

## **UNIT 2: INTERACTIONS AMONG BRANCHES CONGRESS, PRESIDENT, JUDICIARY, & BUREAUCRACY**

**Because power is widely distributed and checks prevent one branch from usurping powers from the others, institutional actors are in the position where they must both compete and cooperate in order to govern.**

The three key institutions of the federal government are Congress, the presidency, and the courts. The bureaucracy, which implements policy, is seen by some as an extension of the executive branch and by others as, in effect, a fourth branch of government because of the discretion it can exercise in carrying out policy directives. The Constitution grants specific powers to Congress, the president, and the courts, and in addition, each branch exercises informal powers (developed through political practice, tradition, and legislation). Because checks and balances are designed to prevent one branch from becoming too powerful, Congress and the president, for example, will sometimes cooperate and sometimes compete in governance.

The powers of Congress are set forth in Article I of the Constitution. Congress is bicameral, with the Senate representing states and the House of Representatives reflecting each state's population. Congress passes laws that cover a wide range of policy areas, and each chamber has different responsibilities and rules. The federal budget is a good example of how the president and Congress must cooperate and compromise. While Congress is empowered to develop and pass a budget, in the modern era the president typically proposes one, which may lead to ideological debate. There are several reasons it is difficult for Congress to pass legislation, including ideological differences. Much of the work of Congress is done in committees, and congressional committees also exercise oversight to ensure that the bureaucracy is carrying out policies as intended.

The expressed powers of the president are set forth in Article II of the Constitution. The president has a significant degree of informal power, which has grown over time. Under the Constitution, Congress checks the power of the president, and this leads to tension between the two branches over both foreign and domestic affairs. The president and Congress have several interrelated powers. For example, while Congress passes legislation, the president must sign it into law. The president appoints judges and members of the cabinet, who must be confirmed by the Senate. The president also oversees most of the bureaucracy. Technology has impacted the president's use of the "bully pulpit" to influence public opinion. In addition to reaching out to the public through televised press conferences and the State of the Union message, the president is increasingly making use of social media to communicate views to a vast audience.

The federal judiciary, including the Supreme Court, established under Article III, is designed to be an independent branch of government. The Court's most far-reaching power, judicial review, was justified in *Marbury v. Madison* (1803), where the Court declared that it had the constitutional authority to overturn acts of Congress, state laws, or executive action deemed to be unconstitutional. Thus, judicial review serves as an important check on other branches of government. Appointed for life, justices are somewhat insulated from public opinion. It is not surprising that over the years the Court has handed down decisions that have been unpopular and controversial. Congress and the president may influence the Court through the appointment process, by refusing to implement a Court decision, or by passing legislation that changes the Court's jurisdiction.

Using a merit-based civil service system for all staff except top-level political appointees, the federal bureaucracy carries out laws to regulate a wide range of individual and commercial activities. Bureaucrats implement policy using their discretionary and rule-making authority. Both Congress and the president can hold the bureaucracy accountable in policy implementation, and the two branches will sometimes be in conflict over whether or not administrative agencies are carrying out the letter and spirit of the law.

### ***Essential Questions:***

- How do the branches of the national government compete and cooperate in order to govern?
- To what extent have changes in the powers of each branch affected how responsive and accountable the national government is in the 21st century?

## UNIT 2A: CONGRESS

*The republican ideal in the U.S. is manifested in the structure and operation of the legislative branch.*

### 1) Students will be able to:

Describe the different structures, powers, and functions of each house of Congress

#### Students will know that:

- a) The Senate is designed to represent states equally, while the House is designed to represent the population
- b) Different chamber sizes and constituencies influence formality of debate
- c) Coalitions in Congress are affected by term-length differences
- d) The enumerated and implied powers in the Constitution allow the creation of public policy by Congress, which includes:
  - Passing a federal budget, raising revenue, and coining money
  - Declaring war and maintaining the armed forces
  - Enacting legislation that addresses a wide range of economic, environmental, and social issues based on the Necessary and Proper Clause

### 2) Students will be able to:

Explain how the structure, powers, and functions of both houses of Congress affect the policy-making process

#### Students will know that:

- a) By design, the different structures, powers, and functions of the U.S. Senate and House of Representatives affect the policy-making process
- b) Though both chambers rely on committees to conduct hearings and debate bills under consideration, different constitutional responsibilities of the House and Senate affect the policy-making process
- c) Chamber-specific procedures, rules, and roles that impact the policy-making process include:
  - Number of chamber and debate rules that set the bar high for building majority support
  - Roles of Speaker of the House, President of the Senate, party leadership, and committee leadership in both chambers
  - Filibuster and cloture
  - Holds and unanimous consent in the Senate
  - Role of Rules Committee, Committee of the Whole, and discharge petitions in the House
  - Treaty ratification and confirmation role of the Senate
- d) Congress must generate a budget that addresses both discretionary and mandatory spending, and as entitlement costs grow, discretionary spending opportunities will decrease unless tax revenues increase or the budget deficit increases
- e) Pork barrel legislation and logrolling affect the lawmaking in both chambers

### 3) Students will be able to:

Explain how congressional behavior is influenced by election processes, partisanship, and divided government

#### Students will know that:

- a) Congressional behavior and governing effectiveness are influenced by:
  - Ideological divisions within Congress that can lead to gridlock or create the need for negotiation and compromise
  - Gerrymandering, redistricting, and unequal representation of constituencies have been partially addressed by such Court decisions as *Baker v. Carr* (1961), which opened the door to equal protection challenges to redistricting and stated the "one person, one vote" doctrine, and the no-racial-gerrymandering decision in *Shaw v. Reno* (1993)
  - Elections that have led to a divided government, including partisan votes against presidential initiatives and congressional refusal to confirm appointments of "lame-duck" presidents of the opposite party
  - Different role conceptions of "trustee," "delegate," and "politico" as related to constituent accountability in each chamber

## UNIT 2B: THE PRESIDENCY

*The presidency has been enhanced beyond its expressed constitutional powers.*

### 1) Students will be able to:

Explain how the president can implement a policy agenda

#### Students will know that:

- a) Presidents use powers and perform functions of the office to accomplish a policy agenda
- b) Formal and informal powers of the president include:
  - Vetoes and pocket vetoes – formal powers that enable the president to check Congress
  - Foreign policy – both formal (Commander-in-Chief and treaties) and informal (executive agreements) powers that influence relations with foreign nations
  - Bargaining and persuasion – informal power that enables the president to secure congressional action
  - Executive orders – implied from the president's vested executive power, or from power delegated by Congress, executive orders are used by the president to manage the federal government
  - Signing statements – informal power that informs Congress and the public of the president's interpretation of laws passed by Congress and signed by the president

### 2) Students will be able to:

Explain how the president's agenda can create tension and frequent confrontations with Congress

#### Students will know that:

- a) The potential for conflict with the Senate depends upon the type of executive branch appointments, including:
  - Cabinet members
  - Ambassadors
  - White House staff
- b) Senate confirmation is an important check on appointment powers, but the president's longest lasting influence lies in life-tenured judicial appointments
- c) Policy initiatives and executive orders promoted by the president often lead to conflict with congressional agenda

### 3) Students will be able to:

Explain how presidents have interpreted and justified their use of formal and informal powers

#### Students will know that:

- a) Justifications for a single executive are set forth in *Federalist No. 70*
- b) Term-of-office and constitutional-power restrictions, including the passage of the Twenty-second Amendment, demonstrate changing presidential roles
- c) Different perspectives on the presidential role, ranging from a limited to a more expansive interpretation and use of power, continue to be debated in the context of contemporary events

### 4) Students will be able to:

Explain how communication technology has changed the president's relationship with the national constituency and the other branches

#### Students will know that:

- a) The communication impact of the presidency can be demonstrated through such factors as:
  - Modern technology, social media, and rapid response to political issues
  - Nationally broadcast State of the Union messages and the president's bully pulpit used as tools for agenda setting

## UNIT 2C: THE JUDICIARY

*The design of the judicial branch protects the Supreme Court's independence as a branch of government, and the emergence and use of judicial review remains a powerful judicial practice.*

### 1) Students will be able to:

Explain the principle of judicial review and how it checks the power of other institutions and state governments

#### Students will know that:

- c) The foundation for powers of the judicial branch and how its independence checks the power of other institutions and state governments are set forth in:
  - **Article III of the Constitution**
  - **Federalist No. 78**
  - **Marbury v. Madison** (1803)

### 2) Students will be able to:

Explain how the exercise of judicial review in conjunction with life tenure can lead to debate about the legitimacy of the Supreme Court's power

#### Students will know that:

- a) Precedents and stare decisis play an important role in judicial decision making
- b) Ideological changes in the composition of the Supreme Court due to presidential appointments have led to the Court's establishing new or rejecting existing precedents
- c) Controversial or unpopular Supreme Court decisions can lead to challenges of the Court's legitimacy and power which Congress and the president can address only through future appointments, legislation changing the Court's jurisdiction, or refusing to implement decisions
- d) Political discussion about the Supreme Court's power is illustrated by the ongoing debate over judicial activism versus judicial restraint

### 3) Students will be able to:

Explain how other branches in the government can limit the Supreme Court's power

#### Students will know that:

- a) Restrictions on the Supreme Court are represented by:
  - Congressional legislation to modify the impact of prior Supreme Court decisions
  - Constitutional amendments
  - Judicial appointments and confirmations
  - The president and states evading or ignoring Supreme Court decisions
  - Legislation impacting court jurisdiction

## UNIT 2D: THE BUREAUCRACY

*The federal bureaucracy is a powerful institution implementing federal policies with sometimes questionable accountability*

### 1) Students will be able to:

Explain how the bureaucracy carries out the responsibilities of the federal government

#### Students will know that:

- a) Tasks performed by departments, agencies, commissions, and government corporations are represented by:
  - Writing and enforcing regulations
  - Issuing fines
  - Testifying before Congress
  - Issue networks and "iron triangles"
- b) Political patronage, civil service, and merit system reforms all impact the effectiveness of the bureaucracy by promoting professionalism, specialization, and neutrality

### 2) Students will be able to:

Explain how the federal bureaucracy uses delegated discretionary authority for rule making and implementation

#### Students will know that:

- a) Discretionary and rule-making authority to implement policy are given to bureaucratic departments, agencies, and commissions, such as:
  - Department of Homeland Security
  - Department of Transportation
  - Department of Veterans Affairs
  - Department of Education
  - Environmental Protection Agency (EPA)
  - Federal Elections Commission (FEC)
  - Securities and Exchange Commission (SEC)

### 3) Students will be able to:

Explain how Congress uses its oversight power in its relationship with the executive branch

#### Students will know that:

- a) Oversight and methods used by Congress to ensure that legislation is implemented as intended are represented by:
  - Committee hearings
  - Power of the purse
- b) As a means to curtail the use of presidential power, congressional oversight serves as a check of executive authorization and appropriation

### 4) Students will be able to:

Explain how the president ensures that executive branch agencies and departments carry out their responsibilities in concert with the goals of the administration

#### Students will know that:

- a) Presidential ideology, authority, and influence affect how executive branch agencies carry out the goals of the administration
- b) Compliance monitoring can pose a challenge to policy implementation

### 5) Students will be able to:

Explain the extent to which governmental branches can hold the bureaucracy accountable given the competing interests of Congress, the president, and the federal courts

#### Students will know that:

- a) Formal and informal powers of Congress, the president, and courts over the bureaucracy are used to maintain its accountability