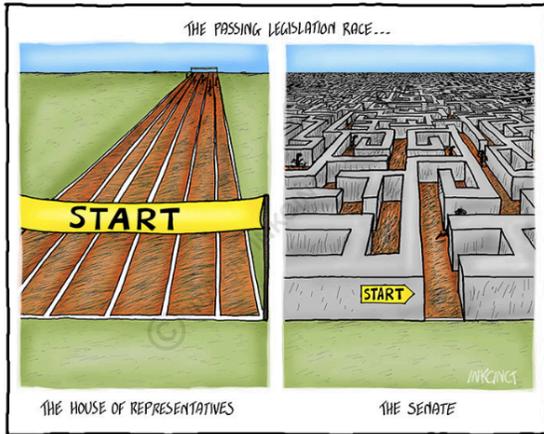


2.3 Congressional Behavior



ESSENTIALS

1. Congressional behavior and governing effectiveness are influenced by: Ideological divisions within Congress that can lead to gridlock or create the need for negotiation and compromise
2. Gerrymandering, redistricting, and unequal representation of constituencies that have increased partisanship and decreased accountability, partially addressed by such Court decisions as Baker v. Carr (1961) and Shaw v. Reno (1993)
3. Elections that have led to a “divided government,” including partisan votes against presidential initiative and congressional refusal to confirm appointments of “lame-duck” presidents of the opposite party.
4. Differing role conceptions of “trustee,” “delegate,” “partisan” and “politico” as related to constituent accountability in each chamber

1. What is the underlying idea of this cartoon?

2. What constitutional reasons and institutional rules make the legislative process difficult in the House and even more difficult in the Senate?

DEFINE **Gerrymandering** (differentiate between reapportionment and redistricting):

Find/List **three** egregious examples of gerrymandered Congressional districts (draw one):

Record the vote and primary opinion of the following Supreme Court cases dealing with gerrymandering

Baker v. Carr (1961)	Shaw v. Reno (1993)	Gill v. Whitford (2018)
		Benisek v. Lamone (2018)

DEBATE: Investigate how Senate Republicans blocked the Supreme Court nomination of Merrick Garland in 2016. Write down the essential facts. *Did Senate Republicans have the right to block Merrick Garland? Write a claim statement followed by three substantiating facts.*

Define and assess each of the following Congressional role conceptions:

Trustee	Delegate	Partisan
Examples	Examples	Examples

What role would you prefer if serving in the Congress? What is a **Politico**

SCOTUS COMPARISON

The basic premise of the political question doctrine is that the political branches of government are better equipped to handle and resolve certain types of questions than the federal courts. The doctrine's origins trace back to *Marbury v. Madison*, but the seminal case in which the Court articulated and applied the doctrine was decided almost fifty years later in *Luther v. Borden*. *Luther* arose out of an altercation in Rhode Island in 1841 due to resentment over the state's voting laws (which many believed to be too restrictive). After failing to achieve legislative reform, the supporters of wider suffrage held their own convention, ratified a new constitution, and declared that constitution to be the highest law of Rhode Island. When the leaders of the old charter government declared that all acts performed by the new government were illegal, supporters of the new government organized an armed rebellion. In the midst of this disturbance, the defendant, an officer of the charter government, broke into the home of the plaintiff, a supporter of the new government. The plaintiff sued for trespass, arguing that the creation of a new government in 1841 annulled the charter government and hence the defendant (who argued that the authority of the charter government justified his actions) acted without legitimate governmental authority. The case therefore presented the question of which government—the charter one or the new one—was the legal government at the time of the trespass.

The Court rebuffed the plaintiff's argument that it could decide that the new government annulled the old one, refusing to rule on the legitimacy of the competing governments. Chief Justice Taney pointed to Article IV of the Constitution (the Guarantee Clause) as authority for this position. Insofar as the Constitution allowed the federal government to "interfere in the domestic concerns of a State," Chief Justice Taney argued that it "treated the subject as political in its nature, and placed the power in the hands of [Congress]." Article IV therefore gave Congress the power of deciding "what government is the established one in a State," and only Congress could decide the proper means for fulfilling the terms of the Guarantee Clause. Once Congress decided on the legitimacy of a state government (for example, by admitting its representatives and senators), that decision bound "every other department of the government, and could not be questioned in a judicial tribunal."

Source: Franklin Sacha, "Excising Federalism: The Consequences of *Baker v. Carr* Beyond the Electoral Arena," *Virginia Law Review*, December 2015

Based on the information above, respond to the following questions.

- A. Identify a common constitutional principle used to make a ruling in both *Baker v. Carr* (1962) and *Luther v. Borden* (1849).
- B. Explain how the difference in facts led to a different decision in both *Baker v. Carr* (1962) and *Luther v. Borden* (1849).
- C. Explain how the outcome in *Luther v. Borden* (1849) demonstrates how public policy regarding political questions is affected by judicial review in the United States.