

Unit 6

Legislatures: Laying Down the Law

Learning Objectives

After completing this session, you will be able to:

- Identify the variety of legislative bodies in the U.S.
- Explain the founders' views on the role of Congress in American politics.
- Identify the full range of meanings attached to the term representation.
- Describe the need for compromise in a legislative body.
- Illustrate the conflict between what constituents want and what legislators believe is right.

Topic Overview

For the founders of the Constitution, Congress was the central organ of government. In this unit, the role, including the contradictory expectations that Americans have of legislators, is explored in some depth. This unit illustrates the need for compromise in a body filled with individuals representing a wide variety of interests. The unit also explores the contradiction that occurs when legislators find themselves at odds with their constituents. Finally, the unit shows a different, but very important, kind of representation that legislators routinely provide.

Legislatures are a primary instrument of representative democracy. They are highly contentious places where elected officials try to balance the diverse views of their constituents in addressing problems through legislation and other activities. **Article I** of the U.S. Constitution provides for a **bicameral Congress** composed of two houses—a Senate and House of Representatives. A reflection of the many compromises made during the Constitutional Convention, Congress's bicameral structure includes equal representation of states in the **Senate** (two senators per state) and proportional representation based on state populations in the **House of Representatives**. All states in the U.S. have bicameral legislatures except Nebraska, which has a one-house (unicameral) legislature. In many counties, cities, and townships, elected councils also represent local citizens and legislate on their behalf.

Americans often criticize their legislatures for being paralyzed by partisan struggles and legislators' self-interest. However, many Americans praise the performance of their individual legislators, and often reelect them at high rates. These contradictory attitudes can be explained in part by noting the differences between the lawmaking and representation functions of America's legislatures.

Lawmaking involves translating Americans' often conflicting or unarticulated policy preferences into public policy by passing bills. This requires extensive public debate, committee work, and parliamentary maneuvering to achieve majority legislative support for public policy. The relatively low regard that many Americans hold for Congress reflects in part the complexity of national problems and the legitimate differences people have over what to do about them.

Topic Overview, cont'd.

Representation, in contrast, only requires that representatives express the interests of their constituents, or take positions on issues that they think are best for their constituents or the larger public interest. Activities associated with representation include introducing legislation on behalf of constituents, voicing constituents' views and interests through speeches and other public statements, and meeting with constituents and interest groups to hear their concerns. Thus, legislators can represent their constituents in many ways without actually passing new laws.

Building on their English parliamentary heritage, America's constitutional framers placed Congress at the center of national policy making and required that each state adopt a representative form of government. Congress originally was conceived as the preeminent branch of government with the power to set and enact domestic and foreign policy agendas, and which was supposed to function "closest to the people." The relative powers between America's legislatures and its chief executives, including the president and the 50 governors, vary from state to state, and even from one presidential administration to another. During the twentieth century, however, Congress has lost or ceded powers to the president, including the power to make war and to command national attention.

Besides performing their lawmaking and representative functions, Congress, the state legislatures, and many legislative bodies at the local level engage in other activities including constituency casework and oversight of executive departments and agencies. **Casework** involves individual legislators helping their constituents solve individual problems with the bureaucracy, such as helping a military veteran receive his disability benefits, or performing other services such as writing a letter of recommendation for a local constituent or providing an office visitor with a complimentary flag. Casework is a non-controversial activity that often endears legislators to individual voters, and ultimately helps them gain support for re-election. It should also be noted, however, that casework is a form of representation. Sometimes, constituents just want to know that someone in the legislature is there to help them.

Another permanent function of legislatures is to evaluate the programs of executive departments and agencies. This function, called **legislative oversight**, stems from legislatures' budgeting and appropriations responsibilities. Oversight techniques include public hearings to evaluate agency budget requests, audits of agency finances, and investigations of executive agency personnel.

To carry out their legislative responsibilities, individual legislators must balance several interests, including those of their party's leadership, their constituents and organized interests, and their own desire to gain re-election. In fulfilling their responsibilities, some legislators perceive themselves primarily as **delegates** of their constituencies, doing what their constituents want whether or not they personally believe it's good policy. Other legislators see themselves more as **trustees** who follow their own judgment on what is right even if it clashes with a majority's preferences.

Pre-Viewing Activity and Discussion (30 minutes)

Before viewing the video, discuss the following questions:

- Can legislatures ever be efficient policy-makers?
- Should they be efficient?
- How does Congress represent the founders' intent to provide for a series of checks and balances?
- Legislatures are chaotic places. Why?
- Should legislators represent their constituents or the larger political system?

Watch the Video (30 minutes) and Discuss (30 minutes)

The video includes three segments. If you are watching on videocassette, watch each segment and pause to discuss it, using the questions below. If you are watching a real-time broadcast on the Annenberg/CPB Channel, watch the complete video and then discuss.

1. Campaign Finance Reform

For nearly seven years, a small bipartisan group of reformers in Congress fought to get a bill passed that would deal with the pervasive influence of money in American politics. Their proposed bill represented the first major change in campaign finance rules since Congress passed far-reaching amendments to the Federal Election Campaign Act (FECA) in 1974. The new campaign finance reform bill would prohibit corporations, unions, and other interests from donating unregulated soft money, which includes union dues and shareholder investments, to political parties or to individual politicians. The bill that passed was the result of significant compromise with various interests in and out of Congress. Although the campaign bill wasn't what all of its supporters wanted, it was what could command the support of a majority of Congress.

Discussion Questions

- After years of pushing for campaign finance reform, supporters were strengthened in their efforts by the scandal that erupted over Enron. Can you think of other times when unpredictable outside forces created the opportunity for major legislative action?
- The campaign finance bill was, in the end, passed because several legislators were willing to compromise and accept some provisions that they were not happy to support. What does this tell us about legislators and the legislative process?
- Is the bipartisan support for the campaign finance bill really that unusual?

2. Standing Up for a Cause You Don't Support

This story contrasts the efforts of Oregon's two U.S. senators on the so-called Death With Dignity law, which allows doctors to prescribe lethal doses of controlled substances to terminally ill adults who request them. Through two direct ballot initiatives, one to create the law and one to decide whether or not to repeal it, Oregonians twice voted in favor of assisted suicide. Both Republican Senator Gordon Smith and Democratic Senator Ron Wyden personally opposed the assisted suicide law. But once Congress challenged Oregon's law as a violation of the U.S. Controlled Substances Act, the senators had to decide where they stood on Congress's challenge, and how much they should let the views of Oregonians sway their position. In the end, each had to decide if he was a delegate or a trustee.

Discussion Questions

- What interests should a representative represent?
- What should a legislator do if the constituents' views clash with the representative's?
- Should legislators do what is best for their constituents or what is best for the nation?

3. My Door Is Always Open: A Profile of Representative Wayne Gilchrist

One part of a legislator's life that is little appreciated by most of us is the extraordinary amount of time they spend in helping their constituents on a variety of matters including requests for aid in untangling bureaucratic red tape, personal references, and specific information on a wide variety of policy topics. To meet their constituents' needs, most representatives maintain large staffs in their Capitol Hill and home district offices. Although this kind of work is often denigrated as casework or errand running, it is important to recognize it as a form of representation.

Watch the Video and Discuss, cont'd.

Discussion Questions

- What kinds of services should legislators perform for their constituents?
- Are there services that legislators should not provide?
- What is it that constituents want from legislators?

Post-Viewing Activity and Discussion (30 minutes)

1. Are Our Legislators Like Us, and Does It Matter? (20 minutes)

While in theory legislatures are primary mechanisms of popular sovereignty that help to carry out the consent of the governed, in demographic terms America's legislators are more white, male, and older than the American population as a whole. Some Americans think that this undermines representation, while others believe that legislators can effectively represent people who are different from them.

The following statistics compare the demographic characteristics of the 107th Congress with the entire population of the United States. Examine the following statistics. Note how certain categories in society are underrepresented in Congress while other categories are over-represented. Then consider whether "good representation" requires that Congress "mirror" the country as a whole, or whether an "atypical" Congress can represent all interests in society. Try to think of examples of this, such as men who champion women's rights, or wealthy legislators who fight for the interests of the poor. Do these examples undermine the view that Congress members and senators should be more diverse? Why or why not? Consider the issue as what "good representation" really means, and what it requires in practical terms.

White Men in Congress

House: 336 (77%)
Senate: 87 (87%)
Congress as a whole: 426 (79%)
U.S. as a whole: 39%

Women in Congress

House: 61 (14%)
Senate: 13 (13%)
Congress as a whole: 74 (14%)
U.S. as a whole: 51%

African Americans in Congress

House: 39 (9%)
Senate: 0
Congress as a whole: 39 (7%)
U.S. as a whole: 12%

Hispanics in Congress

House: 18 (4%)
Senate: 0
Congress as a whole: 18 (3%)
U.S. as a whole: 8%

Asians in Congress

House: 5 (1%)
Senate: 2 (2%)
Congress as a whole: 7 (1%)
U.S. as a whole: 3%

Gays (openly) in Congress

House: 3 (0.7%)
Senate: 0
Congress as a whole: 3 (0.6%)
U.S. as a whole: 12%

Members Over 70 Years Old

House: 34 (8%)
Senate: 9 (9%)
Congress as a whole: 43 (8%)
U.S. as a whole: 8%

Members Under 40 Years Old

House: 42 (9%)
Senate: 1 (1%)
Congress as a whole: 43 (8%)
U.S. as a whole: 46%

Jews in Congress

House: 27 (6%)
Senate: 10 (10%)
Congress as a whole: 37 (7%)
U.S. as a whole: 2%

Catholics in Congress

House: 120 (27%)
Senate: 24 (24%)
Congress as a whole: 144 (27%)
U.S. as a whole: 23%

Baptists in Congress

House: 60 (14%)
Senate: 8 (8%)
Congress as a whole: 68 (13%)
U.S. as a whole: 11.7%

Methodists in Congress

House: 51 (12%)
Senate: 14 (14%)
Congress as a whole: 65 (12%)
U.S. as a whole: 5%

Mormons in Congress

House: 12 (3%)
Senate: 5 (5%)
Congress: 17 (3%)
U.S. as a whole: 2%

Presbyterians in Congress

House: 38 (9%)
Senate: 10 (10%)
Congress as a whole: 48 (9%)
U.S. as a whole: 3%

Post-Viewing Activity and Discussion, cont'd.

2. Bringing Home the Bacon and Representing the Constituents (10 minutes)

Members of Congress, state legislatures, and even local government legislators are generally expected to provide financial benefits for their communities. In Congress, this expectation is called *bringing home the bacon* and the bills whereby special projects or lucrative grants are earmarked for particular districts are referred to as *pork*. Discuss these expectations as a problem of representation. Should legislators do this? Is this good public policy? If it isn't good public policy, who is to blame: the legislators or their constituents?

Homework

Read the following Readings from Unit 7 to prepare for next week's session.

- Introduction—The Modern Presidency: Tools of Power
- Tocqueville, *Democracy in America*: "The Executive Power"
- *Federalist Papers*: "Federalist No. 69"
- Jackson, "On Indian Removal"
- Lincoln, The Emancipation Proclamation

Read next week's Topic Overview.

Critical Thinking Activity: Go to the course Web site and try the Critical Thinking Activity for Unit 6. This is a good activity to use with your students, too.

www.learner.org/channel/courses/democracy

Classroom Applications

You may want to have your students do the post-viewing activities: Are Legislators Like Us, and Does It Matter? and Bringing Home the Bacon and Representing the Constituents. They are provided for you as blackline masters in the Appendix.

Web-Based Resources

www.house.gov—**The U.S. House of Representatives** Web site contains extensive information on current and past legislation and links to all House committees, subcommittees, and individual members' Web sites. A useful set of educational learning resources is also provided.

www.senate.gov—**The U.S. Senate** Web site contains information on current and past legislation and links to all Senate committees, subcommittees, and individual senators' Web sites. An "art and history" link also contains useful materials for classroom learning.

www.ncsl.org—**The National Council of State Legislatures** offers extensive information on the policies confronting the 50 state legislatures. Policy briefs are organized according to issue areas.