

Citizen U Presents:  
**Ark of Power:**  
**An Appraisal of American Government and Politics**  
*AP U.S. Government and Politics Curriculum*  
2 Teachers  
2019

**Big Ideas in U.S. Government and Politics**

1. **CONSTITUTIONALISM:** *The U.S. Constitution establishes a system of checks and balances among branches of government and allocates power between federal and state governments. This system is based on the rule of law that seeks to balance majority rules with minority rights.*
2. **LIBERTY AND ORDER:** *Governmental laws and policies balancing order and liberty are based on the U.S. Constitution and have been interpreted over time.*
3. **CIVIC PARTICIPATION IN A REPRESENTATIVE DEMOCRACY:** *Popular sovereignty, individualism, and republicanism are important considerations of U.S. laws and policy-making and assume citizens will engage and participate.*
4. **COMPETING POLICY-MAKING INTERESTS:** *Multiple actors and institutions interact to produce and implement possible policies.*
5. **METHODS OF POLITICAL ANALYSIS:** *Using various types of analyses, political scientists measure how U.S. political behavior, attitudes, and ideologies are shaped by a number of factors over time.*

**Unit 2: Interaction Among Branches of Government**

*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.*

- 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 21<sup>st</sup> century?

**BIG IDEA: Constitutionalism**

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

Early in our history, Alexander Hamilton was giving a tour of the nation's capital to a group of foreign visitors. When they arrived to witness Congress in action he opened the door and was to have said, "Here sir,

the people govern.” Our representative democracy finds agency through our Congress, our representative body. **The republican ideal in the United States is manifested in the structure and operation of the legislative branch.**

The enumerated powers of Congress are found in Article 1 Section 8 of the U.S. Constitution. Congress declares war; collects taxes; regulates interstate commerce; coins money; and establishes courts. Broadly speaking, Congress makes laws; conducts oversight of the entire government; and provides for constituent service.

If the president has the “power of the sword,” the Congress has the “power of the purse.” The greatest power the Congress can wield is their control of the Federal budget. The Congress oversees our government’s fiscal policy. They raise money through taxes and spend money through their appropriations. The greatest challenge facing federal budgets today is the ever-growing entitlement programs, namely Social Security and Medicaid. Discretionary choices made by our Congress make up less and less of the federal budget. Raising revenue through taxation is never a popular option. It is for this reason that federal budgets are notable for their deficits and not their discipline.

It is the informal powers of Congress, however, that increasingly express its 21<sup>st</sup> century authority. More and more of Congress’ work are legitimized by the commerce clause and the necessary and proper clause. These two constitutional provisions allow Congress to go beyond the letter of the law.

The Constitution’s enumerated power to regulate all interstate commerce has been used to expand the size and scope of the federal government. Congress uses this provision more than any other to justify its regulatory prerogative. In a recent Court argument a Justice asked if there were any limits to what could be regulated under the commerce clause. Before the attorney could answer another Justice quipped, “Don’t give anything away here. They might want to do it next.” Conservatives in recent years have tried to reign in the use of the commerce clause. With little success, the commerce clause continues to be at the epicenter of political debate over the role played by our government in our lives.

There is a reason the necessary and proper clause has been dubbed the elastic clause. This constitutional provision has allowed the Congress and subsequently the government of the United States to expand far beyond what the Founders had envisioned. In all fairness, however, the Founders never could have imagined what our world would be like today. It was for this reason they wrote into law a provision that would allow the Constitution to be a living letter. Some argue it lives too gregariously. It is necessary and proper for “we the people” to decide whether or not the Congress abuses its authority.

The legislative branch is ultimately responsible to make laws. The time taken in the legislative process varies enormously. The complexity of the legislative process always gives the opponents an advantage. Only members of Congress can introduce a bill or propose a piece of legislation. Bills must pass both chambers of Congress in order to become a law. Bills can originate in any chamber except all revenue bills, laws that affect taxes, must start in the House of Representatives. Remember we fought a revolution over “no taxation without representation.” It is for this reason that the root of public policy in American life was to be found in our legislative branch, the United States Congress.

Lawmaking has been frequently compared to sausage making. It is not pretty. It begins with an idea. Public policy ideas can come from a variety of places. Ultimately, however, ideas must be written into a formal proposal known as a bill. Only a member of Congress can introduce a bill into Congress.

Once a bill is introduced it is assigned to a committee where the bill is marked up. Committees study, hold hearings, and edit various details before voting on the bill. If the bill receives a majority vote in committee it

is passed on to the next step. Helping Congress in the early stages of legislation is the Congressional Budget Office (CBO). This bipartisan agency scores the probable affect of proposed bills.

If the bill is defeated in committee, true for most, a member can call for a discharge petition. A discharge petition allows members from the floor of each chamber to reject a committee decision and bring a bill to a vote. Discharge petitions are highly unusual.

In the House of Representatives [only] there is a Rules Committee. The Rules Committee determines if a bill on the floor will have an open or closed rule. An open rule means a bill can be amended on the floor debate. A closed rule means a bill cannot be amended or changed during the floor debate.

Most bills in Congress involve the authorization of money. Authorizations set spending limits. Most laws in Congress appropriate money. An appropriation is the amount of money that is actually spent. Often appropriations are given inside large bills to small projects that affect only one congressional district. These earmarks are used to persuade single members to vote for a more controversial bill. This “greasing of the wheel” is often called a pork barrel project. Earmarks make up a small percentage of Congressional spending but have come under serious criticism in recent years.

Floor debate and voting is dramatically different in the House and Senate. In the House the majority party dominates floor activity. Debate is limited by time. If the leadership maintains party discipline, that is, if they stick together, the majority party in the House can pass everything they want.

The Senate floor is much different. There are no strict time limits. In fact, one member can stall or delay the entire Senate calendar by filibustering. Today almost every bill in the Senate must overcome a filibuster. To end a filibuster requires a cloture. A cloture vote requires sixty Senators to decide to end a filibuster. Rarely does the majority party have 60 votes. This means that the minority party can obstruct just about everything in the Senate.

If a bill were to pass both chambers of Congress it must go to a conference committee. A conference committee reconciles the differences between the House and Senate versions of a bill.

When a bill passes Congress it still needs a president’s signature to become law. The president has 10 days to act. If he does nothing in 10 days the bill becomes law automatically. A presidential veto, however, ends it all. Congress can override a veto with a 2/3’s majority vote. This is rare. Less than 4% of presidential vetoes are overridden. Occasionally the president might use a pocket veto. A bill is pocket vetoed if the president does not act and Congress adjourns within the 10-day limit. One thing is certain – the legislative process is never routine. The process varies enormously. The opposition always has the advantage. As the legislative process has grown more and more decentralized, with numerous hurdles and access points for officials to affect outcomes, opportunities for corruption and obstruction have proliferated.

Many of the duties and responsibilities of Congress have evolved with experience and certain new traditions. It is for this reason that our Congress should be seen as more than a legislative branch. The United States Congress fulfills three primary duties:

First, the United States Congress is, as we have already seen, a legislative branch. Here “we the people” make laws. Here “we the people” rule. But this is not their only responsibility.

Second, the United States Congress is given the power of oversight. The U.S. Congress is empowered to check the privileges and authority of the rest of the government. This is done through Congressional hearings where information is solicited. It is done through formal investigations. But it is also done through

the budget process. The U.S. Congress controls the money collected and spent by our federal government. Congress can cut spending, cut appropriations, to those agencies of government that abuse their power.

Third, the United States Congress is ultimately made up of members who are charged with representing their constituents. Therefore, more and more time spent by members of Congress revolves around constituent service. Constituents are the citizens who cast their votes for a member of Congress. Most members of Congress spend a majority of their time helping their constituents. This is done through direct representation of constituent interests but also by helping to resolve local concerns, coordinating services with state and local governments and making personal appeals to assure veterans receive their pensions and seniors receive promptly their Social Security benefits.

## **2.2 Explain how the structure, powers, and functions of both houses of Congress affect the policy making process.**

Bicameralism best describes our legislative branch. The United States Congress is a two-house legislature. We have a House of Representatives, based upon population, and a Senate where every state has two members. Representatives in the House were the only elected office that the Founders put directly in the hands of the people. Other offices in government were either appointed or chosen by an elite few. Even to this day the House mirrors local interests far more than the Senate. The House is most responsive to the public's wishes. The Senate tends to focus more on broader national and state issues. Senators were not directly elected until the passage of the 17<sup>th</sup> Amendment (1913). Due to its more prestigious six-year terms the Senate is referred to as the Upper House.

Our bicameral legislature was divided for reasons other than compromising between big states and small states. Each house represents the people, yet they also possess remarkably different responsibilities. The House, modeled on the British House of Commons, represents the passions of the people. The Senate, modeled on the British House of Lords, responds to these passions with reason. James Madison saw the Senate as an "anchor," a "necessary fence" against the "fickleness and passion" of the people. The Senate is to "cool" House legislation just as a saucer was used to cool hot tea. Thomas Jefferson once expressed his doubts about the usefulness of the Senate. "Why did you pour that coffee into your saucer?" George Washington asked. "To cool it," Jefferson replied. "Even so," Washington declared, "we pour legislation into the senatorial saucer to cool it."

House members serve 2-year terms. The Senate enjoys 6-year terms. One third of the Senate is up for reelection every two years. These term differences affect the formation of coalitions in Congress. Ever changing, it helps to explain increased polarization and gridlock. Additionally our Congress has come to reflect the diversity of America more than ever. The House of Representatives is much less male and much less white.

The American people have never held Congress in lower regard than today. Nevertheless, even though our Congress has never been more representative today's Congress looks more like America – it is less male and less white. At last our Congress mirrors our demographic diversity. Most Americans have grown cynical toward Congress. Many reformers have suggested term limits – limiting the length of time one can serve in Congress. Most believe Congress is self serving and beholden to the special interests.

Ironically the more Congress looks like "one of us" the more we frown upon the way we look.

In many ways the House and Senate are very different. These differences impact the work of Congress. The policy process is often hindered by these differences. One can conclude that this was intentional. For instance, the House is made up of 435 members who serve two-year terms. The Senate is made up of 100 members who serve six-year terms. The leadership in the House plays a more important role. The House has less procedural flexibility than the Senate. Strict rules govern the legislative process in the House. This includes limited debate. The Senate is known for the filibuster, a rule that allows one member to stop all legislation by threatening an unlimited debate. Members of the House tend to become experts on certain issues. Senate members often are more generalists. House members appeal to a narrow constituency. Ironically House elections are less competitive. The Senate is also given certain unique constitutional duties like confirming presidential appointments and treaties.

The leadership of Congress is determined by strict party votes. The majority party holds all of the principal leadership positions.

The most important leadership positions in the House of Representatives are:

**SPEAKER OF THE HOUSE** – As presiding officer the Speaker controls the calendar. The Speaker determines the agenda of the House. The Speaker also makes committee assignments.

**MAJORITY LEADER** – The Majority Leader orchestrates the legislative process. When important bills are introduced the Majority Leader is in charge of building a strategy to get it passed.

**MAJORITY WHIP** – The Majority Whip collects information and tries to induce members to vote in line with the party leadership. No vote in Congress is held before the Whip informs the leadership of the probable outcome. This allows the leadership to only hold a vote when they know they will win. WHIPs help build coalitions of voters and serve as Congressional headcounters.

The most important leadership positions in the Senate are:

**MAJORITY LEADER** – The Majority Leader in the Senate is the most important leader. The Majority Leader orchestrates the legislative process. When important bills are introduced the Majority Leader is in charge of building a strategy to get it passed.

**MAJORITY WHIP** – The Majority Whip collects information and tries to induce members to vote in line with the party leadership. No vote in the Senate is held before the Whip informs the leadership of the probable outcome. This allows the leadership to only hold a vote when they know they will win.

**NOTE:** The presiding officer in the Senate is the Vice President but has virtually no power. The Vice President will appear in the Senate on the opening day and if a tie occurs in a vote. The VP breaks all tie votes. In his absence the presiding officer becomes the President Pro Tempore. This is more symbolic and typically goes to the oldest member of the majority party.

Congress at work, however, is Congress in committee. Though the leadership of Congress receives the lion share of the media attention – most of the power in Congress is found in the standing committees. Every member of Congress is assigned to at least one standing committee. Standing committees is where the real work of Congress gets done. The majority party holds a majority of the votes in every committee. The permanent committees study prospective laws. This allows members of Congress, over time, to become experts in one area over another. For instance, a Congressman from Minnesota when assigned to the House Agriculture Committee becomes an expert on agricultural issues. Of course this helps him back home with his constituents. Another reason incumbency rates are so high. The distributive theory of legislative organization argues that committee views are respected over what the whole House wants.

Certain standing committees are more important than others. The House Ways and Means Committee handles all revenue bills. Tax proposals go through this committee first. The Appropriation Committee, in both the House and Senate, handles the way tax dollars are spent.

There are two other types of committees in Congress. Select committees work on a specific albeit temporary issue. Conference committees resolve differences between House and Senate versions of the same bill.

Beyond committees Congress also is organized around specialized caucuses. These would be members who organize around a particular interest or issue. Many are large and powerful like the Congressional Black Caucus. Others are silly like the Congressional Boating Caucus. Caucuses are just another means to organize like-minded members to influence public policy.

Members of Congress also possess a large staff that helps them perform their duties. As Congressional staff increases so too does the amount of work Congress performs. With help from staff more and more legislation is proposed every year. This has made Congress much more individualistic. This decentralized Congress now provides greater access points for corrupt behavior.

To review, the legislative process is cumbersome, complex and rife with built in obstacles. Party leaders can demand discipline from its members to block most policy proposals from the opposition. House rules favor the majority party while the in the Senate the filibuster advantages the minority party. Senate members can also put holds on action. For all practical purposes this is a parliamentary rule that hinders the policy making process. Public policy success depends upon either broad national consensus, a strong president or an overwhelming majority of one party.

Logrolling is as old as politics itself. Logrolling is vote trading. I will support your bill if you support mine. You scratch my back and I will scratch yours. One wonders if principle can be found anymore? Logrolling also provides cover for legislators to do an interest groups' bidding. Yet many would argue that without logrolling even less would get done inside Congress. Logrolling serves as a practical lubricant to the legislative process.

With the "power of the purse" Congress is given the unique power to generate a budget. Governments are, after all, institutions that collect and spend money. Governments collect money through taxes and fees. They appropriate these monies through a complex budgetary process. Every penny spent goes through an excruciating political process. Certain federal budget line items receive mandatory funds each year. Mandatory spending makes up the vast majority of today's federal budget. These entitlement programs include Social Security and Medicaid. Our biggest political fights in Congress occur over the ever-decreasing discretionary monies. The biggest line item in this category is the military budget. Left over funds for education, environmental protection, foreign aide and the arts are difficult to find. Subsequently our deficits continue to rise. Without new tax revenues there is little choice.

Our Constitution was a byproduct of great compromises. Our form of government persists because of even more great compromises. The public policy process, to be successful, requires our legislators to let the good times roll.

### **2.3 Explain how Congressional behavior is influenced by election processes, partisanship, and divided government.**

Popular rights have been called "the first-order tools of democracy." This involves more than casting votes. Popular rights also mean that collective decisions made by a representative legislative body reflect the will of

the people. Measuring our Congress' effectiveness has proven to be difficult. Approval ratings of our Congress are at historic lows. Yet recent political science can demonstrate that the "proven ability to advance a member's agenda items through the legislative process" is actually quite positive. Words like gridlock and divided government dominate our national narrative but a closer look at our Congress would show that certain lawmakers are able to effectively represent the interests of their constituents. There are, however, certain trouble spots.

Political differences in Congress today continue to threaten democratic effectiveness. Whereas a "do nothing Congress" was once considered an occasional political barb, it now appears to be the new normal. On this political scientists agree.

*By any measure, the modern Congress is a polarized one. In the past 40 years, more conservative Republicans have replaced retiring Republicans, and incoming Democrats have been more liberal than those that they replaced. The departure of Southern Democrats, once a stronghold of moderate views on issues besides civil rights, has exacerbated this trend. In the 1950s, political scientists complained that it was difficult to differentiate between the two parties. By the 1980s the parties in Congress were mostly differentiated, and today ideological overlap between the parties is essentially gone. Congressional polarization may be the most prominent stylized fact of American political science...*

Yet our democratic institutions continue to function. Omnibus appropriation bills get passed. Social services continue without interruption. Our military is staffed and adequately supplied. Appointed judges get confirmed. Our commerce is both encouraged and regulated to assure both prosperity and safety. And most importantly, our Congress is able to react and respond to emergencies that impact our citizens. Our government continues to work. Nevertheless differences in Congress can undermine democratic effectiveness.

George Wallace, a Southern politician, liked to say, "There's not a dime's worth of difference between Democrats and Republicans." Today there can be no mistaking the partisan divide between our two major political parties. In both legislative chambers, House and Senate, Democrats sit on one side and Republicans on the other. Less obvious but more pronounced is the ideological split between our two ruling parties. Congress today is characterized by its constant bickering, squabbling and wrangling. Democrats today are more liberal while Republicans are more conservative. Democrats and Republicans block each other at every turn. Ideological polarization, it has been argued, is rooted in the permanent campaign. Members of Congress find themselves all too often seeking to secure votes back home rather than votes in their legislative chamber. Negotiation and compromise in Congress today are endangered species. Without compromise meaningful change is difficult. Public policy achievements are more rare. But beyond the permanent campaign, polarization in Congress is also a byproduct of systematic gerrymandering.

Spoiler alert, if Americans knew about gerrymandering the perception of Congress would be even lower. Read on at your own risk.

Gerrymandering is a by-product of a practice mandated by the U.S. Constitution that takes place every ten years. Every ten years the U.S. must take a census to count accurately our population. Population determines the number of representatives each state is allocated in the House of Representatives. Every ten years the House is reapportioned. If one state's population declines relative to another they may lose a seat in Congress. An increase might mean adding a seat in the House. Once reapportioned, each state congressional district must be redrawn to reflect the new population numbers. In *Baker v. Carr* (1962) the Court ruled against mal-apportionment. Each congressional district must have the same population, "one

man one vote.” Drawing new congressional districts is called redistricting. So far it sounds quite innocent. It is far from it. When State legislatures redistrict they intentionally draw the lines to favor one political party over another. When they redistrict to advantage an incumbent this is called gerrymandering. To put it plainly, gerrymandering is when elected officials all but rig election outcomes before we the people vote. Gerrymandering gives a tremendous advantage to the political party in power. It almost assures that party will hold on to voting majorities for another ten years. Gerrymandering helps to explain why our Congress has grown more partisan and ideological. Gerrymandering also helps, in part, to explain how our Congress has grown more diverse. In *Shaw v. Reno* (1993) the Supreme Court has ruled that legislative redistricting must be conscious of race and ensure compliance with the Voting Rights Act of 1965. Racial gerrymandering has grown commonplace. Close to one third of all Congressional districts today are majority minority districts.

Incumbency rates in Congress are so high. Close to 90% of members in the House seeking reelection win. Despite low approval ratings of Congress incumbency almost guarantees reelection. Beyond the affects of gerrymandering, incumbents have many advantages. They have name recognition due to free media attention. They have an easier time raising money. They have the franking privilege [free postage]. Most importantly, incumbents engage in constituent service. Legislating takes up less and less of Congress’ time. Members spend much of their time helping constituents back home in their districts resolve local issues. Constituents are simply the citizens a member of Congress represents.

Occasionally incumbents lose. Every seat is not a “safe seat.” There are a few marginal districts. Marginal districts are congressional districts where the winner receives less than 55% of the vote. Marginal districts are competitive. Marginal districts are more likely when congressional districts are nationalized. This means a national issue mobilizes voters throughout the country.

Divided government, as well, helps to explain and influence the behavior of the United States Congress. When the majority of Congress is of a different party than the president, there is a tendency to vote against presidential initiatives. Divided governments also experience greater difficulty when confirming presidential appointments. Though political science continues to debate the impact of divided governments versus unified governments, Congressional approval ratings have never been lower. Citizens increasingly believe Congress is not living up to their constitution charge. In the end Congress is called upon to vote on public policy.

There are three types of votes taken in Congress. When members vote as “delegates” they cast votes that best represent their constituents back home in their districts. When members vote as “trustees” they cast votes that best represent their own individual conscience. When members vote as “partisans” they cast votes that best represent the wishes of their party. With the precision of today’s gerrymandering, members often can play all three roles in any given vote. This is called being a “politico.”

Today’s U.S. Congress has a self-image problem. We the people hold it in contempt. These feelings are not new. Throughout our history Congress has been a punch line to a sick joke. Even Franklin Roosevelt joined in on the pile up when he said, “It is the duty of the President to propose and it is the privilege of the Congress to dispose.” Congress was never intended to be an efficient working machine. Rather, its duty has always been to represent a complex, diverse and multifaceted democratic polity.

## **BIG IDEA: Constitutionalism**

### **2.4 Explain how the president can implement a policy agenda.**

The history of the presidency is a history of aggrandizement. We all imagine today a president with far reaching power. When looking at the constitution alone, however, we find a president with significant limits. **The presidency has been enhanced beyond its expressed constitutional powers.**

Here is a list of the president's formal powers as found in Article 2 of the US Constitution:

Commander-in-Chief (Congress declares war); Make treaties (w/ Senate approval); Appoint ambassadors (w/ Senate confirmation); provide a State of the Union Address; Convene special sessions of Congress (Truman was the last to do this in 1948); Receive ambassadors; "Take care that the laws be executed." [To this list many would add the veto once rarely used but now played out more frequently. Fewer than 4% of all presidential vetoes are overridden].

Not impressive by anyone's standards. Yet today many would argue that the U.S. president is the most powerful person in the world. Noted political scientist Richard Neustadt found the modern president's power in his ability to persuade. The unique position the president has to bargain and use his political resources has made any chief executive extraordinarily powerful.

Today the president is powerful due to his ability to politic. This involves applying his influence to important decisions. Logrolling involves trading votes. The prestige of the president applies tremendous pressure on policy decision makers. In addition the president can muster up public opinion to support his agenda. President's can grab headlines to influence the national agenda. This unique ability to persuade has made all presidents, not just the charismatic ones, truly powerful. No one has a bully pulpit like the president.

It should be added that certain powers exercised today by the president are also based upon tradition. These powers are not found in the constitution but are routinely practiced without any reservations. They include:

Executive Orders – These domestic decrees carry the force of law but do not require Congressional passage or approval. The president can change and affect policy details through directives like these. Recent presidents for instance have changed details on various education and health care laws without any assistance from the other branches.

Executive Agreements – These foreign policy decrees carry the force of treaties but do not require the Senate's approval. The president can change and affect foreign policy without having to bother with the Senate. Recent presidents for instance have made numerous overtures in the Middle East without involving the other branches.

Executive Privilege – This privilege allows the president to seek candid and confidential advice without having to disclose details to the general public. Despite promises of transparency all presidents utilize executive privilege to keep many matters of importance outside the purview of the media.

Signing Statements – This informal power informs Congress and the public of the president's interpretation of laws passed by Congress and signed by the president. Invariably it involves an enforcement agenda that may differ from the original statutory intention.

Collectively these informal powers have dramatically increased the influence and authority of the president. Few seem to notice or care. The usurpation of power by modern presidents seem to only invite our chief executive to do it more. For example, presidents have increasingly played a more dramatic role in the legislative process through signing statements. A signing statement is when a bill is signed into law but interpreted by the president differently than originally intended by Congress. In this way the president

controls the legislative process. These signing statements often go unchecked. Signing statements are another example of an informal power.

The modern presidency has grown for a number of reasons. One reason the presidency has grown is the increased importance of foreign policy. The president is at the epicenter of American foreign policy decisions. Another reason for the growth of the American presidency is the growth of the federal bureaucracy. Much of this growth has been a result of economic crises. The federal government has built a larger more comprehensive safety net. The president oversees these responsibilities. Do not discount the role technology has played. The president's ability to use the media to increase the power of the office should be noted. For some, we now have an imperial presidency.

Then again, a limited government is one of our most important maxims. Limiting presidential power, both formally and informally, is no exception. Regardless of how vast presidential power has become, there are both checks and obstacles to the exercise of that power. There are still significant limits on presidential power. Some would argue these checks have made the president "a pitiful helpless giant."

Here are the primary checks that protect our democracy from unfettered presidential power:

Congress. Examples like the War Powers Act (1974) and the Budget Impoundment Act (1974) continue to limit the president's war making powers and his power over the budget.

Courts. Examples like *US v. Nixon* (1974) demonstrate how the courts can limit the president, in this case a limit on executive privilege.

Federalism. The separation of powers between the national and state governments still impose significant limits on a president's reach of authority.

National Elections. The 22<sup>nd</sup> Amendment limits the president to 2 terms. Time becomes a serious limit to presidential success.

Foreign governments. Crises over seas often side track domestic agendas. It is difficult to prepare for the surprises each Administration faces in the area of foreign policy.

Media. Remember the relationship here is love-hate. Presidents rely on the media to bring light to their agenda. They love this. The media also, however, exposes presidents to criticism and bad light. They hate this. The media acts like a junkyard dog around the president and his Administration.

Public Opinion. The biggest constraint on any president is public opinion. History suggests that most presidents' popularity declines while in office, except during reelection campaigns. What this means is that to succeed in office most presidents better work fast and early. FDR was given a 100-day honeymoon. Modern presidents rarely are treated as well.

Impeachment is the most drastic check on presidential power. Impeachment proceedings provide the perfect civics lesson. Impeachments demonstrate our checks and balances system. The House of Representatives is given the formal power to levy charges against an elected official with a simple majority vote. The Senate tries the impeachment case and can vote to remove with a 2/3s vote. Impeachments also teach the separation of power, federalism and partisanship. More importantly, however, impeachments are often fueled by public opinion. Constitutional safeguards protect elected officials from being removed on whim. We have seen a few presidents impeached, but none have been removed.

The powers and functions of a U.S. president have evolved dramatically since George Washington was unanimously selected in 1789. Whether the president is “the most powerful” agent in our democracy or “a pitiful helpless giant” continues to fuel debate. One thing is certain; the presidency has been enhanced beyond its expressed constitutional powers.

## **2.5 Explain how the president’s agenda can create tension and frequent confrontations with Congress.**

Often presidents see election victories as a mandate from the people. Voters choose candidates in order to fulfill campaign promises and to see certain public policies enacted. Presidential agendas create tensions within in our representative democracy. Successful presidents need to navigate carefully in order to achieve their objectives. This requires presidents to maintain a permanent campaign mode. This requires mastery over the media.

*As part of their permanent campaign for public support, presidents constantly speak and hold public events. To reach the public, presidents must lead not only traditional broadcast and print media, but also reach audiences that prefer cable television, Internet blogs, or other online news sources. Presidents must target these media daily, as the 24-hour news cycle has the potential to move rapidly from one news story to another.*

More so, however, presidents need to rely upon a close staff of advisers and support personnel. These men and women are typically drawn from the president’s campaign. The American presidency encompasses a vast Executive Branch. It is more than one person.

“The buck may stop” on the president’s desk but it must pass through a large complex bureaucracy known as the Executive Branch. Policies proposed by the president are shaped, molded and initiated by the White House Office. Certain executive departments also assist the president’s policy agenda. Examples would be the Department of State, the Department of Defense and the Department of the Treasury. The heads of these departments are collectively known as the Cabinet. The Cabinet has grown weaker over time as each Secretary spends more time securing the stability [and budget] of their Department rather than giving unfettered advice to the president. Even so, the president’s White House Office and his/her Cabinet play a vital role in setting the national agenda.

There are, of course, significant obstacles to a president realizing public policy success. Tensions over a president’s agenda are constant. Public opinion often gets in the way. So too does unexpected foreign policy interruption. More obvious, however, is the public confrontation with Congress. Even when our government is unified, the president and the majority of Congress from the same political party, U.S. presidents and the U.S. Congress fight over policy priorities.

A salient example of this would be the inherent tensions over presidential appointments. The constitutionally required Senate confirmation process has become routinely messy. Political science has studied this tension with great interest. The consequences to our democracy are both real and immediate and in many ways quite new. A recent study has suggested:

*The defining characteristic of the current appointment process, and of congressional-executive interactions more broadly, is novelty. Established mechanisms for policy setting and compromise are being cast aside, the casualties of increasing polarization in Congress combined with divided government and presidential political imperatives. New*

*norms and governing approaches are emerging, with a heavy emphasis on executive action. Although prior practices may return with a switch to unified government, good reason exists to expect innovation even then.*

A noticeable change in the appointment and confirmation process today is the time it takes to complete. Holds, delays and the vetting process now move at a snails pace. Sometimes this cannot be avoided. All too often, however, it is all about political gamesmanship. Delays in the appointment process affect government work and responsiveness.

This can be seen most clearly in judicial appointments. Presidents are required by the U.S. Constitution to fill vacated seats on the Supreme Court. The Senate has the responsibility to confirm those appointments. This advice and consent responsibility has grown increasingly political. Going back at least as far as the Robert Bork nomination in 1987, the Senate has routinely chosen to make the confirmation process of judges more difficult.

Another area of dramatic tension between the president and Congress can be found in the area of foreign policy. Presidents have distinctly different agendas when it comes to foreign policy. They also possess substantial power advantages over Congress in the area of foreign policy. The Founding Fathers seemed to have intended this. Nevertheless, Congress through their power of the purse and access to the 24/7 media machine can pose serious threats to a president's foreign policy goals.

Presidents can circumvent Congressional obstructions by using their vast arsenal of informal powers. Presidents as of late have issued more waivers, recess appointments, executive orders and agreements to fulfill campaign promises and agendas. Although these tactics can fuel greater animus and mistrust between the institutions, they also reflect how presidential power has increased in recent years without too much push back by the American people.

Policy initiatives promoted by the president often lead to conflict. In our lifetime these conflicts have tended to weaken the other branches while making the presidency even stronger. Back in 1788 Alexander Hamilton called for "an energetic president." Today there can be little doubt that Hamilton's hopes have been realized.

## **2.6 Explain how presidents have interpreted and justified their use of formal and informal powers.**

Alexander Hamilton outlined his hopes for a single American chief executive in Federalist 70. The president by no means was intended to be weak. Hamilton wrote:

*Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman story, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of Dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct*

*threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome.*

Hamilton's description, however, appears to overstate the role of president as taught by both historical experience and political science.

For many presidents throughout our history we barely remember their names. Powerful presidents were either made by extreme circumstances like wars and economic depressions or possessing certain charismatic qualities. But as we were often taught in school, U.S. presidents were not intended to be powerful.

Presidents face many checks on their power. The constitution gave presidents few unilateral powers. The Senate, through their advice and consent authority, is authorized to confirm and approve presidential activity. Federalism dilutes federal power even more. And more particularly, the Twenty-Second Amendment now limits presidential terms. No president can serve longer than two four-year terms.

We have, in more recent years, come to expect much more from our president. The President of the United States has to wear many hats. Today's modern president is expected to fulfill many different roles. These roles include:

1. Chief Executive – the President oversees the vast powers of the United States government. Ultimately the President takes responsibility for governing. When times are good the President receives praise but when they are bad he is left with the blame. The President's closest political and policy advisors are to be found in the White House Office, sometimes called the Executive Office. Members of the White House Office are generally drawn from the President's campaign. As chief executive the President is called upon to make the final decisions in all public policy matters facing the nation.
2. Commander-in-Chief – The constitution created a military that would be lead by a civilian. The Framers hoped that such a set up might make war less common. The President of the United States, a civilian, is in charge of our entire military. Congress declares war but the President mobilizes troops at his command. First strike capabilities are not checked or balanced by any other branch of government. The President of the United States can launch a nuclear strike at any time, for any reason. He is the commander-in-chief.
3. Chief of Party – Chief of Party is an informal power. There is no mention of this role in the United States Constitution. Though political parties are not mentioned in the Constitution, they undeniably play an important role in our government. As Chief of Party the President oversees electoral strategies, issues, agendas and public policy priorities. The President also plays a major role in raising campaign money for candidates from his party. When the majority of Congress shares the same party as the President it is called a unified government. When the two are different it is called a divided government.
4. Chief of State – This may be the President's most esoteric role. Yet some would call it the most important. This role is primarily ceremonial. As Chief of State the President serves as the embodiment of America. When there are important occasions around the world to attend our President goes. When important visitors come to America our President serves as host. When we honor our heroes the President awards them. If there is a solemn event our President speaks to the nation to console us. Throughout history the King played this role. We have no king. The stand in for Chief of State is our President. Our president is "first citizen."
5. Chief Legislator – Though the Congress is given primary responsibility for writing laws our president serves as Chief Legislator. The power of veto, the power to reject laws, is given solely to the president. Fewer than 4% of presidential vetoes are overridden. In addition the constitution requires the president to give annually a State of the Union address. Often this is a legislative agenda for the year. Through his bully

pulpit no single person in our government is situated better to influence the legislative process than the president of the United States.

6. Chief Diplomat – One of the clearest powers granted to the president is his authority in foreign policy. Appointing ambassadors, receiving foreign guests and designing treaties with other nations is a fundamental part of a president's term. The State Department along with the Secretary of State completes much of this work. However, the president conducts the highest levels of negotiations. The president makes agreements with foreign powers. Formal treaties require Senate approval but executive agreements do not. As globalization spreads more and more around the world the role of Chief Diplomat takes on greater and greater importance.

When looking at these roles it is hard to imagine that our Founders wanted a weak President. The Framers may have feared monarchy as much as anarchy but they also understood the necessity of creating an energetic President. This type of President had strict limits but could respond to national crises with imminent effectiveness.

Of course different perspectives on presidential power, ranging from a limited to a more expansive interpretation, continue to be debated in the context of contemporary events. Yet presidential power, today, is undeniable. According to an authority on presidential power,

*The modern president sits atop a vast military and civilian bureaucracy capable of generating laws, adjudicating disputes, and executing policy. No other governing officer has available such an immense range of resources and legal tools to shape the everyday lives of Americans. No other governing office is as visible a representation of Americans. No other governing office is as visible a representation of American constitutional aspirations. Presidents shape not only specific national policies but also normative conceptions of constitutional meaning, each capable of mobilizing people and resources. Moreover, through the constitutional visions they articulate, presidents seek legitimacy for the practices that further their policies. Rooted in constitutional claims, new policy directions find legitimacy in their coherence with our constituted past. A political reward for winning the presidency is the ability to use the office's substantial public voice to persuade others to see the national community in a way that furthers the office holder's preferred vision. Marshaling party and patronage, the modern president has the ability to communicate to the American people through many voices utilizing all the tools of modern media communications. In turn, when people seek government action, the president is the most direct recipient of the public's attention.*

The U.S. Constitution may be ambiguous when it comes to enumerating presidential power. But history, experience and even contemporary events leave little doubt that the office of president was and is an office filled with great energy.

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

Even Abraham Lincoln understood the power of his brand. "Perception is everything," he said. "One of the most conspicuous trends in the development of the modern presidency," according to political science, "is the emergence and growth of the plebiscitary presidency... Contemporary presidents engage in a permanent public campaign to promote legislative priorities." Teddy Roosevelt called it his bully pulpit. Whatever you

call it, today's presidents rely upon public speeches, polls, extensive travel around the country and social media to set the national agenda. The ever present need for rhetorical appeals along with communication technology have changed the president's relationship with the national constituency and the other branches of government.

Edward Corwin, noted political scientist, rooted presidential authority in the rather limited formal powers as found in the text of the U.S. Constitution. In contrast, Richard Neustadt, another noteworthy scholar, posited presidential power and authority in the ability to master certain informal powers. This meant presidents could successfully dictate policy priorities through the art of persuasion. Presidents, therefore, greatly influence government outcomes through strategic bargaining with policy makers and gaining public approval through high profile events. Recent presidents have traveled more, given more speeches, made appearances on highly rated television programs and utilized a variety of social media platforms. Public approval, it has been argued, gives presidents leverage but not control. Such leverage, however, has made the modern president more powerful. It has dramatically changed the relationship with both national constituents and players in the other branches.

The Constitution requires presidents to give an annual State of the Union address. Traditionally this was an important agenda setting moment. It still is. Yet today a 24/7 media cycle has allowed presidents to promote a different agenda each and every day. All types of media cover presidential travels. Speeches are televised and posted on social media. Other modern technologies like Facebook and Twitter make presidential movement and statements ubiquitous. All of these communication outlets allow the president to become a first responder. They also let the president mold and make stories. These pseudo-events go a long way in explaining how presidents today build public approval and therefore advance their political agendas.

Examples are plentiful of presidents practicing this type of agenda setting. Woodrow Wilson, even before he entered the White House, considered that if a president could "rightly interpret national thought and boldly insist upon it, he (would be) irresistible." Ronald Reagan's ability to master these skills earned him the title, "The Great Communicator." Few presidents, however, were as intentional about employing public opinion as an empowering agent as Bill Clinton. During his campaign in 1992, a "war room" was created to coordinate activity. A similar "war room" was set up in the White House to coordinate agendas, legislative priorities, political battles and administrative rule making. In Clinton's "war room" the rules of engagement were designed to fight critical budget battles as well as fights for NAFTA, Health Care and the Reinvention of Government. The Clinton Administration did not win all of these battles but they were able to call upon high public approval to ward off Republican inquisitors seeking to remove him over a sex scandal. Demonstrably presidents use communication technologies to influence critical constituencies.

Michael Novak has written, "If we are to reform the presidency, the heart of the matter is the president's power over reality, his symbolic power. The social reality of the U.S. cannot be left to definition by one man alone." Teddy Roosevelt had his bully pulpit. Obama had Snapchat. Trump Twitter. Presidents are uniquely positioned to move political agendas by drawing attention to national priorities and therefore pressuring policy makers to act accordingly. The Founding Fathers may have envisioned an energetic chief executive but they never would have imagined a plebiscitary presidency. Nor would they have understood what a recent Google executive stated, "If you want to liberate a government, give them the Internet." Communication technologies along with social media have changed the relationship between "we the people" and their government. Not sure who has the upper hand. Google it.

## **BIG IDEA: Constitutionalism**

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

Article III of the U.S. Constitution did not say much. It established a judicial branch but left the details out. How things have changed. At the time our constitution was ratified Alexander Hamilton, in Federalist 78, referred to the United States judiciary and its Supreme Court as “the least dangerous branch.” It did not take long before Alexis de Tocqueville recognized that “scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.” Today the federal judiciary led by the United States Supreme Court resolve our most vexing political quandaries. **The design of the judicial branch protects the Court’s independence as a branch of government, and the emergence and use of judicial review remains a powerful judicial practice.** Our least dangerous branch has evolved into our most potent political player.

The weapon that propelled the federal judiciary into the political limelight is judicial review. The precedent of judicial review was established in the courts case *Marbury v. Madison* (1803). Chief Justice John Marshall wrote famously, “It is emphatically the province and duty of the Judicial Department [the judicial branch] to say what the law is.” In other words, the court would be the final arbiter in all-constitutional matters. The federal judiciary has the authority to rule on the constitutionality of all government activity on a case-by-case basis. This gives the federal judiciary tremendous power.

Legal scholars debate whether or not judicial review was anticipated by our Founding Fathers. Perhaps it was the vague wording of Article III of the United States Constitution that permitted this expansion of judicial power. Clearly judicial review is a major check on the power of other governing institutions including state governments. Judicial review has its critics. Some have called it “alien to the constitutional design.” Others have claimed this expansive power has created “politicians in robes.” Most notably, Alexander Bickel found this judicial power to invalidate legislation as counter to democratic principles. He argued,

*Judicial review is a counter majoritarian force in our system...When the Supreme Court declares unconstitutional a legislative act...it thwarts the will of representatives of the actual people of the here and now.*

Protection against the tyranny of the majority has always been a central aim of our legal system. Irrespective of reasonable debate, judicial review is the primary tool to this end. Our Supreme Court is “a critical bulwark against tyranny.” The result is often tension between the branches. A critical example of this was when the Supreme Court ruled a number of Franklin Roosevelt’s New Deal policies as unconstitutional. The legitimacy of our system of checks and balances was severely tested during this period.

The supremacy clause as well demonstrates how the judiciary checks the power of other institutions and state governments. *McCulloch v. Maryland* (1819) established the supremacy of the national government. In this case the court recognized the necessary and proper clause as authoritative when creating a national bank despite the constitution’s silence on the matter. This case would have far reaching consequences in the battle between the national government and the states. When disputes arise over the proper balance of federalism, the supremacy clause typically prevails in favor of the national government.

The principle of legal standing can also demonstrate how the judiciary checks the power of government. Cases that are heard in the U.S. Supreme Court must first show standing. Standing means that there is a constitutional question at stake. We are a nation of law, not men. Under the Court’s supervision, the principle of standing holds our governing officials to a legal standard and not merely personal whim.

Judicial review has empowered the court far beyond what many think the original constitution had intended. Used rarely at first, judicial review is now used quite frequently. Some might think this activism would stir public opinion against the court. On the contrary more and more Americans are not bothered by judicial activism. A powerful court is no longer feared.

Former Chief Justice Charles Evans Hughes wrote, “We are under a Constitution, but the Constitution is what the judges say it is.” This kind of court confidence might have surprised Alexander Hamilton but it does not seem to bother you and I. The federal judiciary is no longer “the least dangerous branch.” It may be the most dangerous. As we learn more about the dysfunctions of our political institutions perhaps a powerful court is just what we need.

## **2.9 Explain how the exercise of judicial review in conjunction with life-tenure can lead to controversy about the legitimacy of the Supreme Court’s power.**

The once “least dangerous branch” now faces the prospect of possessing too much power. No longer hindered by a “political thicket,” the Supreme Court routinely exercises its expanding authority to provide meaning to just about every issue facing our time. The modern Supreme Court has been accused of aiding and abetting “the end of democracy.” Through judicial review the Court can somewhat innocuously invalidate the political process. Some scholars have written about a “judicial usurpation of politics.” When combined with the life tenure given to federal judges, the Supreme Court’s power has grown increasingly controversial even to the point of challenging its legitimacy.

The bedrock of the American legal system is justice for all. Throughout our history we have committed to equality under the law. An important pillar of this system is the use of legal precedence. Precedents and stare decisis play an important role in judicial decision-making.

Precedent simply means that once a court acts in a certain way there is an expectation that all who face similar circumstances will therefore be treated accordingly. In Latin this is referred to as “stare decisis.” This literally means “let the decision stand.” Rooted in fairness, the practice of stare decisis assures that every citizen, regardless of race or class, is treated the same. Much of this is borrowed from English common law. In this way our law lives organically. As courts rule in individual cases our law and its protections also grow. This is another way in which our judicial system, through informal means, continues to grow in its authority and importance.

Controversial or unpopular court decisions illustrate how judicial review can lead to challenges of the Court’s legitimacy and power. Few cases have been more controversial than *Citizens United v. FEC* (2010). In this case, a Court majority allowed for American corporations to participate in donating independent expenditures during national campaigns. The perception that corporate-America and its special interests play a disproportionate role in our government seemingly received an endorsement by our highest Court. Many were outraged, including the President of the United States. Just days after the *Citizens United* decision was announced, President Obama in his State of the Union speech said,

*With all due deference to separation of powers...Last week, the Supreme Court reversed a century of law that I believe will open the floodgates for special interests – including foreign corporations – to spend without limit in our elections.*

Sitting just below the president that night was Judge Samuel Alito. Upon hearing the president’s rebuke, Alito was clearly seen mouthing the words “not true.” Right or wrong our Court today is clearly seen as acting overtly political. Dispute over court nominations bear witness to this fact. In the end the Court’s legitimacy is challenged.

Another highly controversial decision in recent years was *District of Columbia v. Heller* (2008). In this case the Court seemingly turned its back on decades of case law regarding the Second Amendment. Writing for the majority Justice Scalia wrote, “There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.” Soon this precedent would be used to invalidate laws throughout the country that attempted to limit the sale of firearms. In dissent Justice Stevens wrote,

*The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms. Specifically, there is no indication that the Framers of the Amendment intended to enshrine the common-law right of self-defense in the Constitution.*

It appeared the Court was imposing its conservative will upon the wishes of state and local governments hoping to stem the outbreak of an epidemic of gun violence. The Court’s authority to use judicial review had empowered it to reverse decades of accepted law. The stature, prestige and therefore legitimacy of the Court was both weakened and compromised. Rather than serving as objective arbitrators over our most serious legal disputes, the Supreme Court is increasingly seen as just another politically partisan institution.

The legitimacy of the Court often gets embroiled in the debate over how judges go about making their decisions. Controversy about the Supreme Court’s decision-making power is illustrated by the ongoing debate over judicial activism versus judicial restraint.

The process of making a judicial decision is called jurisprudence. Ideally, we all wish to believe that “justice is blind.” We hope that judges base their opinions upon what the law says and not on personal bias. There are two primary schools of jurisprudence.

One school of jurisprudence is called judicial restraint. These strict constructionists attempt to reserve their judgments to the original intent of the law. They often defer to the other branches and try to avoid making politically explosive decisions. Today conservatives tend to consider themselves practicing judicial restraint.

Another school of jurisprudence is called judicial activism. Activist judges see themselves as the last resort for the powerless. They are not afraid to see the constitution as a living document. Furthermore when Congress writes vague laws it is the Court, they say, that needs to clearly define the government’s intent. Today liberals tend to support judicial activism.

Regardless of one’s jurisprudence, there is an expectation that the Court follows *stare decisis*. This is a Latin phrase that means, “Let the decision stand.” In our legal system court precedent is the basis by which other like-minded cases are decided. In this way we all receive equal justice.

When the court does deviate from precedent it can be accused of becoming a policy-making institution. Here again we see why the court is no longer “the least dangerous branch.” The Court has evolved into an important political force. It is for this reason that court appointments have become major political battlegrounds. Presidential appointments can change the ideological composition of the Court. This in part

can replace old precedents with new precedents. It is for these reasons that the exercise of judicial review in conjunction with life-tenure can lead to controversy about the legitimacy of the Supreme Court's power.

## **2.10 Explain ways other branches of government can limit the Supreme Court's power.**

The Court's power has also evolved over time due to certain key landmark precedents. In addition to *Marbury* and judicial review, *McCulloch v. Maryland* (1819) established national supremacy. In the Fulton steamboat monopoly case, *Gibbons v. Ogden* (1824), the court reinforced national supremacy by ruling broadly on the Constitution's commerce clause. Today the most notable issues facing the court revolve around civil liberties and civil rights. Nevertheless there are many other important issues that our court faces. Yet with all of this newfound authority, we should not forget that like other institutions in our government the Court faces serious checks on its power. The United States Supreme Court is restricted in many different ways.

One significant check on the Supreme Court is its lack of enforcement. If court decisions deviate too far from national consensus the American public will simply not follow the opinion. Impeachment is another check but rarely used and never used successfully on a Supreme Court judge. Perhaps the most significant check on the Supreme Court is public opinion. The court is apprehensive to lose its prestige by ruling in ways that dismiss what broad majorities hold. In this way the Court is held in check.

In more traditional ways the other institutions of government can also limit the Supreme Court's power. Congress can pass legislation to modify the impact of prior Supreme Court decisions. Seemingly Court decisions are final. They cannot be overturned by Congress or vetoed by the president. Political science tells us, however, that..

*On both statutory and constitutional questions, Congress has significant power and responsibility to respond to Supreme Court decisions. On statutory matters, there is no question that Congress may negate a Supreme Court interpretation by enacting new legislation...Congress, for example, may enact legislation that seeks to limit the reach of Supreme Court rulings. After the Supreme Court upheld abortion rights in *Roe v. Wade* (1973), Congress blocked the use of Medicaid and other federal funds to pay for abortions. Congress also offered religious organizations federal funds to promote sexual abstinence as a method of birth control.*

The will of the people, through their popularly elected Congress, can moderate and in some cases alleviate the sting of Court opinions. Article III of the U.S. Constitution also gives to Congress the authority to control the Court's appellate jurisdiction. In no small way our Congress can impact the Court's docket. Acts of Congress can impact the cases the Court is allowed to hear. Our Congress can impose real limits on Court power.

So too can our president limit the Court's power. The president along with state governments can ignore Supreme Court decisions. Recent political science has postulated,

*We live in a legal culture besotted by the myth of judicial supremacy...According to this myth, the Constitution means whatever five Supreme Court justices claim it means, and all other governmental actors are duty-bound to abide by that supposed meaning.*

This argument claims that presidents are not duty bound by the Constitution to enforce court opinions. The Obama Administration fought against Court precedent in the area of Voter ID laws and chose not to enforce previously accepted federal cannabis policy. Filling Court vacancies is another way in which presidents can impact Court outcomes.

Judicial appointments and confirmations also check the Supreme Court's power. The constitutional process on paper seems simple enough. The president of the United States appoints and the Senate confirms. Yet rarely is it this simple, especially when the president and the Senate majority are from different political parties.

Presidents attempt to pack the court with judges who share his/her political bent. This usually involves prospective judges passing a president's litmus test. Every president typically has an issue or two that defines their respective political party. For Republicans a litmus test issue might be holding a pro-life position. Democratic presidents might demand prospective judges to hold broad commerce clause opinions. In either case the opposing party always complains. The opposition reminds the American people that justice is supposed to be blind. The Court is not supposed to reflect our political arena. It is for this reason that our founders gave our Supreme Court judges life terms. They are appointed and not elected. Nevertheless the battle over judgeships in no small way can limit the Court's power.

Finally, it can be argued that federalism itself imposes limits on Court power. Through federalism Constitutional amendments are enacted. Though Congress proposes amendments, they are ratified by state legislatures. Infrequently used, the amendment process is nevertheless an important check on Court authority to change policy in American political life. No one is calling the Supreme Court today "the least dangerous branch." Yet our Court is not really supreme either. Today's judicial branch faces significant limits. Our system of the separation of powers still works. So do checks and balances. Looking under the hood of our two hundred year old constitution shows an engine that still works.

## **BIG IDEA: Competing policy-making interests**

### **2.11 Explain how the bureaucracy carries out the responsibilities of the federal government.**

When government is asked to do something – and it is asked a lot – somebody has to do it. Democratic governments have been instituted to serve the people. The Legislative Branch and their respective legislatures respond to the needs of the people by writing laws. In our United States government Congress is responsible for creating public policy. The Executive Branch is given the primary function to implement those policies. The President of the United States and his staff execute the laws. This is no small task. The large arm of the executive branch responsible for translating laws into action is called the Federal Bureaucracy. The Federal Bureaucracy is the government means to a public policy end. When we want our government to do something, it is the Federal Bureaucracy who is responsible for doing it. The Federal Bureaucracy transforms our wishes into realities. The Federal Bureaucracy transforms Federal policy into action. Those individuals who transform public policy into actionable services are Federal bureaucrats. As the action figures in our government they come under frequent criticism and attack. Characterized by its hierarchical organization and specialization, the ever-growing Federal Bureaucracy has been asked to address more and more. **The federal bureaucracy is a powerful institution implementing federal policies with sometimes-questionable accountability.** With its size comes inefficiency and unresponsiveness making us wonder if we can live with it. One thing about the Federal Bureaucracy is certain, however, we cannot live without it.

The Federal Bureaucracy is characterized by its organization, specialization and expertise. Whereas patronage appointments –that is by friends and patrons of the president – once exclusively staffed the executive branch the Civil Service Act of 1883 established the merit system. Today the vast majority of the Federal Bureaucracy is made up of career civil servants.

The Federal Bureaucracy tends to be organized hierarchically. Underneath the President of the United States and his White House staff and executive office are the Cabinet Departments.

Each Cabinet Department has a head, usually called a Secretary, with multiple levels and layers of responsibility. The most noted Cabinet Departments are:

- The State Department – responsible for foreign policy
- The Treasury Department – responsible for monetary policy
- The Department of Defense – responsible for national security

Yet other Cabinet Departments are growing in stature as federal priorities change:

- The Department of Education is trying to reform public education in America
- The Department of Health and Human Services is implementing many changes in the way health care will be provided to millions of Americans.

In addition to the Cabinet Departments, the Federal Bureaucracy is also made up of Independent agencies like NASA, the CIA and the EPA.

- NASA, the National Aeronautic and Space Administration, studies and explores regions outside of our atmosphere.
- The CIA, the Central Intelligence Agency, gathers and interprets foreign intelligence in order to keep us safe at home.
- The EPA, the Environmental Protection Agency, develops policies and programs to clean our environment.

The Federal Bureaucracy is also made up of certain government corporations like the United States Postal Service and Amtrak: one delivers our mail and the other delivers us to our destination via rail.

The Federal Bureaucracy is organized in order to deliver government services as efficiently as possible. Considering the number of tasks and the diversity of constituents this is not always easy.

When given the responsibility to help execute the laws, executive departments, agencies, commissions and government corporations are called upon to perform numerous tasks. In no small way they help to write regulations, enforce existing law and adjudicate disputes. The functions of our three branches, from writing, enforcing and interpreting laws, can all be found in the day-to-day operations of the federal bureaucracy. In that way our federal bureaucracy plays an important role in national policy-making.

Congress often intentionally passes vague laws. This gives either intended or unintended power to federal bureaucrats who are then left to interpret these laws in the field. In other words, regulators of the federal government are often given legislative authority.

For example, the Environmental Protection Agency can write rules and regulations that affect and impact air quality. An Act of Congress authorizes them to do so and may even provide the necessary funding but the details are written and enforced by bureaucrats.

For many this is a direct affront on constitutional government. In essence, it is argued, unelected government workers often act without sufficient checks.

Needless to say it puts every citizen on guard as critical watchdogs overseeing government activity that often goes unnoticed.

Adjudication of disputes appropriately falls upon our court system. Yet as our vast bureaucracy has grown exponentially so too has its power to use its discretionary authority to determine resolutions. These administrative tribunals are not mentioned in the U.S. Constitution. Nor will you find much about them in the political science literature. The federal bureaucracy exercises more and more judicial authority.

For many this is worrisome. Some argue that a shadow government, lying outside of normal checks and balances, often rules on our most important disputes. Keeping an eye on these activities is not easy.

An example of one such tribunal is the Interstate Commerce Commission. These appointed officials are responsible for enforcing laws that govern transportation which often include the regulation of shipping rates. When disputes arise the Commission has the authority to render a decision with the authority of law.

This is but another example how the aggrandizement of the United States government continues to pose challenges that the framers had not anticipated.

Iron Triangles, or issue networks as they are now called, are not easy to understand. They are nevertheless the keys to understanding how public policy is both made and sustained. Public policies are a byproduct of relationships between Congressional committees, related interest groups and specific executive agencies. Because all three groups share a particular interest they guard specific policies from outsiders. This makes it nearly impossible to change specific government policies despite common sense objections. Iron Triangles become entrenched in time and help explain why it is so difficult to reduce the size and scope of the national government.

Political patronage, civil service and merit system reforms in promoting professionalism, specialization and neutrality, all impact the effectiveness of the bureaucracy. While most of the federal bureaucracy is comprised of career civil servants, there are enough direct political appointees to make for both political and partisan clashes. Remember it was Ronald Reagan who said “government is not the solution . . . government is the problem.” Over time Americans have grown frustrated with the unresponsiveness of the Federal Bureaucracy just as Max Weber warned over one hundred years ago.

When government is asked to do something – and it is asked a lot – somebody has to do it. Those individuals who transform public policy into actionable services are Federal bureaucrats. As the action figures in our government they come under frequent criticism and attack. Characterized by its hierarchical organization and specialization, the ever-growing Federal Bureaucracy has been asked to address more and more. With its size comes inefficiency and unresponsiveness making us wonder if we can live with it.

One thing about the Federal Bureaucracy is certain, however, we cannot live without it.

## **2.12 Explain how the federal bureaucracy uses delegated discretionary authority for rule making and implementation.**

Bureaucratic agencies are given discretionary and rule-making authority to implement policy. Political science tells us,

*Bureaucrats are powerful political actors because they have some flexibility as they interpret the law and implement public policy. For instance, police officers overlook some offenses during their shifts and welfare caseworkers decide the order and speed with which applicants receive their benefits. Of course, the actions of police officers and caseworkers, like all bureaucrats, are at least theoretically bound by the law. The point is not that bureaucrats are rogue actors but that they have some latitude as they make decisions.*

Remember bureaucrats are those people empowered to carry out the will of the people as defined by public policy. Somebody has to do it. Yet discretionary authority can be dangerous. Rule making without adequate checks can most certainly lead to corruption and abuse.

Put in real terms, the various Executive Departments of the federal government have broad discretion to act. Acting like legislators, chief executives and the courts; the U.S. Department of Agriculture can manage favorably controversial ethanol policies; the U.S. Department of Defense can modernize weapon systems; the U.S. Department of Homeland Security can initiate contentious meta data collections; the U.S. Department of Transportation can administer massive infrastructure improvement plans; the U.S. Department of State can direct clandestine foreign intelligence operations; the U.S. Department of Veteran Affairs can oversee vast health care networks; and the U.S. Department of Education can help to transform classrooms in remote villages and hamlets of America. The story of America can be told as the aggrandizement of the federal bureaucracy.

This potential danger has authorized what some have called an unlawful administrative state. Philip Hamburger has recently written,

*After absolute power was defeated in England and America, it circled back from the continent through Germany, and especially through Prussia. There, what once had been the personal prerogative power of kings became the bureaucratic administrative power of the states. The Prussians were the leaders of this development in the 17th and 18th centuries. In the 19th century they became the primary theorists of administrative power, and many of them celebrated its evasion of constitutional law and constitutional rights.*

Yet when government is asked to do something somebody has to do it.

As our rights have expanded so too has the responsibility of our government to protect those rights. The aggrandizement of the federal government can be explained. "We the people" have grown more demanding. We expect more and more from our government. Therefore our administrative state has expanded its authority.

*Agencies of the executive branch write, issue, and enforce many kinds of rules under authority of statutes passed by Congress. Many rules concern the agencies' own operations, such as those governing civilian and military personnel, the procurement of goods and services, the management of parks and prisons, and the administration of border controls and immigration policies. Others set forth the terms of grants and other payments to state and local governments and to private business corporations, organizations, and individuals. The agencies operate their own programs for adjudicating disputes under these rules, from immigration to Social Security disability benefits, usually with rights of appeal to independent, Article III courts.*

Our federal bureaucracy, at various times, serves as a surrogate for all three branches of government.

But to say our bureaucracy has wide discretionary power does not mean it acts arbitrarily. Nor does it go unchecked. Policies, standards and procedures are in place. Congressional oversight is constant. Investigative journalism also serves to hold our administrative state accountable. And certainly the Courts have played their part.

The Supreme Court, in fact, has defended bureaucratic discretion in just about every case where it was challenged. And when Congress attempted to empower itself to veto bureaucratic decisions the Court ruled such authority unconstitutional. In the case *INS v. Chadha* (1983) the Court ruled the legislative veto unconstitutional. In doing so Chief Justice Burger provided an important civics lesson in his majority opinion:

*The Constitution sought to divide the delegated powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial, to assure, as nearly as possible, that each branch of government would confine itself to its assigned responsibility. The hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power, even to accomplish desirable objectives, must be resisted.*

*The choices we discern as having been made in the Constitutional Convention impose burdens on governmental processes that often seem clumsy, inefficient, even unworkable, but those hard choices were consciously made by men who had lived under a form of government that permitted arbitrary governmental acts to go unchecked. There is no support in the Constitution or decisions of this Court for the proposition that the cumbersomeness and delays often encountered in complying with explicit constitutional standards may be avoided, either by the Congress or by the President. With all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution.*

*We hold that the congressional veto provision ...is severable from the Act and that it is unconstitutional.*

The federal bureaucracy uses delegated discretionary authority for rule making and implementation. Some worry this invites abuse. Doesn't wide discretion challenge the ideal of a limited government? Then again, the Constitution demands government to provide certain protections. The executive branch has been delegated to enforce those laws passed by Congress. Somebody has got to do it...and our bureaucratic agencies are happy to.

## **2.13 Explain how Congress uses its oversight power in its relationship with the executive branch.**

Writing laws is but one important function of Congress. Another important duty of Congress is to ensure that executive agencies implement legislation as intended. This oversight fulfills Congress' vital check on the other branches of government. This "vigilant oversight of administration," as Woodrow Wilson wrote, has been deemed the "watchdog on the Hill." The oversight function of Congress is played out through its power of the purse and through investigative committee hearings.

The most pronounced and distinct constitutional authority given to the U.S. Congress is the power of the purse. Often maligned and disparaged, Congress nevertheless is granted the power to raise revenue and spend it on public projects that advance democratic interests. The power of the purse should be seen for what it is worth. Congressional appropriations limit government as much as they empower it.

*In dividing the federal government into three parts, the Constitution gives each branch tools 'to resist encroachments of the others.' One of Congress's most potent strengths, particularly with respect to the executive branch, lies in its control over the money of the federal government. Article I, Section 8 begins its enumeration of the powers delegated to Congress with the 'Power To lay and collect Taxes, Duties, Imposts and excises'; it follows immediately with the power 'To borrow money on the credit of the United States.' Article I, Section 9 commands that 'No money shall be drawn from the Treasury, but in Consequence of Appropriations made by law.' Article I, Section 7 prescribes the exclusive process for making a law, which commences with positive action by both Houses of Congress. Thus, unless Congress passes laws to impose taxes, authorizes borrowing or appropriates funds, the executive branch can neither take money from the citizenry nor spend money on behalf of the government.*

This fiscal discretion given to Congress has wavered throughout history. As we have seen, it is difficult for Congress to act in one accord. During national crises like economic depressions and wars Congress has deferred to strong executive authority. They have had to reign in executive authority through specific pieces of legislation.

For example, in 1974 Congress enacted the Budget and Impoundment Control Act. Its primary purpose was to restore Congress' proper place in the federal budgetary process. Numerous protocols and committees were formed to shore up Congressional authority over presidential actions. The Congressional Budget Office (CBO) was also created to provide independent financial estimates and long-term outcomes for prospective public policies. More recently the public has demanded from Congress an attempt to reign in fiscal irresponsibility. Congress, therefore, has implemented a number of Pay-as-you-go provisions along with complicated sequester agreements in order to control the expansion of government. The power of the purse gives Congress tremendous authority. It should be seen, when used right, as a fundamental means of checking, balancing and limiting the national government.

Democratic accountability depends upon a robust system of oversight. James Madison called the separation of powers with its implied oversight duty "the sacred maxim of free government." Congress has fulfilled its oversight duty with varied success. For some this oversight duty has served as a proper check on the natural tendency toward abuse of power in the executive branch. Others, however, claim that Congress has failed in its attempts to adequately hold the president accountable.

Political science agrees that skillful oversight requires both proper expertise and clear budgetary power. Today's Congress is accused of lacking both. A case in point is the oversight of executive branch intelligence agencies following 9/11. Testifying before the Senate Select Committee on Intelligence, Lee Hamilton in 2007 stated:

*To me, the strong point simply is that the Senate of the United States and the House of the United States is [sic] not doing its job. And because you're not doing the job, the country is not as safe as it ought to be... You're dealing here with the national security of the United States, and the Senate and the House ought to have the deep down feeling that we've got to get this thing right.*

Congressional oversight may in fact be crucial not only to the very success of government but of our way of life as well.

Congressional oversight is not easy. There are many different access points to measure. There are multiple players to consider and assess. It is not always easy to know when oversight is effective. At its core oversight requires Congress to evaluate to what extent the executive branch is in compliance with the law of the land. And there lies the problem. All too often legislation is written in vague terms. Executive agencies are given broad discretionary powers. As we saw in our post 9/11 worlds, partisanship played a predominant role in Congress' check of presidential power and authority. Whereas Republicans turned a blind eye to Bush policy initiatives, Democrats voiced strong opposition regardless of the logic. Committee hearings were poisoned from the start.

A recent political scientist has claimed that Congress' policing of executive activity looks more like fire fighting. Legislators, it is argued, "jump into action" only when enough alarm is raised by outside groups. It appears then, that if we want an attentive Congress "we the people" will need to be more attentive. Greater expertise must be demanded from our Congress. Properly using its power of the purse also authorizes Congress to interrupt the undaunted courage of unilateral executive action. Congress is more than just a lawmaker. Congress represents us by not only passing good public policy but also by holding the rest of government accountable. As Madison wrote in Federalist 51, "If men were angels, no government would be necessary." We may not have any angels looking over us, but we certainly need somebody looking over us.

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

Sitting in plain view atop President Harry S Truman's Oval Office desk sat a simple sign, "The buck stops here." Truman was not the type of president to skirt responsibility. Decisions made by the executive branch through its agencies and departments were ultimately acting as agents of the president. Truman saw himself as responsible. Yet when leaving the office of President Truman said to Eisenhower, "[You will] sit there all day saying do this, do that, and nothing will happen." Executive branch agencies and departments often act beyond the direct control of the president. Nevertheless many political scientists have labeled the president both a central "overseer and decider" of executive branch activity. Much of the time this means carrying out the partisan goals of the sitting president.

The framers established a unitary executive. This provided for certain inherent powers. Article II, Section 1, Clause I of the U.S. Constitution states: "The executive power shall be vested in a President of the United States of America." Whether unwittingly or not, the Vesting Clause allocated to the president powers over policy making by all executive agencies and departments. Priorities of the president can quickly become the priorities of our government. This inherent power, as some have argued, allows the president "to act in the absence of statutory authorization."

The President is sworn in by taking the following oath of office: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States." There is plenty of evidence to suggest that our founders intended to empower that oath with certain affirmation of power. The influential writings of John Locke described a need for a strong and energetic president:

*It is not necessary – no, nor so much as convenient – that the legislative should be always in being; but absolutely necessary that the executive power should, because there is not*

*always need of new laws to be made, but always need of execution of the laws that are made...[The power to act] according to discretion for the public good, without the prescription of the law and sometimes even against it, is that which is called prerogative.*

The English King held certain prerogative powers “for the sake of unanimity, strength, and dispatch.” John Marshall referred to the President as “the sole organ of the nation.” More recently it has been argued that the Constitution

*...Gives presidents the power to control their subordinates by vesting all of the executive power in one, and only one person: the president of the United States.*

A unitary president is one of the most agreed upon legacies of the Constitutional convention in Philadelphia in 1787. In real terms this means that the heads of executive agencies and departments are the political actors of the president. The buck does not just stop on the desk of the President it begins there as well.

Further evidence of a president’s political power over the executive branch agencies and departments is the unilateral authority given for removal of certain personnel. Throughout our history Congress has attempted to usurp certain aspects of this executive power. The Court, however, has invalidated attempts to weaken the president’s removal authority in the case *Myers v. United States* (1926). Both law and tradition have firmly placed our unitary chief executive at the top of the policy-making food chain.

As “overseer and decider”-in-chief a president’s power over the vast federal bureaucracy was enhanced with the creation of the Office of Information and Regulatory Affairs. Created by an act of Congress in 1980, this agency within the president’s Office of Management and Budget (OMB) plays a crucial role in assisting our unitary executive. It has been called “an information aggregator.” If knowledge is power this agency coordinates a wide spectrum of issues faced by our federal bureaucracy each and every day and applies consistent advice. Working closely with the Executive Office, the Office of Information and Regulatory Affairs (OIRA) serves as a surrogate for the president. Agencies such as these serve as a guardian of the political wishes of any and all sitting presidents.

Recent presidents have taken even more action to assure greater power and authority over executive branch agencies and departments. President Clinton in 1993 issued Executive Order 12,866. This had the sole purpose of improving the coordination and oversight of Federal regulation.

*With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.*

*Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered...*

This language may sound like common sense today, but it also sounds a whole lot like certain campaign promises made during the 1992 campaign. One of the pillars of the Clinton political agenda was a “reinvention of government.” This Executive Order was an attempt by the president to put his stamp on the actions and procedures of the executive branch at large.

Though it might sound like presidents are given a tremendous voice over executive branch activity, be reminded that the federal bureaucracy is made up of millions of workers. Billions of dollars are spent each and every day. The buck may stop on the presidents desk but there are still plenty more bucks to go around. This tension between our unitary executive and their attempts to control the federal bureaucracy will forever be a salient issue when studying American government.

Maybe Truman was right . . . on both accounts.

## **2.15 Explain the extent to which government branches can hold the bureaucracy accountable given the competing interests of Congress, the president, and the federal courts.**

Max Weber, a German sociologist who studied rational organizations in the 19<sup>th</sup> century, compared modern bureaucracies to well oiled machines. Each part has its own special unique role to play if the machine is working right. The problem, of course, is that we do not always operate like machines. We make mistakes. Interpersonal issues like political differences get in the way of our expertise. This is why over time bureaucracies have taken on a negative connotation. The size and scale of the Federal Bureaucracy has taken on proportions that are difficult to control and manage.

So how do we control the federal bureaucracy? Formal and informal powers of Congress, the president and the courts help keep the federal bureaucracy accountable.

First and foremost the executive branch tries to control itself. The President of the United States is the manager-in-chief. The Oath of Office assigns the President to “faithfully execute” the laws. This has meant that every presidency concerns itself with reinventing how the federal bureaucracy works. President Bill Clinton initiated a National Performance Review. This program required each federal agency to carefully reevaluate its mission statements and objectives. President George W. Bush went even further and tried to inject more of a business model to government services. He went so far as to introduce more and more privatization into the Federal Bureaucracy. This is one reason why the numbers of people directly working for the federal bureaucracy appears to be flat. Our government has increasingly out sourced its responsibilities. President Barack Obama, through Executive Orders, encouraged federal agencies to use “behavioral science” methodology in attempts to become more efficient. Reinventing government has always been well intentioned but realizing intended results are much more difficult to come by.

The legislative branch also plays an important role in controlling the federal bureaucracy. The U.S. Congress is given oversight authority of the federal bureaucracy. This involves holding public hearings in which various levels of the bureaucracy are asked to account for themselves. In addition to writing the legislation that creates federal agencies in the first place the Congress also controls the bureaucracy through its budget. The power of the purse is an important tool when disciplining the federal bureaucracy. Invariably, however, *iron triangles* are formed which reduce the impact of congressional oversight. Iron triangles are particular issue networks made up of congressional committees, federal agencies and special interest groups. Since they all share the same goals these respective iron triangles are protected from any serious reform.

The Supreme Court is our final arbitrator when exercising control over the federal Bureaucracy. Court cases arise that help to define the Federal bureaucracies’ rights and responsibilities. For instance in the Supreme Court case of *Wilder v. Virginia Hospital Association* (1990) the justices ruled that those eligible for federally assisted health care must have “reasonable access” to facilities of “adequate quality.” Rules such as these help the Federal Bureaucracy shape policy in accordance to the law.

Holding the federal bureaucracy accountable in the twenty-first century is confounded by a number of challenges including the rule of law, political conflicts and improbable crises. When combined with unrealistic expectations one can clearly see that the federal bureaucracy can hardly win. New challenges demand new solutions. Political science suggests,

*The best candidate for creating this new accountability layer is information. Government will need to learn and operate more like the Internet. Problems can appear on any node, and solutions need to be wired across multiple agencies. Answers need to appear as quickly as questions, and the questions and answers rarely repeat themselves. Not only does the existing rule of law fail to fit emerging policy problems. Government's emerging and inescapable problems require collaborative solutions that cut across organizational, sectoral and international boundaries. Government will need to connect with and solve these problems with boundary crossing strategies. Just as the Internet allows individuals with shared interests to connect, a problem driven/information based strategy can help government. It can help identify the resources that government needs to solve problems and plug the gaps in the government's regular organizational structure and its standard operating procedures – and in the existing rule of law.*

Sounds a whole lot like the *auxiliary precautions* Madison wrote about it Federalist 51:

*If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.*

Throughout this course will study the ark of power. It is an appraisal of American government and politics. Life is a power struggle. Collectively government reflects how we as a people resolve that struggle. The essence of our government has been codified in the words of the United States Constitution. Our limited government was and is rooted in historical tradition, theory, conflict and compromise. Both the writers of our constitution and the vast majority of voters today have settled upon a representative democracy. **A balance between governmental power and individual rights has been a hallmark of American political development.** Political disputes invariably collide at the intersection of power and rights, legitimacy and authority. If “we the people” are to overcome life’s struggles together, if our democracy is to succeed at all, it will depend upon putting into practice the knowledge and skills learned here.

The words of the wise seem appropriate here: *Life can only be understood backwards; but it must be lived forwards.* Look forward to exercising your voice in our political process. Act on your political sentiments even today. A two hundred year old document has empowered you. Here we have no kings, just citizens.