricane Katrina wiped out most of New Orleans in 2005, the state of Louisiana did not have the resources to address the problem. Local and state officials, including the Louisiana National Guard, were needed to evacuate some people, rescue others, and prevent looting. The federal government, through the Federal Emergency Management Agency (FEMA), was needed to provide relief and assistance to residents who were displaced from their homes.

Adding to these approaches to ­federal–state relationships is that there are some powers that are held by both the federal and the state governments. These powers are called concurrent powers. In these situations, both the federal and the state governments hold specific powers, but that does not always mean that they will be exercised at both levels, nor do the federal and state governments need to work together when using their concurrent powers. For example, the power to tax is held by the federal and by the state governments.

**States as Laboratories of Democracy**

Federalism today is often understood as a tug of war between those seeking more uniform national standards and those seeking more flexibility for the states. The question is often whether the notion of state sovereignty in the 21st century has any real meaning when the states increasingly rely on the national government to provide them with financial assistance. Some might argue that the U.S. government should be thought of as a unitary system with a central authority that delegates authority and power to administrative subdivisions. Yet states continue to have a vital role to play. Supreme Court Justice Louis Brandeis (1856–1941) famously observed that states in the federal system are laboratories of democracy—they represent places to experiment with policy before it is tried out on the nation as a whole.

Wisconsin’s welfare-to-work program in the 1990s provides an example. The program required that those receiving public assistance benefits work at least 20 hours a week. Those needing training received it, while those requiring child care to participate also received it. Participants could continue receiving Medicaid. The idea was to transition people from dependence on welfare to independence in the labor force. As the number of families on welfare declined, federal officials and policy planners wondered if the success of the Wisconsin program could be duplicated at the national level.

Following Wisconsin’s example, President Clinton signed a sweeping reform law in 1996 requiring welfare recipients to work in exchange for their benefits. As part of the reform, the national government established a new program called Temporary Assistance for Needy Families (TANF). States received TANF funds in the form of block grants and could distribute the money as they saw fit. At the heart of the reform were the welfare-to-work programs that each state would create. Some states might provide little help in finding employment, while others might provide substantial help for job seekers, including résumé writing, interview training, and general skills training. States wanting to reduce their welfare rolls (also a requirement of the law) could find ways to disqualify recipients, which forced them into the labor market and to accept whatever jobs available to them. Wisconsin’s welfare-to-work program is an example of a laboratory of democracy. Clinton’s federal welfare reform program was democratic because it emerged from grassroots experimentation.

**Local Autonomy**

Within the federal system, local governments are very different from states. While the Constitution makes no mention of local governments, it assumes that municipalities function within, and are governed by, their respective states. Today, the federalist model extends to local government, and local governments have only as much power and independence as their states want them to have.

**Dillon’s Rule Versus Home-Rule Charters**

The guiding principle regarding local autonomy versus state oversight is known as Dillon’s Rule. In 1868, Iowa Circuit Judge Forrest Dillon expressed this opinion regarding a dispute between the state of Iowa and a city:

An example of Dillon’s Rule was the New York City mayor’s plan to reduce traffic congestion by requiring drivers to pay a surcharge when they entered the city. The plan, proposed by the city, required approval by the state legislature.

Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control.

Cities, in other words, are creatures of the state. Disputes between municipalities and states are decided in favor of the state. Cities have only those powers expressly granted to them by state governments.

Most cities have home-rule charters, which establish the limits of local authority. A city with a home-rule charter is generally more sovereign than a city without one. Charters are granted by either state legislatures or provisions in state constitutions. Cities without home-rule charters are assumed to be governed by Dillon’s Rule, which gives state legislatures much more power over them.

**Types of Local Government**

There are more than 3,000 local governments of different types and with different responsibilities in the United States. Each state constitution provides for local entities, including counties, municipalities, and special districts. County governments are generally responsible for record keeping such as births, deaths, and land transfers; the administration of elections including voter registration; construction and maintenance of local and rural roads; zoning; building code enforcement; and the administration of justice. The functions of counties vary from state to state.

Municipalities are incorporated cities, towns, or villages within a county that have their own governing and taxing authority. Some municipalities take up an entire county, such as San Francisco and Jacksonville. Some cities, such as Chicago, are the principal cities in their respective counties (Chicago is in Cook County, Illinois) while others, such as New York City, span several counties. Finally, special districts operate independently of other local governments and are usually established to serve a specific purpose within a geographic region. As such, special districts often have their own taxing authorities.

**3.5 The Future of Federalism**

**The Welfare Reform Debate**

Congress responded to public pressure to reduce federal involvement in welfare programs by passing the Personal Responsibility and Work Opportunity Act just prior to the 1996 election. This legislation replaced Aid to Families with Dependent Children (AFDC) with a more limited program known as Temporary Aid for Needy Families (TANF). New restrictions and sanctions were imposed on the states to minimize the number and eligibility of recipients and the length of time they could receive benefits. Welfare participation declined significantly as a result of the changes.

Questions concerning the future of federalism often focus on whether federalism as it is currently known is really viable. As citizens ask the national government to do more, there would appear to be less of a need for the traditional division of power and authority between the states and the national government. History, particularly where civil rights are concerned, has shown that people cannot rely on the states to protect them. The argument for national authority is that it is necessary to achieve uniformity of standards. If left up to the states, each will do things as it sees fit.

Consider the example of the federal minimum wage. The federal minimum wage was set at $7.25 in July 2009. Without a national uniform standard, one or more states might have minimum wages below that standard, or none at all. Uniformity of standards requires a strong centralized authority at the national level, as well as states that will comply with that authority.

There remains a strong rationale for maintaining the federal system. During the late 1800s, Lord James Bryce argued that federalism prevents the rise of despotic governments that would absorb other powers and threaten the private liberties of citizens. Federalism ensures that power and authority are well distributed.

Federalism also provides the best means for developing a growing country, principally because it allows for experimentation. The forms of self-government that occur within smaller units of governance may stimulate citizens’ interest in local affairs. This is because government is closer to home and feels more relevant to citizens. For example, people tend to be more concerned with their community’s decision to build a local sports stadium than with a congressional debate over whether to try terrorists in civilian courts or military tribunals. Because local government is closer to citizens, they can keep more of a watchful eye on what is going on. Additionally, when governance is spread out widely, something that goes wrong in one place will not adversely affect the rest of the nation. Finally, by creating many local legislatures with broad powers, federalism relieves the national legislature of functions and responsibilities that may prove too burdensome.

This was the argument that Madison made in Federalist No. 10, where he suggested an expansive republic would both dilute the power of states and make them the centers of local political activity. While all of this may be true, we must also remember that the future shape of the federal system is whatever the people want it to look like.

**CHAPTER 4**

**4.1 Congressional Powers as Stated in the U.S. Constitution**

Congress is the legislative branch. As such, it writes the nation’s laws and makes public policy. Further, Congress holds the executive branch accountable through its oversight function. By raising and spending money, Congress determines how taxpayer funds will be allocated. The U.S. Senate influences foreign policy through its power to confirm Cabinet-level appointments (secretary of state, secretary of defense) and ambassadorships and by ratifying treaties. Finally, Congress participates in national security by raising armies and declaring war on other nations. Each of these functions speaks to the primary role of the legislative branch to represent the people.

The scope of congressional power, and the parameters of its representation, are both established in Article I of the Constitution, Section I, which states, “All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” Once Congress is established as bicameral, or made up of two chambers, it defines who is eligible to serve, how each chamber selects its members, and term length. Members of the House represent the people in districts for 2-year terms. Citizens are also represented by senators, who serve for 6-year terms.

Most importantly, however, Article I outlines the principal powers of Congress, which are the power of the purse, the power to declare war, and implied powers.

**Enumerated Powers: The Power of the Purse**

The power of the purse is perhaps Congress’s most important power. Article I, Section 7 states, “All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.” This means all bills concerning taxes must be proposed by the House of Representatives before moving on to the Senate. It is the responsibility of Congress to pass the national budget before it is signed by the president. Article I, Section 8 includes enumerated powers, or the powers specifically granted to Congress by the Constitution: “Congress shall have Power to Lay and collect Taxes . . . To borrow Money on the Credit of the United States . . . To Coin Money, regulate the Value thereof, and of foreign Coin and fix the Standard of weights and Measures.” Further, Congress has the authority to impose taxes, borrow money, and print money. Congress may decide whether the nation will use coins or print money.

Only Congress has the authority to lay and collect taxes, and to borrow and print money. Presidents prepare budgets and submit them to Congress.

While Congress has the power to raise taxes and spend money, the national budget, like any other law, must be approved by majorities in both houses of Congress and signed by the president. The Budget and Accounting Act of 1921 requires the president to prepare budget estimates, which are then submitted to Congress. This requirement helps Congress learn about department budget needs. Before this law was enacted, departments often submitted their budget estimates directly to Congress. The purpose of the Budget and Accounting Act, which required the president to submit budget estimates, was to give the president responsibility for the budget. From an administrative standpoint, the president has greater control over executive branch agencies and departments, which promotes greater accountability. The president’s right to submit a budget proposal can be inferred from Article II, Section 3 of the Constitution, which says, “He shall from time to time give the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient.”

Consider the vignette introducing this chapter. Extending the Bush tax cuts required Congress to introduce a bill calling for their extension. Because the bill concerned taxation, the House had to introduce it, after which the Senate needed to approve it before it was formally presented to the president, which is required under Article I, Section 7. Had Congress failed to act, it would have meant the expiration of the Bush-era tax cuts, as originally enacted.

**Enumerated Powers: The Power to Declare War**

The enumerated powers of Congress include the power to “declare War,” “raise and support Armies,” and “provide and maintain a Navy.” If Congress declares war, Congress must also appropriate the money to fight it. When the Constitution was initially ratified, there was no Air Force, and the Army and Navy were each separate departments. Today, all branches of the military fall under the Department of Defense, and Congress makes appropriations for all of them. Still, the authority to appropriate money to the armed forces is taken from specific constitutional provisions.

The formal authority to declare war is a matter of maintaining checks and balances. Traditionally, presidents request formal declarations of war from Congress. Congress has declared war five times since the Constitution was ratified. The last time was on December 8, 1941, one day after the Japanese attacked the United States at Pearl Harbor. President Roosevelt appeared before a joint session of Congress and requested the declaration. Historical congressional declarations of war include the following:

War of 1812 (1812–1814)

Mexican American War (1846–1848)

Spanish-American War (1898–1898)

World War I (1917–1921)

World War II (1941–1945)

Implied Powers and the Necessary and Proper Clause

Congress’s implied powers are based on the enumerated powers in Section 8. Congress uses its implied powers to expand its authority beyond the scope of its enumerated powers. Article I, Section 8, Clause 18 states, “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution of the United States, or in any Department or Officer thereof.” As noted in earlier chapters, this clause is also known as the Necessary and Proper Clause and suggests that Congress has an implied power to do something not explicitly enumerated in the Constitution if it infers that such action is necessary to fulfill its other constitutional requirements. For example, Congress’s enumerated powers include the power “To raise and support armies,” although the Constitution does not specify what that means. It has meant calling upon state National Guard units and military drafts even though the Constitution does not give Congress the specific authority to do either. Congress, however, can infer the right on the basis of the Necessary and Proper Clause, because calling upon the National Guard is understood, or inferred, to be part of Congress’s power to “raise and support armies,” which is an enumerated power.

Implied powers are the basis for justifying broadening congressional power. You may recall from the last chapter that during the period of Dual Federalism, congressional power was assumed to be limited because the Constitution outlines what it can do. More recently, Congress has overcome that restriction by asserting its implied powers. If Congress passes a law using its implied powers and without enumerated constitutional authority, that law may be challenged as unconstitutional in the courts.

Even when there is an enumerated power, such as with interstate commerce in the Commerce Clause, its scope may not be clear. The Necessary and Proper Clause allows Congress to tie legislation to the Commerce Clause. Congress established the precedent for such an expansion of its powers in the early days of the republic when the Federalists supported a national bank over the objections of the Anti-Federalists, who claimed that it would violate states’ rights. After heated debate, Congress established the bank on the grounds that it was necessary and proper for the purposes of coining money.

Arguably, such reasoning could serve as the basis for unlimited congressional authority. This argument was used when Congress passed the first minimum wage law in 1938. Before then, national legislation was considered to be an unconstitutional encroachment on a state’s police power. Congress argued that, when firms were conducting business across state lines, employee pay was a matter of national concern because of Congress’s express authority to regulate interstate commerce. The constitutionality of the minimum wage was upheld on these grounds.

More recently, during the debate leading up to passage of the Affordable Care Act of 2010, conservative critics asked what the basis in the Constitution was for such legislation, especially the requirement that individuals purchase health insurance. Congress’s response was that the power was found in the Commerce Clause. The U.S. Supreme Court upheld the Affordable Care Act on the grounds that the health insurance requirement was a tax. As Article I, Section 8 gives Congress the power to lay and collect taxes, it was within Congress’s power to mandate health insurance because the tax is a penalty for not purchasing the health insurance.

**4.2 The Meaning of Representation**

Congress makes policy and passes legislation all as part of its representation function. Yet representation means different things to different people under different circumstances. On the one hand, representation can mean that Congress members do exactly what the people tell them to do. Yet Congress members represent by doing what they believe is right because they have been entrusted by the people to speak and make decisions on their behalf. Representation can be interpreted on an individual level, such as when a member of Congress performs constituent services such as helping to track down a missing Social Security payment; it also can mean that Congress as a legislative body represents the people by holding the executive branch of government accountable. Congress members are expected to represent the people by serving as their agent and acting on their behalf.

**Apportionment and Congressional Districts**

Article I of the Constitution provides for apportionment, or the distribution of House seats among the states on the basis of population. Larger states are apportioned more representatives than smaller states are. House seats are apportioned into congressional districts. The Constitution does not require congressional districts. Rather, it states in Article I, ­Section 2,

The Nebraska Legislature’s Redistricting Committee redraws the state’s congressional districts, something states do periodically. Beyond the one-seat minimum guaranteed in the Constitution, the number of House seats apportioned to each state is determined by population.

The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at least one Representative.

Put differently, it is up to the states to define the boundaries of congressional districts.

During the early years, each state could decide if it wanted districts at all. Most states established themselves as single-member districts, which meant that each district had only one representative. The alternative was to allow for members of the House to represent their states on an at-large basis such that a state with 10 House seats would be represented by all 10, each representing the entire state, as opposed to 10 separate districts, with one representative each. An at-large system would make the House similar to the Senate with members representing their states rather than the people. To prevent this, Congress passed the Apportionment Act in 1842 requiring all states to send representatives to Congress from single-member districts (as of the 2010 Census, seven states have one representative each because of their small populations; in these states, all state residents are represented at large).

Interestingly, the Constitution does not require equal representation in each congressional district. According to Article I, Section 2, “The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative.” The implication is that there is no fixed number of representatives in the House. As the population grew, the Constitution implied, so too would the number of representatives. But in 1929, federal law fixed the number of House seats at 435, which meant that as the population increased, each House member would represent a larger population within the same geographical area. As of the 2010 Census, each House member represents approximately 710,000 people.

**Gerrymandering**

District boundary lines are not necessarily fixed. States will draw district lines as they see fit, which may reflect state legislators’ desire to gerrymander to advance their own political interests. Gerrymandering occurs when a district is intentionally configured to maximize the influence of a specific party or class, often guaranteeing that districts remain safe for specific incumbents or parties. Massachusetts Governor Elbridge Gerry first employed this practice prior to the 1812 election in an effort to protect his political party representation in the state legislature. One district ended up looking like a salamander, and as a result the practice came to be known as gerrymandering (see Figure 4.1).

One example of gerrymandering eventually resulted in a Supreme Court challenge. Following the 1990 census, the North Carolina General Assembly sought to enact a congressional plan with only one district with a majority of minority group members in 1991. This was known as majority-minority districting, often referred to as racial gerrymandering. The demographics of this northeast North Carolina area made it possible to create a small Black district by joining it with the predominantly Black precinct in Durham, North Carolina. The U.S. Justice Department opposed the plan, however, because of insufficient minority representation. At the time, the state was 22% African American; one predominantly African American district was deemed insufficient.

Meanwhile, the State General Assembly, then controlled by Democrats, responded in early 1992 by creating a gerrymandered district. While Republicans had proposed several plans that would contain two minority districts, Democratic leaders in the Assembly selected one and modified it to be more favorable to their party. Several Republicans challenged the plan, claiming that it lacked both compactness and respect for community interests.

In Shaw v. Reno (1993), the U.S. Supreme Court ruled that a racial gerrymander may, in some circumstances, violate the 14th Amendment’s Equal Protection Clause. The Supreme Court did not rule the plan was invalid; rather, it sent the case back to the district court to determine whether the districts had been drawn on the basis of race and, if so, whether the racial gerrymander that resulted was “narrowly tailored to further a compelling governmental interest.”

States still engage in gerrymandering to achieve certain results. Members of the U.S. House of Representatives and in state legislatures seek to run in districts in which they can expect to win because there are lopsided percentages of persons registered with their political party in that district. Additionally, the majority party in state legislatures will draw districts that create disadvantages for the minority party. The U.S. Supreme Court has upheld such arrangements on the grounds that, provided certain approaches are taken, such as ensuring that the districts respect community boundaries, then the 14th and 15th amendments are not deemed to have been violated. Figure 4.2 demonstrates the various shapes U.S. congressional districts can take.

**Reapportionment**

Because representation in the House is based on population size, the number of representatives from each state is not fixed. Rather, the House is required to reapportion, that is, redistribute, members based on changes in state populations. The Constitution specifically calls for a census to be taken every 10 years for the primary purpose of reapportioning the House of Representatives. This means that population shifts are reflected in congressional apportionment. For example, Texas gained four House seats following the 2010 Census, while Louisiana lost one House seat. In 2005, Hurricane Katrina resulted in thousands of New Orleans residents seeking refuge in Houston. Louisiana’s population shift to Texas contributed in part to Texas gaining representation and Louisiana losing representation. The Supreme Court affirmed that Congress must reapportion based on population shifts when it ruled in the 1962 case of Baker v. Carr because failing to do so effectually denied citizens equal representation.

**Models of Representation**

There are four basic models of representation: the delegate model, the trustee model, the oversight model, and the individual service model.

**Delegate Model and the Role of Public Opinion**

The delegate model holds that members of Congress are delegates of the people they serve, and, as such, whatever position Congress members take is the position that their constituents direct them to take. The delegate model is considered to be a form of agency representation, whereby members regard their constituents as their bosses with the power to hire or fire them. In order to know how to vote, members must stay in tune in with public opinion. As an example, a Congress member seeking direction on a policy vote may poll her district to gauge public opinion on the issue and vote accordingly.

This model suggests that Congress members have no opinions of their own and they support whatever their constituents stand for. This raises the question of whether someone following the delegate model can both lead and follow at the same time. The case might be made, however, that a delegate is not a follower. Rather, delegates’ positions on the issues reflect their constituents’ values, which explains why they were elected.

A second assumption of the delegate model is that the primary goal of Congress members is to be reelected. They can do this only if they satisfy the wishes of their constituents. In the early 1970s, political scientist David Mayhew put forth the electoral connection thesis, which has become the conventional wisdom about how Congress operates. According to this thesis, the primary goal of Congress members is to be elected and reelected, and the desires they express during a campaign to achieve certain legislative goals are the means to that end. In short, they will say or do whatever it takes to get elected, and they will never vote against the wishes of their constituents for fear that they will be voted out of office. In essence, David Mayhew suggests that Congress members, in serving their constituents, are serving their own self-interests.

Based on this thesis, constituents’ wishes come before Congress members’ party loyalty. One might consider the vote on the Affordable Care Act to be a case where this thesis did not hold up. Most public opinion polls showed that most Americans opposed the legislation, but a majority in Congress voted for it anyway. Many of those who voted for it soon discovered that they faced a tough reelection challenge. If Congress members paid attention only to public opinion in their districts, then the health care bill might not have passed.

The answer to this puzzle may lie in the fact that representation is a much more complicated process than has been described thus far, as is public opinion. On one level, those who voted for the bill may have believed that most people in their respective districts wanted it or were not so strongly opposed to it that they would deny them reelection.

**Trustee Model and Serving the Public Interest**

Following constituent opinion is not the only reason why Congress members would favor the Affordable Care Act. Some Congress members may have believed that this was an issue of the common good, and they voted for the bill because their constituents entrusted them to make decisions on their behalf. This approach to representation is embodied in the trustee model.

The trustee model was initially formulated by British statesman Edmund Burke (1729–1797), who argued that representatives should vote based on what they believe is right. By electing members to a legislative body, Burke said, the people have entrusted them to effectively vote their conscience. Trustees, then, do not represent their constituents by following public opinion polls. They do what they think best serves the public interest. The trustees then stand before their constituents during the next campaign and justify their positions. If their constituents are satisfied, they are reelected. If the public is not satisfied, the trustees are voted out of office.

In some respects, this model is undemocratic and implies a negative view of the people. Burke himself was a conservative who did not believe the people could be trusted. The representative should be a trustee, he argued, because the people lack the proper judgment. Columnist and television commentator George Will (1993) has considered Burke’s views within the context of term limits, arguing they would make the members less beholden to their constituents and more able to act like trustees.

**Oversight Model and Delegating Authority to the Executive Branch**

When Congress holds the executive branch accountable, it represents the people and serves the common good by using the oversight model, where accountability is typically maintained through hearings.

Congress holds the executive branch accountable by delegating authority to executive branch departments to perform various functions. For example, Article I, Section 8 gives to Congress the power to “raise and support armies.” Congress itself does not raise armies; those powers are delegated to the secretary of defense. If someone within the Department of Defense fails to fulfill Congress’s expectations, that person may be required to testify before Congress to explain his or her decision making, thus making the Department of Defense accountable to Congress. During the Iraq War, members of the U.S. Army, among others, abused and tortured detainees at Abu Ghraib prison in Iraq. The Senate Armed Services Committee held hearings investigating these human rights violations. Secretary of Defense Donald Rumsfeld was included among those who were called to testify.

Article I, Section 1 of the Constitution says, “All legislative Powers herein granted shall be vested in a Congress of the United States.” Questions have arisen as to whether Article I, Section 1 deprives Congress of the power to delegate power to the executive branch. The constitutional provision also reflects John Locke’s view of a supreme legislative body. In his Second Treatise, Locke (1689/1988) says,

This Legislative is not only the supreme power of the Commonwealth, but sacred and unalterable in the hands where the Community have once placed it; nor can any Edict of any Body else, in what Form soever conceived, or by what Power soever backed, have the force and obligation of a Law.

He then notes that the supreme legislature cannot transfer more power than it has, nor can it transfer power that it does not have.

Can Congress delegate its authority? One view suggests that it cannot. Another view suggests that, if authority is delegated, the regulations put in place by the executive branch may not fully reflect the legislature’s intent. Alternately, Congress’s delegation of authority to the executive branch is legitimate because the authority is limited to running a program that Congress has created.

In 1973, the Watergate Committee held hearings to investigate Richard Nixon’s cover-up of the break-in of the Democratic National Committee headquarters in the Watergate office and apartment complex.

Oversight hearings are a regular occurrence in Congress, and usually few citizens pay attention to them. The Watergate hearings were an exception. On June 17, 1972, operatives associated with President Nixon’s Committee to Reelect the President broke into the Democratic National Committee headquarters at the Watergate apartment and office complex in Washington, D.C. The cover-up that followed the arrest of the operatives led all the way to the president. Congress held special investigative hearings that riveted the nation for weeks. The House Judiciary Committee recommended that the House of Representatives impeach President Nixon. The president resigned before impeachment could proceed. Watergate was an extreme case, but it nevertheless stands as an excellent example of Congress’s potential to represent the people through the oversight model.

Congress’s power to impeach and remove the president from office is found in Article II, Section 4 of the U.S. Constitution. Public officials are removed upon impeachment and conviction for “Treason, Bribery or other High Crimes and Misdemeanors.” Impeachment is a critical check on executive power. Seeking impeachment carries political risk for Congress members. Impeachment and removal requires first that the House of Representatives vote to impose Articles of Impeachment. A majority impeachment vote once made is followed by a Senate trial. The chief justice of the U.S. Supreme Court oversees Senate impeachment trials of the president, but not other impeached public officials. A two-thirds Senate vote results in conviction and removal.

Two presidents have been impeached and tried by the Senate. Andrew Johnson was acquitted by one vote in 1868, while Bill Clinton was acquitted by a wider margin in 1999. Impeachment strains relationships between the president and Congress. Andrew Johnson was impeached for violating the Tenure of Office Act because he removed the secretary of war from office, which angered his political opponents in Congress. The impeachment weakened Johnson’s political position, which may have contributed to his failure to secure his party’s nomination when seeking reelection in 1868. Clinton’s impeachment enhanced his popularity because it was viewed as politically motivated among congressional Republicans. Presidential impeachments may be rarely used because members of Congress may see themselves as undoing the will of the people in doing so.

**Service Model of Representation**

Finally, members of Congress represent their constituents by performing services for them. This is known as the service model of representation. As an example, a recently retired person who is having trouble receiving his first Social Security payment may contact his representative for help. All House members maintain offices in their home districts and in Washington, D.C., while senators maintain several offices throughout their respective states. Either a congressional staff member or the Congress member herself may contact the Social Security Administration, which can investigate the issue. To take another example, a researcher studying the history of funding prison building may contact a Congress member. The office will issue a request to the Congressional Research Service of the Library of Congress, and within a few weeks a report may be forwarded to the researcher. This type of representation is important because it is often the little things that win the support of constituents who see their lives improved as a result of a direct connection with the Congress member or his or her office staff. Such representation is very personal. Many constituents might not care much about congressional debates over foreign policy because they do not greatly affect their day-to-day lives, but this type of service does.

This type of service can be highly beneficial, but there is a risk for abuse that can lead to corruption. For example, in 1989, five U.S. senators were accused of improperly intervening on behalf of Charles Keating, the chairman of Lincoln Savings and Loan. It was alleged that Keating gave $1.3 million in campaign contributions to Senators Alan Cranston of California, Dennis DeConcini and John McCain of Arizona, John Glenn of Ohio, and Donald Riegle of Michigan (the “Keating Five”). In turn, the senators were alleged to have used their influence to get bank regulators to overlook various banking violations. The Senate Ethics Committee cleared both Glenn and McCain of acting improperly, but they were criticized for poor judgment. The others were found to have acted improperly and did not seek reelection.

**Which Model of Representation Does Congress Follow?**

In summary, Congress follows all four models of representation, at times more than one model at a time. Members sometimes act as delegates and at other times act like trustees. Meanwhile, they all are involved in oversight and service. It really depends on the specific issue being considered, the amount of time between voting on the issue and the next election, and how Congress members view their role and impact on American politics.

In considering various congressional roles, members of Congress are more likely to act as delegates on matters of domestic policy, because such bread-and-butter issues more directly affect their constituents’ lives and constituents are more likely to pay attention to domestic issues compared with foreign policy concerns, about which the public is less informed. The trustee model is more often followed in foreign affairs for these reasons. The four models of representation thus overlap with one another. Additionally, Congress members deliver benefits to their constituents by bringing various projects such as construction and government contracts to their districts and states.

**4.3 Congressional Organization**

Congress is organized by both committees and party leadership, neither of which is specified in the Constitution. Most of the work of Congress is done in committees, while the majority party organizes each house of Congress and determines its leaders. Upon entering Congress, a newly elected member will seek committee assignments based on various factors. These factors may include committees that best serve their district or state (such as agricultural committees that will write policies that will greatly affect states whose economies depend more on agriculture than others); “money” committees, such as Ways and Means and Appropriations, which may be viewed as key committees that will serve as a critical base of power; or committees for which the Congress member has special expertise, such as doctors serving on health-related committees. Additionally, members may seek a committee that will best serve their constituency.

As an example, persons seeking membership on the Armed Services Committee may have weapons systems manufacturers in their districts. These members hope to maintain support for the systems that a manufacturer makes, which will also maintain jobs for constituents. This is an example of delivering the goods back to the district. Some committees are viewed as more prestigious than others, such as those dealing with foreign policy, the military, or justice. Committee service may lead to the possibility of becoming a committee chair or party leader, such as speaker of the House or Senate majority leader. Members of Congress serve on multiple committees at the same time, although they may not chair more than one of the permanent policy committees (“standing committees,” discussed later in the chapter) at the same time.

There is one leadership position in the Senate created to accommodate the constitutional mandate that the vice president break Senate ties. The constitutional requirement that there be two senators per state regardless of the state’s population leads to the possibility that there may be a tie in the Senate. The Framers assigned the task of breaking ties to the vice president, whom the Constitution names as president of the Senate. When the vice president is not present, the Senate’s longest-serving member is assigned the role of president pro-tempore.

**Congressional Committees**

Congress is organized by committees principally because it is the most efficient way to get its business done. Some Framers believed that in the spirit of democracy all members should be knowledgeable about and able to debate all the issues that come before Congress. This might have been possible in the early days of the republic, when Congress was relatively small and had fewer responsibilities. In those days, Congress was in session for less than 3 months each year, and members remained in their districts most of the time. The farmer who came to Congress to represent a rural Virginia district would still spend most of his year at home farming.

 Broad knowledge is no longer practical, as Congress deals with so many complex issues. Dividing Congress into committees allows specialization and division, which leads to greater efficiency. Those on a committee whose jurisdiction includes education may focus on education, while the Armed Services Committee deals with matters of defense. While specialization means that members can become experts on issues within their committee’s jurisdiction, specialization may also mean that other issues are largely ignored. The obvious question is whether members of Congress can represent the people when they are not fully knowledgeable about everything about which they are making decisions. Yet if they divide their time among all the issues so that they can know something about everything, they may end up having little depth of knowledge across these issues. In practice, members of Congress may not fully understand legislation on which they are expected to vote. They may review summaries that have been prepared by staff members.

Parties in both the House and the Senate have used different methods for selecting committee members. For instance, from 1911 to 1974, House Democrats relied on Democratic members of the Ways and Means Committee to recommend assignments. Beginning in 1975, the Democrats gave this function to the Steering and Policy Committee, chaired by the speaker, when they were in the majority. Republicans in the House have a Committee on Committees that is composed of one member from every state that has at least one Republican in the House. This committee is chaired by the Republican floor leader. On the Senate side, Democrats have a steering committee, appointed by the floor leader, that makes appointments. The steering committee is composed of senior party members, who also serve as committee chairs. Senate Republicans have a Committee on Committees that makes initial assignments also based on seniority. The party caucus must approve all committee assignment recommendations.

**Types of Committees**

There are four types of committees: standing committees, select committees, special committees, and joint committees. Power is located in committees and is where legislation is crafted. Legislative research is also completed at the committee level. And testimony about the impact a bill may have is communicated in committee, such as through hearings and written reports.

Standing committees exist permanently from one Congress to the next and deal with a variety of issues in a given subject area. An example of a standing committee is the House Education and Workforce Committee, which may deal with educational achievement, job training, and the minimum wage. Because these issues vary so widely, they are often divided into subcommittees. A subcommittee may deal specifically with job training while another deals with minimum wage.

A select committee is established to address a specific purpose, such as a particular issue that needs to be addressed or that is in a subject area that does not easily fit into a standing committee. Once the issue has been addressed, the committee can be disbanded, or if the issue is expected to be ongoing, the select committee can be transformed into a standing committee.

A joint committee is made up of members of both houses of Congress. The most common joint committee is the conference committee. Bills passed in each chamber on the same issue must be examined by a conference committee to ensure that they are the same because the Constitution requires that Congress present bills to the president that are jointly agreed upon by both houses. Conference committees also negotiate compromises if there are differences between the bills passed by each chamber.

A joint committee may also be convened to carry out congressional investigations into executive branch abuses of power or to discuss business the two houses have in common, such as managing common facilities or arranging celebrations and memorials.

**Table 4.1: Committees of the 111th Congress (2015–2017)**

| **Standing committees in the U.S. House of Representatives** | **Standing committees in the U.S. Senate** | **Joint committees** |
| --- | --- | --- |
| [Agriculture](http://agriculture.house.gov/)[Appropriations](http://appropriations.house.gov/)[Armed Services](https://armedservices.house.gov/)[Budget](http://budget.house.gov/)[Education and the Workforce](http://edworkforce.house.gov/)[Energy and Commerce](https://energycommerce.house.gov/)[Ethics](http://ethics.house.gov/)[Financial Services](http://financialservices.house.gov/)[Foreign Affairs](http://foreignaffairs.house.gov/)[Homeland Security](https://homeland.house.gov/)[House Administration](http://cha.house.gov/)[Intelligence](http://intelligence.house.gov/)[Judiciary](https://judiciary.house.gov/)[Natural Resources](http://naturalresources.house.gov/)[Oversight and Government Reform](https://oversight.house.gov/)[Rules](https://rules.house.gov/)[Science, Space, and Technology](https://science.house.gov/)[Small Business](http://smallbusiness.house.gov/)[Transportation and Infrastructure](http://transportation.house.gov/)[Veterans’ Affairs](http://veterans.house.gov/)[Ways and Means](http://waysandmeans.house.gov/) | [Agriculture, Nutrition, and Forestry](http://www.agriculture.senate.gov/)[Appropriations](http://www.appropriations.senate.gov/)[Armed Services](http://www.armed-services.senate.gov/)[Banking, Housing, and Urban Affairs](http://www.banking.senate.gov/public)[Budget](http://www.budget.senate.gov/)[Commerce, Science, and Transportation](http://www.commerce.senate.gov/)[Energy and Natural Resources](http://www.energy.senate.gov/)[Environment and Public Works](http://www.epw.senate.gov/)[Finance](http://www.finance.senate.gov/)[Foreign Relations](http://www.foreign.senate.gov/)[Health, Education, Labor, and Pensions](http://www.help.senate.gov/)[Homeland Security and Governmental Affairs](http://www.hsgac.senate.gov/)[Judiciary](http://www.judiciary.senate.gov/)[Rules and Administration](http://www.rules.senate.gov/)[Small Business and Entrepreneurship](http://www.sbc.senate.gov/)[Veterans’ Affairs](http://www.veterans.senate.gov/) | [Joint Economic Committee](http://www.jec.senate.gov/public/)[Joint Committee on the Library](https://cha.house.gov/jointcommittees/joint-committee-library)[Joint Committee on Printing](https://cha.house.gov/jointcommittees/joint-committee-on-printing)[Joint Committee on Taxation](https://www.jct.gov/) |

**Committee Chairs**

**Committees in Congress**

Congressional committees are briefly explained, including similarities and differences in the House of Representatives and in the Senate.

Committee chairs are normally assigned based on seniority. Before 1974, those in Congress the longest often found themselves chairing their choice of committee. This practice contributed to shrinking opportunities for newcomers to become key committee chairs. On the heels of Watergate in 1974, the newly elected freshman members staged a revolt and demanded that these rules be relaxed.

In the Senate, the seniority system meant that the Southern states held a disproportionate amount of power. Until the 1970s, the South was essentially a one-party system, as nearly all Southern senators were Democrats. It was quite challenging to accomplish anything in the Senate without the approval of the Southern senators.

**Leadership**

Congress is also organized by party leadership. The political party with the most seats in a chamber of Congress has earned the power to organize it. The speaker of the House of Representatives, the House leader, is elected by the majority party. The speaker is the third in line of succession to be president. Working directly below the speaker is the majority leader, who supervises lieutenants known as whips, or floor leaders. Whips gauge support for specific bills among members of their party. They also attempt to enforce party discipline so that the rank-and-file members, or members of Congress who do not hold leadership positions, vote with the party’s political agenda. On the Senate side, key leadership positions include the majority leader and whips, who perform the same basic functions as their counterparts in the House. Meanwhile, the minority party in both chambers also has leadership positions. In both chambers, there are minority leaders who supervise minority whips.

How does the party leadership enforce discipline? It comes back to committees. The majority party selects the standing and select committee chairs in Congress (each party selects members for its own special committees). The speaker and majority leader control the Rules Committee while they control other high-profile appointments. This means that party loyalists can be rewarded with desirable committee assignments. Those failing to “toe the party line” can be punished with less desirable committee assignments, which may include denying more senior Congress members chair assignments that their seniority might otherwise earn them.

**Staff**

Members of Congress are each assigned staff members to support them in fulfilling their responsibilities. Congressional staff members play a significant role in the overall operations of Congress and, more specifically, in the representative function. Each member has a sizable personal staff, while committees are also assigned staff. Prior to World War II, congressional staff was not very large (see Figure 4.3). Just after the war, personal and committee staff together numbered approximately 2,000. Those numbers grew steadily over subsequent years, and by the mid-1980s, 18,000 individuals were working on either a personal or a committee staff in Congress.

**Number of personal staff members in Congress, 1930–2010**

Since World War II, the number of personal staff members in Congress has increased substantially. By 2010, with 4,067 personal staff for 100 senators, each member of the Senate had an average of 40 personal staff.

Staff members can have a considerable impact on legislation. As members of Congress find themselves stretched thin over a variety of issues, they rely on their staffs to study the issues and provide them with essential information. Staff members can increase their legislative impact if they are willing to aggressively advise members and challenge them on their positions. Moreover, they can increase their influence by timing the release of critical information that a member might need to make an informed vote on a measure. Members tend to rely on personal staff members for legislative assistance when addressing new problems, while recently elected members are likely to rely more on their staffs compared with more senior members because they are less experienced and expert in various areas.

Committee staff members are also vital to the legislative process. They organize hearings and conduct research on topics relevant to committee investigations. They draft bills and amendments, prepare the language of committee reports, and assist members in preparing for floor debate, during which bills are discussed and argued over in each chamber before being voted on by the full House or Senate. Committee staff members also serve as the liaisons between Congress and both interest groups and the executive branch.

The persons testifying at hearings will often include executive branch officials and interest group representatives. Executive branch officials will often speak to issues about a proposed bill, such as to ensure that sufficient funding is put in place for implementation, while an interest group will testify as to the need for legislation or to convince Congress to shape proposed legislation in the direction supported by the interest group. When executive branch officials and interest groups testify before Congress, they are taking part in iron triangles, which are discussed in Chapter 6.

Committee staff members perform four principal functions, focusing on intelligence/information gathering, integration, innovation, and influence. They provide intelligence by collecting and filtering information before it is shared with committee members. They integrate by working closely with appropriate committee staff in the other chamber. They innovate by looking for new problems and proposing solutions to them. Finally, they have influence because of the vital tasks they perform and the trust they build between themselves and members of Congress.

**Organization by Constituency Versus Organization by Party**

A key question is whether it is more important for Congress to be organized around serving constituents or serving party interests. The congressional committee structure is designed to serve primarily constituents, while the leadership structure serves party interests. For members, it can be difficult to manage the demands placed on them—is it in their constituents’ best interest for them to pursue committee leadership or chamber leadership? While the speaker of the House and Senate majority leader may be more powerful and prestigious positions than committee chairs, it can take years to work one’s way up to the top, and most will not secure one of those positions.

As chair of a key committee, a member can build a power base and be effective. From 1987 to 1989, Democratic Senator Robert Byrd of West Virginia served as Senate majority leader. He resigned that leadership post to become the Appropriations Committee chair, where he ensured a flow of federal dollars into West Virginia to benefit his constituents.

Although leadership positions may be highly visible, the people who hold them may be perceived as focused on national issues at the expense of local concerns, and constituents may feel neglected. Whether the perception is true or not, these highly visible congressional leaders may not have as much time to devote to their districts. Democratic South Dakota Senator Tom Daschle, who served as majority leader from 2001 to 2003, was defeated when he ran for reelection in 2004 largely due to a well-financed campaign by his opponent, who accused him of being out of touch with his constituents. In fact, Daschle was the first Senate party leader to lose reelection since 1952. A similar campaign helped defeat former Democratic Speaker of the House Tom Foley in 1994, when George Nethercutt beat him 51% to 49%. In both cases, the challengers were advantaged, as they had more time to be in the district campaigning.

**Efficiency Versus Democracy**

Can a committee structure that encourages specialization and efficiency really be democratic? There would appear to be an inherent contradiction here. The entire constitutional structure, as noted in Chapter 2, was intended to be anything but efficient so as to prevent Congress from encroaching upon individual rights. One tenet of democracy is for the people to be represented by grassroots-level citizen-politicians, but the committee structure and the reliance on specialization and division of labor has given rise to the professional politician. The effect is to create distance between Congress members and the people they represent. Moreover, a stronger democracy may be achieved if representatives are familiar with all the matters before them. But Congress has been overburdened with so much work in recent decades that many members struggle to keep up. Put differently, the institution is so large and the business before it so great that without some semblance of efficiency, there would be no functioning government at all.

**4.4 Policymaking and Broad Representation**

Policymaking transforms ideas into laws. It is also through policymaking that diverse positions are represented in the U.S. Congress. On one level, the process can be thought of as a flow diagram where bills are introduced, debated in committee, debated further in the full chambers of each house, and then sent to the president for signature. However, the process is considerably more political. How bills move through the process is a question of who pushes them, how much power that person has, and what deals or agreements that person can make to gain support for them. If we return to the premise of the delegate model of representation, members of Congress are likely to support a bill if there is something in it for their constituents. This does not mean that they expect the same from every bill, but if they support a bill for a program that is not important to their state or district, they will expect others to, in turn, support bills that are. Each member, in other words, expects reciprocity. This is called logrolling, where members support each other’s bills.

**How a Bill Becomes a Law**

 A bill is typically introduced by a sponsor with several possible co-­sponsors, in each chamber of Congress. On the House side, a bill is introduced by a representative and then referred to the appropriate committee for action. As an example, the Affordable Care Act in its initial form was referred to the House Ways and Means Committee. A bill is sometimes divided into its component parts and referred to different subcommittees. The component dealing with financing may be sent to a financing subcommittee, while the component focusing on expanding coverage may be sent to a different subcommittee. For a bill to become law, each component must be passed by its respective subcommittee and referred back to the full committee. The full committee then debates and votes on the bill. If it clears the committee, it is sent to the House floor for debate and a vote.

Meanwhile, the same process occurs in the Senate. Once the Senate passes its version of the bill, the two versions must be reconciled into one bill for the president to sign. Both chambers appoint representatives to serve on a conference committee that is tasked with negotiating compromise between the House and Senate versions of the bill. That committee then sends the compromise version of the bill back to both chambers of Congress for another round of debate and then a vote.

The bill can be killed at any step in this process. A bill that fails to make it out of a committee, for instance, will not be voted on in the full chamber.

**Senate Filibusters**

Each chamber has the right to establish its own rules for debate. In the House, where there are more members, members might be given no more than 5 minutes to speak on a matter on the floor. The Senate, however, has more elaborate rules, and a Senate debate can be endless. The Senate also allows its members to engage in the filibuster, a procedure under which individual senators can extend debate indefinitely and prevent action on a bill. Filibusters prevent anyone from having the floor to speak, including introducing a motion to vote, if the filibustering senator has not yielded the floor. As part of a filibuster, a senator can yield to a colleague who will continue where the filibustering senator left off.

An old-style filibuster involved a senator talking for hours until everyone dropped from exhaustion. South Carolina Senator Strom Thurmond staged the nation’s longest one-person filibuster, in opposition to the Civil Rights Act of 1957. Thurmond was a longtime segregationist who ran as a States’ Rights Democrat (Dixiecrat) candidate for president in 1948, with the goal of preserving the Southern segregationist way of life. Thurmond’s filibuster, which lasted for more than 24 hours, began with his reading every state’s election laws in alphabetical order and continued with reciting the Declaration of Independence, the Bill of Rights, and Washington’s Farewell Address. In the end, though, the Civil Rights bill passed in the House by a vote of 270 to 97 and in the Senate by a vote of 60 to 15.

Current Senate rules permit another type of filibuster. Each bill is assumed to be under filibuster, meaning it cannot advance to the Senate floor for debate until a cloture vote—­literally, a vote to close it off—has occurred. Current Senate rules require that a minimum of 60 senators vote for cloture. This means that a Senate divided along party lines, and where the majority party can never achieve the required 60 votes, may never pass any legislation. As an example, environmental legislation sought by President Obama and passed by the House in 2009 was effectively declared dead in the Senate because it never achieved its requisite 60 votes to achieve cloture. Chamber leaders usually will not seek a floor vote unless they believe they have the necessary number of votes, as measured by the whips, to pass it.

In 2013, the 60-vote requirement for cloture was modified for presidential appointments. Filibusters may be broken with a simple majority if the issue being delayed with a filibuster is a confirmation vote. However, the 60-vote requirement to end a filibuster still stands for proposed legislation.

**Bringing a Measure to the Floor**

To gain the consensus necessary to bring a measure to the floor, leaders often use the following tools: pork barrel politics, vote trading, and coalition building.

**Pork Barrel Politics**

Many people decry the idea of pork barrel spending but do not mind when their own Congress members secure federal programs and projects for their areas.

A major part of representation involves bringing benefits back to one’s district or state, which is often referred to as pork barrel politics. Until 2011, the congressional leadership could buy another member’s vote with the promise of support for a project that could offer substantial benefit to the member’s district. Sometimes this pork is referred to as an earmark, which was a legislative provision directing funds to be spent on approved projects. Earmarks that would target projects in House members’ districts or senators’ states were placed into the budget. They also exempted certain projects or enterprises from taxes and other fees. Critics of earmarks, including Congress members, claim that earmarks are wasteful spending. The ban on earmarks has not changed the practice, however. Rather, the way that the monies are now directed to specific states or districts is by Congress allocating dollars to the appropriate federal agency for the purpose of directing those monies into those states or districts.

Congressional leaders are not the only politicians who offer pork. The president may also support various projects for specific members in exchange for their support of his or her goals. Moreover, many members of Congress run on platforms outlining what they can do for their states, such as attracting large employers and industries to the states.

**Vote Trading**

**The Favor Bank and Trading Votes**

Getting the number of votes to pass a piece of legislation can be challenging. Two key aspects of bringing a measure to the floor, vote trading and coalition building, are discussed.

Vote trading involves members exchanging votes with one another. Representative X will promise to vote for a bill supported by Representative Y if Representative Y will in turn vote for Representative X’s bill. For instance, Representative X’s bill is for increased defense spending that will benefit Representative X’s home district, and Representative Y’s bill is for a new literacy program that will benefit Representative Y’s constituents. In all likelihood, Representative Y has no real interest in defense issues and Representative X has no real interest in literacy programs, but both are willing to support each other to represent their own constituents effectively. It is often through this process of logrolling that Congress gets things done.

**Coalition Building and Broad Representation**

Congress works through coalition building and consensus. Coalitions are usually built through pork barrel politics and logrolling. Individual members of Congress trade votes with each other, and committee chairs trade votes with other chairs. In a technical sense, a majority vote in both chambers of Congress is usually enough to pass legislation, but the vote is really only the final act of an otherwise long and drawn-out process. Most of the time, it is also anticlimactic; how members are going to vote becomes apparent along the way because of the work that has gone into building a coalition.

Coalitions must be formed by those who spearhead legislation. It is the Madisonian formula in action. When each constituency gets what is important to it, each has received what political scientist Arthur Maass (1983) has called broad-based representation. Ultimately, everyone’s interests and needs are fulfilled and legislation is rarely accomplished quickly.

**Policymaking by Consensus and Partisan Mutual Adjustment**

In an ideal world, Congress members would vote for a measure because it is the right thing to do and a compelling argument has been made in its favor. But that is not the only reality. Members often find that they must compromise on their positions to build consensus. They vote for measures because they have bargained with one another while a variety of deals have been made throughout the process. Political scientist Charles Lindblom (1965) calls this partisan mutual adjustment. Members build a consensus that accomplishes some but not all of what they want because they must adjust their expectations and compromise to get enough votes.

The extension of the Bush tax cuts is a case in point. Those who stand on principle will not compromise their positions. But Congress members who seek to represent their constituencies feel that it is better to have some tax cuts than none at all. By accomplishing something, even just a very small step, a foundation has been placed upon which more blocks can be set in the future. Lindblom calls this process of taking small steps incrementalism. If an extension of the tax cuts represents a step, it can be built on in the future through perhaps more and longer extensions until they are made permanent at some point. This again shows the genius of Madison’s design, because Congress cannot undertake sweeping action that could encroach upon citizens’ liberties if congressional members are able to make only small changes as part of a larger process. An incremental process is checks and balances in action and thus in the end represents the public well.

**4.5 Congress and Executive Accountability**

As we noted earlier when discussing the oversight model, an important representative function of Congress is holding the executive branch accountable. Its chief tools for doing this are hearings, overriding presidential vetoes, and the legislative veto, which was utilized between 1930 and 1980 until it was declared unconstitutional in 1983.

**Hearings**

Former Defense Secretary Robert Gates, who served from 2006 to 2011, speaks with members of the Senate Armed Services Committee after testifying before them. Requesting the testimony of members of the executive branch is one way that Congress ensures executive accountability to the American people.

Hearings occur when members of Congress, usually in committee, request the appearance and testimony of executive branch officials, who have little choice but to comply. (Failure to respond to a congressional subpoena can result in arrest and jail time.) During these hearings, officials are usually asked to report on what their agency or department has been doing and explain any new programs that have been implemented.

For instance, both the House and Senate Foreign Affairs committees may hear testimony from the secretaries of state and defense to determine whether the money they have appropriated for diplomatic and military action is well spent. Or they may want to know whether certain policies are accomplishing their intended results. As a result of these hearings, Congress may either write new legislation to refocus a policy or increase or reduce funding.

Testimony occurs in two forms. First, witnesses provide written testimony prior to the hearing. Second, they deliver an oral summary of their written testimony, usually in the form of an opening statement. After that, the floor is opened to questioning from members, who often read from questions prepared by their staffs. Because these hearings are often televised, they effectively constitute an exercise in public accountability. By forcing executive branch officials to publicly justify their actions, Congress holds the executive branch accountable to the American public.

**Overriding Presidential Vetoes**

The Constitution specifically gives veto power to the president as a check on the legislative branch. But Congress can override the president’s veto with a two-thirds vote of all the members in both chambers. The threshold is higher than would be the case for normal passage of a bill, which requires a simple majority of those who cast a vote that day.

Veto overrides do not happen often, but when they do, Congress can claim that it has achieved supremacy over the executive and in so doing has added to its representative function. Arguably, if officials in the executive branch know that an override is possible, they will think seriously about whether a veto is a good option. At the very least, the threat of a veto override may force the president to justify his or her position. Because an override is difficult to achieve (only 7% of all vetoes have been overridden), it is not wise to threaten one unless the leadership is sure that it has lined up the needed votes.

**Legislative Veto**

The legislative veto was another tool that Congress used to control the executive branch. Technically, the Constitution provides only for a presidential veto, but Congress had inferred the right to its own veto as necessary to fulfill its representative function. The idea is really a logical outgrowth of congressional delegations of authority. When Congress passes a law, it leaves the implementation of the law to the executive branch. Then, as an aspect of its oversight function, Congress calls officials to testify about what they have been doing. If Congress decides that it does not like how the law has been implemented, it can pass a resolution instructing them to cease and desist. This is called a legislative veto, and it was found unconstitutional in Immigration and Naturalization Service v. Chadha (1983) because it violated the separation of powers.

**4.6 Congress and Elections**

Congressional elections, which occur every 2 years, present opportunities to change the government. A midterm election, which falls in the middle of the president’s 4-year term, provides a forum for voters to register opposition or support of the president’s policies and performance. It is not uncommon for the president’s party to lose seats in Congress during these contests. The 1994 midterm election is a case in point. Following great dissatisfaction with the Democratic Party’s performance during the first 2 years of Bill Clinton’s presidency, the voters elected Republican majorities in both houses for the first time since 1952. Many observers were quick to label it a repudiation of Clinton himself, but Clinton still won reelection 2 years later. This suggests that the midterm election was more of a repudiation of the party controlling Congress than of the president.

Clinton’s 1992 presidential campaign included a health care reform platform, which he failed to deliver. Much of that failure stemmed from Democratic opposition in Congress. At the same time, many incumbent Democrats were embroiled in what came to be known as the House Banking Scandal, when it was discovered that lawmakers were overdrawing their congressional checking accounts without penalty. The 1994 midterm election giving Republicans majorities in both houses of Congress may have been due, in part, to public anger over the scandal and to the belief that the Democrats were wasting their time by not working with the president to get things done. More recently, in both midterm elections of the Obama presidency, the Democrats experienced meaningful losses. In 2010, Democrats lost their majority in the U.S. House of Representatives, while Republicans in the Senate narrowed their minority by six. Republicans gained 64 seats in the U.S. House of Representatives, which shifted their membership from 178 to 242. In 2014, the Democrats lost 10 seats, lost their majority party status in the Senate, and lost 13 more seats in the House of Representatives. Arguably, Barack Obama’s low approval ratings contributed to these staggering losses. In one sense, this creates gridlock whereby nothing gets done. But in another, it is the very meaning of checks and balances.

**The Role of Money in Congressional Elections**

Running for Congress is an expensive proposition (see Figure 4.5). On average, running for a House seat costs around $1 million, and Senate campaigns can cost considerably more. In a large state such as California, for instance, a candidate might easily spend as much as $40 million.

This means that those running for Congress must raise large sums of money. Once a House election has happened, the next election is only 2 years away, so much of a member’s time is spent raising funds and campaigning. By law, an individual is not permitted to give more than $2,600 per campaign (note that primaries, runoffs, and general elections are separate campaigns), but political action committees (PACs) can give up to $5,000 per campaign. Many incumbents expend legislative effort trying to please an array of interest groups who are then expected to make large contributions favoring the incumbent’s reelection campaign. The nature of campaign finance may effectively make Congress beholden to special interests and thus call into question the meaning of representation. At the same time, congressional elections also serve to keep members accountable to their constituents.

The nature of campaign finance favors incumbency. Current members tend to enjoy widespread name recognition. More often than not, they do not need to put forth as great a financial effort to make themselves known to the voting public as do challengers. This does not mean that incumbents generally spend less than challengers do on elections. In fact, they spend much more. Congress members also enjoy the franking privilege that comes with holding office. Franking is using taxpayer funds to mail flyers and other materials to help educate one’s constituents as to one’s positions and accomplishments. A third significant advantage of incumbency is that campaign contributors are more likely to give money to someone they know than to a challenger with whom they may not be familiar or who may lack a legislative record.

**Whom Does Congress Ultimately Represent?**

The way elections in the United States are financed raises questions as to who is actually being represented. Is it the constituents who vote or the moneyed interests that contribute to campaigns? Additional concerns emerged in 2010 when the U.S. Supreme Court, in a divided 5–4 decision in Citizens United v. the Federal Election Commission, ruled that, among other considerations, the First Amendment protects the political speech of corporations and unions with regard to the funding of political broadcasts. Two thirds of the public opposed the Court’s position soon after the decision was made. The reality is that Congress members cannot represent their constituents if they cannot get elected. Because attaining leadership positions, even committee leadership positions, is based on seniority, members must be reelected multiple times to become senior to their congressional peers. It might seem bizarre that for Representative X to serve, Representative X first needs to satisfy financial contributors. Nonetheless, if Representative X is perceived as catering to moneyed interests, Representative X can deflect criticism by delivering the pork and performing the essential service work.

**The Role of Technology**

When the Constitution was drafted in the late 1700s, the only way for members of Congress to communicate with constituents was through letters or in person. It could take a long time for a letter to arrive, and the travel difficulties between a member’s district and the Capitol made visits infrequent. Today, technological advances in transportation and communications have made it much easier for members to go back and forth between their districts and the Capitol, and to regularly communicate with their constituents. Each member maintains a website where constituents can learn what is going on in Congress and where their representative stands on an issue. Congress as an institution also has websites that the public can access to get information about pending legislation. In the other direction, technology has made it easier for members of Congress to obtain public opinion about particular issues, thereby making it easier to represent the public’s wishes.

Technology also plays an increasing role in elections. Through the Internet and email, members of Congress can reach out to the general population to raise funds. Reaching a broader grassroots fundraising base through the Internet may weaken the hold of big, moneyed interest groups, and it can potentially make Congress more representative. Also, the prospect of a more informed citizenry pressures Congress to be more transparent. At a minimum, members are more accountable; they can hide behind public ignorance far less than in the past.

Technology may raise a larger, more philosophical question: If the public can become informed about public affairs through the use of the Internet, do citizens need Congress to represent them at all? Might the institution become obsolete? Remember, one of the reasons for representative government is that, given the population size and geographic distances, direct democracy where everybody would come to debate issues and vote on them was impractical. But is this still the case if members of the voting public can debate and, ultimately, vote over the Internet?