

## The Structure and Functions of the Government



The United States of America is a **democratic republic** or an **indirect government**. In definition, it means that when the people vote, they give the power to govern to their representatives.

The people of the United States of America are citizens under two governments: The National (Federal) Government and the State Governments in which they reside

The *Constitution of the United States of America* limits power by dividing it between the National (Federal) and State Governments. Both the Federal Government and the State Governments have their own special powers. In addition, they can share powers. This is called **FEDERALISM** and the table below illustrates the functions of each division.

<b>DELEGATED POWERS</b> (national government only)	<b>CONCURRENT POWERS</b> (both governments)	<b>RESERVED POWERS</b> (state governments only)
<p><b>Interstate commerce</b> <b>Foreign commerce</b> <b>Foreign relations</b> <b>Declared war</b> <b>Coins money</b> <b>Immigration</b> <b>Postal service</b></p> <p><b>IMPLIED POWERS</b> Congress can stretch the delegated laws (the “Elastic Clause”)</p>	<p><b>Taxation</b> <b>Borrowing</b> <b>Court Systems</b> <b>Penal (jail) systems</b> <b>Law enforcement agencies</b> <b>General welfare of citizens</b> <b>Charter Banks</b> <b>Charter Corporations</b></p>	<p><b>Intrastate Commerce</b> <b>Local Governments</b> <b>Public Health</b> <b>Voter Qualification</b> <b>Supervise elections</b> <b>Supervise education</b> <b>License occupations</b></p>

Under the original *Constitution of the United States*, the only officials that the people could choose **directly** were their local member to the House of Representatives. Originally, the Senators, President, Vice President and federal judges were chosen **indirectly**. The reason being that the framers believed that voters could be swayed too easily into making the wrong choices. They did not want another dictator to run their new country. In the back of their minds, the framers of the *Constitution of the United States* had doubts about the wisdom and the education of the general population in 1787.

## Congress

Article I of the *Constitution of the United States* clearly describes the structure and powers given to Congress. It is the “peoples” branch, a governing body from every part of the country whose ideas become the core of the nation.

### Congressional Bicameral Organization

<b>House of Representatives</b>	<b>Senate</b>
<p><u>Membership</u></p> <ul style="list-style-type: none"> <li>• Total of 435 (set by law)</li> <li>• Each state's delegation is determined by its population relevant to others. Done by the census every 10 years</li> </ul> <p><u>Qualifications</u></p> <ul style="list-style-type: none"> <li>• Must be at least 25 years old</li> <li>• U.S. Citizen for 7 years</li> <li>• Resident of the State represented</li> </ul> <p><u>Term</u></p> <ul style="list-style-type: none"> <li>• Two (2) years</li> <li>• The entire house must be elected every two years</li> </ul> <p><u>How Elected</u></p> <ul style="list-style-type: none"> <li>• Directly by the voters of a district</li> </ul> <p><u>Presiding Officer</u></p> <ul style="list-style-type: none"> <li>• Speaker of the House (elected by the members who vote along party lines).</li> </ul> <p><u>Special Powers</u></p> <ul style="list-style-type: none"> <li>• Bring impeachment charges</li> <li>• May choose the President if there is no majority in the electoral college system</li> <li>• Must start all revenue bills</li> </ul>	<p><u>Membership</u></p> <ul style="list-style-type: none"> <li>• Two (2) per state</li> </ul> <p>Currently 100 from 50 states</p> <p><u>Qualifications</u></p> <ul style="list-style-type: none"> <li>• At least 30 years old</li> <li>• U.S. Citizen for 9 years</li> <li>• Resident of state represented</li> </ul> <p><u>Term</u></p> <ul style="list-style-type: none"> <li>• 6 years with staggered elections</li> <li>• one-third of the members elected every two years</li> </ul> <p><u>How Elected</u></p> <ul style="list-style-type: none"> <li>• Directly by the voters of a state (this was according to the 17<sup>th</sup> Amendment)</li> <li>• Originally, each state legislature chose its two Senators</li> </ul> <p><u>Presiding Officer</u></p> <ul style="list-style-type: none"> <li>• According to the Constitution, the Vice-President is the “President of the Senate”</li> <li>• A temporary President if needed (President Protempore) is also chosen by the Senate members</li> </ul> <p><u>Special Powers</u></p> <ul style="list-style-type: none"> <li>• Acts as a jury during an impeachment – a two-thirds vote is needed to pass</li> <li>• May choose the Vice-President if there is no majority in the electoral college system</li> <li>• Must ratify treaties with foreign nations by a two-thirds vote</li> <li>• Must approve Presidential appointments (only a majority vote needed)</li> </ul>

## How Congress Operates

There have only been two amendments to the Constitution since 1789 regarding how Congress is to function:

- **The 17<sup>th</sup> Amendment – the direct election of senators**
- **The 20<sup>th</sup> Amendment – moving the start date for sessions to the month of January**

The Senate and the House of Representatives have different rules but they still check each other’s work, and must cooperate to produce laws. The powers used by Congress fall into three (3) categories:

### **Delegated Power, Implied Power, and Concurrent Power.**

**Delegated Power:** Section 8 of Article I gives Congress seventeen (17) **enumerated or delegated powers**. The most important ones are listed below:-

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• Levying and collection taxes</li> <li>• Borrowing on the credit of the United States</li> <li>• Declaring war</li> <li>• Establishing immigration laws</li> <li>• Maintaining the court system</li> <li>• Maintaining the postal system</li> </ul> | <ul style="list-style-type: none"> <li>• Regulating interstate and foreign commerce</li> <li>• Governing patents and copyrights</li> <li>• Coining money and punishing counterfeiters</li> <li>• Maintaining the army and the navy</li> </ul> |
|---|---|

**Implied Power:** Section 8 of Article I grants Congress an 18<sup>th</sup> power, which gives Congress some flexibility without actually amending the Constitution. This 18<sup>th</sup> clause states that Congress “...shall have the power to make all laws necessary and proper to carry into effect the foregoing powers...” It is the **“Elastic Clause.”** The “Elastic Clause” allows Congress to stretch the meaning of the other seventeen powers to cover new situations that did not exist at the time the Constitution was written.

Within Congress are two different views on how this implied power should be used:-

<b>Loose Constructionists</b>	<b>Strict Constructionists</b>
Congress should <u>liberally stretch</u> the 17 delegated powers to meet all of the problems facing society	Congress should <u>conservatively stretch</u> the 17 delegated powers <u>only when absolutely necessary</u> to meet only the most serious problems confronting society

When disputed by both sides of Congress the matter is then taken to the Supreme Court who decides whether Congressional laws have applied the elastic clause too liberally. In some cases, the Supreme Court has ruled that Congress has acted unconstitutionally.

**Concurrent Power:** This is a shared power (both Federal and State governments). The Constitution assigns these powers to Congress, the Vice-President and the States.

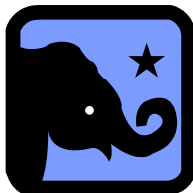
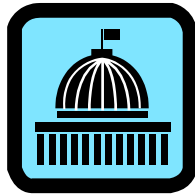
**All governments use two basic powers to operate on a daily basis.**

Any government needs the “**Power of the Purse**” – the power to raise money in order to operate. This is obtained from taxation.

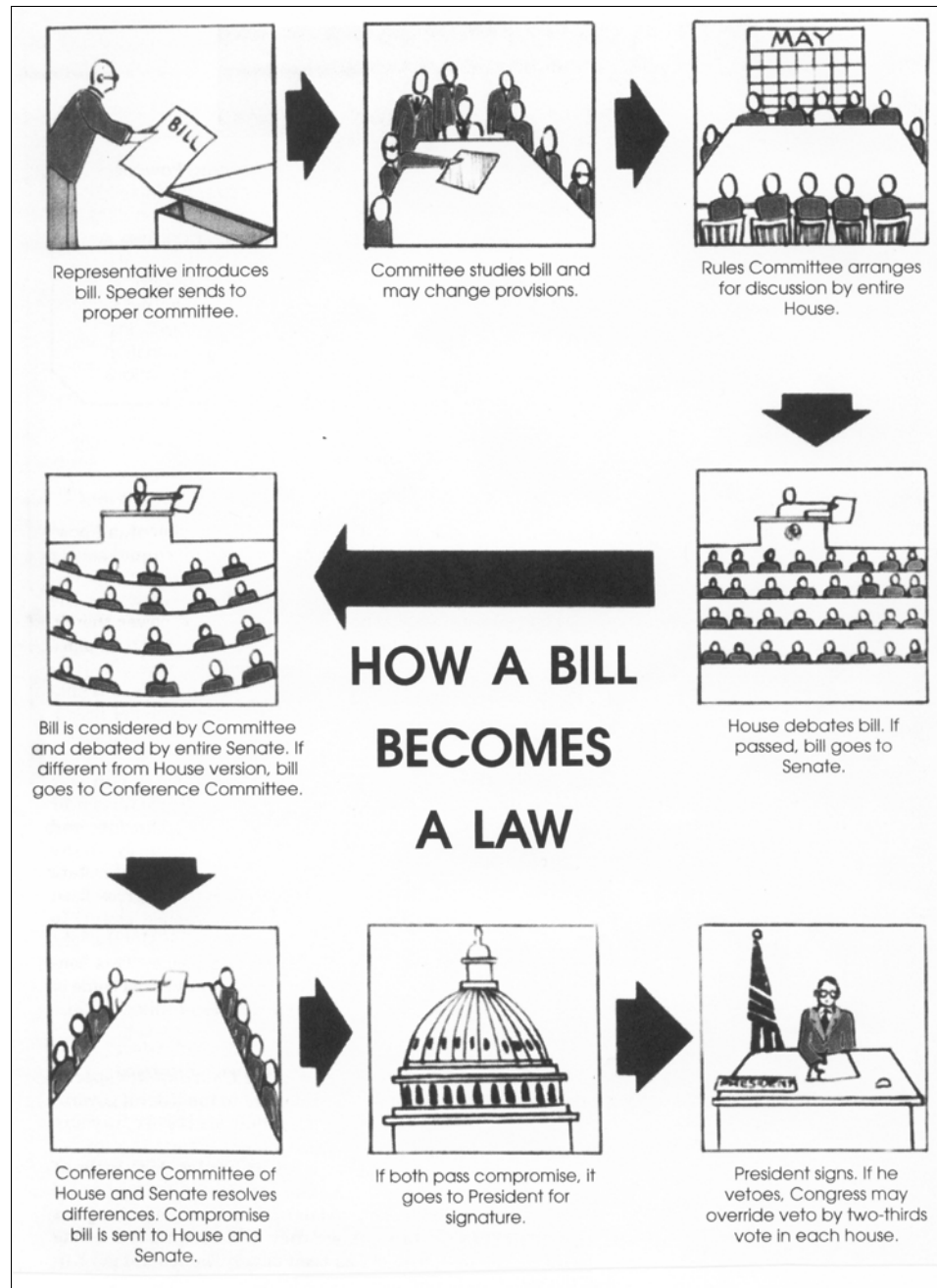
All governments must have the “**Power of the Sword**” – the power to enforce their laws. Federal, State and Local governments all share this police power.

**Powers denied to Congress according to the Constitution of the United States of America:**

- It cannot suspend **writs of habeas corpus** (speedy arraignment) except in times of invasion or rebellion
- It cannot pass **bills of attainder** (legislative acts declaring people guilty without trials)
- It cannot make **ex post facto laws** (laws that declare an act a crime after the act has been passed)
- It cannot levy direct taxes on people (except income tax – 16<sup>th</sup> Amendment)
- It cannot tax exports
- It cannot spend money without appropriation (without first passing a law)
- It cannot grant titles of nobility



Congress takes **bills** (proposed laws) submitted by its members and processes them by using committees and public debates. The process is lengthy and involved but the idea is deliberate and careful. Congress must avoid unworkable or unjust laws that will affect society. An exception to the normal rules is that any revenue bills (tax) bills can only be started in the House of Representatives, because this is the section of government that is linked the closest to the people of the nation.



## Presidency

Article II of the *Constitution of the United States of America* outlines the **Executive Branch** (the President) of the government. The Article only names two (2) officials – a President and a Vice-President. In addition, there have been five Amendments to the Constitution (12<sup>th</sup>, 20<sup>th</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, 25<sup>th</sup>) that concern the executive branch.

### Qualifications for the President:-

- Must be at least 35 years old
- Must be a native born citizen
- Must be a resident of the United States for at least 14 years

The official term of the President is Four (4) years. However, he or she can be removed by the **impeachment process**. Impeachment means to accuse an official of serious misconduct – “high crimes and misdemeanors.”

According to the Constitution, during an impeachment the following must be followed:

- Official charges must be brought and then voted on by the House of Representatives.
- A trial must take place and this must be in the Senate.
- The Chief Justice of the Supreme Court must preside over this trial.
- The Senate acts as a jury. A Two-Thirds vote is necessary for impeachment.

The Constitution outlines a specific number of **official roles or duties** of the President:-

- **Chief Executive** – implements and administers laws and programs legislated by Congress
- **Chief of State** – represents the nation on ceremonial occasions
- **Chief Diplomat** – conducts affairs with other nations
- **Commander-In-Chief** – supervises the military forces
- **Chief Legislator** – proposes legislation, lobbies Congress, signs or vetoes
- **Chief Jurist** – Enforces court decisions

In addition to the above, the President is also granted the following privileges:

- Appoints all important government officials
- Grants pardons and reprieves
- Delivers the State of the Union Address
- Can call special sessions of the Congress

The Constitution does not cover the “**extra-curricular**” roles that the President has acquired over time. Some of these are:-

**World Leader** – mostly after World War II – a role assumed by the President of the United States

**Emergency Director** – takes charge of government actions related to floods, hurricanes etc.

**Manager of Prosperity** – becomes directly involved with depressions or recessions

**Head of Political Party** – not a given responsibility but today it is an assumed role

**Voice of the People** – his speeches often represent the opinions of the entire nation.

## Supreme Court

Article III of the *Constitution of the United States of America* outlines the **Supreme Court** and the national courts of the nation. The Constitution refers to only one court by name: The **Supreme Court of the United States**. Congress has to pass laws to create other courts within the federal system.

The first Congress did this under the **Judiciary Act of 1789**.

- **All federal judges are appointed for Life Tenure**  
(they must be selected by the President then approved by the Senate)
- **Federal Judges must serve in “good behavior”**  
(they are subject to the same rules and regulations of impeachment)

The main power of the Supreme Court is **Judicial Review**. This is the process of deciding cases involving local, state, and federal statutes and governmental actions to determine if they violate the *Constitution of the United States*.

If the Supreme Court finds such a conflict, it will declare a law or action **“null and void”** or **“unconstitutional.”** This power is not specified in Article III but was **assumed** by the Court in the famous *Marbury v. Madison* decision of 1803, which took place under the leadership of Chief Justice John Marshall. This is a unique power and has often placed the Supreme Court at the center of controversy in American history.

### Formation of the Federal Court System

<b>U.S. SUPREME COURT</b>	<ul style="list-style-type: none"> <li>• 1 x Chief Justice</li> <li>• 8 x Associate Justices</li> <li>• has original and appellate jurisdiction</li> <li>• hearings on Constitutional issues</li> </ul>
<b>U.S. CIRCUIT COURTS OF APPEAL</b>	<ul style="list-style-type: none"> <li>• There are only 11 within the nation</li> <li>• Have only appellate jurisdiction</li> <li>• Operate as hearing panels</li> <li>• Decisions are final in most cases</li> </ul>
<b>U.S. DISTRICT COURTS</b>	<ul style="list-style-type: none"> <li>• There are 94 within the nation</li> <li>• Have original jurisdiction</li> <li>• Operate using normal jury trial procedures</li> </ul>