Close Up’s policy units introduce students to broad policy topics that inform the current legislative agenda. Close Up’s curriculum is designed to expose students to the historical foundations, institutional structures, and government processes necessary to engage in informed discussion about public policy.

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INTRODUCTION

“The Constitution is a living document. The drafters of the Constitution knew what they wanted to accomplish. In a single document, they wanted to create a democracy in which the people elect their leaders and government is managed by the people for the people. They also wanted to establish

The United States is not a finished project. The Constitution established a blueprint for building a government, but the document is not as clear or easy to make sense of as a blueprint for a building. For one thing, it was not created by one architect but by 47. And the 47 architects all had very different ideas about the type of government that should be created. For that reason, what emerged is a compromise document—the Constitution incorporates different ideas about power, democracy, and the role of government that do not naturally fit together. If the nation had been a building, there is no guarantee that it would have lasted. However, the founders included a process for amending the Constitution and, over time, through amendment, court decision, executive action, and legislation, a stable—but still contested—form of democracy has emerged.

This chapter provides an overview of the structure of the federal government in order to inform your understanding of the political and policy debates that make up the remainder of the book. More importantly, this chapter attempts to illuminate some of the long-standing tensions that are hardwired into our system. Although a few modern examples are sprinkled throughout the chapter, the major intent is to show the continuing debates that have shaped American politics and democracy for centuries, and still do today.
certain individual rights that government could not take away and certain areas in which states could make their own decisions.

Yet, when the drafters gathered in Philadelphia for the Constitutional Convention in 1787, they disagreed about how to accomplish these goals. For months, they argued over states’ rights and issues relating to which branch of government, if any, should be most powerful. They also disagreed about whether to list citizens’ rights in the initial document, who should be allowed to vote, what the role of the courts should be, and how to choose leaders in the executive, judicial, and legislative branches.

After months of negotiations, however, the drafters reached an agreement: a Constitution replaced the Articles of Confederation in 1788 as the nation’s framework for government. Remarkably, they did it in less than 4,500 words. The document has many features and ideas that were ahead of their time, including a process for making amendments so the document could be altered over time. That process paved the way for key additions such as the Bill of Rights. The Constitution created the important guiding principles that deeply shape life in the United States as we know it today. These principles include the separation of powers and federalism.

**Separation of Powers.** The drafters were nervous about vesting too much government power in any one person or institution, such as a king or a parliament. Because of this fear, they created three branches of government: executive, legislative, and judicial. To ensure the proper balance of power between the branches, they also created a system of checks and balances. James Madison explained it well when he wrote, “Ambition must be made to counteract ambition…. 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.” For more than 200 years, the separation of powers and system of checks and balances has achieved the drafters’ goal of dispersing power among the government’s various branches.
CHECKS, BALANCES, AND TENSIONS IN THE 21ST CENTURY

Politics, it is often said, ends at the water’s edge. Since the presidency of William McKinley during the Spanish American War, Congress has frequently shown deference to the executive branch when it comes to developing alliances, engaging in military action, or forging trade agreements. In recent years, however, Congress has been more vocal.

For example, in early 2015, the State Department engaged in negotiations with Iran and six other nations to curb Iran’s nuclear program in exchange for relief from political and economic sanctions. Israel, a close ally of the United States, opposed the deal, as did many Republicans in Congress. In January, then-Speaker of the House John Boehner, R-Ohio, invited Israeli Prime Minister Benjamin Netanyahu to address Congress without informing the executive branch about the invitation. In the prime minister’s address, he urged the U.S. electorate not to accept a deal with Iran. In March, 47 U.S. senators, all Republicans, signed a letter to Iran’s leaders written by Senator Tom Cotton, R-Ark., explaining the limits of executive authority in the United States and claiming that Congress or a future president could ignore any agreement that Iran reached with President Barack Obama’s administration.

Both the invitation to Netanyahu and the letter from Senator Cotton raised questions about the appropriate balance of authority between the executive branch and the legislative branch in regard to foreign policy. Both instances also highlighted a gray area in the structure and procedures of the U.S. system of government: the Constitution contains no explicit provisions regarding the nuances of diplomacy, except insofar as it mentions treaties, war, and the role of the president as head of state.

Federalism. In keeping with the founders’ desire to make sure that no branch of government could ever achieve full control of the U.S. citizenry, the Constitution divides powers between the federal government and the states. For example, states were given the power to establish their own forms of government, consistent with the Constitution; to pass and enforce laws; to educate their citizens; and to build roads. After the Constitutional Convention, Madison wrote, “The powers delegated by the proposed Constitution to the Federal Government, are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation,
and foreign commerce; with which last the power of taxation will for the most part be connected. The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people; and the internal order, improvement, and prosperity of the State.” Today, virtually every state has a three-branch system that mirrors that of the federal government. The Tenth Amendment to the Constitution clarified that powers that were not specifically given to the federal government, or specifically prohibited to the states, are reserved for the states. The intent behind this amendment was to ensure that the United States would remain a federation of individual states operating together under certain guiding principles of democracy and individual rights. Accordingly, for example, states make their own laws regarding the minimum age requirements for driving.

Although federalism has preserved the autonomy of states to govern in a number of areas, it has caused much debate. For example, states have the power to educate their citizens. Some critics of this power say that the federal government should establish a uniform set of learning standards that would apply to all states. This, they say, would help the United States compete in an increasingly globalized world. But others say that the federal government already has overstepped its bounds in many areas, including tax policy. Both the federal and state governments have the power to tax citizens in order to raise funds to run their respective governments. Some state advocates say federal tax policy discourages growth in their states and that the combined federal tax rates—for income, Social Security, and other taxes—are too high. In effect, they argue that their citizens should not have to fund a disproportionate share of the costs to run the federal government. Other people say the federal government is simply too big and tries to regulate too much. They cite the fact that the federal government employs almost two million civilian Americans and is the largest employer in the country.

Key principles such as the separation of powers and federalism remain among the fundamental beacons guiding the relationship between the government and the people. They also guide the relationships between the various branches of government. Given the complexity of
governing in today’s changing world, it is likely that debate over these principles will continue well into the future.

**THE LEGISLATIVE BRANCH**

*Congress.* The legislative branch is defined in Article I of the Constitution—the article that the framers debated the most. During the Constitutional Convention, delegates debated how states should be represented, how legislative members would be elected, and how slaves would be counted, if at all. Ultimately, the Constitution established a Congress with two chambers, one based on state population size (the House of Representatives) and one based on equal representation for each state (the Senate). The intent was to ensure sufficient representation for each state. Today there are 435 members of the House and 100 members of the Senate. The number of senators remains the same for each state, but the number of representatives per state can change over time based on periodic results of the U.S. Census.

It is important to note that members of the House come up for reelection every two years; senators come up for reelection every six years on a rotating basis. Thus, every two years, the entire House and one-third of the Senate is up for reelection. Often, it is difficult to pass legislation in an election year, when many members focus on getting reelected. Yet, members can face pressure from their constituents if they perceive that members have been part of a “do nothing” Congress.

So, just what is Congress supposed to do to meet its duties as the legislative branch? The Constitution gives Congress a wide range of powers, including the powers to declare war, to regulate interstate and foreign commerce, to ratify treaties, and to confirm presidential nominations such as Supreme Court justices. Perhaps the most significant, though, are the powers to approve the president’s annual budget and to propose legislation that becomes law. The latter most often happens when a bill is passed by both houses of Congress and then is signed by the president. The president may veto a bill, but Congress can override that veto with a sufficient number of votes.
Making Laws. The Constitution’s drafters were concerned about giving the legislature too much power to make laws. As a result, they set up a series of processes—involving both houses of Congress—that a bill must survive in order to be sent to the president for signature. In practice, far more bills are proposed than are enacted into law.

Typically, the process begins when a member proposes a bill. If the chairperson of the appropriate congressional committee thinks the bill is worthy of consideration, a subcommittee may hold public hearings in which witnesses testify. If the subcommittee approves the bill, it gives the bill to the full committee. The full committee may or may not approve the bill. If approved, the bill may be sent to the House or Senate for debate. In reality, bills are often amended during committee hearings and floor debates, and at some point, a final vote is called. If the bill does not pass, it is sent back to its original committee. No action is taken on the vast majority of bills.

If the House and Senate pass different versions of the same bill, a conference committee of representatives and senators works out the differences. The new bill is then returned to each chamber for final debate and a vote. If both the House and Senate pass the same version of the bill, it goes to the president. The president can sign the bill into law or veto it. Congress may override a veto by securing a two-thirds majority vote in both houses.
# THE LEGISLATIVE PROCESS

**IDEA:** A person or group has an idea for improving the way the federal government could address an issue they are concerned about.

**BILL IS PROPOSED:** A bill is written up in proper legislative language and is formally proposed to Congress. Only a member of Congress can have a bill placed on the legislative agenda.

**COMMITTEE ASSIGNMENT:** The bill is assigned to committee(s) with legislative jurisdiction over the issue. In the House, the speaker exercises strong control over assignments to committee(s); in the Senate, this is worked out by the committee chairs with the Senate majority leader.

**COMMITTEE HEARINGS:** Experts, interest groups, and/or individuals are given time to express their views on the bill.

**MARKUP:** The committee works out changes to the language and provisions of the original bill. The committee can decide (by a majority vote of committee members) to kill or “table” the bill (indefinitely postpone further action), amend it, or approve it as is.

**RULES ARE SET:** The bill is scheduled for debate; time limits and procedures for proposing amendments from the floor are set. In the House, the powerful Committee on Rules sets specific rules covering all aspects of debate time and amendments from the floor (if they decide to allow any amendment proposals at all). In the Senate, individual senators are traditionally given much greater freedom to debate and propose amendments as they wish.
FLOOR DEBATE: The whole body debates the merits and drawbacks of the bill and votes on passage. At this stage, the whole body can vote to kill or “table” it, pass it as is, or (if the rules allow amendments from the floor) pass an amended version of the bill.

THE OTHER CHAMBER ACTS: The other chamber of Congress must take the bill through the same process. Both chambers of Congress must take the bill through the steps of the legislative process. The Constitution requires all “money bills” to originate in the House; other types of bills can originate in either chamber.

CONFERENCE COMMITTEE: A conference committee composed of members from both chambers comes together to work out differences between the two versions of the bill. This is typically a time of intense negotiations (and lobbying).

CONGRESS CONSIDERS THE CONFERENCE BILL: Both chambers of Congress must vote on the final version of the bill. Members may debate the final version, but no amendments are allowed; each chamber must cast a straight up or down vote.

TO THE PRESIDENT! The president may either sign the bill into law or veto it. The president may also use a procedure known as the “pocket veto.”
Many people believe it is easier to kill bills in Congress than to pass them. Powerful committee chairs can decline to consider bills, and committees can change a bill’s intent by adding amendments. Furthermore, senators with different viewpoints or party alliances can hold up votes with filibusters or other delaying tactics. There is often pressure on members to vote along party lines and to deal with industry lobbyists and the media as well.

A good example of how difficult it is to make laws is the recurring discussion of immigration reform. Since the 1990s, lawmakers have consistently tried to pass laws to reform the immigration system. These proposed laws have focused on two main priorities: establishing a pathway to citizenship for undocumented immigrants and increasing border security. Republican lawmakers have consistently introduced bills that would increase border security, while Democrats have consistently attempted to pass bills that would offer citizenship to different groups of people. In 2013, in an effort to compromise, a bipartisan group of eight senators gathered to create a bill that would address both of these concerns. The group’s bill received support from both parties and passed in the Senate. However, the Republican-controlled House never took up the bill, and thus almost all momentum to reform immigration was lost. Although the next Congress may debate immigration reform, any reform bill would need to be reintroduced in both the House and the Senate.
ATTEMPTED SENATE CLOTURE* VOTES, 96TH-112TH CONGRESS (1979-2012) Bars are colored according to the minority party

Average cloture votes when REPUBLICANS are in minority: 57.25
Average cloture votes when DEMOCRATS are in minority: 41.63

* CLOTURE VOTES ARE REQUIRED TO END FILIBUSTERS AND MOVE TO A VOTE.
Source: The Brookings Institution
SENATE LEADERSHIP

President of the Senate
Joseph Biden
Vice President of the United States

Senate President Pro Tempore
Orrin Hatch,
Republican, Utah

Senate Majority Leader
Mitch McConnell
Republican, Kentucky

Senate Minority Leader
Harry Reid
Democrat, Nevada

Senate Majority Whip
John Cornyn
Republican, Texas

Senate Minority Whip
Richard Durbin
Democrat, Illinois

HOUSE LEADERSHIP

Speaker of the House
Paul Ryan
Republican, Wisconsin

House Majority Leader
Kevin McCarthy
Republican, California

House Minority Leader
Nancy Pelosi
Democrat, California

House Majority Whip
Steve Scalise
Republican, Louisiana

House Minority Whip
Steny Hoyer
Democrat, Maryland
THE EXECUTIVE BRANCH

The executive branch is defined in Article II of the Constitution. It consists of the president, the cabinet, and all of the federal agencies. It is by far the largest branch and includes an estimated 2,000 agencies and subagencies.

Officials in the White House and the rest of the executive branch both advise the president and help to implement laws. Although the president appoints many of the leaders of the executive branch (such as cabinet members, secretaries, and agency directors), most of its employees are career civil servants whose tenures are not affected by who controls the White House. This enables the work of the federal government to continue even when the presidency changes hands.

According to the Constitution, the role of the executive branch is to carry out the laws passed by Congress by issuing regulations and administering programs. This is a large and complex task implemented by a variety of agencies. It involves complicated allocations of federal funds to states for specific types of programs and constant coordination with states and other countries in the implementation process.

The president also relies on the executive branch to advance policies that may be at odds with those put forth by Congress. This push-and-pull between Congress and the executive branch illustrates the system of checks and balances laid out in the Constitution. At times, checks and balances can cause gridlock, a situation that arises when Congress and the president cannot agree and policy does not move forward. In response to the gridlock on immigration reform, President Obama issued two executive orders to temporarily halt deportations of young people who entered the country illegally without their knowledge, as well as the families of those young people. Despite protests from many lawmakers, executive agencies moved forward with the programs—until they were blocked by a federal judge in February 2015.
Ultimately, a major question is how far the executive branch can go in doing its job. For example, how much domestic surveillance should federal agencies be able to do? In recent years, the public has become more aware of the extent of government surveillance, largely owing to whistleblowers such as Edward Snowden and Chelsea (formerly Bradley) Manning. Because of information provided by these whistleblowers, organizations such as the Central Intelligence Agency (CIA) and the National Security Agency (NSA) have been criticized for violating the rights of American citizens. The Obama administration has either defended the actions of these organizations or claimed that the United States is not spying on ordinary people who do not threaten national security, but some members of Congress are concerned. Congressional members have held multiple hearings to investigate both the extent of government surveillance and the legality of the government spying on American citizens. Many people argue that there should be more congressional oversight of domestic surveillance. They believe that this is an important check that the legislative branch provides on executive authority. Others argue that in matters of national security, the executive branch should be able to act quickly and decisively, and that oversight could either slow or complicate the process of keeping the United States safe.
## THE CABINET MEMBERS

<table>
<thead>
<tr>
<th>Position</th>
<th>Name</th>
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<tbody>
<tr>
<td>Secretary of State</td>
<td>John Kerry</td>
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<tr>
<td>Secretary of the Treasury</td>
<td>Jack Lew</td>
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<tr>
<td>Secretary of Defense</td>
<td>Ashton Carter</td>
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<tr>
<td>Attorney General</td>
<td>Loretta E. Lynch</td>
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<tr>
<td>Secretary of the Interior</td>
<td>Sally Jewell</td>
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<tr>
<td>Secretary of Agriculture</td>
<td>Thomas J. Vilsack</td>
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<td>Secretary of Commerce</td>
<td>Penny Pritzker</td>
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<tr>
<td>Secretary of Labor</td>
<td>Thomas E. Perez</td>
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<tr>
<td>Secretary of Health and Human Services</td>
<td>Sylvia Mathews Burwell</td>
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<td>Secretary of Housing and Urban Development</td>
<td>Julián Castro</td>
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<td>Secretary of Transportation</td>
<td>Anthony Foxx</td>
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<td>Secretary of Energy</td>
<td>Ernest Moniz</td>
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<td>Secretary of Education</td>
<td>John King</td>
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<td>Secretary of Veterans Affairs</td>
<td>Robert McDonald</td>
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<tr>
<td>Secretary of Homeland Security</td>
<td>Jeh Johnson</td>
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THE JUDICIAL BRANCH

Article III of the Constitution establishes the Supreme Court and the lower federal courts. It is the shortest of the articles describing the branches of government. However, its brevity contrasts greatly with the powerful federal judiciary that exists today. Its power is largely due to the work of the early 19th century Court, led by Chief Justice John Marshall. Through decisions in cases such as *Marbury v. Madison*, Chief Justice Marshall established the Supreme Court’s right to decide the legality and constitutionality of the actions of the other two branches of the government.

The Supreme Court. Cases that come before the Supreme Court are mostly on appeal from lower federal or state courts and are chosen by the justices. Each year, the Court receives roughly 8,000 petitions, from which the justices select fewer than 100 cases to hear. The cases usually involve matters of great public importance or issues on which lower courts have offered conflicting decisions. The Supreme Court session typically runs from October through May, with some decisions announced during the summer recess.

An excellent example of how the Constitution’s system of checks and balances works is the appointment of federal Supreme Court justices. The president nominates justices, but the Senate must approve the appointees. These justices serve for life, unless they resign or are impeached. This allows a justice to make decisions without having to worry about the political ramifications of his or her rulings. In this respect, the appointment system is supposed to operate much like the tenure system in place in many educational institutions in the United States and abroad.
THE SUPREME COURT

Chief Justice
John Roberts
Appointed by President
George W. Bush, 2005

Associate Justice
Stephen Breyer
Appointed by President
Bill Clinton, 1994

Associate Justice
Anthony Kennedy
Appointed by President
Ronald Reagan, 1988

Associate Justice
Samuel Alito
Appointed by President
George W. Bush, 2006

Associate Justice
Clarence Thomas
Appointed by President

Associate Justice
Sonia Sotomayor
Appointed by President
Barack Obama, 2009

Associate Justice
Ruth Bader Ginsburg
Appointed by President
Bill Clinton, 1993

Associate Justice
Elena Kagan
Appointed by President
Barack Obama, 2010

One seat is vacant
as of July 2016
THE SIZE AND SCOPE OF FEDERAL GOVERNMENT

A major argument in American democracy centers on the proper size and scope of government. The size of government is measured by its revenues and expenditures and by the sheer number of its employees and programs. The scope of government is harder to measure, but it relates to the number of things that the government attempts to regulate, promote, or address. For instance, how active a role should the government play in regulating or trying to expand Internet access?

In many ways, arguments over the size and scope of government form the very basis of American politics. Conservatives tend to believe that government should play a smaller role in people’s lives and particularly in the marketplace. In contrast, many social conservatives argue that the government should play a role in moral or social issues by banning gay marriage, regulating alcohol purchases and consumption, or limiting access to abortion. Liberals or progressives are more likely to argue that the government has a larger role to play in people’s lives. They advocate for strong consumer protection laws and push for programs that are intended to promote equality or economic growth. Yet, many liberals feel that the government should stay out of what they view as private moral decisions such as gay marriage, marijuana usage, and abortion access.

The federal government’s power to take action on as many issues as it does largely rests on a few parts of the Constitution and one amendment added after the Civil War.

Necessary and Proper Clause. Under Article I, Section 8 of the Constitution, Congress has the power “to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or any Department or Officer thereof.”¹² In many Supreme Court cases, this clause has been used to uphold challenges to federal authority, but in recent years, the Supreme Court has begun to reinterpret and narrow the meaning of the clause, limiting congressional authority.¹³
**Interstate Commerce Clause.** Article I, Section 8, Clause 3 of the Constitution gives Congress the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” The commerce clause has been used to regulate market activity, but it has also been used in more controversial ways. For example, civil rights legislation passed in the 1960s used the commerce clause as justification. In one case (*Katzenbach v. McClung*, 1964), the Supreme Court ruled that the federal government could force a family-owned restaurant in Alabama to desegregate. In recent years, the more conservative Court has narrowed the scope of this clause.

**Taxing and Spending.** Article I, Section 8, Clause 1 states: “The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.” The Supreme Court declared in two separate cases that the spending authorized by the Constitution must be for the general welfare. Unlike the two clauses described above, this clause has received little scrutiny in recent years. In fact, this clause was central to the Court’s decision to uphold the Patient Protection and Affordable Care Act, the law more commonly known as Obamacare.

**Equal Protection Clause.** Section 1 of the 14th Amendment states: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The equal protection clause plays a large role in federal civil rights protection programs, arguments about affirmative action, and even debates over abortion.
CONCLUSION

The understanding of these parts of the Constitution has changed over time. The founders knew that this would be the case; Alexander Hamilton said, when arguing for ratification, “Constitutions should consist only of general provisions; the reason is that they must necessarily be permanent, and that they cannot calculate for the possible changes of things.” On this point, his most bitter political rival, Thomas Jefferson, agreed; he wrote, “Laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors.”

It is up to all Americans to discuss, deliberate, argue, and take action to shape government today. In so doing, we play the fundamental role required in any democracy—that of the citizen. In the remainder of this book, you will have an opportunity to explore current political tensions and issues facing the nation. As you engage with the book and with others, remember that many of these debates are as old as the nation itself.


Ibid.


Ibid.


