UNITED STATES GOVERNMENT

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Licensing

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CHAPTER OVERVIEW

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1.1: Political Ideas in History

Figure 1.1.1: Is government to be feared or loved? Thomas Hobbes set out to discover that in his book Leviathan, which spawned this famous title page that depicts government as a giant towering over the land. Is the king protecting or threatening his country?

Do you believe in government "BY THE PEOPLE, FOR THE PEOPLE, AND OF THE PEOPLE?" Few Americans would say no, especially since these words, spoken by Abraham Lincoln in his 1863 Gettysburg Address, are firmly embedded in the American political system. Yet, governments over the centuries have not always accepted this belief in popularly elected rule.

The American political system is rooted in the ideal that a just government can exist, and that its citizens can experience a good measure of liberty and equality in their personal lives.

Figure 1.1.2: Jacques-Louis David painted The Death of Socrates as a metaphor for the French government during the revolution. Socrates represents the revolutionaries that martyred themselves for their principles, while the Athenian government represents the corrupt French nobility.

Even in the modern United States, many skeptics criticize government as being controlled by greedy, corrupt people who are only interested in lining their own pockets. So, which view is correct? Is government an instrument of its citizens, an entity that represents and protects a beloved country, or an oppressive, self-serving monster that deserves no respect? The Rule of Law implies that government is based on the body of law that is applied equally and fairly, not on the whims of a ruler.

If we look to the past for an answer, we find comments like these:

> *Behold my sons, with how little wisdom the world is governed. -Axel Oxenstiern (1583-1654)*
>
> *That government is best which governs least. -Thomas Jefferson*

Figure 1.1.3: Governments are everywhere. From the earliest tribe through the most recent nation to find its place on the map, government in some form has been necessary to ensure safety and order. In the 1600s, Rembrandt painted the government of the local clothmaker's guild. Source: Creative Commons.org

The conflict between the power of the government and the sovereignty of the people is solidly based in the past. Governments are sometimes idealized and often criticized. Yet, virtually every society in history has had some form of government, either as simple

as the established leadership of a band of prehistoric people, or as complex as the government of the United States today. We will begin by examining reasons why governments exist and considering some types of government including democracy, particularly as it is practiced in the modern United States.

Laws of Nature and Nature's God

Natural rights are usually seen as opposite of the concept of legal rights. Legal rights are those bestowed onto a person by a given legal system (i.e., rights that can be modified, repealed, and restrained by human laws). Natural rights are those that are not dependent on the laws, customs, or beliefs of any particular culture or government, and are therefore universal and inalienable (i.e., rights that cannot be repealed or restrained by human laws).

Natural rights are closely related to the concept of natural law (or laws). During the Enlightenment, the concept of natural laws was used to challenge the divine right of kings, and became an alternative justification for the establishment of a social contract, positive law, and government (and thus, legal rights) in the form of classical republicanism (built around concepts such as civil society, civic virtue, and mixed government). Conversely, the concept of natural rights is used by others to challenge the legitimacy of all such establishments.

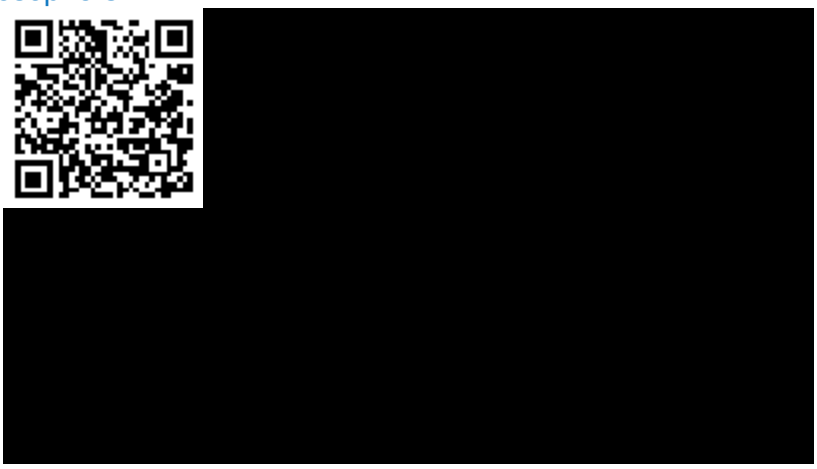
The idea of natural rights is also closely related to that of unalienable rights; some acknowledge no difference between the two, while others choose to keep the terms separate to eliminate association with some features traditionally associated with natural rights. Natural rights, in particular, are considered beyond the authority of any government or international body to dissolve.

The phrase, ."..law of nature and nature's god" is found in the Declaration of Independence.

Divine Right of Kings

The Divine Right of Kings is a political and religious doctrine of royal and political legitimacy. It claims that a monarch is not subject to any earthly authority, that the right to rule is directly given by God. The king is not subject to the will of his people, the aristocracy, or any other earthly power. It implies that only God can judge an unjust king and that any attempt to depose, dethrone, or restrict his powers runs opposite to the will of God.

Social Contract Philosophers



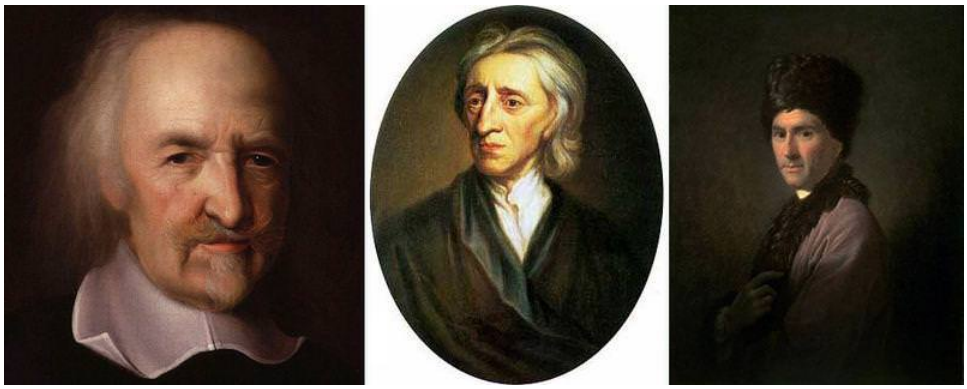


Figure 1.1.4: *Social Contract Thinkers Thomas Hobbes (Left), John Locke (Center), and Jean Jacques Rousseau (Right)*

Thomas Hobbes proposed that a society without rules and laws to govern our actions would be a dreadful place to live. Hobbes described a society without rules as living in a “state of nature.” In such a state, people would act on their own accord, without any responsibility to their community. Life in a state of nature would be Darwinian, where the strongest survive and the weak perish. A society, in Hobbes’ state of nature, would be without the comforts and necessities that we take for granted in modern western society. The society would have:

- No place for commerce
- Little or no culture
- No knowledge
- No leisure
- No security and continual fear
- No arts
- Little language

The social contract is unwritten, and is inherited at birth. It dictates that we will not break laws or certain moral codes and, in exchange, we reap the benefits of our society, namely security, survival, education and other necessities needed to live.

In contrast, John Locke viewed men as born into a "perfect state of nature" with certain natural rights and freedoms, including life, liberty, and the pursuit of happiness. In Locke's view of the world, men are born good and should be trusted to govern themselves through the creation of laws that protect them from the unjust actions of the government.

Jean Jacques Rousseau went even further in his views, stating, “Man is born free, yet he is in chains everywhere.” He believed that men are shackled with the burdens of oppressive governments, and that it is the duty of men to take control of the government and establish a government responsive to the “general will.” Rousseau’s views are considered closest to the original idea of a direct democracy, as originally practiced in Greece.

Evaluating the Views of Hobbes, Lock, and Rousseau

The philosophies of Hobbes, Locke, and Rousseau can be placed along a wide political spectrum involving a trade-off between natural liberties and freedoms versus strong authoritarian governments who provide security and safety in exchange. Hobbes saw the role of government as one involving the provision of security and defense with the people owing everything to a strong and forceful leader. Locke saw the role of government as protecting the individual rights of the people and believed that governments exist only to serve the needs of the people. In Hobbes's view of government, the people should do what the government says in order to stay safe. In Locke's view of government, the people should be in charge of their own government and leaders should do what the people say.

Figure 1.1.5

Why Such Different Views?

Why did these men propose such different views of the role of government and its relationship with the people? To understand the answer to this question, we must understand the times in which these men lived.

Thomas Hobbes lived during a period of time when Britain was torn apart by civil war. He believed the king ruled by Divine Right, meaning that the monarch was perceived to be selected by God to rule over the people, and that such a ruler had an absolute and God-given right to be obeyed without question. Others did not share that view and the king was actually beheaded for failing to listen to the will of his people. This tumultuous period of time was known as the English Civil War, and it led to a period of violence and conflict, which would only end with the eventual overthrow of a dictator (Oliver Cromwell) and the return of the monarchy under the rule of William and Mary. To regain their throne, William and Mary had to agree to a limited monarchy in which their power was limited by Parliament and by the people themselves. They were only allowed to return to the throne when they signed the English Bill of Rights.

Locke and Rousseau lived in a period known as the Enlightenment, a time when men began to question the authority of the church and their political rulers. Under men such as Locke and Rousseau, a period of economic and political prosperity began to flourish as advancements were made in science, technology, industry, and global trade. It was truly a time of prosperity and the rise of property ownership by the common man. It is no wonder that Locke was so concerned about the protection of individual rights and property. Prior to the Enlightenment, it would be very unpopular, not to mention unwise, to question the authority of an absolute political ruler such as the king. However, the Enlightenment was a period of open questioning and the application of reason rather than tradition and superstition.

Unlike Locke, Rousseau did not focus singly on the protection of property rights, but upon political liberties. His beliefs were far more radical than Locke’s and, like Locke, are the foundation of much of the Declaration of Independence as well as the United States Bill of Rights.

Social Contracts

While these three philosophers can be placed on a wide political spectrum, they all shared a common belief in one thing: the existence of a "social contract." That is, they believed that there was a real, yet often times unwritten, contract between the government and the people. In Hobbes's view, the people owed everything to the government, and it was the government's job to simply protect people from themselves. The role of the people was to simply do as they were told. In Locke's view, the social contract called for the government to protect the rights and property of individuals. Also, it called for the government to allow the people as many personal freedoms as possible while it was the role of the people to respect the rule of law and to take a strong stand in ensuring that the government did not get out of hand. In Rousseau’s more radical view, governments must submit to the general will of the people, and the people must actively and directly participate in their governance.

The three social contracts of Hobbes, Locke, and Rousseau have a common understanding that: (1) A social contract exists between government and the people. (2) Social contracts are based on collective action, which means that people work together in order to solve problems and make decisions that affect them as a group. (3) Governments have a specific purpose which is designed to meet the needs, wants, and objectives of the collective group (“the people”). When government provides essential goods and services that would be otherwise economically unavailable or unobtainable to the general public, they are providing *public goods.* A *public good* can best be described as a good or service that, once provided, is available to everyone and cannot be excluded from any one group (regardless of how much they have contributed to the cost of providing it). Practical examples of public goods are national defense and public roads.

Comparison of Social Contracts

Hobbes	People collectively agree to give up all their freedom and power to a sovereign (ruler). "That a man be willing, when others are so too, as far forth as for peace and defence of himself he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himself. " Absolute control (authoritarian monarchy) is where all powers and laws are held by that sovereign. Government imposes law and order to prevent the state of war.
Locke	Governments exist by the consent of the people to protect their natural rights and promote public good. The right of revolution is exercised when the government fails. People may rebel to redress the government. There is the principle of the rule of majority where things are decided by the greater public. (liberal/constitutional monarchy)
Rousseau	Social contract is made among all people of that society to bring them in harmony. A *general will* is made by and agreed to by the people who abide by it. "Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole." Direct rule by the people. (republicanism/democracy) "Whoever refuses to obey the general will shall be compelled to do so by the whole body."

Figure 1.1.6: The state and national government build and maintain roads.

Collective Action Problems: A Practical Example

Goods or services that are provided by the government to the public without charge and that cannot be made exclusive to only one group are called *public goods*. Public goods come with their own sets of problems. What happens if the *social contract* is violated, or if one or the other side takes advantage of the *social contract* for their own benefit? For instance, if the people of a small town vote to construct a new road through the center of their small community, this road would serve the public good because everyone in the community would benefit from its construction and use.

What if only a small number of people actually participated in contributing to the road construction by investing money, time, labor, or materials? Since every shop owner would benefit by the increased traffic and access the road would provide, and everyone would be able to use this road equally regardless of the amount of money, time, labor, or resources they contributed to its

construction, this road becomes the best example of a *collective action problem.* While the road is designed to benefit the entire community, not everyone contributed equally (or even minimally) to its construction and maintenance. Since the road is open for everyone, those who did not contribute to its construction but benefited from its use are called *free riders.* This “free rider problem” is very common in the study of government and is the most debated part of social contract theory today.

Collective Action Problems in Nations

Figure 1.1.7: The U.S. contributes troops to addressing foreign problems.

If we take our example of a road one step further, we can see how *collective action problems* apply to nations. For example, the United States often contributes troops, materials, weapons, and expertise in addressing foreign problems. When the United States entered the second Iraq war in 2003, it did so with a consortium of other nations. However, as time went on, the number of U.S. allies decreased. Any country that received the benefit of U.S. military action in Iraq and Afghanistan but did not contribute directly to the cost, materials, or personnel involved would be considered a "free rider" because they benefited from the collective action without actually contributing to its cost.

A Further Comparison

Hobbes, Locke, and Rousseau: A Comparison			
	Thomas Hobbes	John Locke	Jean Jeacques Rousseau
Favored Government	Absolute Monarchy	Constitutional (representative) Democracy	Liberal (direct) Democracy
State of Nature	People are born with rights that they relinquish to the monarch in return for protection.	All people are born with certain unalienable rights, including life, liberty, and the right to own property.	Men in a state of nature are free and equal. In a state of nature, men are "Noble Savages". Civilization is what corrupted him.
Purpose of Government	To impose law and order and prevent a state of war.	To secure natural rights – namely liberty and property.	To bring people into harmony. To unite them under the "General Will".
Representation	Governments are designed to control, not necessarily represent.	Representation ensures that governments are responsive to the people. Representation is a safeguard against government oppression.	Representation is not enough. Citizens cannot delegate their civic duties. They must be actively involved. Rousseau favors a more direct democracy to enact the general will.
Social Contract	Men must give up some of their rights in order to ensure protection by the government. Governments owe the people security and protection. People own government loyalty and obedience.	The government must secure the rights and liberties of the people. People should respect and obey the rule of law and legal authority of legitimate government.	Argued that the social contract only existed between the people and themselves, not between ruler(s) and people. General will of the people is the true and actual power of government. People should openly participate in political affairs.
Reaction to Government Abuses	People had no say in government. Should do nothing if the government (monarch) were abusive.	People have the right and obligation to overthrow an abusive government	Everywhere, man is "in chains" from abusive governments. Government power comes only from the general will of the people. Government power should be strictly limited and abusive governments should be immediately overthrown.
Representation	Governments are designed to control, not necessarily represent.	Representation ensures that governments are responsive to the people. Representation is a safeguard against oppression.	Representation is not enough. Citizens cannot delegate their civic duties. They must be actively involved. Rousseau favors a more direct democracy to enact the general will.
Impact on American Government	Governments must be designed to protect the people from themselves.	1. Governments must be designed to protect the people from the government. 2. Natural Rights must be secured.	1. Governments must be responsive and aligned with the general will. 2. People make a nation, not institutions. 3. Individual will are subordinate to the general (collective) will.

Figure 1.1.8

Figure 1.1.9

Study/Discussion Questions

1. What beliefs did Hobbes, Locke, and Rousseau share?

2. How were their beliefs different?

3. What is meant by the terms "natural law" and "social contract"?

4. Explain what each of the philosophers below meant by the quotes attributed to them and how they saw the government's role in addressing the problems they saw.

	Quote	Problem	Solution
Thomas Hobbes	**"Life is solitary, nasty, short and Brutish."**		
John Locke	**"Men are born with natural rights, including life, liberty and the ownership of property."**		
Jean Jacques Rousseau	**"Man is born free yet everywhere he is in chains."**		

5. How was the theory of Divine Right used to justify a monarch's rule?

6. Why were the ideas of Hobbes so different from those of Locke and Rousseau?

7. How did the Enlightenment lead to new ideas in government?

8. How do we see the ideas of Hobbes, Locke, and Rousseau included in the American system of government?

9. What is a public good? Provide an example.

10. What are free riders and why are they a problem with regard to collective actions?

11. Benjamin Franklin once said, *"Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety ."*What does Franklin's quote mean and how does it relate to our discussion of the social contract? Which of the social contract philosophers would most agree with this statement? Which would be least likely to agree? Why?

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1.2: America's Foundation

Figure 1.2.1: Landing of the Pilgrims at Plymouth 1620

Sea travel expanded the horizons of many European nations and created prosperity and the conditions for the Enlightenment. In turn, the Enlightenment ideals of liberty, equality, and justice helped to create the conditions for the American Revolution and the subsequent Constitution.

The Colonial Era

In 1607 (more than a decade before the Pilgrims would land at Plymouth Rock), three wooden ships arrived on the shores of coastal Virginia. These ships carried just over 100 English men and boys--many of whom were jewelers and merchants by training and practice--and a charter from King James I of England.

When they arrived, they had little over a month's time to build a fort and to establish their presence in what would be known as Jamestown. This would be the first permanent English settlement in North America. Within six months, more than half of these colonists were dead (mostly from famine because they did not know how to farm). While many school children today learn about the struggle and hardship these first colonists faced, we must also consider what they accomplished.

By 1619 in a small church on the grounds of the fort, these men established the first representative assembly in North America. Twenty-two elected representatives, known as burgesses, would establish the first rule of law in North America.

These men passed a number of laws concerning a new cash crop, tobacco, that they had learned to farm from the natives, and they established a system of taxation as well as rules meant to promote the general welfare of the people such as measures concerning drunkenness and gambling. This small elected body would go on to become the Virginia House of Burgesses, which was one of the most influential and effective bodies of self-government in the Colonial Era of America.

Figure 1.2.2: In this picture, a landing party makes its way to shore from the ships the Discovery, Godspeed, and the Susan Constant during a re-enactment ceremony on the 400th anniversary of the first landing of settlers to the "New World." Settlers from the ships the Godspeed, Discovery and the Susan Constant landed in Virginia Beach and stayed four days before transiting to Jamestown.

Early Historical Influences on American Government

Democracy was not created overnight. In a world where people were ruled by monarchs from above, the idea of self-government was entirely alien. Democracy requires practice and builds wisdom from experience. The American colonies began developing a democratic tradition during their earliest stages of growth.

Over 150 years later, the colonists believed their experience was substantial enough to refuse to recognize the British king. The first decade was rocky. The American Revolution and the domestic instability that followed prompted a call for a new type of

government with a constitution to guarantee liberty. The constitution drafted in the early days of the independent American republic has endured longer than any in human history.

Where did this democratic tradition truly begin? The ideas and practices that led to the development of the American democratic republic owe a debt to the ancient civilizations of Greece and Rome, the Protestant Reformation, and Gutenberg's Printing Press (which greatly impacted the spread of revolutionary ideas in Colonial America). The Enlightenment of 17th-century Europe had the most immediate impact on the framers of the United States Constitution. Philosophes (the French term attributed to early Enlightenment Philosophers) had an important impact on modern democratic governments.

The Philosophes

One of the first philosophes (French for philosophers) was Thomas Hobbes, an Englishman who concluded in his famous book, *Levithan*, that people are incapable of ruling themselves primarily because humans are naturally self-centered and quarrelsome, so they need the iron fist of a strong leader.

Later philosophes, like Voltaire, Montesquieu, and Rousseau were more optimistic about democracy. Their ideas encouraged the questioning of absolute monarchs, like the Bourbon family that ruled France. Montesquieu suggested a separation of powers into branches of government, not unlike the system American would later adopt. They found eager students who later became the founders of the American government.

Figure 1.2.3: The Boston Tea party was a political and mercantile protest.

John Locke

The single most important influence that shaped the founding of the United States comes from John Locke, a 17th-century Englishman who redefined the nature of government. Although he agreed with Hobbes regarding the self-interested nature of humans, he was much more optimistic about their ability to use reason to avoid tyranny.

In his *Second Treatise of Government*, Locke identified the basis of a legitimate government. According to Locke, a ruler gains authority through the consent of the governed. The duty of that government is to protect the natural rights of the people, which Locke believed to include life, liberty, and property.

If the government should fail to protect these rights, its citizens would have the right to overthrow that government. This idea deeply influenced Thomas Jefferson as he drafted the Declaration of Independence.

Important English Documents

Ironically, the English political system provided the grist for the revolt of its own American colonies. For many centuries, English monarchs had allowed restrictions to be placed on their ultimate power. The Magna Carta, written in 1215, established the core idea of limited government, or the belief that the monarch's rule was not absolute.

Although the document only forced King John to consult nobles before he made arbitrary decisions like passing taxes, the Magna Carta provided the basis for the later development of Parliament. Over the years, a representative government led by a prime minister came to control and eventually replace the king as the real source of power in Britain.

Figure 1.2.4: The ideas of the French Enlightenment philosophes strongly influenced the American revolutionaries. French intellectuals met in salons similar to this to exchange ideas and define their ideals such as liberty, equality, and justice.

The Petition of Right (1628) extended the rights of "commoners" to have a voice in the government. The English Bill of Rights (1688) guaranteed free elections and rights for citizens accused of crimes. Although King George III still had some real power in 1776, Britain was already well along on the path of democracy by that time.

The foundations of American government lie squarely in the 17th and 18th century European Enlightenment. The American Founders were well versed in the writings of the philosophes whose ideas influenced the shaping of the new country.

Thomas Jefferson, George Washington, James Madison, and others took the brave steps of creating a government based on the Enlightenment values of liberty, equality, and a new form of justice. That government is still intact more than 200 years later.

The Early Colonial Experience

One must remember that the majority of the original American Colonies were first established under the direct Charter of the British Government. The British King was considered a father to these new colonies, and the colonies were treated like the King's own children. Like children, the American colonies grew and flourished under British supervision. As with many adolescents, the colonies rebelled against their parent country by declaring independence.

The American democratic experiment did not begin in 1776. The colonies had been practicing limited forms of self-government since the early 1600s. The great expanse of the Atlantic Ocean created a safe distance for American colonists to develop skills to govern themselves, and the British had very little power to enforce even the most basic of parliamentary policies governing trade or taxation during this period known as the period of salutary neglect.

Despite its efforts to control American trade, England could not possibly oversee the entire American coastline. Colonial merchants soon learned to operate outside British law. Finally, those who escaped religious persecution in England demanded the freedom to worship according to their faiths.

Colonial Governments

Each of the thirteen colonies had a charter, or written agreement between the colony and the king of England or Parliament. Charters of royal colonies provided for direct rule by the king. A colonial legislature was elected by property-holding males, but governors were appointed by the king and had almost complete authority—in theory.

The legislatures controlled the salary of the governor and often used this influence to keep the governors in line with colonial wishes. The first colonial legislature, the Virginia House of Burgesses, was established in 1619.

Figure 1.2.5: Map of the original 13 colonies

Colonies in North America

The colonies along the eastern coast of North America were formed under different types of charters, but most developed representative democratic governments to rule their territories.

When the first Pilgrims voyaged to the New World, a bizarre twist of fate created a spirit of self-government. These Pilgrims of the Mayflower were bound for Virginia in 1620, but they got lost and instead landed at Plymouth in present-day Massachusetts.

Since Plymouth did not lie within the boundaries of the Virginia colony, the Pilgrims had no official charter to govern them. They drafted the Mayflower Compact which, in essence, declared that they would rule themselves.

Although Massachusetts eventually became a royal colony, the Pilgrims at Plymouth set a powerful precedent of making their own rules that later reflected itself in the town meetings that were held across colonial New England.

Figure 1.2.6: The signing of the Mayflower Compact in 1620 led to the establishment of formal self-rule among the Pilgrims.

Trade and Taxation

Colonial economies operated under Mercantilism, a system based on the belief that colonies existed in order to increase the mother country's wealth. England tried to regulate colonial trade and forbid colonies from trading with other European countries.

England also maintained the right to tax the colonies. Both trade and taxation were difficult for England to control, so an informal agreement emerged. England regulated trade but allowed colonists the right to levy their own taxes. Smugglers soon exploited the English inability to guard every port by secretly trading against Parliament's wishes.

Figure 1.2.7: The seal of the colonial charter granted to William Penn.

Colonial Charters

A charter is a document that gave colonies the legal rights to exist. Charters may also bestow certain rights on a town, city, university, or institution. Colonial charters were empowered when the king granted exclusive powers for the governance of land to proprietors or a settlement company. The charters defined the relationship of the colony to the mother country, free from involvement from the Crown. For the trading companies, charters vested the powers of government in the company in England. The officers would determine administration, laws, and ordinances.

Proprietary charters gave governing authority to the proprietor, who determined the form of government, chose the officers, and made laws--subject to the advice and consent of the freemen. All colonial charters guaranteed the vague rights and privileges of Englishmen to the Colonists. This would later cause trouble during the Revolutionary Era. In the second half of the 17th century, the Crown looked upon charters as obstacles to colonial control substituting the royal province for corporations and proprietary governments.

The Virginia and Massachusetts charters were given to business corporations. Regular meetings of company officers and stockholders were the only governmental institutions required. The Virginia Charter, issued in 1606 and revised in 1609 and 1612, was revoked in 1624 upon bankruptcy of the sponsoring and organizing Virginia Company of London. The second colonial charter was granted to Massachusetts Bay in 1629, settling at Boston and Salem, a decade after the first "New Englanders" inhabited Plymouth Colony further south toward Cape Cod.

In 1684, the Chancery Court in England voided the charter and changed it to a Royal Colony. Charles II placed Massachusetts under the authority of the unified Dominion of New England in 1685. After William III assumed the throne, he issued Massachusetts Bay a new liberal charter in 1691.

Charles II granted Connecticut its charter in 1662 with the right of self-government. When James II ascended the throne in 1685, he tried to revoke the Connecticut Charter and sent Sir Edmund Andros to receive it for the Crown. Captain Joseph Wadsworth spirited the precious document out a window, stole the charter, and hid it in a hollow oak tree. This became known as the "Charter Oak."

This lasted until James II was overthrown. Connecticut temporarily lost the right to self-government under the unification of the several colonies into the Dominion of New England in 1687, but it was reinstated in 1689. The last charter by Charles II was issued to Rhode Island in 1663. Connecticut and Rhode Island attained colonial charters as already established colonies that allowed them to elect their own governors.

As a result of political upheavals, especially after the three English civil wars in the 1640s and the 1668 "Glorious Revolution," religious conflicts also transformed into struggles between the king and Parliament.

As a result of political upheavals, especially after the three English civil wars in the 1640s and the 1668 "Glorious Revolution," religious conflicts also transformed into struggles between the king and Parliament. Many historians believe the Glorious Revolution to be one of the main factors that led to defining the powers of Parliament and the Crown in England. As a result, the king's powers were limited while the governments were increased. It was specified that the king's power could not be absolute.

As these conflicts traveled across the Atlantic Ocean, most colonies eventually surrendered their charters to the Crown by 1763 and became royal colonies as the king and his ministers asserted more centralized control of their previously neglected and autonomous Thirteen Colonies.

By the late 1600s, colonial Maryland had its proprietary charter to the Lords Baltimore revoked and became a royal colony with the governor of Maryland appointed by the Monarch under the advice of his ministers, the colonial offices, and the Board of Trade of members from Parliament. By 1776, Pennsylvania and its lower Delaware Bay counties remained proprietary colonies under a charter originally granted to William Penn and his heirs. The Province of Connecticut, the Province of Rhode Island, and Providence Plantations continued as corporation colonies under charters.

At this time, Massachusetts was governed as a royal province while operating under a charter after the unifying of the older "Massachusetts Bay" colony at Boston and the "first landing" colony, Plymouth Colony at Plymouth, Massachusetts, with its famous "Mayflower Compact" from 1620.

Further south, the Provinces of Virginia, North Carolina, South Carolina, Georgia, and to the undefined border with Spanish Florida, all had their original charters dismissed with different opinions about the role, powers, and taxing authority between the Royal Governors and their increasingly restless and defiant colonial assemblies. The Royal Authority reasserted itself and began governing more directly from London with increasing friction as the 18th-Century progressed to its revolutionary climax.

Figure 1.2.8: Churches, such as this one, were the centerpiece of religious and social life in Colonial Era America.

Religious Freedom

While most early colonies in America were, at least in part, established for religious and economic reasons, it is clear that the majority of early colonists firmly rooted their daily life in what is today identified as Judeo-Christian values.

The Massachusetts Body of Liberties was created in 1641 with the intention of protecting an individual's rights. This document contained rights that would later be included in the Bill of Rights. Some of the liberties legislated are explicitly cited as originating from biblical sources.

These ideals, common to most colonists, include a belief in natural (God-given) rights, natural laws (those attributed to God and considered higher than those of men), a set of moral behavioral standards (based on the Ten Commandments), and a belief that hard work and right behavior will be rewarded. While these beliefs were commonly shared among the colonists, they certainly did not share a single religious belief system. Most believed in religious tolerance which meant people should be free to worship and practice the religious belief of their choice.

This was particularly true in the middle and southern colonies but was less true in the New England colonies (particularly Massachusetts where strict Calvinist beliefs were prominent). Other colonies such as Rhode Island, founded by Roger Williams,

were established for the primary purpose of allowing religious diversity and tolerance.

In Thomas Jefferson's Virginia Statute of Religious Freedom, he wrote:

> *"Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishment or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was his Almighty power to do . . .*
>
> *Be it enacted by the General Assembly, that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise diminish, enlarge, or affecttheir civil capacities.*

This is just one example of many such documents that were drafted and adopted by colonial assemblies during the Pre-revolutionary period. Religious freedom served as a major motivation for Europeans to venture to the American colonies. Puritans and Pilgrims in Massachusetts, Quakers in Pennsylvania, and Catholics in Maryland represented the growing religious diversity in the colonies. Rhode Island was founded as a colony of religious freedom in reaction to zealous Puritans. As a result, many different faiths coexisted in the colonies. This variety required an insistence on freedom of religion since the earliest days of British settlement.

Colonial Comparison

The Pre-revolutionary colonial experience was one of absorbing British models of government, the economy, and religion. Over the course of about 150 years, American colonists practiced these rudimentary forms of self-government that eventually led to their decision to revolt against British rule.

The democratic experiment of American self-rule was therefore not a sudden change brought about by the Declaration of Independence. By 1776, Americans had plenty of practice.

REGIONAL COMPARISON OF THE 13 COLONIES

	Southern Colonies Virginia, Maryland, South Carolina, North Carolina, Georgia	**Middle Colonies** New York, New Jersey, Pennsylvania, Delaware	**New England Colonies** Massachusetts, Connecticut, New Hampshire, Rhode Island
Settlement	Originally established under royal charter. Stockholders and settlers expected profits from gold and crops.	Dutch initially settled the region, followed by Swedes and finally the English. Quakers under William Penn were given a royal charter to develop the area as they saw fit.	Initially settled by Pilgrims and Puritans. Strict adherence to a godly community led to dissenters leaving and establishing new colonies.
Economy	Plantation economy based on single-crops, mainly tobacco and rice.	Small farmers, craftsmen, and merchants would form the basis of both agricultural (farming) and commercial (trade-based) economies.	Small farmers and merchants with the basis of subsistence small family-operated farms and trade in some areas (like Boston).
Labor and Servitude	Growth of large plantations led to heavy reliance on slavery.	Small businesses tended to rely on indentured servants.	Family-run businesses and farms meant little need for servants or slaves.
Demographic makeup	Biracial, socially-stratified society based on English tradition and wealth.	Diverse, heterogeneous society of many cultures, languages, and religions.	A homogeneous society based on the idea of a perfect, godly, religious community.
Government leadership	Lived on large and small plantations which led to the rule of wealthy elite at county level	Lived in small, dispersed settlements that encouraged the growth of county-level governments.	Lived in close-knit and clustered villages and towns that led to local rule and town-hall meetings.
Views on society, politics, and religion	English tradition formed the basis for traditionally English viewpoints about politics, religion and economy.	Many cultural traditions encouraged the growth of diverse cultural, economic, political and social traditions.	Separatist nature of colonies led to the creation of a distinctly “American” point of view far different than that of the British.
Religion	Religion was traditionally Church of England (Anglican) with the exception of Georgia which was intended as a Catholic colony. Played a minor role in politics and economy.	Religious tolerance was the rule and practiced by the Quakers. Religion played a minor role in politics and economy.	Religion was strictly Calvinist, while little uniformity existed among practitioners. Religion dictated political, economic and social lives of the colonists.

Political Life in Colonial Times

Under the Kingdom of Great Britain, the American colonies experienced a number of situations which would guide them in creating a constitution. The British Parliament believed that it had the right to impose taxes on the colonists.

While it did have *virtual* representation over the entire empire, the colonists believed Parliament had no such right as the colonists had no *direct* representation in Parliament. By the 1720s, all but two of the colonies had a locally elected legislature and a British appointed governor. These two branches of government would often clash, with the legislatures imposing "power of the purse" to control the British governor.

Thus, Americans viewed their legislative branch as a guardian of liberty, while the executive branch was deemed tyrannical. There were several occasions when royal actions upset the Americans. For example, taxes on the importation of products including lead, paint, tea, and spirits were imposed.

Figure 1.2.9: The Tea Act

After the Boston Tea Party, Great Britain's leadership passed acts that outlawed the Massachusetts legislature. The Parliament also provided for special courts in which British judges, rather than American juries, would try colonists. The Quartering Act and the Intolerable Acts required Americans to provide room and board for British soldiers. Americans especially feared British actions in Canada where civil law was once suspended in favor of British military rule.

American distaste for the British government would lead to revolution. Americans formed their own institutions such as the Continental Congress with political ideas gleaned from the British radicals of the early 18th century. England passed beyond those ideas by 1776, with the resulting conflict leading to the first American attempts at a national government.

Figure 1.2.10

Study/Discussion Questions

For each of the following terms, write a sentence which uses or describes the term in your own words.

John Locke	Charles de Montesquieu	Enlightenment
Boston Tea Party	Intolerable Acts	

1. How are legitimate governments created according to Locke?
2. What makes the Magna Carta an important document for American politics?
3. How did Colonial Legislators influence their appointed governors?
4. Why did the Mayflower Compact set an important precedent?
5. Why was religious freedom so important to the colonies?
6. Explain the difference between *virtual* and *direct* representation.

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1.3: Important Individuals

Figure 1.3.1: Riot police form a line to push back protesters and media, Baltimore, April 28, 2015

Would you rather live in a society with strict laws and punishments or one in which the people could do anything they wanted with no laws or consequences? Explain your answer.

Before continuing any further in this section, watch the video lecture below for a better understanding of why many political philosophers throughout history have proposed and explained the necessity of a formal government.

Whenever people come together, it becomes necessary to ensure that they can safely and effectively relate to each other in a civil way. People must be able to collectively solve important problems and determine the rules and standards by which they will live. These become the main reasons that governments are necessary. To quote James Madison, “If men were angels, governments would not be necessary” (Federalist 51).

Many times throughout history, it became necessary for the leader of a society to mandate a standard for the behavior of his or her people and to ensure those standards were followed by applying harsh consequences for disregard.

History is full of examples where it became necessary to institute rules by which a society will live. For example, in 1754 BC, Hammurabi, a famous Babylonian King, wrote down a series of laws and punishments on ancient clay tablets. He based these on the principle of “an eye for an eye and a tooth for a tooth." Today, these laws are known as the Code of Hammurabi. Later, Moses, a biblical prophet from the Old Testament, received a series of laws to be delivered to the Hebrew nation. Today, these laws are known as “The Ten Commandments.”

Early Laws

Hammurabi – “Hammurabi’s Code”	Moses-Ten Commandments
195. If a son strike[s] his father, his hands shall be cut off. **196**. If a man put out the eye of another man, his eye shall be put out. **198.** If he put out the eye of a freed man, or break the bone of a freed man, he shall pay one gold mina. **199.** If he put out the eye of a man's slave, or break the bone of a man's slave, he shall pay one-half of its value. **200.** If a man knock out the teeth of his equal, his teeth shall be knocked out. **131**. If a man bring a charge against one's wife, but she is not surprised with another man, she must take an oath and then may return to her house. **132**. If the "finger is pointed" at a man's wife about another man, but she is not caught sleeping with the other man, she shall jump into the river for her husband. **8.** If anyone steal cattle or sheep, or an ass, or a pig or a goat, if it belong to a god or to the court, the thief shall pay thirtyfold therefor; if they belonged to a freed man of the king he shall pay tenfold; if the thief has nothing with which to pay he shall be put to death. **1.** If anyone ensnare another, putting a ban upon him, but he can not prove it, then he that ensnared him shall be put to death.	**1.** Thou shalt have no other gods before me. **2.** Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth. **3.** Thou shalt not take the name of the LORD thy God in vain **4.** Remember the Sabbath day, to keep it holy. **5.** Honor thy father and thy mother: **6.** Thou shalt not kill. **7.** Thou shalt not commit adultery. **8.** Thou shalt not steal. **9.** Thou shalt not bear false witness against thy neighbor. **10.** Thou shalt not covet thy neighbor’s house, thou shalt not covet thy neighbor’s wife, nor his manservant, nor his maidservant, nor his ox, nor his ass, nor any thing that is thy neighbor’s.*Exodus 20:1-17; Deuteronomy 5:4-21*

The Rule of Law

Both Hammurabi's Code and the Ten Commandments are sets of laws that are handed down with very little say from the people themselves. When people decide upon their own rules and standards of behavior in a collective manner and live according to those rules, they are abiding by the *Rule of Law.* This means that the people decide for themselves which laws are made, how they will be followed, and what consequences will be enforced if they are not.

Charles-Louis de Secondat, Baron de La Brède et de Montesquieu

Simply called Montesquieu, the noted political philosopher was also a French judge and man of letters, which meant he could read and write--something of a rarity for the time period of the early 1700s. Montesquieu expressed the idea of separation of powers, which is implemented in many constitutions across the world.

He anonymously published *The Spirit of the Laws* in 1748. This text stated that in order for political institutions to be successful, it was necessary for them to reflect the social and geographical aspects of the particular community.

Montesquieu pleaded for a constitutional system of government with separation of powers, the preservation of legality and civil liberties, and the end of slavery.

This discourse greatly influenced the Founding Fathers in drafting the United States Constitution.

Sir William Blackstone

One proponent of this philosophy of the Rule of Law was Sir William Blackstone. He developed the ideas of British Common Law and such principles as presumed innocence (innocent until proven guilty), so that laws could be fairly and equitably applied across society. Blackstone's most famous quote was, "Better ten guilty men escape than one innocent man suffer." This quote would later be called "Blackstone's Formulation." Blackstone's focus on the Rule of Law and his contributions to legal education and thought would become a cornerstone of the American government.

William Blackstone (1723-1780) was an English-born jurist who greatly influenced the legal system of Great Britain and the United States. He was educated at Oxford with studies in the classics, math, and logic. He was further educated in law and admitted to the bar in 1746. He worked as a lawyer, served as a judge, and later became a lecturer at Oxford University where his series of lectures became the basis for his book *Commentaries of the Laws of England*. It was published in February 1766 (later to be augmented and further revised).

The Commentaries

Blackstone's *Commentaries on the Laws of England* was the first attempt at collecting and organizing English Common Law. This book would give substance to English Common Law. It was written in a way that even a novice law student could understand its concepts. It became the basis for the study of law in the 18th and 19th centuries in most English-speaking nations. There was such a high demand it was reprinted many times and translated into many languages.

Influence on American Government

One important aspect of *Commentaries*... for the late 18th- and early 19th-century Americans was its convenience. It was published at a time when law books were scarce and expensive. With this one publication, a lawyer could essentially have a complete law library in four volumes. It was so much easier to transport a compendium of legal knowledge in a convenient collection.

Blackstone wrote, "Christianity is part of the law of England," but he also wrote that the law of England, "Gives liberty, rightly understood, that is, protection to a Jew, Turk, or heathen as well as to those who profess the true religion of Christ."

Thomas Jefferson put several phrases in the Declaration of Independence that can be directly attributed to Blackstone including: "self-evident," "unalienable rights," and "Laws of Nature," and Nature's God."

John Marshall, first Chief Justice of the Supreme Court, quoted Blackstone's definition of *writ of mandamus* (a legal order to a state to perform an action) in *Marbury vs. Madison* (1803), which established the important concept of judicial review. Judicial review gives the courts the power to overturn a law on the basis of its constitutionality.

Marshall also cited Blackstone in his decision in the trial of Aaron Burr. Blackstone was cited at the Constitutional Convention, particularly in regard to *ex post facto laws* (laws that retroactively make a crime from an act that was not criminal at the time it was committed), which Blackstone determined only applied to criminal cases.

Alexander also quoted Blackstone in *Federalist 69* and *84*, while Patrick Henry used Blackstone to support his opposition to Virginia's adoption of the Constitution because there was no provision for a jury trial in civil cases included in that document. Abraham Lincoln read and studied Blackstone as part of his self-taught legal education.

Republicanism

A political philosophy that has been a major part of American civic thought since its founding is called Republicanism. This concept values *liberty* and *unalienable rights* as central values, making people sovereign as a whole. Republicanism rejects monarchy, aristocracy and inherited political power, expects citizens to be virtuous and faithful in their performance of civic duties, and vilifies corruption. American republicanism was first expressed and first practiced by the Founding Fathers.

Today

Blackstone became less influential after the Civil War. Some objected to his support of the monarchy, and others would attribute the decline in his influence to the more structured legal education, which replaced the text method (his 'Commentary') with the case method of study. However, it is clear that Blackstone's ideas were critical in defining and applying the Rule of Law to legal systems around the world, particularly in Great Britain and the United States.

Law and Religion: Should they Co-Exist?

The United States has a history of a "wall of separation" between church and state. In the modern era that wall is beginning to erode

Video: The Objective Standard by Which to Judge Laws

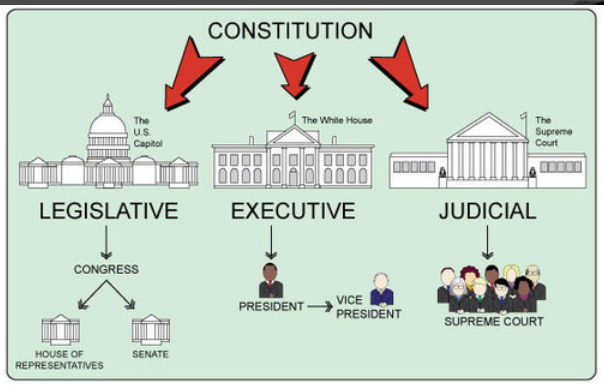

Figure 1.3.2

Government is the institutions who have authority to make and carry out laws, decisions, and actions on behalf of the citizens of a nation or territory.

Government and Politics: What's the Difference?

Governments can best be described as institutions, which have recognized authority to make and carry out laws, decisions, and actions on behalf of the citizens of a nation or territory. As we will see later, there are many types and forms of government; however, they all have this definition in common.

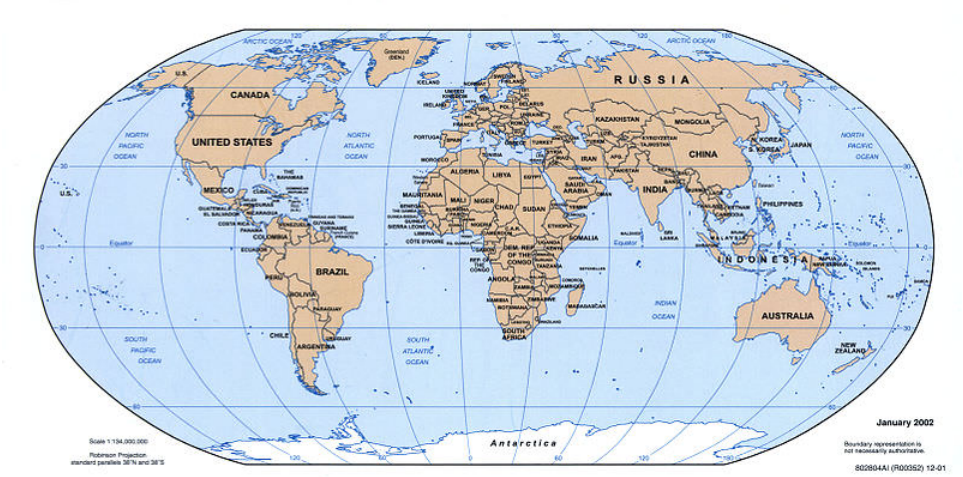

Figure 1.3.3: Political Map of the World

States

States are contiguous geographic regions whose laws and policies are created and enforced by a recognized government. All states have four general characteristics:

First, they must have a population. However, the size of that population has nothing to do with whether a geographic region is recognized as a state.

Second, they must have known and recognized boundaries (as in the political map above).

Third, they must have sovereignty, meaning they must decide their own foreign and domestic policies without seeking the direct authority of any other nation. For instance, the State of Texas is not a sovereign nation as it must still abide by the laws and constitution of the United States.

Fourth, states must have a government, which consists of the institutions and people who have recognized authority to create and execute laws and make decisions on behalf of the citizens.

Figure 1.3.4: Political Debate Held at Burges High School, March 2014

Politics

Politics can best be described as the processes used to acquire and exercise authority. Harold Lasswell (1950) is most often credited as creating the best definition of politics. He said that politics was all about acquiring and using power. His definition was simply, “who gets what, when, and how.”

While government and politics are two very different things, they are often misunderstood by citizens who mistake government for politics. Quite simply, governments are institutions for laws and those who create them, while politics is best described as the processes by which those institutions are created, lawmakers are selected, and decisions are made and implemented.

> Source: Lasswell, Harold, Politics: Who Gets What, When and How, ©1950, New York, Pete
> *Video: The Difference Between Government and Politics*

Video Discussion Questions

After viewing the video above, answer the following questions.

1. How does the subject of the video describe the difference between government and politics?

2. In what context was this video made and presented? How does this impact your perception of the subject's credibility (believability) as a presenter?

3. Do you agree or disagree with the ideas presented in the video? Why/why not?

Figure 1.3.5

Study/Discussion Questions

For each of the following terms, write a sentence which uses or describes the term in your own words.

William Blackstone	Moses	Politics
Government	Natural Law	Rule of Law
Hammurabi	Montesquieu	States

1. What did James Monroe mean when he said, “If men were angels, governments would not be necessary”?

2. What did the law codes or Hammurabi and Moses have in common? How were they different

3. What was Blackstone's formulation? How is it applied in our system of government today?

4. What two laws did Blackstone see as often being in conflict with each other? Of the two, which did Blackstone see as superior?

5. What is the difference between government and politics? Support your answer with examples.

6. From your experience, are people who represent government more concerned with government or with politics? Explain your answer.

7. What are the four general characteristics of a state?

8. How did Harold Lasswell describe politics? Explain what is meant by his definition.

9. Give an example from your life of an encounter with government.

10. Give an example from your life of an encounter with politics.

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1.4: The Founding Fathers

Figure 1.4.1: America's Founding Fathers

The term Founding Fathers refers broadly to those individuals who led the American Revolution against the authority of the British Crown and established the United States of America. It may be more narrowly defined as referring specifically to those who either signed the Declaration of Independence in 1776. This term includes those who were delegates to the 1787 Constitutional Convention and took part in drafting the proposed Constitution of the United States.

Some historians define the "Founding Fathers" to mean a larger group, including not only the Signers and the Framers but also all those who, whether as politicians, jurists, statesmen, soldiers, diplomats, or ordinary citizens, took part in winning American independence and creating the United States of America.

In 1973, historian Richard B. Morris identified the following seven figures as the key Founding Fathers: John Adams, Benjamin Franklin, Alexander Hamilton, John Jay, Thomas Jefferson, James Madison, and George Washington. Three of these (Hamilton, Jay, and Madison) were authors of *The Federalist Papers*, a series of articles and essays advocating ratification of the Constitution.

Some lesser known, but no less important founders include James Wilson, Roger Sherman, and George Mason.

FACTS ABOUT THE FOUNDING FATHERS

FOUNDING FATHER	ESSENTIAL FACTS
John Adams	John Adams was born in Massachusetts in 1735. He was a Harvard lawyer who defended the British soldiers after the Boston Massacre. He served as a delegate to both Continental Congresses and was on the committee to write the Declaration of Independence. He was the first Vice President and the second President of the United States. During his Presidency, he tried to maintain neutrality with England and France, even though the French attempted a bribe during the XYZ Affair. He is criticized for signing the Alien and Sedition Acts which many said violated civil liberties. Adams was defeated by Jefferson in 1800 when he ran for a second term. Before he left office, he appointed John Marshall as Chief Justice. In the final days of his Presidency, he appointed Federalists to fill several new judgeships in what is called “the midnight appointments.” It was one of these appointments that led to the famous case *Marbury v Madison*. He died on July 4, 1826.
Benjamin Franklin	Benjamin Franklin was an inventor, writer, printer, diplomat, scientist, humorist, and statesman. He was born in Boston in 1706. In 1733 he started publishing *Poor Richard’s Almanack*. A distinguishing feature of Franklin’s almanac was his witty sayings and lively writing. During the French and Indian War, Franklin advocated colonial unity with his Albany Plan which encouraged the colonists to “Join or Die.” He was a delegate to both Continental Congresses and a member of the committee to write the Declaration of Independence. Franklin was the U.S. Ambassador to France and helped to negotiate the Treaty of Paris that ended the American Revolution. The French loved Franklin, and he was very popular there. Later, he was the oldest delegate to the Constitutional Convention at the age of 81. He became a member of the Pennsylvania Abolition Society before he died.
Alexander Hamilton	Alexander Hamilton was born in the West Indies in 1755. He was the Aide-De-Camp (personal assistant) to George Washington during the American Revolution. He was a delegate from New York during the Constitutional Convention in 1787. As a proponent of a strong central government, he was one of the authors of *The Federalist Papers* (essays that promoted the ratification of the Constitution). Hamilton was the first Secretary of the Treasury under President George Washington. He worked to pay off the country’s war debts through his financial plan which included the assumption of state debts and creation of a national bank. He was the founder of the Federalist Party--considered the first political party. On July 11, 1804, he fought a duel with Aaron Burr who was angry over Hamilton’s support of Jefferson in the presidential election of 1800. Hamilton was shot by Burr and died the next day.
John Jay	John Jay was born December 12th, 1745. Representing the point of view of the American merchants in protesting British restrictions on the commercial activities of the colonies, he was elected to the

	Continental Congress in 1774 and again in 1775. Jay did not favor independence from Britain. However, once the revolution was undertaken, Jay was an ardent supporter of the new nation. He drafted the first constitution of New York State and was appointed chief justice of the state in 1777. In the following year, he was again elected to the Continental Congress and was chosen as its president. The ineffectiveness of the Articles of Confederation led Jay to become a proponent of a strong national government and one of the primary authors of *T*he *Federalist Papers*. After the Constitution was ratified, George Washington nominated John Jay as the chief justice, and he was confirmed two days later. Jay was instrumental in establishing the Supreme Court as a reasoned and honorable institution. He later retired from service in the Supreme Court and was elected (without even running) Governor of New York in 1795 where he proved to be a popular and productive governor.
Thomas Jefferson	Thomas Jefferson was born in Virginia in 1743. As a Virginia planter, he was also a delegate to the House of Burgesses and to the First and Second Continental Congress. He was selected to draft the Declaration of Independence and is considered the author of the Declaration of Independence. Next, he was a U.S. Minister to France. Jefferson was the first Secretary of State under George Washington and Vice-President under John Adams. As Leader of the Democratic-Republican Party, in 1801 he became the third President of the United States. As President, he was responsible for the Louisiana Purchase in 1803 and the Embargo Act of 1807. In 1804, Jefferson sent the Lewis and Clark Expedition to explore the new territory purchased from France which produced a wealth of scientific and geographical knowledge. He died on July 4, 1826, the fiftieth anniversary of the Declaration of Independence. His self-written epitaph read: *"Here was buried Thomas Jefferson Author of the Declaration of American Independence of the Statute of Virginia for religious freedom & Father of the University of Virginia."*
James Madison	James Madison was born in Virginia in 1751. Madison was a delegate to the Philadelphia Constitutional Convention. He is widely considered the "Father of the Constitution" for his many contributions to the basic structure of our government. He used Montesquieu's idea for separation of powers but also added a system of checks and balances to assure no one branch was too powerful. He authored the Virginia Plan, which proposed representation in the Legislative Branch based on population but was willing to compromise by creating a bicameral legislature. He supported ratification of the new U.S. Constitution and wrote over a third of T*he Federalist Papers*, promoting its ratification. He helped frame the Bill of Rights. Then he became Secretary of State under Thomas Jefferson. He was the fourth President of the United States. During his presidency, the United States fought Great Britain in the War of 1812.
George Washington	George Washington was born in Virginia in 1732. He was a Virginia planter and a delegate to the House of Burgesses.

	Washington fought during the French and Indian War and was a delegate to the Continental Congress. He was chosen Commander of the Continental Army during the American Revolution. Later, he became the President of the Philadelphia Constitutional Convention in 1787 and the First President of the United States. During his presidency, his foreign policy was to remain neutral. He warned the country against European entanglement and political parties in his Farewell Address. George Washington is referred to as the “Father of our Country.”

The First Continental Congress

The First Continental Congress met briefly in Philadelphia, Pennsylvania in 1774. It consisted of 56 delegates from 12 of the Thirteen Colonies that later would become the United States of America.

The delegates were elected by their respective colonial assemblies and included George Washington (soon to be appointed commander of the army), Patrick Henry, and John Adams. Other notable delegates included Samuel Adams from Massachusetts, John Dickinson from Pennsylvania, and John Jay from New York.

A major influence at this meeting was James Wilson. In addition to signing the Declaration of Independence, Wilson was elected two times to the Continental Congress as a representative of Pennsylvania. Wilson was a member of the delegation, the Committee of Detail that wrote the first draft of the Constitution. James Wilson shared a similar philosophy to James Madison, and they allied to work for the Constitution's ratification. His input and campaign for the Constitution led Pennsylvania to be the second state to sign it. Due to his mastery of legal theory, he was one of the six original justices appointed by George Washington to the Supreme Court.

Roger Sherman, representative from Connecticut, was an early American statesman and lawyer, as well as a Founding Father of the United States. He is the only person to have signed all four state main documents of the United States: the Continental Association, the Declaration of Independence, the Articles of Confederation, and the Constitution. Along with James Wilson, he proposed the Three-Fifths Compromise, which counted slaves as three-fifths of a person for the purposes of representation in the United States House of Representatives.

George Mason was elected as a delegate to the Constitutional Convention from Virginia. He participated in the process of drafting the Constitution for months until he concluded that he did not fully support the Constitution because it did not contain a bill of rights. Mason also wanted to immediately end slavery. Although his ideas were not incorporated during this time, James Madison, a fellow Virginian and Founding Father, was intent to include a bill of rights during the First Congress in 1789.

This congress, in addition to formulating appeals to the British crown, established the Continental Association to administer boycott actions against Britain.

The Second Continental Congress

When the Second Continental Congress came together on May 10, 1775, it was, in effect, a reconvening of the First Congress. Many of the same 56 delegates who attended the first meeting participated in the second.

Notable new arrivals included Benjamin Franklin and Robert Morris of Pennsylvania, John Hancock of Massachusetts, and John Witherspoon of New Jersey. Hancock was elected president of the second Continental Congress two weeks into the session when Peyton Randolph was summoned back to Virginia to preside over the House of Burgesses.

Thomas Jefferson replaced Randolph in the Virginia congressional delegation. The second Congress adopted the Declaration of Independence. Witherspoon was the only active clergyman to sign the Declaration. He also signed the Articles of Confederation and attended the Constitutional Convention in New Jersey (1787) that ratified the Federal Constitution.

The newly founded country of the United States had to create a new government to replace the British Parliament. The Americans adopted the Articles of Confederation, a declaration that established a national government made up of a one-house legislature. Its ratification by all thirteen colonies gave the second Congress a new name: the Congress of the Confederation. They met from 1781 to 1789.

The Constitutional Convention

The Constitutional Convention took place from May 14 to September 17, 1787, in Philadelphia, Pennsylvania. It was held to address problems in governing the United States, which had been operating under the Articles of Confederation following independence from Great Britain.

Although the convention was intended to revise the Articles of Confederation, the intention from the outset of many of its proponents, chief among them James Madison and Alexander Hamilton, was to create a new government rather than fix the existing one. The delegates elected George Washington to preside over the convention. The result of the convention was the United States Constitution, placing the convention among the most significant events in the history of the United States.

The Framers of the Constitution

The men who attended the Constitutional Convention included some of the most prominent men of the revolutionary and post-revolutionary era. George Washington attended the convention, and he was chosen to be its president. Also in attendance were Benjamin Franklin, Alexander Hamilton, James Madison, and Roger Sherman. As a group, the Framers of the Constitution were wealthier and better educated than the average American. Nearly all of them had experience in state and national governments, and many of them had fought in the revolution. They were truly the “cream of the crop” of leaders and thinkers in America during the pre-colonial and post-colonial periods

The Missing Founders

While the Constitutional Convention included many luminaries, several famous figures from the Revolutionary Era did not attend. Patrick Henry and Samuel Adams, for example, were not there, and they both expressed serious reservations about the final document. Thomas Jefferson was also absent because he was serving as the American ambassador to France at the time.

Aims of the Framers

The framers aimed to create a stronger national government that would better protect and enhance liberty by preventing tyranny. The experience of Shays’ Rebellion and the states’ inability to cooperate with one another had also proven the weaknesses of the Articles of Confederation. Many Founding Fathers were concerned that Great Britain and other potential foreign powers would take advantage of those weaknesses, but the framers did not want to abolish the state governments.

This was a time in American history in which most Americans felt more loyalty toward their state government than to Congress or any other potential form of national government. A decentralized system with a strong local government made sense for the operation of a large nation such as the United States.

Figure 1.4.2: Scene at the Signing of the Constitution of the United States is a famous oil-on-canvas painting by Howard Chandler Christy. It depicts the Constitutional Convention signing the U.S. Constitution at Independence Hall in Philadelphia on September 17, 1787.

Scene at the Signing of the Constitution of the United States is a famous oil-on-canvas painting by Howard Chandler Christy. It depicts the Constitutional Convention signing the U.S. Constitution at Independence Hall in Philadelphia on September 17, 1787.

Figure 1.4.3

Study/Discussion Questions

For each of the following Founding Fathers, write a sentence which details and describes his contribution to the United States of America's early government.

John Adams	Benjamin Franklin
Alexander Hamilton	John Jay
Thomas Jefferson	James Madison
George Washington	James Wilson
Roger Sherman	George Mason

2. What occurred during the First Continental Congress? The Second?

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1.5: Debates and Compromises that Impacted the Founding Documents

Figure 1.5.1: "Scene at the signing of the Constitution" by Howard Chandler Christy shows the Constitutional Convention signing the Declaration of Independence on September 17, 1787 in Independence Hall, Philadelphia, PA

Creating a new government was an immense challenge. The members of the Constitutional Convention all brought their own philosophies and ideas to the meeting at Independence Hall.

The Convention assembled in Philadelphia in May of 1787. The delegates shuttered the windows of the State House and swore secrecy so they could speak freely. Although they had gathered to revise the Articles of Confederation, by mid-June they had decided to completely redesign the government. There was little agreement about what form it would take.

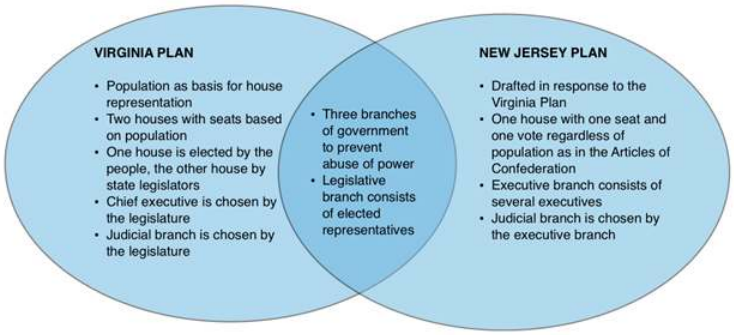

Figure 1.5.2

The Great Compromise

At the Convention, several plans were introduced. James Madison's plan, known as the Virginia Plan, was the most important plan. The Virginia Plan was a proposal by Virginia delegates for a bicameral legislative branch.

Prior to the start of the Convention, the Virginian delegates met. Drawing largely from Madison's suggestions, they drafted a plan. In its proposal, both houses of the legislature would be determined proportionately. The lower house would be elected by the people, and the upper house would be elected by the lower house. The executive branch would exist solely to ensure that the will of the legislature was carried out and, therefore, would be selected by the legislature. Since this plan was based on population, it would benefit those states with the largest population (mainly Virginia, New York, Pennsylvania, and Massachusetts).

The Virginia Plan

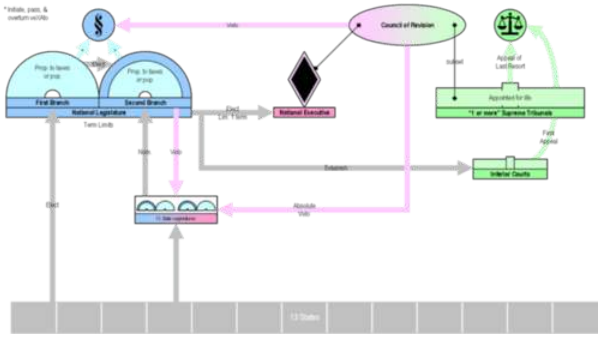

Figure 1.5.3

After the Virginia Plan was introduced, New Jersey delegate William Paterson asked for an adjournment to contemplate the plan. Under the Articles of Confederation, each state had equal representation in Congress, exercising one vote each. Paterson's New

Jersey Plan was ultimately a rebuttal to the Virginia Plan. Under the New Jersey Plan, the unicameral (one house) legislature with one vote per state was inherited from the Articles of Confederation. This position reflected the belief that the states were independent entities and because they entered the United States of America freely and individually, they remained so. Of course, this plan also benefited the states with smaller populations, and it did not give any consideration to the states with larger populations (like New York, Virginia, Pennsylvania and Massachusetts). As a result, the larger states did not like it.

The New Jersey Plan

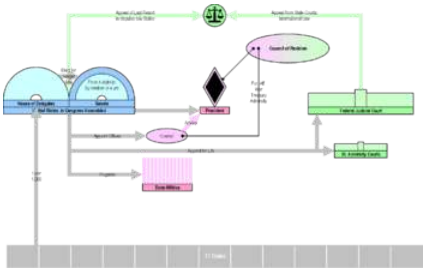

Figure 1.5.4

To resolve this stalemate, the Connecticut Compromise, also called the Great Compromise, was forged by Roger Sherman from Connecticut and entered into debate on June 11. In a sense, it blended the Virginia (large-state) and New Jersey (small-state) proposals. Ultimately, however, its main contribution was in determining the apportionment of the Senate and, thus, retaining a federal character in the Constitution. A modified form of this plan was ultimately included in the Constitution.

Slavery

Figure 1.5.5: Slavery was the most contentious issue at the Constitutional Convention.

Among the most controversial issues confronting the delegates was that of slavery. Slavery was widespread in the states at the time of the Convention. Twenty-five of the Convention's 55 delegates owned slaves, including all the delegates from Virginia and South Carolina.

Whether slavery was to be regulated under the new Constitution was a matter of such intense conflict between North and South, several Southern states refused to join the Union if slavery was not allowed. Delegates opposed to slavery were forced to yield their demands that slavery practiced within the confines of the new nation be completely outlawed. However, they continued to argue that the Constitution should prohibit the states from participating in the international slave trade, including the importation of new slaves from Africa, and the exportation of slaves to other countries.

The Convention postponed making a final decision on the international slave trade until late in the deliberations due to the contentious nature of the issue. Once the Convention had finished amending the first draft from the Committee of Detail, a new set of unresolved questions were sent to several different committees for resolution.

During the Convention's late July recess, the Committee of Detail inserted language that prohibited the federal government from attempting to ban international slave trading and prohibited imposing taxes on the purchase or sale of slaves. This committee developed a compromise. In exchange for this concession, the federal government's power to regulate foreign commerce would be strengthened by provisions that allowed taxation of slave trades in the international market and provisions that reduced the requirement for passage of navigation acts from two-thirds majorities of both houses of Congress to a simple majority.

The Three-Fifths Compromise

The Three-Fifths Compromise was a compromise between Southern and Northern states reached during the Philadelphia Convention of 1787. It stated three-fifths of the enumerated population of slaves would be counted for representation purposes regarding both the distribution of taxes and the apportionment of the members of the United States House of Representatives. It was proposed by delegates James Wilson and Roger Sherman. This was eventually adopted by the Convention.

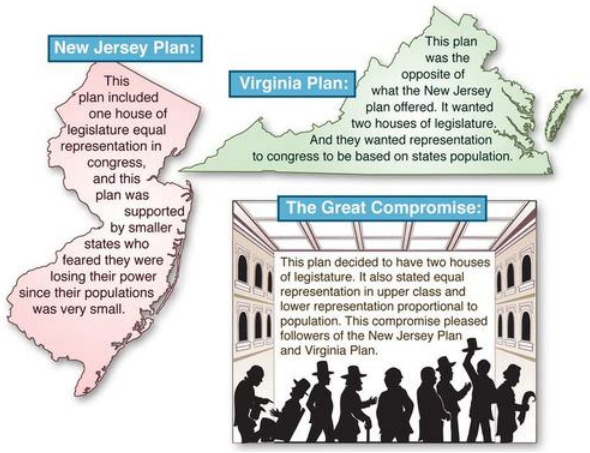

Figure 1.5.6

Other compromises dealing with slavery were also made. These included a complete Constitutional ban on debating or passing any new legislation that would end the importation of slaves until at least 1808 (20 years after the ratification of the Constitution). Additionally, a requirement that runaway slaves be returned to the state from which they originated even if they had fled to a free state was included.

Commerce Compromise

Northern interests wanted the government to be able to impose tariffs on goods in order to protect against foreign competition. However, the Southern states feared that tariffs on their goods would hurt the trade upon which they heavily relied. The compromise was to allow tariffs only on imports from foreign countries and not exports from the United States.

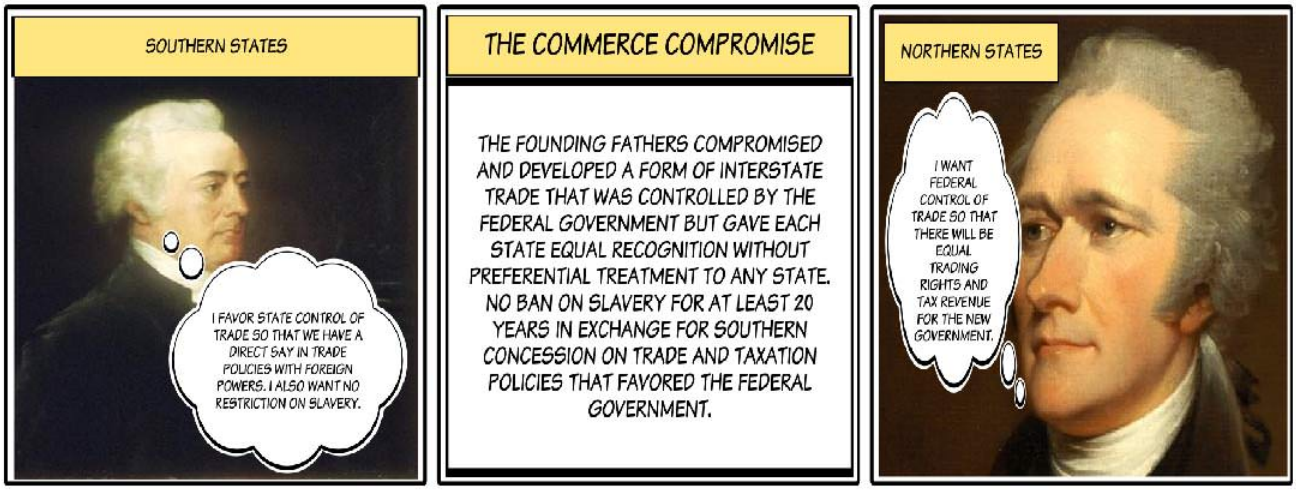

Figure 1.5.7: The Commerce Compromise gave the national government authority over interstate trade and the ability to place tariffs on imported goods, but at a cost. The importation of slaves continued for 20 more years until it was banned in 1808. It continued 60 more years after that (until the end of the Civil War.

Election of the President

The Articles of Confederation did not provide for a Chief Executive of the United States. Therefore, when delegates decided that a president was necessary, there was a disagreement over how he or she should be elected to office. While some delegates felt that the president should be popularly elected, others feared that the electorate would not be informed enough to make a wise decision. Other alternatives included going through each state's Senate to elect the president. In the end, the two sides compromised with the creation of the Electoral College. Thus, the citizens vote for electors who then vote for the president.

Drafting, Ratification, and Continued Debate

The Constitution was drafted on September 16, 1787. Delaware was the first state to ratify it on December 7, 1787. During the ratification and adoption process, two distinct parties had developed. One party opposed adoption (the Anti-Federalists), and one party favored adoption (the Federalists). These two parties continued to publish justifications for their position in newspapers across the country.

The most famous of these was *The Federalist Papers*, which promoted the side of the Federalists and argued for the Constitution. After New York ratified the Constitution on July 26, 1788, the Continental Congress was still the official government of the United States (while only meeting at irregular intervals) and passed a resolution on September 13, 1788 to place the new Constitution in operation in eleven states.

The last state to ratify the new Constitution was Rhode Island. Rhode Island was so concerned about this new constitutional form of national government that it failed to even send delegates to the Philadelphia Convention fearing that they "smelled a rat." On May 29, 1790, Rhode Island finally became the 13th state to ratify the Constitution. The result was unanimous ratification by all 13 states.

Figure 1.5.8

Study/Discussion Questions

For each of the following terms, write a sentence which uses or describes the term in your own words

Great Compromise	three-fifths compromise
unicameral	bicameral

1. What was the main goal of the Philadelphia Convention?
2. What was the difference between the Virginia Plan and the New Jersey Plan?
3. Why was the Three-Fifths Compromise controversial?
4. How were the issues over slavery and trade settled?

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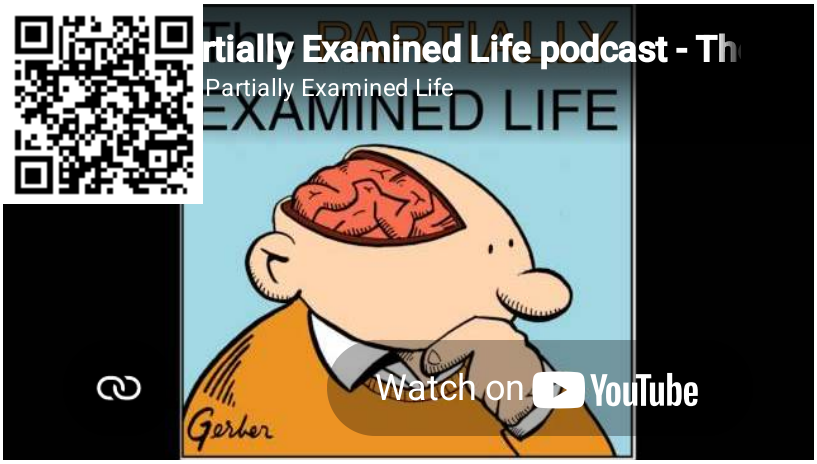
1.6: The Federalist Papers and Constitutional Government

Figure 1.6.1: Authors of the Federalist Papers were (L-R) Alexander Hamilton, James Madison and John Jay

What is Federalism?

Federalism is the system of government in which sovereignty (the authority and power to govern over a group of people) is constitutionally divided between a central, or national government, and individual regional political units generally referred to as states. It is based upon democratic rules and institutions in which the power to govern is shared between national and state governments, creating a federation.



Debating a Federal System: The Federalist Papers

The most forceful defense of the new Constitution was *The Federalist Papers*, a compilation of 85 anonymous essays published in New York City to convince the people of the state to vote for ratification. These articles were written by Alexander Hamilton and

James Madison. They examined the benefits of the new Constitution and analyzed the political theory and function behind the various articles of the Constitution. Those opposed to the new Constitution became known as the Anti-Federalists. They generally were local rather than cosmopolitan in perspective, oriented to plantations and farms rather than commerce or finance, and wanted strong state governments and a weak national government. The Anti-Federalists believed that the Legislative Branch had too much power, and that they were unchecked. Also, the Executive Branch had too much power, they believed that there was no check on the President. The final belief was that a Bill of Rights should be coupled with the Constitution to prevent a dictator from exploiting citizens. The Federalists argued that it was impossible to list all the rights and those that were not listed could be easily overlooked because they were not in the official Bill of Rights.

What Were The Federalist Papers and Why are They Important?

The Federalist Papers were a series of essays by John Jay, Alexander Hamilton, and James Madison written for the Federalist newspaper.

The convention in Virginia began its debate before nine states had approved the Constitution, but the contest was so close and bitterly fought that it lasted past the point when the technical number needed to ratify had been reached. Nevertheless, Virginia's decision was crucial to the nation. Who can imagine the early history of the United States if Virginia had not joined the union? What if leaders like George Washington, Thomas Jefferson, and James Madison had not been allowed to hold national political office? In the end Virginia approved the Constitution, with recommended amendments, in an especially close vote (89-79). Only one major state remained; the Constitution was close to getting the broad support that it needed to be effective.

Perhaps no state was as deeply divided as New York. The nationalist-urban artisan alliance could strongly carry New York City and the surrounding region while more rural upstate areas were strongly Anti-Federalist. The opponents of the Constitution had a strong majority when the convention began and set a tough challenge for Alexander Hamilton, the leading New York Federalist. Hamilton managed a brilliant campaign that narrowly won the issue (30-27) by combining threat and accommodation. On the one hand, he warned that commercial down state areas might separate from upstate New York if it didn't ratify. On the other hand, he accepted the conciliatory path suggested by Massachusetts; amendments would be acceptable after ratification.

The debate in New York produced perhaps the most famous exploration of American political philosophy, now called *The Federalist Papers*. Originally they were a series of 85 anonymous letters to newspapers that were co-written by Alexander Hamilton, James Madison, and John Jay. Together, they tried to assure the public of the two key points of the Federalist agenda. First, they explained that a strong government was needed for a variety of reasons, but especially if the United States was to be able to act effectively in foreign affairs. Second, they tried to convince readers that because of the "separation" of powers in the central government, there was little chance of the national government evolving into a tyrannical power. Instead of growing ever stronger, the separate branches would provide a "check and balance" against each other, so that none could rise to complete dominance.

The influence of these newspaper letters in the New York debate is not entirely known, but their status as a classic of American political thought is beyond doubt. Although Hamilton wrote the majority of the letters, James Madison authored the ones that are most celebrated today, especially Federalist No. 10.

Here Madison argued that a larger republic would not lead to greater abuse of power (as had traditionally been thought), but actually could work to make a large national republic a defense against tyranny. Madison explained that the large scope of the national republic would prevent local interests from rising to dominance and therefore the larger scale itself limited the potential for abuse of power. By including a diversity of interests (he identified agriculture, manufacturing, merchants, and creditors, as the key ones), the different groups in a larger republic would cancel each other out and prevent a corrupt interest from controlling all the others.

Madison was one of the first political theorists to offer a profoundly modern vision of self-interest as an aspect of human nature that could be employed to make government better, rather than more corrupt. In this, he represents a key figure in the transition from a traditional Republican vision of America, to a modern Liberal one where self-interest has a necessary role to play in public life.

A Closer Look at the Federalist Papers

Let's closely examine just three of these important documents.

Federalist #10: In this, the most famous of the *Federalist Papers*, James Madison begins by stating that one of the strongest arguments in favor of the Constitution is the establishment of a government capable of controlling the violence and damage caused by factions which Madison defines as groups of people who gather together to protect and promote their special economic interests and political opinions (basically political parties and special interests today). Although these factions are at odds with each other, they frequently work against the public interest and infringe upon the rights of others.

Both sides of the Constitutional debate (federalists AND anti-federalists alike) have been concerned with the political instability that these rival factions may cause. Under the Articles of Confederation, the state governments have not succeeded in solving this problem. As a matter of fact, the situation has become such a problem that people have become disillusioned with all politicians and blame the government for their problems (sound familiar?). Consequently, a form of popular government that can deal successfully with this problem has a great deal to recommend it.

Federalist #39: This essay was written to explain and defend the new form of Republican government which the Founding Fathers envisioned to be different than any other "Republic" in Europe. In the mind of Madison and the other founders, no other form of government is suited to the particular genius of the American people; only a Republican form of government can carry forward the principles fought for in the Revolution or demonstrate that self-government is both possible and practical.

Madison sees a Republican form of government as one which derives its powers either directly or indirectly from the people (which distinguishes this new form of republicanism from others that had been used in Europe). This form is administered by people who hold elected public office for a limited period of time or during good behavior. He goes on to say that no government can be called Republican that derives its power from a few people or from a favored and wealthy class (as many governments in Europe did). The Constitution conforms to these Republican principles by ensuring that the people will directly elect the House of Representatives. Additionally, the people indirectly select the senators and the president. Even the judges will reflect the choice of the people since the president appoints them, and the Senate confirms their appointment. The president, senators, and representatives hold office for a specified and limited term. Judges are appointed for life but subject to good behavior. The constitutional prohibition against granting titles of nobility and the guarantee to the states that they shall enjoy a republican form of government is further proof that the new government is Republican in nature.

These facts do not satisfy all people. Some people claim that the new Constitution destroyed the federal aspect of the government by taking away too much power from the states. Opponents (anti-federalists) believed that the framers established a national (unitary) form of government where the citizens' are directly acted upon by a central government as citizens of the nation rather than as citizens of the states. But the proposed government (a federal republic) would contain both national and federal characteristics and would allow for a sharing and careful balance of powers between the national government and the states. The principle of federalism (a division of power between the states and the national government) is integrated into the new Constitution and reflected in the suggested method of ratification. The delegates to the ratifying conventions would directly participate (through voting) as citizens of their states, not as citizens of the nation. Madison also points out that this new form of federal republic is also reflected in the structure of the Senate in which the states are equally represented. Since the states would retain certain exclusive and important powers, this is to be considered further proof of the federal nature of the proposed government.

Madison goes on to concede that the new Constitution does exhibit national (central government) features. Madison finishes by reaching the conclusion that the government would be BOTH national and federal. In the operation of its powers, it is a nation; in the extent of its power, it is federal.

Federalist # 51: In this essay, James Madison explains and defends the checks and balances system which would prove to be one of the most important protections and limits included in the Constitution. Each branch of government would be constructed so that its power would have checks over the power of the other two branches. Also, each branch of government is to be subject to the authority of the people who are the legitimate source of authority for the United States government and its new Constitution.

Madison also goes on to discuss the way a republican government can serve as a check on the power of factions, and the tyranny of the majority which would limit the ability of the majority from imposing their will on the minority unjustly (like a tyrant or despot imposing his will over his subjects).

Madison's conclusion is that all of the Constitution's checks and balances would serve to preserve liberty by ensuring justice. Madison explained, "Justice is the end of government. It is the end of civil society." Madison's political theory is based on Montesquieu's *The Spirit of the Laws on the Founders*.

The Impact of the Federalist Papers

The *Federalist Papers* had an immediate impact on the ratification debate in New York and in the other states. The demand for reprints was so great that one New York newspaper publisher printed the essays together in two volumes entitled *The Federalist, A Collection of Essays Written in Favor of the New Constitution, By a Citizen of New York*. By this time, the identity of "Publius," never a well-kept secret, was pretty well known. *The Federalist*, also called *The Federalist Papers*, has served two very different purposes in American history. The 85 essays succeeded in persuading doubtful New Yorkers to ratify the Constitution. Today, *The Federalist Papers* help us to more clearly understand what the writers of the Constitution had in mind when they drafted that amazing document over 200 years ago.

From these essays, Americans have received a gift from our Founding Fathers. Whenever we, as a nation, need to consider what the original intent and meaning of the Constitution was more than 200 years ago, we simply can go back to these documents and remind ourselves exactly what our founders were thinking and what was intended without any question as to meaning or design.

Figure 1.6.2

Study/Discussion Questions

For each of the following terms, write a sentence which uses or describes the term in your own words.

Federalism	Federalist Papers	democratic
factions	republicanism	liberalism

1. Why has federalism been such a major source of conflict throughout the history of the United States?

2. Why are the Federalist Papers important to our Constitutional system?

3. Compare the views of the Federalists with those of the Anti-Federalists.

4. How do Federalist Papers 10, 39 and 51 contribute to our understanding of the Constitution and the issue of federalism?

5. How would you describe the impact of the Federalist Papers on American government today? What do you think our governmental system would be like without them?

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CHAPTER OVERVIEW

2: The Constitution

2.1: Importance of a Written Constitution
2.2: Constitutional Provisions for Limiting the Role of Government
2.3: Amending the Constitution
2.4: How the Constitution Guides a National Identity and a Federal Identity
2.5: Protection of Religious Freedoms v. Separation of Church and State
2.6: Limited Government and the Rule of Law
2.7: Unalienable Rights
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2.9: Freedoms and Rights Guaranteed by the Bill of Rights

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2.1: Importance of a Written Constitution

Figure 2.1.1: Delegates (who also became known as the “framers” of the Constitution) were a well-educated group that included merchants, farmers, bankers and lawyers.

When the Framers of the Constitution set about creating a new constitutional form of government, they wanted a document that would divide, distribute, balance, and protect governmental powers, and ensure that the liberties and rights of the people were protected. To achieve this, they instituted a series of important principles into the new Constitution.

Of course, they did not do this without a little help from those giants upon whose shoulders they knew they were standing–the Enlightenment philosophers such as Hobbes, Locke, Rousseau, and Montesquieu. While we have talked about the influence of these enlightened thinkers, it is probably a good time to remind ourselves of their importance.

These brave men, the Founding Fathers, worked in unknown and untested territory – the creation of an entirely new form of Democracy (which would be described as a Federal Republic). In order to implement this grand experiment, the Founding Fathers instituted a number of important philosophical principles, which we will call “Constitutional Ideals.” These are described in the chart below:

IMPORTANT CONSTITUTIONAL IDEALS

POPULAR SOVEREIGNTY	People establish governments and are the source of all governmental powers. People tell the government what to do instead of governments controlling the lives of the people.
LIMITED GOVERNMENT	Governments must have restricted and highly controlled power so that they do not exercise “tyranny” or unrestrained power over the people. Individual rights must be “firewalled” and protected from government abuse.
SEPARATION OF POWERS	Government power is divided among branches. In U.S. Government there are three branches: the Legislative (lawmaking), Executive (Implement and Execute laws), and Judicial (Interpret and enforce laws).
CHECKS AND BALANCES	In order to ensure that no one branch of government wields too much power over the others, each branch is given authority to check or restrain some of the powers of the other branches.
JUDICIAL REVIEW	The judiciary (Supreme Court and lower courts) has the power to strike down laws and other government actions as unconstitutional.
FEDERALISM	The powers and rights of the states are protected and balanced with powers and rights given to the national government through a process of division and power-sharing as outlined in the Constitution.

The Constitution's Design

The Constitution is a brief document when compared to other constitutions around the world.

The Constitution serves as a blueprint for how our government operates.

The Constitution is organized into three main parts, including:

1. A Preamble stating that the people hold the power in this new government and listing the purposes for government
2. A series of seven specific articles incorporating the principles of constitutional government with specific protections and a shared system of governmental power between the states and a newly created national government
3. A newly created Bill of Rights (the First Ten Amendments to the Constitution), and an additional 17 amendments that we have picked up along the way during our nation's history

Once these basic principles of governing were identified, they were included in the new Constitution. The Founding Fathers believed that if the new federal government could be instituted in such a way as to reflect these basic principles and could stay true to them over time, this new experiment just might work. Of course, now more than 227 years later, they did such a good job, the document has only had to be formally changed 27 times to date. Of those 27 formal changes, ten of them were made in the first two years of the new Constitution in order to create our nation’s Bill of Rights.

The Constitution as a Blueprint of American Government

In its original form, the U.S. Constitution runs just over 4,500 words. In comparison to other national constitutions, and to individual state constitutions, this is a brief document. In this brief document, the Founding Fathers offered us an outline for governance that has incorporated ideas that worked for other governments in the past, as well as new and uniquely "American" ideas that make our Constitution something that has been the envy (and the model) of modern democracies throughout history.

The Constitution that we apply today was written in three main parts. First, there is the Preamble, followed by the articles (the meat of the Constitution), and lastly the Amendments (there are presently 27). The Preamble acts as an introduction to the Constitution and clearly states the goals and purposes of our government. The Seven Articles are presented in such a way as to first divide the government into its three branches: Legislative (Article I), Executive (Article II) and Judicial (Article III). Article IV specifically outlines the American system of federalism, which is the balance and division of power between the new national government and the individual states. Article V discusses the process by which the Constitution may be formally changed or amended. This has only happened 27 times in our history. The first ten of those changes created the Bill of Rights, so overall this document has remained relatively formally unchanged throughout its history. Let's compare that to the almost 500 times the Texas State Constitution has been changed since its creation in 1876. Article VI makes the Constitution the "Supreme Law of the Land" and establishes a "pecking order" by which federal and state laws will be judged. Lastly, Article VII was intended to be used only once. That is, it was designed to outline the process by which the Constitution itself would be adopted by the 13 states.

So, there it is--an outline of our Constitution in one paragraph. Of course there is much more to learn, so a commentary and description of the Constitution have been included along with a series of interactive links to games, documents, and videos that will help you as you explore this important document.

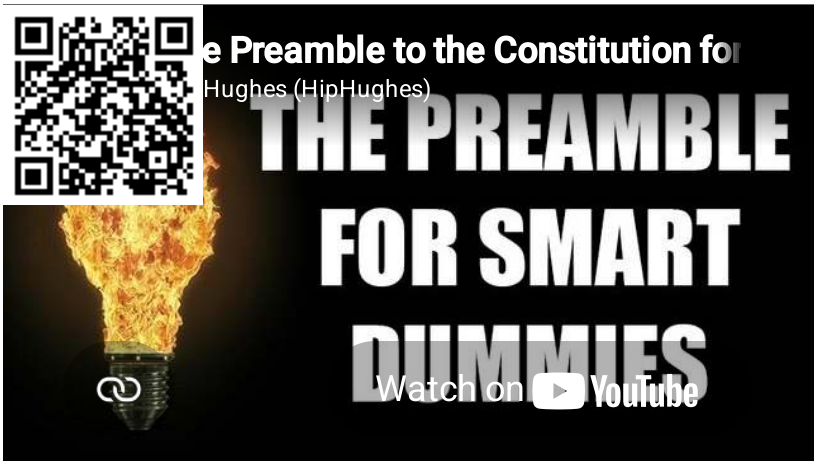
Additional Resources

Interactive Web Links:

Constitution for Dummies Videos

Playlist at https://www.youtube.com/playlist?list=PLi3U-nPPrbS5d-juhFwo3hTBso0gq2sUZ

Preamble -



Article I (Congress) -

Elastic Clause -

Article II -

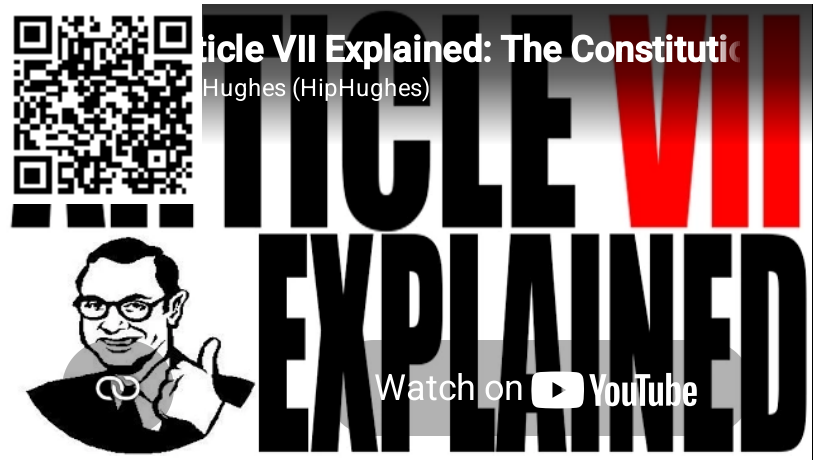
Article III -

Article IV -

Article V -

Article VI -

Article VII -



http://www.archives.gov/exhibits/charters/constitution_q_and_a.html

Hatton Sumners Activities "Walk Through the Constitution

http://www.law.cornell.edu/constitution/overview

Annenberg Guide to the U.S. Constitution

http://www.annenbergclassroom.org/page/a-guide-to-the-united-states-constitution

Link to Spanish Translation of the Constitution

http://www.usconstitution.net/const_sp.html

WEB LINK: INTERACTIVE CONSTITUTION

For an interactive version of the Constitution, go to constitutioncenter.org/constitution/

Figure 2.1.2

Constitution Overview

The Preamble

“We the People” … these three words set the tone for the United States Constitution. They were intended to document the recognition of popular sovereignty, the idea that all government power comes from the people. The Preamble continues by outlining the specific purposes of government in the United States:

1) To form a more perfect union – correct problems inherent in the Articles of Confederation

2) Establish Justice – Create a system of fair and equitable justice (federal courts)

3) Ensure domestic tranquility – Respond to internal disruptions and disputes between the states

4) Provide for the common defense – Provide a system of national defense including army and navy

5) Promote the general welfare – Economic and social prosperity and a stable society

6) Secure the blessings of liberty – promote and protect individual rights and liberties particularly with regard to property and protections from government intrusions on the people.

Article 1: The Legislative Branch

Section 1 – Only Congress can make laws, and Congress will be bicameral (two-chamber body) consisting of the House of Representatives and Senate.

Section 2 Clause 1: Members of the House of Representatives are chosen every two years through popular election. Individual states cannot bar someone who is legally eligible to vote from participating. This means that states cannot limit voting to only a “small elite.”

Section 2 Clause 2: Details job requirements for serving in the House: members must be 25 years old, a citizen for at least seven years, and live in the state they are elected to represent.

Section 2 Clause 3: Establishes that representation in the House is based on apportionment, meaning House Representation is based on population. States with more population would get more representatives. States with smaller populations would get fewer representatives. Apportionment would be based on a National Census (a count of the number of people living in the country) to be taken every ten years. No state, regardless of population, would have less than one representative. This section also includes a clause (a compromise) allowing slaves to be counted as three-fifths of a person for apportionment purposes (three-fifths compromise). In addition, an original clause dealing with direct taxes to the states was removed after the 16th Amendment allowed for a federal income tax.

Section 2 Clause 4: Specifies rules for vacancies. When a congressional seat becomes vacant in the middle of a term, the governor of the state must call a special election to fill that opening.

Section 2 Clause 5: Lists procedures for impeachment. The House of Representatives chooses officers from among themselves (including Speaker of the House), and has the sole power to impeach (initiate proceedings to remove executive and judicial officers from their jobs, including the president). Note that in this case, impeachment is only the accusation that someone has committed a high crime or a misdemeanor. The Senate actually conducts a trial with the Chief Justice of the Supreme Court presiding. If the person is convicted during that trial, the only power the Senate has is the ability to remove that person from office. Any additional punishment must come from the courts through a criminal or civil trial.

Section 3 Clause 1: Every state has exactly two senators regardless of population. Each senator's term lasts six years, and the terms are staggered (one-third of the Senate is up for election every two years). Since the Senate was designed to represent the states, the state legislators originally selected the senators themselves. In 1913, the 17thAmendment allowed for direct election of senators through popular election, so the states no longer appoint their senators.

Section 3 Clause 2: This is the clause that sets-up the staggered terms of senators so that no more than one-third of the Senate is up for reelection at any given time (basically only one-third of the senators have to run for re-election in any two-year period). This means the Senate is considered a "continuous body" because only a small number of senators (1/3 of the Senate) will face reelection at the same time. Remember, the Senate was originally intended to represent the interests of the state, and senators were appointed by state legislatures. This process changed with the 17thAmendment by allowing the direct popular election of senators. The 17thAmendment also requires any Senate vacancy to be filled in a special election called by the state's governor (just as with the House).

Section 3 Clause 3: To be a senator you must be at least 30 years old, a citizen for at least nine years, and live in the state you will represent.

Section 3 Clause 4: The vice president was originally intended to serve a very minor role in the government unless the president died. The role of the vice president was mostly a ceremonial role as "President of the Senate," because he or she only has the power to participate in debate or cast a vote if there is a tie between the other senators. Most vice presidents have opted not to bother showing up in the Senate except for very special occasions.

Section 3 Clause 5: Establishes the office of "President Pro Tem." This is usually a senior senator of the majority party who presides over the Senate in the absence of the vice president, (which is most of the time). The Senate also has the power to choose other officers from among its members.

Section 3 Clause 6: The Senate has the power to try a case of impeachment (which begins in the House). If the House of Representatives votes to impeach a civil officer, the Senate serves as judge and jury. If two-thirds of the senators vote for conviction, the impeached (accused) official is removed from office. Only twice has an impeachment trial been held. The first was the trial of Andrew Johnson in 1868. The second was the case of Bill Clinton in 1998. In both cases, the Senate did not convict. The impeached presidents served out their full terms in office. However, the Senate has removed lesser officials and judges from office through this procedure.

Section 3 Clause 7: Places limits on penalties for impeachment to removal from office and disqualification from holding further government office. Also says the convicted party may be held accountable in a criminal or civil trial if further punishment is deemed.

Section 4 Clause 1: The Constitution leaves the organization of congressional elections up to the states, but gives Congress the power to set rules and requirements for federal elections. For instance, Congress passed a law in 1842 requiring single-member district elections in every state and standardized the congressional election practices across the country. This same law set one common Election Day--the Tuesday after the first Monday in November.

Section 4 Clause 2: Congress is required to have at least one session per year. The 20th Amendment in 1933 moved the opening day of Congress from the first Monday in December to January 3.

Section 5 Clause 1: The House and Senate have the power to judge the qualifications of their own members. For example, if a Senate election is disputed, it would ultimately be up to the Senate itself to decide which candidate would actually be recognized as the new senator. The second part of this clause requires a majority of either chamber's membership to be present in order for a

quorum to be recognized. If less than that required number of members are present, Congress can continue to conduct business but any member can issue a "quorum call" which requires either a majority of members to show up or the House to temporarily adjourn.

Section 5 Clause 2: The House and the Senate have the power to establish their own rules for conducting business (parliamentary procedure). Over the course of our nation's history, the rules of Congress have grown increasingly complex. Both the House and the Senate have the power to censure (punish) their own members for bad behavior, but to expel (kick out) a member requires a two-thirds vote from their respective body.

Section 5 Clause 3: Requires both chambers of Congress to keep and publish an official record of their sessions. *The Congressional Record* is a publication printed and distributed daily when either of the two houses is in session. *The Record* documents all official activity of both houses.

Section 5 Clause 4: Neither of the chambers may go on an "extended vacation" while the other remains in business unless the other chamber approves. The purpose of this is to prevent one house from interfering or obstructing with the other's legislation by not showing up for work.

Section 6 Clause 1: State Senators and Representatives have to be paid for their services according to law, and they are to be paid from the Treasury of the United States. The 27th Amendment modified this a bit by forbidding Congress from giving itself a raise in the same term; (they have to stand for re-election before the raise can take effect). Interestingly, this amendment was first proposed in 1789 as a part of the Bill of Rights but was not ratified until 223 years later in 1992. This clause also provides for legislative immunity for congressmen and congresswomen, meaning they cannot be charged with a crime for anything they say in Congress, or they cannot be arrested nor detained by the police unless they have committed treason or another serious crime. The purpose of this was to ensure that the president or others in the Executive branch can't abuse their powers by arresting or jailing legislators who disagree with them.

Section 6 Clause 2: People who serve in the Executive or Judicial branches of the U.S. government cannot serve in Congress at the same time. Members of Congress can't serve in the Executive or Judicial Branches either. Also, a member of Congress can't quit his seat in order to take another governmental job if that job has undergone a salary increase during his or her term. The purpose of this provision is to prevent corruption by prohibiting a congressman or congresswoman from voting in favor of a pay raise for an executive office with intent to move into that office.

Section 7 Clause 1: Requires all bills dealing with taxes or tariffs to originate in the House of Representatives, but gives the Senate its regular power to change any bill sent to it from the House. Basically, it addresses the "No Taxation Without Representation!" complaint by making sure only directly elected officials (the House) are able to initiate a law that would tax the people. This clause really isn't as relevant since the passage of the 17th Amendment requiring the direct election of Senators.

Section 7 Clause 2: Outlines how a bill becomes a law. Both houses of Congress must pass the same bill. Then it is sent to the president for signature. If the president signs it, then it becomes a law. If not, this is called a *veto*. Next, the bill returns to Congress where a two-thirds vote in both houses can override it. If the president doesn't do anything, the bill becomes law without his or her signature after ten days (not counting Sundays). If Congress adjourns less than ten days after sending the bill to the president, he or she can "pocket veto" it by refusing to sign. If Congress adjourns before the ten days are up, the normal provision by which a bill becomes law does not take effect.

Figure 2.1.3: How Our Laws are Made

Section 7 Clause 3: A joint resolution of Congress is a special measure passed under special circumstances (unlike the procedure for passing regular bills of law). Joint resolutions are still supposed to be sent to the president for his signature, but a joint resolution signed by the president has “the force of law." A simple congressional resolution not sent to the president for signature does not have the force of law.

Section 8 Clause 1: Congress has the power to create and collect taxes and to tax imported goods (tariffs), but can’t charge more for tariffs in one state than another. Congress also has the power to apply taxes to pay federal debts.

Section 8 Clause 2: Congress is allowed to borrow money to pay for governmental services and programs. Deficit spending in a time of peace has only recently become common. For most of our nation’s history, this power was used in order to financially support national defense.

Section 8 Clause 3: Congress has the power to create laws and rules that regulate commerce between states with regard to international business. This clause, called the *interstate commerce clause* has been very controversial with regard to its interpretation by the courts. For a long time, judges tended to apply this clause very narrowly, but beginning in the 1930s, judges have tended to apply this clause very broadly, therefore, allowing the government to regulate all types of economic activity. For example, Congress sets a national minimum wage. It has also been used to enforce laws on the states that would, on the surface, have no application to commerce--like drug laws and pornography statutes.

Section 8 Clause 4: Congress has the power to set up a system for immigrants to become American citizens. Congress also has the power to establish rules for bankruptcy (allowing people with more debt than income to have their debts forgiven).

Section 8 Clause 5: Congress has the power to mint money and to conduct operations that set its value. In practice, when the Federal Reserve Bank was created in 1913, the power of Congress to set the value of money was theoretically transferred to the “Fed.” Congress also has the power to set standards of weights and measures.

Section 8 Clause 6: Congress can make and enforce laws that punish those who counterfeit United States currency.

Section 8 Clause 7: Congress has the power to create and operate post offices and to build roads to connect to them.

Section 8 Clause 8: Congress has the power to set up a copyright and patent system and to grant copyrights and patents that allow people the exclusive right to sell what they have created.

Section 8 Clause 9: Congress was given the right to create a Federal Court System. This has occurred over time. There are currently twelve Circuit Courts of Appeals and 94 federal District Courts. In addition, there are a number of other special courts including bankruptcy courts and immigration/naturalization courts.

Section 8 Clause 10: Congress has the power to punish piracy. While it might seem as though this is an irrelevant or antiquated clause, beginning in 2009 piracy has become a hot topic again. This particularly applies to protecting U.S. shipping off the coast of Somalia where pirates have targeted merchant ships off the Horn of Africa.

Section 8 Clause 11: Congress has one of the most important powers in government--the power to declare war. Technically, only Congress can officially declare or make war. The president can’t. This clause also allows Congress a very unusual power--the power to hire pirates to attack the nation’s enemies (a *letter of marquis*) as long as that pirate is acting on behalf of national interests. Again, this section might seem antiquated, but in today’s environment of international terrorism and threats to our electronic networks, it may come in handy.

Section 8 Clause 12: Congress has the power to raise and support armies, meaning it has the “power of the purse.” While the president may act as Commander in Chief and has the ability to engage the military for a period of time, Congress has the power to decide whether or not it will pay for such actions. It cannot fund a military action for more than two years in the future.

Section 8 Clause 13: Congress has the power to create and maintain a navy.

Section 8 Clause 14: Congress has the power to set rules for the behavior of its armed forces. Before 1951, these rules were part of the “Articles of War” but since 1951 they have been contained in the Uniform Code of Military Justice, which contains standing laws and rules for military service members. Soldiers or sailors who break these rules can face a court-martial and be punished.

Section 8 Clause 15: Congress has the power to call out the militia. Today, this means the National Guard.

Section 8 Clause 16: Control over the militia is divided between Congress and the state governments. If the National Guard or militia is called into national service, Congress must pay for it, but Congress can also govern its actions. The states retain control over who serves as its officers and how its men are trained.

Section 8 Clause 17: Congress has the power to build a national capital outside the jurisdiction of any state. This is how Congress came to choose a piece of swampland (Washington D.C.) along the Potomac River that was originally part of Maryland and Virginia. Congress also has authority on all federal military installations, even if they are located within a particular state.

Section 8 Clause 18: This is the necessary or proper clause, also called the "elastic clause" because it is the basis for all of the legislative branch's implied powers (meaning those that extend beyond the ones specifically listed or *enumerated* in clauses 1-17). Throughout history, this clause has been used as justification for a gradual expansion of Congressional powers and for the creation of a host of federal government actions and programs. It is called the elastic clause because it can stretch or extend to any number of presumed or implied purposes. It's a one-size-fits-all piece of law that is incredibly important to understand today.

Section 9 Clause 1: This derived as a result of another compromise between northern and southern states which barred any attempt to outlaw the slave trade prior to 1808. As soon as that provision expired, Congress voted to block the international slave trade, but slaves continued to be sold and bred within the country for another 60 years (until the end of the Civil War).

Section 9 Clause 2: People can't be held in jail without facing charges and being brought before a judge. This provision has been debated recently as the war on terrorism placed people in Guantanamo (off American shores) without being formally informed of charges or being brought before a judge. President George W. Bush argued that terrorism subjects in Guantanamo had no right to *habeas corpus* and could be held indefinitely without trial.

Section 9 Clause 3: A bill of attainder is a law that basically pronounces certain people guilty of a crime and imposes a punishment on them without ever seeing a judge. These bills were used by the British Parliament during the Revolutionary period, and the American Founding Fathers hated them. *Ex post facto* laws are laws that criminalize an act after the act has already been committed. They punish someone for committing a crime when it wasn't really a crime when they committed the act.

Section 9 Clause 4: A capitation tax is basically a "head tax" which is charged to each individual in the population. It meant that Congress had to levy and apply taxes on the basis of a state's population and not on the basis of individual income or other individual standards. The 16thAmendment took out the phrase "other direct Tax[es]" and made it possible to implement the modern income tax system.

Section 9 Clause 5: Southern states did not want Congress to unfairly tax their export crops (cotton, tobacco, rice, and indigo), so they insisted that the Constitution forbid taxing the exportation of items. In another compromise (the commerce compromise), northern states agreed and only gave Congress the power to tax imports, not exports.

Section 9 Clause 6: Congress can't treat any state unfairly by charging taxes for shipping goods from one state to another. Also, one state's ports may not be treated with more favor than another through preferential regulations or taxes.

Section 9 Clause 7: Grants Congress sole "power of the purse" – the ability to control government spending. Theoretically, the president may not spend public money without getting approval from Congress first through an appropriations bill. This is probably the most important check and balance that Congress has against unlimited presidential power. It has become the center of an increasing debate over which branch of government should wield the most power in government.

Section 9 Clause 8: The Framers wanted to ensure that the U.S. would not develop a formal aristocracy like its European cousins. The U.S. Government can't grant any title of nobility (like King, Duke, Earl, Lord, etc.). Also, no one working for the government is allowed to accept a grant of nobility from a foreign government. This was intended to keep foreign powers from corrupting U.S. government officials.

Section 10 Clause 1: Only the federal government (not the states) has the power to conduct foreign diplomacy or to print money. States are also barred from doing many of the same things the federal government can't do – such as bills of attainder and *ex post facto* laws. Also, they can't pass laws that break contracts, or they can't grant state-level titles of nobility. This was included primarily to make sure that the states didn't act like little, independent countries and undermine the national government (like they did under the Articles of Confederation).

Section 10 Clause 2: States can't act like little countries, so they are not allowed to charge taxes or tariffs on imports from other states. Can you imagine how expensive it would be to transport goods across a number of independent state lines if each state cold charge import tariffs? Remember, only the national government has the power to regulate interstate trade.

Section 10 Clause 3: States aren't allowed to run their own armies or start their own wars. They can keep their own militias, under the oversight and direction of the federal government. They can only call up those militias in a time of emergency or war. Usually, this is where the federal government would step in anyway.

Article 2: The Executive Branch

Section 1 Clause 1: Grants the president "executive power," which is not well-defined and has been very broadly interpreted. Establishes the presidency as a strong office within the American governmental system. Gives the president a strong mandate to enforce the country's laws and administer its public policies. Sets the term of the president and vice president as four years, but doesn't specifically limit the number of terms a president can serve. That would be added later.

Section 1 Clause 2: Establishes one of the most misunderstood parts of government – the Electoral College. Each state gets electoral votes equivalent to the number of representatives and senators it has. Makes a compromise between allocating the electoral votes on the basis of population (house members) and equally (senators) for each state. Over our history, this system has allowed four candidates to win the presidency even though they lost the popular vote. Most recently this happened in the case of George W. Bush in 2000 who handily lost the popular vote but, with a little help from the Supreme Court, won the electoral vote by taking Florida in a highly contested and narrow election where fewer than 300 votes separated the winner from the loser.

Section 1 Clause 3: Set the procedure for the assembly and process of the Electoral College, but it was changed in 1804 by the 12th Amendment. The original system proved flawed when Thomas Jefferson accidentally finished in a tie with his vice-presidential running-mate, Aaron Burr. The 12th Amendment was an effort to avoid this problem by separating the ballot for president from that of vice president.

Section 1 Clause 4: Congress sets the date for presidential elections. Since the mid-1800s, Congress has held presidential elections on the Tuesday following the first Monday in November.

Section 1 Clause 5: Requirements for president: must be born an American citizen (not naturalized), must be at least 35 years old, and must reside in the United States for at least 14 years.

Section 1 Clause 6: Establishes a procedure for presidential succession (what happens if the president or vice president dies while in office). Later would be modified by the 25th Amendment in 1967.

Section 1 Clause 7: President must be paid. The president receives a predetermined salary that can't be changed during his or her term in office. The presidential salary is currently $400,000 with a $50,000 annual expense account.

Section 1 Clause 8: Spells out the exact language of the presidential 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." In President Obama's January 2009 inauguration, Chief Justice John Roberts accidentally misquoted this oath. Therefore, questions arose regarding the legitimacy of Obama's presidency, so he took the oath again in a private ceremony the next day just to make sure his critics didn't "pounce" on this. In reality, he became president at noon on that day anyway (at least that's the interpretation of many constitutional scholars).

Section 2 Clause 1: Spells out important presidential powers. First, he or she serves as commander in chief of the military. Secondly, he or she heads up all civilian departments of government. He or she is given the ability to establish what has become known as the Presidential Cabinet (consisting of the heads of all of the Executive Branch departments). Third, he or she is granted the power to pardon individuals convicted of crimes. Most famously, Gerald Ford pardoned Richard Nixon after Nixon's resignation in 1974. For this, Gerald Ford was not elected in 1976--(people didn't forget!)

Section 2 Clause 2: The president has the power to negotiate treaties with foreign governments, but it takes a two-thirds vote of the Senate to ratify. He also has the power to nominate all appointed officials in government, including officers of the Executive Branch and judges in the Judicial Branch, but he needs "advice and consent" of the Senate to do so. Basically, this means a majority-vote approval for a nominee to be confirmed, and many confirmations have increasingly become contentious as Congress has refused to "rubber stamp" presidential nominees.

Section 2 Clause 3: The president can make “recess appointments. This means he or she can appoint people to governmental positions without going through the confirmation process if the Senate is out of session. These appointments are only temporary and can’t last any longer than the next session of Congress.

Section 3 Clause 1: The president is required to report on the “State of the Union.” This has become a very important part of the president’s “bully pulpit” power. The "State of the Union Address” is delivered every January to a joint meeting of both houses of Congress. The president can call Congress into special session when it is on a recess if he or she thinks there is urgent business that Congress needs to confront. The president must “faithfully execute” the laws of the United States and must grant commissions to all military officers of the United States.

Section 4 Clause 1: If the president really messes up, and Congress finds him guilty of treason, bribery, or other “high crimes and misdemeanors” [which has never really been defined], he or she can be impeached and removed from office before the end of the normal four-year term. Remember, impeachment is just the charges that’s done in the House. Removal happens after the Senate conducts a trial and (if) he or she is convicted. This complete process has never happened. While two presidents have been impeached, no president has been convicted and removed from office.

Article 3: The Judicial Branch

Section 1: Creates the Supreme Court and grants “all judicial power of the United States” to that court, making it the highest court in the land and head of the Judicial Branch. Also, gives power to create “inferior courts” – basically what we know as the Federal Judicial System. There are nearly 100 Federal District Courts and a dozen circuit Court of Appeals around the country. There are several other types of special courts including bankruptcy courts and immigration/naturalization courts. With the exception of special courts, federal judges are appointed for life terms and are paid salaries that cannot be reduced while they remain on the bench.

Section 2 Clause 1: Defines the jurisdiction of the Federal Courts. Federal Courts have the jurisdiction to decide cases involving federal law, disputes between states, and disputes between residents of different states. The 11th Amendment, passed in 1795, limited federal jurisdiction in several types of cases involving state governments.

Section 2 Clause 2: Cases involving Ambassadors, foreign ministers and consuls, and cases involving the States as a party (very limited after the 11th Amendment) must originate in the Supreme Court. Otherwise, the Supreme Court acts as a court of last appeal and has the power to determine which cases it will hear. Every year, tens of thousands of cases are presented to the Supreme Court for consideration, but less than one hundred are selected for argument and consideration. Think of that the next time you threaten to take your traffic ticket “all the way to the Supreme Court”!

Section 2 Clause 3: Anyone accused of a crime in Federal Court has the right to a trial by a jury of his or her peers rather than a bench trial. This means a trial held only by a judge. The framers of the Constitution believed that trial by jury was a critical part of liberty and wanted to prevent any potentially tyrannical judge from abusing his or her power.

Section 3 Clause 1: Treason was a very serious crime in the time of the Founding Fathers. It was also one that could be abused. For this reason, the authors of the Constitution very specifically and narrowly defined this crime. The requirement is for two eyewitnesses to give testimony to the same overt act unless the accused person confessed in open court. This is why it is very rare to see someone convicted of treason today.

Section 3 Clause 2: The government cannot punish the relatives or descendants of a person convicted of treason. While the maximum punishment for treason is death, the United States has never executed anyone for committing treason. Even in the famous case of Ethel and Julius Rosenberg, who were tried and executed for stealing the secrets to the Atomic Bomb and delivering them to Russia in the 1950s, the conviction was for espionage (spying) and not treason!

Article 4: Interstate Relationships and Federal Property Management

Section 1: Each state must recognize the laws, records, and court rulings of other states. This is called the ‘Full Faith and Credit” clause and has been particularly placed at the center of the recent debate over such matters as same-sex marriage. In 2015, The Supreme Court settled this debate in the case of Obergefell v. Hodges. In a 5-4 decision the court ruled that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

Section 2 Clause 1: States can't discriminate against the residents of other states.

Section 2 Clause 2: States are required to extradite (return) captured fugitives from justice in other states to the state where the crime took place in order to face trial.

Section 2 Clause 3: Another holdover from slavery, this infamous fugitive slave clause required that slaves who had escaped from freedom in the North were required to be sent back to their owners in the South. When the 13th Amendment, which banned slavery, was adopted, this provision of the Constitution was null and void.

Section 3 Clause 1: The framers of the Constitution planned for future expansion and growth for the country by setting up a system of territorial and state adoption. New states could apply for admission, but existing states could not be broken up to form a new state and states could not combine into bigger states without the consent of those states involved as well as Congress. The only time a state was formed from another state was West Virginia which did not join the rest of Virginia in seceding from the Union during the Civil War. Because Virginia was not recognized as a state during the Civil War, the Union admitted West Virginia.

Section 3 Clause 2. Western territories that hadn't yet become states would fall under the direct control of Congress (as territories). They would later be admitted as states using the procedures in Clause 1.

Section 4: The national government guaranteed that each state would maintain a representative (Republican) form of government, and no state would be allowed to become a dictatorship. The federal government also committed to protecting all of the states from foreign military attack and to come to the assistance of states if they were to be threatened by uprisings or insurrections.

Article 5: The Amendment Process

Section 1: The Constitution can be changed through a formal process established in the Constitution. For an amendment to take effect, it must first be officially proposed by a two-thirds vote in both houses of Congress (or by two-thirds of all state legislatures). Then it must be ratified by three-fourths of the state legislatures. Over the course of American history, 27 amendments to the Constitution have been ratified. Article V includes two restrictions, both rooted in the difficult compromises that were made during the Constitutional Convention to solve controversies over slavery and representation. The first restriction, crossed out here because it is no longer operative, barred any amendments that would have outlawed the slave trade before 1808. The second restriction ensures that no amendment can end the system of equal representation of all states, large and small, in the U.S. Senate.

Figure 2.1.4: The Supremacy Clause (Article VI Clause 2) of the Constitution says that the Constitution is the Supreme Law in the Land

Article 6: Governmental Supremacy (The Supremacy Clause)

Section 1: The new government formed by the Constitution would promise to take on all debts that had been accumulated by the older, weaker national government under the Articles of Confederation. This signaled to other nations and to individual creditors that the new nation wasn't trying to excuse itself from paying its debts.

Section 2: Clearly states that the Constitution is the "supreme law of the land." No other law, regardless of how it was passed (federal or state) would be more powerful that the Constitution. Basically, there is a "pecking order" of laws Constitution->Federal Treaties -> Federal Laws -> State Constitutions -> State Laws -> Local Ordinances.

Section 3: All government officials (elected or appointed) must swear an oath to support the Constitution of the United States. That Oath does not need to be religious in nature and the government cannot require any official to pass any test of religious affiliation

in order to take office. This ban on religious tests was included to make sure that the U.S. Government was secular (non-religious) in nature and that there was a clear wall of separation between church and state.

Article 6: Ratification

Section 1: Requires at least nine states to ratify the new Constitution before it can become law. The Founding Fathers were very worried that they would not be able to get unanimous approval from all 13 states for the new Constitution, so the Framers decided that ratification would require at least nine states to approve it before it could become law.

The Constitution was drafted on September 16, 1787. Delaware was the first state to ratify it on December 7, 1787. During the ratification and adoption process, two parties developed: one opposing adoption (the Anti-Federalists) and one favoring adoption (the Federalists). These two parties continued to publish justifications for their position in newspapers across the country. The most famous of these was T*he Federalist Papers*(promoting the side of the Federalists and arguing for the Constitution). After New York ratified the Constitution on July 26, 1788, the Continental Congress, which was still the official government of the United States (while only meeting at irregular intervals), passed a resolution on September 13, 1788, to place the new Constitution into operation with eleven states. The last state to ratify the new Constitution was Rhode Island who was so concerned about this new Constitutional form of national government that they didn't even send delegates to the Philadelphia Convention. On May 29, 1790, Rhode Island finally became the 13th state to ratify the Constitution, resulting in its unanimous ratification by all 13 states.

Figure 2.1.5

Study/Discussion Questions

For each of the following terms, write a sentence which uses or describes the term in your own words.

popular sovereignty	limited government	separation of powers
checks and balances	judicial review	federalism

CONSTITUTION SUMMARY QUESTIONS

Based on the resources provided in this chapter, answer the following questions as you read through the United States Constitution.

You should use both the original text, found at http://www.archives.gov/exhibits/charters/constitution_transcript.html as well as the information provided in this section to answer the questions. Be sure to answer all questions in complete sentences and use textual evidence to support your answers.

Preamble

1. The Preamble is a statement of both the source of the political authority of the Constitution and of its purposes or goals. On whose authority does the Constitution rest? In your own words, explain the purposes of the Constitution as stated in the Preamble.

2. What kind of governmental institutions and powers would be necessary to fulfill these purposes? Do you see any potential conflicts among these purposes?

Article I Section 1

3. What kind of power does the Constitution confer on Congress?

4. Why does the Constitution divide Congress into two houses? What is gained by this division?

Article I Section 2

5. Explain why this section is essential. How do these specific requirements ensure that the House of Representatives represents the people?

Article I Section 3

6. What advantages do the states have under the arrangement outlined in this section?

7. Explain why this section is essential. Point out some differences between requirements for the House of Representatives and the Senate and explain why the differences are significant.

Article I Section 4

8. Summarize the details of this section.

9. Explain why the details of this section are essential.

Article I Section 5

10. Why is it important that each House is granted a measure of independence from the other?

Article I Section 6

11. How does this section protect the freedom of speech of representatives while at the same time preventing abuse of power?

Article I Section 7

12. Summarize the legislative process.

13. Describe the benefits of this process.

Article I Section 8

14. This section enumerates the powers given to Congress. Many of the goals or purposes stated in the Preamble are to be achieved through Congress's exercise of these powers. Can you align the goals of the Preamble with the powers enumerated of Section 8?

15. Explain why this section is essential. Why do you think the framers chose to enumerate a list of powers instead of a general grant of power or of a list of restrictions?

16. What is the significance of the 'necessary and proper' clause? What opportunities are there for abuse of power?

Article I Section 9

17. This section is a list of restrictions on the law-making powers of Congress. Summarize this section.

18. How does Section 9 relate to or compare with Section 8?

19. How does this list ensure "a more perfect Union"?

Article I Section 10

20. This section lists things which states cannot do. How could this list of restrictions be rewritten as a list of granted powers and what effect would that change have?

21. Explain why this section is essential. Why are these prohibitions necessary?

Article II Section 1

22. Article II is devoted to the Executive. What does the word executive suggest about the role of the president under the Constitution? Does the placement of this Article second suggest anything about the place of the Executive in the national government?

23. How do these specific requirements for the election of President of the United States ensure that he/she represents the people and at the same time make him/her independent of Congress? Where you surprised that there is no requirement? Explain your answer.

Article II Section 2

24. Explain the powers and restrictions placed on the president in this section.

25. Why does the Constitution grant the president such powers with such restrictions?

Article II Section 3

26. What responsibilities does this section grant to the president?

27. Why does the Constitution grant these specific responsibilities to the president?

Article II Section 4

28. What procedure is specifically addressed in this section?

29. Why is this section important to the Constitutional process?

Article III Section 1

30. Article III establishes the federal judiciary. Why do you think the judicial article comes after the legislative and the executive? Why does Congress have a role in the function of the judicial branch?

31. What is the significance of the different terms for judges compared to the president or Congress?

Article III Section 2

32. How far does judicial power extend? Why is this significant?

33. What is the purpose of the Supreme Court in the American federal system?

Article III Section 3

34. Why is it significant that Treason is the only specific crime that the Constitution defines?

Article IV Section 1

35. This section is sometimes called the federal article. Why do you think this is?

36. Why is it important for states to recognize the records and proceedings of other states?

37. Give a contemporary example of how Article IV Section 1 might be used to ensure cooperation between two states. (Hint: A major example of this has been consistently in the news lately and has been the subject of several federal appeals and Supreme Court cases.)

Article IV Section 2

38. What responsibilities do the states have to each other? What does the third paragraph of this section allow for that is now unconstitutional?

Article IV Section 3

39. What does this section say about the relationship between the federal government and the states?

Article V

40. What is the purpose of this Article and how is it relevant to us today?

Article VI

41. Article VI is called the Supremacy Clause. What is made supreme by this clause?

42. How is this clause used with regard to the relationship between federal and state laws? Give an example of how it might be used today.

Article VII

43. What is the purpose of this Article?

44. Most would argue that this particular Article was designed for one-time use and has no present-day purpose. What argument would they use to justify this position? Would you agree or disagree with them? Explain your answer.

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2.2: Constitutional Provisions for Limiting the Role of Government

Figure 2.2.1: The blueprint for the new government

The framers of the Constitution wanted to create an entirely new form of democratic government -- a Federal Republic. To accomplish this task, they carefully considered the problems with previous forms of government and examined the Enlightenment ideas that had so greatly influenced them up to that point. However, they knew that an even more daring experiment in democracy was needed, so they mixed the Enlightenment ideals of the past with new and uniquely American thoughts on self-government and devised a document that in little more than 4,000 words (quite short for a document of its nature) completely laid out a new blueprint for government that we know as the United States Constitution.

For this system to be effective, the framers had to carefully interweave six principles of Constitutional government. These were:

Popular Sovereignty

Limited Government

Separation of Powers

Checks and Balances

Judicial Review

Federalism

When the Framers of the Constitution set about creating a new constitutional form of government, they wanted a document that would divide, distribute, balance, and protect governmental powers, and ensure that the liberties and rights of the people were protected. To achieve this, they instituted a series of important principles into the new Constitution.

Of course, they did not do this without a little help from those giants upon whose shoulders they knew they were standing – the Enlightenment philosophers such as Hobbes, Locke, Rousseau, and Montesquieu. While we have talked about the influence of these enlightened thinkers, it is probably a good time to remind ourselves of their importance.

These brave men, the Founding Fathers, were working in unknown and untested territory – the creation of an entirely new form of Democracy (which would be described as a Federal Republic). In order to go about this grand experiment, the Founding Fathers instituted a number of important philosophical principles which we will call “Constitutional Ideals.” These are described in the chart below:

IMPORTANT CONSTITUTIONAL IDEALS

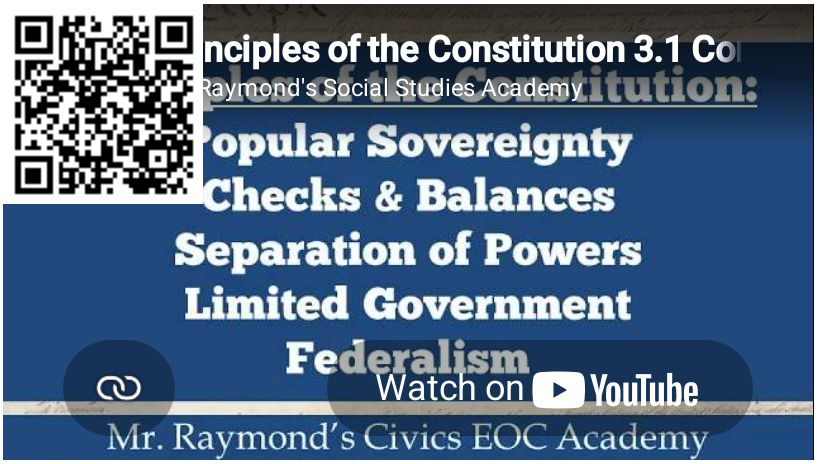
POPULAR SOVEREIGNTY	People establish governments and are the source of all governmental powers. People tell the government what to do instead of governments controlling the lives of the people.
LIMITED GOVERNMENT	Governments must have restricted and highly controlled power so that they do not exercise “tyranny” or unrestrained power over the people. Individual rights must be “firewalled” and protected from government abuse.
SEPARATION OF POWERS	Government power is divided among branches. In U.S. Government there are three branches: the Legislative (lawmaking), Executive (Implement and Execute laws), and Judicial (Interpret and enforce laws).
CHECKS AND BALANCES	In order to ensure that no one branch of government wields too much power over the others, each branch is given authority to check or restrain some of the powers of the other branches.
JUDICIAL REVIEW	The judiciary (Supreme Court and lower courts) has the power to strike down laws and other government actions as unconstitutional.
FEDERALISM	The powers and rights of the states are protected and balanced with powers and rights given to the national government through a process of division and power-sharing as outlined in the Constitution.

Once these basic principles of governing were identified, they were included in the new Constitution. The Founding Fathers believed that if the new federal government could be instituted in such a way as to reflect these basic principles and could stay true to them over time, this new experiment just might work. Of course, now more than 227 years later, they did such a good job, the document has only had to be formally changed 27 times to date. Of those 27 formal changes, ten of them were made in the first two years of the new Constitution in order to create our nation’s Bill of Rights.

In its original form, the U.S. Constitution runs just over 4,500 words. In comparison to other national constitutions, and the individual state constitutions, this is a brief document. In it, the Founding Fathers have offered us an outline for governance that has incorporated ideas that had worked for other governments in the past, as well as new and uniquely "American" ideas that make our Constitution something that has been the envy (and the model) of modern democracies throughout history.

Principles of the Constitution

Video: Principles of the Constitution



Republicanism

A political philosophy that has been a major part of American civic thought since its founding is called Republicanism. American republicanism was first expressed and first practiced by the Founding Fathers. The concept stemmed from their experiences with the monarchy in Great Britain.

The idea of Republicanism promotes *liberty* and *unalienable rights* as central values, making people sovereign, or able to rule themselves. Republicanism rejects monarchy, aristocracy, and inherited political power. It also expects citizens to be virtuous and faithful in their performance of civic duties, and vilifies corruption. A Republic should prepare for the negative influences that could place the nation in a perilous situation leading to tyranny or dictatorship. For example, Republicanism believes that a government official should not run for or hold a public office for personal gain, but rather to benefit the whole community.

Under Republicanism, all citizens were considered equal, but the definition of *citizen* has changed throughout the years. When the United States of America was first formed, for example, a black person was not considered a citizen.

Today's Republicanism is very different. The guiding principles are interpreted differently from the Republicans who initially created the concept in the Renaissance.

Video: Classical Republicanism

Individual Rights

According to scholars today, Jefferson acquired the most famous ideas in the Declaration of Independence from the writings of English philosopher John Locke. In 1689, Locke wrote *Second Treatise of Governmen*t. This was during England's Glorious Revolution, which overthrew the rule of James II.

In his treatise, Locke identified the basis of a legitimate government. A ruler gains authority through the consent of the governed Locke stated. The government's duty is to protect the natural rights of the people-- life, liberty, and property.

If the government did not protect these rights, its citizens would have the right to overthrow that government. This idea deeply influenced Thomas Jefferson as he drafted the Declaration of Independence.

Video: Natural Rights, Social Contract, Democracy, Republicanism, and Limited Government

Figure 2.2.2

Study/Discussion Questions

For each of the following terms, write a sentence which uses or describes the term in your own words.

popular sovereignty	limited government	separation of powers
checks and balances	judicial review	federalism

1. Compare and contrast the political theory of Classical Republicanism and today's Republicans.

2. Describe the influence that John Locke's ideas about individual rights had on Thomas Jefferson's draft of the Constitution.

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2.3: Amending the Constitution

Figure 2.3.1: The Constitution has only been amended 26 times

Article V of the Constitution spells out the processes by which constitutional amendments can be proposed and ratified. As seen below, this is a two-step process. It begins with the proposal of a change to the Constitution and concludes with the ratification process. There are two ways in which Constitutional amendments may be proposed and another two ways by which amendments may be ratified. Each of these will be discussed in this section.

Video: Article V For Dummies: The Amendment Procedure Explained

To Propose Amendments

In the U.S. Congress, both the House of Representatives and the Senate must approve (by a two-thirds supermajority vote) a joint resolution amending the Constitution. Amendments so approved do not require the signature of the president of the United States and are sent directly to the states for ratification.

OR

Two-thirds of the state legislatures must ask Congress to call a national convention to propose amendments. However, to date, this method has never been used.

To Ratify Amendments

Three-fourths of the state legislatures must approve it.

OR

Ratifying conventions in three-fourths of the states must approve it. This method has been used only once -- to ratify the 21st Amendment, which repealed Prohibition.

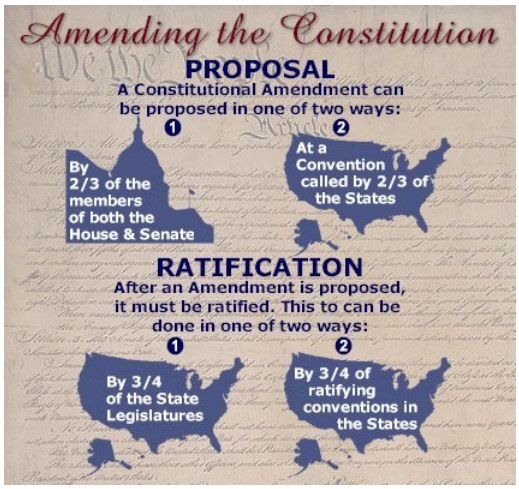

Figure 2.3.2: The Constitution has four formal ways it can be changed in writing.

The Supreme Court has stated that ratification must be within "some reasonable time after the proposal." Beginning with the 18th amendment, it has been customary for Congress to set a definite period for ratification. In the case of the 18th, 20th, 21st, and 22ndamendments, the period set was seven years, but there has been no determination as to just how long a "reasonable time" might extend.

One interesting example of this is the 27th Amendment, which was actually proposed as a part of the Bill of Rights in 1789. This amendment, limiting the power of Congress to give itself a raise without standing for reelection first, was still awaiting ratification in 1992, a record-setting period of 202 years, 6 months and 12 days after it was sent to the states for ratification. It was finally ratified on May 7, 1992.

Of the thousands of proposals that have been made to amend the Constitution, only 33 obtained the necessary two-thirds vote in Congress. Of those 33, only 27 amendments (including the Bill of Rights) have been ratified.

The First Ten (Eleven?) Amendments

When the First Congress convened in 1789, one of its foremost promised orders of business was to consider a series of amendments to the Constitution. These were intended to become part of a "Bill of Rights." Remember that to secure the support of the Anti-Federalists in the fight for ratification, the Federalists promised to add a Bill of Rights to the Constitution after it was in effect.

However, once the First Congress was in session, most of its members were more interested in getting down to the "business of government" than they were in considering amendments to the Constitution. Indeed, if not for James Madison's persistence, repeatedly rising on the House floor to urge the House to consider the promised Constitutional amendments, it is unlikely that the First Congress would have considered them at all.

The reluctance to consider amendments to the Constitution was probably, at least in part, due to the fact that dozens of amendments had been proposed in the various state ratifying conventions. By considering any amendments, members of Congress were probably afraid that nothing else would be accomplished until all of the proposed amendments were considered and voted upon.

Madison, however, studied all of the proposed amendments, discarded the ones he found distasteful, consolidated similar amendments, and trimmed the list down to just ten. By a two-thirds majority in each house, the Congress formally proposed Madison's ten amendments along with two others. They were then sent to the states for ratification. The result was that ten of the proposed amendments were ratified and, thereby, became part of the Constitution. The first ten amendments are often referred to as the Bill of Rights.

Beginning with the 18th Amendment, Congress established a seven-year time limit on the ratification of amendments; however, there was no time limit set on the ratification of amendments proposed before that time. One of the original 12 proposed amendments was not ratified until 1992, a full 203 years after it was proposed by the First Congress! Upon ratification, it became the 27th Amendment to the Constitution. This amendment prohibited any law that increases or decreases the salary of members of Congress from taking effect until the start of the next set of terms of office for Representatives.

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The Bill of Rights

#	Subject	Date submitted for Ratification	Date ratification completed	Ratification time span
1st	Prohibits the making of any law respecting an establishment of religion, impeding the free exercise of religion, abridging the freedom of speech, infringing on the freedom of the press, interfering with the right to peaceably assemble or prohibiting the petitioning for a governmental redress of grievances.	September 25, 1789	December 15, 1791	2 years 2 months 20 days
2nd	Protects the right to keep and bear arms.	September 25, 1789	December 15, 1791	2 years 2 months 20 days
3rd	Prohibits quartering of soldiers in private homes without the owner's consent during peacetime.	September 25, 1789	December 15, 1791	2 years 2 months 20 days
4th	Prohibits unreasonable searches and seizures and sets out requirements for search warrants based on probable cause as determined by a neutral judge or magistrate.	September 25, 1789	December 15, 1791	2 years 2 months 20 days
5th	Sets out rules for indictment by grand jury and eminent domain, protects the right to due process, and prohibits self-incrimination and double jeopardy.	September 25, 1789	December 15, 1791	2 years 2 months 20 days
6th	Protects the right to a fair and speedy public trial by jury, including the rights to be notified of the accusations, to confront the accuser, to obtain witnesses and to retain counsel.	September 25, 1789	December 15, 1791	2 years 2 months 20 days
7th	Provides for the right to	September 25, 1789	December 15, 1791	2 years 2 months 20 days

	trial by jury in certain civil cases, according to common law.			
8th	Prohibits excessive fines and excessive bail, as well as cruel and unusual punishment.	September 25, 1789	December 15, 1791	2 years 2 months 20 days
9th	Protects rights not enumerated in the Constitution.	September 25, 1789	December 15, 1791	2 years 2 months 20 days
10th	Reinforces the principle of federalism by stating that the federal government possesses only those powers delegated to it by the states or the people through the Constitution.	September 25, 1789	December 15, 1791	2 years 2 months 20 days

Categorizing the Amendments

The 27 amendments to the Constitution can roughly be sorted into six broad categories. The first ten amendments are collectively known as the Bill of Rights. For the purposes of this categorization, the 27th Amendment can be included with the first ten because it was proposed by Madison at the same time as the first ten amendments. It is also appropriate to include it with the first ten because it was intended to provide the people protection from unscrupulous elected officials who might abuse their offices for financial gain.

A second set of amendments has specifically addressed the scope of the national government's authority. The 11th Amendment was proposed and ratified in response to a Supreme Court decision regarding sovereign immunity. The 16th Amendment authorized the national government to directly tax the incomes of individuals.

The 13th, 14th, and 15th Amendments were proposed and ratified shortly after the Civil War and were aimed at extending civil rights and liberties to former slaves. Another five amendments, the 12th, 17th, 20th, 22nd, and 25th Amendments have made changes in terms or methods of electing Presidents, Vice-Presidents, and Senators. Four amendments: the 19th, 23rd, 24^{th,} and 26th (the 15thcan also be included in this category) expanded the number of persons eligible to vote in national elections. The 18th Amendment prohibited the consumption of alcohol, and the 21st Amendment canceled the former out.

The Additional Amendments (11-27)

#	Subject	Date submitted for Ratification	Date ratification completed	Ratification time span
11th	Makes states immune from lawsuits with out-of-state citizens and foreigners not living within the state borders; lays the foundation for sovereign immunity.	March 4, 1794	February 7, 1795	11 months 3 days
12th	Revises presidential election procedures.	December 9, 1803	June 15, 1804	6 months 6 days
13th	Abolishes slavery and involuntary servitude except as punishment for a crime.	January 31, 1865	December 6, 1865	10 months 6 days
14th	Defines citizenship, contains the Privileges or Immunities Clause, the Due Process Clause, the Equal Protection Clause, and deals with post-Civil War issues.	June 13, 1866	July 9, 1868	2 years 0 months 26 days
15th	Prohibits the denial of the right to vote based on race, color, or previous condition of servitude.	February 26, 1869	February 3, 1870	11 months 8 days
16th	Permits Congress to levy an income tax without apportioning it among the states or basing it on the United States Census.	July 12, 1909	February 3, 1913	3 years 6 months 22 days
17th	Establishes the direct election of United States Senators by popular vote.	May 13, 1912	April 8, 1913	10 months 26 days
18th	Prohibited the manufacture or sale of alcohol within the United States. (Repealed December 5, 1933)	December 18, 1917	January 16, 1919	1 year 0 months 29 days
19th	Prohibits the denial of the right to vote based on sex.	June 4, 1919	August 18, 1920	1 year 2 months 14 days

20th	Changes the date on which the terms of the President and Vice President (January 20) and Senators and Representatives (January 3) end and begin.	March 2, 1932	January 23, 1933	10 months 21 days
21st	Repeals the 18th Amendment and prohibits the transportation or importation into the United States of alcohol for delivery or use in violation of applicable laws.	February 20, 1933	December 5, 1933	9 months 15 days
22nd	Limits the number of times a person can be elected president. Specifically, a person cannot be elected president more than twice. A person who has served more than two years of a term to which someone else was elected cannot be elected more than once.	March 24, 1947	February 27, 1951	3 years 11 months 6 days
23rd	Grants the District of Columbia electors (the number of electors being equal to the least populous state) in the Electoral College.	June 16, 1960	March 29, 1961	9 months 12 days
24th	Prohibits the revocation of voting rights due to the non-payment of a poll tax.	September 14, 1962	January 23, 1964	1 year 4 months 27 days
25th	Addresses succession to the Presidency and establishes procedures for filling a vacancy in the office of the Vice President and responding to Presidential disabilities.	July 6, 1965	February 10, 1967	1 year 7 months 4 days
26th	Prohibits the denial of the right of US citizens eighteen years of age or	March 23, 1971	July 1, 1971	3 months 8 days

	older to vote on account of age.			
27th	Delays laws affecting Congressional salary from taking effect until after the next election of representatives.	September 25, 1789	May 7, 1992	202 years 7 months 12 days

Why Haven't There Been More Amendments?

Credit for the absence of more amendments can be given to the ingenuity of the Framers and to the flexibility they built into the document. As it has been noted, in many instances the Constitution was left intentionally vague, leaving particular aspects of the document for future generations to interpret.

Constitutional Amendments Proposed and Approved by Congress but NOT Ratified

Six amendments adopted by Congress and sent to the states have not been ratified by the required number of states. Four of these, including one of the twelve Bill of Rights amendments, are still technically open and pending. The other two amendments are closed and no longer pending. One dismissed by terms set within the Congressional Resolution proposing it (†) and the other by terms set within the body of the amendment (‡).

Congressional Apportionment Amendment (pending since September 25, 1789; ratified by 11 states)

Would strictly regulate the size of congressional districts for representation in the House of Representatives.

Title of Nobility Amendment (pending since May 1, 1810; ratified by 12 states)

Would strip citizenship from any United States citizen who accepts a title of nobility from a foreign country.

Corwin Amendment (pending since March 2, 1861; ratified by 3 states)

Would make "domestic institutions" (which in 1861 implicitly meant slavery) of the states impervious to the constitutional amendment procedures enshrined within Article Five of the United States Constitution and immune to abolition or interference even by the most compelling Congressional and popular majorities.

Child Labor Amendment (pending since June 2, 1924; ratified by 28 states)

Would empower the federal government to regulate child labor.

Equal Rights Amendment (ratification period March 22, 1972 to March 22, 1979/June 30, 1982; the amendment failed; ratified by 35 states)

Would prohibit deprivation of equality of rights (discrimination) by the federal or state governments on account of sex.

District of Columbia Voting Rights Amendment (ratification period August 22, 1978 to August 22, 1985; the amendment failed; ratified by 16 states)

Would grant the District of Columbia full representation in the United States Congress as if it were a state, repealed the 23rd Amendment and granted the District full representation in the Electoral College system in addition to full participation in the process by which the Constitution is amended.

List of Failed Amendment Proposals NOT Approved by Congress

Approximately 11,539 measures have been proposed to amend the Constitution from 1789 through January 2, 2013. The following amendments, while introduced by a member of Congress, either died in committee or did not receive a two-thirds vote in both houses of Congress and were, therefore, they were not sent to the states for ratification.

Nineteenth Century:

More than 1,300 resolutions containing over 1,800 proposals to amend the Constitution had been submitted before Congress during the first century of its adoption. Some prominent proposals included:

Blaine Amendment

Proposed in 1875, it would have banned public funds from going to religious purposes in order to prevent Catholics from taking advantage of such funds. Though it failed to pass, many states adopted such provisions.

Christian Amendment

Proposed first in February 1863, it would have added acknowledgment of the Christian God in the Preamble to the Constitution. Similar amendments were proposed in 1874, 1896 and 1910 with none passing. The last attempt in 1954 did not come to a vote.

The Crittenden Compromise

It was a joint resolution that included six constitutional amendments aimed at protecting slavery. Both the House of Representatives and the Senate rejected it in 1861. Abraham Lincoln was elected on a platform that opposed the expansion of slavery. The South's reaction to the rejection paved the way for the secession of the Confederate states and the American Civil War.

Twentieth-Century:

Anti-Miscegenation Amendment

This was proposed in 1912 by Representative Seaborn Roddenbery, a Democrat from Georgia, to forbid interracial marriage nationwide. Similar amendments were proposed in 1871 by Congressman Andrew King, a Missourian Democrat, and in 1928 by Senator Coleman Blease, a South Carolinian Democrat. None were passed by Congress.

Anti-Polygamy Amendment

This was proposed by Representative Frederick Gillett, a Massachusetts Republican, on January 24, 1914. It was supported by former U.S. Senator from Utah and anti-Mormon activist Frank J. Cannon, and by the National Reform Association.

Bricker Amendment

A proposal from 1951 by Ohio Senator John W. Bricker. It intended to limit the federal government's treaty-making power. Opposed by President Dwight Eisenhower, it failed twice to reach the threshold of two-thirds of voting members necessary for passage--the first time by eight votes, and the second time by a single vote.

Death Penalty Abolition Amendment

A proposal presented in 1990, 1992, 1993, and 1995 by Representative Henry González to prohibit the imposition of capital punishment "by any State, Territory, or other jurisdiction within the United States." The amendment was referred to the House Subcommittee on the Constitution but never made it out of committee.

Flag Desecration Amendment

It was first proposed in 1968 to give Congress the power to make acts such as flag burning illegal. During each term of Congress from 1995 through 2005, the proposed amendment was passed by the House of Representatives but never by the Senate. The closest it came was during voting on June 27, 2006, with 66 in support and 34 opposed. This was one vote short.

Human Life Amendment

First proposed in 1973, it would overturn the *Roe v. Wade* court ruling. A total of 330 proposals using varying texts have been proposed with almost all dying in committee. The only version that reached a formal floor vote, the Hatch-Eagleton Amendment, was rejected by 18 votes in the Senate on June 28, 1983.

Ludlow Amendment

This was proposed by Representative Louis Ludlow in 1937. This amendment would have heavily reduced America's ability to be involved in a war.

Twenty-first Century:

A Balanced Budget Amendment:

A proposal would force Congress and the President to balance the budget every year (can't spend more money than collected from revenue). This amendment has been introduced many times.

School Prayer Amendment:

Proposed on April 9, 2003, to establish that "The people retain the right to pray and to recognize their religious beliefs, heritage, and traditions on public property, including schools."

"God" in the Pledge of Allegiance:

Declaring that it is not an establishment of religion for teachers to lead students in reciting the Pledge of Allegiance (with the words "one Nation under God"), proposed on February 27, 2003, by Oklahoma Representative Frank Lucas.

Every Vote Counts Amendment:

Proposed by Congressman Gene Green on September 14, 2004. It would abolish the Electoral College.

Continuity of Government Amendment:

After a Senate hearing in 2004 regarding the need for an amendment to ensure continuity of government in the event that many members of Congress become incapacitated, Senator John Cornyn introduced an amendment to allow Congress to temporarily replace members after at least a quarter of either chamber is incapacitated.

Equal Opportunity to Govern Amendment:

Proposed by Senator Orrin Hatch. It would allow naturalized citizens with at least 20 years of citizenship to become president.

Seventeenth Amendment Repeal:

Proposed in 2004 by Georgia Senator Zell Miller. It would reinstate the appointment of Senators by state legislatures as originally required by Article One, Section Three, Clauses One and Three.

The Federal Marriage Amendment:

Introduced in the United States Congress four times: in 2003, 2004, 2005/2006 and 2008 by multiple members of Congress (with support from then-President George W. Bush). It would define marriage and prohibit same-sex marriage, even at the state level.

Twenty-second Amendment Repeal:

Proposed as early as 1989, various congressmen, including Rep. Barney Frank, Rep. Steny Hoyer, Rep. José Serrano, Rep. Howard Berman, and Sen. Harry Reid, have introduced legislation, but each resolution died before making it out of its respective committee. The current amendment limits the president to two elected terms in office and up to two years succeeding a President in office. The last action was on January 4, 2013, Rep. José Serrano once again introduced H.J. Res. 15 proposing an Amendment to repeal the 22nd Amendment, as he has done every two years since 1997.

Proposed "Anchor Baby" Change to 14th Amendment:

On January 16, 2009, Senator David Vitter of Louisiana proposed an amendment which would deny U.S. citizenship to anyone born in the U.S. unless at least one parent was a U.S. citizen, a permanent resident, or in the armed forces.

Murkowski Amendment:

On February 25, 2009, Senator Lisa Murkowski, because she believed the District of Columbia House Voting Rights Act of 2009 would be unconstitutional if adopted, proposed a Constitutional amendment that would provide a representative to the District of Columbia.

Term Limits for U.S. Senators:

On November 11, 2009, Senator Jim DeMint proposed term limits for the U.S. Congress, where the limit for senators will be two terms for a total of 12 years and for representatives, three terms for a total of six years.

People's Rights Amendment:

On November 15, 2011, Representative James P. McGovern introduced the People's Rights Amendment, a proposal to limit the Constitution's protections only to the rights of natural persons, and not corporations. This amendment would overturn the United States Supreme Court decision in Citizens United v. Federal Election Commission.

Saving American Democracy Amendment:

On December 8, 2011, Senator Bernie Sanders filed The Saving American Democracy Amendment. It stated that corporations are not entitled to the same constitutional rights as people. It would also ban corporate campaign donations to candidates. Additionally, it would give Congress and the states broad authority to regulate spending in elections. This amendment would overturn the United States Supreme Court decision in *Citizens United v. Federa*l Election Commission.

Right to Vote Amendment:

Rep. Jesse Jackson, Jr. backed the Right to Vote Amendment, a proposal to explicitly guarantee the right to vote for all legal U.S. citizens and empower Congress to protect this right; he introduced a resolution for the amendment in the 107th,108th,109th,110th, 111th, and 112th, all of which died in committee. On May 13, 2013, Reps. Mark Pocan and Keith Ellison re-introduced the bill.

Informal Amendments

Unlike formal amendments which change the written word of the U.S. Constitution, informal amendments are changes not affecting the written document but affecting the way the Constitution is interpreted. There are many ways informal amendments can occur but all are affected by two overall political processes:

(1) **Societal Change:** Sometimes society changes, leading to shifts in how constitutional rights are applied. For example, originally only land-holding white males could vote in federal elections. Due to a burgeoning middle class at the peak of the Industrial Revolution in the 1800s, society became focused on expanding rights for the middle and working classes. This led to the right to vote being extended to more and more people. However, formal recognition of the right of poor whites and black males, and later of women, was only fully secured in the Fifteenth Amendment (1870) and the Nineteenth Amendment (1920).

(2) **Judicial Review**: In the United States, federal and state courts at all levels, both appellate and trial, are able to review and declare the constitutionality of legislation relevant to any case properly within their jurisdiction. This means that they evaluate whether a law is or is not in agreement with the Constitution and its intent. In American legal language, "judicial review" refers primarily to the adjudication of the constitutionality of statutes, especially by the Supreme Court of the United States.

This is commonly believed to have been established by Chief Justice John Marshall in the case of *Marbury vs. Madison*, which was argued before the Supreme Court in 1803. A number of other countries whose constitutions provide for such a review of constitutional compatibility of primary legislation have established special constitutional courts with authority to deal with this issue. In these systems, no other courts are competent to question the constitutionality of primary legislation.

Methods of Informal Constitutional Amendment

Legislation:

- Congress can pass laws that spell out some of the Constitution's brief provisions.
- Congress can pass laws defining and interpreting the meaning of constitutional provisions. Congressional legislation is an example of the informal process of amending the U.S. Constitution.
- Two ways in which Congress may informally amend the Constitution is by enacting laws that expand the brief provisions of the Constitution and by enacting laws that further define expressed powers.
- Examples include expanding voting rights, seats in the House, and a minimum wage.

Presidential Action:

- Presidents have used their powers to delineate unclear constitutional provisions. For example, making a difference between Congress's power to declare war and the president's power to wage war.
- Presidents have extended their authority over foreign policy by making informal executive agreements with representatives of foreign governments. This allowed them to avoid the constitutional requirement for the Senate to approve formal treaties.

Executive agreements are pacts made by a president with heads of a foreign government.

- Examples include the Vietnam War and NAFTA.

Supreme Court Decisions:

- The nation's courts interpret and apply the Constitution as they see fit, as in *Marbury v. Madison*, a court case involving the process of informal amendment.
- The Supreme Court has been called "a constitutional convention in continuous session."
- Examples include *Brown v. Board of Education* and *Roe v. Wade*.

Traditional/Practical Realities:

- Each branch of government has developed traditions that fall outside the provisions of the Constitution. Prior to Franklin Roosevelt, there was a tradition of the Executive Branch regarding the idea that a president would not serve a third term. However, that "custom" was added to the written Constitution through a formal amendment.
- An example is the Executive Advisory Board, known as the President's Cabinet, and both houses meeting to hear the State of the Union.

Political Parties and Special Interests:

- Political Parties have been a major source of informal amendment by influencing the political process through the selection of candidates, the establishment of national and local party platforms.
- Political parties have shaped government and its processes by holding political conventions, organizing Congress along party lines, and injecting party politics in the process of presidential appointments.
- The fact that government in the United States is in many ways government through a political party is the result of a long history of informal amendments.
- Examples include current primary practices (caucus, superdelegate, etc.) and the two-party system (committees, etc.).

Special interests have been a major source of informal amendment by influencing the political process through exerting influence over elected officials by way of campaign financing and information dissemination.

THE BLAINE AMENDMENT: A FAILED CONSTITUTIONAL AMENDMENT WITH A LASTING LEGACY

In December 1875, Congressman James G. Blaine sought to apply the religion clauses of the First Amendment directly to the states by specifically prohibiting the disbursement of public funds for parochial (church-run) education. In addition, the Senate added a section forbidding the excluding of the Bible from the nation’s public schools. While this proposed Amendment overwhelmingly passed the House of Representatives, it fell four votes short in the Senate, keeping it from being presented to the states and killing its chances of becoming what would have possibly become the Sixteenth Amendment to the Constitution. Today, this “failed amendment” has lasting repercussions on national policy and its language has been adopted by a majority of states in this country.

You will examine the Blaine Amendment and analyze its impact in the following ways:

I. Read the overview article on the Blaine Amendment. After reading the article, answer the following questions.

1. According to the author, why does the Blaine Amendment “stand apart” from other failed amendments? (Hint: The author patterns the paper around three specific reasons for the Blaine Amendment’s importance).

2. How has the 14th Amendment been used to address the restrictions intended in the Blaine Amendment even though it was never passed as a Constitutional amendment?

3. How do we see the legacy of the Blaine Amendment today in our present public policy?

4. If the Blaine Amendment were to be proposed again today, would you support it? Explain and defend your answer.

5. What present issues and Court cases have centered around the issues presented in the Blaine Amendment? How do these issues impact your life today?

II. Read the article at The Neutrality Principle and prepare a one-page paper that addresses and answers the following questions. Be sure to support your answers with appropriate evidence and references to the documents that have been provided in this assignment.

1. Briefly describe the issue(s) addressed in this article. Be as specific as possible.

2. What is the overall policy question presented in this article? (Hint: What problem or question is the author presenting to you, the reader?)

3. What is your position on the policy question(s) raised in the article? Briefly (one or two sentences) state your position based on the evidence presented.

4. What evidence in the article supports your position? (Present at least three pieces of evidence)

5. What parts of the article would you consider as contrary to your position? (Be as specific as possible)

A Living Document

Many people today have made the argument that the United States has been gifted with a "living Constitution." This idea has become such a part of the American political psyche that it has almost become a cliché. Junior high students lug home civics textbooks with that title and texts such as this can never avoid at least briefly discussing this topic.

What does this idea mean? Is our Constitution really a “living document?” If so, is this a good idea for the governance of our nation?

It is, as the Founding Fathers would say, self-evident that the Constitution – along with the Bill of Rights, now considered part of the core document – is "alive” in one sense. Our Constitution has existed for well over 227 years, longer than any other such document, yet it continues to be a civic touchstone and the model for constitutional democracies around the world. It is also the standard of governance for new and emerging democracies worldwide.

Describing the Constitution as a “living document” implies that it is a flexible instrument that should adapt to changing times and a changing society. Supporters of this theory of open Constitutional interpretation are described as judicial "activists". For the most part, this is where legal scholars, politicians, and legislators have experienced deep controversy for more than a century. We can see the effects of this debate in everyday life. Whether it be in the State of Texas and its attitude towards conforming with federal mandates, or whether we feel that Obama Care is a fair and constitutional policy or a top-down mandate from an out of control government, or whether it is constitutional or unconstitutional under Article IV of the Constitution for states, such as Texas, to recognize same-sex marriages from other states, all of these are subject to the interpretation of the Constitution on the basis of today’s social and political environment.

Until the 20th century, the "originalist" view of the Constitution was the generally accepted standard of the courts and the legislature alike. There are several interpretations and variations on this philosophy, but it generally means that judges should interpret the Constitution as its framers intended it and would themselves interpret it by using the text itself along with other documents of the time, such as *The Federalist Papers*.

Prominent 19th-century legal scholar Joseph Story wrote that the Constitution has "a fixed, uniform, permanent construction. It should be ... not dependent upon the passions or parties of particular times, but the same yesterday, today and forever." Judges should not stray from the text's literal meaning. He believed the only proper way to change the text was by formal amendment - what Alexander Hamilton called "some solemn and authoritative act."

Another perspective of Constitutional interpretation and application began to surface in the mid 19th century. This perspective was inspired by the cutting edge science of the time – Darwin’s Theory of Evolution. Legal scholars began to argue that the Constitution should be viewed as a living organism that is capable of adapting over time.

By the start of the 20th century, progressive jurists like Justice Oliver Wendell Holmes were making and defending the argument that the Constitution "must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago." Holmes said the law was not a matter of absolutes but of the "felt necessities of the time," to be justified by how it contributes "toward reaching a social end."

In other words, while the Constitution was seen as a set of unchanging and fixed laws during the 19th century, 20th-century jurists and scholars began to view the Constitution in a much more flexible and adaptable manner, arguing that its interpretation should be relative to a variety of factors.

This interpretation would depend greatly on three Constitutional Amendments which were neither part of the original Constitution nor the Bill of Rights. These are the “Freedom Amendments” namely the 13th, 14thand 15th Amendments, which were passed by the newly victorious post-Civil War Reconstruction Congress in the late 1860s and early 1870s. In particular, it makes reference to the 14th Amendment and its call for “equal protection under the law.” This has become the centerpiece of both civil rights and civil liberties legislation in addition to the application, or incorporation, of the Bill of Rights to the States on a piecemeal basis over time.

The catch is that judges have been the authorities who have decided how and when the Constitution was evolving. In the 1930s, Chief Justice Charles Evans Hughes put it bluntly, "We are under a Constitution, but the Constitution is what the judges say it is." Others argued that courts have the right to amend it and that the Supreme Court is a continuing constitutional convention.

If, as the Declaration of Independence argues, the government "derives its powers from the consent of the governed," how can judges who are (in the case of the federal system) unelected by the public and entitled to serve for life, decide *when* and *how* to apply and increase those powers?

The popularity of these “originalist” arguments has grown in recent years. Supporters of the originalist interpretation of the Constitution warns that judges may decide to make a "politically correct" ruling, then find some way to justify it through a process of creatively interpreting the law and creating a written precedent that must be followed by judges who hear similar cases. They claim that such judges cannot and should not be allowed to do this forever, or the Constitution will become meaningless. They see these types of jurists as “judicial activists”, and they see themselves as having “judicial restraint” or being “judicial constructivists”. A judicial activist is any judge who uses his powers of judicial review to create policy without the authority of the people or their elected representatives. Judicial restraint is the literal interpretation of the Constitution in deciding such matters without using judicial review to make new law.

Many critics also point out that the only consistent evolutionary movement the Constitution has made is in a socially liberal direction, which places moral, fiscal, and Constitutional conservatives in a much less powerful position. As an example, the power to forbid any "establishment of religion" continues to expand, while the companion guarantee to the "free exercise thereof" shrinks (at least from the more conservative perspective).

It's not that the framers didn’t consider or foresee these changes or the confusion and argument that might be a result. Both James Madison and Thomas Jefferson debated the idea that each generation of Americans should write their own constitution. Jefferson laughed at the "sanctimonious reverence" some would hold for a mere historic document. Madison fretted that without some reverence for continuity, a nation could not have the "requisite stability."

Maybe both were right. Perhaps we really have two constitutions - the written one, which provides a rational continuity, and an unwritten one, which embodies the basic principles behind the document as we now understand them.

For example, look at the "right to privacy." Many Americans make the false assumption that it is one of our basic rights, but the right to privacy is not directly addressed in the Constitution. Instead, it has been created, interpreted and applied over many decades, using the Fourth Amendment's guarantee against "unreasonable searches and seizures," and especially the 14thAmendment's principles of due process and equal protection as well, to a lesser extent, as the 9th Amendment.

Courts have carved out legal zones of privacy around marriage, families, and individuals, overturning laws that required public school attendance, prohibited the use of contraceptives, and more. Last year in Lawrence vs. Texas, a decision that threw out a Texas sodomy law, the court argued that because of the constitutional right to privacy, the government cannot impose a moral point of view on Americans.

Sometimes, the written and unwritten versions conflict. Literally, the Constitution was constructed to preserve the 18th-century status quo regarding slavery, but it was soon read to assert the principle that human rights must be expanded and extended.

We live with such conflict and somehow manage to navigate our way through the uncertainties and challenges that the Constitution will both present us with, as well as correct. As Justice William Brennan wrote, "It is arrogant to pretend that from our vantage we can gauge accurately the intent of the Framers on the application of principle to specific, contemporary questions."

Video: A debate between Supreme Court Justices Antonin Scalia and Stephen Breyer on Original Intent and Living Constitutionalism.

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Figure 2.3.3

Study/Discussion Questions

For each of the following terms, write a sentence which uses or describes the term in your own words.

Amendment	Bill of Rights
ratify	

1. What is the difference between formal and informal amendments?

2. What does it mean when we describe the Constitution as a "living document?" Provide examples to support your answer.

3. What is the difference between an "originalist" and an "activist" view of the Constitution?

4. What does the Constitution say about the right to privacy? What kind of jurist would support the idea that such a constitutional right exists -- an "originalist" or a "constitutionalist"? Explain your answer.

5. Research examples of each method of informal constitutional amendment process as they were described in this textbook. Describe each method and provide an example from your research.

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Saving American Democracy Amendment

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2.4: How the Constitution Guides a National Identity and a Federal Identity

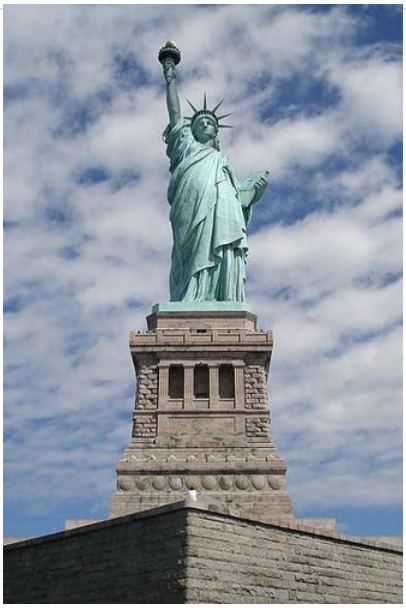

Figure 2.4.1: As President Cleveland accepted the statue on behalf of American citizens, he declared “we will not forget that liberty here made her home; nor shall her chosen altar be neglected.”

Why do governments exist? One major reason is that they create rules. Which rules are necessary or desirable? That is open to debate. Different types of governments have certainly created a wide variety of rules.

Governments originated with the need to protect people from conflicts and to provide law and order. Why have conflicts among people happened throughout history? Many people, both famous and ordinary, have tried to answer that question. Perhaps human nature dictates selfishness, and people inevitably will come to blows over who gets which property or privilege. Maybe, as Karl Marx explains, it is because the very idea of "property" makes people selfish and greedy.

Whatever the reasons, governments first evolved as people discovered that protection was easier if they stayed together in groups, and if they all agreed that one (or some) in the group should have more power than others. This recognition is the basis of sovereignty, or the right of a group (later a country) to be free of outside interference.

Figure 2.4.2: Part of a government's function is to protect its citizens from outside attack. Ancient Chinese emperors constructed a "Great Wall" to defend the borders of their empire.

A country needs to not only protect its citizens from one another, but also needs to organize to prevent outside attack. Sometimes they have built Great Walls and guarded them carefully from invaders. Other times they have led their followers to safe areas protected by high mountains, wide rivers, or vast deserts. Historically, they have raised armies, and the most successful ones have trained and armed special groups to defend the rest. Indeed in the twentieth century, governments have formed alliances and fought great world wars in the name of protection and order.

In more recent years, government responsibilities have extended to the economy and public service. An early principle of capitalism dictates that markets should be free from government control. When economies spun out of control during the Great Depression of the 1930s and countries sank into great depressions, governments acted. The United States Congress created the

Federal Reserve System in the early twentieth-century to ward off inflation and monitor the value of the dollar. Franklin Roosevelt and his "brain trust" devised New Deal programs to shock the country into prosperity.

Governments become involved with the economic workings of their countries. In the 1930s, the Federal Reserve System began to take a role in helping the American economy prevent another depression by locating currency reserves at centralized banks.

Perhaps government responsibility to provide social programs to its citizens is the most controversial of all. In the United States, the tradition began with the New Deal programs. Many provided people with relief through jobs, payments, and food. During the 1960s, President Lyndon Johnson unveiled his "Great Society" programs aimed at eliminating poverty in the entire country.

Many European countries today provide national medical insurance and extensive welfare benefits. Many Americans criticize these programs as expensive ventures that destroy the individual's sense of responsibility for his or her own well-being. So, the debate over the proper role of government in providing for its people's general welfare is still alive and well today.

General Purposes of Government

- Though the rules and responsibilities vary greatly through time and place, governments must create them.
- Governments provide the parameters for everyday behavior for citizens
- Governments must protect citizens from outside interference, and
- Governments must often (or, at least are expected to) provide for the well-being and happiness of its citizens.

The Founding Fathers and the Purposes of Government

In writing the United States Constitution, our Founding Fathers (meaning those who were directly involved in creating, debating, and adopting the Constitution) explicitly stated the purposes for which they believed governments existed. We find those purposes in the opening paragraph of the United States Constitution, called the *Preamble*.

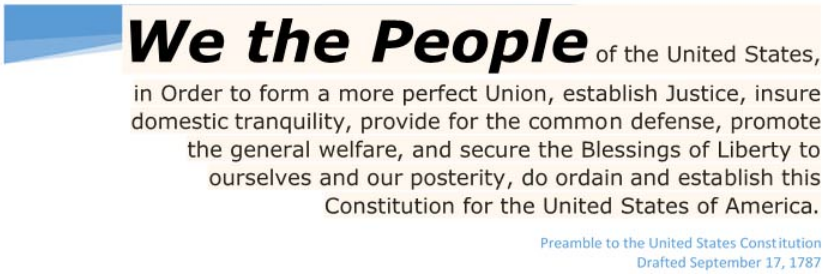

Figure 2.4.3: The Preamble to the United States Constitution

Constitutional Purposes of American Government

As stated in the preamble, the specific purposes of Government in the United States are:

1. To form a more perfect union (to join together the colonies)
2. To establish justice (define and protect the rule of law)
3. To insure domestic tranquility (to prevent conflicts within or between the states)
4. To provide for the common defense (a united power opposing any attacks)
5. To promote the general welfare (human rights and a stable society)
6. To secure the blessings of liberty (insure that the concept of freedom endures)

Figure 2.4.4: Why do Governments Exist?

One major reason is that they create rules. Which rules are necessary or desirable? That is open to debate. Different types of governments have certainly created a wide variety of rules.

Governments originated with the need to protect people from conflicts and to provide law and order. Why have conflicts among people happened throughout history? Many people, both famous and ordinary, have tried to answer that question. Perhaps human nature dictates selfishness, and people inevitably will come to blows over who gets which property or privilege. Maybe, as Karl Marx explains, it is because the very idea of "property" makes people selfish and greedy.

Whatever the reasons, governments first evolved as people discovered that protection was easier if they stayed together in groups, and if they all agreed that one (or some) in the group should have more power than others. This recognition is the basis of sovereignty, or the right of a group (later a country) to be free of outside interference.

Video: The Constitution, The Articles, and Federalism

Purpose 2: To Establish Justice

Remember our discussion of the Rule of Law (the idea society and its institutions are subject to and accountable to a series of rules and standards that are fairly applied and enforced)? It is the government's responsibility to ensure that laws are fairly and equitably interpreted and enforced. This is the purpose of the *justice system*, which, in the United States, consists of the Supreme Court and all of the lower courts established under it. In our federal system, each state establishes its own set of courts and the federal justice system also has a series of courts. But no court in the United States has more authority than the Supreme Court, which is considered the highest court in the land. Its main responsibility is to interpret and apply to the Constitution of the United States so that laws

Purpose 3: To Ensure Domestic Tranquility

Figure 2.4.5: Marker at Shay's Rebellion

Learning through Rebellion

In the mid-1780s, the economy of the newly formed United States was in serious trouble. Hampered by its ability to raise revenue, the national government (what there was of it) owed the equivalent of hundreds of millions of dollars in today's money from the American Revolution. Many ex-soldiers had returned to their farms but had borrowed money against their farms in order to keep them running. A series of farmers, led by Daniel Shays, marched onto a Massachusetts courthouse with hundreds and hundreds of protestors. After hearing of "Shays' Rebellion", George Washington said, "We are fast verging to [absence of government] and confusion!"

This "crisis" made it clear that the national government needed to have the power to address domestic problems and to react to potential domestic problems. The Constitution has given the government certain powers so that they will be able to keep the peace. These are known as *police powers*. Local governments, along with state governments, are allowed to use their own police to enforce national laws within their own borders. However, when the crime has crossed state borders, the national police agencies, like the FBI, can step in to help protect life and property.

Video: Shays' Rebellion

[redacted]

Purpose 4: To Provide for the Common Defense

Figure 2.4.6: The Minutemen were the original ideal of common defense in the United States.

At the conclusion of the American Revolution, the Continental Army disbanded and its soldiers returned to their homes and farms. Leaving the newly formed United States with no real army with which to defend itself. Without an army, there was no way to force British troops to leave the western frontier. Without a navy, there wasn't any way to prevent Spain from closing part of the Mississippi River to the American Trade.

The framers of the Constitution realized that armed forces were vitally important to a nation's survival. Military power would help to prevent attacks from other nations, but it would also protect economic and political interests. The Constitution gives Congress enough power to "raise and support Armies" and to "provide and maintain a Navy".

Today, the armed forces consist of the Army, Air Force, Navy, Marine Corps, and Coast Guard. The Constitution also establishes the principle that the military is under civilian, or non-military, control. Article 2 of the Constitution states that the President is Commander in Chief of the armed forces. Even the highest-ranking military officer must answer to an elected official.

Purpose 5: To Promote the General Welfare

Figure 2.4.7: Promote the General Welfare - Part of Memorial to the Constitution in Suburban Maryland

The Constitution states that the national government should promote the general welfare, but it doesn't really define what this means. Since the 1930s, most people have come to increasingly depend upon government-provided services such as Social Security, a national system of interstate highways, federal unemployment insurance, and a variety of social welfare programs. However, in order to pay for these services the national government must collect taxes from the people.

The workplace provides tons of examples of how the national government has promoted the general welfare. Factory owners have to meet certain safety standards for their work areas. People that are disabled or are unemployed receive financial support. The Social Security system has made sure that all workers will receive income upon their retirement.

General welfare has also been promoted by supporting education. Education helps prepare people for the real world. It helps people learn to become responsible, working citizens. It provides training and tools for employment as well.

Supporting education come in many different ways. The national government has to pay for school nutrition programs in local school areas. Many students also receive money to help pay for the costs of their college education. This is called a scholarship.

Scientific research is also supported by general welfare. General welfare promotes the development of improving the quality of life. Researchers at the National Institutes of Health have led the fight against many different diseases. Without general welfare, hardly any of this would have been possible. Scientists that work at the Department of Agriculture have helped and continue to help farmers improve their crops and to develop better livestock.

Of course, the most recent controversy with regard to the government's role in promoting the general welfare revolves around the recently implemented Affordable Care Act, also known as "Obama Care." The debate over the role of the federal government in providing health care services and requiring every citizen to have health insurance (either privately, through their employers, or through government supported 'exchanges') has become increasingly tense.

The Executive Order Promoting Healthcare Choice and Competition, also known as the Trumpcare Executive Order, or Trumpcare, is an Executive Order signed by President Donald Trump on October 12, 2017, which tells federal agencies to modify how the Patient Protection and Affordable Care Act of the Obama Administration is implemented.

Along with chipping away at the landmark Affordable Care Act, the Trump administration has made a historic and controversial change to Medicaid, allowing states to require many participants who gained coverage through Obama Care to work or lose their benefits.

Trump officials say their moves are aimed at providing greater access to more affordable health insurance options. They are particularly concerned about younger Americans and those who earn too much to qualify for federal subsidies.

The government's role in promoting the general welfare of the people extends beyond directly providing governmental services. Today, the government takes an active role in economic policy. Its objective is to provide an environment in which people are gainfully employed, prices are fair and equitable, goods are freely available, the currency (money) is secure, banks are safe, and the marketplace is open to competition. To provide these services, the government regulates some aspects of trade, insures federal banks, and provides a central banking system.

Figure 2.4.8: The Statue of Liberty has come to represent the ideals of freedom and liberty around the world.

One of the main reasons colonists fought the American Revolution was for the protection of liberty (basic freedoms). For this reason, it makes sense that the framers of the constitution would have been especially concerned with securing liberty as one of its major goals. For our purposes, we will define liberty as the freedom to live as you would like, as long as you follow and obey the laws of the country, and respect the rights of others.

One way that the Constitution ensures the blessings of liberty is by limiting the power of government. The most important example of this is the Bill of Rights, the first 10 amendments to the Constitution, which outline basic rights to our freedoms. This includes freedom of speech, religion, press and assembly; the right to bear arms; basic property protections; basic protections against self-incrimination; the rights to a fair and speedy trial by a jury of ones' peers in both criminal and civil cases; the right to be treated fairly when accused of a crime; basic protections from unfair search and seizure and cruel and unusual punishment; and a promise that the power of the government at the national and state levels would be limited with the bulk of the rights going to the people. These basic rights are not allowed to be taken away by our government (in keeping with Locke's idea of unalienable rights).

Another way the constitution has kept liberty safe is by giving the people the right to vote. We, the people, have the right to select our leaders to help make our laws. And, we are also able to take the power away from our leaders, if we feel it is necessary.

The "blessings of liberty" have been extended to more Americans since the Constitution was written. This can be done in several ways, including amending the Constitution itself, creating new laws, eliminating or changing laws, and applying the Constitution through decisions by the Supreme Court and other courts within the justice system at the national and state levels.

Sources: x24xlaceyx24x.tripod.com/id1.html, http://www.ushistory.org/gov/1a.asp

Video: The Preamble

Figure 2.4.9

Study/Discussion Questions

Use or describe each of the following terms in a sentence.

Sovereignty	Great Wall of China	Great Depression
Federal Reserve System	“Brain Trust”	New Deal
Great Society	Preamble to the Constitution	More Perfect Union
Justice	Domestic Tranquility	Common Defense
General Welfare	Blessings of Liberty	Confederation

1. Governments almost certainly began for what reason(s)?

2. What are the four general purposes of government? Briefly explain each one in your own words.

3. What six purposes did the founding fathers have for American Government? Where can those purposes be found?

4. Give an example from your own experience of how our system of government fulfills each of the six purposes of government.

5. Of the six purposes of government defined by the founding fathers, which do you see as being the most important today? Why?

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2.5: Protection of Religious Freedoms v. Separation of Church and State

Figure 2.5.1: The first amendment to the U.S. Constitution that prohibits any law limiting freedom with respect to religion, expression, peaceful assembly, or the right of citizens to petition the government.

The freedom to say what's on your mind. To worship as you wish. To pray without interference from the government. To peacefully protest. These rights are actively protected by the First Amendment and are just as vitally important today as they were when the Bill of Rights was ratified in 1791. In order for these First Amendment liberties to remain in effect requires actively engaged citizens who are willing to take a courageous stand to defend them.

The First Amendment has become the global standard of the right of "a single majority of one" to openly and freely express views that differ from those in the majority of society in the areas of speech, religion and expression. As a federal judge recognized, history has shown us that "pleasing speech is not the kind that needs protection." According to the U.S. Supreme Court, the First Amendment has become the fortress for protecting the "uninhibited, robust, and wide-open" discussion of controversial and often unpopular issues in public places." [William J. Brennan, Jr., Associate Justice of the Supreme Court of the United States (New York Times Co. v. Sullivan, 1964)].

> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*
>
> *First Amendment to the United States Constitution*

Background

Since the inception of our new nation, the Founders stood firm in the belief that an open and free exchange of ideas was essential for the success of a representative democracy. Benjamin Franklin famously said, "Whoever would overthrow the liberty of a nation must begin by subduing the freeness of speech." In order to ensure the open and free exchange of ideas, the Founding Fathers placed the freedoms of religion, speech, press, assembly, and petition at the forefront of protected liberties as the First Amendment of the United States Bill of Rights. In recognizing the wisdom of the Founding Fathers, U.S. Supreme Court Justice Hugo Black said, "The Framers knew that free speech is the friend of change and revolution. But they also knew that it is always the deadliest enemy of tyranny."

Figure 2.5.2: Religious freedom has always been a priority to Americans.

The First Amendment Today

The First Amendment also includes specific protections dealing with the liberty to freely exercise and practice the religion of one's choice while also protecting the individual from government establishment of forced religious beliefs or practices against the individual's will. In other words, we are free to expressly follow whatever religious beliefs we want while the government cannot dictate how we should act or what we should believe when it comes to religion.

There are contemporary examples of cases where the First Amendment would appear to be under attack. These issues include such questions as:

- To what extent does the First Amendment allow for freedom of speech and expression in schools?
- Which is more important – the right to freely exercise and express one's religious beliefs or the requirement that the government actively separate issues of church and state?
- Does the government have the right to limit or forbid the expression of unpopular views in a public forum?
- Can members of the press be threatened with jail time for reporting on important government programs?

> *Source: Amendment I: Freedom of Religion, Speech, Press, and Assembly,* Rutherford In
> https://www.rutherford.org/constitutional_corner/amendment_i_freedom_of_religion_speec

The First Amendment to the United States Constitution declares that:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

This brief sentence has produced more than its share of controversy in America's political history. While religious liberty has always been cherished in America, it has not always been easy to balance the religious liberties of individuals against the needs of

society. How much should religious liberty be limited in the name of societal order? How involved, if at all, should the government be in religion? Some of the answers that various people have offered to these questions at various times in America's political history might surprise you.

Religious Freedom

It is no mistake that a guarantee of religious freedom and a prohibition of govern\ment established religions appears in the first half of the First Amendment to the Constitution. The people were not about to take for granted rights they had only recently come to enjoy. The place of religion in the colonies, and then in the states, however, has evolved significantly over time. Several states had established religions early in America's history. In fact, the Congregational Church was the official church of the state of Massachusetts until 1833.

As the notion of religious freedom has evolved, however, the government's role in religion has become increasingly cautious. Not only are there no official, government-sanctioned religions in the United States, but also there is a widely held belief that there ought to be a "wall of separation" between religion and government. Furthermore, in the balance between liberty and order, it is widely believed that each individual should be allowed to engage in religious practices that do not directly harm other individuals.

While these notions of government non-involvement in religion and religious liberty are fairly straightforward in most cases, there have been numerous instances in which the proper role of government has been unclear or where it has been unclear just how harmful an individual or group's religious practices are. In these cases, the people of the nation, usually led by the Supreme Court, had to strike a workable balance between liberty and order. Those who have been on the losing side of these battles, however, have not given up trying to shift the balance in their preferred direction. Indeed, much of the story of the First Amendment is the continuing struggle to find a balance that everyone can live with.

The Establishment Clause

The First Amendment actually contains two distinct and sometimes conflicting clauses about religion. The first of these, the Establishment Clause, declares that the Congress "shall make no law respecting an establishment of religion." While there have been many different interpretations of the Establishment Clause, one of the most common is that there should be a "separation" between church and state, i.e. between religion and government."

Another interpretation, which is not incompatible with the first, is that government should be neutral with regard to religion. In the competition of religious ideas, the government should remain neutral, neither favoring nor disfavoring any religion or even irreligion. But what does this mean in practice? What is it permissible for the government to do? What kinds of things should it refrain from doing?

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Many Americans mistakenly believe that the phrase "separation of church and state," or some variation of this statement appears in the Constitution. In fact, the only reference to the relationship between government and religious institutions in the Constitution is in the First Amendment. So where does the term come from? It originates from a letter written by Thomas Jefferson to the Danbury Baptists in 1802. In the letter, Jefferson wrote:

Believing that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their Legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof, thus building a wall of separation between Church and State.

Elsewhere, Jefferson clarified his position on the role of religion in civil society and the relationship that should exist between government and religions:

No man [should] be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor [should he] be enforced, restrained, molested, or burdened in his body or goods, nor... otherwise suffer on account of his religious opinions or belief... All men [should] be free to profess and by argument to maintain their opinions in matters of religion, and... the same [should] in no wise diminish, enlarge, or affect their civil capacities... The proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument unless he profess or renounce this or that religious opinion is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens, he has a natural right.[2]

The view of non-establishment Jefferson seems to convey appears to be a one-way wall. It is not a wall intended to prevent religious influence on government, but rather one which forbids official government involvement in or endorsement of religion. Religious people should not be discouraged from bringing their convictions with them to the political arena, but any governmental effort to force others to adopt a particular set of religious beliefs or engage in particular religious practices would clearly be a breach of the "wall" Jefferson spoke of.

The Supreme Court and Establishment

As the case with each item included in the Bill of Rights, the Supreme Court played a central role in clarifying, at least for legal purposes, the meaning of the First Amendment. In several of its decisions, the Court has outlined a definition of "establishment" that prohibits the governmental promotion of religion or irreligion. In legal terms, the Court has maintained that the government in its approach to religion. That does not mean that the government can do nothing at all to benefit religion or religious institutions. In the granting of tax-exempt status to churches, for example, the government must simply treat all religions equally.

Government Funding for Private Religious Schools

In a landmark case, Lemon v. Kurtzman, the Supreme Court announced a three-part test it would use to determine whether the government's actions in a particular case violated the Establishment Clause. At issue in the case were the laws of two states, Rhode Island and Pennsylvania, that provided financial support for nonpublic, religious elementary and secondary schools. In each case, state support for teachers' salaries, textbooks, and materials were justified because funding was provided only for the teaching of secular subjects taught in public schools. The laws of both states were challenged on the grounds that they "established" religion in violation of the First Amendment.

Hearing appeals of both cases in tandem, the Supreme Court declared that it is not the quality of the education provided by private schools or their efficiency that matters, but whether state aid to religious schools can be "squared with the dictate of the Religion Clauses." Ultimately, the Court determined that it could not:

Under our system, the choice has been made that government is to be entirely excluded from the area of religious instruction and church excluded from the affairs of government. The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that while some involvement and entanglement are inevitable, lines must be drawn.

So, where are the lines to be drawn? In its decision, the Court offered a three-part test, now referred to as the "Lemon Test," to determine when government involvement in religion becomes "establishment" or "promotion." For a national or state law to meet the requirements of the Lemon Test, it must first have a clear "secular legislative purpose." In other words, its goals must be

nonreligious in nature. Second, its "primary effect must be one that neither advances nor inhibits religion." Finally, any "excessive government entanglement with religion" must be avoided. The difficulty of meeting the standards set forth by the Lemon Test is that if a law fails to meet any one of its requirements, it is, according to the Court, unconstitutional.

On the matter of the Pennsylvania and Rhode Island laws providing financial support to religious schools and their teachers, the Supreme Court ruled that they did not adhere to the three standards of determining non-establishment. How did they fail to satisfy the test? While the Court found that both laws had clear secular purposes, i.e. improving the nonreligious elementary and secondary education of the children in each state, and that they did not obviously advance or inhibit religion (precautions were taken in both states to assure that state funding was used only for secular teaching), the Court concluded that the "cumulative impact" of the laws and the funding they provided produced too much "entanglement" between government and religious schools.

TESTING THE LEMON TEST

Acceptable Forms of Federal Aid	Unacceptable Forms of Federal Aid
• Free Bus Transportation (if provided for both public and private school students) • Nondenominational Textbooks • Aid for Buildings at Colleges & Universities	• Supplementing teacher salaries • Tuition payments or rebates for elementary or secondary schools • Money for equipment or supplies

While the Lemon Test is still the primary legal basis for deciding establishment cases, the Supreme Court, in a 1997 ruling, partially reversed its decision in *Lemon v. Kurtzman*, relaxing the legal standards for allowing public funds to be used for private religious schools. The decision seems to be consistent with the current Court's more practical approach to the law.

In *Agostini v. Felton*, the Supreme Court ruled that federal aid for elementary education could be used to pay public school teachers to enter private religious schools to teach secular subjects. Title I of the Elementary and Secondary Education Act provides federal funding to improve the teaching of children from low-income families. However, under previous Court rulings, children attending religious schools had to leave their school buildings to receive the remedial help funded by Title I. This often meant that portable buildings had to be provided solely for the purpose of Title I funded teaching. The state of New York was spending almost $12 million a year to comply with the Court's rules requiring no “entanglement” between religion and government as it tried to provide remedial teaching to students at religious schools.

What's the Difference?

While the Supreme Court has ruled that public funding cannot be used to pay for student tuition to attend religious schools, similar restrictions do not apply for students attending accredited colleges and universities. Students who qualify for Pell Grants or federally subsidized student loans are free to use their financial aid at the school of their choice, be it public or private, secular or religious. There are growing demands for states to implement "voucher" systems that would allow parents to use the money that would have been spent on their child at a public school for tuition at a school of their choice. Why might the Court hold such a system unconstitutional while allowing financial aid to be used by college students? The Court's distinction seems to be based on the notion that older students are more capable of accepting or rejecting religious teachings than are younger students who are more susceptible to indoctrination. Proponents of vouchers generally reject this line of reasoning and have been emboldened by the Court's recent rulings allowing the use of public funds in private schools.

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Another major focus of establishment cases before the Supreme Court has been prayer in school. Opponents of allowing prayer in public schools contend that when a public facility (a school) is used for religious observance (a prayer) during the course of official business (beginning the school day or a class), the authority and resources of government are being used to establish a religion. While it is easy to see why many people believe this line of reasoning is an overly-strict interpretation of the Establishment Clause, the Court has taken painstaking efforts to balance liberty and order in the case of prayer in school.

When a prayer is offered to begin the school day, for example, the students in the class who do not subscribe to the particular religious beliefs expressed in the prayer may be uncomfortable. Discomfort, however, is not enough to make an action unconstitutional. The Court has maintained that when a public school class or student body is led in prayer by a teacher, administrator, or even by another student, nonbelieving students might not only feel uncomfortable, but also they may feel compelled or even coerced to participate. By leaving the room or in some other way refusing to participate, a student may bring upon him or herself the scorn and ridicule of the other students present. To avoid being ostracized, a student may simply go along with the prayer or other religious observance. If a student chooses to do so, the Court has argued, government authority and resources, in the form of a public school, have been used to establish religion, or at least to compel an individual to participate in its observances.

In the most famous of its prayer cases, *Engel v. Vitale*, the Supreme Court ruled that requiring students to participate in the recitation of a prayer written by the Board of Regents of the State of New York was unconstitutional. Although the prayer was nondenominational and did not, therefore, promote any specific religion or religious sect, the Court stated its belief that:

. . . the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.

In later cases, the Court extended its ruling to forbid the reading of Bible passages to begin the school day and the recitation of the Lord's Prayer. While the Court's decisions in these cases were probably on firm Constitutional ground, it is questionable whether the Court should have rendered the decisions at all. In the first instance, the decisions have been widely perceived as anti-religious, something the Court probably did not intend. Second, the decisions are nearly impossible to enforce. Even more seriously, by

drawing a legal line establishing what is acceptable and what is not, the Court left in question the permissibility of hundreds of common practices. What of the prayers offered at the beginning of each legislative day in the Congress? References to Deity in the Declaration of Independence, on our money, in the Pledge of Allegiance and in courts of law? Do these practices violate the Establishment Clause?

Even as it issued its decision in the *Engel* case, the Court seemed to sense that it was treading into murky waters. In a footnote in the *Engel* decision, Justice Black observed:

There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State of New York has sponsored in this instance.

Indeed, it is precisely because of the competing interests at stake in school prayer and other establishment cases that there are no easy answers. Americans are an overwhelmingly religious people who value the position of religion in society. 88% say they "never doubt" the existence of God and 78% report that prayer is "an important part of . . . daily life."[6] Another 54% believe that churches should be politically involved7 and only 41% believe that the separation of church and state has been a source of America's strength in the past century.[8] Even more strikingly, only 12% of Americans believe that "by law, prayer should not be allowed in public schools." However, perhaps indicating a reluctance to impose their religious beliefs on others, a clear majority favor silent prayer, as opposed to vocal ones, in schools.

Establishment, Liberty, and Order

As the Supreme Court has rendered its decisions in disputes over public funding for religious schools, prayer in school and other cases, it has tried to strike an appropriate balance between protecting the liberties of individuals while promoting and maintaining societal order. These cases illustrate the difficulties of doing so. In the case of public funding to religious schools, taxpayers may feel that their liberties (in the form of their tax dollars) are being abused. On the other hand, providing public support for underprivileged students attending religious schools serves a broader public good. In the end, the balance the Court strikes will be a reflection of its members' values and those of society. Given the nature of the very freedoms the Court attempts to define and protect, it is impossible to make decisions with which everyone will be happy.

The Free Exercise Clause

The second "Religion Clause" in the First Amendment of the Constitution states that the "Congress shall make no law . . . prohibiting the free exercise [of religion]." While this statement is, on the surface, simple and straightforward, it has also been the subject of several Supreme Court cases. Comparatively speaking, however, there have been fewer "free exercise" cases than there have been "establishment" cases, largely because the vast majority of free speech and assembly cases also apply to religious exercise.

There have been a handful of significant religious exercise cases that have come before the Court. In most of these cases, the Court grappled with the definition of "exercise." What kinds of activities are protected by the First Amendment? Which kinds of activities go too far and, because they harm other individuals or society, ought to be limited?

In deciding free exercises cases, much the same way it decides speech and expression cases, the Supreme Court tends to weigh the balances heavily in favor of the individual. First Amendment rights are generally considered so important to the individual that the government must demonstrate a "compelling state interest" before it can constitutionally limit them. In other words, there must be an overwhelming public interest that is threatened by an individual's religious practice in order for the individual's religious liberty to be deemed less important than the preservation of societal order. Some specific cases shed light on how the Court has addressed free exercise questions.

In the 1940s Jehovah's Witnesses living in the state of Virginia, the Barnette family sued the West Virginia Board of Education. At issue was a requirement that all children stand and repeat the Pledge of Allegiance at the beginning of each school day. Because saluting the flag was contrary to their religious beliefs, they argued that their children were being deprived of their right to freely

exercise their religious beliefs. In *West Virginia v. Barnette*, the Court agreed, clearly giving priority to the individual's freedom of religion. Writing for the majority, Justice Jackson declared:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.

The Court would rely on the wording and principles of the *Barnette* decision in another free exercise case nearly thirty years later. In *Wisconsin v. Yoder*, the Court found that the state's requirement that children stay in school until the age of sixteen violated the religious liberties of an Amish family that wanted to school their children at home after the Eighth Grade. Elsewhere, the Court has ordered that unemployment benefits be paid to a Seventh-Day Adventist who would not accept a job working on Saturdays (*Sherbert v. Verner*). The Court has repeatedly rejected any kind of religious tests for public office holders, even rejecting laws which bar ordained ministers from holding office.

While the Court has generally ruled in favor of the individual in free exercise cases, there are some notable exceptions. For example, an Amish shopkeeper was required to pay his portion of his employees' Social Security taxes, even though his religious beliefs forbid him from either paying Social Security taxes or receiving Social Security benefits (*United States v. Lee*). In another case, members of the Church of Jesus Christ of Latter-day Saints were ordered to cease the practice of polygamy. In that case, *Reynolds v. United States*, the Court argued that:

The only defense of the accused in this case is his belief that the law ought not to have been enacted. It matters not that his belief was a part of his professed religion: it was still belief, and belief only. . . . [W]hen the offence consists of a positive act which is knowingly done, it would be dangerous to hold that the offender might escape punishment because he religiously believed the law which he had broken ought never to have been made. No case, we believe, can be found that has gone so far.

In the case of polygamy, the Court found that society's interests in maintaining order through the prohibition of "undesirable" activities outweighed the religious liberties of the individuals in question.

More recently, the Supreme Court issued what has become one of its most controversial free exercise decisions. In *Employment Division v. Smith*, the Court reviewed the case of two employees who had been fired by their employer for using "illegal nonprescription drugs." The "drug" used, however, was peyote, a hallucinogen used for sacramental purposes in the observations of the Native American Church. Because the two employees were fired for violating their employer's terms of employment, the Employment Division of Oregon refused to award unemployment benefits to the two men. They filed suit claiming that their free exercise rights were being infringed.

While the Court's ruling in the particular case was largely inconsequential (the Court actually sent the case back to the lower court that had originally heard it for further consideration), the reasoning it used was troubling to defenders of religious freedom. In the case, the Court, in the words of the Congress, "virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion." In an effort to require the courts to reinstate the "compelling interest test" and to "to provide a claim or defense to persons whose religious exercise is substantially burdened by government," the Congress passed the Religious Freedom Restoration Act of 1993 (RFRA), setting up a showdown between the legislative and judicial branches on the interpretation of the Free Exercise Clause.

In the first suit brought under the RFRA, the Court struck down the Act in regards to its application to the states and chastised the Congress for attempting to take on the Court's role as interpreter of the Constitution. In response to what they perceive to be the Court's arrogance and continual drift away from protecting religious liberty, many states have drafted their own forms of the RFRA and several members of Congress have proposed a Religious Freedom Amendment to the Constitution. Their stated purpose is to "correct 36 years of Supreme Court decisions which have warped the original plain and simple meaning of our religious rights under the First Amendment to the Constitution." For the time being, the Court has won the battle over defining the First Amendment. However, in the American system, no decision is ever final. The meaning and interpretation of the Free Exercise Clause will continue to evolve as the values and perspectives of this nation's people and leaders change.

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In a recent case involving religious freedom, *Burwell v. Hobby Lobby Stores*, the Supreme Court was asked to consider whether or not a for-profit company could be forced to provide family planning and contraception services as a part of its health insurance, as required by the Affordable Care Act (Obama Care). The Court defined the question as:

Does the Religious Freedom Restoration Act of 1993 allow a for-profit company to deny its employees health coverage of contraception to which the employees would otherwise be entitled based on the religious objections of the company's owners?

The Supreme Court answered this question as "Yes!" The Court held that Congress intended for the RFRA to be read as applying to corporations since they are composed of individuals who use them to achieve desired ends. Because the contraception requirement forces religious corporations to fund what they consider abortion, which goes against their stated religious principles, or face significant fines, it creates a substantial burden that is not the least restrictive method of satisfying the government's interests. In fact, a less restrictive method exists in the form of the Department of Health and Human Services' exemption for non-profit religious organizations, which the Court held can and should be applied to for-profit corporations such as Hobby Lobby. Additionally, the Court held that this ruling only applies to the contraceptive mandate in question rather than to all possible objections to the Affordable Care Act on religious grounds.

Figure 2.5.3

Study/Discussion Questions

1. Why do you think the founding fathers called for the protection against an establishment of religion as well as the assurance of a "free exercise" of religion? Why does the presence of these two clauses often lead to controversy and disagreement today? Give an example.

2. What does "separation of church and state" mean to you? Do you think it is more important for governments to protect the free exercise of religion or to protect citizens from the establishment of government-sponsored religion? Explain and defend your

answer.

3. How does the case of Lemon v. Kurtzman impact the areas of public education and government-sponsored events in today's society? Give an example and defend your answer.

4. Do you believe government-sponsored vouchers that could be taken to ANY private school are a good public education policy? Why would many argue that this is a violation of the First Amendment? Why would others argue that not providing such vouchers is a violation of their First Amendment rights? Which of the two sides has the more valid argument (in your opinion)? Explain and defend your answer.

5. Why was the Engel v. Vitale case so controversial (especially in today's political environment)? Give an example and defend your answer.

6. A young student refuses to salute the American Flag or to recite the Pledge of Allegiance. Under what case is he/she protected on religious grounds? Is this a matter of free exercise or religious establishment? Explain and defend your answer.

7. Do you agree or disagree with the court's decision in the Burwell v. Hobby Lobby case? How is this decision different from other First Amendment decisions that have been passed down by the courts since the 1950s? Defend your answer.

> Notes:

> The Constitution also prohibits any religious requirements for national office holders
> but this does not directly refer to the relationship between the government and religi

> Thomas Jefferson, "Statute for Religious Freedom, 1779" *Papers*, 1:546.

> Source: Rex Lee, *A Lawyer Looks at the Constitution* (Provo: BYU, 1981), 134.

> Daniel Wise, "Parochial School Teaching May Be Paid by Federal Funds," *The New York La*

> Lee, 130-4.

> Pew Research Center for the People and the Press, MAY 1996 RELIGION AND POLITICS SURVE

> Pew Center. PEW VALUES UPDATE: AMERICAN SOCIAL BELIEFS 1997 - 1987 Part 1 ,
> PEW VALUES UPDATE: AMERICAN SOCIAL BELIEFS 1997 - 1987 Part 2.

> Pew Center. Millennium Survey.
>
> American National Election Study. THE NES GUIDE TO PUBLIC OPINION AND ELECTORAL BEHAVI
>
> In these cases, there was an apparent state interest in preventing too much religious
> However, the Court ruled that it was not a violation of the Establishment Clause for
> serve as elected officials. This is consistent with "one-way" interpretation of Jeffe

> **Source**:
> www.thisnation.com/textbook/billofrights-religion.htmllicensed under Creative Commons

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2.6: Limited Government and the Rule of Law

Figure 2.6.1: Justice Felix Frankfurter was a huge influence on the Supreme Court in the years he sat on the bench, 1939 — 62. He is noted for his civil rights and anti-trust decisions.

> *"It is a fair summary of constitutional history that the landmarks of our liberties have often been forged in cases involving not very nice people." -SupremeCourt Justice Felix Frankfurter*

Background

Protection of civil liberties and civil rights is perhaps the most fundamental political value in American society. Yet, as former Justice Frankfurter explained in the quote above, the people who test liberties and rights in our courts are not always ideal citizens. Consider some of these examples:

- A pickax murderer on death row found God and asked for clemency.
- A publisher of magazines, books, and photos convicted for sending obscene materials through the United States mail.
- A convict whose electrocution was botched when 2,000 volts of electricity rushed into his body, causing flames to leap from his head.
- A university student criminally charged for writing and publishing on the internet about torturing and murdering women.

Each of these people made sensational headline news as the center of one of many national civil liberties disputes in the late 20th century. They became involved in the legal process because of behavior that violated a law, and almost certainly, none of them intended to become famous. More important than the headlines they made, however, is the role they played in establishing important principles that define the many civil liberties and civil rights that Americans enjoy today.

Liberties or Rights?

What is the difference between a liberty and a right? Both words appear in the Declaration of Independence and the Bill of Rights. The distinction between the two has always been blurred, and today the concepts are often used interchangeably. However, they do refer to different kinds of guaranteed protections.

Civil liberties are protections against government actions. For example, the First Amendment of the Bill of Rights guarantees citizens the right to practice whatever religion they please. Government, then, cannot interfere in an individual's freedom of worship. Amendment I gives the individual "liberty" from the actions of the government.

Civil rights, in contrast, refer to positive actions of government should take to create equal conditions for all Americans. The term "civil rights" is often associated with the protection of minority groups, such as African Americans, Hispanics, and women. The government counterbalances the "majority rule" tendency in a democracy that often finds minorities out voted.

Right v. Right

PRESIDENT TRUMAN WIPES OUT SEGREGATION IN ARMED FORCES

Posse, Bent On Lynching, Searches Woods For Prey

Figure 2.6.2: The Chicago Defender, an African-American newspaper, trumpets the desegregation of the military. The right to participate in public institutions is a key component of civil rights.

Most Americans think of civil rights and liberties as principles that protect freedoms all the time. However, the truth is that rights listed in the Constitution and the Bill of Rights are usually competing rights. Most civil liberties and rights court cases involve the plaintiff's right vs. another right that the defendant claims has been violated.

For example, in 1971, the *New York Times* published the "Pentagon Papers" that revealed some negative actions of the government during the Vietnam War. The government sued the newspaper, claiming that the reports endangered national security. *The New York Times* countered with the argument that the public had the right to know and that its freedom of the press should be upheld. So, the situation was national security v. freedom of the press. A tough call, but the Court chose to uphold the rights of the press.

The Bill of Rights and the Fourteenth Amendment

The overwhelming majority of court decisions that define American civil liberties are based on the Bill of Rights, the first ten amendments added to the Constitution in 1791. Civil liberties protected in the Bill of Rights may be divided into two broad areas: freedoms and rights guaranteed in the First Amendment (religion, speech, press, assembly, and petition) and liberties and rights associated with crime and due process. Civil rights are also protected by the 14th Amendment, which protects against the violation of rights and liberties by the state governments.

Section 1: 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.

Section 2: Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, *being twenty-one years of age* [Changed by the 26th Amendment], and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3: All person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4: The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5: The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Protection of civil liberties and civil rights is basic to American political values, but the process is far from easy. Protecting one person's right may involve violating those of another. How far should the government go to take "positive action" to protect minorities? The answers often come from individuals who brush most closely with the law, whose cases help to continually redefine American civil liberties and rights.

QUESTIONS/ACTIVITIES FOR DISCUSSION:

1. Choose a controversial issue from one or more of the resources listed below and discuss how this topic relates to our study of civil rights and civil liberties. Which particular civil liberties and civil rights are at question in the topic you chose? What arguments are made on both sides of the controversy? Which side of the argument do you support? Why? What further implications does this argument have on government at the national, state and local levels today and in the future? Be as specific as possible in your analysis.

SOURCES FOR CONTROVERSIAL ISSUES AND DEBATE:

http://www.cnn.com/studentnews

http://www.nytimes.com/roomfordebate

http://www.studentnewsdaily.com/

http://www.pbs.org/newshour/extra

http://millercenter.org/debates

http://www.procon.org/

2. Considering current events today, what arguments can be made that the United States has made great strides in the areas of civil rights and civil liberties? How can one argue that no such progress has been made? Give specific examples to support your position.

3. Why is the 14th Amendment so critical to our society today? What do you think life in the United States would be like without the protections and provisions of the 14th amendment? Explain and defend your answer and provide examples where applicable.

The Rule of Law

The Rule of Law is the democratic ideal where no individual or institution is above the law. The role of the courts is to apply the rule of law in a fair and impartial manner by interpreting the Constitution and the laws of the United States.

According to the World Justice Project, the four underlying principles guiding the rule of law are:

- The government and its officials and agents, as well as individuals and private entities, are accountable under the law.
- The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property.
- The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.
- Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

The courts play an essential role in maintaining the rule of law, particularly when they hear the grievances voiced by minority groups or by those who may hold minority opinions. Equality before the law is such an essential part of the American system of government that, when a majority, whether acting intentionally or unintentionally, infringes upon the rights of a minority, the Court may see fit to hear both sides of the controversy in court.

Figure 2.6.2

Study/Discussion Questions

1. What is a liberty? Give an example.

2. What is a right? Give an example.

3. Explain the importance of the 14th Amendment.

4. What is the Rule of Law?

5. What are the four underlying principles of the Rule of Law?

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2.7: Unalienable Rights

Figure 2.7.1: The Jefferson Memorial features the Preamble that emphasizes unalienable rights.

> *"We hold these truths to be self-evident: that all men are created equal that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." Thomas Jefferson, Preamble to the Declaration of Independence*
>
> *"Inequality will exist as long as liberty exists. It unavoidably results from that very liberty itself." Alexander Hamilton. Constitutional Debate, June 26, 1787*
>
> *"Government is instituted for those who live under it. It ought therefore to be so constituted as not to be dangerous to their liberties. The more permanency it has the worse if it be a bad." Roger Sherman, Constitutional Debate, June 26, 1787*
>
> *"Four score and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal." Abraham Lincoln, Gettysburg Address*

Overview

Natural rights are often considered *unalienable*, meaning that are not to be taken away or denied. English philosopher John Locke believed that "Life, Liberty, and Property were the most important natural rights. In the Declaration of Independence, Thomas Jefferson defined natural rights as "Life, Liberty, and the Pursuit of Happiness." Both men believed that the purpose of government is to protect these rights through a social contract.

Liberty and equality-- these words have come to represent the basic values of democratic political systems including that of the United States.While rule by absolute monarchs and emperors has often brought peace and order, in many instances it has done so at the cost of personal freedoms. As we have seen, democratic values support the belief that an orderly society can exist in which freedom is preserved. However, order and freedom must be balanced.

It is the seemingly conflictual relationship between liberty and equality that has really formed the root of political conflict and debate since the origins of the first democratic governments. In this section, we will examine the basic concepts of equality and liberty and how modern democratic governments must balance the ideals of equality with the protection of basic liberties and

freedoms. In other words, how can everybody be treated as equals, yet still have the freedom to own property and "pursue happiness" when those same basic freedoms may infringe upon the liberties of others?

Figure 2.7.2: In the early days of the French Revolution, the members of the Third Estate agreed to stick together in the face of opposition from the king and nobles. The "Tennis Court Oath" became the first step towards Representative Democracy in France. The theme of this revolution was "Liberty, Equality, Fraternity"

Defining Liberty, Equality, and Justice

Liberty

While there are many definitions of *liberty*, they all share a common feature that is important to our political understanding. That is, the ability to do as one pleases without interference (within the confines of common rules of society and law).

Equality

Again, while there are many definitions of *equality*, perhaps the best way to describe the common political understanding of this word is to describe it as the degree to which people are treated the same and without being "singled out" or restricted with regard to their beliefs, nationalities, cultures, and backgrounds. Black's Law, the most commonly used law dictionary in the United States, further defines equality as *"the condition of possessing the same rights, privileges, and immunities, and being liable to the same duties."* In other words, from a legal perspective, equality means people are all given the same basic rights and privileges, as well as being held to the same requirements and responsibilities within a society.

Justice

As with *liberty* and *equality*, there are many definitions of *justice*, but some common features between these definitions can be seen. This commonality should lead us to an understanding of the term. These features include a set of morals and standards, a system by which people are judged and punished fairly according to a standard set of commonly understood and practiced laws, a common understanding and practice of right or moral conduct, and a standardized application of punishments if the standards or rules of a community are violated.

Does justice always mean fairness? This is a much more complicated question. For instance, it may be fair to apply laws and punishments to all citizens in the same way without considering circumstances or mitigating factors, but is it *just*? Do we give a four-year-old the same punishment for stealing a candy bar from a store as we would a young adult who should know better? Is someone who kills a person in the course of self-defense given the same punishment as someone who commits a "cold-blooded" murder? If truly equitable justice was the goal of government then everyone would, indeed, be treated in exactly the same way, but today we would see this not as justice but as being unfair because we often consider a number of factors in determining guilt and punishment.

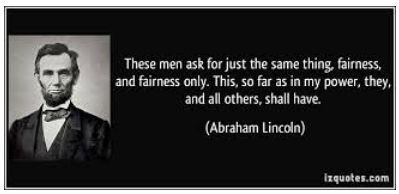

Figure 2.7.3

Economic Arguments

Much of the conflict and debate over the relationship between liberty and equality revolves around the central economic questions of (1) what should be produced, (2) how will it be produced, and (3) for whom will it be produced? If, as John Locke proposed, people should have a natural right to the ownership of property, how can that right to property be balanced with equality? This becomes a question because not everyone will have the same amount of wealth. Just as we have seen several views of political liberty, we can examine economic wealth in the same way.

Distribution of Wealth

There are basically three approaches to the distribution of wealth.

1) **Free Market Economies (Capitalism)** is the belief that markets should be left alone by governments, and people should be free to make and buy what they wish at a price that is best left open to the forces of an open market. Thinkers such as Adam Smith, the Scottish philosopher and founder of modern economics theory, believed that such free market systems of exchange work to benefit both the producer and the consumer in the most efficient way by offering a variety of choices. Through the "invisible hand" of competition, the most efficient price is determined as a result of the competitive marketplace.

This system has been the root of American economic and political policy from our inception. The benefit is that people are free to make and buy what they want (given a large amount of liberty and freedom of choice), but there is an inherent understanding that, to quote the Rolling Stones, "You Can't Always Get What You Want …" because not everyone will have the same level of wealth and income.

The counter-argument, of course, is that you are free to be as wealthy as you wish as long as you work hard and follow the rules. Others would argue that the rules do not work for everyone, particularly minorities. So, in the views of many, equality is sacrificed for the sake of economic liberty.

Here is a video (from the 1950s) on the benefit of Capitalism and distribution of wealth in the United States. It's a little dated, but that's part of the "charm." How do you think these ideals apply to our society today?

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Click below to watch a video on the distribution of wealth in the United States known as the “one percent problem” This video is a little lengthy, but see if you agree or disagree with the arguments presented in the video and compare them to the ideals expressed in the previous video.

(2) **Socialism** involves government influence and intervention in the basic economic questions: what to make, how to make it, and who will get it. Most socialist systems revolve around governmental intervention in or direct provision of goods and services. As an example, the government provided healthcare systems are often referred to as socialist by critics because they bypass the open market and require the government to provide a good or service to the public.

The primary argument against this system is that to provide those services, nations who have socialist economic policies often have very high taxes and fewer choices in the marketplace (not to mention the prices for many goods are much higher than they should be because of the lack of competition).

First, let's look at an academic explanation of pure socialism.

Next, let's take a more humorous look at the idea of "socialism."

(3) **Communism** involves direct governmental ownership and control of all means of production. These economies are often called *command* or *planned economies* because the government directly plans for or commands the types and quantities of goods that will be produced. They own or control the factories and workers that will produce the goods and services, and they set the price for those goods themselves (deciding who in society will be able to afford them).

These economies are most directly compared to the former Soviet Union, China, North Korea, and Cuba. While most former European communist countries (and China) have adopted a more capitalist approach to their economies, the effects of planned economies can still be seen. The criticism of these types of economic and political systems is that while there is equality (everyone is theoretically treated as an equal), the sacrifice is in freedom of choice and personal liberty. Most economic critics believe this system to be the least efficient system.

Below is a Khan Academy discussion of Communism.

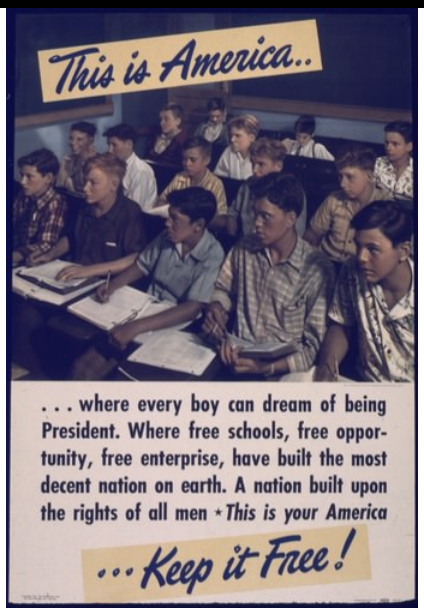

Figure 2.7.4

The American Dream

Surely the conflict between liberty and equality is not just an economic one. Of course, there are more factors to consider in any society than simply the distribution and acquisition of wealth. However, it would seem that in the American system of government, much of the debate revolves around these economic considerations. Our nation has also been one that has considered the relationship between liberty and equality as one that also allows for equal opportunity. This approach would argue that everyone should have the same opportunity to acquire wealth and to improve their standard of living. Many would call this the “American Dream.”

The “American Dream” refers to a set of ideals in which freedom includes the opportunity for prosperity, success, and upward social mobility for the family and the children. The American Dream may be achieved through hard work in a society with few barriers. According to James Truslow Adams in his 1931 definition of the *American Dream*, "Life should be better and richer and

fuller for everyone, with opportunity for each according to ability or achievement" regardless of social class or circumstances of birth.

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The question for many of us today is “Can we still achieve the American Dream?” In a June 2014 CBS News Poll, this debate is openly discussed, with six out of ten of those people polled indicating that they believe the “American Dream” is no longer obtainable.

http://www.cbsnews.com/news/why-most-say-the-american-dream-is-out-of-reach,

http://www.cbsnews.com/news/how-to-revive-your-american-dream/

or examine a 2018 poll here:

today.yougov.com/topics/politics/articles-reports/2018/10/04/american-dream-representation

Do you agree with the polls? Why or Why not?

Figure 2.7.5

Balancing Liberty and Equality

Shouldn't governments help preserve some degree of equality for their citizens? If they overemphasize equality, won't they restrict their citizens' liberty? For example, governments can bring about more equality by taxing rich citizens more than the poor, but if they carry their policies too far, won't they restrict the individual's freedom to strive for economic success?

The balance between liberty and equality is an important cornerstone of democratic government. If we view this as a balance between liberties and equal opportunities, then we see what the founding fathers intended (particularly when they mentioned the pursuit of happiness. If we try to view this as a balance between freedom and equal outcomes (where everyone is exactly the same), there is a tremendous tradeoff between the two. It seems one must be sacrificed in exchange for the other.

Understanding these theories and concepts, the Founders created the blueprints for the United States government in an effort to achieve these delicate balances — between liberty and order, and between liberty and equality. Their success is reflected in the continuing efforts to refine them. The formula has changed with time, but the framework provided by the Constitution and the values expressed by the Declaration of Independence remain the same.

Study/Discussion Questions

Figure 2.7.6

1. What tradeoffs exist between liberty, equality, and justice?
2. Why do you think political scientists and economists often view the democratic ideals of liberty, equality, and justice as requiring tradeoffs? Can these democratic ideals all co-exist in their purest forms without tradeoffs between them? Why/why not?
3. Describe and explain practical examples of the following tradeoffs:
    1. LIBERTY and EQUALITY:
    2. LIBERTY and JUSTICE:
    3. JUSTICE and FAIRNESS:
4. What is meant by the term the "American Dream?" Give an example.

5. Create a graphic organizer similar to the one below and complete it using your understanding and research on the three basic economic systems:

Economic System	Basic Description/ Definition	Who Decides What is Produced?	Who Decides How it is Produced?	Who Decides "Who Gets What?"

Writing Assignment

What is your American Dream? What is your plan to attain it? Do you consider the American Dream an attainable objective in your generation? Why/why not?

Write an essay on the above topic. Your essay should use appropriate English language construction, punctuation, grammar, and vocabulary. In addition, show evidence of planning, including an appropriate thesis, an introduction, supporting paragraphs and a summary/conclusion.

Sources:

Definition of *Liberty* - http://dictionary.reference.com/browse/liberty

Definition of *Equality* - http://dictionary.reference.com/browse/equality

Legal Definition of *Equality* - http://thelawdictionary.org/equality/

Definition of *Justice* - http://dictionary.reference.com/browse/justice

Ethical Discussion of Justice - http://www.scu.edu/ethics/practicing/decision/justice

World History Crash Course Capitalism and Socialism -https://www.youtube.com/watch?v=E

Khan Academy Discussion of Communism - https://www.youtube.com/watch?v=MmRgMAZyYN0

"The One Percent Wealth Gap" documentary - https://www.youtube.com/watch?v=HmlX3fLQrEc

Academic Explanation of Socialism- https://www.youtube.com/watch?v=shD8ZHqP_6k

Youtube Video spoofing Socialism- https://www.youtube.com/watch?v=sCg9E0Pxu80&feature=

CBS News Articles and Accompanying on attainability of the American Dream-

http://www.cbsnews.com/news/why-most-say-the-american-dream-is-out-of-reach

http://www.cbsnews.com/news/how-to-revive-your-american-dream/

> What did the Founding Fathers Mean by "Pursuit of Happiness?", How Stuff Works- http://science.howstuffworks.com/life/inside-the-mind/emotions/pursuit-of-happiness-me

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2.8: Rights Guaranteed by the U.S. Constitution

Figure 2.8.1: The National Archives and Records Administration was established in 1934 to house and maintain official records.

The Bill of Rights: Pathway to Civil Liberties

The foundation of civil liberties is the Bill of Rights, the ten amendments added to the Constitution in 1791 to restrict what the national government may do.

The state conventions that ratified the Constitution obtained promises that the new Congress would consider adding a Bill of Rights. James Madison—the key figure in the Constitutional Convention and an exponent of the Constitution's logic in the Federalist papers—was elected to the first House of Representatives. Keeping a campaign promise, he surveyed suggestions from state-ratifying conventions and zeroed in on those most often recommended. He wrote the amendments not just as goals to pursue but as commands telling the national government what it must do or what it cannot do. Congress passed twelve amendments, but the Bill of Rights shrank to ten when the first two (concerning congressional apportionment and pay) were not ratified by the necessary nine states.

View the Bill of Rights online at http://www.archives.gov/exhibits/charters/bill_of_rights.html

The first eight amendments that were adopted address particular rights. The Ninth Amendment addresses the concern that listing some rights might undercut unspoken natural rights that preceded government. It states that the Bill of Rights does not "deny or disparage others retained by the people." This allows for unnamed rights, such as the right to travel between states, to be recognized. We discussed the 10th Amendment in Chapter 3, as it has more to do with states' rights than individual rights.

The Rights

Even before the addition of the Bill of Rights, the Constitution did not ignore civil liberties entirely. It states that Congress cannot restrict one's right to request a *writ of habeas corpus* giving the reasons for one's arrest. It bars Congress and the states from enacting bills of attainder (laws punishing a named person without trial) or *ex post facto* laws (laws retrospectively making actions

illegal). It specifies that persons accused by the national government of a crime have a right to trial by jury in the state where the offense is alleged to have occurred and that national and state officials cannot be subjected to a "religious test," such as swearing allegiance to a particular denomination.

The Bill of Rights contains the bulk of civil liberties. Unlike the Constitution, containing an emphasis on powers and structures, the Bill of Rights speaks of "the people," and it outlines the rights that are central to individual freedom. [1]

Main Amendments Fall into Several categories of Protection

1. Freedom of expression (I)
2. The right to "keep and bear arms" (II)
3. The protection of person and property (III, IV, V)
4. The right not to be "deprived of life, liberty, or property, without due process of law" (V)
5. The rights of the accused (V, VI, VII)
6. Assurances that the punishment fits the crime (VIII)
7. The right to privacy implicit in the Bill of Rights

The Bill of Rights and the National Government

Congress and the Executive Branch have relied on the Bill of Rights to craft public policies, often after public debate in newspapers. [2] Civil liberties expanded as federal activities grew.

The First Century of Civil Liberties

The first big dispute over civil liberties erupted when Congress passed the Sedition Act in 1798 amid tension with revolutionary France. The act made false and malicious criticisms of the government— including Federalist president John Adams and Congress —a crime. While printers could not be stopped from publishing because of freedom of the press, they could be punished after publication. The Adams administration and Federalist judges used the act to threaten with arrest and imprisonment many Republican editors who opposed them. Republicans argued that freedom of the press, before or after publication, was crucial to giving the people the information they required in a republic. The Sedition Act was a key issue in the 1800 presidential election, Republican Thomas Jefferson won over Adams; the act expired at the end of Adams's term. [3]

Debates over slavery also expanded civil liberties. By the mid-1830s, Northerners were publishing newspapers favoring slavery's abolition. President Andrew Jackson proposed stopping the U.S. Post Office from mailing such "incendiary publications" to the South. Congress, claiming it had no power to restrain the press, rejected his idea. Southerners asked Northern state officials to suppress abolitionist newspapers, but they did not comply. [4]

As the federal government's power grew, so did concerns about civil liberties. When the United States entered the First World War in 1917, the government jailed many radicals and opponents of the war. Persecution of dissent caused Progressive reformers to found the American Civil Liberties Union (ACLU) in 1920. Today, the ACLU pursues civil liberties for both powerless and powerful litigants across the political spectrum. While it is often deemed a liberal group, it has defended reactionary organizations, such as the American Nazi Party and the Ku Klux Klan, and has joined powerful lobbies in opposing campaign finance reform as a restriction of speech.

In later sections focus will be placed on the Fourteenth Amendment and its due process clause. It was added to the Constitution in 1868 and bars states from depriving persons of “life, liberty, or property without due process of law." It is the basis of civil rights. The Fourteenth Amendment is crucial to civil liberties, too. The Bill of Rights restricts only the national government; the Fourteenth Amendment allows the Supreme Court to extend the Bill of Rights to the states.

The Supreme Court exercised its new power gradually. The Court followed selective incorporation. For the Bill of Rights to extend to the states, the justices had to find that the state law violated a principle of liberty and justice that is fundamental to the inalienable rights of a citizen. Table 4.1 shows the years when many protections of the Bill of Rights were applied by the Supreme Court to the states; some have never been extended at all.

The Supreme Court's Extension of the Bill of Rights to the States

Date	Amendment	Right	Case
1897	Fifth	Just compensation for eminent domain	*Chicago, Burlington & Quincy Railroad v. City of Chicago*
1925	First	Freedom of speech	*Gitlow v. New York*
1931	First	Freedom of the press	*Near v. Minnesota*
1932	Fifth	Right to counsel	*Powell v. Alabama (capital cases)*
1937	First	Freedom of assembly	*De Jonge v. Oregon*
1940	First	Free exercise of religion	*Cantwell v. Connecticut*
1947	First	Nonestablishment of religion	*Everson v. Board of Education*
1948	Sixth	Right to public trial	*In Re Oliver*
1949	Fourth	No unreasonable searches and seizures	*Wolf v. Colorado*
1958	First	Freedom of association	*NAACP v. Alabama*
1961	Fourth	Exclusionary rule excluding evidence obtained in violation of the amendment	*Mapp v. Ohio*
1962	Eighth	No cruel and unusual punishment	*Robinson v. California*
1963	First	Right to petition government	*NAACP v. Button*
1963	Fifth	Right to counsel (felony cases)	*Gideon v. Wainwright*
1964	Fifth	Immunity from self-incrimination	*Mallory v. Hogan*
1965	Sixth	Right to confront witnesses	*Pointer v. Texas*
1965	Fifth, Ninth, and others	Right to privacy	*Griswold v. Connecticut*
1966	Sixth	Right to an impartial jury	*Parker v. Gladden*
1967	Sixth	Right to a speedy trial	*Klopfer v. N. Carolina*
1969	Fifth	Immunity from double jeopardy	*Benton v. Maryland*
1972	Sixth	Right to counsel (all crimes involving jail terms)	*Argersinger v. Hamlin*
2010	Second	Right to keep and bear arms	*McDonald v. Chicago*

RIghts Not Extended to the States

Third	No quartering of soldiers in private dwellings
Fifth	Right to grand jury indictment
Seventh	Right to jury trial in civil cases under common law
Eighth	No excessive bail
Eighth	No excessive fines

Many landmark Supreme Court civil-liberties cases were brought by unpopular litigants: members of radical organizations, publishers of anti-Semitic periodicals or of erotica, religious adherents to small sects, atheists and agnostics, or indigent criminal defendants. This pattern promotes a media frame suggesting that civil liberties grow through the Supreme Court's staunch protection of the lowliest citizen's rights.

The finest example is the saga of Clarence Gideon in the book *Gideon's Trumpet* by Anthony Lewis, the Supreme Court reporter for the *New York Times*. The indigent Gideon was sentenced to prison, but protested the state's failure to provide him with a lawyer. Gideon made a series of handwritten appeals.

The Court heard his case under a special procedure designed for paupers. Championed by altruistic civil liberties experts, Gideon's case established a constitutional right to have a lawyer provided, at the state's expense, to all defendants accused of a felony. [5] Similar storylines often appear in news accounts of Supreme Court cases. For example, television journalists personalize these stories by interviewing the person who brought the suit and recounting the touching tale behind the case.[6] This mass-media frame of the lone individual appealing to the Supreme Court is only part of the story.

Powerful interests also benefit from civil-liberties protections. Consider, for example, freedom of expression: Fat-cat campaign contributors rely on freedom of speech to protect their right to spend as much money as they want to win elections. Advertisers say that commercial speech should be granted the same protection as political speech. Huge media conglomerates rely on freedom of the press to become unregulated and more profitable. [7]

Many officials have to interpret the guarantees of civil liberties when making decisions and formulating policy. They sometimes have a broader awareness of civil liberties than do the courts. For example, the Supreme Court found in 1969 that two Arizona newspapers violated antitrust laws by sharing a physical plant while maintaining separate editorial operations. Congress and the president responded by enacting the Newspaper Preservation Act, saying that freedom of the press justified exempting such newspapers from antitrust laws.

Figure 2.8.2

Study/Discussion Questions

1. What is the Bill of Rights?

2. What historical periods were central to the evolution of civil liberties protections?

3. What is the relationship of the Fourteenth Amendment to civil liberties?

4. How does the original text of the Constitution protect civil liberties? What kinds of rights does the Bill of Rights protect that the original body of the Constitution does not?

5. Why might landmark civil-liberties cases tend to be brought by unpopular or disadvantaged groups? What are some of the ways in which powerful interests benefit from civil-liberties protections?

6. Do you think the Bill of Rights does enough to protect civil liberties? In your opinion, are there any ways in which the Bill of Rights goes too far?

Notes:

[1] This section draws on Robert A. Goldwin, From Parchment to Power (Washington, DC:

[2] This theme is developed in Michael Kent Curtis, Free Speech, “The People’s Darling
Expression in American History (Durham, NC: Duke University Press, 2000).

[3] See James Morton Smith, Freedom’s Fetters: The Alien and Sedition Laws and America
(Ithaca, NY: Cornell University Press, 1956). For how the reaction to the Sedition Act
freedom of the press than the Bill of Rights intended, see Leonard W. Levy, Emergence
(New York: Oxford University Press, 1985).

[4] Michael Kent Curtis, Free Speech, “The People’s Darling Privilege”: Struggles for
History (Durham, NC: Duke University Press, 2000), especially chaps. 6–8, quote at 189

[5] Anthony Lewis, Gideon’s Trumpet (New York: Vintage Books, 1964).

[6] Richard Davis, Decisions and Images: The Supreme Court and the News Media(Englewood

[7] Frederick Schauer, “The Political Incidence of the Free Speech Principle,” Univers
935–57.

Source:

http://www.saylor.org/site/textbooks/American%20Government%20and%20Politics%20in%20t
Pgs. 119-127. Accessed Feb. 2, 2015. Licensed under Creative Commons 3.0 BY-NC-SA

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2.9: Freedoms and Rights Guaranteed by the Bill of Rights

Figure 2.9.1: What is your most important freedom or liberty? What would you do if that liberty were suddenly taken away?

A New Era

On September 17, 1787, after 16 weeks of deliberation, the final draft of the United States Constitution was signed by 39 of the 42 delegates present. James Madison reported that Benjamin Franklin, while pointing to the image of a half-sun painted on the back of George Washington's chair, said:

> *I have often in the course of the session...looked at that [chair] behind the president, without being able to tell whether it was rising or setting; but now, at length, I have the happiness to know that it is a rising, and not a setting, sun.*

Figure 2.9.2: Made by John Folwell, George Washington used this chair for nearly three months of the Federal Convention's continuous sessions. 1779

With the Convention officially ended, the members "adjourned to the City Tavern, dined together, and took a cordial leave of each other." However, the struggle for a new Constitution was not over. In fact, many would say it was just beginning. The next important step was to win the consent of popularly elected state conventions. At least nine states would need to ratify the new Constitution before the document could become effective.

Federalists and Anti-Federalists.

By June 1788 the required nine states had ratified the new Constitution, but the largest states, Virginia and New York had not yet done so. Two states, North Carolina and Rhode Island, flatly refused to participate in the ratification process. Popular sentiment was that without the support of these crucial states, the Constitution would never be honored. In the eyes of many people, the document seemed full of potential problems and dangers--including a fear that the new federal government would use its strong central power to “tyrannize them” as Britain had done just a few years earlier. Another fear was that they would be burdened with oppressively heavy taxes and dragged into wars by the new government and its armed forces.

The essays, published in New York newspapers, provided a now classic argument for a central federal government with separate executive, legislative, and judicial branches that provided checks and balances for each other.

In Virginia, the Anti-Federalists attacked the proposed new government by challenging the opening phrase of the Constitution**:** "We the People of the United States." Without using the individual state's name in the Constitution, the delegates argued, the states would not retain their separate rights or powers. Virginia Anti-Federalists were led by Patrick Henry who became the chief spokesman for back-country farmers who feared the powers of the new central government. Wavering delegates were persuaded by a proposal that the Virginia Convention recommend a Bill of Rights. Anti-Federalists joined with the Federalists to ratify the Constitution on June 25. With *The Federalist Papers* influencing the New York delegates, the Constitution was ratified on July 26.

Fear of a strong central government was only one concern among those opposed to the Constitution. Of equal concern to many was the fear that the Constitution did not protect individual rights and freedoms sufficiently. Virginian George Mason, author of Virginia's 1776 Declaration of Rights, was one of three delegates to the Constitutional Convention who refused to sign the final document because it failed to list and specifically protect civil liberties. Together with Patrick Henry, he campaigned vigorously against ratification of the Constitution by Virginia. Indeed, five states, including Massachusetts, ratified the Constitution on the condition that a Bill of Rights be added immediately.

When the first Congress convened in New York City in September 1789, the calls for a series of Constitutional amendments protecting individual rights were virtually unanimous. Congress quickly adopted 12 such amendments. By December 1791, enough states had ratified 10 of those amendments, creating the Bill of Rights. Among their provisions: freedom of speech, press, religion, and the right to assemble peacefully, protest and demand changes (First Amendment); protection against unreasonable searches, seizures of property and arrest (Fourth Amendment); due process of law in all criminal cases (Fifth Amendment); right to a fair and speedy trial (Sixth Amendment); protection against cruel and unusual punishment (Eighth Amendment); and provision that the people retain additional rights not listed in the Constitution (Ninth Amendment).

Since the adoption of the Bill of Rights, only 17 more amendments have been added to the Constitution. Although a number of the subsequent amendments revised the federal government's structure and operations, most followed the precedent established by the Bill of Rights and expanded individual rights and freedoms.

Federalist & Antifederalist Positions

Issue	Federalists	Antifederalists	Explanation
Establishment of a Strong Central Government	Favored	Opposed	Antifederalists were worried that the states would lose power as the national government's power grew.
States' Rights (Power to the 13 Individual States)	Favored limitations on state power. Argued that the new Senate (with two representatives per state) adequately represented state interests.	Wanted protections for states' rights and more power to the individual states.	Local autonomy and control was key to the Antifederalist concept of democracy. This issue would boil up in states' rights fights in the 1800s
Bill of Rights	Not necessary	Supported as essential	Even the largest of states (New York and Virginia) agreed that the absence of a Bill of Rights in the original Constitution was a threat to individual citizens' liberties
Articles of Confederation	Opposed as ineffectual as being ineffective. Congress had no power. All power was in the hands of the states.	The Articles of Confederation needed to be amended, not abandoned	The decision at the Annapolis Convention (1786) to suggest a national convention to modify the Articles proved to be crucial.
Size of the nation	A large republic was seen as the best protection for individual freedoms	Only a small republic could protect rights	The new federal republic would be a "laboratory of Democracy." No new system of democratic government on the scale of America's had ever been attempted.
Supporters	Large farmers, merchants, artisans, and larger states, primarily in the North (with the exception of Rhode Island)	Small farmers, often from rural areas and primarily in the South.	Only a few wealthy men (Mason and Randolph of Virginia, Gerry of Massachusetts) joined the Antifederalists.

Sources: Based on The *American Journey: A History of the United States* by Goldfield, et al. http://faculty.polytechnic.org/gfeld.../chart.fed.pdf

The Bill of Rights

George Mason was one of the leading figures in creating the Bill of Rights. After storming out of the Constitutional Convention because the Constitution didn't contain a declaration of human rights, he worked to pass amendments that would protect citizens from an intrusive government.

The piece of parchment that is called the Bill of Rights is actually a joint resolution between the House and Senate proposing twelve amendments to the Constitution. The final number of accepted amendments was ten, and those became known as the Bill of Rights.

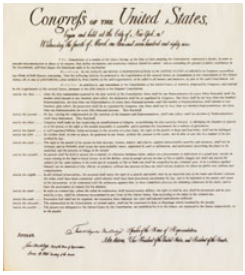

Figure 2.9.3: The United States Bill of Rights

In 1789 Virginian James Madison submitted twelve amendments to Congress. His intention was to answer the criticisms of the Anti-Federalists. The states ratified all but two of them — one to authorize the enlargement of the House of Representatives and one to prevent members of the House from raising their own salaries until after an election had taken place. The remaining ten amendments, known as the Bill of Rights, were ratified in 1791.

They put limits on the national government's right to control specific civil liberties and rights, many of which were already protected by some of the state constitutions. Liberties protected included freedom of speech, press, religion, and assembly (First Amendment) The Bill of Rights also provided safeguards for those accused of crimes. Two amendments — the right to bear arms (Second Amendment) and the right to refuse to have soldiers quartered in your home (Third Amendment) — were clearly reactions to British rule. The Anti-Federalists were pleased by the addition of the Tenth Amendment which declared that all powers not expressly granted to Congress were reserved for the states.

Over the years, the Bill of Rights has become an important core of American values. The compromise that created the Bill of Rights also defined what Americans would come to cherish above almost all else. Together with the Declaration of Independence and the Constitution, the Bill of Rights helps to define the American political system and the government's relationship to its citizens.

The United States Bill of Rights:

The Preamble to The Bill of Rights

Congress of the United States begun and held at the City of New York, on Wednesday, March 4, 1789.

THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; viz.

ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

Note: The following text is a transcription of the first ten amendments to the Constitution in their original form. These amendments were ratified December 15, 1791, and form what is known as the "Bill of Rights."

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, then according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Figure 2.9.4

Study/Discussion Questions

For each of the following terms, write a sentence which uses or describes the term in your own words.

Federalists	Anti-Federalists
states' rights	individual liberty

1. Which states refused to participate in the Ratification process and why?
2. Who were the Federalists and why did they feel a large republic was the only protection of individual freedom?
3. Why did the Anti-Federalists fear a strong central government?

Evaluate each of the following scenarios and determine whether or not the person involved is protected under the Bill of Rights. Then, decide which of the Ten Amendments in the Bill of Rights applies. Write a justification for your decision on each.

1. Sara, an eighteen-year old college student, is arrested for stealing a classmate's term paper and selling it on the Internet. When she appears before the judge, she asks for a lawyer to help defend her. The judge tells her if she is smart enough to be in college, she is smart enough to defend herself. Besides, she is not being charged with a felony, so the stakes are not very high. Does Sara have a right to an attorney? Which Amendment applies?
2. A neighbor is suing the Joneses because a tree in the Joneses' yard fell on their roof during a hurricane. The neighbors want the Jones family to pay $850 to have their roof repaired. Mr. Jones requests that a jury be present to hear this case. The judge says it is not necessary since the amount of the repairs is so small. Does Mr. Jones have the right to a jury trial? If so, which Amendment applies? Justify your answer.
3. Carolyn is arrested for shoplifting a candy bar from a neighborhood convenience store. At trial, she is found guilty. The judge decides that the appropriate punishment is to cut off Carolyn's hands so that she will not be able to shoplift again. Can the judge impose this punishment on Carolyn? If so, what Amendment applies?
4. Mr. Reynolds, an avid hunter and law-abiding citizen with no criminal record, opens the door of his home one day to find agents from the Bureau of Alcohol, Tobacco, and Firearms outside. They inform him that certain provisions of a new federal law allow them to confiscate his rifles so that he may not engage in terrorist activities or plot against the United States government. They have no evidence that he is connected to any such activities. Can the ATF search Mr. Reynolds' house to see if he has any weapons inside? Can they demand that Mr. Reynolds turn over his weapons to them? If so, what Amendment(s) apply?

5. Juan Carlos Garcia is a 30-year-old Hispanic American who was born in the United States and is a natural born United States citizen. He reads and understands English but speaks with a heavy accent. Because of his Hispanic appearance, the police decide to pull him over for further investigation (even though he has not violated any traffic laws). When the police question him and find that he speaks with "a heavy Spanish accent," the officers decide to demand that he prove his citizenship to them or they will detain him for further investigation of illegal entry into the United States. Can the police pull Juan Carlos over and demand that he provide them with proof of American Citizenship if he committed no crime and had not violated any traffic laws? What Amendment(s) apply?
6. Your science teacher asks the class to exchange papers to correct last night's homework. Your friend, Jamie, refuses to do so and is sent to the principal. Is Jamie protected under the Bill of Rights? What Amendment(s) apply?
7. Melissa is a 13-year-old eighth grader at the local middle school. A fellow student notices that she has taken a bottle marked "Tylenol" from her purse and has taken two tablets at the water fountain. Concerned, the student tells an assistant principal who then notifies the nurse and the security guard at the school. Given that the school has a zero-tolerance policy for ANY drugs (including non-prescription) on campus, they bring Melissa into the nurse's office and demand that she hand over the bottle of Tylenol. When she refuses, they tell her that they will perform an involuntary strip search. Can the school conduct such a search for a bottle of Tylenol? If so, what part of the Bill of Rights would apply?
8. Jesse, a 14-year-old student, decides to protest the war in Iraq. He wears a T-shirt to school with a picture of the White House and the caption "Weapon of Massive Misinformation" His principal pulls Jesse aside and asks him not to wear the shirt again because it is disruptive to the learning environment. Jesse wears it the next week and is suspended from school for three days. Is Jesse protected by the Bill of Rights? What specific amendment(s) would apply?
9. Sixteen-year-old Ryan is the captain of the football team. Before the Friday night game, he and his teammates are required to submit to a drug test. Ryan's test shows traces of marijuana. He is not allowed to participate in the game and he is suspended from school. Is Ryan protected? What specific Amendment applies?
10. A known drug dealer is arrested for suspected connections to an inner city murder. The police do not inform him of his rights and immediately begin to interrogate him. They continue until he admits he knows the victim of the crime and was in the neighborhood where the murder took place. Can the police use any of his confession against him in court? If not, what specific Amendment(s) would protect the drug dealer?
11. Your parents are very religious people, but you are not. Today, your parents are going to a service at their place of worship and they expect you to come along. You refuse. They make you come anyway and they ground you for the following month. Are you protected under the Bill of Rights? If so, which specific Amendment(s) would apply?
12. A representative for the City of El Paso comes to your door with an eviction notice stating that your property is being condemned in order to build a new drainage collection pond because of flooding coming from the Freeway nearby. He tells you that the city will reimburse you for the fair market value of your home and your moving expenses. Can the city require you to leave your home? What specific Amendment(s) would apply here?
13. Because of the budget deficit, the United States government is looking for ways to cut costs. They have announced a plan during peacetime to house unmarried soldiers in the homes of American citizens who do not have children. Is this a Constitutional act? What specific Amendment(s) would apply here?
14. Because Members of Congress are unhappy with students' standardized test scores in many states, they pass a federal law that abolishes local school boards and requires a standardized national curriculum with frequent testing of every subject at every grade level. Is this Constitutional? What specific Amendment(s) would apply here?
15. You are in the security line at the airport. The transportation safety agent requires you to take off your coat, take off your shoes, and empty your pockets. The agent also completes a pat-down search before allowing you to board the airplane. Is this a violation of your Constitutional rights? What specific Amendment(s) would apply here?
16. I dyed my hair green because I wanted to make a statement. I didn't think that statement would be, "Search my backpack!" A police officer stopped me and said that he was going to search my backpack because he didn't like my hair color. Do I have a right to privacy in this circumstance? If so, what Constitutional Amendment(s) would apply?
17. I do not like our mayor at all. I think he has made some very bad choices and is not managing our town very well. I'm going to practice my free speech by spray-painting a message for the whole town on the mayor's front door. Do I have a right to free speech through vandalism? What Constitutional Amendment(s) might apply here?
18. Jimmy wants to take the afternoon off from school so he decides to pull the fire alarm at the school to create a diversion. Are Jimmy's actions protected as freedom of expression? What Constitutional Amendment(s) might apply here?

19. You want to start a student chapter of the Fellowship of Christian Athletes to voluntarily meet during lunchtime in a classroom at your school. Your principal refuses to allow you access to a classroom, stating that it would be a violation of the First Amendment. You argue that it is unfair not to allow you to meet in a classroom at lunch since other clubs (like the Chess Club and the Anime Club) meet in classrooms during lunch. Whose side does the First Amendment fall more on – you or the principal?
20. You are an investigative journalist at your school and have discovered that the secret behind the "mystery meat" in the cafeteria is that there is no meat in it at all. Before the story can be published, the principal contacts you and demands it not be printed in the school newspaper. You publish the findings of your investigation anyway only to be suspended because you have embarrassed the school and its administration. Are you protected? Which Amendment applies?

> Sources:

> iCivics. "I Have rights?" worksheet. Used with permission - CC BY-NC 3.0

> primohistory.com Bill of Rights Scenarios. CC BY-SA 3.0

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CHAPTER OVERVIEW

3: The Federalist System

3.1: Purposes set Forth in the Preamble to the U.S. Constitution
3.2: Checks and Balances
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3.4: Structures and Functions of Governmental Levels
3.5: A New Form of Federalism
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3.1: Purposes set Forth in the Preamble to the U.S. Constitution

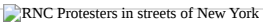

Figure 3.1.1: Rights are widely regarded as the basis of law, but what if laws are bad? Some theorists suggest civil disobedience is, itself, a right. It was advocated by thinkers such as Henry David Thoreau, Dr. Martin Luther King, Jr., and Mohandas Karamchand Gandhi.

Liberty and Responsibility

What is Liberty? The word “liberty” is used throughout the founding documents of the United States, yet most would have great difficulty in truly defining the term as it was envisioned by the founding fathers. Does “liberty” mean the same as “freedom?” Did the Founding Fathers intend for us do anything we wanted without limits or restraints? Even more difficult would be asking the average citizen to identify or to describe the personal liberties and freedoms that are protected in the Constitution and the Bill of Rights. While it is clear that Americans enjoy a tremendous amount of personal freedoms and liberties, we must understand that liberty cannot exist without restraint and responsibility for the effects of our actions, and their impact on others.

Liberty can be described as the freedom to act without unauthorized restraint as well as the freedom to choose not to act. The Founders based their understanding of freedom on the philosophical basis of natural rights (as we discussed in Unit 1). Thomas Jefferson included what he understood to be the basic liberties of citizens: the right to “life, liberty, and the pursuit of happiness.” The Founding Fathers also had a basic legal understanding of liberty. English Common Law held that individuals lived freely under a system of laws designed to protect their property and shield them from unrestrained government control and abuse.

Remember that John Locke and Jean Jacques Rousseau believed in a social contract between the people and their government. They believed that people must willingly exchange some of their liberties in order to benefit from basic services and protections provided by the government, but they also believed that this relationship must ensure people have ultimate control and authority over that government because governments must be instituted in such a way that the rights and privileges of the citizens are protected. As an example, preserving property means securing order through laws and police protection. The people must have the power and must take the responsibility to make sure that the government does not grow so powerful that their basic liberties are unduly restrained. This requires a very delicate balancing act and is the ultimate purpose of the Bill of Rights--listing the limitations on the national government and describing the specific protections our system of government will have for individual rights.

But the founders also believed that liberty could not exist unless the people exercised civic virtues. Exercising personal virtues and civic values would promote and ensure the happiness of society as a whole. George Mason said in the 1776 Virginia Declaration of Rights that “No free government, or the blessings of liberty, can be preserved to any people but by a firm adherence in justice, moderation, temperance, frugality, and virtue and by a frequent recurrence to fundamental principles.” This means that in order for self-government to work, individuals must actively govern and restrain their own personal behavior.

Personal Liberty

Having liberty allows us to make everyday choices that affect our lives: where to go, when and how we will get there, how to dress, what to study, where to work, what kind of profession we wish to pursue and a multitude of other personal matters are part of our everyday decisions and routines. The government cannot make us practice a specific profession, pursue a particular line of work, study a particular subject, or force us to worship a specific deity in a specific way. Put bluntly, it is not the job of the government to tell us what to do or how to think.

As individuals in a free and democratic society, we can travel from state to state, choose a house of worship, get a job or start a business, get married, purchase or rent a place to live anywhere we choose, raise children, and do anything that is considered legal and according to the dictates of our conscience and morals. When good things happen to us as a result of our choices, these are what the Founding Fathers described as “the blessings of liberty.” But what if we make poor choices for ourselves?

Responsibility

When our actions are the result of poor choices, liberty requires accepting the consequences of our mistakes. For instance, the choice to go on a date or go to a party instead of studying may result in a failing grade. If we wish to start a business and that business does not make enough money to survive, we must also understand that this was a consequence of the risks we took and the decisions we made.

The Founding Fathers envisioned a society where people were free to make their own choices in life, but also one in which people assumed the responsibility that goes along with those choices. As an example, exercising your first amendment right to free speech means doing so in a responsible and respectful way. If you wish to freely practice your religion, you must also respect the rights of others to practice his or her religion in a way that might come in conflict with your personal beliefs.

When we practice liberty without any responsibility, the result is called *license*. This may be described as “an excess of liberty.” Societies cannot function properly if people are allowed to have full license to do anything they wish without regards to the effect their actions might have on others. Responsible citizens restrain their actions to conform to society’s laws and standards and to respect the rights and liberties of others.

Personal Liberty and the Constitution

Actions of a deeply personal nature such as when and how to start a family, who we wish to marry, what types of intimate relationships we wish to pursue, and choices about when and how to make decisions concerning our life or death when the end of life is imminent. Since these decisions are so personal and individual, there was no way for the Founders of the Constitution to

anticipate the types of liberty issues that would occur. As an example, how could the Founders have anticipated the privacy issues inherent in using today's plethora of electronic communications devices and technologies? For this reason, most personal liberty issues are not directly named in the Constitution or in the Bill of Rights. However, if you read the Preamble to the Constitution, it clearly states that one of the most important reasons for creating this document and our new government was "to secure the blessings of liberty for ourselves and our posterity." This means that the Founders were not only concerned with the lives of those living in 1787, but with those generations to come.

For this reason, it is often the role of the courts to interpret and apply the Constitution and the Bill of Rights to very complicated and specific cases in order to create legal *precedents* that act as guidelines for judges to use in later cases. The legal principle that judges use to create legal precedents and to use them as guidelines for future cases Is called *stare decisis.* This quite literally means "stand by the decision" in Latin. As an example, the First Amendment specifically protects freedom of speech, assembly and petition, religion and the press. Because these guidelines are so open, it has been used in cases such as *National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449 (1958)*, where the state of Alabama was seeking to limit the ability of NAACP to freely associate with each other in order to conduct business. In this case, the Supreme Court used the freedom of assembly passage of the First Amendment to allow members of the NAACP to continue meeting with each other, and they stopped the State of Alabama from keeping them from assembling or conducting business. As another example, the freedom of speech means having the right to say what one believes as well as the freedom from being forced to say something one doesn't believe. This has been interpreted to mean that we have the right to THINK anything we wish, but when our thoughts become actions, then we may be held responsible for those actions.

Other amendments have also been interpreted in a way that was designed to protect personal liberties including the Third and Fourth Amendments. These were written to protect a person's home and belongings from unreasonable government intrusion. In addition, the Ninth Amendment protects the rights of individuals not named in the Constitution as belonging to the people and not the state. This amendment is often used as a way of protecting personal liberties (namely a presumed right to privacy) not specifically listed or described in the Constitution. Even if the Constitution doesn't specifically mention an expressed right to privacy, the courts have used the Constitution and Bill of Rights in addition to previous court cases in order to interpret the existence of a presumed right to privacy where one did not specifically exist.

In a great deal of issues involving personal liberty such as abortion, the legalization of drug use, or assisted suicide, highly energized debates can reflect a lack of consensus at many levels including local, state and national governments.

So what are the limits of liberty? At what point do our personal choices stop being personal? Justice Oliver Wendell Holmes said, "*Your right to throw a punch stops where my nose begins…*" This has become one of the best explanations or interpretations of the specific problem involved in limiting personal liberties. Are there really situations when personal actions have absolutely no effect on those around us? Even if a choice is purely personal are there certain actions that the government should have the ability to limit or forbid simply because they are contrary to social standards? These types of questions have puzzled policymakers and legal scholars. With the expansion of the Internet, we cannot expect these questions to be answered any time soon.

Therefore it is important to remember one of the most important functions of government policymakers and the courts is to balance the right of the individual to control his or her life with the responsibility of the government to promote the happiness of others. Bluntly stated, just because something makes you happy, and you feel that you have the right to do it doesn't mean it is the right thing to do if it will infringe on the happiness or liberties of others. This conflict between security and liberty, and the conflict between the personal liberties of the individual and the best interests of society, continues to be a difficult and challenging area of government today.

RESEARCH:

- Using Internet resources, find an example of a case or event that best illustrate the tradeoff between exercising personal liberties and personal responsibility. Which of these two is best exemplified in your example? What are the consequences? Explain your answer.
- Investigate upcoming issues involving civil liberties that are likely to appear before the Supreme Court. Issues may include freedom of speech, expression, assembly, and religion (1st Amendment); gun ownership (2nd Amendment); property rights and protection from excessive search, seizure or intrusion (3rd and 4th Amendment), due process rights (5th, 6th, 7th Amendments)

and protections from cruel or inhumane punishment (8th Amendment) as well as implied or expressed rights to privacy (3rd, 4th, and 9th Amendments).

A good place to investigate current issues dealing with civil liberties the ACLU website at https://www.aclu.org/key-issues

the Supreme Court (SCOTUS) website at http://www.supremecourt.gov/

Oyez website at www.oyez.org.

These resources are updated regularly and give information about past and upcoming cases to be heard by the Supreme Court or other appeals courts.

Figure 3.1.2

Study/Discussion Questions

1. What are civil liberties? Where are they found in the Constitution?

2. What role should the government and the courts take in balancing civil liberties with individual rights?

3. Justice Oliver Wendell Holmes once said, "Your rights end when your fist makes contact with my face." What do you think he meant by this? How does this analogy explain the importance of balancing civil liberties with individual rights and protections?

4. What civic responsibilities are important in balancing civil liberties and individual rights? What would society look like without an understanding of civic responsibility?

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3.2: Checks and Balances

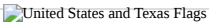

Figure 3.2.1: United States and Texas Flags flying over Texas State Capitol.

Federalism and Hurricane Katrina - Is This the New Reality of Federalism?

When Hurricane Katrina hit New Orleans and the surrounding areas on August 29, 2005, it exposed Federalism's frailties. The state and local governments were overwhelmed, yet there was uncertainty over which level of government should be in charge of rescue attempts. Louisiana governor Kathleen Blanco refused to sign an order turning over the disaster response to federal authorities. She did not want to cede control of the National Guard and did not believe signing the order would hasten the arrival of the troops she had requested. President Bush failed to realize the magnitude of the disaster, so he believed the federal response was effective. In fact, as was obvious to anyone watching television, it was slow and ineffective. New Orleans mayor C. Ray Nagin and state officials accused the Federal Emergency Management Agency (FEMA) of failing to deliver urgently needed help and of thwarting other efforts through red tape. Hurricane Katrina was an exceptional challenge to Federalism. Normally, competition between levels of government does not careen out of control, and federalism works, more or less.

OUTSIDE READING: THE FEDERAL RESPONSE TO KATRINA - LESSONS LEARNED (WASHINGTON POST 2006)

Read the Washington Post article at www.washingtonpost.com/wp-dyn/content/article/2006/02/23/AR2006022300531_pf.html and answer the following questions.

1. What lessons did the federal government claim to learn from Katrina?

2. Which five elements of preparedness does the article mention? Why are these particularly important?

3. How can the relationship between the federal government and state/local government agencies impact the "culture of preparedness" for an emergency such as Katrina?

4. What immediate changes were suggested after evaluating the federal response to Katrina?

5. Based on the information presented in the article, what critical observations can you make about the way in which federal, state and local government agencies worked together during Katrina?

6. What recommendations for improvement does the article mention that are directly related to the issue of federalism? Explain.

7. What additional recommendations for improving a joint response to emergencies such as Katrina would you recommend? Defend your answer and explain how your answer relates to the concept of federalism.

Why Does Federalism Work?

First, Federalism establishes a legal hierarchy—in which national law is superior to state law, which in turn dominates local law—dictates who wins in clashes in domains where each may constitutionally act. Second, state and local governments provide crucial assistance to the national government. Third, national, state, and local levels have complementary capacities, which means they provide distinctly different services and resources with states often becoming dependent on the national government for its much larger resource base. Fourth, the fragmentation of the system is made more effective by interest groups, notably intergovernmental lobbies (lobbies that represent the interest of the states and local governments in dealing with members of Congress) whose job it is to act as voices for state and local governments. In this section, we will look at each of these reasons for conflict in Modern Federalism.

A Clear Hierarchy of Federal and State Laws

The legal hierarchy devised by the founders with the Constitution and United States laws and treaties superior to state and local laws makes for a system where the state and local governments are given the freedom to establish their own laws and to dedicate their resources based on the ideologies and needs of their citizens while still allowing the national government the ability to implement and manage nationwide policies and programs.

States and Local Governments Assist the National Government

State and local governments provide crucial assistance to the national government because they can implement policy and resources at a local level allowing the national government to respond to the needs of the citizens in a more coordinated way without having to duplicate the labor and bureaucratic resources available through the states. Since each state and local region are different, this helps better provide the resources and services necessary in a way that meets the specific needs of the people.

Complementary Resources

The national and state governments have complementary capacities. National, state, and local governments specialize in different policy domains. The main focus of local and state government policy is economic development, broadly defined to include all policies that attract or keep businesses and enhance property values. States have traditionally taken the lead with highways, welfare, health, natural resources, and prisons. Local governments dominate in education, fire protection, sewerage, sanitation, airports, and parking.

The national government is central in policies to serve low-income and other disadvantaged citizens. In these redistributive policies, those paying for a service in taxes are not usually those receiving the service. These programs rarely get positive coverage in the local news because they often show them as "something-for-nothing" benefits that undeserving individuals receive, not as a way to address national problems.

States cannot effectively provide redistributive benefits. Redistributive benefits are those policies that redistribute tax revenue to citizens on the basis of need or other eligibility requirements. These have often been referred to as "social welfare policies." It is impossible to stop people from moving because they think they are paying too much in taxes for services. Additionally, states with generous benefits are unable to stop outsiders from relocating there—a key reason why very few states enact broad health care coverage. On a national scale, former President Obama pressed for and obtained a national healthcare program (The Affordable Care Act, AKA: "Obama Care"). Note, however, given the reserved power of the states and the acknowledgment of Federalism, it is the states' insurance commissioners who are supposed to interpret and enforce many of the provisions of this federal health law. Some states have been much more progressive in this regard, depending upon the political climate and resources available in their particular state.

The three levels of government (national, state, and local) also rely on different sources of tax revenue to fund activities and policies. The national government depends most heavily on the national income tax. This tax is based on a sliding scale. The amount of tax increases depend on a person's ability to pay. This allows a shift in funds from the wealthier states (e.g., Connecticut, New Jersey, and New Hampshire) to poorer states (e.g., New Mexico, North Dakota, and West Virginia).

Taxes of local and state governments are more closely connected to services provided. The local government depends mainly on property taxes. The more valuable the property, the more tax is paid. Most state governments (Texas isn't one of them) implement state income taxes. Also, they rely heavily on sales tax collected during presumably necessary or pleasurable consumer activities.

The language of "no new taxes" or "cutting taxes" is an easy slogan for politicians to feature in campaign ads and news stories. As a result, governments often increase revenues on the sly. Lotteries, cigarette and alcohol taxes, toll roads, and sales taxes fall mostly on nonresidents (in the forrm of hotel taxes or surcharges on car rentals).

The Role of Intergovernmental Lobbies

A fourth reason Federalism often works is because interest groups and professional associations focus simultaneously on a variety of governments at the national, state, and local levels. With multiple points of entry, policy changes can occur in many ways.

In a *bottom-up change*, a problem is first identified and addressed, but not resolved at a local level. People, and often the media, then pressure state and national governments to become involved. Bottom-up change can also take place through an interest group calling on Congress for help. For *example, in 1996, pesticide manufacturers, fed up with different regulations from state to state, successfully pushed Congress to set national standards to make a more uniform, and less rigorous regulation.*

In a t*op-down change***,** breaking news events inspire simultaneous policy responses at various levels. Massive publicity centering on the 1991 beating motorist Rodney King received from Los Angeles police officers propelled police brutality onto the nationwide agenda. Thus, many state and local reforms were inspired. We have seen similar responses to events such as the September 11 attacks on New York and Washington, D.C., and laws regarding drunk driving. In these cases (and others like them), policy reforms took place both at the national and the local levels with a great deal of emphasis coming from the national government to the states.

Policy Diffusion

Policy diffusion is a horizontal form of change. State and local officials watch what other state and local governments are doing. States can be "laboratories of democracy," experimenting with innovative programs that spread to other states. They can also make problems worse with ineffective or misdirected policies. Each type of policy change has its benefits and its unintended consequences, so rather than critically evaluating them on which is better, we simply need to understand that these processes are always at work. This is the reason special interest groups, lobbies, and political parties exist at every level of government.

These processes—bottom-up, top-down, and policy diffusion—are reinforced by the intergovernmental lobby. State and local governments lobby the president and Congress. Their officials band together in organizations, such as the National Governors Association, National Association of Counties, the U.S. Conference of Mayors, and the National Conference of State Legislatures. These associations trade information and pass resolutions to express common concerns to the national government. Such meetings are one-stop-shopping occasions for the news media to gauge nationwide trends in state and local government.

Democrats, Republicans, and Federalism

Both the Democratic and Republican parties stand for different principles with regard to Federalism. Democrats prefer for policies to be set by the national government. They opt for national standards for consistency across states and localities, often through attaching stringent conditions to the use of national funds. Republicans decry such centralization and endorse devolution, giving (or, they say, "returning") powers to the states—and seeking to shrink funds for the national government.

As often occurs with political parties, when politics come into conflict with the desire of the parties to have their candidates elected, these traditional positions on Federalism can, and often do, change. Both parties have been known to give priority to other principles over Federalism and to pursue policy goals regardless of the impact on boundaries between national, state, and local governments.

POLITICAL PARTY POSITIONS ON MODERN FEDERALISM

DEMOCRATIC PARTY	REPUBLICAN PARTY
• Prefer policies set at national level • Opt for standards of consistency across state and local governments	• Decry central politics • See state and local governments as "laboratories of democracy" • Endorse "devolution" – the returning of power, authority and responsibility to state and local levels. • See federal grant-in-aid system as containing unnecessary and unfunded mandates.

Republicans sometimes champion a national policy while Democrats look to the states. In 2004, the Massachusetts Supreme Court ruled that the state could not deny marriage licenses to same-sex couples. This led to officials in cities like San Francisco defying state laws and marrying same-sex couples. Led by President George W. Bush, Republicans drafted an amendment to the US Constitution to define marriage as between a man and a woman. Bush charged that "activist judges and local officials in some parts of the country are not letting up in their efforts to redefine marriage for the rest of America." Democrats, seeking to defuse the amendment's appeal, argued that the matter should be left to each of the states. Democrats appeal to Federalism swayed several Republican senators to vote to kill the amendment.

"The American Recovery and Reinvestment Act," enacted in February 2009, is another example. This was a dramatic response by Congress and the newly installed Obama administration to the country's dire economic condition. It included many billions of dollars in a fiscal stabilization fund: aid to the states and localities struggling with record budget deficits and layoffs. Most Democratic members of Congress voted for the legislation even though it gave the funds unconditionally. Republicans opposed the legislation, preferring tax cuts over funding the states.

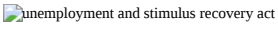

Figure 3.2.2: Economic recovery programs are designed to reduce unemployment and poverty by providing for jobs and new projects at the state and local level through federal grants.

Economic Woes

The national stimulus package implemented by the Obama Administration was a stopgap measure. After spending or allocating most of the federal funds, many states and localities still faced a dire financial situation. The federal government, running a huge budget deficit, was unlikely to give the states significant additional funding. As unemployment went up and people's incomes went down, states' tax collections decreased and their expenditures for unemployment benefits and healthcare increased. Many states had huge funding obligations, particularly for pensions they owed and would owe to state workers.

State governors and legislators, particularly Republicans, promised in their election campaigns not to raise taxes. They relied on cutting costs. They reduced aid to local governments and cities. They fired some state employees, reduced pay and benefits for others, slashed services and programs (including welfare, recreation, and corrections), borrowed funds, and engaged in accounting maneuvers to mask debt.

For example, the University of California staff were put on furlough, which cut their pay by roughly eight percent. Teaching assistants were laid off, courses cut, library hours reduced, and recruitment of new faculty curtailed. Undergraduate fees (tuition) were increased by over 30 percent, provoking student protests and demonstrations.

At the local level, school districts' budgets declined as they received less money from property taxes and from the states (about one-quarter of all state spending goes to public schools). They fired teachers, hired few new ones (resulting in a horrendous job market for recent college graduates wanting to teach), enlarged classes, cut programs, shortened school hours, and closed schools.

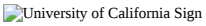

Figure 3.2.3: California schools and public universities were forced to reduce services during the economic downturn of 2008.

Fiscal Federalism

The issues of Federalism have shifted over time from (1) the question of federal supremacy, (2) the question of states' rights, (3) the use of cooperative federalism, (4) addressing questions of civil liberties and civil rights, and (5) the return of national powers and responsibilities to the state and local level. However, the mechanisms used to address these changing issues have not changed, including the use of Congressional Legislation, the incorporation of basic liberties guaranteed in the Bill of Rights to the states, and the use of financial resources to influence state law and policy. It is, however, often the power of the purse that has the greatest impact on the behavior of state legislatures.

Today, the national government exercises the majority of its power and influence over the states by way of Fiscal Federalism. This means using the power of the federal purse (through a system of spending, taxation, and federal assistance) to influence state laws and policies and to achieve a more coordinated system of national public policy. A large indication of this has been the use of federal highway funds to create a coordinated national transportation system while also using federal highway funds as a means of influencing the behavior of the states in areas such as seat belt laws, national speed limits (until recently), and standardized drunk driving laws and penalties.

While the use of federal funding dates back to the Articles of Confederation and the Land Ordinance of 1785, which set aside federal money to build schools in new western territories, it was not until the early 1900s that the use of federal spending to influence state behavior became clearly seen.

During the 20th Century, particularly after the passage of the 16th Amendment in 1913 allowing for a federal income tax, the national government began an expanded use of federal grants-in-aid, which included money and other national resources in order to influence state and local activities. This money has been used to fund a range of services and policy areas from low-income housing, local programs in the arts and sciences, and a variety of social and economic welfare programs.

Figure 3.2.4: Government funding that attempts to influence the actions of state and local governments by offering incentives or penalizing states if mandates are not met is often referred to as "carrot and stick" funding.

Federal income tax is the primary source of the nation's income. The use of federal tax revenues to fund grants-in-aid has been called a redistributive system, meaning taxes are collected at the national level and redistributed to states, local governments, and individual citizens through a variety of grant-based programs. With the flow of money to the states and local governments comes a set of "strings" that are attached to the money. States must often perform certain tasks or meet the demands of mandates in order to

receive funding. In some cases, states receive money if they perform a certain task, such as instituting traffic safety checks to look for seatbelt violators or drunk drivers. These are often referred to as the "carrot" of Fiscal Federalism. In other cases, federal funding is withheld from states or local governments that do not meet those mandates that have been attached to the grants. For example, drunk driving laws have been standardized at a .08 level throughout the country. If a state did not change its drunk driving limit to .08 by a specific target date, it was subject to having federal highway funds withheld. This is an example of the "stick" of Federalism with financial punishment for any state that does not comply with the mandated standards attached to the grant. Another name for "carrot and stick" fiscal funding systems is Coercive Federalism. In other words, federal funding is used to coerce or influence the behavior of the state and local governments.

Types of Federal Grant

Categorical Grants

Most federal aid is provided to the states through the use of categorical grants which can only be used for a specific purpose. For instance, national highway funds must be used to fund Interstate Highway projects and cannot be used to build a rural farm road without some sort of justification as to why that road would be necessary under the highway funding category.

As in the case of Hurricane Katrina and Hurricane Sandy, the national government can also use categorical grants to fund local governments in times of national emergency. The amount of money a state receives as part of a categorical grant often varies depending on a state's population. States may be asked to contribute a portion of the cost of a project in the form of matching funds.

Block Grants

Unlike categorical grants, block grants are provided as chunks of money for states to use for more general purposes and there are fewer restrictions on their use. Since there are fewer restrictions, states prefer the use of block grants over categorical grants and may turn down a categorical grant rather than accept the offer of federal funding because of fear or concern over the mandates and regulations that are attached. This is generally not the case in block grants.

The sacrifice on the federal government side in using block grants is that the national government is giving up a degree of control and influence, but it is recognizing the sovereignty of the states to make decisions on the allocation of resources that best fit the needs of their citizens.

In the 1980s, Ronald Reagan began using block grants as a primary source of federal assistance because it aligned with his belief that the states could better determine and manage the allocation of financial resources to the people rather than a larger central government. During this period, Congress combined a number of previously categorical grants into large chunks of block grants and also implemented a system of revenue sharing where a small portion of federal taxes was returned to the states without any restrictions or conditions on the basis of the state population.

Federal Mandates

As we have previously discussed, federal mandates are demands or restrictions placed on the states in exchange for accepting federal grant money. In some cases, Congress has even imposed such restrictions and requirements without allocating any additional money to the states. These are called unfunded mandates because they lack the financial resources necessary for the state to carry them out with the assumption that the state will need to pay for any financial costs associated with meeting the requirements attached to the mandate.

Federal mandates have served as a vital tool in enacting civil rights and environmental policies, but often these mandates are followed with a great deal of complaining and objection from the states. For example, governmental actions such as school bussing, desegregation, and affirmative action have all resulted from the use of federal mandates attached to a number of federal grants that states have come to rely on. The justification of the federal courts in applying mandates (either funded or unfunded) to such civil rights legislation has been the use of the 14thAmendment of the Constitution and its equal protection clause.

Issues in Federalism Today

Besides the continuous debate over the division of power and the use of federal funding, American Federalism faces ongoing challenges in a variety of policy areas including (1) poverty and economic equality, (2) Homeland Security, (3) environmental

regulation, (4) immigration, and (5) healthcare. Whenever you read the paper, watch television news, or see an article on the Internet, you will soon come to realize that the majority of the issues facing us as a nation are related to modern American Federalism.

Poverty

In 1996, President William Clinton (a Democrat) supported and signed legislation that provided sweeping changes in welfare programs. Prior to this, a number of welfare programs provided money directly to the states or the citizens themselves in the form of direct payments ("welfare") or vouchers (such as "food stamps"). Taxpayers across the nation became incensed that they were paying national income taxes for others who would stay on these forms of aid for years or decades. This led to a change from "welfare" to "workfare" which limited the number of weeks someone could receive such assistance, refocused the funding to link with children and dependent families, and allowed states to establish new regulations and funding formulas that would differ from state to state. Most importantly, a requirement for a recipient to work or attend a job training program was also attached to the new funding. This led to its nickname "workfare." Since instituting this new form of poverty assistance, the number of recipients has decreased. Some people credit this decrease to the ability of the states to approach the problem of poverty within their communities in a more flexible manner. Others argue that this drop in public assistance is only because of a relatively strong economy and add that many states will be unable to meet the needs of their poorest citizens under the current system.

Homeland Security

After the attacks on New York and Washington D.C. in 2001, President George W. Bush asked Congress to create a new federal department as we faced ever-increasing foreign threats from new types of enemies. The Department of Homeland Security was constructed to oversee a number of redundant or disconnected programs that were unable to communicate or cooperate with each other. Even after the creation of the Department of Homeland Security, it became clear that agencies were still disconnected and unable to respond appropriately. An example of this is the response of FEMA (the Federal Emergency Management Agency) following Hurricane Katrina.

Environmental Regulation

Many see any effort to address the area of environmental protection as being squarely in the hands of the national government. There are, of course, a number of practical reasons for a national approach to an environmental policy including the need to coordinate the actions and policies of the states into a unified policy as well as access to resources and regulatory powers. Some leaders believe that environmental regulation and protection is better left to the individual states. For instance, the environmental needs of a petroleum and chemical-based economy such as Texas should not be determined by a more industrial based state such as Michigan. Each state has its own set of natural resources and different industries that operate within them. In light of this view, many members of Congress have asked that the regulatory "reach" of the Environmental Protection Agency be curtailed. An immediate issue at the time of this writing is the opening of the Keystone Pipeline that will pump large quantities of crude oil from fields in Western Canada to refineries in Illinois, Oklahoma, and Texas. While this action will keep the price of oil lower, the concern is the environmental cost of any leak in this pipeline that may occur in the future. Another similar issue is the use of "fracking" in order to better access oil reserves in other parts of the United States such as Montana and the Dakotas.

Immigration

Immigration has also come under a great deal of debate recently as border states like Arizona and Texas have sought to implement their own immigration-based policies in order to address what they perceive as a rising threat from illegal immigration. While the Constitution clearly states that immigration and naturalization are an expressed power given to the federal government, these border states (and an increasing number of others) have expressed frustration with the federal government's inability or lack of concern over the issue of immigration. It has become an increasingly contentious issue regarding federal and state powers.

Health Care

One of the biggest and most feverish debates concerning Federalism has been the issue of national healthcare policy. While Americans have been turning to more creative solutions to offset the rising cost of medical healthcare, we are also faced with a large number of uninsured or underinsured citizens. For instance, in 2003 as many as 45 million Americans were uninsured. While this number has decreased to around 36-40 million under the new Affordable Care Act (Obama Care), it is still approximately one out of every six people in the country, and a large number of these are children and young adults. "Obama Care" is criticized for its

requirement that individuals MUST carry insurance and will be penalized on their income tax if they do not. To raise the number of insured individuals, many states have established exchanges, which function as free marketplaces for individuals to find and purchase insurance. The federal implementation of this new law has met a number of “false starts” and “snags” including the crashing of the entire “healthcare.gov” site at the beginning of 2014. Also, many states have refused to provide the necessary health insurance exchanges and have also not accepted federal funds aimed at expanding Medicaid. In turn, this has left many without access to healthcare insurance.

The basic question with healthcare policy is under which governmental domain does it fall? This is certainly not an enumerated power in the Constitution, and most would argue that since it isn’t forbidden from the states and it isn’t expressly given to the federal government, it should fall under the 10th Amendment to the Constitution as a reserved power. This argument has several flaws as the courts have repeatedly acknowledged the power of the national government to extend itself into the provision of “general welfare” related services throughout our nation’s history. The question of whether a national healthcare system such as the Affordable Care Act is a right and just national policy or an attempt to limit the power of the states and institute “socialized medicine” into the United States will continue for a long time to come.

Figure 3.2.5

Study/Discussion Questions

For each of the following terms, write a sentence which uses or describes the term in your own words.

mandate	fiscal federalism
“carrot and stick”	FEMA

1. Discuss the factors that have contributed to the success of Federalism in the United States system of government.

2. How has Federalism contributed to conflict between the states and the national government? Give examples.

3. What are "intergovernmental lobbies?" How do they impact our federal system?

4. How do political parties differ in their perspectives on Federalism? Would you consider these differences a positive or negative element of Federalism? Explain.

5. Why is Fiscal Federalism often compared to a "carrot and a stick"?

6. How do federal grants-in-aid give the national government power in the federal system?

7. How would the Founding Fathers feel about the use of federal grants-in-aid and Fiscal Federalism? Explain

8. Choose one of the issues of Modern Federalism described in this chapter and/or the additional readings below. Explain how this issue relates to Federalism, and how it is impacted by the actions of the national government and the states.

9. Why do you think Republicans like to use block grants while democrats like to use categorical grants? Explain your answer.

10. What are mandates? Why are they such a controversial part of the American system of Federalism? Explain your answer.

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3.3: Domestic and Foreign Policy

Figure 3.3.1: The United States has many programs that take care of its citizens.

Does the right to pursue happiness include being given assistance by the government? Does it include access to a free public education? Should the unemployed be assisted? Is the right to healthcare included under this idea of happiness?

Early American leaders did not interpret the "pursuit of happiness" this broadly. Americans continually pushed the concept of the pursuit of happiness to include these and other social concerns. Currently, the modern political agenda revolves around determining social policy.

Social Services

The services and benefits governments provide through their social policies vary widely. Scandinavian countries, such as Norway, establish a safety net for its citizens from the cradle to the grave. Americans rely more on employment and private sources such as insurance policies than the government for their income and protection against economic misfortune.

According to some American policymakers, poverty stems in part from the failure of the economic system to provide enough jobs at a living wage in addition workers suffer from racism and sexism. These lawmakers support policies to alleviate poverty's causes (e.g., increasing the minimum wage or lengthening the period of unemployment compensation). From this perspective, people are not much to blame for needing public assistance (welfare).

An alternative view blames people for their fate. Public assistance violates the American values of individual enterprise and responsibility. It is believed that recipients would rather collect government handouts than work. No wonder welfare is one of the most reviled social programs. It is often given grudgingly and with stringent conditions attached.

Aid to Families with Dependent Children (AFDC)

Title IV of the Social Security Act of 1935 provided funds for the states to help the destitute elderly, the blind, and children. Its primary purpose was to assist poverty-stricken families with children during the heart of the Great Depression. Over time, it became Aid to Families with Dependent Children (AFDC), granting financial assistance to low-income mothers and their children. [1]

With program expansion came criticisms, often conveyed and amplified by the media. The program was seen as supporting "unwed motherhood, idleness, and dishonesty." [2] It was disparaged for providing aid to individuals without requiring anything in return. Levels of assistance were given based on family size; the more children families had, the more aid they received. Women were deterred from attempting to leave welfare and entering the workforce because they were limited in the number of hours they could work without losing some of their benefits.

In his successful 1991 campaign for the presidency, Bill Clinton preempted what had been a Republican issue by promising to "put an end to welfare as we know it." In 1996, after rejecting previous versions, he signed a Republican bill, the Personal Responsibility and Work Opportunity and Reconciliation Act (PRWORA). This helped him get reelected in 1996.

This law replaced AFDC with the Temporary Assistance to Needy Families (TANF) program. The federal government gives states grants in aid and greater autonomy in structuring their welfare systems if they follow federal rules. Adult welfare recipients are limited to a lifetime total of five years of TANF benefits. State governments lose some of their TANF funding unless they show that significant numbers of their welfare recipients are entering the workforce. To receive benefits, children under eighteen must live with their parents or in an adult-supervised setting.

Since the law passed, some states have reported decreases of more than 50 percent in the number of welfare recipients. However, it remains to be seen if the changes in the welfare policy have led to less poverty or have simply removed people from the welfare rolls. [3] It also remains to be seen what effects of the policy are now that the economy has declined, causing people who had moved from welfare to employment to lose their jobs.

The federal government does pay the cost of food stamps. Nearly one in seven Americans receives them with an average benefit of $500 a month for a family of four. Removing the stigma of welfare from the stamps, the government changed the program's name to Supplemental Nutrition Assistance Program (SNAP). Making it even more acceptable, it is supported by farmers and grocery stores. [4]

Some policies are controversial at the start, then build up powerful support from their current and future beneficiaries, until they become widely accepted, even treasured, by the public. Over time, they grow in complexity and cost. Social Security is a notable example.

Social Security

Among Americans most distressed by the Great Depression were the nation's elderly, many of whom lost their savings and were unable to support themselves. President Franklin D. Roosevelt and Congress attempted to address this problem through the Social Security Act of 1935.

It established a system of social insurance in which taxes on payrolls were used to provide benefits to the elderly. Social Security was soon expanded to cover benefits for "survivors," including widows, dependent children, and orphans. In 1956, disabled Americans were added to the list of beneficiaries, thus formally creating the Old Age, Survivors and Disability Insurance (OASDI) system. [5] In 1972, benefit levels were tied to the consumer price index—benefit levels go up when the consumer price index does.

Social Security now provides benefits to over 48 million Americans. It is the main source of economic survival for two-thirds of the elderly and the only source of income for over 30 percent of the aged.

Figure 3.3.2: These figures, part of the memorial to President Franklin D. Roosevelt, symbolize the desperate conditions of the elderly during the Great Depression and President Roosevelt's Social Security policy in response.

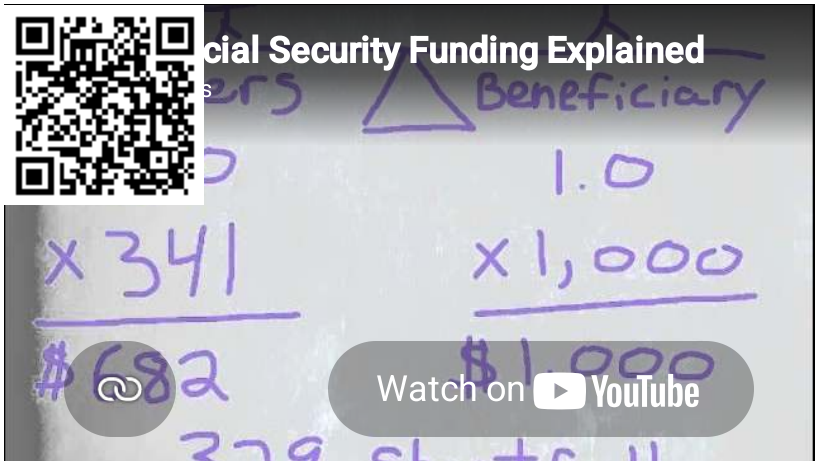
Social Security's Solvency

Traditionally, more money has been paid into the Social Security Trust Fund than drawn out, leading to a revenue surplus, but Americans are living longer than ever. Longer lives mean larger payouts from the fund, as there is no limit on the number of years

people receive benefits. Also, recent generations entering the workforce are generally smaller in size than their predecessors. By 2040, there will not be enough money in the fund to finance recipients at the current level. [6]

Special commissions have issued reports, prominently covered with alarmist stories by the press, about these problems. Proposals to "fix" Social Security have been developed by these commissions, think tanks, other interest groups, and a few politicians. Policymakers are wary of suggesting that they may tamper with the revered system; they make changes with delicacy. Thus in 1983, the age of eligibility for full retirement benefits was increased from 65 to 66, but the change wasn't effective until 2009; the age increases to 67 in 2027.

Additional revenue could be generated by increasing the percentage of the payroll tax or the amount to which it is applied to employees' wages and employers' contributions. However, tax increases are never popular among elected officials, so these options lack advocates in Congress.



Thinking to trade on the momentum of his 2004 reelection, President George W. Bush went public with a campaign to inspire public and congressional support for his proposals to "save" Social Security. [7] Launching his campaign in his State of the Union address, he embarked on a high-profile "60 Cities in 60 Days" tour. His theme: Social Security was in perilous condition. He proposed to save it through personal (private) savings accounts. People would be allowed to invest a third of their Social Security withholdings into a variety of investment options such as the stock market.

The argument for privatization is that the stock market greatly outperforms Social Security's trust fund over the long term. [8] Over time, therefore, privatized investments would be a boon to the overall size of the trust fund and protect the solvency of the system.

The president appeared at town hall meetings with handpicked, sympathetic audiences. Signs saying "Protecting our Seniors" flanked him. He used the positive and evocative words "choice" and "ownership" to describe his proposals.

President Bush was supported by such powerful interest groups as the U.S. Chamber of Commerce and the Business Roundtable. He also received support from potential beneficiaries of his proposed changes: Wall Street firms would receive billions of dollars to manage personal accounts.

The president faced opposition from Democrats and powerful interest groups such as organized labor and AARP (formerly the American Association of Retired Persons). They were bolstered by experts in Social Security policy who provided information challenging and undermining Bush's arguments and claims.

Critics of the president's proposals argued that there was no crisis; that the stock market goes down as well as up, so investing in it is risky and people could end up with reduced retirement income; and that private investment accounts would require the government to borrow about $2 trillion to offset the reduction in payroll taxes to avoid a shortfall in payments owed to current retirees. Most dramatically, the president's opponents contended that his proposals would destroy the program.

It was a perfect setup for the news media. On one side were the president and his nationwide campaign; on the other side was the opposition. Experts could be called on to assess the validity of both sides' arguments. This was all done on a policy issue—the future of Social Security—of public interest and concern.

From the start, media coverage undermined the president. The very first story in the *New York Times* set the pattern. It was headlined “As White House Begins Campaign for Overhauling Social Security, Critics Claim Exaggeration.” [9] It cited “outside analysts,” including the nonpartisan Congressional Budget Office and academics casting doubt on the president’s arguments. It contained this devastating paragraph: “White House officials privately concede that the centerpiece of Mr. Bush’s approach to Social Security—letting people invest some of their payroll taxes in private accounts—would do nothing in itself to eliminate the long-term gap.”

Perhaps because there was no new news in the president’s appearances and statements, stories reporting them focused on the rigged audiences, the “carefully screened panelists,” and “meticulously staged “conversations.” [10]

The more the president spoke, the less the public supported his proposals. From early January into May 2005, public opinion about the way Bush was handling Social Security decreased from 41 to 31 percent approval, and disapproval increased from 52 to 64 percent. [11]

The president ended his campaign. Personal retirement accounts disappeared from Congress’ policy agenda.

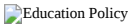


Figure 3.3.3: Because much of their funding comes from property taxes, the quality of schools differs drastically, even in the same city and district.

Education

Traditionally, education policy has been the domain of state and local governments. Schools are funded mainly by local property taxes. Consequently, schools' resources and thus their quality of education depend on their location, with vast differences between and often within school districts.

The federal government’s limited involvement began to change in the 1960s as part of President Lyndon Johnson’s War on Poverty. The 1965 Elementary and Secondary Education Act (ESEA) allotted funds for developing remedial programs, hiring teachers and aides, and purchasing supplies and equipment. The Head Start Program, also established in 1965, provided low-income children with preschool education. The Department of Education was created in 1979.

No Child Left Behind (NCLB)

Fulfilling his campaign pledge, repeated in his inaugural address, to close the gap in achievement between poor and minority children and children attending primarily white schools in the suburbs and to improve school performance, President George W. Bush obtained passage of significant amendments to the ESEA in the No Child Left Behind Act of 2002. He signed the legislation into law in an elaborate ceremony accompanied by his bipartisan congressional allies.

The law was a major policy accomplishment by the president. Placing its administration in the Education Department, he overcame the opposition of some of his party’s leaders who wanted to abolish the department. Imposing federal requirements on schools, he radically changed federal-state relations in education. [12]

The law called for states to implement accountability systems covering all public schools and students and to test all students in grades 3–8 in reading and math. Schools failing to make adequate yearly progress toward goals are subject to corrective actions and restructuring. To increase parental choice for children attending an underperforming school, schools are required to let low-income parents use allotted federal funding to pay for tuition at a school in the district that has attained acceptable standards.

President Bush touted the NCLB Act as a great domestic accomplishment of his administration. He promoted it from the White House, on the radio, and in speeches. [13] Education Secretary Rod Paige talked it up throughout the country. The Department of Education created a website and issued publications and press releases describing the act and how its objectives were being achieved.

The *New York Times* persistently contradicted the administration’s beguiling rhetoric. Reporters detailed problems in how the program was administered and implemented. The newspaper’s education writer critically evaluated the policy, and the editorial page’s verdict on the program was caustic.

The newspaper pointed out that states have widely different standards for measuring students’ progress—there is no agreement on how much students need to know to be considered proficient. Many states have low proficiency standards. Students ace these state

tests only to fail more rigorous federal exams. [14] States with high standards could be penalized by having many failing schools, while states with low standards and poor performance would be left alone. [15]

According to the newspaper, schools reported implausibly high graduation rates and low dropout rates even as they were pushing out low achievers in order to keep up test scores. School districts were not enforcing and failed to meet a provision in the law requiring a "highly qualified" teacher in every classroom by 2006. [16] Only 12 percent of the two million students in public schools eligible for free tutoring were receiving it. Above all, the Bush administration's funding of the program was billions of dollars short of the amount authorized by Congress.

The *Times* printed an op-ed about the Department of Education's rankings of reporters on a one hundred–point scale "depending on whether their stories were critical or favorable toward the law." [17] And repeated revelations (first reported in *USA Today*) came up that media commentators had been paid to promote the policy, including one pundit who received $240,000 and often appeared on television and radio without mentioning the payment.

The *Times*' coverage focused on the program's inadequacies and failures, its duplicity, and deception. Exposure is a news value, common in journalism; the *Times*' reporters were doing their job. Missing, though, was an adequate acknowledgment and appreciation of the program's accomplishments and the difficulty of achieving its goals.

President Obama's Secretary of Education Arne Duncan promised to rectify the defects of NCLB. He embraced competition, accountability, parental choice, and incentives. Specifically, he proposed to raise academic standards, end the misleading identification of thousands of schools as failing, turn around schools that were truly failing, recruit and retain effective teachers, track students' and teachers' performance, and tie teacher evaluation to students' test scores. He wanted to increase the number of charter schools—a broad term describing the more than five thousand private schools set up mainly in urban areas, with local and state and private funds, to compete with public schools. [18]

Duncan encouraged the development of national standards in English and math to be adopted by the states, specifying the skills students should have at each grade level. Although the timetable for implementing the standards is uncertain, states will have to rethink teacher training, textbooks, and testing.

Duncan also created the Race to the Top competition allocating $4.3 billion in education aid to states that comply with the administration's educational goals. But this is a modest sum, won by only a few states, compared with the approximately $650 billion spent on K–12 education annually.

At the same time, states and localities beset by budget deficits are slashing their expenditures for education. They are doing this by dismissing teachers, hiring a few new ones, increasing class sizes, and cutting programs.

So even though the federal government is now far more involved in education than ever before, it prods but cannot compel the states and localities to do its bidding. Moreover, some states and school districts still object to federal intrusion and mandates. Besides, the quality of education often depends more on a student's family and community than the schools, starting with whether children are healthy enough to learn.

Every Student Succeeds Act (ESSA)

The Every Student Succeeds Act (ESSA) was signed by President Obama on December 10, 2015. This bipartisan measure reauthorizes the 50-year-old Elementary and Secondary Education Act (ESEA), the nation's national education law and longstanding commitment to equal opportunity for all students.

The new law builds on key areas of progress in recent years, made possible by the efforts of educators, communities, parents, and students across the country.

For example, today, high school graduation rates are at all-time highs. Dropout rates are at historic lows. And more students are going to college than ever before. These achievements provide a firm foundation for further work to expand educational opportunity and improve student outcomes under ESSA.

The previous version of the law, the No Child Left Behind (NCLB) Act, was enacted in 2002. NCLB represented a significant step forward for our nation's children in many respects, particularly as it shined a light on where students were making progress and where they needed additional support, regardless of race, income, zip code, disability, home language, or background. The law was scheduled for revision in 2007, and, over time, NCLB's prescriptive requirements became increasingly unworkable for schools and

educators. Recognizing this fact, in 2010, the Obama administration joined a call from educators and families to create a better law that focused on the clear goal of fully preparing all students for success in college and careers.

Medicare

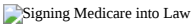


Figure 3.3.4: President Lyndon Johnson signs the Medicare Bill into law in July 1965.

In 1965, the most extensive health coverage legislation in American history became law. Medicare helps citizens 65 and older meet their primary medical care needs. It covers around 40 million people.

Medicare has two parts. Part A pays some of the hospital charges for individuals who are eligible for Social Security benefits. It is funded by payroll deductions and matching contributions from a patient's employer. People are responsible for both a deductible charge that must be paid before Medicare payments are authorized and copayments for many hospital-related services. There are no limits on the total costs people can incur.

Part B is an optional insurance system covering health-care costs outside of hospital stays for physician services, medical tests, and outpatient visits. Participants pay a monthly fee, deductible charges, and copayments. The government contributes about three-fourths of the overall costs.

Prescription Drugs

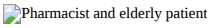


Figure 3.3.5: The introduction of Medicare prescription benefits has been an important public health improvement but it has not been without criticism of its high costs, heavy overhead, and inflationary impact on prescription drugs.

Medicare's lack of a prescription drug benefit was particularly hard on the elderly and disabled, who commonly take several prescription drugs. Responding to this need, the Medicare Prescription Drug and Modernization Act of 2003 contains two types of assistance programs. The first is a prescription drug discount card program saving Social Security recipients roughly 15 percent to 25 percent annually.

In the program's more substantial part, individuals pay an annual premium and deductible in return for the federal government paying 75 percent of their prescription drug costs up to $2,250.

Because of exploding health costs and the new prescription drug benefit, Medicare may be in worse financial shape than Social Security. According to the program's trustees, its hospital insurance trust funds will run out of money in 2019. [19]

Medicaid

Medicaid was created in 1965. It provides health-care coverage for approximately fifty million poor and disabled Americans. More than a third of them are over 65. The federal government pays about half the costs of their medical care, including hospital stays, physician fees, and various diagnostic services. States pay the remainder of the costs of the coverage.

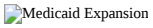


Figure 3.3.6: As a part of "Obamacare," states were offered an incentive to expand their Medicaid eligibility standards, granting public medical insurance to many more low and moderate income citizens. Those states in blue have already expanded their Medicaid programs. Those in red have not yet done so. (Notice that most of the red states are in the conservative Midwest and South (with the exception of Maine).

The federal government requires coverage of the blind, the disabled, and children (Children's Health Insurance Program, under the age of 18 whose family's income is below the poverty level. Otherwise, states decide eligibility for inclusion in Medicaid. State standards vary significantly; someone eligible in California might be excluded in Texas. Nonetheless, Medicaid pays approximately two-thirds of the costs of nursing home care in this country.

Because of the high cost of healthcare services covered under Medicaid, state governments have become increasingly burdened financially. Other than education, Medicaid takes up the single greatest percentage of state budgets, a cost that is increasing annually. This situation has caused states to cut back on a number of the program's optional medical services.

The Uninsured

Around 51 million Americans lacked health insurance. This figure included approximately 9 million under the age of 18 who were eligible for but not enrolled in Medicaid or the Children's Health Insurance Program. Some 28 million people came from households with income above the poverty line but whose employers did not provide them with health insurance. Their work was often temporary or part-time and low-paid. About 15 million of the uninsured had income below the poverty line yet were not receiving Medicaid.

Politicians proposed policies in response to the lack of healthcare. Most notably, the Clinton administration, led by First Lady Hillary Clinton, proposed health-care coverage for all United States citizens. This 1994 initiative died for lack of support in Congress, in part because of its complexity and a negative advertising campaign by interest groups against it. [20]

After he assumed office in 2009, President Obama took up health care as a major policy initiative. His administration negotiated (i.e., bargained) with every major sector of the health-care industry to support its health-care proposals. Motivating the industry was the drop in the number of employers ensuring their employees or providing generous coverage and the number of employees who could afford to pay their share of the cost of insurance. This resulted in fewer Americans with insurance coverage and thus able to pay for hospital care, doctors, and drugs.

At the heart of the bargain "was a simple quid quo pro: accept greater public regulation and involvement in return for greater guaranteed financing." [21] That is, the government would require people to have insurance, thereby greatly expanding the market. This bargain did not prevent each industry group from lobbying to modify or scuttle provisions in the legislation that might reduce its members' income. The drug industry opposed studying the effectiveness of treatment; the American Medical Association lobbied to kill the proposal for a government-run insurer (i.e., the public option); hospital lobbyists objected to a Medicare oversight board that could reduce payments. [22]

In March 2010, the Democratic majority in Congress passed the Patient Protection and Affordable Care Act, arguably the most important domestic legislation in decades. It passed without a single Republican vote and despite millions of dollars of advertising aimed at the forty Democrats in the House deemed vulnerable to defeat if they voted for the bill. In this instance, party loyalty,

appeals from party leaders (especially the president), advertisements from supporters of the legislation, and the realization that this was the most propitious opportunity to enact health reform in many years overcame the opponents' arguments and advertising.

The law is complicated; many provisions do not go into effect until 2014 or later. Bureaucrats will have to write the thousands of pages of rules, define terms such as "benefits," and clarify the details. States will have to implement many provisions. Lobbying will be intense. The Republican majority in the House of Representative voted in 2011 to repeal the law and is likely to strip away funds for putting the law into effect. The law's constitutionality has been challenged in court—cases that, probably consolidated, will likely reach the U.S. Supreme Court.

If it remains in effect, the law will eventually provide health insurance for around 32 million uninsured Americans. It will expand eligibility and subsidize lower premiums for Medicaid, transforming it from a government health-insurance program just for poor families into a much wider program to include millions of the poorest Americans, including able-bodied adults under 65 who earn no more than 133 percent of the federal poverty level. People not covered by their employers and who earn too much to qualify for Medicaid can buy coverage from state-based insurance purchasing organizations. The law prohibits insurance companies from rejecting people for preexisting medical conditions, removes annual and lifetime limits on payments by insurance companies, and enables children to stay on their parents' policy until they turn twenty-six.

Such a complicated law raises a host of criticisms and questions. Are its costs affordable? Can Medicaid absorb the additional people, especially when—even now—many doctors do not accept Medicaid patients on the grounds that the reimbursement it pays is too low? Will insurance premiums continue to rise substantially? Is it constitutional to fine people who remain uninsured? Can the law curb unnecessary care (whatever "unnecessary" means in practice)?

QUESTION FOR DEBATE

Is accessible and low-cost healthcare a basic human right? Support your answer with evidence and research.

Program by program, the federal government has contributed to the costs of medical care for some of the people who have difficulty paying their medical bills or have no health insurance. The media encouraged the creation of such government policies by consistently reporting about the large number of uninsured Americans who, it was assumed, were without an adequate doctor, prescription drug, and hospital care.

In recent times, due to the deepening level of globalization and transnational activities, states also have to interact with non-state actors. The aforementioned interaction is evaluated and monitored in an attempt to maximize the benefits of multilateral international cooperation. Since the national interests are paramount, foreign policies are designed by the government through high-level decision-making processes. National interest accomplishments can occur as a result of peaceful cooperation with other nations or through exploitation.

Foreign policy is designed to protect the national interests of the state. Modern foreign policy has become quite complex. In the past, foreign policy may have concerned itself primarily with policies solely related to national interest--for example, military power or treaties. Currently, foreign policy encompasses trade, finance, human rights, environmental, and cultural issues. All of these issues, in some way, impact how countries interact with one another and how they pursue their national interests worldwide.

Usually, creating foreign policy is designated to the head of government and the foreign minister (or equivalent). In some countries, the legislature also has considerable oversight.

In the United States, foreign policy is made and carried out by the executive branch, particularly the president, with the national security adviser, the State Department, the Defense Department, the Department of Homeland Security, and the intelligence agencies. The National Security Act of 1947 and recent bureaucratic reorganization after 9/11 reshaped the structure of foreign policymaking.

The U.S. Secretary of State is analogous to the foreign minister of other nations and is the official charged with state-to-state diplomacy, although the president has ultimate authority over foreign policy.

Figure 3.3.7: Former U.S. Secretary of State Hillary Rodham Clinton discusses agriculture and environmental issues in Kenya. The Secretary of State is a primary leader in determining U.S. foreign policy.

Congress is involved in foreign policy through its amending, oversight, and budgetary powers and through the constitutional power related to appointments, treaties, and war that it shares with the president. While Congress has sometimes worked to limit the president's autonomy in foreign policy, the use of executive orders and the ability to enter military engagements without formal declarations of war have ensured the president's continued primacy in international affairs. Forces that sometimes influence foreign and military policies from outside the government are think tanks, interest groups, and public opinion.

The foreign policy of the United States is the way in which it interacts with foreign nations. Foreign policy sets standards of interaction for its organizations, corporations, and individual citizens. Two visions of foreign policy in the U.S. are isolationism and internationalism, which has been dominant since World War II. The main foreign policies during the Cold War were containment, deterrence, détente, arms control, and the use of military force like in Vietnam.

U.S. foreign policy is far-reaching because the United States is the global superpower and world leader. It operates in a world beset by famine, poverty, disease, and catastrophes both natural (tsunamis, earthquakes) and man-made (climate change, pollution of the seas and skies, and release of radioactive materials from nuclear plants). Parts of the world are plagued by genocide, regional and ethnic strife, and refugees. Terrorism, conflicts in Iraq and Afghanistan, the nuclear weapons programs of Iran and North Korea, the proliferation of weapons of mass destruction, the Arab-Israeli conflict, and instability and challenges to autocratic rulers in the Middle East are only the most obvious of the foreign policy issues that affect the United States. Others issues include economic upheavals, the rise of China to world economic and political power, relations with Russia, AIDS in Africa, dependence on oil from non-democratic states, the importation of illegal drugs, and the annual U.S. trade deficit of around $800 billion.

Figure 3.3.8: U.S. President Obama and Russian President Putin meet. Relations with other countries, such as the U.S.-Russia relationship, are a primary concern and focal point for U.S. foreign policy.

To prepare for these foreign policy issues, U.S. military expenditures are enormous. The annual defense budget is around 1.3 trillion. It has formal or informal agreements to defend 37 countries. It has more than 700 military installations abroad in approximately 130 countries. The United States is extraordinarily active, often militarily, in international affairs. Since 1989, it has intervened in Panama, Kuwait, Somalia, Bosnia, Haiti, Kosovo, Afghanistan, and Iraq.

Figure 3.3.9: U.S. soldiers patrolling streets in Iraq. The United States' huge military budget and the extensive military is intended to further U.S. foreign policy interests.

National Security

National security policies are policies related to the survival of the state. This security is guaranteed through the use of economic coercion, diplomacy, political power, and the projection of power. This concept developed primarily in the United States after World War II.

Initially focused on military might, national security now encompasses a broad range of concerns. In order to possess national security, a nation needs to possess economic security, energy security, and environmental security, in addition to a strong military. Security threats involve not only conventional foes, such as other nation-states, but also non-state actors, like violent non-state actors (al Queda, for example), narcotic cartels, multinational corporations, and non-governmental organizations. Some authorities include natural disasters and other environmentally detrimental events in this category.

Policies and measures are taken to ensure national security include:

- Using diplomacy to rally allies and isolate threats
- Marshaling economic power to facilitate or compel cooperation
- Maintaining effective armed forces
- Implementing civil defense and emergency preparedness measures (this includes anti-terrorism legislation)
- Ensuring the resilience of a critical national infrastructure
- Using intelligence services to defeat threats, and,
- Using counterintelligence services to protect the nation from internal threats.

Current Administration Domestic and Foreign Policy

During the 18 months in office, President Donald Trump has made significant policy change both home and abroad.

Overview of Policies at Home

Enacts orders to build a wall along the border with Mexico

Restricts federal funds from "sanctuary" cities where immigrants have traditionally settled

Phases out the Deferred Action for Childhood Arrivals (DACA) program enacted by Obama that allowed children brought illegally a degree of amnesty

Separating illegal immigrant's children from their parents at the border and keeping them in "tent cities"

Overview of Policies Abroad

The U.S. withdrew from the Trans-Pacific Partnership, an Obama program, that focused on trade with Asia.

Banned travel to the U.S. from six Muslim nations, later blocked by a federal judge; then reinstated to include two more countries

Called for air strikes on Syria in response to their usage of chemical weapons on civilians

Revamped NAFTA trade agreement between U.S., Mexico, and Canada in order to make the policy more beneficial

Withdraws from the Paris Accord; a bill passed by France in 2015 that seeks a global response to climate change and lowering the carbon footprint.

Attempts to sever cordialities with Qatar; even though they have a large U.S. strategic base located there

Meets with Russian President Putin in spite of the allegations that Russia tampered with the 2016 election

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Figure 3.3.10

Study/Discussion Questions

1. What led the federal government to consider major changes to its welfare, social security, education, and health-care policies? What were the obstacles to change in each case?
2. What major issue do you think the government needs to take action on? What factors do you think prevents the government from acting?
3. Describe two of President Trump's domestic policies that you agree/disagree with and explain why.
4. Describe two of President Trump's foreign policies that you agree/disagree with and explain why.

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3.4: Structures and Functions of Governmental Levels

Figure 3.4.1: Can Federalism also include individual liberties?

Governmental Power and Federalism

In designing the Constitutional pieces of Federalism, the Founding Fathers were faced with a difficult “balancing act.” They had to devise and implement a plan that would address the needs of the national government while preserving the rights of the states and the people to govern themselves in a way that was free from the interference of a central government.

The plan they devised would assign all powers having to do with common interests of the states (as a nation) such as national defense and control over the nation’s money to the new national government. In theory, all other powers would remain at the state and local level.

Understanding Constitutional Powers in our Federal System

This was a solution that proven practical to the needs of both the nation and the states. This is because by the time the Constitution was drafted in 1787, the United States was already on a growth spurt with people moving westward into new territories at a rapid pace. This made it necessary for the new national government to control an ever-increasing geographic area. Since the people were so spread apart, and the modern transportation and communications systems we rely so heavily on today were not yet available, it was only practical and right to leave the bulk of governmental control at the state and local level to whatever extent was possible while still allowing the new national government to operate.

Since the framers were also walking a very delicate line of balance and diplomacy with the states, they recognized that making very specific rules and procedures and placing them into the Constitution would only hinder the ability to govern at the national and the local level. So they set about to make a set of general rules that would be briefly stated and allow both the nation and the individual states enough flexibility to meet the needs of the people while still allowing for the expansion of our new nation.

Figure 3.4.2: The Nation's Capitol Building in Washington, D.C.

National Powers

The Constitution went on to outline a federal system of government that would provide for a strong and cohesive national government while still protecting the rights of the states. This is why the new federal system allows some powers to stay at the national level while reserving others to the states and requiring that the national and state governments must share other powers as well.

Expressed Powers

The Constitution lists, or enumerates, powers that will be specifically given to the national government. These are generally referred to as *expressed powers* and sometimes called enumerated powers. When we examine Article I, Section 8, a list of powers are given to the legislative branch on behalf of the new national government. These include the power to issue money, collect taxes,

pay governmental debts, regulate trade among the states and with other nations, declare war, and raise and maintain an army and a navy. In other parts of the Constitution, Article II gives the president civilian authority over the armed forces in his role as "Commander in Chief." The same Article gives the President the authority to conduct foreign relations on behalf of the United States as well. Article III gives the Judicial Branch the power to rule on constitutional issues and cases involving the U.S. government including disputes among the states. These powers cannot be exercised alone. Sometimes they may involve the use of other powers which may have been unforeseen or assumed on the part of the Founding Fathers. We call these *Implied Powers*.

Implied Powers

The national government also possesses implied powers that may not have been specifically listed in the Constitution but are assumed or implied to be present. These powers are logical extensions of the expressed powers, and their constitutional source originates from the "elastic clause" found in Article I, Section 8 of the Constitution. This clause states:

> *"[Congress can] 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." – U.S. Constitution, Article I, Section 8*

This clause, also called the necessary and proper clause, is generally referred to as the "elastic clause" because it has been used to stretch or extend the powers of Congress throughout history. Many policies of Congress, ranging from the interstate highway system, contemporary drug laws, and food and occupational safety laws are justified through the government's use of implied powers. As an example, the Sixteenth Amendment gives Congress the power to collect income taxes, but the Constitution doesn't say how taxes are to be collected or assessed. Using its implied powers, Congress was able to establish the Internal Revenue Service, or the agency that collects taxes on behalf of the federal government.

Just a few of the implied powers that Congress exercises are:

- The power to financially support public schools.
- The power to maintain the Federal Reserve Board.
- The power to prohibit discrimination in restaurants, hotels, and other public accommodations.
- The power to draft people into the armed services.
- The power to establish a minimum wage.
- The power to monitor air and water pollution.
- The power to limit the number of immigrants to the U.S.
- The power to regulate monopolies and other practices which limit competition.

Inherent Powers

The national government also has inherent powers, which are those powers that have historically been recognized as naturally belonging to all governments that operate as sovereign nations. In other words, the national government has these powers simply because ***it is*** a national government, therefore, it must have the power to conduct certain types of business. These powers include the authority to acquire new territories and to conduct foreign affairs with other nations. These are things that the United States has done since its earliest founding even though they are not specifically listed in the Constitution.

Figure 3.4.3: The United States flag and the Texas flag fly over the Texas Capitol building

State Powers

While the Constitution specifically lists powers that the national government has the authority to exercise, it is much more silent about state-level powers. This is because it was anticipated that if something wasn't clearly authorized for the government to do, it would most likely be a power for the states or the people. In fact, James Madison, in *Federalist Paper* No. 45, explained that the constitutional powers that had been granted to the national government were "few and defined." In contrast, the powers assumed to be given to the states were "numerous and indefinite." To protect the rights of the states, Madison worked his idea into the Bill of Rights in 1791.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

Tenth Amendment

The Tenth Amendment of the Constitution is considered to be the foundation of states' rights and constitutional Federalism. This provision is often called the reserved powers clause. While the Constitution does not specifically enumerate or list reserved powers, they are considered as belonging to the states because the Constitution doesn't delegate them to the national government and it doesn't prohibit the states from exercising them.

State governments have depended on their reserved powers in order to regulate the health, public safety, moral behavior, and general welfare of their citizens. In fact, the states are the most responsible for the laws that most directly affect people as they go about their daily lives. As an example, it is the state that gives you the license to drive a car, that specifies what you must learn in school to receive a diploma, and regulates your daily behavior through criminal and civil laws. Among other reserved powers are the ability to regulate marriage, to form or authorize the formation of a local government, to conduct elections, and to control and regulate public schools. In addition, states have the power to regulate and license businesses that operate within their boundaries and to issue licenses to professionals like doctors, attorneys, plumbers, nurses, the person who cuts your hair, and of course, teachers.

POWERS GIVEN TO THE NATIONAL GOVERNMENT:	POWERS OF THE STATE GOVERNMENTS:
Borrow and coin money	Draw electoral district lines based on population
Levy and collect taxes	Conduct elections
Conduct foreign relations	Maintain state militias (national guards)
Raise armies, declare war and make peace	Regulate commerce within the state
Regulate interstate commerce and with foreign nations	Establish and operate state court systems
Establish post offices	Levy and collect taxes
Regulate immigration and naturalization	Ratify amendments to the Constitution of the United States
Establish and operate the federal court system	Exercise powers not specifically delegated to the national government or prohibited to the states (Tenth Amendment)
Make all laws necessary and proper to execute their national powers ("elastic clause")	

Shared Powers

Besides their reserved powers, the states may also share powers with the national government. If the Constitution does not specifically state that power is *exclusively* given to the national government, the states may exercise that power as well. As an example, 46 states in this country levy an income tax on their citizens (right along with the federal government). This is because the power to levy and collect taxes is considered a concurrent power that can be exercised by both the states and the national government.

Besides collecting taxes, both the national and state governments may also establish courts, make and enforce laws, build roads, provide education and borrow and spend money. This system of shared powers means that citizens are subject to two levels of authority. For instance, you must follow both federal law and Texas state law at the same time.

What happens when federal and state laws come into conflict with each other? Who should win the argument? The Founding Fathers carefully considered this question and laid out their answer in Article VI of the Constitution in what is commonly referred to as the "Supremacy Clause." This clause states that the Constitution, national laws, and national treaties form the "supreme law of the land." It also states that judges in every state must obey the Constitution, even if it contradicts state laws. Remember, the supremacy clause establishes that national laws are supreme to state and local laws to the extent that the national government and

its laws comply with the Constitution which is the supreme law of the land. This is where the role of the Supreme Court becomes so critical in our system of government, as it is the interpreter and enforcer of the Constitution in such cases.

Figure 3.4.4: Concurrent or Shared Powers

Limiting National and State Powers

Besides granting power to the national and state governments, the Constitution also denies certain powers to the national government and to the states. By placing such limits in the Constitution, the Founding Fathers believed they were devising a way by which both the rule of law and the principle of limited government would be integrated into our governmental system.

Limits on State Government

The Constitution was designed to keep the national government from growing too powerful. These provisions were designed to protect the people from specific injustices the colonists had experienced prior to and during the American Revolution.

To keep the states and national government from conflicting with each other, Article I, Section 10, denies specific powers to the state governments. As an example, the states are not allowed to coin their own money, tax imports and exports from other states, maintain their own armies, engage in separate wars, or enter into treaties with each other states or nations. The Founding Fathers believed these would undermine the authority of the national government and inhibit national unity.

As an example, Article I, Section 9 prohibits the government from denying a citizen the right to a trial by jury, forbids the federal government or the states from granting “titles of nobility,” denies the taxing of exports or imports between the states, forbids the passing of laws that favor one state over another, and requires Congress to approve all expenditures of money. In addition, the national government cannot exercise a power that has been reserved for the states, nor may the national government pass a law that threatens the federal system as established by Congress.

The Bill of Rights further limits the powers of the national government by prohibiting it from interfering with basic liberties such as freedom of speech, press, religion, or assembly.

Powers Denied to Both Levels

Still, other powers have been specifically denied by the Constitution to both the national and state governments. For example, neither the national government nor the states may deny people accused of crimes the right to a trial by jury or grant titles of nobility. In addition, the Constitution prohibits both the national government and the states from creating *ex post facto* laws, which are laws made “after the fact”. In other words, considering something as a crime when it wasn’t a crime at the time the offense was committed.

Defining National and State Relationships

Besides dividing governmental power, the Constitution also addresses the responsibilities that the national government and the state governments have toward each other. If this provision not been included in the Constitution, there is a great possibility that Federalism would not have succeeded because these provisions serve as “guidelines for interaction” between the national and state governments.

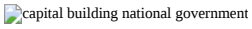

Figure 3.4.5

The Nation and the States

The Founding Fathers wanted to be sure that state governments would be Republics--democracies led by elected representatives. To achieve this, Article IV, Section 4 of the Constitution specifically requires the national government to “guarantee to every State in the Union a Republican form of government.” This means the national government will only admit or recognize states that have representative forms of government.

The national government has the responsibility to protect the states from foreign invasion and domestic uprisings. As a recent example, the national government responded with military force when the Twin Towers and the Pentagon were attacked on September 11, 2001. After this, the national government has conducted a series of domestic and foreign operations designed to address the threat of terrorism.

Additionally, the Constitution requires that the states be treated as equals by the national government. Equal representation must be given in the Senate (two senators to each state) in order to afford the states equal representation. Also, the national government cannot tax people of one state more than another and even though the national government can admit new states, it cannot divide or allow the division of states that already exist or change their boundaries in any way.

Figure 3.4.6

Relationships Between The States

Each of the states is given the power to manage what happens within their borders, but the Constitution also encourages states to cooperate with each other. Can you imagine what this country would be like if each state was able to establish its own rules on who could enter or leave (as nations do)? What if the states didn't recognize each other's laws? What would it be like if you could commit a crime in one state and move to another without the ability to be returned to face a trial for the crime you committed? The Founding Fathers specifically considered these issues and wanted to prevent them from happening. While state laws are different and states are not required to enforce the criminal laws of another state, the Constitution requires states to extradite, or return someone accused of a crime in another state, in order to face trial in the state where the offense allegedly took place.

Article IV of the Constitution, also referred to as the full faith and credit clause, makes sure that extradition takes place when someone flees a state to escape punishment. It also requires that states give "full faith and credit" to the public acts, official records, and judicial proceedings of all states. For instance, if you sign a contract to buy a new car on credit in one state, you must fulfill your obligation to pay for the car regardless of which state you live in or may move to. It also means that a state driver's license is valid throughout the United States regardless of the state that issued it. More recently this provision had been the source of controversy before same-sex marriage was made legal in all states. The Constitution theoretically required states to recognize the marriage license of another state, meaning that same-sex marriages had been contested between states because some states had begun to issue marriage licenses to same-sex couples.

The Constitution also forbids states from discriminating against citizens of other states. This is done through Article IV, Section 2. It is sometimes called the privileges and immunities clause. It specifically states that citizens of each state should receive all the "privileges and immunities" of whichever state they are in. For example, if you are from Texas and are visiting or living in New York City, you will pay the same sales tax and enjoy the same police and fire protection as other New Yorkers (and vice-versa).

There are some exceptions to the privileges and immunities clause. For instance, a state does not have to offer reduced tuition to someone who attends from another state (charging "out of state tuition" to students from other states regardless of residency). Also, a state may charge its own residents less for some services that are funded by taxes such as public health facilities. A state may also limit eligibility for welfare or social services on the basis of residency.

Taking Local Governments into Account

The Constitution does not address local governments. This makes the creation and regulation of local governments a power reserved for the states. Each state includes a plan for local governance in their respective state constitutions, and the relationship between state and local government differs from state to state. States differ in how they establish and recognize local governments, so they can respond better to the needs of their respective citizens at a local level.

ISSUE FOR DEBATE: SAME-SEX MARRIAGE

Prepare a classroom debate and/or to write a paper either defending or criticizing the constitutionality of same-sex marriage from the perspective of federalism. Be sure to use information in the articles (with proper citations) in order to support and defend your position on the issue.

Same-Sex Marriage Fast Facts. CNN.com. May 23, 2015. http://www.cnn.com/2013/05/28/us/same-sex-marriage-fast-facts/

An Often-Overlooked Clause in the Constitution Points The Way to Same-Sex Marriage. By Jay Michaelson. The Daily Beast. http://www.thedailybeast.com/articles/2013/04/02/an-often-overlooked-clause-in-the-constitution-points-the-way-to-same-sex-marriage.html

Alabama's 'Dramatic Defiance' on Gay Marriage. By Connor Friedersdorf. The Atlantic Magazine. Feb. 9, 2015. http://www.theatlantic.com/politics/archive/2015/02/forget-alabama-federalism-has-been-great-for-gay-marriage/385289/

Overview of Same-Sex Marriage Laws. National Conference of State Legislatures. http://www.ncsl.org/research/human-services/same-sex-marriage-laws.aspx

The Case Against Gay Marriage: Let My People Vote. Economist Magazine. April 21, 2015. http://www.economist.com/blogs/democracyinamerica/2015/04/case-against-gay-marriage

Same-Sex Marriage: https://www.npr.org/sections/thetwo-way/2015/06/26/417717613/supreme-court-rules-all-states-must-allow-same-sex-marriages

Same-Sex Marriage

Beginning in the 1970s, advocates fought for the right to marry to extend to all. Small gains were made one state at a time until through various state court rulings, state legislation, direct popular votes, and federal court rulings in 2015, this became a reality. Same-sex marriage that is now recognized by the law is called marriage equality.

Each state has separate marriage laws, but they must follow the federal ruling by the Supreme Court that recognizes marriage as a fundamental right that is guaranteed by both the Equal Protection Clause and the Fourteenth Amendment.

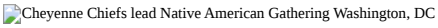

Figure 3.4.7: Cheyenne chiefs gather with thousands of other American Indians on the National Mall for a Native nations procession to dedicate the Smithsonian's National Museum of the American Indian, Washington, D.C., September 21, 2004

Native Americans

Article I, Section 8 grants the national government the power "to regulate commerce …. With the Indian Tribes." This clause has been used to make treaties with Native American nations and to recognize those nations as sovereign tribal entities (like countries within a country).

While, in most cases, the treaties the national government made resulted in the loss of Native American land, today the sovereignty of Native American tribes is recognized by the federal government. Native Americans were not even granted full citizenship until 1924. We will learn more about the issue of Native Americans and Civil Rights in a later section.

Figure 3.4.8

Study/Discussion Questions

For each of the following terms, write a sentence which uses or describes the term in your own words.

State rights	Individual Rights	enumerated powers
implied powers	necessary and proper	reserved powers
interstate	full faith	immunities

1. Describe the "balancing act" faced by the founding fathers and the plan they devised to maintain the balance of power between the national government and the states.

2. How did the key components of federalism aid in balancing national and state powers?

3. What is the difference between expressed, implied, and inherent powers? Provide examples of each.

4. Give examples of powers that are exclusive to the national government and to the state governments.

5. Give examples of shared powers.

6. How do cities and municipalities fit into the federal system? What about Native American reservations?

7. How does the Constitution place limits on national powers? What kind of limits does it place on state powers?

8. If you are preparing to argue in favor of a strong national government, what parts of the Constitution would you want to site and why? Defend your answer.

9. If you are the governor of a state and wish to argue for stronger state powers and authority, where would you go in the Constitution to support your argument? Defend your answer.

10. How does same-sex sex marriage fit into the concept of federalism from the perspective of the national governments and the states? What part of the Constitution most directly deals with this issue? Explain.

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3.5: A New Form of Federalism

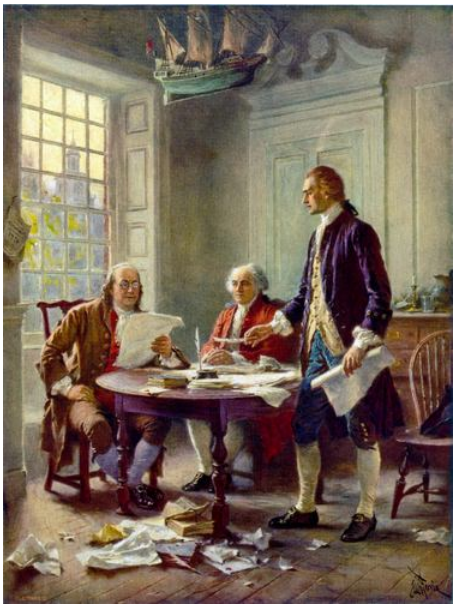

Figure 3.5.1: Could the Founding Fathers create a new form of Federalism?

Influences and Impact

The Declaration of Independence, written by Thomas Jefferson, was adopted by the Continental Congress on July 4, 1776. Its importance to American government lies in the expression and advancement of the political ideals of Enlightenment philosophers (particularly John Locke and Jean Jacques Rousseau). The Declaration proclaimed as “self-evident” the “truths”—bitterly opposed by the rulers of the day—that “all men are created equal” and endowed with “inalienable Rights” to “Life, Liberty, and the pursuit of Happiness.”

The Declaration did not end there. It proclaimed that “[W]henever any Form of Government becomes destructive to these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundations on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”

To the British government in London, the Declaration was illegal and treasonous. If King George III had been able to capture the signers of the Declaration, they would have been transported back to England and hanged. However, the revolution succeeded, and history honors those who inspired, led, and fought for it.

When it was drafted on July 4, 1776, this document publically announced that the 13 colonies were independent of Britain. It was designed to be read aloud in public and to be sent to international audiences. Its point-by-point charges against British rule give equal weight to how the king damaged America’s economic interests, and how he ignored principles of self-government.

Enlightened Ideals

Figure 3.5.2: Benjamin Franklin--Many of our Founding Fathers exemplified Enlightenment ideals.

The Declaration is a deeply democratic document. It is democratic in what it *did*—asserting the right of the people in American colonies to separate from Britain. In addition, it is democratic in what it *said*, “We hold these truths to be self-evident, that all men are created equal” and have inviolable rights to “life, liberty, and the pursuit of happiness.” The Declaration concludes that the people are free to “alter or abolish” repressive forms of government. Indeed, it assumes that the people are the best judges of the quality of government and can act wisely on their own behalf.

This document was also a radical and public statement of Enlightenment ideals that flew in the face of the political philosophy that allowed absolute monarchs in Europe to have unquestioned authority over their subjects. This theory of the Divine Right of Kings was directly attacked by the document as it listed 27 "grievances" against the King and his government. At least 12 of these directly

attacked the King and his establishment of a tyrannical authority over his people. In this case, the use of the word *tyrant* isspecifically intended to criticize the king's use of absolute authority. Even though Great Britain had a tradition of parliamentary democratic rule, the colonists took the opportunity to chip away at the last vestiges of absolute monarchy as a governmental practice.

Reaction to Absolute Rule

Figure 3.5.3: Many of the grievances listed in the Declaration of Independence were a criticism of King George III and his use of "tyrannical power."

The basic premise upon which the Declaration of Independence was founded revolves around the idea that colonists, as British citizens, were entitled to all of the rights and privileges that were granted by the Magna Carta and the British Bill of Rights of 1689. These founding documents of British government established a principle of popular sovereignty, meaning that the King was not above the law and that the people, in the form of parliament, had a right to a say in whether or not they were taxed by parliament, and that citizens were entitled to a trial by jury of their peers.

In addition, the Declaration relied on the legal principal of *salutary neglect*, meaning that for over a century, most British colonies had enjoyed a tradition of self-rule and had been governed through their own legislative bodies since their founding. By 1774, most of the colonists that had once complained about "no taxation without representation" found themselves without any formal representation in Parliament or in any of the colonial representative bodies they had worked so hard to establish and maintain since arriving in America.

At the end of the list of abuses, the *Declaration* focuses attention on a few specific incidents demonstrating the King's disregard for colonial life and liberty and went on to explain the danger inherent if colonists remained divided on the issue of independence, as well as the preparations that Great Britain was making for an all-out violent attempt to control the call for independence in the colonies. These statements were designed to convince moderates in the Second Continental Congress that reconciliation was not a possibility and to convince members of the need to cast their vote in favor of independence.

Interactive Links for the Declaration of Independence

For links to the full text of The Declaration of Independence and a discussion of its historical foundations, click on the following: https://www.archives.gov/founding-docs/declaration-transcript

The Articles of Confederation

Drafted in 1777, the Articles of Confederation were the first political constitution for the government of the United States. They codified the Continental Congress’s practices and powers. The United States of America was a confederation of states. Although the confederation was superior to the individual states, it had no powers without their consent.

Interactive Links:

For an interactive explanation of the Articles of Confederation and a full-text copy of the Articles of Confederation, click here: https://www.history.com/topics/articles-of-confederation

Under the Articles, the Continental Congress took over the king's powers to make war and peace, send and receive ambassadors, enter treaties and alliances, coin money, regulate Indian affairs, and to run a post office. The confederation could not raise taxes and relied on revenues from each state. There was no president to enforce the laws and no judiciary to hear disputes between and among the states.

Each state delegation cast a single vote in the Continental Congress. Nine state's votes were needed to enact legislation, so few laws were passed. States usually refused to fund policies that hampered their own interests. Changes in the Articles required an all-but-impossible unanimous vote of all 13 delegations. The weakness of the Articles was no accident. The fights with Britain created widespread distrust of central authority. By restricting the national government, Americans could rule themselves in towns and states. Like many political thinkers dating back to ancient Greece, they assumed that self-government worked best in small, face-to-face communities.

ARTICLES OF CONFEDERATION: POWERS AND LIMITS

POWERS OF CONGRESS	LIMITS ON CONGRESS
Coin and Borrow money	No president or executive branch
Admit new states and divide western lands	No national court system
Request money from states	No power to directly tax or raise national funds without requesting from the states
Raise an Army	No power to regulate trade or currency within or among the states
Appoint military officers	No power to prohibit states from conducting their own foreign affairs including making their own treaties with other nations.
Establish a postal system	Major laws required the approval of nine states to pass
Conduct foreign affairs	

The Need for A Stronger Government

After gaining its independence from Great Britain in 1783, the United States was presented with a new set of challenges that the new national government was, to say the least, ill-equipped to face. These shortcomings were made even more difficult by the Articles of Confederation which greatly limited the power of the new national government.

One of the new Congress's greatest success stories was the passage of the Northwest Ordinance in 1787. This law established a plan for the settlement of the Northwest Territory which included new lands in what are now Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin. The Northwest Ordinance created a system for the admission of new states into the Union, banned

slavery in these new territories, and established a Bill of Rights that guaranteed representative government, religious freedom, trial by jury and other basic freedoms for settlers in these new lands.

Congress experienced many more challenges than successes. The new nation was faced with war debt, a weak economy, rivalries and disagreements among the states, and an overall lack of cooperation between the states and the national government. Additionally, the rising threat of civil unrest loomed. Of these problems, the most pressing and threatening to the new nation was the war debt. Congress had borrowed heavily from foreign nations (such as France) to finance the army during the Revolutionary War. It also owed many Americans who lent money to the new nation during the Revolutionary period. Also, it owed back wages and pensions that had been promised to veterans of the Revolutionary War.

To meet its obligations, Congress called on the states to approve a tax on imports in 1783. It needed the unanimous consent of all the states for this to pass. Many states had their own foreign trade interests, so they did not want to place a tax on imports because this might cause a trade war. Only nine states voted to allow the new import tax. Without a way to raise revenue, the government was, in a word, broke.

At the same time, each of the states pursued their own interests. Some ignored laws passed by Congress as well as foreign treaties that the new Congress had established. Others started making their own treaties with foreign powers and raising their own army and navy. This left Congress with a large pile of debt and no effective way to govern. George Washington described this period as, "Thirteen Sovereignties pulling against each other and all tugging at the federal head."

Shays' Rebellion

By September 1786, a small group of farmers in Massachusetts was faced with the prospect of losing their property to rich land-owning creditors, so they grouped together and rebelled. Their leader was a former Revolutionary War captain named Daniel Shays. Under Shays' leadership, they attacked courthouses in order to prevent judges from foreclosing on their farms. By 1787, Shays' Rebellion had swelled to nearly 2,500 angry men.

All of these pressures resulted in a request to a group of representatives from Virginia and Maryland for a meeting in March 1785 at Mount Vernon, the home of George Washington. The success of this meeting convinced James Madison that a second, larger meeting should be organized at Annapolis, Maryland in order to discuss the regulation of commerce between the states. At Madison's insistence, the Virginia General Assembly issued meeting invitations to all states. Nine of them accepted, but delegates from only five states actually attended.

In February 1787, Madison was able to persuade the "Confederation Congress" to endorse a meeting in Philadelphia for the "sole purpose of revisiting the Articles of Confederation." While those who met in Philadelphia came to make changes to the Articles of Confederation, they would leave with an entirely new document--a Constitution.

Figure 3.5.4

Study/Discussion Questions

For each of the following terms, write a sentence which uses or describes the term in your own words.

inalienable rights	grievance	confederation
popular sovereignty	Shays' Rebellion	

1. Why was the idea of “no taxation without representation” the cry of the Revolution?
2. Why was the idea of self-government so important to the framers of the Constitution?
3. Create a graphic organizer that illustrates the powers of the Continental Congress under the Articles of Confederation.
4. What in your opinion was the great strength of the Articles? Its greatest weakness? Justify your answer.
5. What was Shays' Rebellion? How did it spur on the Revolution?

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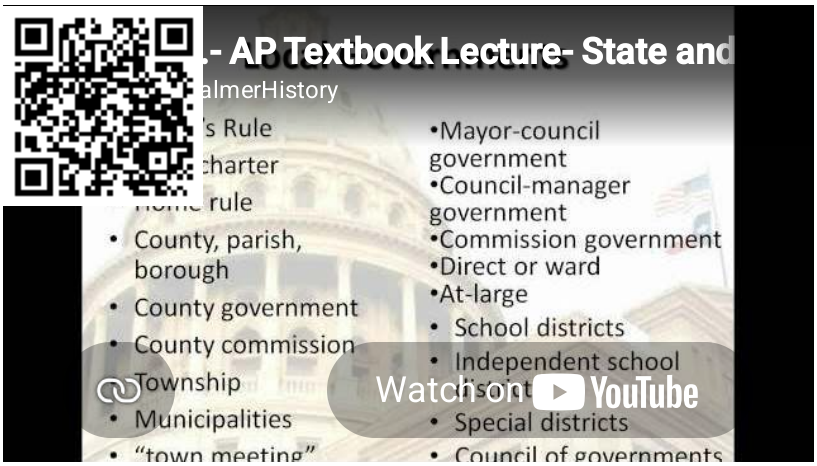
3.6: Governmental Powers and Roles of National and State Governments

Figure 3.6.1: Large-scale public works projects require federal and state governments to cooperate and compromise, especially when deciding who pays for what. The construction of the interstate highway system was a crowning achievement of this sometimes strained partnership. One of the largest construction projects in Texas has been the expansion of Interstate 35 (shown here in Austin, Texas). Recent construction projects have also been controversial because of the traffic backups they tend to cause.

Beneath the layer of national government lies a complex web of state and local officials and institutions. The nation's founders concern over tyranny transcended their separation of power among the three branches of government. Power is also divided by level with each layer performing its designated responsibility. States and communities even have the freedom to design their own institutions and to create their own offices. This creates a multitude of "laboratories" where government leaders at any level could see which systems were successful and which were problematic.



State Constitutions

The states had constitutions years before the United States Constitution was even written. Since the Declaration of Independence, states have written a total of about 150 constitutions, with several states writing new ones frequently. Texas, in fact, has been governed by seven constitutions. State constitutions tend to be quite a bit longer than the national one — an average of four times as long — so they also are more specific. As a result, they often are heavily amended and rather easily tossed out--at least in some states. From its adoption in 1876 until 2015, the Texas State Constitution has had 491 amendments approved. State constitutions determine the structure, role, and financing of state and local levels of government.

READING: STATE CONSTITUTIONAL DISTINCTIONS

Read the article (State Constitutional Distinctions) at uscivilliberties.org/themes/4527-state-constitutional-distinctions.html and answer the following questions based on the evidence presented in the reading. Be sure to use complete sentences and support your answers with evidence from the reading.

1. How do state constitutions play a role in the protection of civil liberties?

2. If state constitutions did not exist, what would the impact be on many of your civil liberties? Explain.

3. What role did the U.S. Supreme Court play in combining the United States Bill of Rights with the bill of rights of each state?

4. Beginning in the 1970s, what did many state judges do in cases where individual constitutional rights were more narrowly limited at the federal level? What role did individual state constitutions play in this process?

5. The Supreme Court of the United States has limited individual access to free speech rights at privately owned property in many situations. What have states such as California, Colorado, Massachusetts, New Jersey, Oregon, and Washington done that has allowed for free speech rights on private property? How were they able to do this?

6. When state constitutional law and U.S. Supreme Court rulings appear to differ, what must most state judges do? Why?

7. How can evidence presented in this article be used to support the idea that state constitutions have a direct impact on the rights and liberties of individual citizens today?

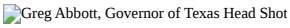


Figure 3.6.2: Hon. Greg Abbott, Governor of Texas

State Officials

Each of the 50 states has its own array of public officials with no two states exactly alike. All of them have governors, legislatures, and courts.

Governors

In every state, the governor is chosen by popular vote, and most governors serve four-year terms. More than half of the states place limits on the number of times an individual may be elected. This is called term limits. In most states, several other top officials are elected including a lieutenant governor, a secretary of state, and an attorney general. In general, governors have the authority to issue executive orders, prepare the state budget, make appointments, veto legislation, and to grant pardons to criminals. In states that tend to concentrate powers in the hands of a few, governors have broader authority and more powers. In other states, power is spread out among many elected officials or is strongly checked by the legislature.

State Legislatures

Every state has a bicameral, or two-house, legislature. An exception is Nebraska, which has a unicameral body. State legislatures vary in size from 20 to 400, and they are not necessarily in proportion to the size of the state's population. For example, New Hampshire has 400 members in its lower house.

All states have guidelines for age, residency, and compensation. Most legislatures meet in annual sessions. Just as in the national legislature, many state legislators serve for several terms, creating a large body of professional politicians in the United States.

State Courts

Each state has its own court system, and most states have a state Supreme Court. State judges have the final voice in the vast majority of cases in the United States since more fall under state, rather than federal jurisdiction. Most states have two types of courts: trial courts that handle issues from traffic fines to divorce settlements to murder, and appeals courts that hear cases appealed from lower courts.

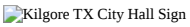


Figure 3.6.3: City Hall Sign in Kilgore, Texas

Types of Local Governments

Local governments are generally organized into four types:

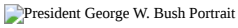


Figure 3.6.4: Governorship can often be an opportunity to pursue higher office; several state governors have gone on to become President. Before he became one of the most notable chief executives of the century, George W. Bush served as governor of Texas.

Counties

Counties are usually the largest political subdivisions, and their primary function is to administer state laws within their borders. Among other duties, they keep the peace, maintain jails, collect taxes, build and repair roads and bridges, and record deeds, marriages, and deaths. Elected officials called Supervisors or Commissioners usually lead counties.

Townships

These units of government do not exist in about half the states, and they have different responsibilities in those that have them. A township may simply be another name for a town or city, or it may be a subdivision of a county.

Special Districts

These units of government have special functions. The best-known example is the local school district, but other types are growing in numbers, especially in heavily populated areas where county and city governments may be overloaded with work.

Municipalities

City, town, or borough governments get their authority to rule only as it is granted by the state. Today about 80% of the American population lives in municipalities, and municipal governments affect the lives of many citizens. Municipalities may have elected mayors, or they may be managed by appointed city managers.

One National Government, 50 State Governments, and 85,000 Local Governments

The organization of state and local government varies widely across the United States. They have common specific features, but their organizations differ. Regardless of their design, state and local governments often have a far greater impact on people's lives than the federal government

Marriage, birth, and death certificates. School policies. Driving age and qualifications for licensure. Laws regarding theft, rape, and murder, as well as the primary responsibility of protecting citizens from criminals. These critical issues and many others are not decided by distant Washington authorities, but by state and local officials.

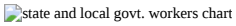


Figure 3.6.5: The chart demonstrates the number of state and local government workers in the United States. The overwhelming percent of government workers hold degrees yet make between 4% and 11% less than their counterparts in private enterprise.

The vast majority of government employees work for local and state — not the federal — governments. Many of these people are state and local employees: teachers, policemen, clerks at the motor vehicle office. This seems to confirm the general notion that government is in fact "closer to the people," and therefore more democratic. However, the real evidence is contradictory.

Who Holds State and Local Power?

Figure 3.6.6: Southwest University Park, El Paso, Texas

Waste management is a sensitive issue that often stirs residents to political action. Concerned citizens in Dayton, Ohio, called for a boycott of Waste Management, Inc. when the company refused to clean up a landfill to the satisfaction of nearby residents.

Governors, legislators, and many other elected officials lead state governments, and judges sit on both state and local courts. Local officials include mayors, City Council members, city planning commissioners, and school board members. Many local officials are nonpartisan. In other words, they do not run for election to office with a party label, but on their own good name. Often these individuals cross-register themselves in both political parties.

Social scientists have studied power in communities and have found some contradictory evidence. Several have found a relatively small and stable group of top policymakers, many of whom are local businesspeople. Others have concluded that while some people have a great deal of local influence, most others had little. This points to the conclusion that there is no permanent "power class," in local politics.

THE EL PASO BALLPARK DEBATE

Figure 3.6.7

In 2012, a group of local businessmen in El Paso proposed the building of a new ballpark (later to be named Southwest University Ballpark) in Downtown El Paso. In order to gain the AAA baseball franchise and build the new ballpark, a quick decision was needed by El Paso City Council. The decision made was to demolish what many considered a perfectly good city hall building (built in the 1970s and early 1980s) in order to make way for the new ballpark. City council took the dramatic step of voting to demolish the city hall building and to relocate city offices (as well as the city council chambers). This decision was made against the wishes of a number of El Paso citizen groups who protested that the people should have been given the final vote on building the ballpark. They criticized the City Council's actions as "undemocratic."

Research and read at least three newspaper articles on this topic. Then debate the following questions:

Were the actions of the City Council "undemocratic?"

How much final say should people have in the decisions made by duly elected local lawmakers (like city council members, local school board members, and other locally elected officials)?

Would you consider the decision made by the City Council to be a positive or negative demonstration of the democratic process in El Paso? Defend your answer.

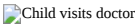


Figure 3.6.8: Several states have taken steps to regulate and oversee managed health care within their own borders, so their residents can navigate the often confusing world of health insurance with less difficulty.

How interested are Americans in their local political affairs? What about citizen participation — voting, attending meetings, phoning officials, and keeping up with local politics? Citizens generally take less interest in and are less informed about their local governments than they are about the national government. Percentages of eligible voters who actually vote in presidential elections have been hovering around 50-60% for the past few elections. Local elections draw far fewer voters with some school board and city council members elected with 10-15 percent of the eligible voters. Why the dramatic difference if they are so close to the people?

Some of the reasons are understandable. After all, local governments are preoccupied with relatively non-controversial routines, such as providing fire and police service, attracting businesses that can create more jobs, and keeping the roads in shape. People tend to let them do their jobs until something happens that directly affects their lives. For example, people often get involved when a landfill company or a drug rehabilitation center buys the property next to theirs, or when a house down the street is robbed.

The participation rates tend to bear out the fact that most people have very little interest in local politics. Still, many of the burning issues of modern times are also state and local concerns. People need protection from crime and violence, and they depend on state and local officials for that. Drugs, gangs, racism, and poverty confront governments on every level. Education, preservation and protection of the environment, and healthcare delivery all cry out for active participants to solve their problems. All across the United States, thousands of political activists are making the attempt, but a democracy needs all of its citizens.

Figure 3.6.9

Study/Discussion Questions

1. How are most state governments organized in comparison to the federal government?

2. Which state government official is generally considered to be the counterpart to the president of the United States? Why?

3. Who holds power at the state and local level? Explain.

4. Compare the level of voter participation in national elections to that of local elections.

5. Which factors account for the difference in citizen participation rates between presidential elections and most local elections?

6. Former Speaker of the House Tip O'Neill was once quoted as saying "all politics is local." What do you think he meant by this? Would you agree or disagree with this quote? Explain and justify your answer.

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http://www.nytimes.com/roomfordebate/2013/07/16/state-politics-vs-the-federal-governme
republic

http://www.ushistory.org/gov/12.asp

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3.7: Limits on National and State Governments

Figure 3.7.1: The U.S. Federal system has "checks and balances" to make sure that no branch of government would become too powerful.

The U.S. system of government was intended by its founders to be a mixed form of government because it includes elements of all three forms: monarchy (the presidency); aristocracy (the Senate, the Electoral College, and the Supreme Court); and democracy (the House of Representatives, elections). The founders created a mixed form of government as part of the institutional system of checks and balances.

Checks and Balances

The system of checks and balances was designed to create a political system where institutions and political organizations provided a measure of protection against corruption and abuse of power. The Founders thought that the mixed form of government was the best way to avoid what historical experience seemed to indicate was inevitable: the tendency of a political system to become corrupt.

The Founders were acutely aware of the historical problem of corruption, and the tendency of governments to become corrupt over time. History provided many examples of power corrupting both individuals and governments. The awareness of corruption caused the Founders to worry about centralized power. Their worries were succinctly expressed by the 19th Century Italian- British figure, Lord Acton (1834-1902), whose famous aphorism warned: “Power tends to corrupt; absolute power corrupts absolutely.”

The Founders believed the corruption by power problem could be avoided by dividing power so that no one person or institution had complete power. The Founders also realized that each form of government tended to become corrupt or decay over time. A monarchy, (which might be a good form of government of one), was apt to turn into tyranny. An aristocracy, (which might be a good form of government of the few best and brightest), was apt to turn into an oligarchy (government of the rich or powerful). A democracy (government of the many) was apt to decay into a mobocracy, tyranny of the majority, or rule by "King Numbers." So the Founders created a mixed form of government.

The roots of American thought about democracy can be traced to Classical (or ancient) Greece and the Roman Republic, the Age of Enlightenment, the Protestant Reformation, and colonial experiences under the British Empire. The ancient Greeks in the city-state Athens created the idea of the democratic government, practiced as a kind of democracy. The Romans developed the concept of the representative democracy, one where citizens elect representatives to act on their behalf. The United States is a republic. A republic is a representative democracy.

Figure 3.7.2: The diagram pictures the difference between direct and representative democracy.

In a republic, individuals do not directly govern themselves. Voters elect representatives who, as government officials, make laws for the people. This contrasts with a direct democracy, where voters choose public policies themselves. Today, however, the term democracy is used generically to include direct and indirect democracy (or republican systems of government).

The Constitution’s original design provided for only limited democracy in the way the national government worked. The members of the House of Representatives were directly elected by the people, but the members of the Senate were selected by state legislators, the president was chosen by the Electoral College (not by popular vote of the people), and federal judges were nominated by the president and confirmed by the Senate to serve life terms.

Only a small percentage of citizens (white male property owners) were originally allowed to vote in elections. The Constitution provided only limited popular control over the government because the Founders were skeptical of direct democracy. Over time, the Constitution, the government, and politics become more democratic with the development of political parties, the direct election of senators, and an expansion of the right to vote.

Figure 3.7.3: The Texas state seal

Texas Government

The Constitution divides the powers of the government of the state into three distinct departments: the legislative, the executive and the judicial. Under the terms of the Texas Constitution, no person in any one department may exercise any power attached to another department unless specifically authorized to do so by the Constitution.

Legislative Branch

The legislative power of the state is vested in a House of Representatives and a Senate, which together constitute the Legislature of the state. The House of Representatives consists of 150 members who are elected for terms of two years each, and the Senate consists of 31 members who are elected for four-year terms. After senatorial redistricting, which occurs every 10 years, each member must run for re-election. At that time the members must draw lots, with 15 senators to serve two-year terms and 16 senators to serve four-year terms.

Proceedings in the House of Representatives are presided over by the speaker of the house, who is selected by the members of the House of Representatives from among their ranks. Proceedings in the Senate are presided over by the lieutenant governor, who is elected by a statewide vote, or in his absence, the president pro tempore of the Senate, who is selected by the members of the Senate from among their ranks.

Regular sessions of the Legislature are held every two years in odd-numbered years and may not exceed 140 days in duration. Special sessions of the Legislature may be convened by the governor at any time. A special session of the Legislature may not exceed 30 days in duration and may address only those subjects designated by the governor.

Executive Branch

The executive branch is often referred to as a “plural executive” because many of the offices in that branch of government are elected directly by Texas voters. This means that executive branch officials answer directly to the people who elected them and share power, which adds a level of checks and balances to the government in Texas that is not seen at the national level.

The Governor

The Executive Department of the state is composed of the governor, the lieutenant governor, the comptroller of public accounts, the commissioner of the General Land Office, the attorney general and the secretary of state, all of whom are elected except the secretary of state (who is appointed by the governor).

There are other elected state officials, including the commissioner of the Department of Agriculture and the three commissioners of the Railroad Commission, (which has regulatory jurisdiction over certain public utilities, transportation, and the oil and gas industry).

The governor is elected for a term of four years and is eligible to seek re-election for an unlimited number of terms. The Constitution requires the governor to cause the laws of the state to be faithfully executed and to conduct all business of the state with other states and the United States. The Constitution also requires the governor to present a message on the condition of the state to the Legislature at the commencement of each session of the Legislature and at the end of his term in office and to recommend to the Legislature such measures as deemed expedient.

The governor has the power to veto any bill or concurrent resolution passed by the Legislature and to veto specific items in appropriation bills, but the Legislature may override any veto, including a line-item veto of an appropriation, by a two-thirds vote. If the governor becomes disabled, he is succeeded in office by the lieutenant governor, who continues as governor until the next general election.

The governor of Texas is currently Greg Abbott. The outgoing governor, Rick Perry, served longer than any other governor in Texas state history. He began his third full term in January 2011 and completed it on January 19, 2015. Before his first full term, he served out the term of then Governor George W. Bush, who became 43rd President of the United States and vacated his position as governor of Texas.

Lieutenant Governor

The lieutenant governor is elected for a term of four years and is eligible to seek re-election for an unlimited number of terms. The governor and the lieutenant governor are elected separately and may be members of different political parties. The lieutenant governor is the president of the Senate and is empowered to cast the deciding vote in the event the Senate is equally divided on any question. The lieutenant governor also performs the duties of the governor during any period that the governor is unable or refuses to do so or is absent from the state.

Because of the legislative and executive duties that are given to the lieutenant governor, many political experts believe that the lieutenant governor is the most powerful elected official in the state of Texas. There is a great deal of validity to this argument as the lieutenant governor presides over the Senate and can decide the fate of legislation through committee appointments, oversight of debate, and the scheduling of legislation for floor votes. In addition, the lieutenant governor serves in an active capacity over the committee that creates and recommends the state budget to legislators.

If the office of the lieutenant governor becomes vacant, a successor is elected by the members of the Senate from their ranks. Until a successor is elected, or if the lieutenant governor is absent or temporarily unable to act, the duties of the lieutenant governor are performed by the president pro tempore of the Senate.

The exiting lieutenant governor was David Dewhurst, and his successor is former Texas state Senator Dan Patrick. Patrick's first term as lieutenant governor began on January 20, 2015 when the Governor-Elect Greg Abbott took office and the new legislative session began in Texas.

Comptroller of Public Accounts

The comptroller of public accounts (the "comptroller") is elected for a term of four years and is the chief accounting officer of the state. The comptroller is generally responsible for maintaining the accounting records of the state and collecting taxes and other revenues due to the state, although other state officials share responsibility for both of these functions. The Comptroller is required by statute to prepare an annual statement of the funds of the state and of the state's revenues and expenditures for the preceding fiscal year.

In addition, the Constitution requires the comptroller to submit to the governor and the Legislature, at the commencement of each regular session of the Legislature, an itemized estimate of the anticipated revenues that will be received by the state during the succeeding biennium based upon existing laws. The Constitution also requires the comptroller to submit supplemental statements at any special session of the Legislature and at such other times as may be necessary to show probable changes. The state Constitution also requires the comptroller to certify that any appropriations bill passed by the Legislature falls within available revenues before the bill goes to the Governor for his signature.

In recent years, the comptroller's responsibilities have been expanded by the Legislature and/or the voters to include the following: the startup of the Texas Lottery, the transfer of the Property Tax Board to the comptroller's office, the administration of the Texas Tomorrow Fund, the transfer of the job duties and responsibilities of the state treasurer to the comptroller's office and the transfer of the responsibilities of the State Energy Conservation Office.

The outgoing Comptroller was Susan Combs, who began her second four-year term in January 2011 and completed that term on January 1, 2015. The current comptroller of public accounts, who began his term on January 2, 2015, is Glenn Hegar of Houston, Texas.

Commissioner of the General Land Office

The commissioner of the General Land Office is elected for a term of four years. The commissioner of the General Land Office is generally responsible for administering the public lands owned by the state. The commissioner of the General Land Office serves as the chairman of the School Land Board, which has authority over the sale and lease of state-owned lands, and as chairman of the Veterans' Land Board.

The commissioner of the General Land Office also serves as the chairman of boards that control the exploration for oil, gas and other minerals on state lands.

The outgoing commissioner of the General Land Office was Jerry Patterson who began his third four-year term in January 2011 and completed his term on January 1, 2015. On January 2, 2015, George P. Bush (nephew of President George W. Bush) became the newly elected commissioner of the General Land Office.

Secretary of State

The secretary of state is the only major executive position appointed by the Governor, with the advice and consent of the Senate, and serves during the term of service of the Governor by whom he or she is appointed.

The secretary of state is required to maintain official records of all laws and all official acts of the Governor and to perform such other duties as are required by law. The Legislature has made the secretary of state generally responsible for the supervision of elections and for corporate and other similar filings. The most important of the secretary of state’s duties is the conduction and oversight of elections in Texas

The current secretary of state is David Whitley. On December 17, 2018, he was appointed and sworn in as Texas' 112th Texas secretary of state by Governor Greg Abbott.

Figure 3.7.4

Study/Discussion Questions

1. Describe the "balancing act" faced by the Founding Fathers and the plan they devised to maintain the balance of power between the national government and the states.

2. How is the government "mixed"?

3. Why did the Founders provide a checks and balances system?

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3.8: Historical and Contemporary Government

Figure 3.8.1: There are many forms of national government including Monarchy, Oligarchy, Theocracy, Dictatorships, Republican Democracies, Presidential, Parliamentary, Federal, Confederate, and Unitary systems.

Basic Forms of Government

States come in a variety of forms that vary based on (1) who holds power, (2) how positions of leadership are obtained, and (3) how authority is maintained. The United States is a democratic presidential republic, a democratic government headed by a powerful elected executive, the president. Also, the United States's federal system divides the power of government between national and state governments.

The United States originally won its independence from Britain, which was a monarchy in which power was concentrated on an individual king. Other forms of government include oligarchy and dictatorship or totalitarianism. One way to classify these governments is by looking at how leaders gain power. Under this system, governments fall into general categories of authoritarianism, oligarchy, and democracy.

Authoritarian Governments

Authoritarian governments differ in who holds power and in how much control they assume over those that they govern, but all are marked by the fact that the empowered are unelected individuals. One well-known example of this type of government is a monarchy.

A monarchy is a form of government in which supreme power is absolutely or nominally lodged with an individual who is the head of state, often for life or until abdication. The person who heads a monarchy is called a monarch.

Some monarchs hold unlimited political power while many constitutional monarchies, such as the United Kingdom and Thailand, have monarchs with limited political power. Hereditary rule is often a common characteristic, but elective monarchies are also considered monarchies (e.g., The Pope).

Some states have hereditary rulers but are considered republics (e.g., the Dutch Republic). Currently, 43 nations have monarchs as heads of state. Monarchies are often tied to the divine right of kings idea. The divine right of kings was a political and religious doctrine. It meant that a monarch was given the right to rule by God alone. It gave a king absolute rule over his subjects because he ruled in God’s name.

Totalitarianism (or totalitarian rule) is a political system that strives to regulate nearly every aspect of public and private life. This type of rule does not have limits or restraints on power. Totalitarian regimes or movements maintain themselves in political power

by means of an official all-embracing ideology and propaganda disseminated through the state-controlled mass media, a single party that controls the state, personality cults, control over the economy, regulation and restriction of free discussion and criticism, the use of mass surveillance, and widespread use of state terrorism. (e.g. Imperialist Japan, Czar Nicholas I of Russia).

Ogligarchic Government

An oligarchy is a form of government in which power effectively rests with a small elite segment of society distinguished by royalty, wealth, family, military, or religious hegemony. An oligarchy is different from a true democracy because very few people are given the chance to make changes. An oligarchy does not have to be hereditary or monarchic. An oligarchy does not have one clear ruler, but several powerful people who rule. One common example is a theocracy.

A theocracy is a form of government in which a god or deity is recognized as the state's supreme civil ruler, or in a broader sense, a form of government in which a state is governed by immediate divine guidance or by officials who are regarded as divinely guided. Theocratic governments enact theonomic laws. Theocracies are distinguished from other secular forms of government that have a state religion or are merely influenced by theological or moral concepts, and monarchies held "by the Grace of God" (theory of *Divine Right of Kings*).In a theocracy, the religious hierarchy controls the state administrative hierarchy.

Democratic Government

Democracy is a form of government in which the right to govern is held by the majority of citizens within a country or a state. The two principles of a democracy are that all citizens have equal access to power and that all citizens enjoy universally recognized freedoms and liberties. Additionally, four elements of democracy are common: 1) citizens choose and replace the government through free and fair elections, 2) there is active participation of the citizens in politics and civic life, 3) there are human rights and civil liberties (freedoms), which are protected for all citizens, and 4) there is a rule of law in which the laws and procedures of government and society apply equally and fairly to all citizens.

There are several varieties of democracy, some of which provide better representation and more freedoms for their citizens than others. However, if any democracy is not carefully legislated with balances, such as the separation of powers, to avoid an uneven distribution of political power, then a branch of the system of rule could accumulate power and become harmful to the democracy itself. Freedom of political expression, freedom of speech, freedom of religion, and freedom of the press are essential so that citizens are informed and able to fairly and equally participate in the political process.

In a direct democracy, or pure democracy, all decisions are voted on by the people. When a budget or law needs to be passed, then the idea goes to the people. This form of government is reserved for small communities that have a central meeting place and solve simple issues.

The map below shows all the countries of the world, colored according to their level of freedom (democracy). Green indicates countries with a high degree of freedom, yellow represents countries who are "less than completely free" and purple is countries that have very low or non-existent levels of democratic freedom. For an interactive version of this map, visit Freedom House.

Figure 3.8.2: Freedom House 2018 map shows freedom in the world: green=free, yellow=partly free, and purple=not free.

Classical Republic

Classical republicanism, also known as civic republicanism, is a form of republicanism developed in the Renaissance period that was inspired by classical writers such as Aristotle, Polybius, and Cicero.

Although modern republicanism rejected monarchy in favor of rule by the people, classical republicanism treated monarchy as one form of government among others. The belief of what constituted an ideal republic depended on personal viewpoint. Classical republicanism is built around concepts such as civil society, civic virtue, and mixed government. A small group of elected leaders represents the concerns of the electorate. The majority rules over the few. Some historians have noted that classical republican ideas influenced early American political thought.

Socialism

Socialism is an economic and political system where the means of making a living (factories, offices, etc.) are owned by the workers who run them, and the people who depend on them instead of a group of private owners.

There are two ways socialists think of the way society can own the means of making wealth: either the state is used, or worker-owned cooperatives are used. Another important belief is that management and sharing are supposed to be based on public interests. Socialism benefits those who are homeless, less fortunate, or underemployed.

The major differences between the different varieties are the role of the free market or planning, how the means of production are controlled, the role of management of workers and the government's role in the economy.

Tribalism

American Indian tribes are sometimes described as “nations within a nation.” Although the tribes are located within the United States, the United States Constitution considers them as separate governments. Native Americans have their own laws and government. Tribal governments have the power to tax, to pass their own laws and to have their own courts. Generally, states do not interfere with tribal governments. Congress, however, has the power to pass laws that govern Indian tribes and their members. Congress tries to make laws that help American Indians while respecting each tribe’s authority to pass its own laws and govern itself.

Many American Indian tribes have adopted constitutions similar to the U.S. Constitution. As a result, many tribes have branches of

government similar to those in U.S state and federal governments. This allows for the separation of powers.

Type of Govt.	Head of State	Decision Makers	Source of Power & How Acquired	Length of Rule	Political Freedoms Determined by:
Military Dictatorship	Dictator (Military Officer)	Dictator	Power taken by Military thru a "Coup D'état"	Death or Overthrow (by another Coup d'état)	Dictator
Absolute Monarchy	King/Queen	King/Queen	Divine right through birth or lineage	Death, Overthrow or Abdication	King/Queen
Limited Monarchy	King/Queen or Prime Minister	King/Queen & Representative Group (usually Parliament)	Divine Right Through Birth and a Constitution through election	Death, Overthrow, Abdication or End of Term	Bill of Rights or other Limiting Document(s)
Oligarchy	Small group of Leaders	Small group of Leaders	Intelligence and/or Wealth thru Coalition or Consensus	Death or Overthrow	Oligarchs
Representative Democracy (Republic)	President	President and Representative Group	A Constitution thru Elections	End of Term	Bill of Rights or Other Limiting Documents
Direct Democracy	N/A	All Citizens	All Citizens thru Elections and Direct Participation	N/A	All Citizens
Anarchy	N/A	N/A	No one has power over anyone else	Ends when a Government is Established	Each Individual (Can do anything" except organize)
Theocracy	Religious Leader	Religious Leader(s) of State Established Religion	Church and State leadership and decision-making are combined	Undetermined. When the government and/or religion are overthrown or when religious and/or political leadership changes.	Church leaders and political leaders.
Totalitarian	Totalitarian leader or group of totalitarian leaders	Totalitarian leader or group of totalitarian leaders granting power to and removing it from the local governments when it sees fit. France is also a unitary government. The national government rules over the various provinces or departments. These	Government has total control over the people and control ALL aspects of daily life.	When the government is overthrown	State exercises total control over the people and actively monitors and determines ALL aspects of daily life.

		local bodies carry out the directions of the central government, but never act independently.			

Figure 3.8.3

Study/Discussion Questions

1. Which three basic criteria determine which form of government a nation or a state has?

2. What type of government does the United States have?

3. If we look only at how leaders gain power, which three basic forms of government does your text describe? What are the essential characteristics of each? What subforms does each government contain?

BASIC TYPES OF GOVERNMENTS BY CITIZEN PARTICIPATION		
GOVERNMENT TYPE	Basic Characteristics	Sub-Forms

Writing

Imagine you have been chosen as a representative to the Constitutional Convention. Your task is to explain the new federal form of government to the state that elected you. In one paragraph, explain this new form of government and persuade your constituents (the people who sent you) why they should support it.

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Source: Tribal Government Systems https://system.uslegal.com/tribal-governments/

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3.9: Federal, Confederate, and Unitary Government

Figure 3.9.1: Political scientists have identified three types of governments.

When governments are formed over large geographic areas or nations, it often becomes necessary to create smaller regional governments (states) as well. Political scientists have identified three basic types of national governments by evaluating the amount of power and authority given to the central (national) governments and to the regional governments (states/provinces). These can be classified in the form of unitary governments, federations, and confederations. Each of these types of governments can be found operating in the world today, and each is a potentially successful means of structuring a state. They are separated by the role of the central government.

Unitary Government

In a unitary system of government, the central government holds most of the power. The unitary state still has local and regional governmental offices, but these are under the direct control or authority of the central government. The United Kingdom is one example of a unitary nation. Parliament holds the governing power in the U.K., granting power to and removing it from the local governments when it sees fit. France is also a unitary government. The national government rules over the various provinces or departments. These local bodies carry out the directions of the central government, but never act independently.

Federalism is marked by a sharing of power between the central government and state, provincial, or local governing bodies. The United States is one example of a federal republic. The U.S. Constitution grants specific powers to the national government while retaining other powers for the states. For example, the federal government can negotiate treaties with other countries while state and local authorities cannot. State governments have the power to set and enforce driving laws while the federal government lacks that ability. The United States, Canada, and Germany are just some examples of modern federalist systems.

A confederation has a weak central authority that derives all its powers from the state or provincial governments. The states of a confederation retain all the powers of an independent nation, such as the right to maintain a military force, print money, and make treaties with other national powers. The United States began its nationhood as a confederate state, under the Articles of Confederation. However, the central government was too weak to sustain the burgeoning country. Therefore, the founding fathers shifted to a federal system when drafting the Constitution. A contemporary example of a confederation is the Commonwealth of Independent States, which is comprised of several nations that were formerly part of the Soviet Union. These nations formed a loose partnership to enable them to form a stronger national body than each individual state could maintain.

Comparing Types of Government

One has only to look at the advantages and disadvantages of each system to see the greatest differences among them. In a unitary system, laws and policies throughout the state are commonly shared, laws are more easily passed since they need only be approved by the central government, and laws are rarely contradictory since there is only one body making those laws. There are disadvantages of this type of government. The central government may lose touch with or control over a distant province or too much power in the central authority could result in tyranny (governmental abuse of its authority). In a federal system, a degree of autonomy is given to the individual states while maintaining a strong central authority and the possibility of tyranny is very low. Federal systems still have their share of power struggles, such as those seen in the American Civil War. Confederate governments are focused on states rights and the needs of the people in each state. The government tends to be more in touch with its citizenry, and tyranny is much less commonly seen. Unfortunately, confederations often break apart due to internal power struggles and lack the resources of a strong centralized government.

COMPARING THE SYSTEMS OF NATIONAL, STATE, GOVERNMENT RELATIONSHIPS

System	Level of Centralization	Strength	Weakness
Unitary (e.g., China, France, Japan, United Kingdom)	High	Sets uniform policies that direct the entire nation	Disregards local differences
Federal (e.g., United States, Germany, Australia, Canada	Medium	Gives local governments more power	Sacrifices national uniformity on some issues
Confederate (e.g., Confederate States of America, Belgium)	Low	Gives local/regional governments almost complete control	Sets no significant uniform national policies

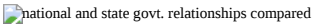

Figure 3.9.2: Diagram of National and State Governmental Relationships

Figure 3.9.3

Study/Discussion Questions

1. Describe the characteristics, advantages, and disadvantages of each of the following forms of government.

BASIC TYPES OF GOVERNMENT BY POWER DISTRIBUTION			
	Characteristics	Advantages	Disadvantages
UNITARY			
FEDERAL			
CONFEDERATE			

2. What are the two basic forms of democratic republic described in the text? How are they similar? How are they different?

FORMS OF DEMOCRATIC REPUBLICS		
FORMS OF GOVERNMENT	CHARACTERISTICS	SIMILARITIES/DIFFERENCES

Case Study

The United Nations is an international organization founded after World War II in 1945 by 51 countries committed to maintaining international peace and security, developing friendly relations among nations, and promoting social progress, better living standards, and human rights.

Due to its unique international character and the powers vested in its founding Charter, the organization can take action on a wide range of issues, and provide a forum for its 193 member states to express their views through the General Assembly, the Security Council, the Economic and Social Council, and other bodies and committees

3. How would you describe the power distribution of this organization (unitary, federal, or confederation)? Explain your answer.

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3.10: Presidential and Parliamentary Government

Figure 3.10.1: Systems of government vary.

At this point in our discussion of governments, it should be clear that there is not one right way of organizing a governmental system. Each has its own individual advantages and disadvantages. The same holds true of the two basic forms of democratic republics--presidential and parliamentary.

Presidential Systems

Many of the world's governments are modeled to some degree on the United States and its presidential system of government. This system is distinguished from others because it has a chief executive (the president) who is chosen by the people to serve a limited term in office with a distinct separation of powers (the executive branch) as well as specific limitations on exactly what he/she can do while in office.

The president serves not only as head of state but he or she is also in charge of the executive branch of government. He or she has the power to appoint members of his/her executive cabinet to oversee major bureaucratic departments within the government, serves as the civilian head of the armed forces, and is responsible for setting foreign policy as well as determining and influencing domestic policy and legislation.

A major advantage of presidential systems of government is that the powers of a president are balanced by a legislature, which is not only popularly elected but also acts independently of the president. Since the president must share his powers with this independent body of elected legislators, it requires the president and the legislature to work together through a process of conflict and compromise. While in many cases the president may be from a different party than the majority of one or both houses of Congress; the only way the president can get his/her policy agenda made into law is by cooperating and compromising with Congress and vice-versa.

This same scenario of divided government is also a major drawback to the presidential system. If the president and members of Congress hold different viewpoints and cannot reach a compromise, the government can come to a grinding halt. This is often referred to as policy gridlock, and it has been very evident in the past few presidential administrations where, at least for a portion of a president's term, there has been a great division between Congress and the president.

Figure 3.10.2

Parliamentary Systems

Most democracies in the world are patterned after Great Britain's parliamentary system. In this system, the executive and legislative branches of government are combined and the political head of state is chosen from within the legislature. This political head of state is usually called a *prime minister,* and he or she is chosen by the majority party in Parliament to serve as the head of the majority party. The prime minister also acts as an advisor to the figurative head of state who is often a monarch (such as the Queen of England). Of course, not all parliamentary systems have a monarchy, so the prime minister can be both the political AND the figurative head of state in many countries, which is closer to the role our president plays in a presidential system.

The combining of executive and legislative branches can be both an advantage and a disadvantage. Some scholars and observers would argue that it is easier to pass laws in a parliamentary system as the head of state is always chosen from the majority party, so a divided government is generally not an issue. Others would take issue with the fact that prime ministers are neither directly elected by the people, nor able to take a popular stand against the majority of Parliament (because they would be simply removed through a no-confidence vote if they were to lose the support of their party).

Key Differences Between Parliamentary and Presidential Forms of Government

1. Social scientists have studied power in communities and have found some contradictory evidence. Several have found a relatively small and stable group of top policymakers, many of whom are local businesspeople. Others have concluded that while some people have a great deal of local influence, most others had little. This points to the conclusion that there is no permanent "power class," in local politics.

2. The parliamentary system of government is where the legislative and executive branch work cooperatively. The judicial branch works independently. In a presidential government, the three branches of the government work independently.

3. In a parliamentary form of government, the executive is divided into two parts, i.e. the head of the state (president) and the head of the government (prime minister). The president is the chief executive of the presidential government.

4. In the parliamentary form of government, the executive body, i.e. the Council of Ministers is accountable to Parliament for its acts. The executive is not accountable in a presidential government.

5. A combination of powers is key to a parliamentary system. The powers are divided in a presidential system.

6. In parliamentary form, ministers are appointed from the executive body. In presidential form, one does not need to be a member.

7. In parliamentary government, the prime minister has the power to dissolve the lower house before the completion of its term. The president cannot dissolve the lower house. The members will serve their term.

8. The term of the executive is not set in a parliamentary government. If a no-confidence motion is passed, the Council of Ministers is removed. In a presidential government, the executive has a set term.

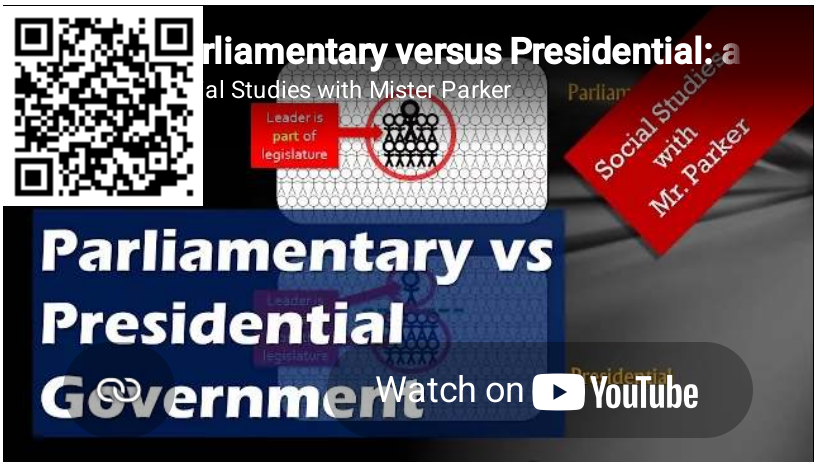

Figure 3.10.3

Study/Discussion Questions

1. List two advantages and two disadvantages of a parliamentary government system.

2. List two advantages and two disadvantages of a presidential government system.

3. Compare and contrast the parliamentary and presidential government systems by making a Venn Diagram. Find five differences and three similarities.

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CHAPTER OVERVIEW

4: Three Branches of Government

4.1: Important Individuals in the History of Government and Politics
4.2: The Structure and Functions of the Legislative Branch
4.3: The Structure and Functions of the Executive Branch
4.4: The Structure and Functions of the Judicial Branch
4.5: Independent Executive Agencies
4.6: Presidential Election Procedures
4.7: The Seventeenth Amendment
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4.9: Due Process
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4.1: Important Individuals in the History of Government and Politics

Figure 4.1.1: The Founding Fathers

Many individuals and teams provided enlightening ideas and fulfilled significant roles to shape the foundation of America. This section will detail the accomplishments of some of the most important men in the history of government and politics: George Washington, Thomas Jefferson, John Marshall, Andrew Jackson, Abraham Lincoln, Theodore Roosevelt, Franklin D. Roosevelt, and Ronald Reagan all played a pivotal part in the progress of American ideals.

The Founding Fathers

The term Founding Fathers refers broadly to those individuals who led the American Revolution against the authority of the British Crown and established the United States of America. It is also more narrowly defined as referring specifically to those who either signed the Declaration of Independence in 1776 or who were delegates to the 1787 Constitutional Convention and took part in drafting the proposed Constitution of the United States.

The men who attended the Constitutional Convention included some of the most prominent men of the revolutionary and post-revolutionary era. George Washington was present at the convention (and was chosen to be its president), along with Benjamin Franklin, Alexander Hamilton, James Madison, and Roger Sherman. As a group, the framers of the Constitution were wealthier and better educated than the average American. Nearly all of them had experience in state and national governments, and many of them had fought in the revolution. They were truly the “cream of the crop” of leaders and thinkers in America during the pre- and post-colonial periods.

QUICK FACTS ABOUT THE FOUNDING FATHERS

FOUNDING FATHER	ESSENTIAL FACTS
John Adams	John Adams was born in Massachusetts in 1735. He was a Harvard lawyer who defended the British soldiers after the Boston Massacre. He served as a delegate to both Continental Congresses and was on the committee to write the Declaration of Independence. He was the first Vice President and the second President of the United States. During his Presidency, he tried to maintain neutrality with England and France, even though the French attempted a bribe during the XYZ Affair. He is criticized for signing the Alien and Sedition Acts which many said violated civil liberties. Adams was defeated by Jefferson in 1800 when he ran for a second term. Before he left office, he appointed John Marshall Chief Justice. In the final days of his Presidency, he appointed Federalists to fill several new judgeships in what is called “the midnight appointments.” It was one of these appointments that led to the famous case Marbury v Madison. He died on July 4, 1826.
Benjamin Franklin	Benjamin Franklin was an inventor, writer, printer, diplomat, scientist, humorist, and statesman. He was born in Boston in 1706. In 1733 he started publishing Poor Richard’s Alamanack. What distinguished Franklin’s almanac were his witty sayings and lively writing. During the French and Indian War, Franklin advocated colonial unity with his Albany Plan which encouraged the colonists to “Join or Die.” He was a delegate to the both Continental Congresses and a member of the committee to write the Declaration of Independence. Franklin was the U.S. Ambassador to France and helped to negotiate the Treaty of Paris that ended the American Revolution. The French loved Franklin, and he was very popular in that country. Later, he was the oldest delegate to the Constitutional Convention at the age of 81. He became a member of the Pennsylvania Abolition Society before he died.
Alexander Hamilton	Alexander Hamilton was born in the West Indies in 1755. He was the Aide-De-Camp (personal assistant) to George Washington during the American Revolution. He was a delegate to the Constitutional Convention in 1787 from New York. As a proponent of a strong central government, he was one of the authors of The Federalist Papers (essays that promoted the ratification of the Constitution). Hamilton was the first Secretary of the Treasury under President George Washington, where he worked to pay off the country’s war debts through his financial plan, which included the assumption of state debts and creation of a national bank. He was the founder of the Federalist Party, which is considered the first political party. On July 11, 1804 he fought a duel with Aaron Burr who was angry over Hamilton’s support of Jefferson in the presidential election of 1800. Hamilton was shot by Burr and died the next day
John Jay	John Jay was born December 12th, 1745, Representing the point of view of the American merchants in protesting British restrictions

	on the commercial activities of the colonies, he was elected to the Continental Congress in 1774 and again in 1775. Jay did not favor independence from Britain. However, once the revolution was undertaken Jay was an ardent supporter of the new nation. He drafted the first constitution of New York State and was appointed chief justice of the state in 1777. In the following year, he was again elected to the Continental Congress and was chosen as its president. The ineffectiveness of the Articles of Confederation led Jay to become a proponent of a strong national government and one of the primary authors of the Federalist Papers. After the Constitution was ratified, George Washington nominated John Jay as the chief justice, and he was confirmed two days later. Jay was instrumental in establishing the Supreme Court as a reasoned and honorable institution. He later retired from service in the Supreme Court and was elected (without even running) to be Governor of New York in 1795 where he proved to be a popular and productive governor.
Thomas Jefferson	Thomas Jefferson was born in Virginia in 1743. As a Virginia planter, he was also a delegate to the House of Burgesses and to the First and Second Continental Congress. He was selected to draft the Declaration of Independence and is considered the author of the Declaration of Independence. Next, he was a U.S. Minister to France. Jefferson was the first Secretary of State under George Washington and Vice-President under John Adams. Leader of the Democratic-Republican Party, in 1801 he became the third President of the United States. As President, he was responsible for the Louisiana Purchase in 1803 and the Embargo Act of 1807. Jefferson sent the Lewis and Clark Expedition in 1804 to explore the new territory purchased from France, which produced a wealth of scientific and geographical knowledge. He died on July 4, 1826, the fiftieth anniversary of the Declaration of Independence. His self-written epitaph read: ***"Here was buried Thomas Jefferson Author of the Declaration of American Independence of the Statute of Virginia for religious freedom & Father of the University of Virginia."***
James Madison	James Madison was born in Virginia in 1751. Madison was a delegate to the Philadelphia Constitutional Convention and is widely considered the "Father of the Constitution" for his many contributions to the basic structure of our government. He used Montesquieu's idea for separation of powers but also added a system of checks and balances to assure no one branch was too powerful. He authored the Virginia Plan which proposed representation in the legislative branch based on population but was willing to compromise by creating a bicameral legislature. He supported ratification of the new U.S. Constitution and wrote over a third of the Federalist Papers, promoting its ratification. He helped frame the Bill of Rights, and then became Secretary of State under Thomas Jefferson. He was the fourth President of the United States. During his presidency, the United States fought Great Britain in the War of 1812.

George Washington	George Washington was born in Virginia in 1732. He was a Virginia planter and a delegate to the House of Burgesses. Washington fought during the French and Indian War and was a delegate to the Continental Congress. He was chosen Commander of the Continental Army during the American Revolution. Later, he became the President of the Philadelphia Constitutional Convention in 1787 and the First President of the United States. During his presidency, his foreign policy was to remain neutral, and he warned the country against European entanglement and political parties in his Farewell Address. George Washington is referred to as the "Father of our Country."

Although the delegates to the Constitutional Convention met in secret, the records of the convention debates reveal lively conversations about what form of government to create. The convention debates and the subsequent debates over ratification of the new constitution were generally organized as a debate between the Federalists and the Anti-federalists. The Federalists supported ratification because they believed that the country needed a stronger national government. Their arguments for ratification were made in a series of famous essays written by James Madison, Alexander Hamilton, and John Jay called *The Federalist Papers*. The Anti-federalists opposed ratification of the Constitution because they believed that it gave the national government too much power. They preferred a political union where the states had more power. The Anti-federalists tend to be overlooked because they lost the argument. The Constitution was ratified. But the Anti-federalist Papers are worth reading in an era when American politics includes criticism of the size of the federal government.

The legacy of the Founding Fathers continues to this day as the document that they drafted during the Constitutional Convention has held true and steadfast throughout the test of time.

John Marshall

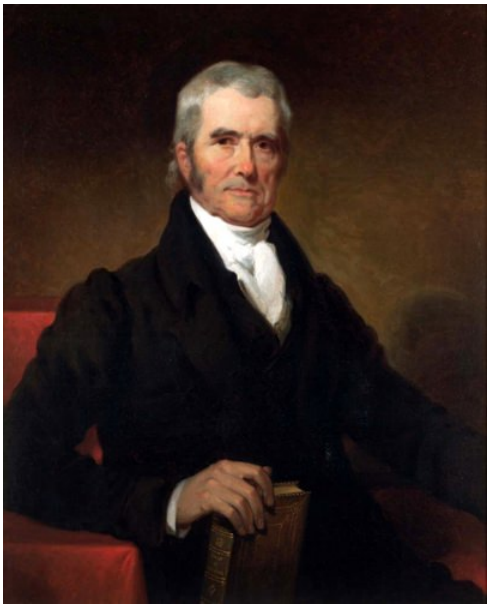

Figure 4.1.2: Justice John Marshall

John Marshall was a self-made man who lacked formal schooling due to the isolated area in Virginia where he was raised. Because schools were few, his father taught him at home. Upon the outbreak of the Revolutionary War, Marshall volunteered and served in the 11th regiment of Virginia. He participated in the battles at Germantown, Brandywine, Monmouth, and Stony Point. During the war, Marshall developed an interest in law. When the war concluded, he studied law at the College of William and Mary. However, he only studied law for about six weeks. After passing the bar in 1780, he became a successful attorney and congressman for Virginia.

George Washington, a man much admired by Marshall, offered him the post of Attorney General and U.S. minister to France. He did not accept Washington's offer. He did, however, reluctantly accept Adam's appointment as one of three commissioners to France. When Marshall and the other commissioners arrived in France, they were quickly asked for a bribe in order to provide a stronger U.S./French relationship. The commissioners vehemently refused, returned to America, and received national recognition for the incident known as the XYZ Affair.

In 1799, Marshall ran for and received a seat in the U.S. House of Representatives. In 1800, due to his staunch support of Adams and his stellar service, Adams first appointed Marshall to the position of secretary of state. Marshall reluctantly accepted the position. Then, in 1801, President Adams appointed Marshall as chief justice of the United States.

During Marshall's 34 years as chief justice, he clarified the position of the Supreme Court and made it a central fixture in the process of government. As a fervent Constitutionalist, John Marshall worked tirelessly to foster the Supreme Courts role in guiding national policy and public opinion.

One of the most important cases heard by the court during Marshall's tenure was *Marbury v. Madison.*

Marbury v. Madison (1803)

Facts of the Case

The case began on March 2, 1801, when an obscure Federalist, William Marbury, was designated as a Justice of the Peace in the District of Columbia. Marbury and several others were appointed to government posts created by Congress in the last days of John Adams's presidency, but these last-minute appointments were never fully finalized. The disgruntled appointees invoked an act of Congress and sued for their jobs in the Supreme Court. (Justices William Cushing and Alfred Moore did not participate.)

Question

Is Marbury entitled to his appointment? Is his lawsuit the correct way to get it? Is the Supreme Court the place for Marbury to get the relief he requests?

Conclusion

Decision: 4 votes for Madison, 0 vote(s) against

Legal provision: Section 13 of the Judiciary Act of 1789

The justices held, through Marshall's forceful argument, that on the last issue the Constitution was "the fundamental and paramount law of the nation" and that "an act of the legislature repugnant to the constitution is void." In other words, when the Constitution--the nation's highest law--conflicts with an act of the legislature, that act becomes invalid.

Importance: This case establishes the Supreme Court's power of judicial review allowing courts to overturn laws on the basis of unconstitutionality. With this case, the Supreme Court gave itself a series of check and balance powers that raised its prominence to that of the Legislative and Executive branches.

Figure 4.1.3: President Andrew Jackson

Andrew Jackson

Andrew Jackson was the seventh president of The United States. He served two terms in office, from 1829-1837. During his presidency, Jackson challenged the status quo of typical political procedures and typical political participants.

Andrew Jackson, an orphan from South Carolina, was the definition of a self-made man. He was just a boy when he fought in the Revolutionary War. Then, he studied law and became a prosecutor, judge, senator, and congressman from Tennessee. His main

claim to fame arose from his role as Major General in the War of 1812, the battle with the Creek Indians, and the victory over the British at the Battle of New Orleans, (which was fought after the war had been declared over).

When the orders to disband his troops were received, Jackson defied them. He bravely used his own resources (money and horses) to successfully lead his troops back to Tennessee. His toughness was equated to the hickory tree, and after his heroism toward his troops, Jackson was given the nickname “Old Hickory.”

In 1829, Jackson used his military fame to receive the Democratic nomination and ran against incumbent John Quincy Adams. Jackson organized and ran a national political campaign in which he called himself, “a man of the people.”

Using this platform to promote an anti-elitism stance, he fought the small number of eastern elites that normally participated in politics. Jackson won huge victories in the south and the west. According to Kahn Academy.org, “The election marked a transition from the small, elite political parties of the past to the mass political parties that the United States continues to host today.”

President Jackson challenged the Bank of the United States on the grounds that it promoted eastern elitism in favoritism against the common man. Although the Supreme Court declared the bank constitutional, Jackson was determined to close it. During his impassioned fight against the bank, Jackson passed legislation aimed at weakening the national bank. Jackson moved government money to state-chartered banks, which sent the economy into a temporary depression. The Bank War ended in 1836 when the charter for the national bank was not renewed. Jackson had won.

An additional legacy from Jackson’s presidency was the establishment of The Indian Removal Act of 1830, which led to the Trail of Tears. The Trail of Tears was a series of removals of Native Americans in the United States from their ancestral homelands in the Southeastern United States to areas in the west that had been designated as Indian Territory. The relocated tribe members suffered from exposure, disease, and starvation while traveling to the reserved land. Many died before reaching their destinations.

Although portrayed as a positive movement to open the territory west of the Mississippi to westward expansion by Anglo settlers, the Indian Removal Act resulted in the brutal death of many natives who refused to go peacefully. The Trail of Tears occurred when federal troops forcibly removed the Cherokee from Georgia after the Cherokee unsuccessfully attempted to use legal action to block removal. As the majority of Cherokee did not vacate their land by the designated time, they were rounded up and marched to Oklahoma at gunpoint. Approximately 4000 Native Americans lost their lives on this journey.

Jackson had many notions that the average American favored, and his concept of politics for all encouraged many changes to the political system. In his final speech to the American public, he said, “But you must remember, my fellow-citizens, eternal vigilance by the people is the price of liberty, and that you must pay the price if you wish to secure the blessing.”

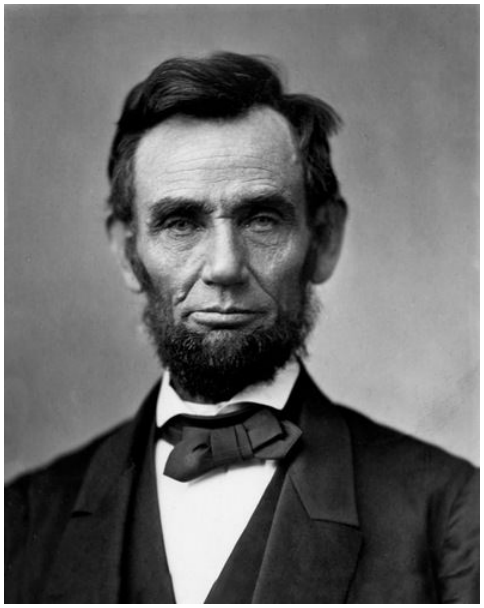

Figure 4.1.4: President Abraham Lincoln

Abraham Lincoln

Abraham Lincoln was born in the Kentucky wilderness where his family worked the land as farmers. After becoming involved in a land dispute, the Lincoln family moved to Indiana. He did not have any formal schooling but reportedly was encouraged to read by his step-mother. Rumors from his Indiana neighbors claim he would walk for miles to borrow a book.

When the family moved once again, Lincoln followed them to Illinois, but after another move, he chose to go his own way and settled in New Salem. While in New Salem, Lincoln held many jobs including shopkeeper, postmaster, and store owner.

Eventually, Lincoln became a captain in the volunteer army in the battle of the Black Hawks. He did not see any combat, but he did make some political connections. Lincoln launched his political career in 1834 as a legislator for the Whig party. He then decided to become a lawyer, so he taught himself by reading Blackstone's book about law.

In 1847 Lincoln became a representative where he was vocally against the Mexican-American war while he also vocally supported Zachary Taylor for president.

Soon, Lincoln decided to run again for the Senate. He embarked on a campaign, which included a series of debates against the incumbent senator, Stephen Douglas. Douglas maintained his seat, but the attention earned Lincoln national attention as momentum gathered to give him a chance at the presidency.

In 1860, he was elected the 16th president of the United States. During his tenure in office, Lincoln led the country through the Civil War. He delivered the Emancipation Proclamation in 1863 that freed the slaves. He also delivered the Gettysburg Address where he reminded the country that the Declaration of Independence maintained equality for all.

Lincoln led the country in Reconstruction, but he believed in a quick resolution to allow the southern states to return to the Union. He was assassinated before he could follow through with this plan.

His strong leadership, simple humor, speaking style, and political accomplishments have left a permanent legacy in American history.

Figure 4.1.5: President Franklin Delano Roosevelt

Franklin Delano Roosevelt

Franklin Delano Roosevelt (FDR), the 32nd American president, served four terms in office--that is 16 years! Eventually after his presidency, the 22ndamendment, which limited the presidential term limit to two terms, was ratified in 1951. Prior to this amendment, there was not a rule or regulation about seeking reelection. The previous presidents all simply followed Washington's and Adams's precedent of only running for two terms.

Roosevelt's popularity stemmed from his leadership through the Great Depression and World War II. He successfully steered the nation while expanding the federal government's powers. The social programs created through the New Deal produced a large presence of government in an average citizen's life. This relationship between government and citizen was forever changed.

The New Deal was implemented in order to restore hope to an out-of-work and down-on-its-luck American public. The governmental agencies such as Civilian Conservation Corps, Tennessee Valley Authority, and the Works Progress Administration, and many more created under the New Deal, restored hope and prosperity to the public. Some of these agencies are still in existence today.

Elected in 1932, Democratic president Franklin Delano Roosevelt (FDR) sought to implement a "New Deal" for Americans amid staggering unemployment. He argued that the national government could restore the economy more effectively than states or localities. He persuaded Congress to enact sweeping legislation. New Deal programs included boards that enforced wage and price guarantees, created programs to construct buildings and bridges, developed national parks, created artworks, and provided payments to farmers to reduce acreage of crops and stabilize prices.

The 1930s New Deal programs included commissioning photographers to document social conditions during the Great Depression. The resultant photographs are both invaluable historical documents and lasting works of art.

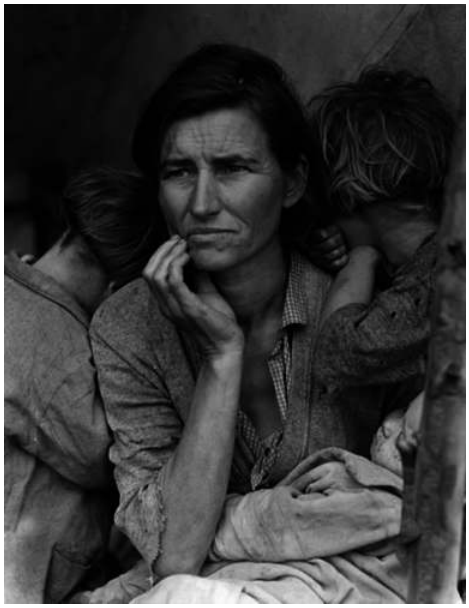

Figure 4.1.6

The New Deal and the End of Dual Federalism

By 1939, national government expenditures equaled state and local expenditures combined. FDR explained his programs to nationwide audiences by having "fireside chats" on the relatively young medium of radio.

His policies were highly popular, and he was reelected by a landslide in 1936. The Supreme Court, after rejecting several New Deal measures, eventually upheld national authority over such once-forbidden terrain as labor-management relations, minimum wages, and subsidies to farmers. The Court thereby sealed the fate of Dual Federalism.

Figure 4.1.7

Theodore Roosevelt

With the assassination of President McKinley in 1901, Theodore Roosevelt, almost 43, became the youngest President in the nation's history. He brought new excitement and power to the presidency, as he vigorously led Congress and the American public toward progressive reforms and a strong foreign policy.

He took the view that the President as a "steward of the people" should take whatever action necessary for the public good unless expressly forbidden by law or the Constitution." I did not usurp power," he wrote, "but I did greatly broaden the use of executive power."

Roosevelt's youth differed sharply from that of the log cabin Presidents. He was born in New York City in 1858 into a wealthy family, but he too struggled against ill health, and in his triumph became an advocate of the strenuous life.

During the Spanish-American War, Roosevelt was lieutenant colonel of the Rough Rider Regiment, which he led on a charge at the battle of San Juan. He was one of the most conspicuous heroes of the war.

Boss Tom Platt, needing a hero to draw attention away from scandals in New York State, accepted Roosevelt as the Republican candidate for Governor in 1898. Roosevelt won and served with distinction.

As President, Roosevelt held the ideal that the Government should be the great arbiter of the conflicting economic forces in the Nation, especially between capital and labor, guaranteeing justice to each and dispensing favors to none.

Roosevelt emerged spectacularly as a "trust buster" by forcing the dissolution of a great railroad combination in the Northwest. Other antitrust suits under the Sherman Act followed.

Roosevelt steered the United States more actively into world politics. He liked to quote a favorite proverb, "Speak softly and carry a big stick. . . . "

Aware of the strategic need for a shortcut between the Atlantic and Pacific, Roosevelt ensured the construction of the Panama Canal. His corollary to the Monroe Doctrine prevented the establishment of foreign bases in the Caribbean and arrogated the sole right of intervention in Latin America to the United States.

He won the Nobel Peace Prize for mediating the Russo-Japanese War, reached a Gentleman's Agreement on immigration with Japan, and sent the Great White Fleet on a goodwill tour of the world.

Some of Theodore Roosevelt's most effective achievements were in conservation. He added enormously to the national forests in the West, reserved lands for public use, and fostered great irrigation projects.

He crusaded endlessly on matters big and small, exciting audiences with his high-pitched voice, jutting jaw, and pounding fist. “The life of strenuous endeavor” was a must for those around him, as he romped with his five younger children and led ambassadors on hikes through Rock Creek Park in Washington, D.C.

Leaving the Presidency in 1909, Roosevelt went on an African safari, then jumped back into politics. In 1912 he ran for President on a Progressive ticket. To reporters he once remarked that he felt as fit as a bull moose, the name of his new party.

While campaigning in Milwaukee, he was shot in the chest by a fanatic. Roosevelt soon recovered, but his words at that time would have been applicable at the time of his death in 1919: “No man has had a happier life than I have led; a happier life in every way.”

Figure 4.1.8: President Ronald Reagan

Ronald Reagan

On February 6, 1911, Ronald Wilson Reagan was born to Nelle and John Reagan in Tampico, Illinois. He attended high school in nearby Dixon then worked his way through Eureka College. There, he studied economics and sociology, played on the football team, and acted in school plays. Upon graduation, he became a radio sports announcer. A screen test in 1937 won him a contract in Hollywood. During the next two decades, he appeared in 53 films.

As President of the Screen Actors Guild, Reagan became embroiled in disputes over the issue of Communism in the film industry; his political views shifted from liberal to conservative. He toured the country as a television host, becoming a spokesman for conservatism. In 1966 he was elected Governor of California by a margin of a million votes. He was re-elected in 1970.

Ronald Reagan won the Republican Presidential nomination in 1980 and chose as his running mate former Texas Congressman and United Nations Ambassador George Bush. Voters troubled by inflation and by the year-long confinement of Americans in Iran swept the Republican ticket into office. Reagan won 489 electoral votes to 49 for President Jimmy Carter.

Ronald Reagan became the 40th President of the United States serving America from 1981 to 1989. His term saw a restoration of prosperity at home, with the goal of achieving “peace through strength” abroad.

At the end of his two terms in office, Ronald Reagan viewed with satisfaction the achievements of his innovative program known as the Reagan Revolution, which aimed to reinvigorate the American people and reduce their reliance upon Government. He felt he had fulfilled his campaign pledge of 1980 to restore “the great, confident roar of American progress and growth and optimism.”

On January 20, 1981, Reagan took office. Only 69 days later he was shot by a would-be assassin, but quickly recovered and returned to duty. His grace and wit during the dangerous incident caused his popularity to soar.

Dealing skillfully with Congress, Reagan obtained legislation to stimulate economic growth, curb inflation, increase employment, and strengthen national defense. He embarked upon a course of cutting taxes and Government expenditures, refusing to deviate from it when the strengthening of defense forces led to a large deficit.

A renewal of national self-confidence by 1984 helped Reagan and Bush win a second term with an unprecedented number of electoral votes. Their victory turned away Democratic challengers Walter F. Mondale and Geraldine Ferraro.

In 1986 Reagan obtained an overhaul of the income tax code, which eliminated many deductions and exempted millions of people with low incomes. At the end of his administration, the Nation was enjoying its longest recorded period of peacetime prosperity without recession or depression.

In foreign policy, Reagan sought to achieve “peace through strength.” During his two terms he increased defense spending 35 percent, but sought to improve relations with the Soviet Union. In dramatic meetings with Soviet leader Mikhail Gorbachev, he negotiated a treaty that would eliminate intermediate-range nuclear missiles. Reagan declared war against international terrorism, sending American bombers against Libya after evidence came out that Libya was involved in an attack on American soldiers in a West Berlin nightclub.

By ordering naval escorts in the Persian Gulf, he maintained the free flow of oil during the Iran-Iraq war. In keeping with the Reagan Doctrine, he gave support to anti-Communist insurgencies in Central America, Asia, and Africa.

Overall, the Reagan years saw a restoration of prosperity, and the goal of peace through strength seemed to be within grasp.

Figure 4.1.9

Study/Discussion Questions

1. How did George Washington's actions as Founding Father, Framer, and First President establish his legacy in American history?

2. How was Thomas Jefferson so instrumental in crafting America's foreign policy? Give two examples.

3. Do you agree with Andrew Jackson's Indian Removal Act? What do you think this act showed about his character?

4. Abraham Lincoln delivered the Emancipation Proclamation Speech in 1863. How was this a turning point in the Civil War?

5. Explain FDR's New Deal. Include three strengths.

6. How did Theodore Roosevelt improve the Monroe Doctrine?

7. What effect did Ronald Reagan's military spending have on America? Defend your position.

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4.2: The Structure and Functions of the Legislative Branch

Figure 4.2.1: The Legislative branch of the government makes the laws for our nation.

As we previously learned when studying the Constitution, our government is divided into three distinct branches, with each addressed in their own section of the Constitution's first three Articles. Article I created Congress as the legislative, or lawmaking branch of the national government.

Figure 4.2.2: The United States Congress is a bicameral (two-chamber) lawmaking institution consisting of a House of Representatives with 435 members and a Senate with 100 members.

Bicameral Nature of Congress

Our Congress was created as a bicameral (or two-house) form of government with the House of Representatives intended to operate on behalf of the people themselves, through direct election and apportionment by population (with larger states receiving proportionally more representatives than smaller states) and the Senate being the body that was designed to represent and defend the interest of the states (through equal representation - two senators for each state and legislative selection of senators rather than direct election).

This bicameral structure was created as a form of compromise between smaller and larger states and was also designed to correct weaknesses that had existed when the United States was under the Articles of Confederation, which was a unicameral (or one-chamber) form of legislature.

When delegates arrived at the Constitutional Convention of 1787, they realized the failure of the unicameral structure of lawmaking under the Articles of Confederation and sought to copy the bicameral structure of the British Parliament but also wanted to strengthen the power of the elected lawmakers by making it the most powerful of the three branches.

The new plan also gave Congress the power to control *interstate commerce*, which is the exchange of goods and services between citizens that live in different states.

The new plan of bicameral legislation with the House representing the people through direct election and the Senate representing the states through appointment by state legislatures would remain until the 17th Amendment to the Constitution was passed in 1913. This amendment changed the selection of senators from one based on appointment or selection by state legislatures to one in which senators were directly elected by the people. This change occurred because of a series of scandalous elections in the late 1800s and early 1900s that made citizens resent senators who they perceived as being selected because they were friends or business associates of the legislators rather than because they were qualified.

William Jennings Bryan, a congressman from Nebraska, wanted to eliminate or reduce the power that special interest groups had in influencing state legislators as to the selection of senators that would be favorable to big business and special interest groups, so he convinced people to persuade Congress to pass the 17th Amendment, which would allow citizens to directly elect their senators just as they did the representatives.

The Structure of Congress

The Great Compromise of 1787 did more than create a two-chamber Congress. One obvious difference was the number of members. The House has more than four times more members than the Senate. The Senate consists of an equal number of senators per state (two) for a total of 100 (50 states x 2 senators per state = 100 senators). But the number of representatives apportioned to each state changes as the population of the United States changes, as determined by a census (or official count of people), which occurs every ten years. This is because representatives are apportioned on the basis of congressional districts, which represent roughly the same number of people in each. Every state must be given at least one representative (regardless of population) but after that, the number of representatives a state receives is based on its population. Since the Apportionment Act of 1911, also called "Public Law 62-5," there has been a constant number of representatives (435). Every ten years some states (like Texas) may see more representatives allotted to them as their population increases, but for every state that receives a new representative district, another state must lose one.

As of 2019, the most populous state, California, currently has 53 representatives. On the other end of the spectrum, there are seven states with only one representative each (Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont, and Wyoming). Texas currently has 36 representatives including Veronica Escobar, Democrat from El Paso. Escobar became the first Latina congresswoman to represent the 16th district in Texas. The total number of voting representatives is fixed by law at 435. In addition, there are six non-voting representatives who have a voice on the floor and a vote in committees, but no vote on the floor. These non-voting members represent Washington D.C. and the other territories of the United States that are not states, including Guam, Puerto Rico, and the U.S. Virgin Islands. In addition, these territories (and the District of Columbia) do not have any representation in the Senate, which only represents the states themselves.

Today, a congressional district consists of approximately 700,000 citizens (except, of course for those seven states whose population does not warrant more than one representative). The natural question, of course, would be "why not just add more representatives as the population of the country grows?" This was the concern of the Congressional members who passed the Apportionment Act in 1911. Their main concern was that there simply wasn't enough physical space to house so many representatives and they were also concerned that Congress would simply become too large to really accomplish anything, so they put a limit on the number of representatives at 435, which remains today.

In order to fairly distribute representatives to the states, a census is taken every ten years (with the last one being in 2010). They count the number of people living in the United States and also look at where these people live. They then readjust the boundaries of the congressional districts (which is usually a task left up to the individual state legislatures after each state is told how many representatives they will be allotted).

This becomes another problem, though, because the state legislators themselves decide how they will map the congressional districts they have been given; they often make decisions on the basis of partisan allegiances (based on party membership and voting patterns). The intentional shifting or drawing of congressional district lines with the intent of excluding members of a political party (or a racial/ethnic group) is known as *gerrymandering*. Below is a political cartoon, which was used to demonstrate the effect of gerrymandering in the 1800s. Since this cartoon was created, the technique of gerrymandering has come under great criticism and debate. This is particularly true of states in the South (including Texas) that have a history or racial or partisan gerrymandering. The Voting Rights Act of 1964 required pre-clearance of any new congressional district lines but since 2012, this pre-clearance requirement has not been enforced due to a series of Supreme Court decisions.

Figure 4.2.3: Printed in March 1812, this political cartoon was drawn in reaction to the newly drawn state senate election district of South Essex created by the Massachusetts legislature to favor the Democratic-Republican Party candidates of Governor Elbridge Gerry over the Federalists. The caricature satirizes the bizarre shape of a district in Essex County, Massachusetts, as a dragon-like "monster." Federalist newspaper editors and others at the time likened the district shape to a salamander, and the word gerrymander was a blend of that word and Governor Gerry's last name.

Since the House of Representatives is based on proportional representation and the Senate has only two members per state, a senator's *constituency* may be much more diverse than that of a representative. This is especially true of larger and more diverse states (such as California and Texas). A congressional district generally covers only a small part of the state (except for those six states with such small populations such as North Dakota and Wyoming that only have one representative in the House).

For example, El Paso's Representative, Veronica Escobar, would have a much less diverse constituency than Texas Senators Ted Cruz and John Cornyn. Texas has 36 diverse congressional districts while it only has two senators who must represent the interests of the entire state. So the intensely diverse and massively large population of Texas is represented by these two senators (who also are seen as highly conservative).

Why are the House and Senate So Different?

Have you ever noticed that major bills are often debated and voted on by the House in a single day, while the Senate's deliberations on the same bill take weeks? Again, this reflects the Founding Fathers' intent that the House and Senate not be carbon-copies of each other. By designing differences into the House and Senate, the Founders assured that all legislation would be carefully considered, taking both the short and long-term effects into account.

Why are the Differences Important?

The Founders intended that the House be seen as more closely representing the will of the people than the Senate.

To this end, they provided that members of the House - U.S. Representatives - be elected by and represent limited groups of citizens living in small geographically defined districts within each state. Senators, on the other hand, are elected by and represent all voters of their state. When the House considers a bill, individual members tend to base their votes primarily on how the bill might impact the people of their local district, while Senators tend to consider how the bill would impact the nation as a whole. This is just as the Founders intended.

All members of the House are up for election every two years. In effect, they are always running for election. This ensures that members will maintain close personal contact with their local constituents, thus remaining constantly aware of their opinions and needs, and better able to act as their advocates in Washington. Elected for six-year terms, Senators remain somewhat more insulated from the people, thus less likely to be tempted to vote according to the short-term passions of public opinion.

By setting the constitutionally-required minimum age for Senators at 30, as opposed to 25 for members of the House, the Founders hoped Senators would be more likely to consider the long-term effects of legislation and practice a more mature, thoughtful and deeply deliberative approach in their deliberations. Setting aside the validity of this "maturity" factor, the Senate undeniably does take longer to consider bills, often brings up points not considered by the House and just as often votes down bills passed easily by the House.

A famous (though perhaps fictional) simile often quoted to point out the differences between the House and Senate involves an argument between George Washington, who favored having two chambers of Congress and Thomas Jefferson, who believed a second chamber to be unnecessary. The story goes that the two Founders were arguing the issue while drinking coffee. Suddenly,

Washington asked Jefferson, "Why did you pour that coffee into your saucer?" "To cool it," replied Jefferson. "Even so," said Washington, "we pour legislation into the senatorial saucer to cool it."

The Senate as a Check on the House

As a check on the popularly elected House, the Senate has several distinct powers. For example, the "advice and consent" powers are a sole Senate privilege. The House, however, can initiate spending bills and has exclusive authority to impeach officials and choose the President in an Electoral College deadlock. The Senate and House are further differentiated by term lengths and the number of districts represented. Unlike the Senate, moreover, the House is more hierarchically organized. Moreover, the procedure of the House depends not only on the rules, but also on a variety of customs, precedents, and traditions. In many cases, the House waives some of its stricter rules (including time limits on debates) by unanimous consent. With longer terms, fewer members and (in all but seven delegations) larger constituencies, senators may receive greater prestige. The Senate has traditionally been considered a less partisan chamber because it's relatively small membership might have a better chance to broker compromises.

COMPARING THE STRUCTURE OF THE HOUSE AND THE SENATE

HOUSE OF REPRESENTATIVES	SENATE
• Represents the people equally based on population. • District seats (435) are apportioned according to population based on national census • Closer to the people • Constitutional: Elected by the people • Two-year terms constantly running for re-election • Reflects popular passions and specific ideologies and concerns of constituents living in the congressional district of each representative.	• Represents the states equally • Each state has two senators regardless of population. • Senators are somewhat removed of the people and represent the needs of a much more diverse population (the entire state). • Constitutionally: Appointed by state legislatures to represent the interests of the state. • Seventeenth Amendment: Provided for direct election of senators (just as in the House). • Six-year staggered terms • More deliberate in the issues they debate and in their styles of representation.

Figure 4.2.4: At the 1787 Constitutional Convention, members drafted Article I which created the Legislative Branch.

Article I: Establishes Congress (Legislative Branch of Government)

Congress is addressed in Article I of the U.S. Constitution. The Constitutional provisions of Article I are as follows:

Article I, Section 1:

All Legislative Powers are Vested in Congress:

Requires that Congress be bicameral, that is, it should be divided into two houses, the Senate and the House of Representatives. At the time the constitution was adopted, several states and the Continental Congress had only one lawmaking body. The creation of two legislative bodies reflected a compromise between the power of the states and the power of the people. The number of seats in the House of Representatives is based on population. The larger more urban states have more representatives than the more rural, less-populated states. But the Senate gives power to the states equally, with two senators from each state. To become law, any proposed legislation must be passed by both the House and the Senate and be approved (or at least not vetoed) by the president.

Article I, Section 2:

Composition and Rules for House:

Specifies that the House of Representatives be composed of members who are chosen every two years by the people of the states. There are only three qualifications: a representative must be at least 25 years old, have been a citizen of the United States for at least seven years, and must live in the state from which he or she is chosen. Efforts in Congress and the states to add requirements for office, such as durational residency rules or loyalty oaths, have been rejected by Congress and the courts.

In 1966, the U.S. Supreme Court used the language, "chosen ... by the people of the several States" in Article I, Section 2, to recognize a federal right to vote in congressional elections. That right, along with the equal protection clause of the 14th Amendment, was later used by the U.S. Supreme Court to require that each congressional district contain roughly the same number of people, ensuring that one person's vote in a congressional election would be worth as much as another's.

Article I, Section 2, also creates the way in which congressional districts are to be divided among the states. A difficult and critical sticking point at the Constitutional Convention was how to count a state's population. Particularly controversial was how to count slaves for the purposes of representation and taxation. If slaves were considered property, they would not be counted at all. If they were considered people, they would be counted fully —just as women, children, and other non-voters were counted. Southern slave-owners viewed slaves as property, but they wanted them to be fully counted in order to increase their political power in Congress. After extended debate, the framers agreed to the three-fifths compromise — each slave would equal three-fifths of a person in a state's population count. (Note: The framers did not use the word slave in the document.) After the Civil War, the formula was changed with the passage of the 13th Amendment, which abolished slavery, and Section 2 of the 14th Amendment, which repealed the three-fifths rule.

This section also establishes that every 10 years, every adult in the country must answer a survey instrument known as a census — a monumental task when people move as often as they do and when some people have no homes at all. Based on the surveys, Congress must determine how many representatives (at least one required) are to come from each state and how federal resources are to be distributed among the states. The Constitution set the number of House members from each of the original 13 states that were used until the first census was completed.

In 1929 Congress limited the House of Representatives to 435 members and established a formula to determine how many districts would be in each state. For example, after the 2000 census, Southern and Western states, including Texas, Florida, and California, gained population and thus added representatives while Northern states, such as Pennsylvania, lost several members.

Congress left it to state legislatures to draw district lines. As a result, at the time of a census, the political party in power in a state legislature is able to define new districts that favor its candidates, affecting who can win elections for the House of Representatives in the following decade. This process — redrawing district lines to favor a particular party — is often referred to as gerrymandering.

Article I, Section 2, also specifies other operating rules for the House of Representatives. When a House member dies or resigns during the term, the governor of that state may call for a special election to fill the vacancy. The House of Representatives chooses its own speaker, who is in line to become president if neither the president nor the vice president is able to serve.

Authorized to instigate impeachment proceedings against President.

Lastly, this section specifies that only the House of Representatives holds the power of impeachment. House members may charge a president, vice president or any civil officer of the United States with "Treason, Bribery or other high Crimes and Misdemeanors."(See Article II, Section 4.) A trial on the charges is then held in the Senate.

That happened during President Clinton's term. The House of Representatives investigated the president and brought charges against him. House members acted as prosecutors during an impeachment trial in the Senate. (See Article 1, Section 3.) Clinton was not convicted of the charges and he completed his second term as president.

Article I Section 3:

The Senate

Composition and Rules for Senate:

The Senate, which now has 100 members, has two senators from each state. Until 1913, senators were elected by their state legislatures. But since the adoption of Amendment XVII, senators have been elected directly by the voters of their states. To be a senator, a person must be more than 30 years old, must have been an American citizen for at least nine years, and must live in the state he or she represents. Senators may serve for an unlimited number of six-year terms.

Senatorial elections are held on a staggered basis so that one-third of the Senate is elected every two years. If a senator leaves office before the end of his or her term, Amendment XVII provides that the governor of his or her state sets the time for an election to replace that person. The state legislature may authorize the governor to temporarily fill the vacant seat.

U.S. Vice President is President of Senate and votes to break ties

The vice president of the United States is also the president of the Senate. He or she normally has no vote, but may vote in a tiebreaker if the Senate is divided on a proposed bill or nomination. The Senate also chooses officers to lead them through their work. One is the president pro tempore (president for a time), who presides over the Senate when the vice president is not available and, as is the Speaker of the House, is in the line of succession should the president or the vice president be unable to serve.

Sole power to adjudicate impeachment of President in hearing presided over by Chief Justice of Supreme Court.

Although the House of Representatives brings charges of impeachment to remove a president, vice president or another civil officer such as a federal judge, it is the Senate that is responsible for conducting the trial and deciding whether the individual is to be removed from office. The chief justice of the U.S. Supreme Court presides over the impeachment trial of a president. The Senators act as the jury and two-thirds of those present must vote for removal from office. Once an official is removed, he or she may still be prosecuted criminally or sued, just like any other citizen

Article I, Section 4:

Congressional Elections

Gives state legislatures the task of determining how congressional elections are to be held. For example, the state legislature determines the scheduling of an election, how voters may register and where they may cast their ballots.

Congress has the right to change state rules and provide national protection for the right to vote. The first federal elections law, which included prohibitions on false registration, bribery and reporting false election returns, was passed after the Civil War to enforce the ban on racial discrimination in voting established by Amendment XV. With the passage of the Civil Rights Acts of 1957 and 1964 and the Voting Rights Act of 1965, Congress extended the protection of the right to vote in federal, state and local elections.

As a general rule, Congress determines how frequently it will meet. The Constitution provides only that it meets at least once a year. Amendment XX, Section 2, now provides that the first meeting of Congress begin at noon on Jan. 3 of each year, unless the members specify differently.

Article I Section 5:

Congressional Checks on Behavior of Members

The House of Representatives and the Senate are each in charge of deciding whether an election of one of their members is legitimate. They may call witnesses to help them decide. Similarly, the House and Senate may establish their own rules, punish members for disorderly behavior and, if two-thirds agree, expel a member.

To do business, each chamber needs a quorum, which is a majority of members present. A full majority need not vote but must be present and capable of voting.

Both bodies must keep and publish a journal of their proceedings, including how members voted. Congress may decide that some discussions and votes are to be kept secret, but if one-fifth of the members demand that a vote be recorded, it must be. Neither the House nor the Senate may close down or move proceedings from their usual location for more than three days without the other chamber's consent.

Article I Section 6:

Restrictions Against Self-dealing by Members of Congress

Members of Congress are to be paid for their work from the U.S. Treasury. Amendment XXVII prohibits members from raising their salaries in the current session, so congressional votes on pay increases do not take effect until the next session of Congress.

Article I, Section 6, also protects legislators from arrests in civil lawsuits while they are in session, but they may be arrested in criminal matters. To prevent prosecutors and others from using the courts to intimidate a legislator because they do not like his or her views, legislators are granted immunity from criminal prosecution and civil lawsuits for the things they say and the work they do as legislators.

To ensure the separation of powers among the legislative, judicial and executive branches of government, Article I, Section 6, prohibits a senator or representative from holding any other federal office during his or her service in Congress.

Article I Section 7:

Revenue, Presidential Veto and Congressional Overrides

Revenue bills must originate in House

The House of Representatives must begin the process when it comes to raising and spending money. It is the chamber where all taxing and spending bills start. The Senate can offer changes and must ultimately approve the bills before they go to the president, but only the House may introduce a bill that involves taxes.

Presidential veto power over Congress

When proposed laws are approved by both the House and Senate, they go to the president. If the president signs the bill, it becomes law at the time of the signature, unless the bill provides for a different start date. If the president does nothing for 10 days, not

including Sundays, the bill automatically becomes law, except in the last 10 days of the legislative term. In that time, the president can use a "pocket veto"; by doing nothing, the legislation is automatically vetoed.

If the president does not like the legislation, he or she can veto the bill, list objections, and send it back for reconsideration by the chamber where it originated. If the president vetoes a bill, the bill must be passed again with the votes of two-thirds of the House and the Senate for it to become law.

Override of Presidential veto requires 2/3 majority vote in both Houses.

Congress also may change the bill to make it more acceptable to the president. Although, for political reasons, presidents are cautious about vetoing legislation, the threat of a veto will often press members of Congress to work out a compromise. Similarly, if Congress has the ability to override a veto, it is likely the president will make every effort to compromise on the issue.

Article I Section 8:

Enumerated Powers

Specifies the powers of Congress in great detail. These powers are limited to those listed and those that are "necessary and proper" to carry them out. All other lawmaking powers are left to the states. The First Congress, concerned that the limited nature of the federal government was not clear enough in the original Constitution, later adopted Amendment X, which reserves to the states or to the people all the powers not specifically granted to the federal government.

Tax Power:

The most important of the specific powers that the Constitution enumerates is the power to set taxes, tariffs and other means of raising federal revenue, and to authorize the expenditure of all federal funds. In addition to the tax powers in Article I, Amendment XVI authorized Congress to establish a national income tax. The power to appropriate federal funds is known as the "power of the purse." It gives Congress great authority over the executive branch, which must appeal to Congress for all of its funding. The federal government borrows money by issuing bonds. This creates a national debt, which the United States is obligated to repay.

Commerce Clause:

Since the turn of the 20th century, federal legislation has dealt with many matters that had previously been managed by the states. In passing these laws, Congress often relies on power granted by the commerce clause, which allows Congress to regulate business activities "among the states."

The commerce clause gives Congress broad power to regulate many aspects of our economy and to pass environmental or consumer protections because so much of business today, either in manufacturing or distribution, cross state lines. But the commerce clause powers are not unlimited.

Necessary and Proper Clause:

In recent years, the U.S. Supreme Court has expressed greater concern for states' rights. It has issued a series of rulings that limit the power of Congress to pass legislation under the commerce clause or other powers contained in Article I, Section 8. For example, these rulings have found unconstitutional federal laws aimed at protecting battered women or protecting schools from gun violence on the grounds that these types of police matters are properly managed by the states.

In addition, Congress has the power to coin money, create the postal service, maintain the army or navy, lower federal courts, and to declare war. Congress also has the responsibility of determining naturalization, how immigrants become citizens. Such laws must apply uniformly and cannot be modified by the states.

Article I Section 9:

Restrictions on Legislative Power

Specifically prohibits Congress from legislating in certain areas. In the first clause, the Constitution bars Congress from banning the importation of slaves before 1808. This, of course, became an unenforceable clause after the 13th Amendment ended slavery following the Civil War.

In the second and third clauses, the Constitution specifically guarantees rights to those accused of crimes. It provides that the privilege of a writ of habeas corpus, which allows a prisoner to challenge his or her imprisonment in court, cannot be suspended

except in extreme circumstances such as rebellion or invasion, where the public is in danger. Suspension of the writ of habeas corpus has occurred only a few times in history. For example, President Lincoln suspended the writ during the Civil War. In 1871, it was suspended in nine counties in South Carolina to combat the Ku Klux Klan.

Similarly, the Constitution specifically prohibits bills of attainder — laws that are directed against a specific person or group of persons, making them automatically guilty of serious crimes, such as treason, without a normal court proceeding. The ban is intended to prevent Congress from bypassing the courts and denying criminal defendants the protections guaranteed by other parts of the Constitution.

In addition, the Constitution prohibits “ex post facto” laws — criminal laws that make an action illegal after someone has already taken it. This protection guarantees that individuals are warned ahead of time that their actions are illegal.

The provision in the fourth clause prohibiting states from imposing direct taxes was changed by Amendment XVI, which gives Congress the power to impose a federal income tax. To ensure equality among the states, the Constitution prohibits states from imposing taxes on goods coming into their state from another state and from favoring the ports of one state over the ports of others.

Article I, Section 9, also requires that Congress produce a regular accounting of the monies the federal government spends. Rejecting the monarchy of England, the Constitution also specifically prohibits Congress from granting a title of nobility to any person and prohibits public officials from accepting a title of nobility, office, or gift from any foreign country or monarch without congressional approval.

Article I Section 10:

Restrictions on State Power

Limits the power of the states. States may not enter into a treaty with a foreign nation; that power is given to the president, with the advice and consent of two-thirds of the Senate present. States cannot make their own money, nor can they grant any title of nobility.

As is Congress, states are prohibited from passing laws that assign guilt to a specific person or group without court proceedings (bills of attainder), that make something illegal retroactively(ex post facto laws) or that interfere with legal contracts.

No state, without approval from Congress, may collect taxes on imports or exports, build an army or keep warships in times of peace, or otherwise engage in war unless invaded or in imminent danger.

The Role of Committees in the Legislative Process

Committees are an essential part of the legislative process. Senate committees monitor on-going governmental operations, identify issues suitable for legislative review, gather and evaluate information, and recommend courses of action to the Senate.

Figure 4.2.5: Committee for Foreign Relations-2016

During each two-year Congress, thousands of bills and resolutions are referred to Senate committees. To manage the volume and complexity, the Senate divides its work between standing committees, special or select committees, and joint committees. These

committees are further divided into subcommittees. Of all the measures sent to committees, only a small percentage are considered. By considering and reporting on a bill, committees help to set the Senate's agenda.

HOUSE COMMITTEES	SENATE COMMITTEES
Agriculture	Agriculture, Nutrition, and Forestry
Appropriations	Appropriations
Armed Services	Armed Services
Banking and Financial Service	Banking, Housing, and Urban Affairs
Budget	Budget
Commerce	Commerce, Science, and Transportation
Education and the Workforce	Energy and Natural Resources
Government Reform	Environment and Public Works
House Administration	Finance
International Relations	Foreign Relations
Judiciary	Governmental Affairs

When a committee or subcommittee decides to consider a measure, it usually takes four actions.

1. The committee requests written comments from relevant executive agencies.
2. Hearings are held to gather additional information and views from non-committee experts.
3. The committee works to perfect the measure by amending the bill or resolution.
4. Once the language is agreed upon, the committee sends the measure back to the full Senate. Often it also provides a report that describes the purpose of the measure.

The Process for Enacting Laws

Figure 4.2.6: How Laws are Enacted

Figure 4.2.7

Study/Discussion Questions

1. Why did the Founding Fathers choose a bicameral legislative system rather than a more traditional and widely used system such as the unicameral system it had under the Articles of Confederation?

2. What are some of the major differences between the way members of the House of Representatives were originally selected vs. that of the Senate?
3. How did the 17th Amendment change the way members of the Senate were selected?
4. What impact did this have on the type of representation a Senator must provide his/her constituents?
5. How are territories such as the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands represented in the House? What type of representation do they have in the Senate? Explain your answer.
6. What is Gerrymandering and why is it commonly used?
7. What provisions did laws such as the Voting Rights Act of 1964 provide for states that had the reputation of gerrymandering? How did this change after 2012?
8. How should senators accommodate the diverse population they represent in a state like Texas or California?

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4.3: The Structure and Functions of the Executive Branch

Figure 4.3.1: The Seal of the United States President is a visual symbol of the power and influence this office has over the operation of the United States Government.

The president of the United States of America, a title that automatically brings respect and recognition across the nation and the world. Only 45 men have held this office in the history of our country. The president is the head of state and head of government that is indirectly elected to a four-year term by the people through the Electoral College. The president heads the executive branch of the federal government and is the commander-in-chief of the United States Armed Forces.

The Presidency: Power and Limitations

On May 21, 2009, President Obama gave a speech explaining and justifying his decision to close the Guantánamo Bay detention center (prison). The facility had been established in 2002 by the Bush administration to hold detainees from the war in Afghanistan and later Iraq. President Obama spoke at the National Archives, in front of portraits of the founding fathers, pages of the Constitution open at his side. He thereby identified himself and his decision with the founding fathers, the treasured Constitution, and the rule of law.

Figure 4.3.2: Presidents can connect their policy proposals to revered American forebears and documents, but this does not guarantee success.

Yet, years later, the prison remained open. The president had failed to offer a practical alternative or present one to Congress. Lawmakers had proved unwilling to approve funds to close it. The Republican National Committee had conducted a television

advertising campaign implying that terrorists were going to be dumped onto the U.S. mainland, presenting a major terrorist threat.

The Powers of the Presidency

The presidency is seen as the heart of the political system. It is personalized in the president as an advocate of the national interest, chief agenda-setter, and chief legislator. [1] Scholars evaluate presidents according to such abilities as “public communication,” “organizational capacity,” “political skill,” “policy vision,” and “cognitive skill.” [2] The media, too, personalize the office and push the ideal of the bold, decisive, active, public-minded president who altruistically governs the country. [3]

Two big summer movie hits, *Independence Day* (1996) and *Air Force One*(1997) are typical: ex-soldier presidents use physical rather than legal powers against (respectively) aliens and Russian terrorists. The president’s tie comes off and heroism comes out, aided by fighter planes and machine guns. The television hit series *The West Wing* recycled, with a bit more realism, the image of a patriarchal president boldly putting principle ahead of expedience. [4]

Figure 4.3.3: Whether swaggering protagonists of hit movies Independence Day and Air Force One in the 1990s or more down-to-earth heroes of the hit television series The West Wing, presidents are commonly portrayed in the media as bold, decisive, and principled.

Enduring Image: Mount Rushmore

Carved into the granite rock of South Dakota's Mount Rushmore, 7,000 feet above sea level, are the faces of Presidents George Washington, Thomas Jefferson, Abraham Lincoln, and Theodore Roosevelt. Sculpted between 1927 and 1941, this awe-inspiring monument achieved even greater worldwide celebrity as the setting for the hero and heroine to overcome the bad guys at the climax of Alfred Hitchcock's classic and ever-popular film *North by Northwest* (1959).

This national monument did not start out devoted to American presidents. It was initially proposed to acknowledge regional heroes: General Custer, Buffalo Bill, the explorers Lewis and Clark. The sculptor, Gutzon Borglum, successfully argued that "a nation's memorial should…have a serenity, a nobility, a power that reflects the gods who inspired them and suggests the gods they have become." [7]

The Mount Rushmore monument is an enduring image of the American presidency by celebrating the greatness of four American presidents. The successors to Washington, Jefferson, Lincoln, and Roosevelt do their part by trying to associate themselves with the office's magnificence and project an image of consensus rather than conflict, sometimes by giving speeches at the monument itself. A George W. Bush event placed the presidential podium at such an angle that the television camera could not help but put the incumbent in the same frame as his glorious predecessors.

Figure 4.3.4: George W. Bush Speaking in Front of Mt. Rushmore

The enduring image of Mount Rushmore highlights and exaggerates the importance of presidents as the decision makers in the American political system. It elevates the president over the presidency, the occupant over the office. All depends on the greatness of the individual president—which means that the enduring image often contrasts the divinity of past presidents against the fallibility of the current incumbent.

News depictions of the White House also focus on the person of the president. They portray a "single executive image" with visibility no other political participant can boast. Presidents usually get positive coverage during crises, foreign or domestic. The news media depict them speaking for and symbolically embodying the nation: giving a State of the Union address, welcoming foreign leaders, traveling abroad, representing the United States at an international conference. Ceremonial events produce laudatory coverage even during intense political controversy.

The Presidency in the Constitution

Article II of the Constitution outlines the office of president. Specific powers are few; almost all are exercised in conjunction with other branches of the federal government.

Constitutional Powers of the President

Article I, Section 7, Paragraph 2	Veto
	Pocket veto
Article II, Section 1, Paragraph 1	"The Executive Power shall be vested in a President…"
Article II, Section 1, Paragraph 7	Specific presidential oath of office stated explicitly (as is not the case with other offices)
Article II, Section 2, Paragraph 1	Commander in chief of armed forces and state militias
Article II, Section 2, Paragraph 1	Can require opinions of departmental secretaries
Article II, Section 2, Paragraph 1	Reprieves and pardons for offenses against the United States
Article II, Section 2, Paragraph 2	Make treaties
	appoint ambassadors, executive officers, judges
Article II, Section 2, Paragraph 3	Recess appointments
Article II, Section 3	State of the Union message and recommendation of legislative measures to Congress
	Convene special sessions of Congress
	Receive ambassadors and other ministers
	"He shall take Care that the Laws be faithfully executed"

Presidents exercise only one power that cannot be limited by other branches: the pardon. So controversial decisions like President Gerald Ford's pardon of his predecessor Richard Nixon for "crimes he committed or may have committed" or President Jimmy Carter's blanket amnesty to all who avoided the draft during the Vietnam War could not have been overturned.

Presidents have more powers and responsibilities in foreign and defense policy than in domestic affairs. They are the commanders in chief of the armed forces; they decide how (and increasingly when) to wage war. Presidents have the power to make treaties to be approved by the Senate; the president is America's chief diplomat. As head of state, the president speaks for the nation to other world leaders and receives ambassadors.

Read the entire Constitution at;

http://www.archives.gov/exhibits/charters/constitution_transcript.html.

The Constitution directs presidents to be part of the legislative process. In the annual State of the Union address, presidents point out problems and recommend legislation to Congress. Presidents can convene special sessions of Congress, possibly to "jump-

start" discussion of their proposals. Presidents can veto a bill passed by Congress, returning it with written objections. Congress can then override the veto. Finally, the Constitution instructs presidents to oversee the executive branch. Along with naming judges, presidents appoint ambassadors and executive officers. These appointments require Senate confirmation. If Congress is not in session, presidents can make temporary appointments known as recess appointments without Senate confirmation, good until the end of the next session of Congress.

The Constitution's phrase *"he shall take Care that the Laws be faithfully executed"* gives the president the job to oversee the implementation of laws. Thus presidents are empowered to issue executive orders to interpret and carry out legislation. They supervise other officers of the executive branch and can require them to justify their actions.

Executive Powers

The president has the power to manage national affairs and oversee the day-to-day operations of the federal government. In addition, the president has the constitutional power to issue rules, regulations and instructions called executive orders that have the binding force of law on federal agencies but do not require approval from Congress. The president also prepares the United States budget and submits it to Congress for approval.

Military Powers

The president serves as commander in chief of the United States armed forces and can call into service (federalize) National Guard in time of war or national emergency.

The president may exercise broad powers to manage the national economy and security of the United States (with oversight and approval of Congress).

Lastly, the president may send troops to other countries for hostile reasons but must get congressional confirmation within 48 hours and seek congressional approval beyond 60 days.

Legislative Powers

The president has several options when presented a bill from Congress.

- May sign a bill into law or allow to become legislation if not signed within ten days of submission
- May veto a bill and return to Congress with a "veto message"
- May "pocket veto" legislation if Congress adjourns within ten days of sending the bill to the President.
- May issue "signing statements" which express his opinion on the constitutionality of a bill's provisions if he feels they intrude on his executive power.

As the leader of his political party, the president holds a great deal of influence over public opinion and may influence legislation through public messages and use of the media.

Appointment Powers

Before taking office, the president-elect appoints more than 6,000 new federal positions. These include top officials at U.S. government agencies, White House Staff and members of the U.S. diplomatic corps. Most of these appointments require confirmation by the Senate.

The president nominates federal judges, including members of the United States Courts of Appeals and the U.S. Supreme Court with advice and consent (confirmation) from Congress. This gives the president the power to exert a lasting influence on the judiciary through his appointment power because appointments are for life.

The president nominates individuals for any vacant position in federal departments or agencies (as listed in the "Plum Book" which contains more than 7,000 governmental positions which must be appointed. In addition, the president appoints his staff of aides, advisers, and assistants (which are not subject to Senate confirmation requirements).

Executive Clemency

The president has the power to pardon or commutate people convicted of federal crimes except for individuals who have been impeached and removed from office (must have been impeached by the House and removed following conviction in Senate).

Foreign Affairs

The president conducts and coordinates relations with foreign nations and appoints ambassadors, ministers, and consuls subject to confirmation from the Senate. Additionally, the president has the power to receive and recognize foreign ambassadors and other public officials. Along with the Secretary of State, the President manages all official contacts with foreign governments.

Through the Department of State and the Department of Defense, the president is responsible for the protection of Americans abroad and of foreign nationals in the United States. The president decides whether to recognize new nations and new governments, and negotiate treaties with other nations, which become binding on the United States when approved by two-thirds of the Senate. The president may also negotiate "executive agreements" with foreign powers that are not subject to Senate confirmation.

Emergency Powers

The president has implied (but not express) powers in times of national emergency.

Some Presidents (Abraham Lincoln and George W. Bush) asserted an implied power to temporarily suspend habeas corpus (the ability to be brought before a judge) in times of national emergency such as the Civil War and the aftermath of the September 11, 2001 attacks.

President Franklin Delano Roosevelt similarly invoked emergency powers when he issued an order directing that all Japanese Americans residing on the West Coast be placed into internment camps during World War II. The U.S. Supreme Court upheld this order in Korematsu v. United States. 323 U.S. 214 (1944).

Harry Truman declared the use of emergency powers when he seized private steel mills that failed to produce steel because of a labor strike in 1952. With the Korean War ongoing, Truman asserted that he could not wage war successfully if the economy failed to provide him with the material resources necessary to keep the troops well-equipped. This action was later overturned by the Supreme Court.

Executive Privilege

Since the administration of George Washington, presidents have asserted ***executive privilege*** which gives the president the ability to withhold information from the public, Congress, and the courts in matters of national security. George Washington first claimed privilege when Congress requested to see Chief Justice John Jay's notes from an unpopular treaty negotiation with Great Britain. This power is NOT included in the Constitution but has been recognized since Washington's tenure in office. Eventually, the assertion of executive privilege was limited by the case of the United States v. Nixon in which Richard Nixon was ordered to hand over tapes recorded in the Oval Office and eventually resigned rather than have the tapes played in open sessions of Congress. Bill Clinton also asserted executive privilege when investigated in the Monica Lewinsky case. The Supreme Court has also stated that executive privilege may not be used to avoid prosecution or some suits in civil court.

Powers Of Persuasion - "The Bully Pulpit"

The fact that the president serves as chief executive and as the recognized head of state for the United States gives him/her a great deal of persuasive power. But presidents have used a variety of methods to persuade the public and influencing the passage of legislation that they wish to see become law.

According to the Constitution, the president must give a yearly speech before a joint session of Congress. This is called the "State of the Union Speech" and is one of the most important forums for the delivery of presidential legislative agendas and "wish lists" to Congress. But of course, this agenda is not binding on Congress and only a small portion of the president's agenda will ever become law.

Another important persuasive power available to the president is the use of the office and its trappings. For instance, the president has the use of the ***"bully pulpit"*** meaning he/she can call the media together to deliver messages through press conferences or through direct addresses to the American People. Another example of the use of presidential trappings is the impact of Air Force One. When this flying presidential office rolls onto the tarmac of an airfield the president will often choose to make announcements or conduct press conferences with Air Force One in the background simply because of its impressive impact on the validity of what the president has to say.

Lastly, when the president is having difficulty getting a piece of legislation through Congress, he/she will choose to make a series of phone calls directly to those legislators who he sees as possible stalling his agenda. If that strategy doesn't impact the vote on his/her chosen legislation, the president may choose to *"go public"* to deliver a message directly to the people in order to activate the public to contact their representatives in Congress to vote in a certain way on a piece of legislation that is important to the president.

Congressional Limitations on Presidential Powers

Almost all presidential powers rely on what Congress does (or does not do). Presidential executive orders implement the law, but Congress can overrule such orders by changing the law. And many presidential powers are delegated powers that Congress has accorded presidents to exercise on its behalf—and that it can cut back or rescind.

Congress can challenge presidential powers single-handedly. One way is to amend the Constitution. The 22nd Amendment was enacted in the wake of the only president to serve more than two terms, the powerful Franklin D. Roosevelt (FDR). Presidents now may serve no more than two terms. The last presidents to serve eight years, Ronald Reagan, Bill Clinton, and George W. Bush, quickly became "lame ducks" after their reelection and lost momentum toward the ends of their second terms, when attention switched to contests over their successors.

Impeachment gives Congress "sole power" to remove presidents (among others) from office. [10] It works in two stages. The House decides whether or not to accuse the president of wrongdoing. If a simple majority in the House votes to impeach the president, the Senate acts as the jury, House members are prosecutors, and the chief justice presides. A two-thirds vote by the Senate is necessary for conviction, the punishment for which is removal and disqualification from office.

Prior to the 1970s, presidential impeachment was deemed the founders' "rusted blunderbuss that will probably never be taken in hand again." [11] Only one president (Andrew Johnson in 1868) had been impeached—over policy disagreements with Congress on the Reconstruction of the South after the Civil War. Johnson avoided removal by a single senator's vote.

Presidential Impeachment

Read about the impeachment trial of President Johnson at;

http://www.senate.gov/artandhistory/history/minute/The_Senate_Votes_on_a_Presidential_Impeachment.htm.

Read about the impeachment trial of President Clinton at;

www.lib.auburn.edu/madd/docs/impeach.html.

Since the 1970s, the conflict between Congress and the president has escalated. A bipartisan majority of the House Judiciary Committee recommended the impeachment of President Nixon in 1974. Nixon surely would have been impeached and convicted had he not resigned first. President Clinton was impeached by the House in 1998, though acquitted by the Senate in 1999, for perjury and obstruction of justice in the Monica Lewinsky scandal.

Figure 4.3.5: Bill Clinton was only the second US president to be impeached for "high crimes and misdemeanors" and stand trial in the Senate. Not surprisingly, in this day of huge media attention to court proceedings, the presidential impeachment trial was covered live by television and became endless fodder for twenty-four-hour-news channels. Chief Justice William Rehnquist presided over the trial. The House "managers" (i.e., prosecutors) of the case are on the left, the president's lawyers on the right.

Much of the public finds impeachment a standard part of the political system. For example, a June 2005 Zogby poll found that 42 percent of the public agreed with the statement "If President Bush did not tell the truth about his reasons for going to war with Iraq, Congress should consider holding him accountable through impeachment." [12]

Impeachment can be a threat to presidents who chafe at congressional opposition or restrictions. All three impeached presidents had been accused by members of Congress of abuse of power well before allegations of law-breaking. Impeachment is handy because it refers only vaguely to official misconduct: “treason, bribery, or other high crimes and misdemeanors.”

From Congress’s perspective, impeachment can work. Nixon resigned because he knew he would be removed from office. Even presidential acquittals help Congress out. Impeachment forced Johnson to pledge good behavior and thus “succeeded in its primary goal: to safeguard Reconstruction from presidential obstruction.” [13] Clinton had to go out of his way to assuage congressional Democrats, who had been far from content with several of his initiatives; by the time the impeachment trial was concluded, the president was an all-but-lame duck.

Presidential Power

Most American presidents claim inherent powers not explicitly stated but that are intrinsic to the office or implied by the language of the Constitution. They rely on three key phrases. First, in contrast to Article I’s detailed powers of Congress, Article II states that **“**The Executive Power shall be vested in a President.” Second, the presidential oath of office is spelled out, implying a special guardianship of the Constitution. Third, the job of ensuring that “the Laws be faithfully executed” can denote a duty to protect the country and political system.

Ultimately, the Supreme Court can and does rule on whether presidents have inherent powers. Its rulings have both expanded and limited presidential power. For instance, the justices concluded in 1936 that the president, the embodiment of the United States outside its borders, can act on its behalf in foreign policy.

But the court usually looks to congressional action (or inaction) to define when a president can invoke inherent powers. In 1952, President Harry Truman claimed inherent emergency powers during the Korean War. Facing a steel strike he said would interrupt defense production, Truman ordered his secretary of commerce to seize the major steel mills and keep production going. The Supreme Court rejected this move: “the President’s power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.”[14]

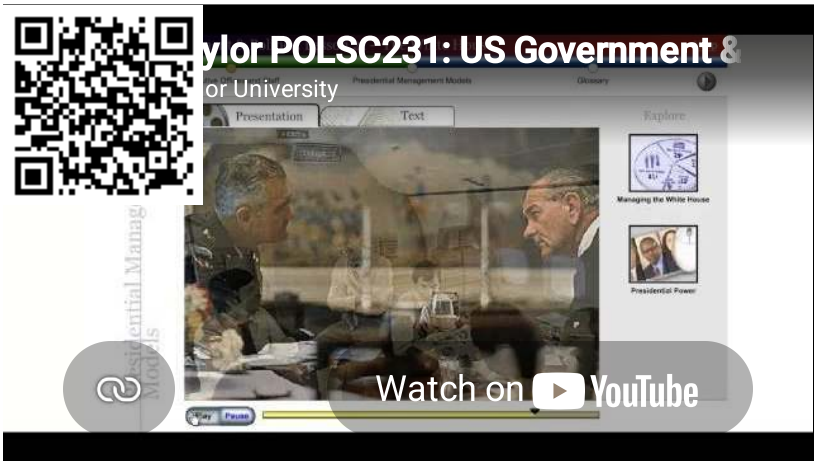
The Vice Presidency

Only two positions in the presidency are elected: the president and vice president. With ratification of the 25th Amendment in 1967, a vacancy in the latter office may be filled by the president, who appoints a vice president subject to majority votes in both the House and the Senate. This process was used twice in the 1970s. Vice President Spiro Agnew resigned amid allegations of corruption; President Nixon named House Minority Leader Gerald Ford to the post. When Nixon resigned during the Watergate scandal, Ford became president—the only person to hold the office without an election—and named former New York Governor Nelson Rockefeller vice president.

The vice president’s sole duties in the Constitution are to preside over the Senate and cast tie-breaking votes, and to be ready to assume the presidency in the event of a vacancy or disability. Eight of the forty-three presidents had been vice presidents who succeeded a dead president (four times from assassinations). Otherwise, vice presidents have few official tasks. The first vice president, John Adams, told the Senate, “I am Vice President. In this I am nothing, but I may be everything.” More earthly, FDR’s first vice president, John Nance Garner, called the office “not worth a bucket of warm piss.”

In recent years, vice presidents are more publicly visible and have taken on more tasks and responsibilities. Ford and Rockefeller began this trend in the 1970s, demanding enhanced day-to-day responsibilities and staff as conditions for taking the job. Vice presidents now have a West Wing office, are given prominent assignments, and receive distinct funds for staff under their control parallel to the president’s staff. [15]

Arguably the most powerful occupant of the office ever was Dick Cheney. This former doctoral candidate in political science (at the University of Wisconsin) had been a White House chief of staff, member of Congress, and cabinet secretary. He possessed an unrivaled knowledge of the power relations within government and of how to accumulate and exercise power. As George W. Bush’s vice president, he had access to every cabinet and subcabinet meeting he wanted to attend, chaired the board charged with reviewing the budget, took on important issues (security, energy, economy), ran task forces, was involved in nominations and appointments, and lobbied Congress. [16]



The presidency is organized around two offices: The Executive Office of the President (EOP) and the White House Office (WHO). They enhance but also constrain the president's power.

Figure 4.3.6: President Barrack Obama and former Secretary of State Hillary Clinton meet in the President's Oval Office. But the office and staff of the president is much larger than the ceremonial Oval Office shown here.

The Executive Office of the President

Figure 4.3.7: Official Seal of the Executive Office of the President (EOP)

The Executive Office of the President (EOP) is an umbrella organization encompassing all presidential staff agencies. Most offices in the EOP, such as the office of the vice president, the National Security Council, and the Office of Management and Budget, are established by law, some positions require Senate confirmation.

Learn about the EOP at;

http://www.whitehouse.gov/administration/eop.

Inside the EOP is the White House Office (WHO). It contains the president's personal staff of assistants and advisors; most are exempt from Congress's purview. Though presidents have a free hand with the personnel and structure of the WHO, its organization has been the same for decades. Starting with Nixon in 1969, each president has named a chief of staff to head and supervise the White House staff, a press secretary to interact with the news media, and a director of communication to oversee the White House message. The national security advisor is well placed to become the most powerful architect of foreign policy, rivaling or surpassing the secretary of state. New offices, such as President Bush's creation of an office for faith-based initiatives, are rare; such positions get placed on top of or alongside old arrangements.

Even activities of a highly informal role such as the first lady, the president's spouse, are standardized. It is no longer enough for them to host White House social events. They are brought out to travel and campaign. They are presidents' intimate confidantes, have staffers of their own, and advocate popular policies (e.g., Lady Bird Johnson's highway beautification, Nancy Reagan's anti-drug crusade, and Barbara Bush's literacy programs). Hillary Rodham Clinton faced controversy as first lady by defying expectations of being above the policy fray; she was appointed by her husband to head the task force to draft a legislative bill for a national health-care system. Clinton's successor, Laura Bush, returned the first ladyship to a more social, less policy-minded role. Michelle Obama's cause is healthy eating. She has gone beyond advocacy to having Walmart lower prices on the fruit and vegetables it sells and reducing the amount of fat, sugar, and salt in its foods.

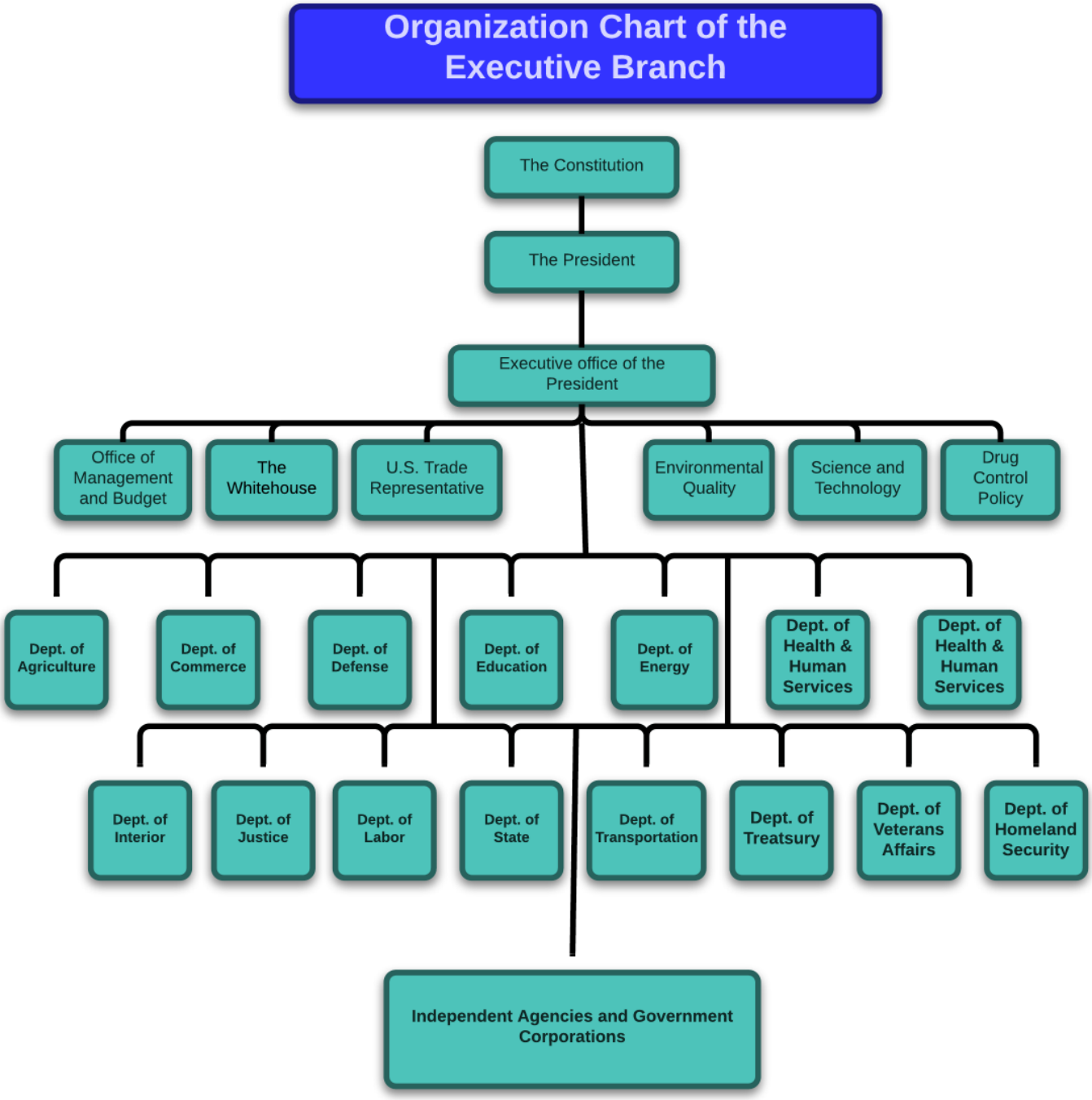


Figure 4.3.8: As Chief Executive, the President is second only to the Constitution in authority and power to make policy and enforce laws within the many departments of the United States Government. Above is an outline of the Executive Branch and the president's scope of authority.

Bureaucratizing the Presidency

The media and the public expect presidents to put their marks on the office and on history. But “the institution makes presidents as much if not more than presidents make the institution.” [17]

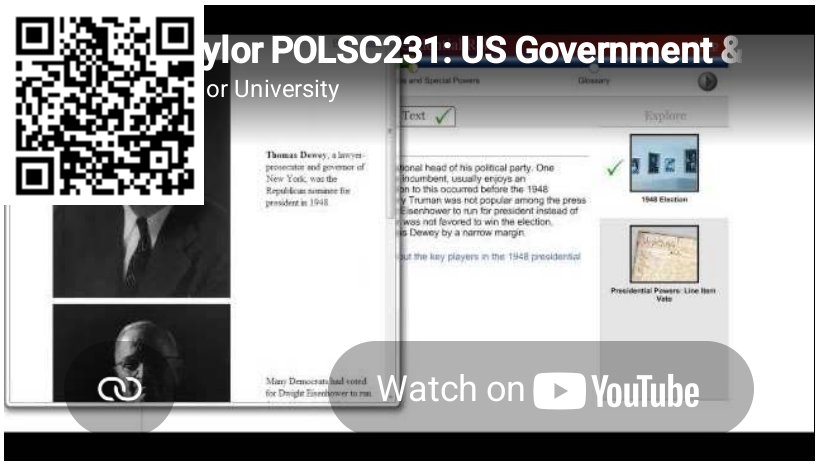
The presidency became a complex institution starting with President Franklin Roosevelt (FDR), who was elected to four terms during the Great Depression and World War II. Prior to FDR, presidents’ staffs were small. As presidents took on responsibilities and jobs, often at Congress’s initiative, the presidency grew and expanded.

Not only is the presidency bigger since FDR, but the division of labor within an administration is far more complex. Fiction and nonfiction media depict generalist staffers reporting to the president, who makes the real decisions. But the WHO is now a miniature bureaucracy. The WHO's first staff in 1939 consisted of eight generalists: three secretaries to the president, three administrative assistants, a personal secretary, an executive clerk. Since the 1980s, the WHO has consisted of around 80 staffers; almost all either have a substantive specialty (e.g., national security, women's initiatives, environment, health policy) or emphasize specific activities (e.g., White House legal counsel, director of press advance, public liaison, legislative liaison, chief speechwriter, director of scheduling). The White House Office adds another organization for presidents to direct—or lose track of.

The large staff in the White House, and the Old Executive Office Building next door is no guarantee of a president's power. These staffers "make a great many decisions themselves, acting in the name of the president. In fact, the majority of White House decisions—all but the most crucial—are made by presidential assistants." [18]

Most of these labor in anonymity unless they make impolitic remarks. For example, two of President Bush's otherwise obscure chief economic advisors got into hot water, one for (accurately) predicting that the cost of the war in Iraq might top $200 billion, another for praising the outsourcing of jobs. [19] Relatively few White House staffers—the chief of staff, the national security advisor, the press secretary—become household names in the news, and even they are quick to be quoted saying, "as the president has said" or "the president decided."

Figure 4.3.9: President Harry Truman famously displayed a sign on his desk in the Oval Office saying "THE BUCK STOPS HERE." This was his way of taking ownership of anything he or his aides did while in office (including taking responsibility for those things that went wrong). It was also his way of saying "I'm the Boss!"



The political system was designed by the framers to be infrequently innovative, to act with neither efficiency nor dispatch. Authority is decentralized. Political parties are usually in conflict. Interests are diverse.[1]

Yet, as we have explained, presidents face high expectations for action. Adding to these expectations is the soaring rhetoric of their election campaigns. For example, candidate Obama promised to deal with the problems of the economy, unemployment, housing, health care, Iraq, Afghanistan, and much more.

As we have also explained, presidents do not invariably or even often have the power to meet these expectations. Consider the economy. Because the government and media report the inflation and unemployment rates and the number of new jobs created (or not created), the public is consistently reminded of these measures when judging the president's handling of the economy. And certainly, the president does claim credit when the economy is doing well. Yet the president has far less control over the economy and these economic indicators than the media convey and many people believe.

A president's opportunities to influence public policies depend in part on the preceding administration and the political circumstances under which the new president takes office. [2] Presidents often face intractable issues, encounter unpredictable events, have to make complex policy decisions and are beset by scandals (policy, financial, sexual).

Once in office, reality sinks in. Interviewing President Obama on The Daily Show, Jon Stewart wondered whether the president's campaign slogan of "Yes we can" should be changed to "Yes we can, given certain conditions." President Obama replied "I think I would say 'yes we can, but…it's not going to happen overnight.'" [3]

So how do presidents get things done? Presidential powers and prerogatives do offer opportunities for leadership.

Between 1940 and 1973, six American presidents from both political parties secretly recorded just less than five thousand hours of their meetings and telephone conversations.

Check out http://millercenter.org/academic/presidentialrecordings

Presidents indicate what issues should garner most attention and action; they help set the policy agenda. They lobby Congress to pass their programs, often by campaign-like swings around the country. Their position as head of their political party enables them to keep or gain allies (and win reelection). Inside the executive branch, presidents make policies by well-publicized appointments and executive orders. They use their ceremonial position as head of state to get into the news and gain public approval, making it easier to persuade others to follow their lead.

The Roles of the President

Presidents try to set the political agenda. They call attention to issues and solutions, using constitutional powers such as calling Congress into session, recommending bills, and informing its members about the state of the union, as well as giving speeches and making news. [4]

Figure 4.3.10: The president's constitutional responsibility to inform Congress on "the state of the union" has been elevated into a performance, nationally broadcast on all major networks and before a joint session on Capitol Hill, that summarizes the key items on his policy agenda.

Congress does not always defer to and sometimes spurns the president's agenda. Its members serve smaller, more distinct constituencies for different terms. When presidents hail from the same party as the majority of Congress members, they have more influence to ensure that their ideas receive serious attention on Capitol Hill. So presidents work hard to keep or increase the number of members of their party in Congress: raising funds for the party (and their own campaign), campaigning for candidates, and throwing weight (and money) in a primary election behind the strongest or their preferred candidate. Presidential coattails—where members of Congress are carried to victory by the winning presidential candidates—are increasingly short. Most legislators win by larger margins in their district than does the president. In the elections midway through the president's term, the president's party generally loses seats in Congress. In 2010, despite President Obama's efforts, the Republicans gained a whopping 63 seats and took control of the House of Representatives.

Since presidents usually have less party support in Congress in the second halves of their terms, they most often expect that Congress will be more amenable to their initiatives in their first two years. But even then, divided government, where one party controls the presidency and another party controls one or both chambers of Congress, has been common over the last fifty years. For presidents, the prospect of both a friendly House and Senate has become the exception.

Even when the White House and Congress are controlled by the same party, as with President Obama and the 2009 and 2010 Congress, presidents do not monopolize the legislative agenda. Congressional leaders, especially of the opposing party, push other issues—if only to pressure or embarrass the president. Members of Congress have made campaign promises they want to keep despite the president's policy preferences. Interest groups with pet projects crowd in.

Nonetheless, presidents are better placed than any other individual to influence the legislative process. In particular, their high prominence in the news means that they have a powerful impact on what issues will—and will not—be considered in the political system as a whole.

What about the contents of "the president's agenda"? The president is but one player among many shaping it. The transition from election to inauguration is just over two months (Bush had less time because of the disputed 2000 Florida vote). Presidents are preoccupied first with naming a cabinet and White House staff. To build an agenda, presidents "borrow, steal, co-opt, redraft, rename, and modify any proposal that fits their policy goals." [5] Ideas largely come from fellow partisans outside the White House. Bills already introduced in Congress or programs proposed by the bureaucracy are handy. They have received discussion, study, and compromise that have built support. And presidents have more success getting borrowed legislation through Congress than policy proposals devised inside the White House. [6]

Crises and unexpected events affect presidents' agenda choices. Issues pursue presidents, especially through questions and stories of White House reporters, as much as presidents pursue issues. A hugely destructive hurricane on the Gulf Coast propels issues of emergency management, poverty, and reconstruction onto the policy agenda whether a president wants them there or not.

Finally, many agenda items cannot be avoided. Presidents are charged by Congress with proposing an annual budget. Raw budget numbers represent serious policy choices. And there are ever more agenda items that never seem to get solved (e.g., energy, among many others).

After suggesting what Congress should do, presidents try to persuade legislators to follow through. But without a formal role, presidents are outsiders to the legislative process. They cannot introduce bills in Congress and must rely on members to do so.

Figure 4.3.11: President Lyndon Johnson was very skilled at understanding how Congress works and often stayed up late into the night making phone calls to members of Congress with the intent of persuading them to vote his way on important pieces of legislation.

Presidents attempt to achieve legislative accomplishments by negotiating with legislators directly or through their legislative liaison officers: White House staffers assigned to deal with Congress who provide a conduit from the president to Congress and back again. These staffers convey presidential preferences and pressure members of Congress; they also pass along members' concerns to the White House. They count votes, line up coalitions, and suggest times for presidents to rally fellow party members. And they try to cut deals.

Legislative liaison focuses less on twisting arms than on maintaining "an era of good feelings" with Congress. Some favors are large: supporting an appropriation that benefits members' constituencies, traveling to members' home turf to help them raise funds for reelection, and appointing members' cronies to high office. Others are small: inviting them up to the White House where they can talk with reporters; sending them autographed photos or extra tickets for White House tours; and allowing them to announce grants. Presidents hope the cordiality will encourage legislators to return the favor when necessary. [7]

Such good feelings are tough to maintain when presidents and the opposition party espouse conflicting policies, especially when that party has a majority in one or both chambers of Congress or both sides adopt take-it-or-leave-it stances.

When Congress sends a bill to the White House, a president can return it with objections. [8] This veto—Latin for "I forbid"—heightens the stakes. Congress can get its way only if it overrides the veto with two-thirds majorities in each chamber. Presidents who use the veto can block almost any bill they dislike; only around four percent of all vetoes have ever been successfully overridden. [9] The threat of a veto can be enough to get Congress to enact legislation that presidents prefer.

The Veto

The veto does have drawbacks for presidents:

- Vetoes alienate members of Congress who worked hard crafting a bill. So vetoes are most used as a last resort. After the 1974 elections, Republican President Ford faced an overwhelmingly Democratic Congress. A Ford legislative liaison officer recalled, "We never deliberately sat down and made the decision that we would veto sixty bills in two years.…It was the only alternative." [10]
- The veto is a blunt instrument. It is useless if Congress does not act on legislation in the first place. In his 1993 speech proposing health-care reform, President Clinton waved a pen and vowed to veto any bill that did not provide universal coverage. Such a threat meant nothing when Congress did not pass any reform. And unlike governors of most states, presidents lack a line-item veto, which allows a chief executive to reject parts of a bill. Congress sought to give the president this power in the late 1990s, but the Supreme Court declared the law unconstitutional. [11] Presidents must take or leave bills in their totality.
- Congress can turn the veto against presidents. For example, it can pass a popular bill—especially in an election year—and dare the president to reject it. President Clinton faced such "veto bait" from the Republican Congress when he was up for reelection in 1996. The Defense of Marriage Act, which would have restricted federal recognition of marriage to opposite-sex couples, was deeply distasteful to lesbians and gay men (a key Democratic constituency) but strongly backed in public opinion polls. A Clinton veto could bring blame for killing the bill or provoke a humiliating override. Signing it ran the risk of infuriating lesbian and gay voters. Clinton ultimately signed the legislation—in the middle of the night with no cameras present.
- Veto threats can backfire. After the Democrats took over the Senate in mid-2001, they moved the "patients' bill of rights" authorizing lawsuits against health maintenance organizations to the top of the Senate agenda. President Bush said he would veto the bill unless it incorporated strict limits on rights to sue and low caps on damages won in lawsuits. Such a visible threat encouraged a public perception that Bush was opposed to any patients' bill of rights, or even to patients' rights at all. [12] Veto threats thus can be ineffective or create political damage (or, as in this case, both).

Savvy presidents use "vetoes not only to block legislation but to shape it.…Vetoes are not fatal bullets but bargaining ploys." [13] Veto threats and vetoing ceremonies become key to presidential communications in the news, which welcomes the story of Capitol Hill-versus-White House disputes, particularly under divided government. In 1996, President Clinton faced a tough welfare reform bill from a Republican Congress whose leaders dared him to veto the bill so they could claim he broke his 1992 promise to "end welfare as we know it." Clinton vetoed the first bill; Republicans reduced the cuts but kept tough provisions denying benefits to children born to welfare recipients. Clinton vetoed this second version; Republicans shrank the cuts again and reduced the impact

on children. Finally, Clinton signed the bill—and ran ads during his reelection campaign proclaiming how he had “ended welfare as we know it.”

In a signing statement, the president claims the right to ignore or refuse to enforce laws, parts of laws, or provisions of appropriations bills even though Congress has enacted them and he has signed them into law. This practice was uncommon until developed during President Ronald Reagan’s second term. It escalated under President George W. Bush, who rarely exercised the veto but instead issued almost 1,200 signing statements in eight years—about twice as many as all his predecessors combined. As one example, he rejected the requirement that he report to Congress on how he had provided safeguards against political interference in federally funded research. He justified his statements on the “inherent” power of the commander in chief and on a hitherto obscure doctrine called the unitary executive, which holds that the executive branch can overrule Congress and the courts on the basis of the president’s interpretation of the Constitution.

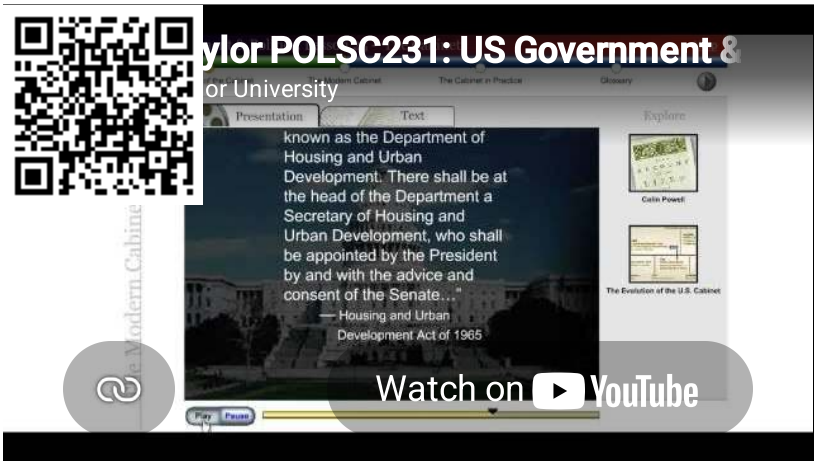
President Obama ordered executive officials to consult with the attorney general before relying on any of President Bush’s signing statements to bypass a law. Yet he initially issued some signing statements himself. Then, to avoid clashing with Congress, he refrained from doing so. He did claim that the executive branch could bypass what he deemed to be unconstitutional restraints on executive power. But he did not invoke the unitary executive theory. [14]

Presidential Scorecards in Congress

How often do presidents get their way on Capitol Hill? On congressional roll call votes, Congress goes along with about three-fourths of presidential recommendations; the success rate is highest earlier in the term. [15] Even on controversial, important legislation for which they expressed a preference well in advance of congressional action, presidents still do well. Congress seldom ignores presidential agenda items entirely. One study estimates that over half of presidential recommendations are substantially reflected in legislative action. [16]

Can and do presidents lead Congress, then? Not quite. Most presidential success is determined by Congress’s partisan and ideological makeup. A divided government and party polarization on Capitol Hill have made Congress more willing to disagree with the president. So recent presidents are less successful even while being choosier about bills to endorse. Eisenhower, Kennedy, and Johnson staked out positions on well over half of congressional roll call votes. Their successors have taken positions on fewer than one-fourth of them—especially when their party did not control Congress. “Presidents, wary of an increasingly independent-minded congressional membership, have come to actively support legislation only when it is of particular importance to them, in an attempt to minimize defeat.” [17]

As chief executive, the president can move first and quickly, daring others to respond. Presidents like both the feeling of power and favorable news stories of them acting decisively. Though Congress and courts can respond, they often react slowly; many if not most presidential actions are never challenged. [18] Such direct presidential action is based in several powers: to appoint officials, to issue executive orders, to “take care that the laws be faithfully executed,” and to wage war.



Presidents both hire and (with the exception of regulatory commissions) fire executive officers. They also appoint ambassadors, the members of independent agencies, and the judiciary. [19]

The months between election and inauguration are consumed by the need to rapidly assemble a cabinet, a group that reports to and advises the president, made up of the heads of the 14 executive departments and whatever other positions the president accords cabinet-level rank. Finding "the right person for the job" is but one criterion. Cabinet appointees overwhelmingly hail from the president's party; choosing fellow partisans rewards the winning coalition and helps achieve policy. [20] Presidents also try to create a team that, according to Clinton, "looks like America." In 1953, President Dwight Eisenhower was stung by the news media's joke that his first cabinet—all male, all white—consisted of "nine millionaires and a plumber" (the latter was a union official, a short-lived labor secretary). By contrast, George W. Bush's and Barack Obama's cabinets had a generous complement of persons of color and women—and at least one member of the other party.

These presidential appointees must be confirmed by the Senate. If the Senate rarely votes down a nominee on the floor, it no longer rubber-stamps scandal-free nominees. A nominee may be stopped in a committee. About one out of every twenty key nominations is never confirmed, usually when a committee does not schedule it for a vote. [21]

Confirmation hearings are opportunities for senators to quiz nominees about pet projects of interest to their states, to elicit pledges to testify or provide information, and to extract promises of policy actions. [22] To win confirmation, cabinet officers pledge to be responsive and accountable to Congress. Subcabinet officials and federal judges, lacking the prominence of cabinet and Supreme Court nominees, are even more belatedly nominated and more slowly confirmed. Even senators in the president's party routinely block nominees to protest poor treatment or win concessions.

As a result, presidents have to wait a long time before their appointees take office. Five months into President George W. Bush's first term, one study showed that of the 494 cabinet and subcabinet positions to fill, under half had received nominations; under one-fourth had been confirmed. [23] One scholar observed, "In America today, you can get a master's degree, build a house, bicycle across country, or make a baby in less time than it takes to put the average appointee on the job." [24] With presidential appointments unfilled, initiatives are delayed and day-to-day running of the departments is left by default to career civil servants.

No wonder presidents can, and increasingly do, install an acting appointee or use their power to make recess appointments. [25] But such unilateral action can produce a backlash. In 2004, two nominees for the federal court had been held up by Democratic senators; when Congress was out of session for a week, President Bush named them to judgeships in recess appointments. Furious Democrats threatened to filibuster or otherwise block all Bush's judicial nominees. Bush had no choice but to make a deal that he would not make any more judicial recess appointments for the rest of the year. [26]

Presidents make policies by executive orders. [27] This power comes from the constitutional mandate that they "take care that the laws be faithfully executed."

Executive orders are directives to administrators in the executive branch on how to implement legislation. Courts treat them as equivalent to laws. Dramatic events have resulted from executive orders. Some famous executive orders include Lincoln's Emancipation Proclamation, Franklin D. Roosevelt's closing the banks to avoid runs on deposits and his authorizing internment of Japanese Americans during World War II, Truman's desegregation of the armed forces, Kennedy's establishment of the Peace

Corps, and Nixon's creation of the Environmental Protection Agency. More typically, executive orders reorganize the executive branch and impose restrictions or directives on what bureaucrats may or may not do. The attraction of executive orders was captured by one aide to President Clinton: "Stroke of the pen. Law of the land. Kind of cool." [28] Related ways for presidents to try to get things done are by memoranda to cabinet officers, proclamations authorized by legislation, and (usually secret) national security directives. [29]

Executive orders are imperfect for presidents; they can be easily overturned. One president can do something "with the stroke of a pen"; the next can easily undo it. President Reagan's executive order withholding American aid to international population control agencies that provide abortion counseling was rescinded by an executive order by President Clinton in 1993, then reinstated by another executive order by President Bush in 2001—and rescinded once more by President Obama in 2009. Moreover, since executive orders are supposed to be a mere execution of what Congress has already decided, they can be superseded by congressional action.

Opportunities to act on behalf of the entire nation in international affairs are irresistible to presidents. Presidents almost always gravitate toward foreign policy as their terms progress. Domestic policy wonk Bill Clinton metamorphosed into a foreign policy enthusiast from 1993 to 2001. Even prior to 9/11, the notoriously untraveled George W. Bush was undergoing the same transformation. President Obama has been just as if not more involved in foreign policy than his predecessors.

Congress—as long as it is consulted—is less inclined to challenge presidential initiatives in foreign policy than in domestic policy. This idea that the president has greater autonomy in foreign than domestic policy is known as the "Two Presidencies Thesis." [30]

War powers provide another key avenue for presidents to act unilaterally. After the 9/11 attacks, President Bush's Office of Legal Counsel to the US Department of Justice argued that as commander in chief President Bush could do what was necessary to protect the American people. [31]

Since World War II, presidents have never asked Congress for (or received) a declaration of war. Instead, they rely on open-ended congressional authorizations to use force (such as for wars in Vietnam and "against terrorism"), United Nations resolutions (wars in Korea and the Persian Gulf), North American Treaty Organization (NATO) actions (peacekeeping operations and war in the former Yugoslavia), and orchestrated requests from tiny international organizations like the Organization of Eastern Caribbean States (invasion of Grenada). Sometimes, presidents amass all these: in his last press conference before the start of the invasion of Iraq in 2003, President Bush invoked the congressional authorization of force, UN resolutions, and the inherent power of the president to protect the United States derived from his oath of office.

Congress can react against undeclared wars by cutting funds for military interventions. Such efforts are time-consuming and not in place until long after the initial incursion. But congressional action, or its threat, did prevent military intervention in Southeast Asia during the collapse of South Vietnam in 1975 and sped up the withdrawal of American troops from Lebanon in the mid-1980s and Somalia in 1993. [32]

Congress's most concerted effort to restrict presidential war powers, the War Powers Act, which passed over President Nixon's veto in 1973, may have backfired. It established that presidents must consult with Congress prior to a foreign commitment of troops, must report to Congress within forty-eight hours of the introduction of armed forces, and must withdraw such troops after sixty days if Congress does not approve. All presidents denounce this legislation. But it gives them the right to commit troops for sixty days with little more than requirements to consult and report—conditions presidents often feel free to ignore. And the presidential prerogative under the War Powers Act to commit troops on a short-term basis means that Congress often reacts after the fact. Since Vietnam, the act has done little to prevent presidents from unilaterally launching invasions. [33]

President Obama did not seek Congressional authorization before ordering the U.S. military to join attacks on the Libyan air defenses and government forces in March 2011. After the bombing campaign started, Obama sent Congress a letter contending that as commander in chief he had constitutional authority for the attacks. The White House lawyers distinguished between this limited military operation and a war.

Study/Discussion Questions

1. How can the president check the power of Congress? How can Congress limit the influence of the president?
2. How is the executive branch organized?
3. What has happened to presidential power as the government has expanded its services and bureaucracy?

4. What are the constitutional requirements to become president of the United States?
5. What additional restrictions does the Constitution place on anyone who wishes to become president?
6. What personal qualifications or traits make a good president?
7. How has the “natural born citizen” clause of the Constitution come into question with recent presidential candidates?
8. How did the 25th Amendment impact the order of succession of the presidency? What was the purpose of this constitutional amendment?
9. What are the formal and informal roles of the vice president?

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4.4: The Structure and Functions of the Judicial Branch

Figure 4.4.1: The Judicial Branch enforces the laws of the land.

Where the Executive and Legislative branches are elected by the people, members of the Judicial Branch are appointed by the President and confirmed by the Senate.

Article III of the Constitution, which establishes the Judicial Branch, leaves Congress significant discretion to determine the shape and structure of the federal judiciary. Even the number of Supreme Court Justices is left to Congress — at times there have been as few as six, while the current number (nine, with one chief justice and eight associate justices) has only been in place since 1869.

The Creation of the Supreme Court, Lower Courts, Terms of Judges and Pay

The Judicial Power of the United States was intended to be placed solely in the hands of the Supreme Court with Congress being allowed to establish a system of lower courts as it deemed necessary. In 1789, Congress did just that when it created the United States Court System. This act created three sets of Constitutional courts starting with District Courts that would hear both criminal and civil cases of a federal nature, a set of intermediate “Circuit” courts of appeal which would review cases coming from the District Courts and the Supreme Court acting as the highest court in the land. With few exceptions, federal judges hold their Offices for life and can only be removed through a process of impeachment. Judges must be paid for their services and whenever they receive a pay raise, their pay may not be reduced as long as they stay in office. This protects the judges from being manipulated through their salary.

Judicial Authority and Jurisdiction for the Federal Courts

Section 2 of Article III describes the jurisdiction of the federal courts. Jurisdiction is the power of a court to hear a case, so this section tells us what kinds of cases the Supreme Court and other federal courts will hear.

- All cases that arise under the Constitution, the laws of the United States or its treaties.
- All cases that affect American Ambassadors, public officials, and public consuls.
- All cases of admiralty and maritime jurisdiction (cases that involve national waters).
- All cases in which the United States is a party (when a state, a citizen or a foreign power sues the national government).
- All cases that involve one or more states, or the citizens of different states.
- All cases between citizens of the same state who are claiming land under grants from other states.

The 11th Amendment changed some provisions of this section by placing limits on the ability of individuals to sue a state.

Original Jurisdiction

Section 2 also notes that the Supreme Court will have original jurisdiction in any case dealing with or affecting an Ambassador, Public Minister or Consul, or in which a state is a party.

Original jurisdiction is the power of a court to hear a case first. This means that, in any case dealing with these groups of public servants, the Supreme Court must hear the case first, and no lower court can do so. The number of original jurisdiction cases heard by the United States Supreme Court is very low; less than 1% of all their cases.

In addition to these original jurisdiction cases, the Supreme Court will have appellate jurisdiction in all other cases. *Appellate jurisdiction* is the power to hear a case AFTER a lower court has already decided the case. That is what it means to hear the case on appeal. The vast majority cases heard by the United States Supreme Court today are appellate cases.

The Supreme Court is the "court of last resort" that is, the final court in which a citizen, state or other entity can have their case heard. The Supreme Court is also the only federal court to have BOTH original and appellate jurisdiction.

Figure 4.4.2: Representatives were grilled by the Senate Intelligence Committee.

Right to a Jury Trial in all Cases but Impeachment

Article III Section 2 also states that in the trial of all crimes, except impeachment, the accused has a right to a trial by jury. These trials are held in the state where the crime is committed. *Impeachment* is the process described in the Constitution by which high officers of the U.S. government may be accused, tried, and removed from office for misconduct; the House of Representatives is responsible for the inquiry and formal accusation, and the Senate is responsible for the trial. The right to a trial by jury is also expressly listed in the 6th and 7th Amendments of the Constitution (in the Bill of Rights).

Treason

Section 3 of Article III deals with the crime of treason, first by giving us a definition of the crime, then by telling us how the crime will be tried.

Treason is defined in the Constitution as levying war against the United States, or giving aid to our enemies. This is the only crime actually defined in the Constitution. Why? The founders were afraid that people could be charged with treason, when they were really just engaging in dissent. Part of living in a democracy is the ability we all have to disagree with our government. If simply speaking out against the government were treason, then the government could quash all dissent, and we would not have a free country. By defining treason in the Constitution, the founders made sure that those accused of treason had to do more than simply say things our government or leaders didn't like.

To be guilty of treason, they had to take actual action (make war against our government or directly help our enemies). This protects our freedom of speech from being limited. Section 3 tells us that, to be convicted of treason, there must be two witnesses to the same overt act, or that the person committing treason must confess in open court. Congress has the power to determine the punishment for treason, which ranges from five years in prison and a $10,000 fine, up to life in prison or death.

The View of the Founders on an Independent Judiciary

The major Constitutional Convention debate was over the degree of court independence. The Federalists believed the new Supreme Court would be too weak, and the Anti Federalists believed it would be too strong. But there is little doubt that both sides intended the judicial branch to be the least powerful. In Federalist 78, Alexander Hamilton argued:

> *The judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no*

> *influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.*

But the power of the judicial branch (through its use of Judicial Review) has risen since its creation and today, it wields great power and influence through its actions and decisions

Figure 4.4.3: Lady Justice statue at a federal courthouse.

Four Types of Law

There are four basic types of law in the federal legal system. These include:

SOURCES OF FEDERAL LAW

Kind of Law	**Sources**
The Constitution: Is the fundamental law of the United States. Creates the branches of government, defines the powers and limitations of each branch and defines the scope of basic rights and obligations.	United States Constitution (Found in the *United States Code*)
Case Law (Judicial): Based on a court's written explanation (known as a decision or opinion) regarding how and why it applied the law to the facts of a case. Forms the basis for legal precedents (common law) that are followed by other courts and judges in similar cases.	U.S. Supreme Court, U.S. Court of Appeals, U.S. District Courts. Cases published in the *Federal Reporter* and *Federal Supplement*
Statutes (legislative): Laws enacted by the legislature (Congress)	U.S. Congress *U.S. Statutes at Large*("Stat.") *U.S. Code*
Administrative Regulations (executive): Administrative Agencies issue rules or regulations implementing legislation which govern an agency. These rules or regulations explain or enforce a statute. Authority comes through the Executive branch of government (with the President as Chief Executive).	U.S. Executive and Independent Agencies The *Federal Register*("Fed. Reg.") The *Code of Federal Regulations* ("CFR")

Source: https://www.law.upenn.edu/live/files/226-research-guide-federal-court-mappdf

Independent Judiciary

Independent Judiciary is is the degree to which the courts and the judges who interpret the law are allowed to make and enforce decisions without intervention from other branches of the government. For the justice system to be impartial, it must also remain independent (by a separation of powers).

Judicial review is the power of the courts to overturn laws or other actions of Congress and the Executive Branch based on their constitutionality. This principle allows courts to establish quasi-legislation (legislation created from bench) which often leads to accusations of "judicial activism". The Constitution is actually silent on subject of judicial review so the Supreme Court gave itself and lower courts power of judicial review in case of *Marbury vs. Madison*. Judicial review is rarely used. In fact the Court has struck down only around 170 national laws (less than .25 percent of all passed) and around 1400 state laws in its more than 200 year history.

Judicial Interpretation

Judicial interpretation is the manner or basis used to interpret a law. Constitutional interpretation involves deciding whether or not a law should stand solely on the basis of its constitutionality (whether or not it violates a particular part of the Constitution). Statutory interpretation involves applying both national and state law to a specific case to determine whether the law(s) actually apply to the case brought in front of the court and whether or not those laws are being applied properly in that specific case. Constitutional interpretation has a much broader scope than the very specific and minute details that are considered in the case of statutory interpretation.

Judicial Activism

Judicial activism is when the court strikes down a duly enacted law created by Congress. That is its FORMAL meaning, its descriptive meaning. But in the course of politics, commentators and critics often call a decision to strike down a law "judicial activism" if they don't like the court's action. If they DO like the court's decision, they don't use that term.

Court Fundamentals

In an adversarial judicial system such as we have in the United States, the plaintiff is the party that is bringing the case before the court as a complaint or accusation against another party. The defendant is the party that has been accused of harming the plaintiff in some way. In civil cases, the plaintiff is the injured party and the defendant is the party that has been accused of doing harm to the plaintiff. In a criminal case, the plaintiff is always the government (either the state or the United States government) and the defendant is the party accused of violating the law. In both civil and criminal cases, the burden of proof is on the plaintiff and the defendant is entitled to confront his/her accusers and to a vigorous defense against the charges.

In order to win a civil case, the plaintiff must prove the case "beyond a preponderance of the evidence" meaning the evidence presented weighs more on his/her side in the eyes of the jury or the judge (if the trial is a bench trial where a jury has been waived).

In a criminal case, the state must prove its case "beyond a reasonable doubt," meaning there is no doubt in the minds of the jury that the defendant committed the crime he/she is accused of. This is a much higher burden of proof.

In order to smoothly allow cases to flow through the system, plea bargaining often occurs before court verdicts are ever reached. This happens when the defendant is allowed to plead guilty to a lesser charge and/or receive a lighter punishment in exchange for his/her plea. In such a case, the defendant must testify to his/her crimes in open court and the defendant also waives the right to an appeal.

Deferred Adjudication

Deferred adjudication occurs when the court delays sentencing pending terms of probation. When the defendant completes all terms of probation, charges may be expunged (dropped) and/or the jail time may be eliminated or reduced.

The adversarial judicial system gives both sides of a case access to the relevant information. Each of the parties must openly share any evidence or relevant information with each other. This process is called disclosure.

Double Jeopardy and Civil/Dual (Federal and State) Prosecution Cases

Currently, people can face a criminal trial and a civil trial for the same incident without triggering the Constitution's ban on "double jeopardy" which is forbidden in the Constitution. In a similar vein, a person can be tried at both the federal and state levels for the same crime (because of its two different laws and jurisdictions).

That's what the law says. Is the law right? What are the arguments for and against being able to be tried both in civil and criminal court?

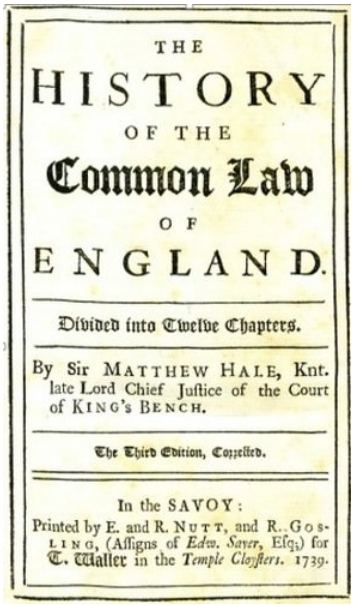
THE
HISTORY
OF THE
Common Law
OF
ENGLAND.
Divided into Twelve Chapters.
By Sir MATTHEW HALE, Knt.
late Lord Chief Justice of the Court
of KING's BENCH.
The Third Edition, Corrected.
In the SAVOY:
Printed by E. and R. NUTT, and R. GOSLING, (Assigns of *Edw. Sayer*, Esq;) for
C. Waller in the *Temple Cloysters*. 1739.

Figure 4.4.4: Sir Matthew Hale's book was the first attempt to compile a comprehensive look at English common law and was a standard text until the late 19th century

Principles of Common Law

Common Law (also known as case law or precedent) is law developed by judges through decisions of courts and similar tribunals that decide individual cases, as opposed to statutes adopted through the legislative process or regulations issued by the executive branch. This law is deeply rooted in the respect for the decisions and actions of previous courts and the expectation that when a ruling is made by the courts it should be respected and applied by future courts.

- Precedent (stare decisis) means "let the decision stand" in Latin. This is the principle that previously decided cases/sets of decisions should serve as a guide for future cases on the same topic. The Supreme Court strongly honored precedent in first 100 years of its existence but many decisions in the past 100 years have demonstrated modern court is more willing to overturn precedent in order to correct for violations of human rights, civil rights or states' rights.

- Jurisdiction is the power of a court to hear a case and to make a binding legal judgment or decision based on the facts presented to the court. The Constitution and the Federal Judiciary Act of 1789 both establish the jurisdiction of the federal courts in regards to what cases they may hear and how those cases are selected or assigned to the courts.
- Collusion is the requirement that litigants in the case cannot want the same outcome
- Standing is when a petitioner has a legitimate basis for bringing the case
- Mootness is the requirement that controversy must still be relevant when the Court hears the case
- Ripeness is the opposite of mootness; with ripeness, the controversy has not started yet.

WEB LINK:

For more information on the fundamentals of common law, go to:

www.law.berkeley.edu/library/robbins/pdf/CommonLawCivilLawTraditions.pdf

Figure 4.4.5: "EQUAL JUSTICE UNDER LAW" - These words, written above the main entrance to the Supreme Court Building, express the ultimate responsibility of the Supreme Court of the United States.

Limitations on the Court's Power

The power of the Supreme Court is great but ultimately it is only a court of law. The Supreme Court does not have the power to initiate its own cases. Cases can only come to it from a lower court (except in the limited area of so-called original jurisdiction). Therefore, a justice cannot select a law or policy with which he/she disagrees and bring it to court for a ruling.

Once a decision has been made, the Supreme Court does not have the ability to enforce its rulings. This can only be done by the Executive and Legislative branches of government. When segregation in southern schools was declared unconstitutional in 1954, nothing happened in the south. It took until 1957 for the decision to actually be enforced. Though the Supreme Court had initiated a new approach in southern schools, no-one in the south wanted to enforce it and only the Federal government could do this by the use of troops.

The Supreme Court needs to maintain its position within America as the highest judicial body in the nation. Therefore it does need to be seen working as a partner with the Legislative and Executive branches as a conflict between the three would invariably diminish their standing in the eyes of the public. It is rare that the Court will totally overturn an act passed by the Legislative. The Court might seek to change parts of it piecemeal and over a period of time as this would appear to be less provocative towards an elected body. The ability of the Supreme Court to interpret the Constitution is limited as most parts of it are written in a very clear and concise way which does not leave them open to interpretation.

The greatest limitation to the Supreme Court are the politicians themselves. As the Court cannot enforce its decisions, it relies on the Federal authorities to do this. These politicians are supportive of the Constitution and even Roosevelt never thought about operating without a Supreme Court regardless of his clashes with it. Politicians must be willing to listen and abide by its decisions. What could the Supreme Court do if these politicians refused to abide by its decisions?

Power of the Supreme Court

Figure 4.4.6: The ceremonial courtroom of the United States Supreme Court

In Federalist No. 78, Alexander Hamilton described the courts as “the least dangerous” branch of government. Yet, they do possess considerable power. For example, because of the Court’s 5–4 decision in 2002, the more than seven million public high school students engaged in “competitive” extracurricular activities—including cheerleading, Future Farmers of America, Spanish club, and choir—can be required to submit to random drug testing. Decisions such as these have proven divisive and have led to a belief by many that the Supreme Court has recently exceeded its Constitutional authority and purpose.

Discussion Question: "Do you think the Supreme Court's power has grown too large?

Many have argued that since the 1950s, the Supreme Court has changed from “the Least Dangerous Branch” to an “Imperial Judiciary.” Do you think the Supreme Court’s power has grown too large? Read the articles below and respond to this question.

www.voanews.com/content/a-13-2005-03-07-voa48-67525242/387028.html

http://www.nationalaffairs.com/publications/detail/the-most-dangerous-branch

http://www.heritage.org/research/reports/2012/01/what-is-the-proper-role-of-the-courts

http://www.outsidethebeltway.com/still_the_least_dangerous_branch/

Judicial Review

The federal courts’ most significant power is judicial review. Exercising it, they can refuse to apply a state or federal law because, in their judgment, it violates the US Constitution.

Marbury v. Madison

Judicial review was asserted by the U.S. Supreme Court in 1803 in the decision of Chief Justice John Marshall in the case of *Marbury v. Madison*(5 US 137, 1803).

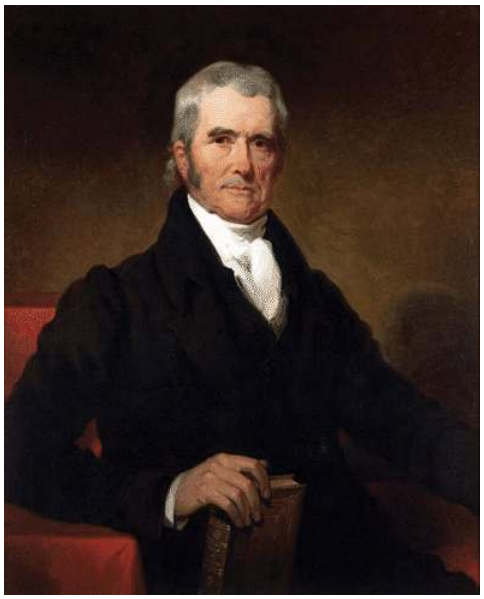

Figure 4.4.7: John Marshall was chief justice of the Supreme Court from 1801 to 1835 and the author of many decisions, including Marbury v. Madison.

After losing the election of 1800, John Adams made a flurry of 42 appointments of justices of the peace for Washington, D.C. in the last days of his presidency. His purpose in doing so was to ensure that the judiciary would remain dominated by his Federalist party. The Senate approved the appointments, and Secretary of State John Marshall stamped the officials' commissions with the Great Seal of the United States. But no one in the outgoing administration delivered the signed and sealed commissions to the appointees. The new president, Thomas Jefferson, instructed his secretary of state, James Madison, not to deliver them. One appointee, William Marbury, sued, asking the Supreme Court to issue a writ of mandamus, a court order requiring Madison to hand over the commission.

The case went directly to the Supreme Court under its original jurisdiction. John Marshall was now chief justice, having been appointed by Adams and confirmed by the Senate. He had a dilemma: a prominent Federalist, he was sympathetic to Marbury, but President Jefferson would likely refuse to obey a ruling from the Court in Marbury's favor. However, ruling in favor of Madison would permit an executive official to defy the provisions of the law without penalty.

Marshall's solution was a political masterpiece. The Court ruled that Marbury was entitled to his commission and that Madison had broken the law by not delivering it. But it also ruled that the part of the Judiciary Act of 1789 granting the Court the power to issue writs of mandamus was unconstitutional because it expanded the original jurisdiction of the Supreme Court beyond its definition in Article III; this expansion could be done only by a constitutional amendment. Therefore, Marbury's suit could not be heard by the Supreme Court. The decision simultaneously supported Marbury and the Federalists, did not challenge Jefferson, and relinquished the Court's power to issue writs of mandamus. Above all, it asserted the prerogative of judicial review for the Supreme Court.

For 40 years after Marbury, the Court did not overturn a single law of Congress. And when it finally did, it was the Dred Scott decision, which dramatically damaged the Court's power. The Court ruled that people of African descent who were slaves (and their descendants, whether or not they were slaves) were not protected by the Constitution and could never be U.S. citizens. The Court also held that the U.S. Congress had no authority to prohibit slavery in federal territories.

The pace of judicial review picked up in the 1960s and continues to this day. The Supreme Court has invalidated an average of 18 federal laws per decade. The Court has displayed even less compunction about voiding state laws. For example, the famous *Brown v. Board of Education of Topeka, Kansas* desegregation case overturned statutes from Kansas, Delaware, South Carolina, and Virginia that either required or permitted segregated public schools. The average number of state and local laws invalidated per decade is 122, although it has fluctuated from a high of 195 to a low for the period 2000–2008 of 34.

Judicial review can be seen as reinforcing the system of checks and balances. It is a way of policing the actions of Congress, the president, and state governments to make sure that they are in accord with the Constitution. But whether an act violates the Constitution is often sharply debated, not least by members of the Court.

Figure 4.4.8: Samuel Chase was an associate justice of the United States Supreme Court and was impeached by the House of Representatives for his judicial opinions but not convicted by the Senate.

Constraints on Judicial Power

Samuel Chase (April 17, 1741 – June 19, 1811) was an associate justice of the United States Supreme Court and earlier was a signatory to the United States Declaration of Independence as a representative of Maryland. Early in life, Chase was a "firebrand" states-righter and revolutionary. His political views changed over his lifetime, and, in the last decades of his career, he became well

known as a staunch Federalist and was impeached for allegedly letting his partisan leanings affect his court decisions. He was acquitted by the Senate and was NOT removed from office. But he remains the only Supreme Court Justice to have articles of impeachment drafted against him by the House. His is an example of philosophical and political differences that remain today.

At question then, as today, is the issue of judicial authority and power. The American system of government relies on specific checks and balances of power so as to balance the authority of the three branches of government. In this section, we will examine three types of constraints on the power of the Supreme Court and lower court judges. These are precedents, internal limitations, and external checks.

Ruling by Precedent

Judges look to precedent, previously decided cases, to guide and justify their decisions. They are expected to follow the principle of ***stare decisis***, which is Latin for "to stand on the decision." They identify the similarity between the case under consideration and previous ones. Then they apply the rule of law contained in the earlier case or cases to the current case. Often, one side is favored by the evidence and the precedents.

Precedents, however, have less of an influence on judicial power than would be expected. According to a study, "justices interpret precedent in order to move existing precedents closer to their preferred outcomes and to justify new policy choices."

Precedents may erode over time. The 1954 Brown school desegregation decision overturned the 1896 Plessy decision that had upheld the constitutionality of separate but equal facilities and thus segregation. Or they may be overturned relatively quickly. In 2003, the Supreme Court by 6–3 struck down a Texas law that made homosexual acts a crime, overruling the Court's decision seventeen years earlier upholding a similar antisodomy law in Georgia. The previous case "was not correct when it was decided, and it is not correct today," Justice Kennedy wrote for the majority.

Judges may disagree about which precedents apply to a case. Consider students wanting to use campus facilities for prayer groups: if this is seen as violating the separation of church and state, they lose their case; if it is seen as freedom of speech, they win it. Precedents may allow a finding for either party, or a case may involve new areas of the law.

Internal Limitations

For the courts to exercise power, there must be a case to decide: a controversy between legitimate adversaries who have suffered or are about to suffer in some way. The case must be about the protection or enforcement of legal rights or the redress of wrongs. Judges cannot solicit cases, although they can use their decisions to signal their willingness to hear (more) cases in particular policy areas.

Judges, moreover, are expected to follow the Constitution and the law despite their policy preferences. In a speech to a bar association, Supreme Court Justice John Paul Stevens regretted two of his majority opinions, saying he had no choice but to uphold the federal statutes. [8] That the Supreme Court was divided on these cases indicates, however, that some of the other justices interpreted the laws differently.

A further internal limitation is that judges are obliged to explain and justify their decisions to the courts above and below. The Supreme Court's written opinions are subject to scrutiny by other judges, law professors, lawyers, elected officials, the public, and, of course, the media.

External Checks on Power

The executive and legislative branches can check or try to check judicial power. Through their authority to nominate federal judges, presidents influence the power and direction of the courts by filling vacancies with people likely to support their policies.

They may object to specific decisions in speeches, press conferences, or written statements. In his 2010 State of the Union address, with six of the justices seated in front of him, President Obama criticized the Supreme Court's decision that corporations have a First Amendment right to make unlimited expenditures in candidate elections. [9]

Presidents can engage in frontal assaults. Following his overwhelming reelection victory, President Franklin D. Roosevelt proposed to Congress in February 1937 that another justice be added to the Supreme Court for each sitting justice over the age of seventy. This would have increased the number of justices on the court from nine to fifteen. His ostensible justification was the Court's workload and the ages of the justices. Actually, he was frustrated by the Court's decisions, which gutted his New Deal economic programs by declaring many of its measures unconstitutional.

The president's proposal was damned by its opponents as unwarranted meddling with the constitutionally guaranteed independence of the judiciary. It was further undermined when the justices pointed out that they were quite capable of coping with their workload, which was not at all excessive. Media coverage, editorials, and commentary were generally critical, even hostile to the proposal, framing it as "court packing" and calling it a "scheme." The proposal seemed a rare blunder on FDR's part. But while Congress was debating it, one of the justices shifted to the Roosevelt side in a series of regulatory cases, giving the president a majority on the court at least for these cases. This led to the famous aphorism "a switch in time saves nine." Within a year, two of the conservative justices retired and were replaced by staunch Roosevelt supporters.

Congress can check judicial power. It overcomes a decision of the Court by writing a new law or rewriting a law to meet the Court's constitutional objections without altering the policy. It can threaten to—and sometimes succeed in—removing a subject from the courts' jurisdiction, or propose a constitutional amendment to undo a Court decision.

Indeed, the first piece of legislation signed by President Obama overturned a 5–4 Supreme Court 2007 decision that gave a woman a maximum of six months to seek redress after receiving the first check for less pay than her peers. [10] Named after the woman who at the end of her nineteen-year career complained that she had been paid less than men, the Lilly Ledbetter Fair Pay Act extends the period to six months after any discriminatory paycheck. It also applies to anyone seeking redress for pay discrimination based on race, religion, disability, or age.

Impeachment

The Constitution grants Congress the power to impeach judges. But since the Constitution was ratified, the House has impeached only eleven federal judges, and the Senate has convicted just five of them. They were convicted for such crimes as bribery, racketeering, perjury, tax evasion, incompetence, and insanity, but not for wrongly interpreting the law.

The Supreme Court may lose power if the public perceives it as going too far. Politicians and interest groups criticize, even condemn, particular decisions. They stir up public indignation against the Court and individual justices. This happened to Chief Justice Earl Warren and his colleagues during the 1950s for their school desegregation and other civil rights decisions.

The controversial decisions of the Warren Court inspired a movement to impeach the chief justice. Do you think the founding fathers intended for the judiciary to be threatened with removal if Congress did not agree with their decisions? Explain your answer.

How the decisions and reactions to them are framed in media reports can support or undermine the Court's legitimacy (Note the section below: "Comparing Content").

Comparing Content

Brown v. Board of Education of Topeka, Kansas

How a decision can be reported and framed differently is illustrated by news coverage of the 1954 Supreme Court school desegregation ruling.

The New York Times of May 18, 1954, presents the decision as monumental and historic, and school desegregation as both necessary and desirable. Southern opposition is acknowledged but downplayed, as is the difficulty of implementing the decision. The front-page headline states "High Court Bans School Segregation; 9–0 Decision Grants Time to Comply." A second front-page article is headlined "Reactions of South." Its basic theme is captured in two prominent paragraphs: "underneath the surface…it was evident that many Southerners recognized that the decision had laid down the legal principle rejecting segregation in public education facilities" and "that it had left open a challenge to the region to join in working out a program of necessary changes in the present bi-racial school systems."

There is an almost page-wide photograph of the nine members of the Supreme Court. They look particularly distinguished, legitimate, authoritative, decisive, and serene.

In the South, the story was different. The Atlanta Constitution headlined its May 18, 1954, story "Court Kills Segregation in Schools: Cheap Politics, Talmadge Retorts." By using "Kills" instead of the Times's "Bans," omitting the fact headlined in the Times that the decision was unanimous, and including the reaction from Georgia Governor Herman E. Talmadge, the Constitution depicted the Court's decision far more critically than the Times. This negative frame was reinforced by the headlines of the other stories on its front page. "Georgia's Delegation Hits Ruling" announces one; "Segregation To Continue, School Officials Predict" is

a second. Another story quotes Georgia's attorney general as saying that the "Ruling Doesn't Apply to Georgia" and pledging a long fight.

The Times' coverage supported and legitimized the Supreme Court's decision. Coverage in the Constitution undermined it.

External pressure is also applied when the decisions, composition, and future appointments to the Supreme Court become issues during presidential elections. [11] In a May 6, 2008, speech at Wake Forest University, Republican presidential candidate Senator John McCain said that he would nominate for the Supreme Court "men and women with…a proven commitment to judicial restraint." Speaking to a Planned Parenthood convention on July 17, 2007, Senator Barack Obama identified his criteria as "somebody who's got the heart, the empathy, to recognize what it's like…to be poor or African American or gay or disabled or old."

Judges as Policymakers

Judges have power because they decide cases: they interpret the Constitution and laws, and select precedents. These decisions often influence, even make, public policy and have important ramifications for social conflict. For example, the Supreme Court has effectively established the ground rules for elections. In 1962 it set forth its "one person, one vote" standard for judging electoral districts. It has declared term limits for members of Congress unconstitutional. It has upheld state laws making it extremely difficult for third parties to challenge the dominance of the two major parties.

Judicial Philosophies

How willing judges are to make public policy depends in part on their judicial philosophies. Some follow *judicial restraint*, deciding cases on the narrowest grounds possible. In interpreting federal laws, they defer to the views expressed in Congress by those who made the laws. They shy away from invalidating laws and the actions of government officials. They tend to define some issues as political questions that should be left to the other branches of government or the voters. When the Constitution is silent, ambiguous, or open ended on a subject (e.g., "freedom of speech," "due process of law," and "equal protection of the laws"), they look to see whether the practice being challenged is a long-standing American tradition. They are inclined to adhere to *precedent*.

Judicial restraint is sometimes paired with *strict constructionism*. Judges apply the Constitution according to what they believe was its original meaning as understood by a reasonable person when the Constitution was written. Other judges follow a philosophy of *judicial activism* (although they may not call it that). Activist judges are willing to substitute their policy views for the policy actions or inaction of the other branches of government.

Judicial activism is often paired with loose constructionism, viewing the Constitution as a living document that the founders left deliberately ambiguous. In interpreting the Constitution, these judges are responsive to what they see as changes in society and its needs. A plurality of the Supreme Court found a right to privacy implicit in the Constitution and used it to overturn a Connecticut law prohibiting the use of contraceptives. [15] The justices later used that privacy right as a basis for the famous *Roe v. Wade* decision, "discovering" a woman's constitutional right to an abortion.

The distinction between judicial restraint and strict constructionism on the one hand and judicial activism and loose constructionism on the other can become quite muddy. In 1995, the Supreme Court, by a 5–4 vote, struck down the Gun-Free School Zone Act—an attempt by Congress to keep guns out of schools. [16] The ruling was that Congress had overstepped its authority and that only states had the power to pass such laws. This decision by the conservative majority, interpreting the Constitution according to what it believed was the original intentions of the framers, exemplified strict constructionism. It also exemplified judicial activism: for the first time in fifty years, the Court curtailed the power of Congress under the Constitution's commerce clause to interfere with local affairs. [17]A 5–4 conservative majority has also interpreted the Second Amendment to prohibit the regulation of guns. [18] This decision, too, could be seen as activist.

Figure 4.4.9: The Warren Court 1954

The Warren Court and Civil Rights

The Earl Warren Court of the 1950s and 1960s made some of the most important civil rights decisions in American History including *Brown v. Board of Education*, Gideon v. Wainwright, and *Cooper v. Aaron*, which were unanimously decided, as well as *Abington School District v. Schempp*, and *Engel v. Vitale.*

Each case striking down religious recitations in schools with only one dissent. In an unusual action, the decision in Cooper was personally signed by all nine justices, with the three new members of the Court adding that they supported and would have joined the Court's decision in *Brown v. Board*. But this court's decisions also proved to be very divisive at a time in our history when the Civil Rights movement was gaining steam. The Warren Court is an example of how the Supreme Court can use its powers of judicial review to institute policy (civil rights and civil liberties) when the legislature is unable or unwilling to do so.

Research Topic:

Conduct Research on the Earl Warren Court and its important decisions then discuss its legacy.

Do you believe this court exemplifies judicial activism or judicial restraint? What impact did the court have on our lives today? Would you describe this court's impact as positive or negative? Explain your answer.

One doesn't have to believe that justices are politicians in black robes to understand that some of their decisions are influenced, if not determined, by their political views. [19] Judges appointed by a Democratic president are more liberal than those appointed by a Republican president on labor and economic regulation, civil rights and liberties, and criminal justice. [20]Republican and Democratic federal appeals court judges decide differently on contentious issues such as abortion, racial integration and racial preferences, church-state relations, environmental protection, and gay rights.

On rare occasions, the Supreme Court renders a controversial decision that graphically reveals its power and is seen as motivated by political partisanship. In December 2000, the Court voted 5–4, with the five most conservative justices in the majority, that the

Florida Election Code's "intent of the voter" standard provided insufficient guidance for manually recounting disputed ballots and that there was no time left to conduct recounts under constitutionally acceptable standards. This ensured that Republican George W. Bush would become president.

The decision was widely reported and discussed in the media. Defenders framed it as principled, based on legal considerations. Critics deplored it as legally frail and politically partisan. They quoted the bitter comment of dissenting Justice Stevens: "Although we may never know with complete certainty the identity of the winner of this year's presidential election, the identity of the loser is perfectly clear. It is the nation's confidence in the judge as an impartial guardian of the rule of law."

Figure 4.4.10

Study/Discussion Questions

1. What role does judicial review play in our legal system? Why might it be important for the Supreme Court to have the power to decide if laws are unconstitutional?
2. In *Marbury v. Madison*, how did Chief Justice Marshall strike a balance between asserting the Supreme Court's authority and respecting the president's authority? Do you think justices should take political factors into account when ruling on the law?
3. Why do you think it might be important for judges to follow precedent? What do you think would happen if judges decided every case differently?
4. Which of the four judicial philosophies described in the text makes the most sense to you? What do you think the advantages and disadvantages of that philosophy might be?

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4.5: Independent Executive Agencies

An independent executive agency is created by Congress to address concerns that go beyond the scope of ordinary legislation. These agencies are responsible for keeping the government and the economy running smoothly. These agencies are not represented in the cabinet and are not part of the Executive Office of the president. They deal with government operations, the economy, and regulatory oversight.

Figure 4.5.1: NASA Florida

NASA

President Dwight D. Eisenhower established the National Aeronautics and Space Administration (NASA) in 1958 with a distinctly civilian (rather than military) orientation encouraging peaceful applications in space science. The National Aeronautics and Space Act was passed on July 29, 1958, disestablishing NASA's predecessor, the National Advisory Committee for Aeronautics (NACA). The new agency became operational on October 1, 1958.

Since that time, most U.S. space exploration efforts have been led by NASA, including the Apollo moon-landing missions, the Skylab space station, and later the Space Shuttle. Currently, NASA is supporting the International Space Station and is overseeing the development of the Orion Multi-Purpose Crew Vehicle, the Space Launch System and Commercial Crew vehicles. The agency is also responsible for the Launch Services Program (LSP), which provides oversight of launch operations and countdown management for unmanned NASA launches. The organizational structure of NASA is shown in the following chart.

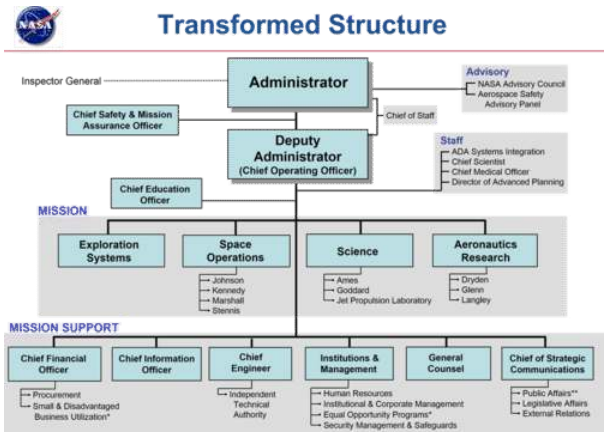


Figure 4.5.2: * In accordance with law, the OEOP and SDBU maintain reporting relationships to the Deputy and the Administrator. ** Including a new emphasis on internal communicationsRevised: 6/24/04 Note that the administrative staff must also work side by side with advisory committees and the inspector general's office who independently provides accounting and oversight for the actions of the agency. In addition, while the agency does not directly report to the President, it does report to Congress for oversight and funding.

Video: The 50th Anniversary of NASA (2008)

Important NASA Contributions

Beginning in the last half of the 20th century and continuing today, the research and exploration efforts of NASA have contributed to discovery and development of many important technological innovations.

Health and Medicine

Light-Emitting Diodes (LEDs): Red light-emitting diodes are growing plants in space and healing humans on Earth. The LED technology used in NASA space shuttle plant growth experiments has contributed to the development of medical devices such as award-winning WARP 10, a hand-held, high-intensity, LED unit developed by Quantum Devices Inc. The WARP 10 is intended for the temporary relief of minor muscle and joint pain, arthritis, stiffness, and muscle spasms, and also promotes muscle relaxation and increases local blood circulation. The WARP 10 is being used by the U.S. Department of Defense and U.S. Navy as a noninvasive "soldier self-care" device that aids front-line forces with first aid for minor injuries and pain, thereby improving endurance in combat. The next-generation WARP 75 has been used to relieve pain in bone marrow transplant patients, and will be used to combat the symptoms of bone atrophy, multiple sclerosis, diabetic complications, Parkinson's disease, and in a variety of ocular applications. (Spinoff 2005, 2008)

Infrared ear thermometers: Diatek Corporation and NASA developed an aural thermometer, which weighs only 8 ounces and uses infrared astronomy technology to measure the amount of energy emitted by the eardrum, the same way the temperature of stars and planets is measured. This method avoids contact with mucous membranes, virtually eliminating the possibility of cross infection, and permits rapid temperature measurement of newborn, critically-ill, or incapacitated patients. NASA supported the Diatek Corporation, a world leader in electronic thermometry, through the Technology Affiliates Program. (Spinoff 1991)

Artificial limbs: NASA's continued funding, coupled with its collective innovations in robotics and shock-absorption/comfort materials are inspiring and enabling the private sector to create new and better solutions for animal and human prostheses. Advancements such as Environmental Robots Inc.'s development of artificial muscle systems with robotic sensing and actuation capabilities for use in NASA space robotic and extravehicular activities are being adapted to create more functionally dynamic artificial limbs (Spinoff 2004). Additionally, other private-sector adaptations of NASA's temper foam technology have brought about custom-moldable materials offering the natural look and feel of flesh, as well as preventing friction between the skin and the prosthesis, and heat/moisture buildup. (Spinoff 2005)

Ventricular assist device: Collaboration between NASA, Dr. Michael DeBakey, Dr. George Noon, and MicroMed Technology Inc. resulted in a lifesaving heart pump for patients awaiting heart transplants. The MicroMed DeBakey ventricular assist device (VAD) functions as a "bridge to heart transplant" by pumping blood throughout the body to keep critically ill patients alive until a donor heart is available. Weighing less than four ounces and measuring one by three inches, the pump is approximately one-tenth the size of other currently marketed pulsatile VADs. This makes it less invasive and ideal for smaller adults and children. Because of the pump's small size, less than 5 percent of the patients implanted developed device-related infections. It can operate up to 8 hours on batteries, giving patients the mobility to do normal, everyday activities. (Spinoff 2002)

Transportation

Airplane anti-icing systems: NASA funding under the Small Business Innovation Research (SBIR) program and work with NASA scientists advanced the development of the certification and integration of a thermoelectric deicing system called Thermawing, a DC-powered air conditioner for single-engine aircraft called Thermacool, and high-output alternators to run them both. Thermawing, a reliable anti-icing and deicing system, allows pilots to safely fly through ice encounters and provides pilots of single-engine aircraft the heated wing technology usually reserved for a larger, jet-powered craft. Thermacool, an innovative electric air conditioning system, uses a new compressor whose rotary pump design runs off an energy-efficient, brushless DC motor and allows pilots to use the air conditioner before the engine even starts. (Spinoff 2007)

Grooves in concrete: Safety grooving, the cutting of grooves in concrete to increase traction and prevent injury, was first developed to reduce aircraft accidents on wet runways. Represented by the International Grooving and Grinding Association, the industry expanded into highway and pedestrian applications. The technique originated at Langley Research Center, which assisted in testing the grooving at airports and on highways. Skidding was reduced, stopping distance decreased, and a vehicle's cornering ability on curves was increased. The process has been extended to animal holding pens, steps, parking lots, and other potentially slippery surfaces. (Spinoff 1985)

Radial tires: Goodyear Tire and Rubber Company developed a fibrous material, five times stronger than steel, for NASA to use in parachute shrouds to soft-land the Vikings on the Martian surface. The fiber's chain-like molecular structure gave it incredible strength in proportion to its weight. Recognizing the increased strength and durability of the material, Goodyear expanded the technology and went on to produce a new radial tire with a tread life expected to be 10,000 miles greater than conventional radials. (Spinoff 1976)

Chemical detection: NASA contracted with Intelligent Optical Systems (IOS) to develop moisture- and pH-sensitive sensors to warn of potentially dangerous corrosive conditions in aircraft before significant structural damage occurs. This new type of sensor, using a specially manufactured optical fiber whose entire length is chemically sensitive, changes color in response to contact with its target. After completing the work with NASA, IOS was tasked by the U.S. Department of Defense to further develop the sensors for detecting chemical warfare agents and potential threats, such as toxic industrial compounds and nerve agents, for which they proved just as successful. IOS has additionally sold the chemically sensitive fiber optic cables to major automotive and aerospace companies, who are finding a variety of uses for the devices such as aiding experimentation with nontraditional power sources, and as an economical "alarm system" for detecting chemical release in large facilities. (Spinoff 2007)

Public Safety

Video enhancing and analysis systems: Integraph Government Solutions developed its Video Analyst System (VAS) by building on Video Image Stabilization and Registration (VISAR) technology created by NASA to help FBI agents analyze video footage. Originally used for enhancing video images from nighttime videotapes made with hand-held camcorders, VAS is a state-of-the-art, simple, effective, and affordable tool for video enhancement and analysis offering benefits such as support of full-resolution digital video, stabilization, frame-by-frame analysis, conversion of analog video to digital storage formats, and increased visibility of filmed subjects without altering underlying footage. Aside from law enforcement and security applications, VAS has also been adapted to serve the military for reconnaissance, weapons deployment, damage assessment, training, and mission debriefing. (Spinoff 2001)

Land mine removal device: Due to arrangements such as the one between Thiokol Propulsion and NASA that permits Thiokol to use NASA's surplus rocket fuel to produce a flare that can safely destroy land mines, NASA is able to reduce propellant waste without negatively impacting the environment, and Thiokol is able to access the materials needed to develop the Demining Device flare. The Demining Device flare uses a battery-triggered electric match to ignite and neutralize land mines in the field without detonation. The flare uses solid rocket fuel to burn a hole in the mine's case and burn away the explosive contents so the mine can be disarmed without hazard. (Spinoff 2000)

Fire-resistant insulation over steel: Built and designed by Avco Corporation, the Apollo heat shield was coated with a material whose purpose was to burn and thus dissipate energy during reentry while charring, to form a protective coating to block heat penetration. NASA subsequently funded Avco's development of other applications of the heat shield, such as fire-retardant paints and foams for aircraft, which led to the world's first intumescent epoxy material, which expands in volume when exposed to heat or flames, acting as an insulating barrier and dissipating heat through burn-off. Further innovations based on this product include steel

coatings devised to make high-rise buildings and public structures safer by swelling to provide a tough and stable insulating layer over the steel for up to four hours of fire protection, ultimately to slow building collapse and provide more time for escape. (Spinoff 2006)

Firefighter gear: Firefighting equipment widely used throughout the United States is based on a NASA development that coupled Agency design expertise with lightweight materials developed for the U.S. Space Program. A project that linked NASA and the National Bureau of Standards resulted in a lightweight breathing system including a face mask, frame, harness, and air bottle, using an aluminum composite material developed by NASA for use on rocket casings. Aerospace technology has been beneficially transferred to civil-use applications for years, but perhaps the broadest fire-related technology transfer is the breathing apparatus worn by firefighters for protection from smoke inhalation injury. Additionally, radio communications are essential during a fire to coordinate hose lines, rescue victims, and otherwise increase efficiency and safety. NASA's inductorless electronic circuit technology contributed to the development of a lower-cost, more rugged, short-range two-way radio now used by firefighters. NASA also helped develop a specialized mask weighing less than three ounces to protect the physically impaired from injuries to the face and head, as well as flexible, heat-resistant materials—developed to protect the space shuttle on reentry—which are being used both by the military and commercially in suits for municipal and aircraft-rescue firefighters. (Spinoff 1976)

Consumer, Home, and Recreation

Temper foam: As the result of a program designed to develop a padding concept to improve crash protection for airplane passengers, Ames Research Center developed a foam material with unusual properties. The material is widely used and commonly known as temper foam or "memory foam." The material has been incorporated into a host of widely used and recognized products including mattresses, pillows, military and civilian aircraft, automobiles and motorcycles, sports safety equipment, amusement park rides and arenas, horseback saddles, archery targets, furniture, and human and animal prostheses. Its high-energy absorption and soft characteristics not only offer superior protection in the event of an accident or impact but enhanced comfort and support for passengers on long flights or those seeking restful sleep. Today, temper foam is being employed by NASCAR to provide added safety in racecars. (Spinoff 1976, 1977, 1979, 1988, 1995, 2002, 2005)

Enriched Baby Food/Baby bottle: Commercially available infant formulas now contain a nutritional enrichment ingredient that traces its existence to NASA-sponsored research that explored the potential of algae as a recycling agent for long-duration space travel. The substance, formulated into the products life's DHA and life's ARA, can be found in over 90 percent of the infant formulas sold in the United States, and are added to the infant formulas sold in more than 65 additional countries. The products were developed and are manufactured by Martek Biosciences Corporation, which has pioneered the commercial development of products based on microalgae; the company's founders and principal scientists acquired their expertise in this area while working on the NASA program. (Spinoff 1996, 2008)

Portable Cordless Vacuums: Apollo and Gemini space mission technologies created by Black & Decker have helped change the way we clean around the house. For the Apollo space mission, NASA required a portable, self-contained drill capable of extracting core samples from below the lunar surface. Black & Decker was tasked with the job and developed a computer program to optimize the design of the drill's motor and insure minimal power consumption. That computer program led to the development of a cordless miniature vacuum cleaner called the Dustbuster. (Spinoff 1981)

Freeze dried food technology: In planning for the long-duration Apollo missions, NASA conducted extensive research into space food. One of the techniques developed was freeze drying—Action Products commercialized this technique, concentrating on snack food. The foods are cooked, quickly frozen, and then slowly heated in a vacuum chamber to remove the ice crystals formed by the freezing process. The final product retains 98 percent of its nutrition and weighs only 20 percent of its original weight. Today, one of the benefits of this advancement in food preparation includes simple nutritious meals available to handicapped and otherwise homebound senior adults unable to take advantage of existing meal programs sponsored by government and private organizations. (Spinoff 1976, 1994)

Environmental and Agricultural Resources

Silicon solar power cells: Homes across the country are now being outfitted with modern, high-performance, low-cost, single crystal silicon solar power cells that allow them to reduce their traditional energy expenditures and contribute to pollution reduction. The advanced technology behind these solar devices—which are competitively-priced and provide up to 50 percent more power than conventional solar cells—originated with the efforts of a NASA-sponsored 28-member coalition of companies,

government groups, universities, and nonprofits forming the Environmental Research Aircraft and Sensor Technology (ERAST) Alliance. ERAST's goal was to foster the development of remotely piloted aircraft intended to fly unmanned at high altitudes for days at a time, requiring advanced solar power sources that did not add weight. As a result, SunPower Corporation created the most advanced silicon-based cells available for terrestrial or airborne applications. (Spinoff 2005)

Pollution Remediation

A product using NASA's microencapsulating technology is available to consumers and industry enabling them to safely and permanently clean petroleum-based pollutants from water. The microencapsulated wonder, Petroleum Remediation Product or "PRP," has revolutionized the way oil spills are cleaned. The basic technology behind PRP is thousands of microcapsules—tiny balls of beeswax with hollow centers. Water cannot penetrate the microcapsule's cell, but oil is absorbed right into the beeswax spheres as they float on the water's surface. Contaminating chemical compounds that originally come from crude oil (such as fuels, motor oils, or petroleum hydrocarbons) are caught before they settle, limiting damage to ocean beds. (Spinoff 1994, 2006)

Water purification: NASA engineers are collaborating with qualified companies to develop a complex system of devices intended to sustain the astronauts living on the International Space Station and, in the future, those who go on to explore the Moon. This system, tentatively scheduled for launch in 2008, will make use of available resources by turning wastewater from respiration, sweat, and urine into drinkable water. Commercially, this system is benefiting people all over the world who need affordable, clean water. By combining the benefits of chemical adsorption, ion exchange, and ultra-filtration processes, products using this technology yield safe, drinkable water from the most challenging sources, such as in underdeveloped regions where well water may be heavily contaminated. (Spinoff 1995, 2006)

Software

Better Software: From real-time weather visualization and forecasting, high-resolution 3-D maps of the Moon and Mars, to real-time tracking of the International Space Station and the space shuttle, NASA is collaborating with Google Inc. to solve a variety of challenging technical problems ranging from large-scale data management and massively distributed computing, to human-computer interfaces—with the ultimate goal of making the vast, scattered ocean of data more accessible and usable. With companies like InterSense, NASA continues to fund and collaborate on other software advancement initiatives benefiting such areas as photo/video image enhancement, virtual-reality/design, simulation training, and medical applications. (Spinoff 2005)

Computer-generated car modeling/structural analysis software: NASA software engineers have created thousands of computer programs over the decades equipped to design, test, and analyze stress, vibration, and acoustical properties of a broad assortment of aerospace parts and structures (before prototyping even begins). The NASA Structural Analysis Program, or NASTRAN, is considered one of the most successful and widely-used NASA software programs. It has been used to design everything from Cadillacs to roller coaster rides. Originally created for spacecraft design, NASTRAN has been employed in a host of non-aerospace applications and is available to industry through NASA's Computer Software Management and Information Center (COSMIC). COSMIC maintains a library of computer programs from NASA and other government agencies and offers them for sale at a fraction of the cost of developing a new program, benefiting companies around the world seeking to solve the largest, most difficult engineering problems. (Spinoff 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1986, 1988, 1990, 1991, 1998)

Internet-connected technology applications: Embedded Web Technology (EWT) software—originally developed by NASA for use by astronauts operating experiments on available laptops from anywhere on the International Space Station—lets a user monitor and/or control a device remotely over the Internet. NASA supplied this technology and guidance to TMIO LLC, who went on to develop a low-cost, real-time remote control and monitoring of a new intelligent oven product named "ConnectIo." With combined cooling and heating capabilities, ConnectIo provides the convenience of being able to store cold food where it will remain properly refrigerated until a customized pre-programmable cooking cycle begins. The menu allows the user to simply enter the dinner time, and the oven automatically switches from refrigeration to the cooking cycle, so that the meal will be ready as the family arrives home for dinner. (Spinoff 2005)

Industrial Productivity

Powdered lubricants: NASA's scientists developed a solid lubricant coating material that is saving the manufacturing industry millions of dollars. Developed as a shaft coating to be deposited by thermal spraying to protect foil air bearings used in oil-free turbomachinery, like gas turbines, this advanced coating, PS300, was meant to be part of a larger project: an oil-free aircraft engine

capable of operating at high temperatures with increased reliability, lowered weight, reduced maintenance, and increased power. PS300 improves efficiency, lowers friction, reduces emissions, and has been used by NASA in advanced aeropropulsion engines, refrigeration compressors, turbochargers, and hybrid electrical turbogenerators. ADMA Products has found widespread industrial applications for the material. (Spinoff 2005)

Tension and high-pressure monitoring for mine safety: An ultrasonic bolt elongation monitor developed by a NASA scientist for testing tension and high-pressure loads on bolts and fasteners has continued to evolve over the past three decades. Today, the same scientist and Luna Innovations are using a digital adaptation of this same device for a plethora of different applications, including non-destructive evaluation of railroad ties, groundwater analysis, radiation dosimetry, and as a medical testing device to assess levels of internal swelling and pressure for patients suffering from intracranial pressure and compartment syndrome, a painful condition that results when pressure within muscles builds to dangerous levels. The applications for this device continue to expand. (Spinoff 1978, 2005, 2008)

Food safety systems: Faced with the problem of how and what to feed an astronaut in a sealed capsule under weightless conditions while planning for human space flight, NASA enlisted the aid of the Pillsbury Company to address two principal concerns: eliminating crumbs of food that might contaminate the spacecraft's atmosphere and sensitive instruments, and assuring absolute freedom from potentially catastrophic disease-producing bacteria and toxins. Pillsbury developed the Hazard Analysis and Critical Control Point (HACCP) concept, potentially one of the most far-reaching space spinoffs, to address NASA's second concern. HACCP is designed to prevent food safety problems rather than to catch them after they have occurred. The U.S. Food and Drug Administration has applied HACCP guidelines for the handling of seafood, juice, and dairy products. (Spinoff 1991)

MORE INFORMATION:

For more information on NASA's technological contributions, check out the following Internet resources:

https://www.nasa.gov/50th/50th_magazine/benefits.html

http://spinoff.nasa.gov/

http://www.independent.co.uk/news/science/50-years-50-giant-leaps-how-nasa-rocked-our-world-879377.html

https://scepticalprophet.wordpress.com/2012/10/24/why-spend-money-on-science-nasas-contributions-to-society/

http://www.post-gazette.com/life/lifestyle/2009/07/20/From-cell-phones-to-computers-technology-from-NASA-s-space-program-continues-to-touch-everyday-life/stories/200907200146

Video: 25 NASA Discoveries that Changed Your Life

DEBATE ACTIVITY - THE FUTURE OF NASA

Recently, there has been a call to radically change the overall mission of NASA and reduce or eliminate its manned space flight missions. Cutting NASA's annual funding would result in at least $17 billion per year in annual savings. Is this a wise fiscal policy decision? Explain your answer using evidence from online resources and articles including the links provided below.

http://tech.mit.edu/V130/N18/nasap.html http://news.nationalgeographic.com/news/2014/05/140530-space-politics-planetary-science-funding-exploration/

www.popsci.com/tags/nasa-budget

http://dbp.idebate.org/en/index.php/Debate:_Funding_for_space_exploration

http://www.pbs.org/newshour/bb/science-jan-june10-nasa_02-02/

http://www.huffingtonpost.com/howard-steven-friedman/nasa-funding-federal-budget_b_1464070.html

http://www.space.com/22023-nasa-authorization-bill-debate.html

http://www.c-span.org/video/?205561-4/house-debates-nasa-funding

Figure 4.5.3: The United States Post Office is an independent agency of the federal government that is responsible for providing postal service.

Regulatory Agencies

Unlike independent executive agencies like NASA, the Environmental Protection Agency (EPA) and others like it act as regulatory agencies in order to implement and enforce specific Congressional laws. Other regulatory agencies that we will examine in this section include the Occupational Safety and Health Administration (OSHA), the Food and Drug Administration (FDA), and the Federal Communications Commission (FCC). Each of these agencies acts independently and reports directly to Congress for oversight and funding. In addition, these agencies have tremendous police and law enforcement powers, which accompany the Congressional statutes they are charged to enforce.

Figure 4.5.4

The Environmental Protection Agency

The United States Environmental Protection Agency (EPA or sometimes USEPA) is an agency of the U.S. federal government, which was created for the purpose of protecting human health and the environment by writing and enforcing regulations based on laws passed by Congress. The EPA was proposed by President Richard Nixon and began operation on December 2, 1970, after Nixon signed an executive order. The order establishing the EPA was ratified by committee hearings in the House and Senate. The agency is led by its administrator, who is appointed by the president and approved by Congress. The current administrator is Gina McCarthy. The EPA is not a cabinet department, but the administrator is normally given cabinet rank.

The EPA has its headquarters in Washington, D.C., regional offices for each of the agency's 10 regions, and 27 laboratories. The agency conducts environmental assessment, research, and education. It has the responsibility of maintaining and enforcing national standards under a variety of environmental laws, in consultation with state, tribal, and local governments. It delegates some permitting, monitoring, and enforcement responsibility to U.S. states and the federally recognized tribes. EPA enforcement powers include fines, sanctions, and other measures. The agency also works with industries and all levels of government in a wide variety of voluntary pollution prevention programs and energy conservation efforts.

The agency has approximately 15,193 full-time employees and engages many more people on a contractual basis. More than half of EPA human resources are engineers, scientists, and environmental protection specialists; other groups include legal, public affairs, financial, and information technologists.

The EPA oversees a number of important programs and enforces a great number of federal statutes regarding the quality of air, water, and soil in the United States. Some of its most important and most highly visible programs include:

Energy Star: In 1992 the EPA launched the Energy Star program, a voluntary program that fosters energy efficiency.

Pesticide oversight and regulation: The EPA administers the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (which is much older than the agency) and registers all pesticides legally sold in the United States.

Environmental Impact Statement Review: EPA is responsible for reviewing Environmental Impact Statements of other federal agencies' projects, under the National Environmental Policy Act (NEPA).

Safer Detergents Stewardship Initiative: Through the Safer Detergents Stewardship Initiative (SDSI), [29] EPA's Design for the Environment (DfE) recognizes environmental leaders who voluntarily commit to the use of safer surfactants. Safer surfactants are the ones that break down quickly to non-polluting compounds and help protect aquatic life in both fresh and salt water.

The Design for the Environment has identified safer alternative surfactants through partnerships with industry and environmental advocates. These safer alternatives are comparable in cost and are readily available. CleanGredients is a source of safer surfactants.

Fuel economy: Manufacturers selling automobiles in the USA are required to provide EPA fuel economy test results for their vehicles and the manufacturers are not allowed to provide results from alternate sources. The fuel economy is calculated using the emissions data collected during two of the vehicle's Clean Air Act certification tests by measuring the total volume of carbon captured from the exhaust during the tests.

The current testing system was originally developed in 1972 and used driving cycles designed to simulate driving during rush-hour in Los Angeles during that era. Prior to 1984, the EPA reported the exact fuel economy figures calculated from the test. In 1984, the EPA began adjusting city (aka Urban Dynamometer Driving Schedule or UDDS) results downward by 10% and highway (aka HighWay Fuel Economy Test or HWFET) results by 22% to compensate for changes in driving conditions since 1972 and to better correlate the EPA test results with real-world driving. In 1996, the EPA proposed updating the Federal Testing Procedure to add a new higher speed test (US06) and an air-conditioner test (SC03) to further improve the correlation of fuel economy and emission estimates with real-world reports. The updated testing methodology was finalized in December, 2006 for implementation with model year 2008 vehicles and set the precedent of a 12-year review cycle for the test procedures.

In February 2005, the organization launched a program called "Your MPG" that allows drivers to add real-world fuel economy statistics into a database on the EPA's fuel economy website and compare them with others and the original EPA test results.

It is important to note that the EPA actually conducts these tests on very few vehicles. "While the public mistakenly presumes that this federal agency is hard at work conducting complicated tests on every new model of truck, van, car, and SUV, in reality, just 18 of the EPA's 17,000 employees work in the automobile-testing department in Ann Arbor, Michigan, examining 200 to 250 vehicles a year, or roughly 15 percent of new models. As to that other 85 percent, the EPA takes automakers at their word—without any testing-accepting submitted results as accurate." Two-thirds of the vehicles the EPA tests themselves are selected randomly, and the remaining third are tested for specific reasons.

Although originally created as a reference point for fossil fuelled vehicles, driving cycles have been used for estimating how many miles an electric vehicle will do on a single charge. [35]

Air quality: The Air Quality Modeling Group (AQMG) is in the EPA's Office of Air and Radiation (OAR) and provides leadership and direction on the full range of air quality models, air pollution dispersion models and other mathematical simulation techniques

used in assessing pollution control strategies and the impacts of air pollution sources.

The AQMG serves as the focal point on air pollution modeling techniques for other EPA headquarters staff, EPA regional Offices, and State and local environmental agencies. It coordinates with the EPA's Office of Research and Development (ORD) on the development of new models and techniques, as well as wider issues of atmospheric research. Finally, the AQMG conducts modeling analyses to support the policy and regulatory decisions of the EPA's Office of Air Quality Planning and Standards (OAQPS).

Oil pollution: SPCC: Spill Prevention, Control, and Countermeasure Rule. Applies to all facilities that store, handle, process, gather, transfer, store, refine, distribute, use or consume oil or oil products. Oil products include petroleum and non-petroleum oils as well as: animal fats, oils and greases; fish and marine mammal oils; and vegetable oils, (including oils from seeds, nuts, fruits, and kernels). Mandates that a written plan is required for facilities that store more than 1,320 gallons of fuel above ground or more than 42,000 gallons below-ground, and may reasonably be expected to discharge to navigable waters(as defined in the Clean Water Act)or adjoining shorelines. Secondary Containment mandated at oil storage facilities. Oil release containment is required at oil development sites.

WaterSense: is an EPA program designed to encourage water efficiency in the United States through the use of a special label on consumer products. It was launched in June 2006.[38] Products include high-efficiency toilets (HETs), bathroom sink faucets (and accessories), and irrigation equipment. WaterSense is a voluntary program, with EPA developing specifications for water-efficient products through a public process and product testing by independent laboratories. [39]

Drinking water: The EPA ensures safe drinking water for the public, by setting standards for more than 160,000 public water systems throughout the United States. EPA oversees states, local governments, and water suppliers to enforce the standards, under the Safe Drinking Water Act. The program includes regulation of injection wells in order to protect underground sources of drinking water. Select readings of amounts of certain contaminants in drinking water, precipitation, and surface water, in addition to milk and air, are reported on EPA's Rad Net web site in a section entitled Envirofacts. In certain cases, readings exceeding EPA MCL levels are deleted or not included despite mandatory reporting regulations. A draft of revised EPA regulations relaxes the regulations for radiation exposure through drinking water, stating that current standards are impractical to enforce. The EPA is recommending that intervention is not necessary until drinking water is contaminated with radioactive iodine 131 at a concentration of 81,000 picocuries per liter (the limit for short term exposure set by the International Atomic Energy Agency), which is 27,000 times the current EPA limit of 3 picocuries per liter for long-term exposure. [42]

Radiation protection: The EPA has the following seven project groups to protect the public from radiation. These include:

- Radioactive Waste Management
- Emergency Preparedness and Response Programs
- Protective Action Guides and Planning Guidance for Radiological Incidents. EPA developed the manual to provide guidelines for local and state governments to protect the public from a nuclear accident.
- EPA Cleanup and Multi-Agency Program.
- Risk Assessment and Federal Guidance Programs [48]
- Naturally-Occurring Radioactive Materials Program [49]
- Air and Water Programs [50]
- Radiation Source Reduction and Management [51]

Research Vessel (OSV Bold): On March 3, 2004, the United States Navy transferred USNS Bold, a Stalwart class ocean surveillance ship, to the EPA, now known as OSV Bold. The ship, previously used in anti-submarine operations during the Cold War, is equipped with side-scan sonar, underwater video, water and sediment sampling instruments, used in the study of ocean and coastline. One of the major missions of the Bold was to monitor for ecological impact sites where materials are dumped from dredging operations in U.S. ports. [52] In 2013, the Bold was awarded to Seattle Central Community College (SCCC) by the General Services Administration. SCCC demonstrated in a competition that they would put it to the highest and best purpose, and acquired the ship at a cost of $5,000. [53]

Advance identification: Advance identification, or ADID, is a planning process used by the EPA to identify wetlands and other bodies of water and their respective suitability for the discharge of dredged and fill material. The EPA conducts the process in

cooperation with the U.S. Army Corps of Engineers and local states or Native American Tribes. As of February 1993, 38 ADID projects had been completed and 33 were ongoing. [54]

Superfund: Superfund is the federal government's program to clean up the nation's uncontrolled hazardous waste sites. Those sites that are so dangerous as to be placed on the “National Priorities List” are overseen and monitored intensely and are cleaned up to protect the environment and the health of all Americans.

Figure 4.5.5: The Occupational Safety and Health Act was signed by President Nixon to assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education, and assistance.

The Occupational Safety and Health Administration (OSHA)

OSHA is an agency of the United States Department of Labor. Congress established the agency under the Occupational Safety and Health Act, which President Richard M. Nixon signed into law on December 29, 1970. OSHA's mission is to "assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education, and assistance". The agency is also charged with enforcing a variety of whistleblower statutes and regulations. OSHA is currently headed by Assistant Secretary of Labor David Michaels.

OSHA officially formed on April 28, 1971, the date that the OSH Act became effective. George Guenther was appointed as the agency's first director.

Rights and Responsibilities **Under**OSHA

Employers have the responsibility to provide a safe workplace. By law, employers must provide their workers with a workplace that does not have serious hazards and must follow all OSHA safety and health standards. Employers must find and correct safety and health problems. OSHA further requires that employers must first try to eliminate or reduce hazards by making feasible changes in working conditions rather than relying on personal protective equipment such as masks, gloves, or earplugs. Switching to safer chemicals, enclosing processes to trap harmful fumes, or using ventilation systems to clean the air are examples of effective ways to eliminate or reduce risks.

Employers must also:

- Inform workers about chemical hazards through training, labels, alarms, color-coded systems, chemical information sheets, and other methods.
- Provide safety training to workers in a language and vocabulary they can understand.
- Keep accurate records of work-related injuries and illnesses.
- Perform tests in the workplace, such as air sampling, required by some OSHA standards.
- Provide required personal protective equipment at no cost to workers. (Employers must pay for most types of required personal protective equipment.)
- Provide hearing exams or other medical tests when required by OSHA standards.
- Post OSHA citations and annually post injury and illness summary data where workers can see them.
- Notify OSHA within eight hours of a workplace fatality. Notify OSHA within 24 hours of all work-related inpatient hospitalizations, all amputations, and all losses of an eye (1-800-321-OSHA [6742]).
- Prominently display the official OSHA Job Safety and Health – It’s the law poster that describes rights and responsibilities under the OSH Act.

- Not retaliate or discriminate against workers for using their rights under the law, including their right to report a work-related injury or illness.

Workers have the right to:

- Working conditions that do not pose a risk of serious harm.
- File a confidential complaint with OSHA to have their workplace inspected.
- Receive information and training about hazards, methods to prevent harm, and the OSHA standards that apply to their workplace. The training must be done in a language and vocabulary workers can understand.
- Receive copies of records of work-related injuries and illnesses that occur in their workplace.
- Receive copies of the results from tests and monitoring done to find and measure hazards in their workplace.
- Receive copies of their workplace medical records.
- Participate in an OSHA inspection and speak in private with the inspector.
- File a complaint with OSHA if they have been retaliated or discriminated against by their employer as the result of requesting an inspection or using any of their other rights under the OSH Act.
- File a complaint if punished or retaliated against for acting as a "whistleblower" under the 21 additional federal laws for which OSHA has jurisdiction.

Temporary workers must be treated like permanent employees. Staffing agencies and host employers share joint accountability over temporary workers. Both entities are therefore bound to comply with workplace health and safety requirements and to ensure worker safety and health. OSHA could hold both the host and temporary employers responsible for the violation of any condition.

Health and Safety Standards

The Occupational Safety and Health Act grants OSHA the authority to issue workplace health and safety regulations. These regulations include limits on hazardous chemical exposure, employee access to hazard information, requirements for the use of personal protective equipment, and requirements to prevent falls and hazards from operating dangerous equipment.

OSHA's current Construction, General Industry, Maritime and Agriculture standards are designed to protect workers from a wide range of serious hazards. Examples of OSHA standards include requirements for employers to: provide fall protection such as a safety harness/line or guardrails; prevent trenching cave-ins; prevent exposure to some infectious diseases; ensure the safety of workers who enter confined spaces; prevent exposure to harmful chemicals; put guards on dangerous machines; provide respirators or other safety equipment; and provide training for certain dangerous jobs in a language and vocabulary workers can understand.

Employers must also comply with the General Duty Clause of the OSH Act. This clause requires employers to keep their workplaces free of serious recognized hazards and is generally cited when no specific OSHA standard applies to the hazard.

In its first year of operation, OSHA was permitted to adopt regulations based on guidelines set by certain standards organizations, such as the American Conference of Governmental Industrial Hygienists, without going through all of the requirements of a typical rulemaking. OSHA is granted the authority to promulgate standards that prescribe the methods employers are legally required to follow to protect their workers from hazards. Before OSHA can issue a standard, it must go through a very extensive and lengthy process that includes substantial public engagement, notice, and comment. The agency must show that a significant risk to workers exists and that there are feasible measures employers can take to protect their workers.

In 2000, OSHA issued an ergonomics standard. In March 2001, Congress voted to repeal the standard through the Congressional Review Act. The repeal, one of the first major pieces of legislation signed by President George W. Bush, is the only instance that Congress has successfully used the Congressional Review Act to block a regulation.

Regulatory Enforcement

OSHA is responsible for enforcing its standards on regulated entities. Compliance Safety and Health Officers carry out inspections and assess fines for regulatory violations. Inspections are planned for worksites in particularly hazardous industries. Inspections can also be triggered by a workplace fatality, multiple hospitalizations, worker complaints, or referrals.

OSHA is a small agency, given the size of its mission: with its state partners, OSHA has approximately 2,400 inspectors covering more than 8 million workplaces where 130 million workers are employed. In Fiscal Year 2012 (ending Sept. 30), OSHA and its

state partners conducted more than 83,000 inspections of workplaces across the United States — just a fraction of the nation's worksites. [19] According to a report by AFL–CIO, it would take OSHA 129 years to inspect all workplaces under its jurisdiction.

Enforcement plays an important part in OSHA's efforts to reduce workplace injuries, illnesses, and fatalities. Inspections are initiated without advance notice, conducted using on-site or telephone and facsimile investigations, performed by trained compliance officers and scheduled based on the following priorities [highest to lowest]: imminent danger; catastrophes – fatalities or hospitalizations; worker complaints and referrals; targeted inspections – particular hazards, high injury rates; and follow-up inspections.

Current workers or their representatives may file a complaint and ask OSHA to inspect their workplace if they believe that there is a serious hazard or that their employer is not following OSHA standards. Workers and their representatives have the right to ask for an inspection without OSHA telling their employer who filed the complaint. It is a violation of the OSH Act for an employer to fire, demote, transfer or in any way discriminate against a worker for filing a complaint or using other OSHA rights.

When an inspector finds violations of OSHA standards or serious hazards, OSHA may issue citations and fines. A citation includes methods an employer may use to fix a problem and the date by which the corrective actions must be completed. OSHA's fines are very low compared with other government agencies. The maximum OSHA fine for a serious violation is $7,000, and the maximum fine for a repeat or willful violation is $70,000. In determining the amount of the proposed penalty, OSHA must take into account the gravity of the alleged violation and the employer's size of the business, good faith, and history of previous violations. Employers have the right to contest any part of the citation, including whether a violation actually exists. Workers only have the right to challenge the deadline by which a problem must be resolved. Appeals of citations are heard by the independent Occupational Safety and Health Review Commission (OSHRC).

OSHA carries out its enforcement activities through its 10 regional offices and 90 area offices. OSHA's regional offices are located in Boston, New York City, Philadelphia, Atlanta, Chicago, Dallas, Kansas City metropolitan area, Denver, San Francisco, and Seattle.

Video: Introduction to OSHA

Figure 4.5.6: The FDA consists of the Office of the Commissioner and four directorates overseeing the core functions of the agency: Medical Products and Tobacco, Foods and Veterinary Medicine, Global Regulatory Operations and Policy, and Operations.

The Food and Drug Administration (FDA or USFDA)

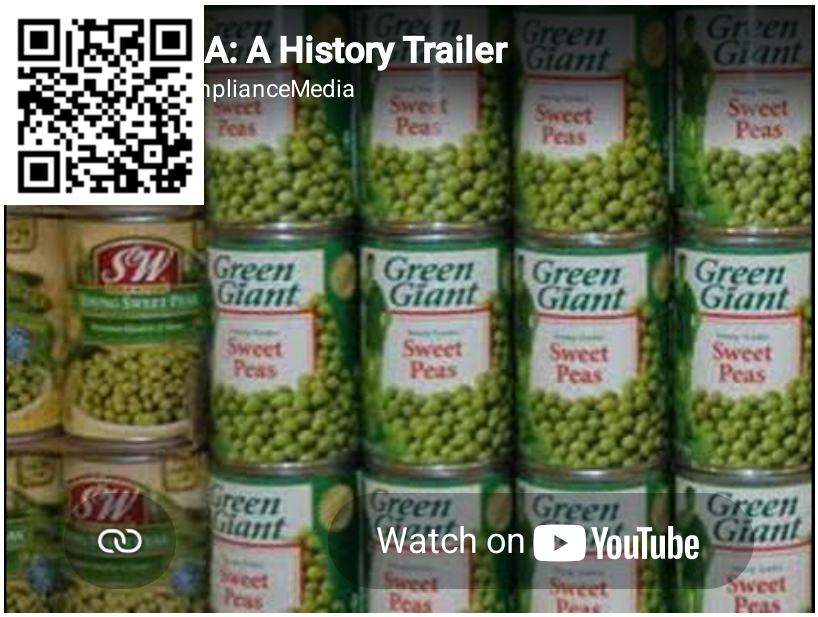
The FDA is a federal agency of the United States Department of Health and Human Services, one of the United States federal executive departments. The FDA is responsible for protecting and promoting public health through the regulation and supervision of food safety, tobacco products, dietary supplements, prescription and over-the-counter pharmaceutical drugs (medications), vaccines, biopharmaceuticals, blood transfusions, medical devices, electromagnetic radiation emitting devices (ERED), cosmetics, animal foods & feed and veterinary products.

The FDA was empowered by the United States Congress to enforce the Federal Food, Drug, and Cosmetic Act, which serves as the primary focus for the Agency; the FDA also enforces other laws, notably Section 361 of the Public Health Service Act and associated regulations, many of which are not directly related to food or drugs. These include regulating lasers, cellular phones, condoms and control of disease on products ranging from certain household pets to sperm donation for assisted reproduction.

The FDA is led by the Commissioner of Food and Drugs, appointed by the President with the advice and consent of the Senate. The Commissioner reports to the Secretary of Health and Human Services. Dr. Scott Gottlieb is the current acting commissioner.

The FDA has its headquarters in unincorporated White Oak, Maryland. The agency also has 223 field offices and 13 laboratories located throughout the 50 states, the United States Virgin Islands, and Puerto Rico. In addition, the FDA began posting employees in foreign countries such as China, India, Costa Rica, Chile, Belgium, and the United Kingdom in 2008.

Video: A Brief History & Overview of the FDA



Facilities

While most of the Centers are located in the Washington, D.C. area as part of the Headquarters divisions, two offices – the Office of Regulatory Affairs (ORA) and the Office of Criminal Investigations (OCI) – are primarily field offices with a workforce spread across the country.

The Office of Regulatory Affairs is considered the "eyes and ears" of the agency, conducting the vast majority of the FDA's work in the field. Consumer Safety Officers, more commonly called Investigators, are the individuals who inspect production and warehousing facilities, investigate complaints, illnesses, or outbreaks, and review documentation in the case of medical devices, drugs, biological products, and other items where it may be difficult to conduct a physical examination or take a physical sample of the product.

The Office of Regulatory Affairs is divided into five regions, which are further divided into 20 districts. Districts are based roughly on the geographic divisions of the federal court system. Each district comprises a main district office and a number of Resident Posts, which are FDA remote offices that serve a particular geographic area. ORA also includes the Agency's network of regulatory laboratories, which analyze any physical samples taken. Though samples are usually food-related, some laboratories are equipped to analyze drugs, cosmetics, and radiation-emitting devices.

The Office of Criminal Investigations was established in 1991 to investigate criminal cases. Unlike ORA Investigators, OCI Special Agents are armed and don't focus on technical aspects of the regulated industries. OCI agents pursue and develop cases where individuals and companies have committed criminal actions, such as fraudulent claims, or knowingly and willfully shipping known adulterated goods in interstate commerce. In many cases, OCI pursues cases involving Title 18 violations (e.g., conspiracy, false statements, wire fraud, mail fraud), in addition to prohibited acts as defined in Chapter III of the FD&C Act. OCI Special Agents often come from other criminal investigations backgrounds and work closely with the Federal Bureau of Investigation, Assistant Attorney General, and even Interpol. OCI receives cases from a variety of sources—including ORA, local agencies, and the FBI—and works with ORA Investigators to help develop the technical and science-based aspects of a case. OCI is a smaller branch, comprising about 200 agents nationwide.

The FDA frequently works with other federal agencies, including the Department of Agriculture, Drug Enforcement Administration, Customs and Border Protection, and Consumer Product Safety Commission. Often local and state government agencies also work with the FDA to provide regulatory inspections and enforcement action.

The FDA regulates more than U.S. $1 trillion worth of consumer goods, about 25% of consumer expenditures in the United States. This includes $466 billion in food sales, $275 billion in drugs, $60 billion in cosmetics and $18 billion in vitamin supplements. Much of these expenditures are for goods imported into the United States; the FDA is responsible for monitoring imports. [11]

Scope and Mission

FDA is responsible for protecting the public health by assuring the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, our nation’s food supply, cosmetics, and products that emit radiation.

FDA is also responsible for advancing the public health by helping to speed innovations that make medicines more effective, safer, and more affordable and by helping the public get the accurate, science-based information they need to use medicines and foods to maintain and improve their health. FDA also has responsibility for regulating the manufacturing, marketing and distribution of tobacco products to protect the public health and to reduce tobacco use by minors.

Finally, the FDA plays a significant role in the Nation’s counterterrorism capability. The FDA fulfills this responsibility by ensuring the security of the food supply and by fostering the development of medical products to respond to deliberate and naturally emerging public health threats.

Most federal laws concerning the FDA are part of the Food, Drug, and Cosmetic Act, (first passed in 1938 and extensively amended since) and are codified in Title 21, Chapter 9 of the United States Code. Other significant laws enforced by the FDA include the Public Health Service Act, parts of the Controlled Substances Act, the Federal Anti-Tampering Act, as well as many others. In many cases, these responsibilities are shared with other federal agencies.

Regulatory Programs

The programs for safety regulation vary widely by the type of product, its potential risks, and the regulatory powers granted to the agency. For example, the FDA regulates almost every facet of prescription drugs, including testing, manufacturing, labeling,

advertising, marketing, efficacy, and safety—yet FDA regulation of cosmetics focuses primarily on labeling and safety. The FDA regulates most products with a set of published standards enforced by a modest number of facility inspections. Inspection observations are documented on FDA Form 483.

Regulation of Food and Dietary Supplements by the U.S. Food and Drug Administration

The regulation of food and dietary supplements by the U.S. Food and Drug Administration is governed by various statutes enacted by the United States Congress and interpreted by the FDA. Pursuant to the Federal Food, Drug, and Cosmetic Act ("the Act") and accompanying legislation, the FDA has authority to oversee the quality of substances sold as food in the United States and to monitor claims made in the labeling about both the composition and the health benefits of foods.

The FDA subdivides substances that it regulates as food into various categories—including foods, food additives, added substances (man-made substances that are not intentionally introduced into food but nevertheless end up in it), and dietary supplements. Specific standards the FDA exercises differ from one category to the next. Furthermore, legislation had granted the FDA a variety of means to address violations of standards for a given substance category.

Drugs

The Center for Drug Evaluation and Research uses different requirements for the three main drug product types: new drugs, generic drugs, and over-the-counter drugs. A drug is considered "new" if it is made by a different manufacturer, uses different excipients or inactive ingredients, is used for a different purpose, or undergoes any substantial change. The most rigorous requirements apply to new molecular entities: drugs that are not based on existing medications.

New Drugs

New drugs receive extensive scrutiny before FDA approval in a process called a New Drug Application (NDA). New drugs are available only by prescription by default. A change to over-the-counter (OTC) status is a separate process, and the drug must be approved through an NDA first. A drug that is approved is said to be "safe and effective when used as directed."

Advertising and Promotion

The FDA's Office of Prescription Drug Promotion reviews and regulates prescription drug advertising and promotion through surveillance activities and issuance of enforcement letters to pharmaceutical manufacturers. Advertising and promotion for over-the-counter drugs are regulated by the Federal Trade Commission.

The drug advertising regulation contains two broad requirements: (1) a company may advertise or promote a drug only for the specific indication or medical use for which it was approved by the FDA. Also, an advertisement must contain a "fair balance" between the benefits and the risks (side effects) of a drug.

The term off-label refers to drug usage for indications other than those approved by the FDA.

Postmarket Safety Surveillance

After NDA approval, the sponsor must review and report to the FDA every patient adverse drug experience it learns of. They must report unexpected serious and fatal adverse drug events within 15 days, and other events on a quarterly basis. [22] The FDA also receives directly adverse drug event reports through its MedWatch program. [23] These reports are called "spontaneous reports" because reporting by consumers and health professionals is voluntary.

While this remains the primary tool of postmarket safety surveillance, FDA requirements for postmarketing risk management are increasing. As a condition of approval, a sponsor may be required to conduct additional clinical trials, called Phase IV trials. In some cases, the FDA requires risk management plans for some drugs that may provide for other kinds of studies, restrictions, or safety surveillance activities.

Generic Drugs

Generic drugs are chemical equivalents of name-brand drugs whose patents have expired. In general, they are less expensive than their name brand counterparts, are manufactured and marketed by other companies and, in the 1990s, accounted for about a third of all prescriptions written in the United States. For the approval of a generic drug, the U.S. Food and Drug Administration (FDA) requires scientific evidence that the generic drug is interchangeable with or therapeutically equivalent to the originally approved

drug. This is called an "ANDA" (Abbreviated New Drug Application). As of 2012 80% of all FDA approved drugs are available in generic form.

Generic Drug Scandal

In 1989, a major scandal erupted involving the procedures used by the FDA to approve generic drugs for sale to the public. Charges of corruption in generic drug approval first emerged in 1988, in the course of an extensive congressional investigation into the FDA. The oversight subcommittee of the United States House Energy and Commerce Committee resulted from a complaint brought against the FDA by Mylan Laboratories Inc. of Pittsburgh. When its application to manufacture generics were subjected to repeated delays by the FDA, Mylan, convinced that it was being discriminated against, soon began its own private investigation of the agency in 1987.

Mylan eventually filed suit against two former FDA employees and four drug-manufacturing companies, charging that corruption within the federal agency resulted in racketeering and in violations of antitrust law. "The order in which new generic drugs were approved was set by the FDA employees even before drug manufacturers submitted applications" and, according to Mylan, this illegal procedure was followed to give preferential treatment to certain companies. During the summer of 1989, three FDA officials (Charles Y. Chang, David J. Brancato, Walter Kletch) pleaded guilty to criminal charges of accepting bribes from generic drugs makers, and two companies (Par Pharmaceutical and its subsidiary Quad Pharmaceuticals) pleaded guilty to giving bribes.

Furthermore, it was discovered that several manufacturers had falsified data submitted in seeking FDA authorization to market certain generic drugs. Vitarine Pharmaceuticals of New York, which sought approval of a generic version of the drug Dyazide, a medication for high blood pressure, submitted Dyazide, rather than its generic version, for the FDA tests. In April 1989, the FDA investigated 11 manufacturers for irregularities; and later brought that number up to 13. Dozens of drugs were eventually suspended or recalled by manufacturers. In the early 1990s, the U.S. Securities and Exchange Commission filed securities fraud charges against the Bolar Pharmaceutical Company, a major generic manufacturer based in Long Island, New York.

Over-the-counter drugs

Over-the-counter (OTC) drugs like aspirin are drugs and combinations that do not require a doctor's prescription. [27] The FDA has a list of approximately 800 approved ingredients that are combined in various ways to create more than 100,000 OTC drug products. Many OTC drug ingredients had been previously approved prescription drugs now deemed safe enough for use without a medical practitioner's supervision like ibuprofen

Ebola Treatment

In 2014, the FDA added an Ebola treatment being developed by Canadian pharmaceutical company Tekmira to the Fast Track program but halted the phase 1 trials in July pending the receipt of more information about how the drug works. This is seen as increasingly important in the face of a major outbreak of the disease in West Africa that began in late March 2014 and continued as of August 2014.

Vaccines, blood and tissue products, and biotechnology

The Center for Biologics Evaluation and Research is the branch of the FDA responsible for ensuring the safety and efficacy of biological therapeutic agents. [30] These include blood and blood products, vaccines, allergenics, cell, and tissue-based products, and gene therapy products. New biologics are required to go through a premarket approval process called a Biologics License Application (BLA), similar to that for drugs.

The original authority for government regulation of biological products was established by the 1902 Biologics Control Act, with additional authority established by the 1944 Public Health Service Act. Along with these Acts, the Federal Food, Drug, and Cosmetic Act applies to all biologic products, as well. Originally, the entity responsible for the regulation of biological products resided under the National Institutes of Health; this authority was transferred to the FDA in 1972.

Medical and radiation-emitting devices

The Center for Devices and Radiological Health (CDRH) is the branch of the FDA responsible for the premarket approval of all medical devices, as well as overseeing the manufacturing, performance, and safety of these devices. The definition of a medical device is given in the FD&C Act, and it includes products from the simple toothbrush to complex devices such as implantable brain pacemakers. CDRH also oversees the safety performance of non-medical devices that emit certain types of electromagnetic

radiation. Examples of CDRH-regulated devices include cellular phones, airport baggage screening equipment, television receivers, microwave ovens, tanning booths, and laser products.

CDRH regulatory powers include the authority to require certain technical reports from the manufacturers or importers of regulated products, to require that radiation-emitting products meet mandatory safety performance standards, to declare regulated products defective, and to order the recall of defective or noncompliant products. CDRH also conducts limited amounts of direct product testing.

"FDA-Cleared" vs "FDA-Approved"

Clearance requests are for medical devices that prove they are "substantially equivalent" to the predicate devices already on the market. Approved requests are for items that are new or substantially different and need to demonstrate "safety and efficacy", for example, it may be inspected for safety in case of new toxic hazards. Both aspects need to be proved or provided by the submitter to ensure proper procedures are followed.

"FDA-Approved" vs. "FDA-Accepted in Food Processing"

The FDA does not approve applied coatings used in the food processing industry. There is no review process to approve the composition of nonstick coatings, nor does the FDA inspect or test these materials. Through their governing of processes, however, the FDA does have a set of regulations that cover the formulation, manufacturing, and use of nonstick coatings. Hence, materials like Polytetrafluoroethylene (Teflon) are not, and cannot be, considered as FDA Approved, rather, they are "FDA Compliant" or "FDA Acceptable."

Cosmetics

Cosmetics are regulated by the Center for Food Safety and Applied Nutrition, the same branch of the FDA that regulates food. Cosmetic products are not, in general, subject to premarket approval by the FDA unless they make "structure or function claims" that make them into drugs, However, all color additives must be specifically FDA approved before manufacturers can include them in cosmetic products sold in the U.S. The FDA regulates cosmetics labeling, and cosmetics that have not been safety tested must bear a warning to that effect.

Cosmetic products

Though the cosmetic industry is predominantly responsible in ensuring the safety of its products, the FDA also has the power to intervene when necessary to protect the public but in general does not require pre-market approval or testing. Companies are required to place a warning note on their products if they have not been tested. Experts in cosmetic ingredient reviews also play a role in monitoring safety through influence on the use of ingredients, but also lack legal authority. Overall the organization has reviewed about 1,200 ingredients and has suggested that several hundred be restricted, but there is no standard or systemic method for reviewing chemicals for safety and a clear definition of what is meant by 'safety' so that all chemicals are tested on the same basis.

Veterinary products

The Center for Veterinary Medicine (CVM) is the branch of the FDA that regulates food, food additives, and drugs that are given to animals, including food animals and pets. CVM does not regulate vaccines for animals; these are handled by the United States Department of Agriculture.

CVM's primary focus is on medications that are used in food animals and ensuring that they do not affect the human food supply. The FDA's requirements to prevent the spread of bovine spongiform encephalopathy are also administered by CVM through inspections of feed manufacturers.

Tobacco products

Since the Family Smoking Prevention and Tobacco Control Act became law in 2009, the FDA also has had the authority to regulate tobacco products. [35]

In 2009, Congress passed a law requiring color warnings on cigarette packages and on printed advertising, in addition to text warnings from the U.S. Surgeon General. However, these new labels were halted because of a court case entitled *R.J. Reynolds Tobacco Co. v. U.S. Food and Drug Administration.* To date, these new labels have not been put into place.

QUESTION FOR DISCUSSION: SHOULD THE FDA REGULATE E-CIGARETTES AS TOBACCO PRODUCTS?

Recently E-Cigarettes have hit the market as "safe" alternatives to the negative effects of tobacco products. Do you think the evidence shows that E-Cigarettes should be regulated in the same way as other tobacco products or do they serve as an alternative to the health risks of tobacco addiction and tobacco products?

www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm

archive.org/details/ElectronicCigarettesFdaWarning

http://www.nytimes.com/2015/01/19/opinion/will-the-fda-kill-off-e-cigs.html?_r=0

http://healthaffairs.org/blog/2015/02/20/in-regulating-e-cigarettes-no-easy-fix-for-the-fda/

casaa.org/deeming_regulations.html

www.reuters.com/article/2015/02/26/us-tobacco-fda-study-idUSKBN0LU02S20150226

http://time.com/3843214/e-cigarettes-regulation-health-experts/

http://dailycaller.com/2014/06/25/white-house-deletes-fda-e-cigarette-regulations/

Regulation of living organisms

With the acceptance of premarket notification 510(k) k033391 in January 2004, the FDA granted Dr. Ronald Sherman permission to produce and market medical maggots for use in humans or other animals as a prescription medical device. Medical maggots represent the first living organism allowed by the Food and Drug Administration for production and marketing as a prescription medical device.

In June 2004, the FDA cleared Hirudo medicinalis (medicinal leeches) as the second living organism to be used as medical devices.

The FDA also requires milk to be pasteurized to remove bacteria and maintains oversight of probiotic products containing living bacterial organisms.

Figure 4.5.7: The Federal Communications Commission regulates interstate and international communications by radio, television, wire, satellite and cable.

The FCC is an independent agency of the United States government, created by Congressional statute (see 47 U.S.C. § 151 and 47 U.S.C. § 154) to regulate interstate communications by radio, television, wire, satellite, and cable in all 50 states, the District of Columbia and U.S. territories. The FCC works towards six goals in the areas of broadband, competition, the spectrum, the media, public safety, and homeland security. The Commission is also in the process of modernizing itself.

The FCC was formed by the Communications Act of 1934 to replace the radio regulation functions of the Federal Radio Commission. The FCC took over wire communication regulation from the Interstate Commerce Commission. The FCC's mandated jurisdiction covers the 50 states, the District of Columbia, and U.S. possessions. The FCC also provides varied degrees of cooperation, oversight, and leadership for similar communications bodies in other countries of North America.

Mission

The FCC's mission, specified in Section One of the Communications Act of 1934 and amended by the Telecommunications Act of 1996 (amendment to 47 U.S.C. §151) is to "make available so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, rapid, efficient, nationwide, and worldwide wire and radio communication services with adequate facilities at reasonable charges." The Act furthermore provides that the FCC was created "for the purpose of the national defense" and "for the purpose of promoting safety of life and property through the use of wire and radio communications."

Consistent with the objectives of the Act as well as the 1993 Government Performance and Results Act (GPRA), the FCC has identified six goals in its 2006–2011 Strategic Plan. These are:

Broadband

"All Americans should have affordable access to robust and reliable broadband products and services. Regulatory policies must promote technological neutrality, competition, investment, and innovation to ensure that broadband service providers have sufficient incentives to develop and offer such products and services."

Competition

"Competition in the provision of communication services, both domestically and overseas, supports the Nation's economy. The competitive framework for communications services should foster innovation and offer consumers reliable, meaningful choice in affordable services."

Spectrum

"Efficient and effective use of non-federal spectrum domestically and internationally promotes the growth and rapid development of innovative and efficient communication technologies and services."

Media

"The Nation's media regulations must promote competition and diversity and facilitate the transition to digital modes of delivery."

Public Safety and Homeland Security

"Communications during emergencies and crisis must be available for public safety, health, defense, and emergency personnel, as well as all consumers in need. The Nation's critical communications infrastructure must be reliable, interoperable, redundant, and rapidly restorable."

Modernize the FCC

"The Commission shall strive to be highly productive, adaptive, and innovative organization that maximizes the benefits to stakeholders, staff, and management from effective systems, processes, resources, and organizational culture."

The Federal Communications Commission regulates interstate and international communications by radio, television, wire, satellite, and cable in all 50 states, the District of Columbia and U.S. territories. An independent U.S. government agency overseen by Congress, the commission is the United States' primary authority for communications law, regulation and technological innovation. In its work facing economic opportunities and challenges associated with rapidly evolving advances in global communications, the agency capitalizes on its competencies in:

What does the FCC do?

- The FCC has been charged with a number of tasks related to the communications infrastructure of the United States. These include:
- Promoting competition, innovation, and investment in broadband services and facilities

- Supporting the nation's economy by ensuring an appropriate competitive framework for the unfolding of the communications revolution
- Encouraging the highest and best use of spectrum domestically and internationally
- Revising media regulations so that new technologies flourish alongside diversity and localism
- Providing leadership in strengthening the defense of the nation's communications infrastructure

Leadership

The agency is directed by five commissioners who are appointed by the President of the United States and confirmed by the U.S. Senate. The president also selects one of the commissioners to serve as chairman. Only three commissioners can be of the same political party at any given time and none can have a financial interest in any commission-related business. All commissioners, including the chairman, have five-year terms, except when filling an unexpired term.

Organization

The commission is organized into bureaus and offices, based on function (see also Organizational Charts of the FCC). Bureau and office staff members regularly share expertise to cooperatively fulfill responsibilities such as:

- Developing and implementing regulatory programs
- Processing applications for licenses and other filings
- Encouraging the development of innovative services
- Conducting investigations and analyzing complaints
- Public safety and homeland security
- Consumer information and education
- Rules and Rulemakings

The FCC's rules and regulations are in Title 47 of the Code of Federal Regulations (CFR), which are published and maintained by the Government Printing Office. Title 47 Rules & Regulations are also available on the web in a searchable format.

Most FCC rules are adopted by a process known as "notice and comment" rulemaking. Under that process, the FCC gives the public notice that it is considering adopting or modifying rules on a particular subject and seeks the public's comment. The Commission considers the comments received in developing final rules. For more information, check out our online summary of the Rulemaking Process at the FCC.

Advisory Committees

In 1972 Congress passed the Federal Advisory Committee Act to ensure that advice by advisory committees is objective and accessible to the public. The Act put in place a process for establishing, operating, overseeing, and terminating these committees that provide valuable input from consumer groups, industry stakeholders, public safety officials and other interested parties.

The FCC is organized into seven bureaus and ten staff offices. In general, the bureaus handle license applications and related filings, as well as analyzing complaints, developing and enacting regulations, conducting investigations and participating in hearings. The seven bureaus are:

Consumer & Governmental Affairs (CGB) oversees the FCC’s consumer policies, including disability access. It handles outreach and education through its Consumer Center, which responds to consumer questions and complaints. CGB also collaborates with state, local and tribal governments to ensure emergency preparedness.

Enforcement Bureau is responsible for enforcing the provisions of the Communications Act of 1934, as well as FCC rules, orders, terms and conditions of station authorizations. This bureau helps to foster local competition and consumer protection, public safety and homeland security.

International Bureau (IB) helps to develop international telecommunications policy on issues such as allocation of frequencies and minimizing electromagnetic interference. IB is responsible for maintaining FCC compliance with the International Radio Regulations and other international agreements.

Media Bureau develops and implements policy and licensing programs relating to electronic media, such as cable television, broadcast television, and radio. Post-licensing for direct broadcast satellite services also falls within its purview.

Wireless Telecommunications Bureau is responsible for all FCC wireless telecommunications programs, policies and outreach programs. These services include amateur radio, cellular networks, pagers, Personal Communications Service (PCS), Part 27 Wireless Communications Services and fixed, mobile and broadcast services in the 700 MHz band.

Wireline Competition Bureau (WCB) assists in policy development for wireline telecommunications (broadband) to promote growth and investments in infrastructure, development, markets, and services.

Public Safety and Homeland Security Bureau develops and implements communications for use during emergencies and crises. In the wake of Hurricane Katrina, this bureau was added to make sure public safety, health, defense and emergency personnel, and consumers can communicate during times of greatest need.

Broadcast Radio and TV

Specific FCC functions include assigning frequency, power, and call signs for radio; allocating spectrum space for AM and FM radio, as well as VHF and UHF television broadcast services; designating sign-on/sign-off times and operating power for broadcast stations. Although the FCC is prohibited from censoring most programming content, it does, however, regulate material deemed indecent or illegal (which includes, for example, cigarette advertising), some aspects of programming for children, and political campaign advertising.

The FCC limits the number of broadcasting outlets that may be owned by a single entity and reviews these regulations biennially. The effect of telecommunications reform has been toward loosening such restrictions. In 1996 the FCC removed the upper limit for the number of TV stations that could be owned nationally, provided that the combined viewership does not exceed 35 percent of all U.S. households. Within local markets, restrictions are much tighter to prevent a media monopoly. In general, the same company may not own a TV station along with a newspaper, a second TV station, a cable system, or a radio station. Radio station ownership rules tend to be more liberal, allowing up to eight stations in a single market depending on the total number of stations serving that market. As with television, there is no limit on the number of stations a company can hold nationally.

Cable TV

Through its Cable Services Bureau, the commission licenses cable television systems and regulates cable pricing, technical standards, and programming. Pricing is only regulated when local cable competition does not exist according to FCC definitions. The FCC requires that certain local broadcast programming be made available through cable systems and that at least one noncommercial channel be carried on every cable system. The agency also mandates that cable systems have a formal equal employment opportunity program, monitors compliance, and investigates claims of discrimination.

Telephone Services

All forms of telephony, including local, long-distance, and wireless, fall under the FCC's purview. This area, in particular, has been subject to considerable reform under the deregulation of the 1990s. The FCC is gradually allowing local service providers, such as the regional Bell operating companies (BOCs), to offer long-distance services once they demonstrate that their respective markets are open to local competition; long-distance companies can also enter local markets. Deregulation has likewise allowed a number of BOCs to merge with other BOCs. The FCC also regulates pricing of telephone network services to prevent local monopolies from charging exorbitant fees to access their networks. Wireless communications like cellular phones and personal communications systems (PCS) are much less regulated, and providers of local and long-distance wire service are permitted to also offer wireless packages.

New and Emerging Technologies

The FCC also holds a major stake in the development of emerging communications technologies. Two of the most important currently are the Internet and digital television. The largely unregulated Internet presents a complex regulatory environment because of its diffused technical and competitive structure. The FCC's policy has been decidedly hands-off, but the agency has statutory powers to control many aspects of Internet service, including pricing, competition, and some content. FCC officials have been very cautious, however, not to encourage a monopoly system as was done formerly with telephone service; the commission's leadership continues to favor a largely unrestricted Internet. Significantly, this laissez-faire approach to the Internet was not a new stance for the FCC—one of its commissioners claimed the agency had a 20-year history of shaping the free Internet by choosing not to regulate it as it became commercially viable.

The FCC played a stronger role in the development of digital television (DTV), but it again deferred many decisions to service providers. It created a timetable for the roll-out of DTV and the eventual elimination of analog television broadcasting. With early digital broadcasts starting in 1998, the FCC created a transition period extending through at least 2006 for broadcasters and consumers to convert to digital equipment. The FCC planned to review the end date periodically to ensure minimal disruption of service. The technical standards for DTV were left up to industry groups and companies to negotiate.

Agency Controversies

Indecency: The FCC has the authority to regulate what is said and shown on broadcast television through a series of decency standards that have been in place since the advent of television in the 1950s. Perhaps the most controversial case is that of the "wardrobe malfunction" of the 2004 Super Bowl where Janet Jackson's top was "accidentally" ripped off by Justin Timberlake. MTV and its parent company CBS were prosecuted and fined by the FCC for violating its decency standards. In another case surrounding radio talk show host Howard Stern in which stations were fined more than $2.5 million between 1990 and 2004 for violating radio decency standards, which refer to obscene language. Eventually Stern left broadcast radio and moved his show to satellite network Sirius where the decency standards and FCC regulation did not apply.

It is a violation of federal law to air obscene programming at any time or indecent programming or profane language from 6 a.m. to 10 p.m. Congress has given the FCC the responsibility for administratively enforcing these laws. The FCC may revoke a station license, impose a monetary forfeiture or issue a warning if a station airs obscene, indecent or profane material.

Obscene broadcasts are prohibited at all times

- Obscene material is not protected by the First Amendment to the Constitution and cannot be broadcast at any time. The Supreme Court has established that to be considered obscene material must meet a three-pronged test:
- An average person, applying contemporary community standards, must find that the material, as a whole, appeals to the prurient interest.
- The material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law.
- The material, taken as a whole, must lack serious literary, artistic, political or scientific value.

Indecent broadcast restrictions

The FCC has defined broadcast indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory organs or activities." Indecent programming contains patently offensive sexual or excretory material that does not rise to the level of obscenity. The courts hold that indecent material is protected by the First Amendment and cannot be banned entirely. FCC rules prohibit indecent speech on broadcast radio and television between 6 a.m. and 10 p.m., when there is a reasonable risk that children may be in the audience.

Profane broadcast restrictions

The FCC defines profanity as "including language so grossly offensive to members of the public who actually hear it as to amount to a nuisance." Like indecency, profane speech is prohibited on broadcast radio and television between the hours of 6 a.m. and 10 p.m.

Cable and satellite services excepted from indecency restrictions

Congress has charged the Commission with enforcing the statutory prohibition against airing indecent programming "by means of radio communications." The Commission has historically interpreted this restriction to apply to radio and television broadcasters and has never extended it to cover cable or satellite operators. In addition, because cable and satellite services are subscription-based, viewers of these services have greater control over the programming content that comes into their homes, whereas broadcast content traditionally has been available to any member of the public with a radio or television. As noted above, however, obscene material is not protected by the First Amendment to the Constitution and is prohibited with respect to cable and satellite services, as well as radio and television broadcasters.

Video: CSPAN Discussion on FCC Decency Standards

403 ERROR

The request could not be satisfied.

Request blocked. We can't connect to the server for this app or website at this time. There might be too much traffic or a configuration error. Try again later, or contact the app or website owner.
If you provide content to customers through CloudFront, you can find steps to troubleshoot and help prevent this error by reviewing the CloudFront documentation.

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Generated by cloudfront (CloudFront)
Request ID: XJnkQEAdn-79ECLySAaN2ybX80ukVAkOqKzFYhAz5onG1gk6uLXoLQ=
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Net Neutrality: An Open Internet means consumers can go where they want when they want. This principle is often referred to as Net Neutrality. It means innovators can develop products and services without asking for permission. It means consumers will demand more and better broadband as they enjoy new lawful Internet services, applications, and content, and broadband providers cannot block, throttle, or create special "fast lanes" for that content. The FCC's Open Internet rules protect and maintain open, uninhibited access to legal online content without broadband Internet access providers being allowed to block, impair, or establish fast/slow lanes to lawful content.

Net Neutrality Rules: Adopted on February 26, 2015, the FCC's Open Internet rules are designed to protect free expression and innovation on the Internet and promote investment in the nation's broadband networks. The Open Internet rules are grounded in the strongest possible legal foundation by relying on multiple sources of authority, including Title II of the Communications Act and Section 706 of the Telecommunications Act of 1996. As part of this decision, the Commission also refrains (or "forbears") from enforcing provisions of Title II that are not relevant to modern broadband service. Together Title II and Section 706 support clear rules of the road, providing the certainty needed for innovators and investors, and the competitive choices and freedom demanded by consumers.

The new rules apply to both fixed and mobile broadband service. This approach recognizes advances in technology and the growing significance of mobile broadband Internet access in recent years. These rules will protect consumers no matter how they access the Internet, whether on a desktop computer or a mobile device. These “Bright Line” rules include:

- No Blocking: broadband providers may not block access to legal content, applications, services, or non-harmful devices.
- No Throttling: broadband providers may not impair or degrade lawful Internet traffic on the basis of content, applications, services, or non-harmful devices.
- No Paid Prioritization: broadband providers may not favor some lawful Internet traffic over other lawful traffic in exchange for consideration of any kind—in other words, no "fast lanes." This rule also bans ISPs from prioritizing content and services of their affiliates.

To ensure an open Internet now and in the future, the Open Internet rules also establish a legal standard for other broadband provider practices to ensure that they do not unreasonably interfere with or disadvantage consumers' access to the Internet. The rules build upon existing, strong transparency requirements. They ensure that broadband providers maintain the ability to manage the technical and engineering aspects of their networks. The legal framework used to support these rules also positions the Commission for the first time to be able to address issues that may arise in the exchange of traffic between mass-market broadband providers and other networks and services.

Video: Net Neutrality Rules Explained

ISSUE FOR DEBATE: NET NEUTRALITY

1. How do you use the Internet on a daily basis? Keep a one-day log to see what types of activities you use Internet-connected devices for and how much time you spend on each. What percent of your time is spent on the Internet? What percent of that Internet time is spent on each type of activity?

2. Many Internet activities that we depend upon on a daily basis demand a more robust Internet infrastructure than other activities (ex: Video takes a lot more bandwidth and infrastructure than sending a text or email). These varied demands on the Internet's infrastructure have triggered a debate about 'Net Neutrality,' an issue rooted in how content should be delivered to consumers. In a nutshell, companies that provide 'high speed' or broadband networks (i.e., phone company DSL or cable Internet services) want to be able to charge higher fees to those who send data-heavy content on the Internet in return for getting that content to consumers faster than the content of individuals or companies who don't pay the higher fees. Broadband network providers say it's only fair that those who place a greater demand on the network should pay more. Critics of this approach believe that such a tiered system would limit the 'openness,' 'freedom' and 'neutrality' of the Internet because not all content providers would be able to reach consumers on a level playing field; those with money would be given an unfair advantage. Some also worry that network providers might block or censor some people's content based on economic or political resources and power. This debate is now being addressed by the FDA with the agency leaning toward the side of ‘net neutrality.’

3. Watch the video at https://www.youtube.com/watch?v=yxgCWzU_uVM then use internet resources listed below to research the question below.

4. Prepare arguments (with appropriate evidence) to answer the following question:

Should the Internet be protected using a “net neutral” policy or should those companies like Netflix be able to get a “fast lane” to deliver their content (based on their ability to pay for it)? What positive and negative characteristics can you identify for both sides of the argument?

RESOURCE LIST:

http://www.pbslearningmedia.org/resource/ac6d797b-df87-4aca-93ad-f026e9c280e5/net-neutrality-rules-ensure-equal-access-to-the-internet/

https://www.eff.org/issues/net-neutrality

www.savetheinternet.com/resources

http://www.ala.org/advocacy/telecom/netneutrality

http://www.pbs.org/moyers/moyersonamerica/net/sites.html

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http://topics.nytimes.com/top/reference/timestopics/subjects/n/net_neutrality/index.html

Figure 4.5.8: Copy and Paste Caption here. (Copyright; author via source)

Study/Discussion Questions

1. How does the mission of an independent executive agency differ from that of an independent regulatory agency? Give an example of each.
2. What controversies have the agencies discussed in this section encountered? What issues or problems tend to lead to such controversies?
3. How does Congress maintain control over independent agencies?
4. How do these agencies impact your daily life? Give an example from each of the agencies discussed in this section.
5. What would our lives be like if independent agencies did not exist within our government?
6. Do you believe these agencies have grown too powerful? Explain.

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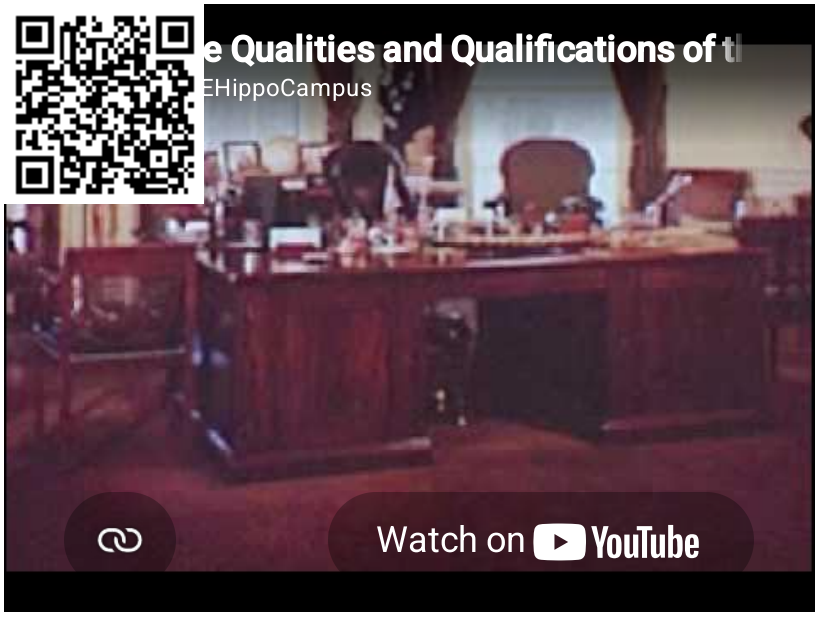
4.6: Presidential Election Procedures

Figure 4.6.1: Presidents George H. W. Bush, Barrack Obama, George W. Bush, Bill Clinton, and Jimmy Carter meet in the Oval Office in 2009.

The current century sees a different presidency than the one created at the end of the 1700s. Constitutional provisions limited the early presidency, although the personalities of the first three--George Washington, John Adams, and Thomas Jefferson--shaped the office into a more influential position by the early 1800s. However, throughout the 1800s until the 1930s, Congress was the main branch of the national government. Then the balance of power shifted dramatically so that the executive branch currently as at least equal power to the legislative branch.

Qualifications, Selection, and Succession

Video: Qualities and Characteristics of Presidents



> *No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.*
>
> ***ARTICLE II, SECTION 1, CLAUSE 5***

According to the Constitution, the president must:

- be a natural-born citizen of the United States
- be at least thirty-five years old;
- have been a permanent resident in the United States for at least fourteen years.

A person who meets the above qualifications is still disqualified from holding the office of president under any of the following conditions:

Under the 22nd Amendment, no person can be elected president more than twice. The amendment also specifies that if any eligible person who serves as president or acting president for more than two years of a term for which some other eligible person was elected president, the former can only be elected president once. Scholars disagree whether anyone no longer eligible to be elected president could be elected vice president, pursuant to the qualifications set out under the Twelfth Amendment. [69]

Under Article I, Section 3, Clause 7, upon conviction in impeachment cases, the Senate has the option of disqualifying convicted individuals from holding other federal offices, including the presidency. [70]

Under Section 3 of the 14th Amendment, no person who swore an oath to support the Constitution, and later rebelled against the United States, can become president. However, this disqualification can be lifted by a two-thirds vote of each house of Congress.

The founders feared the masses. Cautious about granting powers to the general voting public, they created a safety valve against popular will. The American people do not technically elect their president. Electors do.

Controversy: "The Natural-Born Citizen" Clause

Status as a natural-born citizen of the United States is one of the eligibility requirements established in the United States Constitution for election to the office of president or vice president. This requirement was intended to protect the nation from foreign influence.

The Constitution does not define the phrase natural-born citizen, and various opinions have been offered over time regarding its precise meaning. A 2011 Congressional Research Service report stated that

The weight of legal and historical authority indicates that the term "natural born" citizen would mean a person who is entitled to U.S. citizenship "by birth" or "at birth," either by being born "in" the United States and under its jurisdiction, even those born to alien parents; by being born abroad to U.S. citizen-parents; or by being born in other situations meeting legal requirements for U.S. citizenship "at birth." Such term, however, would not include a person who was not a U.S. citizen by birth or at birth, and who was thus born an "alien" required to go through the legal process of "naturalization" to become a U.S. citizen.

The natural-born-citizen clause has been mentioned in passing in several decisions of the United States Supreme Court and lower courts dealing with the question of eligibility for citizenship by birth, but the Supreme Court has never directly addressed the question of a specific presidential or vice-presidential candidate's eligibility as a natural-born citizen.

A great deal of debate has been raised over the eligibility of President Barrack Obama to serve as president, much of which has been addressed in the argument that regardless of his African father, his mother was a natural born American citizen and thus he automatically became a natural born citizen regardless of his place of birth (by way of his mother's citizenship status). This same criticism may be made of Ted Cruz who was born in Canada to a Cuban father and an American mother. The present interpretation is that as long as one parent is a natural born citizen of the United States, a child is automatically considered a natural born citizen regardless of the place of birth. But this still becomes a hotly debated topic as the true definition of "natural born" has never been determined.

Presidential Selection and Succession

Figure 4.6.2: Grover Cleveland, shown on a $20 Federal Reserve Note from 1914, won the popular vote in his second election but lost the presidency because he failed to win the Electoral College.

Selection

According to the Constitution, the president serves a four-year term in office. The 22nd Amendment further requires that a President may not be elected more than twice, nor serve more than a total of ten years. The Constitution also created an electoral college to select the president.

Some of the founders wanted to select a president by popular vote, but others did not want to put that much power into the hands of the voters. Others believed that Congress should select the president, but then, what would happen to the separation of powers and checks and balances? So they compromised and created a special body of electors to be selected by the states. The number of electors would be equal to the sum of a state's Senators and Representatives, so that large states would have more electors than the small ones.

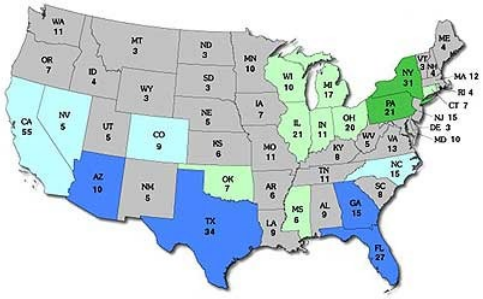


Figure 4.6.3: Some people believe that the Electoral College system gives some states more than their fair share of votes. For example, California's population makes up 11% of the total U.S. population, but they receive 20% of the nation's electoral votes. This map shows the changes made to the Electoral College based on the 2000 census.

Today many people believe that the Electoral College is out of date and that presidents should be chosen by direct election, just as members of Congress are selected. By convention, state electors vote for the candidate that the people select in the general election, but they are not necessarily bound to do so.

The Electoral College also adds one wrinkle — it is possible for a president to win the popular vote and still lose the election. For example, if the Republican candidate gets even one more vote than the Democrat, all the states' electoral votes go to the Republican. Therefore, if a candidate wins small states by large pluralities and loses large states by narrow margins, it is possible to gain more votes than an opponent and win fewer electoral votes. Four presidents — John Quincy Adams, Rutherford B. Hayes, Benjamin Harrison, and George W. Bush — have been elected in this fashion.

Succession

The Constitution originally said little about presidential succession. It only specified that powers and duties should "devolve on the vice president." Numerous succession situations over the years have shaped the current policy, defined in the 25th Amendment, adopted in 1967.

Figure 4.6.4: Vice President Lyndon B. Johnson takes the Presidential Oath of Office in a hastened ceremony aboard Air Force One following the assassination of President Kennedy. This event was solid proof to the world that the American system of presidential succession and the continuity of government worked. The presidential succession system would be modified slightly in 1967 with the 25th Amendment.

25th Amendment

Section 1.

In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2.

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3.

Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President. Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

What happens when the presidency is vacated before an election? The vice president becomes president and then selects a vice president that must be confirmed by both houses of Congress. What if something should happen to the President and Vice President at the same time? Then the speaker of the house takes the presidency, and the President *pro tempore* of the Senate becomes vice president. The line of succession then goes to the Cabinet members, in the order of their creation.

Order of Succession to the Presidency

1 — President of the United States
2 — Vice-President of the United States
3 — Speaker of the House of Representatives
4 — President of the Senate Pro Tempore (becomes VP when Speaker becomes President)
(Cabinet Secretaries in Order of Post's Creation — see Unit 7)
5 — Secretary of State
6 — Secretary of the Treasury
7 — Secretary of Defense
8 — Attorney General
9, etc. — Remaining Cabinet Secretaries

Figure 4.6.5: Gerald Ford assumed the presidency upon the resignation of Richard Nixon. He had been appointed vice president on the resignation of Spiro Agnew, making Ford the only President in history not to have been elected to either office.

Video: Nixon's Resignation Address

Video: Gerald Ford Takes the Oath of Office

Presidential Disability and the 25th Amendment

The 25th Amendment concerns presidential disability, or what to do with the presidency if the President cannot perform the duties of the president. It is an issue that the Framers only gave the most cursory of thought to, relatively speaking. They were concerned about continuity of power, and provided for a vice president to replace the president, should anything ever happen. As time went on, vice presidents did eventually replace presidents as they died in office. For reference, a list of presidents who died in office follows:

PRESIDENTS WHO HAVE DIED WHILE IN OFFICE

9th President William Henry Harrison, died April 4, 1841
12th President Zachary Taylor, died July 9, 1850
16th President Abraham Lincoln, died April 15, 1865
20th President James Garfield, died September 19, 1881
25th President William McKinley, died September 14, 1901
29th President Warren G. Harding, died August 2, 1923
32nd President Franklin Delano Roosevelt, died April 12, 1945
35th President John F. Kennedy, died November 22, 1963

In each of the cases above, a vice president eventually took over the duties of the president as described in the Constitution. But the assassination of President Kennedy in 1963 caused many people great concern over the continuation of government in the case of a president's disability. President Kennedy had suffered a fatal head wound and many in Congress were concerned that had the President's wound not been fatal, there was a very real chance that he could have lived for some time, yet have been in a coma, or he could have lived and been in a diminished mental state. President Lincoln had suffered a similar head wound and had lived for several hours before he passed away. What would be done in the case of a president who suffered a disabling yet non-fatal wound or other medical trauma? The Constitution only allowed for the vice president to assume the presidency if the president died, resigned, or was impeached. A president in a coma could hardly resign, and would there be grounds for impeachment?

The question was actually far from a new one. Medical science, though, had advanced to a place where such questions could be asked. Harrison died of pneumonia a month after taking office. One hundred years later, he might have lived. Taylor died of cholera morbus, or acute indigestion, which surely would not have been fatal today. Lincoln, of course, was shot in the head, but it was over eight hours later that he died.

The first real issue with presidential disability arose with President Garfield who, shot by an assassin's bullet and was incapacitated for 11 weeks before passing away from a secondary infection caused by the wounds he received. But Garfield and his vice president, Chester Arthur, had not been on good terms with each other and had had a hostile working with relationship with Garfield's Cabinet before his death. Even after this crisis in government, the chance to revise the Constitution in order to allow for the continuation of government in the case of presidential disability was not taken up.

President McKinley was shot just after the beginning of his second term and died eight days afterward, the victim of gangrene (again, an infected wound). President Harding's death was relatively quick - after a grueling schedule of speeches, he was ordered to rest by his physicians; later, he collapsed and died four days later. Finally, President Roosevelt died while away for rest in Warm Springs, Georgia. His passing was also relatively quick.

The experiences of previous presidential disabilities and new concerns after the assassination of President Kennedy finally pushed Congress towards reconsidering the line of presidential succession and especially the case of presidential disability. The United States had now become a major world "superpower" and concerns over the continuation of government became a critical question for Congress. The question at hand became "can the United States afford to have any substantial time without a clear picture of who the president is?"

The 25th Amendment was the answer to that question--the United States could not afford to have any doubts about who was at the helm. The 25th ensures that the entire nation and the entire world is clear who the leader is even in a time of uncertainty.

The 25th Amendment

The 25th Amendment basically outlines a plan for the continuation of government and clearly paves a legal way for the vice president to assume power, taking it from the president in cases of disability or when the president is deemed unable to carry out his Constitutional duties. But no radical changes were made to the automatic line of succession except what was clearly instituted before: upon the death, resignation, or impeachment of the president, the vice president becomes the president. But in a case of disability short of death, a clear set of procedures is to be followed in order to allow for the proper continuation of government.

Step 1: Declaration of Disability

In order to remove a president from power, the vice president and a majority of the department secretaries must send a message to the speaker of the house and the president pro tempore of the Senate, which states that the president is unable to fulfill his or her duties as president. It is important to note here that the majority is of "the executive departments" and not of "the Cabinet." While the Cabinet is often used as a shorthand term for the executive departments, it technically consists of other persons, such as the White House chief of staff and some agency head who play a major role in advising the President on important issues. These people are not a part of the 25th Amendment process.

After this message is signed and sent, the vice president immediately becomes acting president.

Step 2: Declaration of Ability

If the president is not physically disabled, he or she may disagree with the actions of his vice president and department secretaries. If the president disagrees and is physically able, he or she can send a message to the speaker of the house and the president pro tempore of the Senate, stating that he/she is of sound mind and physically able to perform as president. In this case, the president is immediately restored to full power as president.

Step 3: Re-declaration of Disability

If the president disputes the previous declaration of disability, a clock starts ticking. If within four days of the president's objection the vice president and the department secretaries again declare the president disabled to the speaker and the president pro tempore, the decision to declare the president disabled or incapacitated falls upon Congress.

If it is not already in session, Congress must convene within 48 hours and another clock begins ticking. Twenty-one days after the vice president's second declaration of disability, Congress must make a decision as to whether or not the president is disabled. If Congress decides, by a required two-thirds majority of each house, that the president is disabled, then the president must relinquish his/her office and the vice president becomes acting president. During the period in which Congress is making its decision, the vice president holds the position of acting president. If the Congress agrees with the statement of disability, then the vice president

continues as acting president. If a two-thirds majority in both chambers of Congress cannot be reached within 21 days, the president resumes his/her duties.

Step 4: Resumption of Power

The 25th Amendment never actually allows for the permanent removal of the president in cases of disability--only for the vice president to become acting president. If there comes a time when the president is able to resume his/her duties and the vice president agrees at any time that the president is able, he/she can give up his powers as acting president. It also would appear from the wording of the amendment that if the vice president were to lose the support of more than half the department secretaries, the president would also resume his/her duties.

The Case of Self-removal

The 25th Amendment provides for the president to remove him/herself from the role of president, which places the vice president directly into the role of acting president. In this case, the president informs the speaker and president pro tempore of his/her disability and upon doing so, the vice president becomes acting president. By simple declaration of ability, reversing the prior message, the president can resume power at any time.

This part of the 25th Amendment was actually invoked when President George W. Bush turned over power to vice president Richard Cheney in June 2002 while he went under general anesthesia for a colonoscopy. When President Ronald Reagan was shot just months into his first term in office, he delegated his powers to Vice President George Bush, but in this case, President Reagan expressly denied invocation of the 25th Amendment. The first President Bush did fall ill a few times during his term, but he never invoked the 25th. In 1996, a panel of historians urged that presidents take greater care when there was to be planned disability such as general anesthesia. Presidents Clinton and Bush both had made formal but secret arrangements for transfer of power in such circumstances, and Bush's 2002 declaration was the first time the recommendations were put into effect.

"Who's In Charge?" -- The Case of The Reagan Assassination Attempt

Watch the video below then answer the following question:

According to the 25th Amendment, who was "in charge?" How does this video demonstrate why the 25th Amendment exists?

Other Instances of Succession

In each of the previously mentioned cases, the vice president assumed office upon presidential death. But in one instance, that of President Richard Nixon, the vice president became president because of a resignation. Gerald Ford is, to date, the only vice president to replace a president for a reason other than death and the only president never to be elected to the office of president or vice president.

President Ford himself came to the vice presidency because of the 25th Amendment. He was President's Nixon's replacement for his first vice president, Spiro Agnew, who resigned from office in the wake of a tax scandal, and Nixon replaced him with Ford under the second section of the 25th Amendment. Prior to the 25th Amendment, there was no provision for the replacement of a vice

president. When a vice president replaced a president, then, the office of vice president remained open until the next election. President Ford invoked the second section of the 25th Amendment himself to nominate his vice president, Nelson Rockefeller.

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Source: Mount, Steve. "Constitutional Topic: Presidential Disability." USConstitution
30 Nov 2001. http://www.usconstitution.net/consttop_pdis.html. Accessed 26 April, 201
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Figure 4.6.6: Vice President Dan Quayle became the butt of many jokes when he misspelled the word "potato" while judging an elementary school spelling bee. Like most vice presidents before him, Quayle failed to win the next presidential election.

Video: Dan Quail Blooper Reel

What does the vice president do? The only given constitutional duty is to preside over the Senate, a job with virtually no power since the vice president can only vote in the event of a tie. Indeed, the nation's first vice president, John Adams, called the post "the most insignificant office that ever the invention of man contrived."

The president, then, has almost total control over what the vice president does. If he chooses to give him many responsibilities, The vice president can have a significant amount of power if the president is willing to delegate it.

In recent years presidents have given their vice presidents more and more to do. They have headed commissions and organized major projects. The vice president often makes goodwill missions and attends ceremonies and celebrations. If the President regularly asks for advice, then the vice president has some real, though indirect, power.

This dependency on the president has made it very difficult for a vice president to successfully run for president. Only twice in American history has a seated vice president been elected to the presidency. In 1837, Vice President Martin Van Buren succeeded Andrew Jackson, and in 1989, Vice President George Bush succeeded Ronald Reagan. In neither case, did they win reelection.

Figure 4.6.7

Study/Discussion Questions

1. What tools does the president have to set the political agenda? What determines what's on the president's own agenda?
2. How do presidents use their veto power?
3. What are the disadvantages of vetoing or threatening to veto legislation?
4. How does the president's position as chief executive allow him to act quickly and decisively?
5. What powers does the president have to respond to events directly?
6. What factors affect the president's public approval ratings?
7. What can presidents do to increase their approval rating?

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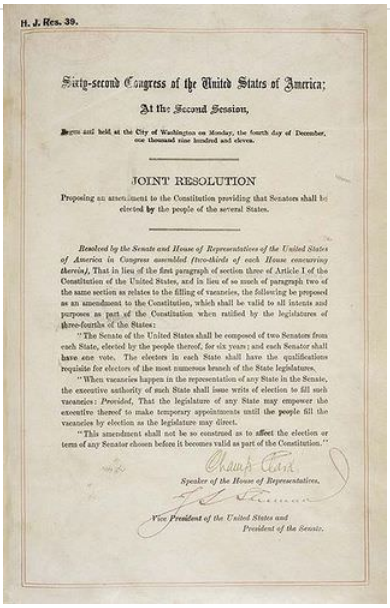
4.7: The Seventeenth Amendment



H. J. Res. 39.

Sixty-second Congress of the United States of America;

At the Second Session,

Begun and held at the City of Washington on Monday, the fourth day of December, one thousand nine hundred and eleven.

JOINT RESOLUTION

Proposing an amendment to the Constitution providing that Senators shall be elected by the people of the several States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That in lieu of the first paragraph of section three of Article I of the Constitution of the United States, and in lieu of so much of paragraph two of the same section as relates to the filling of vacancies, the following be proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the States:

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

"When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

"This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution."

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

Figure 4.7.1: The 17th Amendment to the United States Constitution established the popular election of United States Senators by the people of the states.

The new plan of bicameral legislation with the House representing the people through direct election and the Senate representing the states through appointment by state legislatures would remain until the 17th Amendment to the Constitution was passed in 1913. This amendment changed the selection of Senators from one based on appointment or selection by state legislatures to one in which Senators were directly elected by the people. This change occurred because of a series of scandalous elections in the late 1800s and early 1900s that made citizens resent Senators who they perceived as being selected because they were friends or business associates of the legislators rather than because they were qualified.

Video: The Seventeenth Amendment for Dummies

Amendment XVII

The Senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the Constitution. [1]

Filling Vacancies

The 17th Amendment states that a state legislature may allow the governor to make temporary appointments, which last until a special election is held to fill the vacancy. As of 2009, all but four states—Massachusetts, Oregon, Wisconsin and Oklahoma — permit such appointments. [49] The Constitution does not detail the selection of the temporary appointee. Then, the 17th Amendment requires a governor to call a special election to fill the vacancy.

In 1911, the House of Representatives passed House Joint Resolution 39 proposing a constitutional amendment for direct election of senators. The original resolution passed by the House contained the following clause: [33]

> *The times, places, and manner of holding elections for Senators shall be as prescribed in each State by the legislature thereof.*

This so-called "race rider" clause would have strengthened the powers of states over senatorial elections and weakened those of Congress by overriding Congress's power to override state laws affecting the manner of senatorial elections.[34]

Since the early 1900s, most blacks in the South and many poor whites had been disenfranchised, or deprived of a right or privilege, by state legislatures passing constitutions with provisions that were discriminating against them.

Therefore, there was a large segment of the population that was not represented. Most of the South had one-party states. When the resolution came before the Senate, a substitute resolution, one without the rider, was proposed by Joseph L. Bristow of Kansas. It was adopted by a vote of 64 to 24, with 4 not voting. [35] The House accepted the change almost a year later. On May 13, 1912, the conference report that would become the Seventeenth Amendment was approved by the Senate 42 to 36 on April 12, 1912, and by the House 238 to 39, with 110 not voting.

The Senate Today

What would the Senate look like today if the 17th Amendment had not been ratified?

Visit this link: Constitution Daily: What would the Senate look like today without the 17th Amendment?

Figure 4.7.2

Study/Discussion Questions

1. What did the 17th Amendment state?

2. Why was it important?

3. Do you think that disenfranchisement was successfully fixed with the passage of the 17th amendment? Why or why not?

Sources:

[1]. *"The Constitution of the United States Amendments 11–27". National Archives and R*
Administration. Retrieved 16 June 2018.

49] *"17th Amendment to the U.S. Constitution: Direct Election of U.S. Senators".*

August 15, 2016.

*[33] "17th Amendment: Direct Election of U.S. Senators".*August 15, 2016.

[34] Zachary Clopton & Steven E. Art, "The Meaning of the Seventeenth Amendment and a of State Defiance", 107 Northwestern University Law Review 1181 (2013), pp. 1191-1192

[35]*"17th Amendment to the U.S. Constitution: Direct Election of U.S. Senators".* August 15, 2016.

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4.8: Court Cases that Interpret Guaranteed Rights

According to Article III of The Constitution, the federal judicial system was established. Section I further states, "The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." By hearing important cases and making landmark decisions, the Supreme Court's rulings have paved the way for individual civil liberties and civil rights to remain intact. Some of the following cases set legal precedents that changed the way laws were enforced.

Figure 4.8.1: Contemplation of Justice statue on the steps of the United States Supreme Court Building

Landmark Cases in Civil Liberties and Civil Rights

Engel v. Vitale (1962)

Facts of the Case

The Board of Regents for the State of New York authorized a short, voluntary prayer for recitation at the start of each school day. This was an attempt to defuse the politically potent issue by taking it out of the hands of local communities. The blandest of invocations read as follows: "Almighty God, we acknowledge our dependence upon Thee, and beg Thy blessings upon us, our teachers, and our country."

Question

Does the reading of a nondenominational prayer at the start of the school day violate the "establishment of religion" clause of the First Amendment?

Conclusion

Decision: 6 votes for Engel, 1 vote(s) against

Legal provision: Establishment of Religion

Yes. Neither the prayer's nondenominational character nor its voluntary character saves it from unconstitutionality. By providing the prayer, New York officially approved religion. This was the first in a series of cases in which the Court used the establishment clause to eliminate religious activities of all sorts, which had traditionally been a part of public ceremonies. Despite the passage of time, the decision is still unpopular with a majority of Americans.

Importance

Prohibited organized prayer in public schools and has become an important linchpin in the current “separation of church and state” policies. This remains a hotly debated topic with extreme divisiveness and disagreement on both sides of the debate. Ultimately, this case created a clear boundary between the business of government and the institution/endorsement of religious practices in public institutions (primarily public schools but extended to other government institutions at the federal, state, and local level as well)

Gideon v. Wainwright (1963)

Facts of the Case

Clarence Earl Gideon was charged in a Florida state court with a felony: having broken into and entered a poolroom with the intent to commit a misdemeanor offense. When he appeared in court without a lawyer, Gideon requested that the court appoint one for him. According to Florida state law, however, an attorney may only be appointed to an indigent defendant in capital cases, so the trial court did not appoint one. Gideon represented himself in trial. He was found guilty and sentenced to five years in prison. Gideon filed a habeas corpus petition in the Florida Supreme Court and argued that the trial court's decision violated his constitutional right to be represented by counsel. The Florida Supreme Court denied habeas corpus relief.

Question

Does the Sixth Amendment's right to counsel in criminal cases extend to felony defendants in state courts?

Conclusion

Decision: 9 votes for Gideon, 0 vote(s) against

Legal provision: Right to Counsel

Yes. Justice Hugo L. Black delivered the opinion of the 9-0 majority. The Supreme Court held that the framers of the Constitution placed a high value on the right of the accused to have the means to put up a proper defense, and the state, as well as federal courts, must respect that right. The Court held that it was consistent with the Constitution to require state courts to appoint attorneys for defendants who could not afford to retain counsel on their own.

Justice William O. Douglas wrote a concurring opinion in which he argued that the Fourteenth Amendment does not apply a watered-down version of the Bill of Rights to the states. Since constitutional questions are always open for consideration by the Supreme Court, there is no need to assert a rule about the relationship between the 14th Amendment and the Bill of Rights. In his separate opinion concurring in the judgment, Justice Tom C. Clark wrote that the Constitution guarantees the right to counsel as a protection of due process, and there is no reason to apply that protection in certain cases but not others. Justice John M. Harlan wrote a separate concurring opinion in which he argued that the majority's decision represented an extension of earlier precedent that established the existence of a serious criminal charge to be a "special circumstance" that requires the appointment of counsel. He also argued that the majority's opinion recognized a right to be valid in state courts as well as federal ones; it did not apply a vast body of federal law to the states.

Importance

The Court used the 14th Amendment to justify requiring the states to provide anyone accused of a crime with an attorney at no charge. Defendants could no longer be required to defend themselves if they do not have the capacity to pay. The Court justified its decision with the argument that the right to counsel was essential for a fair trial. In later cases, this ruling was extended to cover any crime with potential jail time (misdemeanor or felony).

Hernandez v. Texas (1953)

Facts of the Case

Pete Hernandez, an agricultural worker, was indicted for the murder of Joe Espinoza by an all-Anglo (white) grand jury in Jackson County, Texas. Claiming that Mexican-Americans were barred from the jury commission that selected juries, and from petit juries, Hernandez' attorneys tried to quash the indictment. Moreover, Hernandez tried to quash the petit jury panel called for service because persons of Mexican descent were excluded from jury service in this case. A Mexican-American had not served on a jury in Jackson County in over 25 years and thus, Hernandez claimed that Mexican ancestry citizens were discriminated against as a special class in Jackson County. The trial court denied the motions. Hernandez was found guilty of murder and sentenced by the all-Anglo jury to life in prison. In affirming, the Texas Court of Criminal Appeals found that "Mexicans are...members of and within the classification of the white race as distinguished from members of the Negro Race" and rejected the petitioners' argument that they were a "special class" under the meaning of the 14th Amendment. Further, the court pointed out that "so far as we are advised, no member of the Mexican nationality" challenged this classification as white or Caucasian.

Question

Is it a denial of the 14th Amendment equal protection clause to try a defendant of a particular race or ethnicity before a jury where all persons of his race or ancestry have, because of that race or ethnicity, been excluded by the state?

Conclusion

Decision: 9 votes for Hernandez, 0 vote(s) against

Legal provision: Equal Protection

Yes. In a unanimous opinion delivered by Chief Justice Earl Warren, the Court held that the Fourteenth Amendment protects those beyond the two classes of white or Negro, and extends to other racial groups in communities depending upon whether it can be factually established that such a group exists within a community. In reversing, the Court concluded that the Fourteenth Amendment "is not directed solely against discrimination due to a 'two-class theory'" but in this case covers those of Mexican ancestry. This was established by the fact that the distinction between whites and Mexican ancestry individuals was made clear at the Jackson County Courthouse itself where "there were two men's toilets, one unmarked, and the other marked 'Colored Men and 'Hombres Aqui' ('Men Here')," and by the fact that no Mexican ancestry person had served on a jury in 25 years. Mexican Americans were a "special class" entitled to equal protection under the Fourteenth Amendment.

Importance

Held that Hispanics must be considered a “class of their own” and were entitled to equal protection and civil rights recognition.

Mapp v. Ohio (1961)

Facts of the Case

Dollree Mapp was convicted of possessing obscene materials after an admittedly illegal police search of her home for a fugitive. She appealed her conviction on the basis of freedom of expression.

Question

Were the confiscated materials protected by the First Amendment? (May evidence obtained through a search in violation of the Fourth Amendment be admitted in a state criminal proceeding?)

Conclusion

Decision: 6 votes for Mapp, 3 vote(s) against

Legal provision: Amendment 4: Fourth Amendment

The Court brushed aside the First Amendment issue and declared that "all evidence obtained by searches and seizures in violation of the Constitution is, by [the Fourth Amendment], inadmissible in a state court." Mapp had been convicted on the basis of illegally obtained evidence. This was an historic -- and controversial -- decision. It placed the requirement of excluding illegally obtained evidence from the court at all levels of the government. The decision launched the Court on a troubled course of determining how and when to apply the exclusionary rule.

Importance

The Court declared that evidence discovered in the process of an illegal search could not be used in a state court case. This has become known as the “fruit of the poisonous tree” principle.

Miranda v. Arizona (1966)

Facts of the Case

The Court was called upon to consider the constitutionality of a number of instances, ruled on jointly, in which defendants were questioned "while in custody or otherwise deprived of [their] freedom in any significant way." In Vignera v. New York, the petitioner was questioned by police, made oral admissions, and signed an inculpatory statement all without being notified of his right to counsel. Similarly, in Westover v. United States, the petitioner was arrested by the FBI, interrogated, and made to sign statements without being notified of his right to counsel. Lastly, in California v. Stewart, local police held and interrogated the defendant for five days without notification of his right to counsel. In all these cases, suspects were questioned by police officers,

detectives, or prosecuting attorneys in rooms that cut them off from the outside world. In none of the cases were suspects given warnings of their rights at the outset of their interrogation.

Question

Does the police practice of interrogating individuals without notifying them of their right to counsel and their protection against self-incrimination violate the Fifth Amendment?

Conclusion

Decision: 5 votes for Miranda, 4 vote(s) against

Legal provision: Self-Incrimination

The Court held that prosecutors could not use statements stemming from custodial interrogation of defendants unless they demonstrated the use of procedural safeguards "effective to secure the privilege against self- incrimination." The Court noted that "the modern practice of in-custody interrogation is psychologically rather than physically oriented" and that "the blood of the accused is not the only hallmark of an unconstitutional inquisition." The Court specifically outlined the necessary aspects of police warnings to suspects, including warnings of the right to remain silent and the right to have counsel present during interrogations.

Importance

In a 5-4 vote, the Court agreed that Miranda's rights had been violated and ordered his conviction struck down. Today, the issues of due process and the rights of those accused of a crime are still of great importance. While some may argue that protecting individual rights of accused persons places an undue burden on the victims of crimes and makes it harder for the state to get a conviction there are those who also argue that having too few protections for the accused would result in abuses of power. They fear that innocent people might be subject to coercion through violence resulting in false confessions. The courts are required to balance the rights of those who are accused of crimes with the rights and protections that society must afford to those who would be the victim of a crime. We see this decision on every "cop show" and in the news when people are arrested or interrogated and are read the famous "Miranda Warning."

Example Miranda Warning:

You have the right to remain silent when questioned. Anything you say or do may be used against you in a court of law. You have the right to consult an attorney before speaking to the police and to have an attorney present during questioning now or in the future. If you cannot afford an attorney, one will be appointed for you before any questioning, if you wish. If you decide to answer any questions now, without an attorney present, you will still have the right to stop answering at any time until you talk to an attorney. Knowing and understanding your rights as I have explained them to you, are you willing to answer my questions without an attorney present?

Video: Miranda Warning 40 Years Later

Roe V. Wade (1973)

Facts of the Case

Roe, a Texas resident, sought to terminate her pregnancy by abortion. Texas law prohibited abortions except to save the pregnant woman's life. After granting certiorari, the Court heard arguments twice. The first time, Roe's attorney--Sarah Weddington--could not locate the constitutional hook of her argument for Justice Potter Stewart. Her opponent--Jay Floyd--misfired from the start. Weddington sharpened her constitutional argument in the second round. Her new opponent -- Robert Flowers -- came under strong questioning from Justices Potter Stewart and Thurgood Marshall.

Question

Does the Constitution embrace a woman's right to terminate her pregnancy by abortion?

Conclusion

Decision: 7 votes for Roe, 2 vote(s) against

Legal provision: Due Process

The Court held that a woman's right to an abortion fell within the right to privacy (recognized in Griswold v. Connecticut) protected by the 14th Amendment. The decision gave a woman total autonomy over the pregnancy during the first trimester and defined different levels of state interest for the second and third trimesters. As a result, the laws of 46 states were affected by the Court's ruling.

Importance

Established a woman’s right to an abortion as part of a constitutional right to privacy using the 9th Amendment and 14th Amendment as its basis. This case has become one of the most controversial modern Supreme Court decisions. Since the Court’s ruling in 1973, this case has been the center of a divisive fight between “pro-choice” and “pro-life” sides of a social and legal debate.

Schenck v. United States (1919)

Facts of the Case

During World War I, Schenck mailed circulars to draftees. The circulars suggested that the draft was a monstrous wrong motivated by the capitalist system. The circulars urged "Do not submit to intimidation" but advised only peaceful action such as petitioning to repeal the Conscription Act. Schenck was charged with conspiracy to violate the Espionage Act by attempting to cause insubordination in the military and to obstruct recruitment.

Question

Are Schenck's actions (words, expression) protected by the free speech clause of the First Amendment?

Conclusion

Decision: 9 votes for United States, 0 vote(s) against

Legal provision: 1917 Espionage Act; US Constitution Amendment 1

Holmes, speaking for a unanimous Court, concluded that Schenck is not protected in this situation. The character of every act depends on the circumstances. "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." During wartime, utterances tolerable in peacetime can be punished.

Importance

This decision limited First Amendment right to free speech if it imposes a “clear and present danger” to the security of the United States or its people.

Texas v. Johnson (1989)

Facts of the Case

In 1984, in front of the Dallas City Hall, Gregory Lee Johnson burned an American flag as a means of protest against Reagan administration policies. Johnson was tried and convicted under a Texas law outlawing flag desecration. He was sentenced to one year in jail and assessed a $2,000 fine. After the Texas Court of Criminal Appeals reversed the conviction, the case went to the Supreme Court.

Question

Is the desecration of an American flag, by burning or otherwise, a form of speech that is protected under the First Amendment?

Conclusion

Decision: 5 votes for Johnson, 4 vote(s) against

Legal provision: Amendment 1: Speech, Press, and Assembly

In a 5-to-4 decision, the Court held that Johnson's burning of a flag was protected expression under the First Amendment. The Court found that Johnson's actions fell into the category of expressive conduct and had a distinctively political nature. The fact that an audience takes offense to certain ideas or expression, the Court found, does not justify prohibitions of speech. The Court also held that state officials did not have the authority to designate symbols to be used to communicate only limited sets of messages, noting that "[i]f there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

Importance

This case answered the question of whether or not the First Amendment protects the burning of the United States flag as a form of symbolic speech with a definitive “YES!” In response, there has been a constant push in many states (particularly more conservative states in the South and Midwest) for a Constitutional Amendment that would prohibit the burning of the United States Flag.

Video: Should Flag Burning be Illegal?

Other Important Cases:

Overview: First Amendment to the United States Constitution

Figure 4.8.2

Overview: Freedom of religion in the United States

Reynolds v. United States, 98 U.S. 145 (1879) Religious belief or duty cannot be used as a defense against a criminal indictment.

Davis v. Beason, 133 U.S. 333 (1890) The Edmunds Anti-Polygamy Act of 1882 does not violate the Free Exercise Clause of the First Amendment even though polygamy is part of several religious beliefs.

Cantwell v. Connecticut, 310 U.S. 296 (1940) The states cannot interfere with the free exercise of religion.

Minersville School District v. Gobitis, 310 U.S. 586 (1940) The First Amendment does not require public schools to excuse students from saluting the American flag and reciting the Pledge of Allegiance on religious grounds. (Overruled by West Virginia State Board of Education v. Barnette (1943))

Murdock v. Pennsylvania, 319 U.S. 105 (1943) A Pennsylvania ordinance that imposes a license tax on those selling religious merchandise violates the Free Exercise Clause.

West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943) Public schools cannot override the religious beliefs of their students by forcing them to salute the American flag and recite the Pledge of Allegiance.

Everson v. Board of Education, 330 U.S. 1 (1947) A state law that reimburses the costs of transportation to and from parochial schools does not violate the Establishment Clause of the First Amendment. The Establishment Clause is incorporated against the states, and the Constitution requires a sharp separation between government and religion.

McCollum v. Board of Education, 333 U.S. 203 (1948) The use of public school facilities by religious organizations to give religious instruction to school children violates the Establishment Clause.

Abington School District v. Schempp, 374 U.S. 203 (1963) School-sponsored reading of the Bible and recitation of the Lord's Prayer in public schools is unconstitutional under the Establishment Clause.

Flast v. Cohen, 392 U.S. 83 (1968) Taxpayers have the standing to sue to prevent the disbursement of federal funds in contravention of the specific constitutional prohibition against government support of religion.

Lemon v. Kurtzman, 403 U.S. 602 (1971) For a law to be considered constitutional under the Establishment Clause, the law must have a legitimate secular purpose, must not have the primary effect of either advancing or inhibiting religion, and must not result in an excessive entanglement of government and religion.

Wisconsin v. Yoder, 406 U.S. 205 (1972) Parents may remove their children from public schools for religious reasons.

Marsh v. Chambers, 463 U.S. 783 (1983) A state legislature's practice of opening its sessions with a prayer offered by a state-supported chaplain does not violate the Establishment Clause.

Edwards v. Aguillard, 482 U.S. 578 (1987) Teaching creationism in public schools is unconstitutional.

Employment Division v. Smith, 494 U.S. 872 (1990) Neutral laws of general applicability do not violate the Free Exercise Clause.

Lee v. Weisman, 505 U.S. 577 (1992) Including a clergy-led prayer within the events of a public school graduation ceremony violates the Establishment Clause.

Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993) The government must show a compelling interest to pass a law that targets a religion's ritual (as opposed to a law that happens to burden the ritual but is not directed at it). Failing to show

such an interest, the prohibition of animal sacrifice is a violation of the Free Exercise Clause.

Rosenberger v. University of Virginia, 515 U.S. 819 (1995) A university cannot use student dues to fund secular groups while excluding religious groups.

Agostini v. Felton, 521 U.S. 203 (1997) Allowing public school teachers to teach at parochial schools does not violate the Establishment Clause as long as the material that is taught is secular and neutral in nature and no "excessive entanglement" between government and religion is apparent.

Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000) Prayer in public schools that is initiated and led by students violates the Establishment Clause.

Zelman v. Simmons-Harris, 536 U.S. 639 (2002) A government program that provides tuition vouchers for students to attend a private or religious school of their parents' choosing is constitutional because the vouchers are neutral toward religion and, therefore, do not violate the Establishment Clause.

Kitzmiller v. Dover Area School District, 400 F. Supp. 2d 707 (M.D. Pa. 2005) Teaching intelligent design in public school biology classes violates the Establishment Clause because intelligent design is not science, and it "cannot uncouple itself from its creationist, and thus religious, antecedents."

Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, 565 U.S. (2012) Ministers cannot sue their churches by claiming termination in violation of employment non-discrimination laws. The Establishment Clause forbids the appointing of ministers by the government; therefore, it cannot interfere with the freedom of religious groups to select their own ministers under the Free Exercise Clause.

Town of Greece v. Galloway, 572 U.S. (2014) A town council's practice of opening its sessions with a sectarian prayer does not violate the Establishment Clause.

Burwell v. Hobby Lobby Stores, Inc., 573 U.S. (2014) Closely held, for-profit corporations have free exercise rights under the Religious Freedom Restoration Act of 1993. As applied to such corporations, the requirement of the Patient Protection and Affordable Care Act that employers provide their female employees with no-cost access to contraception violates the Religious Freedom Restoration Act.

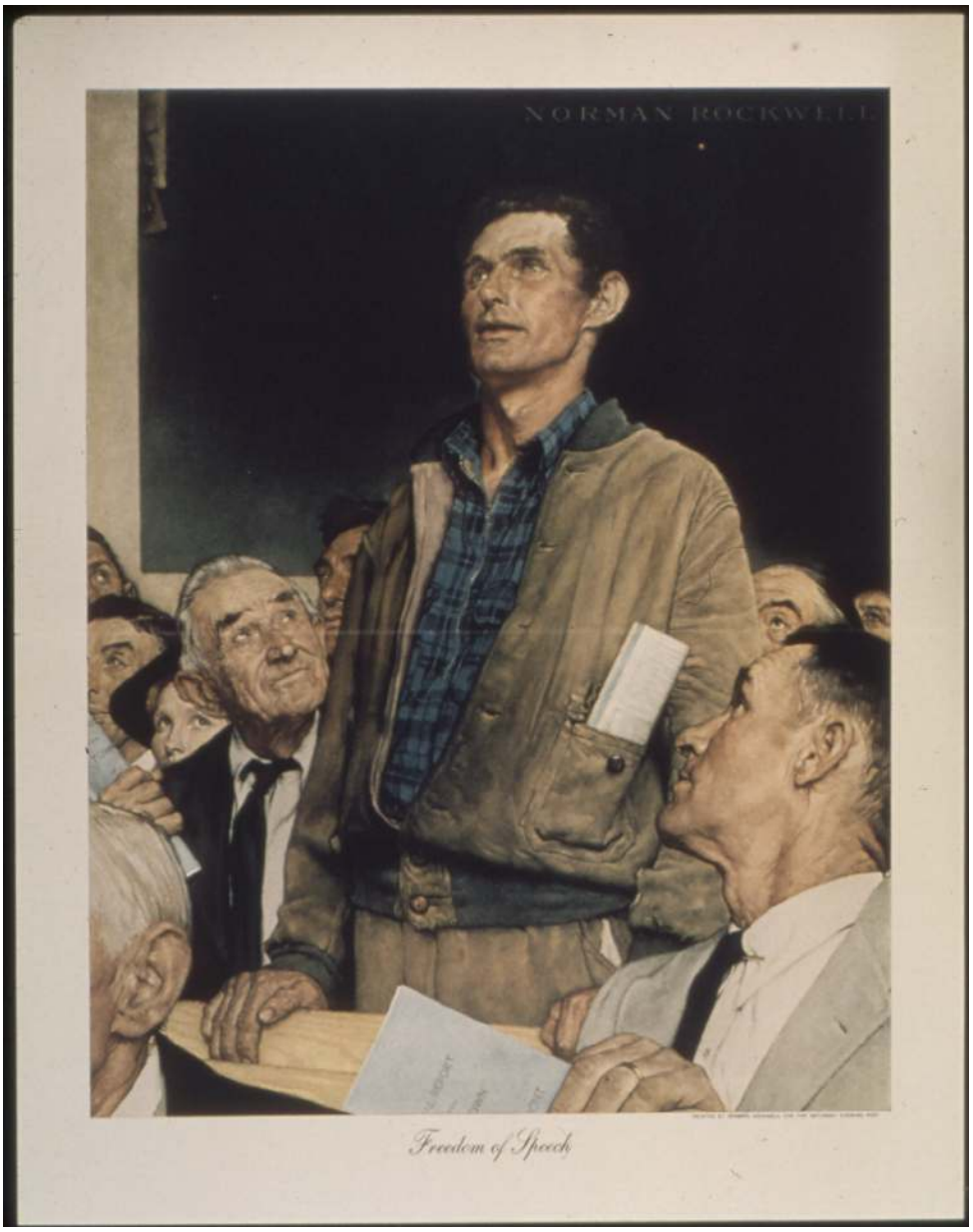


Figure 4.8.3: Painting by Norman Rockwell Freedom of Speech was published in the February 20, 1943 issue of The Saturday Evening Post with a matching essay by Booth Tarkington as part of the Four Freedoms series based on the State of the Union Speech given by FDR in 1941.

Freedom of Speech and Freedom of the Press

Main articles: Freedom of speech in the United States and Freedom of the press in the United States

Mutual Film Corporation v. Industrial Commission of Ohio, 236 U.S. 230 (1915) Motion pictures are not entitled to free speech protection because they are a business, not a form of art. (Overruled by Joseph Burstyn, Inc. v. Wilson (1952))

Gitlow v. New York, 268 U.S. 652 (1925) The provisions of the First Amendment that protect the freedom of speech and the freedom of the press apply to the governments of the states through the Due Process Clause of the Fourteenth Amendment.

Stromberg v. California, 283 U.S. 359 (1931) A California law that bans red flags is unconstitutional because it violates the First Amendment's protection of symbolic speech as applied to the states through the Fourteenth Amendment.

Near v. Minnesota, 283 U.S. 697 (1931) A Minnesota law that imposes prior restraints on the publication of "malicious, scandalous, and defamatory" content violates the First Amendment as applied to the states through the Fourteenth Amendment.

Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) Fighting words—words that by their very utterance inflict injury or tend to incite an immediate breach of the peace—are not protected by the First Amendment.

Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952) Motion pictures, as a form of artistic expression, are protected by the First Amendment.

Roth v. United States, 354 U.S. 476 (1957) Obscene material is not protected by the First Amendment. (Superseded by Miller v. California (1973))

One, Inc. v. Olesen, 355 U.S. 371 (1958) Pro-homosexual writing is not per se obscene.

New York Times Co. v. Sullivan, 376 U.S. 254 (1964) Public officials, to prove they were libeled, must show not only that a statement is false, but also that it was published with malicious intent.

Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967) News organizations may be liable when printing allegations about public figures if the information they disseminate is recklessly gathered and unchecked.

United States v. O'Brien, 391 U.S. 367 (1968) A criminal prohibition against draft-card burning does not violate the First Amendment because its effect on speech is only incidental, and it is justified by the significant governmental interest in maintaining an efficient and effective military draft system.

T*inker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) Wearing armbands as a form of protest on public school grounds is protected by the First Amendment.

Brandenburg v. Ohio, 395 U.S. 444 (1969) The mere advocacy of the use of force or of violation of the law is protected by the First Amendment. Only inciting others to take direct and immediate unlawful action is without constitutional protection.

Cohen v. California, 403 U.S. 15 (1971) The First Amendment prohibits the states from making the public display of a single four-letter expletive a criminal offense without a more specific and compelling reason than a general tendency to disturb the peace.

New York Times Co. v. United States, 403 U.S. 713 (1971) The federal government's desire to keep the Pentagon Papers classified is not strong enough to justify violating the First Amendment by imposing prior restraints on the material.

Miller v. California, 413 U.S. 15 (1973) To be obscene, a work must fail the Miller test, which determines if it has any "serious literary, artistic, political, or scientific value."

Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974) The First Amendment permits the states to formulate their own standards of liability for defamation against private individuals as long as liability is not imposed without fault. If the state standard is lower than actual malice, then only actual damages may be awarded.

Buckley v. Valeo, 424 U.S. 1 (1976) Spending money to influence elections is a form of constitutionally protected free speech; therefore, federal limits on campaign contributions are constitutional in only a limited number of circumstances.

Federal Communications Commission v. Pacifica Foundation, 438 U.S. 726 (1978) Broadcasting has less First Amendment protection than other forms of communication because of its pervasive nature. The Federal Communications Commission has broad authority to determine what constitutes indecency in different contexts.

New York v. Ferber, 458 U.S. 747 (1982) Laws that prohibit the sale, distribution, and advertisement of child pornography are constitutional even if the content does not meet the conditions necessary for it to be labeled obscene.

Bethel School District v. Fraser, 478 U.S. 675 (1986) The First Amendment permits a public school to punish a student for giving a lewd and indecent speech at a school assembly even if the speech is not obscene.

Hazelwood v. Kuhlmeier, 484 U.S. 260 (1988) Public school curricular student newspapers that have not been established as forums for student expression are subject to a lower level of First Amendment protection than independent student expression or newspapers established by policy or practice as forums for student expression.

Hustler Magazine v. Falwell, 485 U.S. 46 (1988) Parodies of public figures, including those intended to cause emotional distress, are protected by the First Amendment.

Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991) While nude dancing is a form of expressive conduct, public indecency laws regulating or prohibiting nude dancing are constitutional because they further substantial governmental interests in maintaining

order and protecting morality.

Reno v. American Civil Liberties Union, 521 U.S. 844 (1997) The Communications Decency Act, which regulates certain content on the Internet, is so overbroad that it is an unconstitutional restraint on the First Amendment.

Citizens United v. Federal Election Commission, 558 U.S. 310 (2010) Limits on corporate and union political expenditures during election cycles violate the First Amendment. Corporations and labor unions can spend unlimited sums in support of or in opposition to candidates as long as the spending is independent of the candidates.

Snyder v. Phelps, 562 U.S. (2011) The infamous Westboro Baptist Church's picketing of funerals cannot be liable for a tort of emotional distress.

Brown v. Entertainment Merchants Association, 564 U.S. (2011) Video games are a distinct communications medium protected by the First Amendment.

McCutcheon v. Federal Election Commission, 572 U.S. (2014) Limits on the total amounts of money that individuals can donate to political campaigns during two-year election cycles violate the First Amendment.

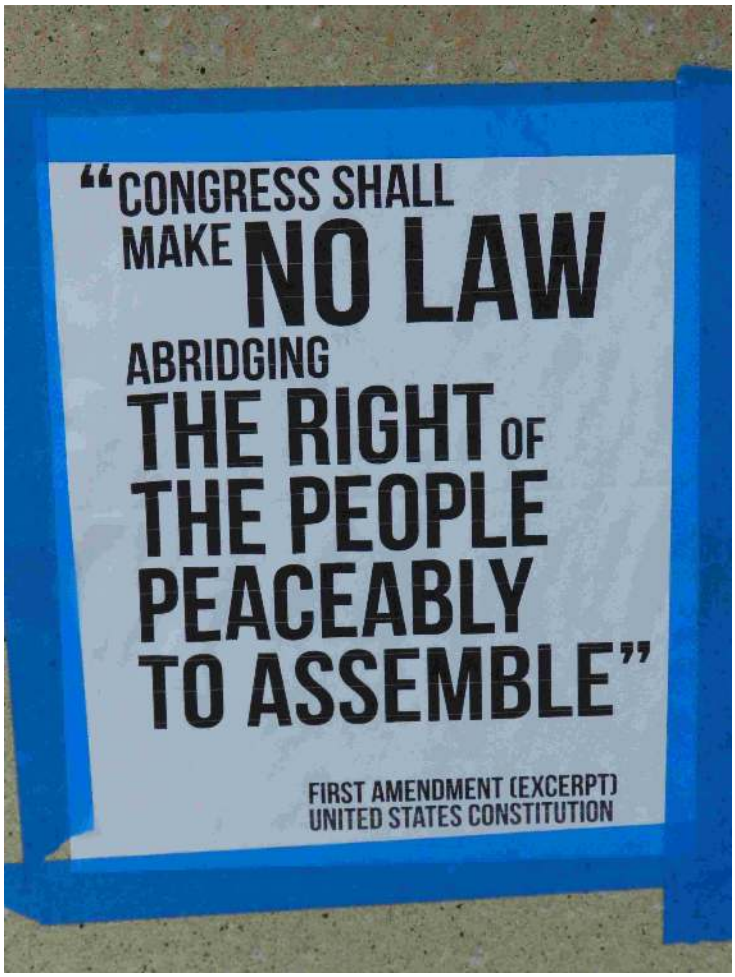


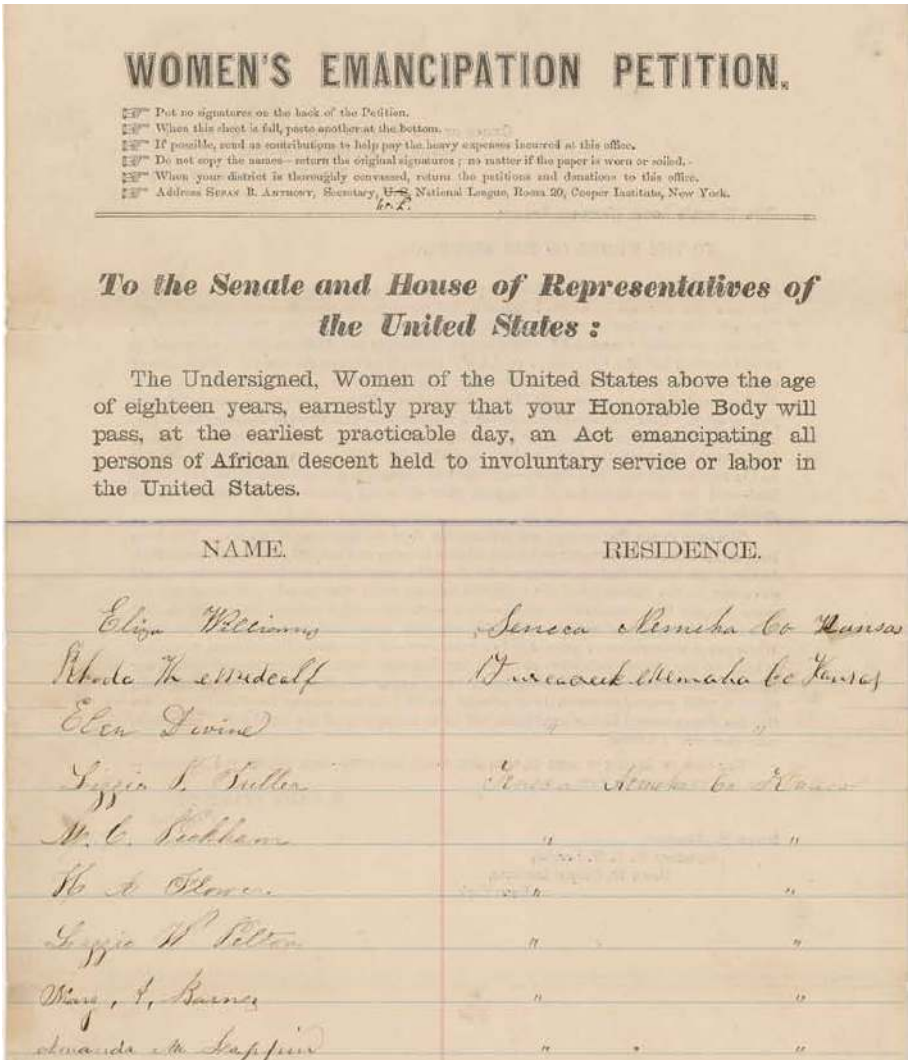
Figure 4.8.4

Freedom of Association

National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449 (1958) The freedom to associate with organizations dedicated to the "advancement of beliefs and ideas" is an inseparable part of the Due Process Clause of the Fourteenth Amendment.

Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston, 515 U.S. 557 (1995) Private citizens organizing a public demonstration have the right to exclude groups whose message they disagree with from participating.

Boy Scouts of America v. Dale, 530 U.S. 640 (2000) Private organizations are allowed to choose their own membership and expel members based on their sexual orientation even if such discrimination would otherwise be prohibited by anti-discrimination legislation designed to protect minorities in public accommodations.



WOMEN'S EMANCIPATION PETITION.

- Put no signatures on the back of the Petition.
- When this sheet is full, paste another at the bottom.
- If possible, send us contributions to help pay the heavy expenses incurred at this office.
- Do not copy the names—return the original signatures; no matter if the paper is worn or soiled.
- When your district is thoroughly convassed, return the petitions and donations to this office.
- Address SUSAN B. ANTHONY, Secretary, ~~U.S.~~ National League, Room 20, Cooper Institute, New York.

To the Senate and House of Representatives of the United States:

The Undersigned, Women of the United States above the age of eighteen years, earnestly pray that your Honorable Body will pass, at the earliest practicable day, an Act emancipating all persons of African descent held to involuntary service or labor in the United States.

NAME.	RESIDENCE.
Eliza Williams	Seneca Nemaha Co Kansas
Rhoda Th Medcalf	Tweedeck Nemaha Co Kansas
Ellen Divine	" "
Lizzie P. Fuller	Seneca Nemaha Co Kansas
M. C. Peckham	" "
H. A. Flower	" "
Lizzie W. Pelton	" "
Mary A. Barnes	" "
Amanda M. Sappin	" "

Figure 4.8.5

Freedom to Petition

Edwards v. South Carolina, 372 U.S. 229 (1963) The Free Petition Clause extends to the states through the Due Process Clause of the Fourteenth Amendment.

California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972) The Free Petition Clause encompasses petitions to all three branches of the federal government—the Congress, the executive including administrative agencies and the judiciary.

Figure 4.8.6

Second Amendment Rights

Overview: Second Amendment to the United States Constitution

United States v. Cruikshank, 92 U.S. 542 (1876) The Second Amendment has no purpose other than to restrict the powers of the federal government. It does not specifically grant private citizens the right to keep and bear arms because that right exists independent of the Constitution.

Presser v. Illinois, 116 U.S. 252 (1886) An Illinois law that prohibits common citizens from forming personal military organizations, performing drills, and parading is constitutional because such a law does not limit the personal right to keep and bear arms.

United States v. Miller, 307 U.S. 174 (1939) The federal government and the states can limit access to all weapons that do not have "some reasonable relationship to the preservation or efficiency of a well-regulated militia."

District of Columbia v. Heller, 554 U.S. 570 (2008) The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia and to use it for traditionally lawful purposes such as self-defense within the home.

McDonald v. Chicago, 561 U.S. 3025 (2010) The individual right to keep and bear arms for self-defense is fully applicable to the states through the Due Process Clause of the Fourteenth Amendment.

Figure 4.8.7

Study/Discussion Questions

1. Complete the table to detail why each case was so important.

case	Importance
Engel v. Vitale	
Schenck v. U.S.	
Texas v. Johnson	
Miranda v. Arizona	
Gideon v. Wainwright	
Mapp v. Ohio	
Roe v. Wade	

2. Do you think a federal ruling on a landmark case may set a bad precedent? Explain using a case as proof of your opinion.

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4.9: Due Process

Figure 4.9.1: Under the Fifth, Sixth and Seventh Amendments, persons accused of a crime are given special protections by the Bill of Rights.

Collectively, the Fifth, Sixth and Seventh Amendments set forth procedural guarantees known as “rights of the accused,” which exist through the criminal process from accusation to trial to conviction.

What is Due Process?

Due process is the idea that laws must be applied fairly and equally to all. This is concept is imperative when a citizen has been accused of a crime. The Constitution states that Americans will not be stripped of "Life, liberty, or property, without due process of law." The Constitution uses the phrase twice: in the Fifth and Fourteenth Amendments. This highlights the importance that is placed on due process.

The central right of the accused is the presumption that anyone charged with a crime is innocent until proven guilty in court. This rule can be hard to preserve when an accused individual has been subjected to massive unfavorable media attention prior to or during a trial. For example, the police have perfected a technique known as the “perp walk” (for “perpetrator”), allowing television cameras to film the accused—often handcuffed and in prison garb—escorted by police. Such images, repeated over and over again in news broadcasts, can lead viewers to presume guilt rather than innocence.

Video: Presumption of Innocence

The Fifth Amendment

The Constitution's Fifth Amendment gives people the right to refuse to answer questions from any entity of government if they claim such responses might lead to criminal prosecution. Claiming this right not to incriminate oneself is popularly called "taking the fifth." Witnesses may be compelled to testify only if given immunity from prosecution. Such restrictions frustrate law enforcement officers, who find confessions among the best means to obtain a guilty verdict.

The right against self-incrimination originally meant only that individuals could not be forced to testify against themselves during their trials. In the 1920s, the Supreme Court threw out convictions when evidence had been gained by torture or coercion and slowly expanded the right to cover all discussions with all law enforcement officials.

By 1966, the Court was wary of issuing case-by-case decisions about whether the police had gone too far in questioning suspects. In *Miranda v. Arizona* (384 U.S. 436), the justices, having reviewed numerous police manuals, concluded that police often tried to create an atmosphere designed to intimidate or manipulate the accused into confessing. The justices ruled that law enforcement officials must "demonstrate the use of procedural safeguards" by ensuring that the accused is "adequately and effectively apprised of his rights." The Miranda decision required a warning to be read to suspects prior to interrogation—this warning is known as Miranda rights—without which their statements could not be admitted as evidence in court. Suspects must be notified of the following: that they have the right to remain silent, that whatever they say can be used against them in court, that they have the right to be represented by a lawyer before and during questioning, that they have the right to have a lawyer provided by the court if they cannot afford one, and that they have the right to terminate questioning at any time.

These rights are familiar to anyone who has seen criminal detective movies or television shows.

> *You are under arrest. You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be appointed to you. Do you understand these rights as they have been read to you? Miranda Warning*

Miranda Rights were effectively introduced to the American public when the tough-guy detectives of the sixties television show *Dragnet* read them to suspects that they were arresting.

But are they effective? Police officers view the reading of these rights as a mere technicality. They can get information by appealing to a suspect's desire to tell his or her story and by acting as if they are on the suspect's side. Even after suspects invoke Miranda rights, officers can try to change their minds or elicit what they term off-the-record information. Eighty percent of suspects voluntarily waive their rights and many confess.

Video: The Fifth Amendment

Over time, Supreme Court decisions have outlined processes for a suspect to be tried in court. The most important are the following:

Individuals cannot be subject to double jeopardy; in other words, they cannot be tried again for a crime after being acquitted of it in an earlier trial. This restriction does not prevent someone acquitted in a criminal case from being sued in a civil case: actor-athlete O. J. Simpson found not guilty of the murder of his ex-wife and her friend, was found in civil court to be responsible and financially liable for their deaths. View the link here to read more about this.

Suspects must know and understand the charges and evidence against them; therefore, cases against those “incompetent to stand trial” for reasons of illness or insanity must be dismissed, and juvenile suspects cannot be tried as adults.

The trial must be speedy so that someone not yet proven guilty is not punished by lengthy incarceration before trial.

Defendants for serious crimes (punishable by more than six months in prison or a $500 fine) and those in federal civil cases have a right to a trial by an “impartial jury” of their peers.

Defendants have a right to face and confront witnesses against them.

The accused has a right to a defense attorney.

- At first, this meant only that accused persons could pay for lawyers to represent them. But the 1932 case of seven young African American men sentenced in Scottsboro, Alabama, to die on a charge of raping two white women (a charge later found to be trumped-up) persuaded the Supreme Court otherwise. The justices ruled that these defendants—poor, illiterate, and charged with a capital offense—had to be represented by a public defender, a defense attorney employed and paid by the state.
- This ruling gradually extended to all defendants in federal courts, then to felony defendants in state courts, and eventually to anyone facing any jail time. But public defenders are underpaid and overworked. And their convicted clients can win on appeal only if they can show that public defenders made serious errors, depriving them of a fair trial.

WHO IS ENTITLED TO LEGAL REPRESENTATION AND WHO SHOULD PAY? THE CASE OF "GIDEON'S TRUMPET"

In 1963, the landmark case of Gideon v. Wainwright was argued before the U.S. Supreme Court on the issue of who is entitled to legal representation and who should pay for such representation. Read the Facts and Case Summary - Gideon v. Wainwright then watch the movie "Gideon's Trumpet." After watching the video, answer the following questions.

Directions: Answer these questions either during or after the video.

Just after Gideon's first trial...

1. Name the crimes Gideon was convicted of.

2. How well did he defend himself?

3. Was the trial unfair?

4. Was the punishment appropriate?

At the point Gideon mails his appeal to the Supreme Court...

1. On what parts of the Constitution did Gideon base his appeal?

2. What is the importance of the writ of habeas corpus?

3. What is a writ of certiorari?

4. What is an in *forma pauperis* petition?

Following the Supreme Court conference in which they agree to hear the Gideon case…

1. What is the conference?

2. What is the importance of precedent (*stare decisis*)?

Following oral arguments before the Supreme Court…

1. What were the major points made by Abe Fortas (Gideon's lawyer)?

2. What arguments were made by the lawyer representing the state of Florida?

4. How would you decide the case? Why?

Following Gideon's preliminary appearance in court for the new trial…

1. Why isn't it double jeopardy to try Gideon a second time?

2. What is a statute of limitations?

3. Why didn't the statute of limitations apply since so much time had passed?

Finally:

Compare and contrast Gideon's two trials.

Video: Gideon's Trumpet Part 1

Video: What is a Plea Bargain?

Today, most charges are resolved prior to trial when a defendant agrees to plead guilty to a lesser charge. They thereby avoid being charged with—and found guilty of—a more serious crime and receiving a more severe sentence, but they lose out on the many protections of trial procedures.

Civil Liberties are often impaired during international crises. Witness the "war on terrorism," which is no exception. While the revelations in April 2004 of abuse and torture of Iraqi prisoners in the Abu Ghraib prison may be a matter more for international law than civil liberties, other rights of the accused were also in question after the terrorist attacks of 9/11.

Figure 4.9.2: The aftermath of terrorist attacks on the Pentagon.

The Bush administration used these powers vigorously. Hundreds of resident aliens were detained without explanation in the fall of 2001, many in solitary confinement. When the Taliban government was overthrown in Afghanistan in late 2001, American forces captured some 10,000 soldiers and other Afghanis. Many of them were named "enemy combatants" (not "prisoners of war," who would have greater protection under international law). Shackled and hooded, they were shipped to a military prison at the base at Guantánamo Bay. Some were subjected to abusive interrogation. The base was located on land the United States had leased from Cuba in perpetuity, and thus, according to the Bush administration, it was outside the jurisdiction of the federal judiciary. [5]

Many rights of the accused were directly challenged by these policies: the right to know charges against oneself, the right to counsel, the right to a speedy and public trial, the right to a jury of one's peers, the right to confront adverse witnesses, and the ability to appeal decisions to a higher court.

In 2004, the Supreme Court upheld the president's power as commander in chief to name persons as enemy combatants, to hold them indefinitely under Congress's authorization of military force, and to fashion trial proceedings with less stringent standards of evidence. But that due process required that a citizen held in the United States as an enemy combatant be given a meaningful opportunity to contest the detention's basis before a neutral decision maker. The Court also ruled that because the United States controlled Guantánamo, all detainees there had the habeas corpus right to go to federal court to challenge their detention.

In response, the Bush administration began keeping detainees in a camp in Bagram, Afghanistan, in the theater of war, where judges could not go. And Congress passed the Military Commissions Act of 2006, removing the federal courts' jurisdiction to hear

habeas corpus applications from detainees designated as enemy combatants. Then, in 2008, the Supreme Court, by a vote of 5–4, declared the Military Commissions Act unconstitutional, thereby giving back to enemy combatants their *habeas corpus* rights.

Landmark Cases in Criminal Law

Freedom from Unreasonable Searches and Seizures

Mapp v. Ohio, 367 U.S. 643 (1961) Evidence that is obtained in violation of the Fourth Amendment is inadmissible in state court.

Katz v. United States, 389 U.S. 347 (1967) The Fourth Amendment's ban on unreasonable searches and seizures applies to all places where an individual has a "reasonable expectation of privacy."

Terry v. Ohio, 392 U.S. 1 (1968) Police may stop a person if they have a reasonable suspicion that the person has committed or is about to commit a crime and frisk the suspect for weapons if they have a reasonable suspicion that the suspect is armed and dangerous without violating the Fourth Amendment.

Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971) Individuals may sue federal government officials who have violated their Fourth Amendment rights even though such a suit is not authorized by law. The existence of a remedy for the violation is implied from the importance of the right that is violated.

United States v. United States District Court for the Eastern District of Michigan, 407 U.S. 297 (1972) Government officials must obtain a warrant before beginning electronic surveillance even if domestic security issues are involved. The "inherent vagueness of the domestic security concept" and the potential for abusing it to quell political dissent make the Fourth Amendment's protections especially important when the government engages in spying on its own citizens.

Illinois v. Gates, 462 U.S. 213 (1983) Established the "totality of circumstances" test in finding probable cause under the Fourth Amendment.

New Jersey v. T. L. O., 469 U.S. 325 (1985) The Fourth Amendment's ban on unreasonable searches applies to those conducted by public school officials as well as those conducted by law enforcement personnel, but public school officials can use the less strict standard of reasonable suspicion instead of probable cause.

Vernonia School District 47J v. Acton, 515 U.S. 646 (1995) Schools may implement random drug testing upon students participating in school-sponsored athletics.

Board of Education v. Earls, 536 U.S. 822 (2002) Coercive drug testing imposed by school districts upon students who participate in extracurricular activities does not violate the Fourth Amendment.

Georgia v. Randolph, 547 U.S. 103 (2006) Police cannot conduct a warrantless search in a home where one occupant consents and the other objects.

In re Directives, (2008) According to the United States Foreign Intelligence Surveillance Court of Review, an exception to the Fourth Amendment’s warrant requirement exists when surveillance is conducted to obtain foreign intelligence for national security purposes and is directed against foreign powers or agents of foreign powers reasonably believed to be located outside the United States.[1]

United States v. Jones, 565 U.S. (2012) Attaching a GPS device to a vehicle and then using the device to monitor the vehicle’s movements constitutes a search under the Fourth Amendment.

Riley v. California, 573 U.S. (2014) Police must obtain a warrant in order to search digital information on a cell phone seized from an individual who has been arrested.

Figure 4.9.3: An attorney is asking questions of a witness.

Right to an Attorney

Glasser v. United States, 315 U.S. 60 (1942) A defense lawyer's conflict of interest arising from a simultaneous representation of codefendants violates the Assistance of Counsel Clause of the Sixth Amendment.

Betts v. Brady, 316 U.S. 455 (1942) Indigent defendants may be denied counsel when prosecuted by a state. (Overruled by Gideon v. Wainwright (1963))

Gideon v. Wainwright, 372 U.S. 335 (1963) All defendants have the right to an attorney and must be provided one by the state if they are unable to afford legal counsel.

Escobedo v. Illinois, 378 U.S. 478 (1964) A person in police custody has the right to speak to an attorney.

Miranda v. Arizona, 384 U.S. 436 (1966) Police must advise criminal suspects of their rights under the Constitution to remain silent, to consult with a lawyer, and to have one appointed to them if they are indigent. A police interrogation must stop if the suspect states that he or she wishes to remain silent.

In re Gault, 387 U.S. 1 (1967) Juvenile defendants are protected under the Due Process Clause of the Fourteenth Amendment.

Michigan v. Jackson, 475 U.S. 625 (1986) If a police interrogation begins after a defendant asserts his or her right to counsel at an arraignment or similar proceeding, then any waiver of that right for that police-initiated interrogation is invalid. (Overruled by Montejo v. Louisiana (2009))

Montejo v. Louisiana, 556 U.S. 778 (2009) A defendant may waive his or her right to counsel during a police interrogation even if the interrogation begins after the defendant's assertion of his or her right to counsel at an arraignment or similar proceeding.

Strickland v. Washington, 466 U.S. 668 (1984) To obtain relief due to ineffective assistance of counsel, a criminal defendant must show that counsel's performance fell below an objective standard of reasonableness and that counsel's deficient performance gives rise to a reasonable probability that, if counsel had performed adequately, the result of the proceeding would have been different.

Padilla v. Kentucky, 559 U.S. 356 (2010) Criminal defense attorneys are duty-bound to inform clients of the risk of deportation under three circumstances. First, where the law is unambiguous, attorneys must advise their criminal clients that deportation "will" result from a conviction. Second, where the immigration consequences of a conviction are unclear or uncertain, attorneys must advise that deportation "may" result. Finally, attorneys must give their clients some advice about deportation—counsel cannot remain silent about immigration consequences.

Figure 4.9.4: You have the right to remain silent.

Right to Remain Silent

Berghuis v. Thompkins, 560 U.S. (2010) The right to remain silent does not exist unless a suspect invokes it unambiguously.

Salinas v. Texas, 570 U.S. (2013) The Fifth Amendment's protection against self-incrimination does not protect an individual's refusal to answer questions asked by law enforcement before he or she has been arrested or given the Miranda warning. A witness cannot invoke the privilege by simply standing mute; he or she must expressly invoke it.

Figure 4.9.5

Competence

Dusky v. United States, 362 U.S. 402 (1960) A defendant has the right to a competency evaluation before proceeding to trial.

Rogers v. Okin, 478 F. Supp. 1342 (D. Mass. 1979) The competence of a committed patient is presumed until he or she is adjudicated incompetent.

Ford v. Wainwright, 477 U.S. 399 (1986) A defendant has the right to a competency evaluation before being executed.

Godinez v. Moran, 509 U.S. 389 (1993) A defendant who is competent to stand trial is automatically competent to plead guilty or waive the right to legal counsel.

Figure 4.9.6: Guantánamo Detainees

Detainment of Terrorism Suspects

Rasul v. Bush, 542 U.S. 466 (2004) The federal court system has the authority to decide if foreign nationals held at Guantánamo Bay were wrongfully imprisoned.

Hamdi v. Rumsfeld, 542 U.S. 507 (2004) The federal government has the power to detain those it designates as enemy combatants, including United States citizens, but detainees that are United States citizens must have the rights of due process and the ability to challenge their enemy combatant status before an impartial authority.

Hamdan v. Rumsfeld, 548 U.S. 557 (2006) The military commissions set up by the Bush administration to try detainees at Guantánamo Bay are illegal because they lack the protections that are required by theGeneva Conventions and the Uniform Code of Military Justice.

Boumediene v. Bush, 553 U.S. 723 (2008) Foreign terrorism suspects held at Guantánamo Bay have the constitutional right to challenge their detention in United States courts.

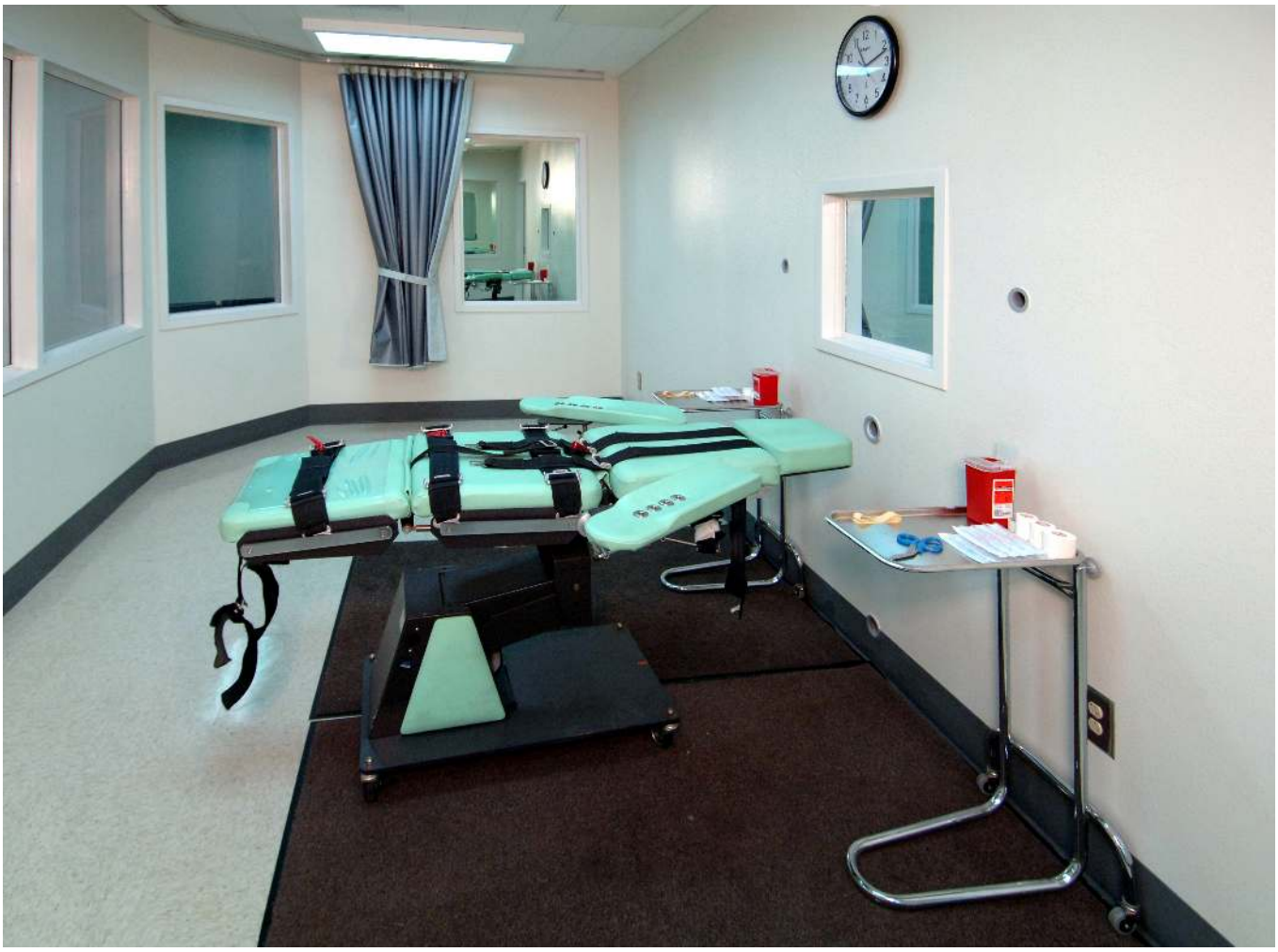

Figure 4.9.7: California Department of Corrections room where capital punishment is administered by lethal injection.

Capital Punishment

Furman v. Georgia, 408 U.S. 238 (1972) The arbitrary and inconsistent imposition of the death penalty violates the Eighth and Fourteenth Amendments and constitutes cruel and unusual punishment. This decision initiates a nationwide de facto moratorium on executions that lasts until the Supreme Court's decision in Gregg v. Georgia (1976).

Gregg v. Georgia, 428 U.S. 153 (1976) Georgia's new death penalty statute is constitutional because it adequately narrows the class of defendants eligible for the death penalty. This case and the next four cases were consolidated and decided simultaneously. By evaluating the new death penalty statutes that had been passed by the states, the Supreme Court ended the moratorium on executions that began with its decision in Furman v. Georgia (1972).

Proffitt v. Florida, 428 U.S. 242 (1976) Florida's new death penalty statute is constitutional because it requires the comparison of aggravating factors to mitigating factors in order to impose a death sentence.

Jurek v. Texas, 428 U.S. 262 (1976) Texas's new death penalty statute is constitutional because it uses a three-part test to determine if a death sentence should be imposed.

Woodson v. North Carolina, 428 U.S. 280 (1976) North Carolina's new death penalty statute is unconstitutional because it allows a mandatory death sentence to be imposed.

Roberts v. Louisiana, 428 U.S. 325 (1976) Louisiana's new death penalty statute is unconstitutional because it calls for a mandatory death sentence for a large range of crimes.

Coker v. Georgia, 433 U.S. 584 (1977) A death sentence may not be imposed for the crime of rape.

Enmund v. Florida, 458 U.S. 782 (1982) A death sentence may not be imposed on offenders who are involved in a felony during which a murder is committed but who do not actually kill, attempt to kill, or intend that a killing take place.

Ford v. Wainwright, 477 U.S. 399 (1986) A death sentence may not be imposed on the insane.

Breard v. Greene, 523 U.S. 371 (1998) The International Court of Justice does not have jurisdiction in capital punishment cases that involve foreign nationals.

Atkins v. Virginia, 536 U.S. 304 (2002) A death sentence may not be imposed on mentally retarded offenders, but the states can define what it means to be mentally retarded.

Roper v. Simmons, 543 U.S. 551 (2005) A death sentence may not be imposed on juvenile offenders.

Baze v. Rees, 553 U.S. 35 (2008) The three-drug cocktail used for performing executions by lethal injection in Kentucky (as well as virtually all of the states using lethal injection at the time) is constitutional under the Eighth Amendment.

Kennedy v. Louisiana, 554 U.S. 407 (2008) The death penalty is unconstitutional in all cases that do not involve murder or crimes against the state such as treason.

Other Criminal Sentences

Apprendi v. New Jersey, 530 U.S. 466 (2000) Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.

Graham v. Florida, 560 U.S. (2010) A sentence of life imprisonment without the possibility of parole may not be imposed on juvenile non-homicide offenders.

Miller v. Alabama, 567 U.S. (2012) A sentence of life imprisonment without the possibility of parole may not be a mandatory sentence for juvenile offenders.

Figure 4.9.8: Libertarian protest

Figure 4.9.9: Copy and Paste Caption here. (Copyright; author via source)

Study/Discussion Questions

1. According to the text, what is the "central right of the accused"? Why do you think this right is such a critical linchpin of the American judicial system?

2. Why was the Miranda ruling such a critical turning point in American justice? Do you agree or disagree with those members of law enforcement who see the Miranda requirement as merely a technicality that allows criminals to escape prosecution and punishment? Explain and defend your answer.

3. Why do you think that the Supreme Court gave as much attention to the protection of the rights of those accused of a crime? Do you see this attention as "unfair to crime victims" or as a necessary part of a fair judicial system? Explain and defend your answer.

4. Was the Bush administration justified in its policy to limit the constitutional rights of those enemy combatants who were detained at Guantánamo Bay, Cuba? Defend your answer

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[2] See Laura Poitras's documentary *Citizenfour* about Edward Snowden; also Glenn Greer
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[3] Remarks by the President on Review of Signals Intelligence, January 17th, 2014,
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Obama Sets Limits on Phone Spying, " *New York Times*, January 18th, 2014, A1, A6; the
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[4] David Cole, "Can Privacy Be Saved?" *New York Review of Books*, March 6, 2014, 23;
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[7 David E. Sanger, "Report Finds No Substitute For Mass Data Collection," New York Ti January 16, 2015, A23.

[8] The cases that established the exclusionary rule are *Weeks v. United States*, 232 U 383 (1914) and *Mapp v. Ohio*, 367 US 643 (1961). See, more recently, *Nix v. Williams*, 4 US 431 (1984); *United States v. Leon*, 468 US 897 (1984); and *Massachusetts v. Sheppard* 468 US 981 (1984)

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4.10: The Fourteenth Admendment

Figure 4.10.1: The 14th amendment extended liberties and rights granted by the Bill of Rights to former slaves.

On July 9, 1868, the Fourteenth Amendment to the United States Constitution was adopted. This amendment is considered one of the Reconstruction Amendments because it was intended to help freed slaves while the country was rebuilding after the Civil War. Because of the climate after the war, the Confederate states were highly opposed to this amendment, but they eventually were forced to acknowledge it in order to preserve representation. Citizenship rights and equal protection of the law was its main focus.

Background

The 14th Amendment stated, “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.” It gave citizens equal protection under both the state and federal law, overturning the Dred Scott decision.

It eliminated the three-fifths compromise of the 1787 Constitution, whereby slaves had been counted as three-fifths of a free white person, and it reduced the number of House representatives and Electoral College electors for any state that denied suffrage to any adult male inhabitant, black or white.

The amendment also answered the question of debts arising from the Civil War by specifying that all debts incurred by fighting to defeat the Confederacy would be honored. Confederate debts, however, would not: “[N]either the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.” Thus, claims by former slaveholders requesting compensation for slave property had no standing. Any state that ratified the Fourteenth Amendment would automatically be readmitted. Yet, all former Confederate states refused to ratify the amendment in 1866.

President Johnson called openly for the rejection of the Fourteenth Amendment, a move that drove a further wedge between him and congressional Republicans. In late summer of 1866, he gave a series of speeches, known as the “swing around the circle,” designed to gather support for his mild version of Reconstruction. Johnson felt that ending slavery went far enough; extending the rights and protections of citizenship to freed people, he believed, went much too far.

Johnson continued to believe that blacks were inferior. The president’s “swing around the circle” speeches to gain support for his program and derail the Radical Republicans proved to be a disaster, as hecklers provoked Johnson to make damaging statements. As a result, Johnson’s reputation was damaged.

Amendment XIV

Here are specifics of this amendment:

Section 1

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. This section was further divided into clauses.

Main Clauses of Section 1 include:

Citizenship Clause

The Citizenship Clause was a rebuttal to the decision in the *Dred Scott v. Sanford* (1857) case that said African Americans were not citizens and they cannot be citizens of the United States. Therefore, they were unable to have any of the privileges or immunity of citizenship. This case was a landmark decision against freedmen because it ruled that Dred Scott was still enslaved even though he was taken into free states by his owner.

Figure 4.10.2: Section 1 states, "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."

Privileges or Immunities Clause

This clause requires that the citizens of other states must be treated in the same manner as citizens of that state. In other words, just because someone is from a different state does not mean they may be discriminated against.

Due Process Clause

The Due Process Clause states that proper legislation authorization must be applied in order to deprive persons of life, liberty, or property.

> Figure 4.10.3: The Fifth and Fourteenth Amendments to the United States Constitution each contain a due process clause. Due process deals with the administration of justice and thus the due process clause acts as a safeguard from arbitrary denial of life, liberty, or property by the government outside the sanction of law.

Equal Protection Clause

This clause requires that no state shall deny to any person within its jurisdiction "the equal protection of the laws". A main motivation for this clause was to validate the equality provisions contained in the Civil Rights Act of 1866, which guaranteed that all people would have rights equal to those of all citizens.

The first section of The Fourteenth Amendment is frequently litigated and has created the basis for some landmark decisions such as:

Brown v. Board of Education (1954) regarding racial segregation,

Roe v. Wade (1973) regarding abortion,

Bush v. Gore (2000) regarding the 2000 presidential election,

Obergefell v. Hodges (2015) regarding same-sex marriage.

Figure 4.10.4

Section 2

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens 21 years of age in such state.

The second section's detail of "rebellion and other crime" has been used as constitutional grounds to disallow felons to vote.

Section 3

No person shall be a senator or representative in Congress, or elector of president and vice president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

The Blaine Amendment

During a speech at a veteran's meeting, President Ulysses S. Grant suggested a constitutional amendment to provide free public education and to prohibit public funds for religious schools. To counteract Grant's suggestion, in 1874, James G. Blaine, a representative from Maine, Speaker of the House and 1876 Republican presidential candidate, proposed the following as an amendment:

> *No State shall make any law respecting an establishment of religion or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect or denomination; nor shall any money so raised or lands so devoted be divided on religious sects or denominations.*

The amendment was defeated in 1875, but it would be used as a model for the "Blaine Amendments" incorporated into 34 state constitutions over the next three decades. These provisions forbid direct government aid to educational institutions that have a religious affiliation.

Debate Activity /Case Study: TRINITY LUTHERAN CHURCH OF COLUMBIA, INC. v. COMER, DIRECTOR, MISSOURI DEPARTMENT OF NATURAL RESOURCES (2017)

The Trinity Lutheran Church Child Learning Center is a Missouri preschool and daycare center. Originally established as a nonprofit organization, the Center later merged with Trinity Lutheran Church and now operates under its auspices on church property. Among the facilities at the Center is a playground, which has a coarse pea gravel surface beneath much of the play equipment. In 2012, the Center sought to replace a large portion of the pea gravel with a pour-in place rubber surface by participating in Missouri's Scrap Tire Program. The program, run by the State's Department of Natural Resources, offers reimbursement grants to qualifying nonprofit organizations that install playground surfaces made from recycled tires. The Department had a strict and express policy of denying grants to any applicant owned or controlled by a church, sect, or other religious entity. Pursuant to that policy, the Department denied the Center's application. In a letter rejecting that application, the Department explained that under Article I, Section 7 of the Missouri Constitution, the Department could not provide financial assistance directly to a church. The Department ultimately awarded 14 grants as part of the 2012 program. Although the Center ranked fifth out of the 44 applicants, it did not receive a grant because it is a church.

Trinity Lutheran sued in Federal District Court, alleging that the Department's failure to approve its application violated the Free Exercise Clause of the First Amendment. The District Court dismissed the suit. The Free Exercise Clause, the court stated, prohibits the government from outlawing or restricting the exercise of religious practice, but it generally does not prohibit withholding an affirmative benefit on account of religion.

The District Court likened the case before it to Locke v. Davey, 540 U. S. 712, where this Court upheld against a free exercise challenge a State's decision not to fund degrees in devotional theology as part of a scholarship program.

The District Court held that the Free Exercise Clause did not require the State to make funds available under the Scrap Tire Program to Trinity Lutheran.

A divided panel of the Eighth Circuit affirmed. The fact that the State could award a scrap tire grant to Trinity Lutheran without running afoul of the Establishment Clause of the Federal Constitution, the court ruled, did not mean that the Free Exercise Clause compelled the State to disregard the broader anti-establishment principle reflected in its own Constitution. Held: The Department's policy violated the rights of Trinity Lutheran under the Free Exercise Clause of the First Amendment by denying the Church an otherwise available public benefit on account of its religious status

Do you agree or disagree with this Supreme Court decision? Prepare a speech in which you convince your classmates to side with you.

Efforts to Extend the Bill of Rights to the States

Congressman John A. Bingham of Ohio, the primary author of the first section of the 14th amendment, intended that the amendment also nationalize the Federal Bill of Rights by making it binding upon the states. Senator Jacob Howard of Michigan,

introducing the amendment, specifically stated that the privileges and immunities clause would extend to the states “the personal rights guaranteed and secured by the first eight amendments.”

Historians disagree on how widely Bingham's and Howard's views were shared at the time in the Congress, or across the country in general. No one in Congress explicitly contradicted their view of the amendment, but only a few members said anything at all about its meaning on this issue.

For many years, the Supreme Court ruled that the Amendment did not extend the Bill of Rights to the states. Beginning in 1897, the Supreme Court has found that various provisions of the Bill of Rights protecting these fundamental liberties must be upheld by the states, even if their state constitutions and laws do not protect them as fully as the Bill of Rights does—or at all. This means there has been a process of selective incorporation of the Bill of Rights into the practices of the states; in other words, the Constitution effectively inserts parts of the Bill of Rights into state laws and constitutions, even though it doesn’t do so explicitly. When cases arise to clarify particular issues and procedures, the Supreme Court decides whether state laws violate the Bill of Rights and are therefore unconstitutional.

Impact on Federalism

After the Civil War, the power balance shifted toward the national government, a movement that had begun several decades before with McCulloch v. Maryland (1819) and Gibbons v. Odgen (1824).

The period between 1819 and the 1860s demonstrated that the national government sought to establish its role within the newly created federal design, which in turn often provoked the states to resist as they sought to protect their interests. With the exception of the Civil War, the Supreme Court settled the power struggles between the states and national government. From a historical perspective, the national supremacy principle introduced during this period did not so much narrow the states’ scope of constitutional authority as restrict their encroachment on national powers.

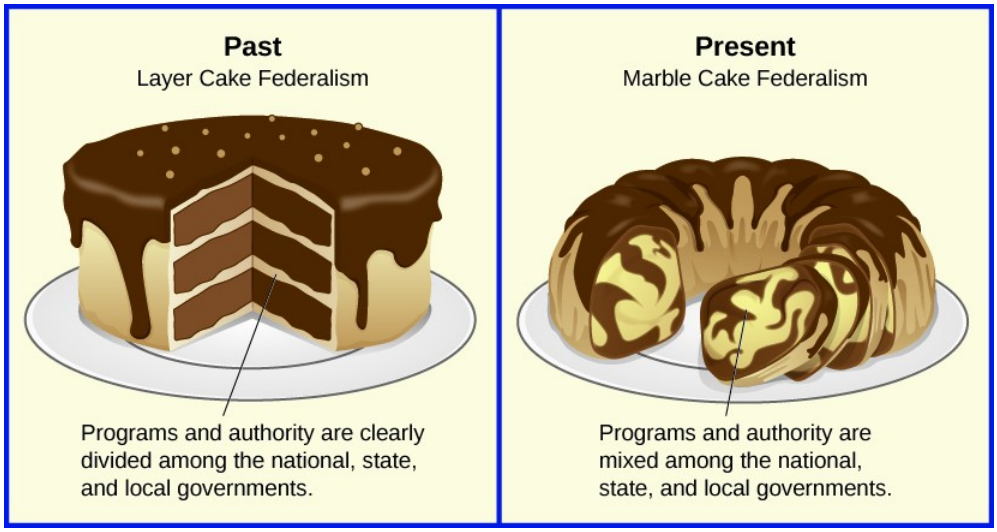

Figure 4.10.5: Morton Grodzins, a professor of political science at the University of Chicago, coined the expression “marble-cake federalism” in the 1950s to explain the evolution of federalism in the United States.

Morton Grodzins coined the cake analogy of federalism in the 1950s while conducting research on the evolution of American federalism. Until then most scholars had thought of federalism as a layer cake, but according to Grodzins the 1930s ushered in “marble-cake federalism”: “The American form of government is often, but erroneously, symbolized by a three-layer cake. A far more accurate image is the rainbow or marble cake, characterized by an inseparable mingling of differently colored ingredients, the colors appearing in vertical and diagonal strands and unexpected whirls. As colors are mixed in the marble cake, so functions are mixed in the American federal system.”

Figure 4.10.6

Study/Discussion Questions

1. What are the main provisions of the 14th Amendment?

2. What was the purpose of passing the 14th Amendment?

3. Explain the Equal Protection Clause.

4. What was the Blaine Amendment? Why is it important?

5. Use the "Marble Cake" to explain U.S. federalism today.

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CHAPTER OVERVIEW

5: Governmental Policies

5.1: Significant Locations, Key Natural Resources, and Foreign Policy
5.2: Influence of Fiscal, Monetary, and Regulatory Policies on the Economy
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5.1: Significant Locations, Key Natural Resources, and Foreign Policy

Figure 5.1.1: Iraqi children gather around as U.S. Army Pfc. Shane Bordonado patrols the streets of Al Asiriyah, Iraq, on Aug. 4, 2008. Bordonado is assigned to 2nd Squadron, 14th Cavalry Regiment, 25th Infantry Division.

The president is in many ways the leader of the foreign policy domain. When the United States wishes to discuss important issues with other nations, the president (or a representative such as the secretary of state) typically does the talking.

What is Foreign Policy?

A country's foreign policy consists of self-interest strategies chosen by the state to safeguard its national interests and to achieve its own goals through relations with other countries. The approaches are strategically employed to interact with other countries.

In recent times, due to the deepening level of globalization and transnational activities, states also have to interact with non-state actors. The aforementioned interaction is evaluated and monitored in an attempt to maximize benefits of multilateral international cooperation. Since the national interests are paramount, foreign policies are designed by the government through high-level decision making processes. National interest accomplishments can occur as a result of peaceful cooperation with other nations or through exploitation.

Elements of Foreign Policy

Foreign policy is designed to protect the national interests of the state. Modern foreign policy has become quite complex. In the past, foreign policy may have concerned itself primarily with policies solely related to national interest--for example, military power or treaties. Currently, foreign policy encompasses trade, finance, human rights, environmental, and cultural issues. All of these issues, in some way, impact how countries interact with one another and how they pursue their national interests worldwide.

Who is in Charge of Foreign Policy?

Usually, creating foreign policy is designated to the head of government and the foreign minister (or equivalent). In some countries the legislature also has considerable oversight.

In the United States, foreign policy is made and carried out by the executive branch, particularly the president, with the national security adviser, the State Department, the Defense Department, the Department of Homeland Security, and the intelligence agencies. The National Security Act of 1947 and recent bureaucratic reorganization after 9/11 reshaped the structure of foreign policy making.

The U.S. Secretary of State is analogous to the foreign minister of other nations and is the official charged with state-to-state diplomacy, although the president has ultimate authority over foreign policy.

Figure 5.1.2: Former U.S. Secretary of State Hillary Rodham Clinton discusses agriculture and environmental issues in Kenya. The Secretary of State is a primary leader in determining U.S. foreign policy.

Congress is involved in foreign policy through its amending, oversight, and budgetary powers and through the constitutional power related to appointments, treaties, and war that it shares with the president. While Congress has sometimes worked to limit the president's autonomy in foreign policy, the use of executive orders and the ability to enter military engagements without formal declarations of war have ensured the president's continued primacy in international affairs. Forces that sometimes influence foreign and military policies from outside government are think tanks, interest groups, and public opinion.

U.S. Foreign Policy

The foreign policy of the United States is the way in which it interacts with foreign nations. Foreign policy sets standards of interaction for its organizations, corporations, and individual citizens. Two visions of foreign policy in the U.S. are isolationism and internationalism, which has been dominant since World War II. The main foreign policies during the Cold War were containment, deterrence, détente, arms control, and the use of military force like in Vietnam.

U.S. foreign policy is far-reaching because the United States is the global superpower and world leader. It operates in a world beset by famine, poverty, disease, and catastrophes both natural (tsunamis, earthquakes) and man-made (climate change, pollution of the seas and skies, and release of radioactive materials from nuclear plants). Parts of the world are plagued by genocide, regional and ethnic strife, and refugees. Terrorism, conflicts in Iraq and Afghanistan, the nuclear weapons programs of Iran and North Korea, the proliferation of weapons of mass destruction, the Arab-Israeli conflict, and instability and challenges to autocratic rulers in the Middle East are only the most obvious of the foreign policy issues that affect the United States. Others issues include economic upheavals, the rise of China to world economic and political power, relations with Russia, AIDS in Africa, dependence on oil from non-democratic states, the importation of illegal drugs, and the annual U.S. trade deficit of around $800 billion .

Figure 5.1.3: U.S. President Obama and Russian President Putin meet. Relations with other countries, such as the U.S.-Russia relationship, are a primary concern and focal point for U.S. foreign policy.

To prepare for these foreign policy issues, U.S. military expenditures are enormous. The annual defense budget is around 1.3 trillion. It has formal or informal agreements to defend 37 countries. It has more than 700 military installations abroad in approximately 130 countries . The United States is extraordinarily active, often militarily, in international affairs. Since 1989, it has intervened in Panama, Kuwait, Somalia, Bosnia, Haiti, Kosovo, Afghanistan, and Iraq.

Figure 5.1.4: U.S. soldiers patrolling streets in Iraq. The United States' huge military budget and extensive military is intended to further U.S. foreign policy interests.

National Security Policies

National security policies are policies related to the survival of the state. This security is guaranteed through the use of economic coercion, diplomacy, political power, and the projection of power. This concept developed primarily in the United States after World War II.

Initially focused on military might, national security now encompasses a broad range of concerns. In order to possess national security, a nation needs to possess economic security, energy security, and environmental security, in addition to a strong military. Security threats involve not only conventional foes, such as other nation-states, but also non-state actors, like violent non-state actors (al Queda, for example), narcotic cartels, multinational corporations and non-governmental organizations. Some authorities include natural disasters and other environmentally detrimental events in this category.

Policies and measures taken to ensure national security include:

- Using diplomacy to rally allies and isolate threats
- Marshalling economic power to facilitate or compel cooperation
- Maintaining effective armed forces
- Implementing civil defense and emergency preparedness measures (this includes anti-terrorism legislation)
- Ensuring the resilience of a critical national infrastructure
- Using intelligence services to defeat threats, and,
- Using counterintelligence services to protect the nation from internal threats.

National Security Policy History

The concept of national security became an official guiding principle of US foreign policy when the National Security Act of 1947 was signed on July 26, 1947, by President Harry S. Truman. Together with its 1949 amendment, this act instantiated important organizations dedicated to American national security, such as the precursor to the Department of Defense. It also subordinated all military branches to the new cabinet level position of the Secretary of Defense, established the National Security Council, and established the Central Intelligence Agency.

Figure 5.1.5: CIA Headquarters: In 1949, the Central Intelligence Agency (headquarters depicted here) was established to further the United State's national security.

Current National Security Policy

At President Trump's Third State of the Union Address delivered on February 5, 2019, the President prioritized the following:

- Stop illegal immigration
- Overhaul immigration system
- Defend southern border against criminal activity (sexual assault, human and sex trafficking, drugs, gangs, murder) by building a wall.
- Rebuild the United States Military
- Increase in defense spending from NATO allies
- Develop a state-of-the-art Missile Defense System
- Withdrawal from the Intermediate-Range Nuclear Forces Treaty, or INF Treaty.
- Push for peace on the Korean Peninsula.
- Recognize the legitimate government of Venezuela
- Recognize the true capital of Israel
- Open the American Embassy in Jerusalem
- Destroy the remnants of ISIS
- Reduce troop presence in Afghanistan and focus on counter-terrorism

Military security was the earliest recognized form of national security. Military security implies the capability of a nation to defend itself and/or deter military aggression. Military security also implies the ability of a nation to enforce its policy choices through the use of military force .Elements of National Security

Figure 5.1.6: US Military Security Traditionally, military strength has been considered the most important component of national security policies.

The political aspect of security is another important facet of national security. Political security concerns the stability of the social order, and refers to policies related to diplomacy, negotiation, and other interactions.

Economic security is also a part of national security. In today's complex system of international trade, characterized by multi-national agreements, mutual inter-dependence, and limited natural resources, economic security refers to whether or not a nation is free to develop its own economy in the manner desired. Economic security today is, arguably, as important a part of national security as military security.

Environmental security deals with environmental issues. While all environmental events are not considered significant enough to be categorized as threats, many transnational issues, both global and regional, stand to affect national security. These include global warming, deforestation, or conflicts over limited resources.

Energy security, as it relates to natural resources, is a final important component of national security. For a nation to be able to develop its industry and maintain economic competitiveness, it must have available and affordable natural resources.

Rights Versus Security

Measures adopted to maintain national security have led to an ongoing tension between the preservation of the state, and the rights and freedoms of individual citizens within that state. Although national security measures are imposed to protect society as a whole, many such measures restrict the rights and freedoms of individuals in society. Many are concerned that if national security policies are not subject to good governance, the rule of law, or strict checks and balances, that there is a risk that "national security policy" may simply serve as a pretext for suppressing unfavorable political and social views.

Figure 5.1.7: This Phone Is Tapped The caption on this pay phone reads, "Your conversation is being monitored by the U.S. Government courtesy of the US Patriot Act of 2001. " The PATRIOT Act is an example of the tension between protecting national security and promoting citizen's rights.

In the United States, the controversial USA PATRIOT Act, as well as other recent government actions, has brought some of these issues to public attention. These issues have raised two main questions. First, to what extent, for the sake of national security, should individual rights and freedoms be restricted? Second, can the restriction of civil rights for the sake of national security be justified?

Diplomacy and Foreign Relations

Diplomacy is the art and practice of conducting negotiations between representatives of groups or states. It usually refers to the conduct of international relations through the intercession of professional diplomats with regard to issues of peace-making, trade, war, economics, culture, environment, and human rights. International treaties are usually negotiated by diplomats prior to endorsement by national politicians .

Figure 5.1.8: Signing Treaties Obama and Afghanistan President Hamid Karzai sign a strategic partnership agreement. One of the main objectives of diplomacy and diplomatic negotiations is signing and negotiating treaties with other countries. If negotiation by national diplomats is successful, the national leaders (as depicted here) sign the treaties.

To some extent, all other tools of international relations can be considered the failure of diplomacy. Keeping in mind, the use of other tools are part of the communication and negotiation inherent within diplomacy. Sanctions, force, and adjusting trade regulations, while not typically considered part of diplomacy, are actually valuable tools in the interest of leverage and placement in negotiations.

Diplomatic Recognition

Diplomatic recognition is an important element of diplomacy because recognition often determines whether a nation is an independent state. Receiving recognition is usually difficult, even for countries which are fully sovereign.

Today there are a number of independent entities without widespread diplomatic recognition, most notably the Republic of China (ROC)/Taiwan on Taiwan Island. Since the 1970's, most nations have stopped officially recognizing the ROC's existence on Taiwan, at the insistence of the People's Republic of China (PRC). Currently, the United States maintains informal relations through de facto embassies, with names such as the American Institute in Taiwan. Similarly, Taiwan's de facto embassies abroad are known by names like the Taipei Economic and Cultural Representative Office. This was not always the case, with the U.S. maintaining official diplomatic ties with the ROC. The U.S. recognized it as the sole and legitimate government of "all of China" until 1979, when these relations were broken off as a condition for establishing official relations with The People's Republic ("PR") of China .

Figure 5.1.9: Taiwan and U.S. Diplomatic Recognition In recent years, Taiwan, an island located off the east coast of China, has not been diplomatically recognized by the United States. The U.S. has adopted this policy in order to maintain more advantageous diplomatic relations with China.

The Palestinian National Authority has its own diplomatic service. However, Palestinian representatives in most Western countries are not accorded diplomatic immunity. Their missions are referred to as Delegations General.

Other unrecognized regions that claim independence include Abkhazia, Transnistria, Somaliland, South Ossetia, Nagorno Karabakh, and the Turkish Republic of Northern Cyprus. Lacking the economic and political importance of Taiwan, these nations tend to be much more diplomatically isolated.

Informal Diplomacy

Informal diplomacy is also a key component of diplomacy. Sometimes called "track II diplomacy," the U.S. has used informal diplomacy for decades to communicate between powers. Most diplomats work to recruit figures in other nations who might be able to give informal access to a country's leadership. In some situations, like between the United States and China, a large amount of diplomacy is done through semi-formal channels using interlocutors such as academic members of think tanks. This occurs in situations where governments wish to express intentions or to suggest methods of resolving a diplomatic situation, but do not wish to express a formal position.

Figure 5.1.10: Jimmy Carter and Informal Diplomacy Former U.S. President Jimmy Carter visits a referendum polling center in Sudan 2011. Former President Carter is leading the Carter Center's international observation of the referendum. Even after leaving office, political leaders can remain active in informal diplomacy.

Diplomacy as Soft Power

The concept of power in international relations can be described as the degree of resources, capabilities, and influence in international affairs. It is often divided up into the concepts of hard power and soft power. Hard power relates primarily to coercive power, such as the use of force. Soft power commonly covers economics, diplomacy, and cultural influence. There is no clear dividing line between the two forms of power. However, diplomacy is usually regarded as being important in the creation of "soft" power, while military power is important for "hard" power.

Figure 5.1.11: Caption: The ministers of foreign affairs of the United States, the United Kingdom, Russia, Germany, France, China, the European Union and Iran negotiating in Lausanne for a Comprehensive agreement on the Iranian nuclear program (30 March 2015).

Humanitarian Policies

In its most general form, humanitarianism is an ethic of kindness, benevolence, and sympathy extended universally and impartially to all human beings. International humanitarian policies, then, are policies presumably enacted to reduce suffering of human beings around the world. International humanitarian policies can take a number of different forms. For example, human rights and human rights laws seek to protect essential rights and fight for justice if these rights are violated. International humanitarian interventions are military or non-military interventions into another country to halt widespread violence or war. Foreign aid seeks to provide countries with resources (economic or otherwise) that they can use to ease the suffering of their people.

Humanitarian Intervention

Humanitarian intervention is a state's use of "military force against another state when the chief publicly declared aim of that military action is ending human-rights violations being perpetrated by the state against which it is directed. "

The subject of humanitarian intervention has remained a compelling foreign policy issue, since it highlights the tension between the principle of state sovereignty – a defining pillar of the UN system and international law – and evolving international norms related to human rights and the use of force. Moreover, it has sparked debates over its legality, the ethics of using military force to respond to human rights violations, when it should occur, who should intervene, and whether it is effective.

Some argue that the United States uses humanitarian pretexts to pursue otherwise unacceptable goals. They argue that the United States has continued to act with its own interests in mind, with the only change being that humanitarianism has become a legitimizing ideology for projection of U.S. power. In particular, some argue that the 1999 NATO intervention in Kosovo was conducted largely to boost NATO's credibility.

Figure 5.1.12: NATO Intervention In this humanitarian intervention, NATO forces intervened in Kosovo. Humanitarian interventions are frequently controversial, and the motives of the intervening force are often called into question. Boundless.

Types of Economic Foreign Aid

There are three main types of economic foreign aid: humanitarian aid, development aid, and food aid. Humanitarian aid or emergency aid is rapid assistance given to people in immediate distress to relieve suffering, during and after man-made emergencies (like wars) and natural disasters. Development aid is aid given by developed countries to support development in general. It is distinguished from humanitarian aid as being aimed at alleviating poverty in the long term, rather than alleviating suffering in the short term. Food aid can benefit people suffering from a shortage of food. It can be used to increase standard of living to the point that food aid is no longer required . Conversely, badly managed food aid can create problems by disrupting local markets, depressing crop prices, and discouraging food production.

Figure 5.1.13: United States Food Aid Aid workers from USAID (the United States Agency for International Development) distribute food to Kenya during a food crisis.

The U.S. and Foreign Aid

Foreign assistance is a core component of the State Department's international affairs budget and is considered an essential instrument of U.S. foreign policy. Foreign aid has been given to a variety of recipients, including developing countries, countries of

strategic importance to the United States, and countries recovering from war. The government channels about half of its economic assistance through a specialized agency called the United States Agency for International Development (USAID) .

The 2010 United States federal budget spent 37.7 billion on economic aid (of which USAID received 14.1 billion) out of the 3.55 trillion budget. Aid from private sources within the United States in 2007 was probably somewhere in the 10 to $30 billion range. In absolute dollar terms, the United States is the largest international aid donor, but as a percent of gross national income, its contribution to economic aid is only 0.2%, proportionally much smaller than contributions of countries such as Sweden (1.04%) and the United Kingdom (0.52%).

The U.S. and Human Rights Policies

The United States' record on human rights is mixed. The United States has backed unpopular leaders (the Shah of Iran, 1941-1979, for example), mired itself in losing battles (consider the Vietnam War, 1950-1975), ignored ethnic cleansing (as was the case in Rwanda, 1994), and given foreign aid to corrupt regimes (as it did to Egypt, 1952-2011). Too often, the United States has had to support the lesser of two evils when it comes to relations with developing nations. And too often, the blowback from these awkward relationships has resulted in resentment from both United States citizens and the oppressed citizens of the developing nations (Guatemala, 1950's, and Nicaragua, 1912-1933). However, the United States remains the largest contributor of foreign aid, and is currently backing what some refer to as the awakening of the Arab world (Libya, 2011), supporting "the people" even though the outcome is not yet clear.

Sources of the United States' Economic Prosperity

In the two hundred and thirty years since the independence of the United States, the country has grown to be a huge, integrated, industrialized economy that makes up nearly a quarter of the world economy. The main policies that contributed to this economic prosperity were a large unified market, a supportive political-legal system, vast areas of highly productive farmlands, vast natural resources (especially timber, coal, iron, and oil) , and an entrepreneurial spirit and commitment to investing in material and human capital. The United States' economy has maintained high wages, attracting immigrants by the millions from all over the world. Technological and industrial factors have also played a major role in the United States' economic prosperity .

Figure 5.1.14: Advanced Technology The United States has been able to grow into a world economic power in part due to the rapid advances of technology and industry.

Economic Prosperity and Foreign Policy

The United States is highly influential in the world, primarily because the United States's foreign policy is backed by a $15 trillion economy, which is approximately a quarter of the global gross domestic product (GDP). Economic prosperity is a central component of any states' foreign policy. Without substantial economic means, a state cannot expect to have influence on the world stage. Similarly, economic prosperity is tied to the maintenance of a global military presence. Without a strong military, the pursuit of national interests becomes more difficult.

Continued Economic Prosperity?

In 2008, a perfect storm of economic disasters hit the United States and indeed the entire world. The most serious began with the collapse of housing bubbles in California and Florida, along with the collapse of housing prices and the construction industry. A series of the largest banks in the United States and Europe also collapsed; some went bankrupt, others were bailed out by the

government. The United States government voted 700 billion in bailout money, committed trillions of dollars to shoring up the financial system, but the measures did not reverse the declines. Banks drastically tightened their lending policies, despite infusions of federal money. The stock market plunged 40%, wiping out tens of trillions of dollars in wealth; housing prices fell 20% nationwide wiping out trillions more. By late 2008, distress was spreading beyond the financial and housing sectors. President Barack Obama signed the American Recovery and Reinvestment Act of 2009 in February 2009; the bill provides 787 billion in stimulus through a combination of spending and tax cuts.

Due to the close relationship between economic prosperity and foreign policy, the recession has impacted all elements of the United States' foreign policy. Cuts to the military and defense spending have been threatened, and this economic crisis will undoubtedly take a toll on the United State's position as a global superpower. However, despite the economic recession, the sheer size of the United State's economy ensures that it will remain an important actor in the world economy .

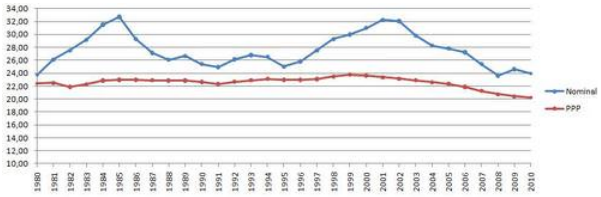

Figure 5.1.15: The United States' Share of World GDP The United States' share of world GDP (nominal) peaked in 1985 with 32.74% of global GDP (nominal). The second highest share was 32.24% in 2001. Note that it is been declining since then.

Figure 5.1.16

Study/Discussion Questions

1. Why must a nation develop and maintain foreign policy?
2. Which executive department(s) is/are in charge of foreign policy?
3. Who implements and administers foreign policy on behalf of the President?
4. Why are U.S. military expenditures so high in comparison to most domestic expenditures?
5. What are national security policies? What types of strategies/policies are included as a part of national security policy?
6. When did national security policy become an official part of the United States' foreign policy toolbox?
7. What are some of the United States' current national security policies?
8. What are the elements of national security and how are they used?
9. How does a nation maintain a balance between the rights and freedoms of individual citizens and the mandate of national security?
10. What is diplomacy? How is it used as a strategy in implementing and administering foreign policy activities?

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5.2: Influence of Fiscal, Monetary, and Regulatory Policies on the Economy

Figure 5.2.1

Taxation is the central part of modern public finance. The importance of taxation arises from the fact that it is by far the most significant source of government revenue and is therefore the primary means of financing government expenditures. In the United States the Internal Revenue Service is the regulatory authority empowered by Congress to collect taxes.

Due to the pervasive nature of taxation, taxes can be used as an instrument of attaining certain social objectives. For example, income taxes due to their progressive nature are used to equitably derive revenue by differentiating tax rates by income strata. The income derived in this manner is then used to transfer income to lower income groups, thereby, reducing inequalities related to income and wealth.

Taxation is also used as part of fiscal policy to stabilize the economy. Increasing taxes can reduce consumption and lead to economic slowing when the economy may be growing too quickly. Alternatively, decreasing taxes can be a mechanism to promote economic growth by increasing the funds available for consumption and investment spending. It is important to note that when the government spends more than the tax revenue it collects, the government is operating at a deficit and will have to borrow funds to finance operations until taxes can be increased to return the government spending to a balanced budget.

Types of Taxes

The U.S. government imposes a number of different types of taxes in order to finance its operations. The following is a list of taxes in common use by governmental authorities:

- Excise tax: tax levied on production for sale, or sale, of a certain good.
- Sales tax: tax on business transactions, especially the sale of goods and services.
- Corporate income tax: tax on a company's profits.
- Income tax: tax on an individual's wages or salary.
- Capital gains tax: tax on increases in the value of owned assets.

Financing State and Local Government

Taxes are the primary source of revenue for state and local governments; income, property, and sales taxes are common examples of state and local taxes. State and local governments collect taxes from residents to support corresponding state and local government activities. Examples of these services include maintenance of public parks and provision of a police force.

- Property tax is an example of a local tax. It is imposed on the value of real estate.
- Sales tax may be imposed by both a state and local government. It is charged at the point of sale of the good or service.
- Income tax may be imposed by the federal, state, or local government. Tax rates vary by location, and often by income level.

Taxes are important to federal, state, and local governments. They are the primary source of revenue for the corresponding level of government and fund the activities of the governmental entity. For example, on a local level, taxes fund the provision of common services, such as police or fire department, and the maintenance of common areas, such as public parks. On a state level, taxes fund the school systems, including state universities. On a federal level, taxes are used to fund government activities such as the provision of welfare and transfer payments to redistribute income.

Figure 5.2.2

Example of a Federal, State, and Local Tax

Income taxes are taxes imposed on the net income of individuals and corporations by the federal, most state, and some local governments. State and local income tax rates vary widely by jurisdiction and many are graduated, or increase progressively as income levels increase. State taxes are generally treated as a deductible expense for federal tax computation.

Example of a State Tax

Sales taxes are imposed by most states on the retail sale price of many goods and some services. Sales tax rates also vary widely among jurisdictions, from 0 percent to 16 percent, and may vary within a jurisdiction based on the particular goods or services

taxed. Sales tax is collected by the seller at the time of sale, or remitted as use tax by buyers of taxable items who did not pay sales tax.

Example of a Local Tax

Property taxes are imposed by most local governments and many special purpose authorities based on the fair market value of property. Property tax is generally imposed only on real estate, though some jurisdictions tax some forms of business property. Property tax rules and rates vary widely.

Corporate Taxes

Many countries impose a corporate tax, also called corporation tax or company tax, on the income or capital of some types of legal entities. A similar tax may be imposed at state or lower levels. The taxes may also be referred to as income tax or capital tax. Most countries tax all corporations doing business in the country on income from that country. Many countries tax all income of corporations organized in the country. Company income subject to taxation is often determined much like taxable income for individuals. Generally, the tax is imposed on net profits. In some jurisdictions, rules for taxing companies may differ significantly from rules for taxing individuals.

Net taxable income for corporate tax is generally financial statement income. The rate of tax varies by jurisdiction; however, most companies provide or make public the effective tax rate on the income earned. The effective tax rate is the average corporate tax rate on the company's income and this takes into consideration tax benefits included in a current tax year.

Corporations are also subject to a variety of other taxes including property tax, payroll tax, excise tax, customs tax and value-added tax along with other common taxes, generally in the same manner as other taxpayers. These, however, are rarely referred to as "corporate taxes".

Payroll Taxes

Payroll taxes are taxes that employers are required to pay when they pay salaries to their staff. Payroll taxes generally fall into two categories: deductions from an employee's wages, and taxes paid by the employer based on the employee's wages.

- Deductions from an employee's wages are taxes that employers are required to withhold from employees' wages, also known as withholding tax, pay-as-you-earn tax (PAYE), or pay-as-you-go tax (PAYG). These often cover advance payment of income tax, social security contributions, and various insurances, such as unemployment and disability.
- Taxes paid by an employer based on the employee's wages are taxes that are paid from the employer's own funds. They are directly related to employing a worker. These can consist of fixed charges, or be proportionally linked to an employee's pay. The charges paid by the employer usually cover the employer's funding of the social security system, and other insurance programs.

In the United States, payroll taxes are assessed by the federal government, all fifty states, the District of Columbia, and numerous cities. These taxes are imposed on employers and employees and on various compensation bases and are collected and paid to the taxing jurisdiction by the employers. Most jurisdictions imposing payroll taxes require reporting quarterly and annually in most cases, and electronic reporting is generally required for all but small employers.

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5.3: Sources of Revenue and Expenditures of the U.S. Government

Figure 5.3.1: The mortgage crisis of 2008 and the government's response give us an opportunity to see how the U.S. government uses economic, fiscal and monetary policy as tools to "promote the general welfare."

The federal government's budget for 2016 was $3.8 trillion. This chapter will provide a brief overview of some of the budget's key areas of expenditure. Policymakers make considerable effort to ensure that long-term priorities are protected from the heat of the election cycle and short-term changes in public opinion. The role of politics in drafting the annual budget is large.

What is Revenue?

Revenue is defined as, "income, especially when of a company or organization and of a substantial nature." All three levels of government within the United States require an enormous amount of money to run its programs and institute its policies. According to the U.S. government, all three levels (federal, state, local) will collect nearly $6 trillion in revenues for the fiscal year 2017. Since the end of World War II, revenues have grown exponentially. When adjusted for inflation and population, revenues have grown by more than 800 percent.

It is a fact that taxes can influence the economy by affecting various aspects of consumer behavior, resource allocation, growth, and productivity, as well as saving and spending, since the burden of taxes can be transferred to others.

Tax Collection

It is a fact that taxes can influence the economy by affecting aspects of consumer behavior, resource allocation, growth, and productivity. In addition, an individual's saving and spending may be influenced by taxes as the burden of taxes is transferred to them.

Taxes can either encourage or discourage consumer activities. A positive aspect of a tax would be that homeowners are allowed to use interest payments on their mortgages as a tax deduction, while a sin tax is a high tax individuals pay on a socially undesirable product such as tobacco. The simplest effect is that taxes raise the final cost of a good or service and consumers will react by purchasing less of the product.

Tax Requirements and Principles

Taxes will always need to be collected, so they should meet certain requirements. They should be equitable, simple, and efficient. If the criteria are met, people will generally understand why they are being taxed and may be more receptive to the idea of the tax.

There are, however, two principles that revolve around taxes. The first is that the benefit principle of taxation, which is that those who benefit from taxes should pay in proportion to the amount of benefits that they receive. The second concept is the ability to pay principle, in which those that can bear the burden of taxes should pay more than those who cannot pay taxes.

Types of Taxes

Taxes are proportional, progressive, or regressive depending on the way in which the tax burden changes as income changes. The main source of revenue for the federal government is the individual income tax, while the second largest source is the FICA tax

used to pay for Social Security and Medicare. Additional government revenues include excises taxes, gift taxes, customs duties, and user fees.

State and Local Revenues

State governments receive revenues from the federal government and the local government. Local governments benefit from intergovernmental revenues from the federal and state governments, as well as from property taxes, liquor sales, sales taxes, utility taxes, and other sources.

Tax Laws and Revisions

The most current tax issues revolve around the idea that taxes are too high and that the tax laws should be much simpler. Some current concepts are to create value added taxes, or a flat tax on individual income, or create more progressive tax brackets. Politicians and government officials revise taxes depending on the social and economic goals of their administrations, therefore tax laws can change from year to year and may either increase or decrease taxes on individuals, businesses or corporations.

Paying Taxes

Every year, in the middle of April, U.S. citizens and residents are required to file an income tax form. The following figure shows the 1040EZ tax form, which is the simplest of all tax forms. For the majority of us, this is one of the most direct pieces of contact that we have with the government.

Based on the declarations we file, we are required to pay taxes on the income we have earned over the year. These tax revenues are used to finance a wide variety of government purchases of goods and services and transfers to households and firms. Of course, income taxes are not unique to the United States; most other countries require their residents to complete a similar kind of form.

Form 1040EZ
Income Tax Return for Single and Joint Filers With No Dependents
2010
Name, Address, and SSN
Income
Payments, Credits, and Tax
Refund
Amount You Owe
Third Party Designee
Sign Here
Paid Preparer Use Only
1040EZ

Figure 5.3.2: The 1040 EZ tax form

Tax Forms

From the perspective of a household or a firm, the tax form is a statement of financial responsibility. From the viewpoint of the government, the 1040 tax form is an instrument of fiscal policy. The 1040 form is based on the U.S. tax code, and changes in that code can have profound effects on the economy—both in the short run and in the long run.

Taxes and the Economy

In this section, we look at the various ways in which income taxes affect the economy. An understanding of taxes is critical for policymakers who devise tax policies and for voters who elect them.

Tax policies are often controversial, in large part because they affect the economy in several different ways. For example, in the 2004 and 2008 U.S. presidential campaigns, one of the most contentious economic policy issues was an income tax cut that

President George W. Bush had initiated in his first term and that the Republican Party wished to make permanent. That issue returned to the forefront of political discussion in 2010 when these tax cuts were renewed.

Politicians have argued about such matters since the country was founded. Should the government ensure it has enough tax revenue to balance its budget? How should we raise the revenues to pay for our government programs? What is the appropriate tax on the income received by individuals and corporations? Fiscal policy questions like these are debated in the United States and other countries throughout the world. They are tough questions for politicians and economists alike.

Politicians focus largely on who wins and loses—which groups will bear the burden of taxes and receive the benefits of government spending and transfers? They do so for political reasons and because one goal of a tax system is to redistribute income. Economists emphasize something rather different. Economists know that taxes are necessary to finance government expenditures. At the same time, they know that taxes can have the negative effect of distorting people's decisions and lead to inefficiency. Hence economists focus on designing a tax system that achieves its goals of raising revenue and redistributing income, without distorting the decisions of individuals and firms too much.

Tax

In addition, macroeconomists have observed that taxes significantly affect overall economic performance, as measured by variables such as real gross domestic product (real GDP) growth or the unemployment rate. The government can use changes in taxes as a means of influencing aggregate spending in the economy.

In the United States, the federal government has often changed income taxes to affect overall economic performance. In this section, we examine two examples: the tax policies of the Kennedy administration of 1960–63 and the Reagan administration of 1980–88.

Our discussion of the Kennedy tax cut experience highlights the way in which variations in income taxes are used to help stabilize the macroeconomy. We use the Reagan tax cuts of the early 1980s to explore the growth implications of income taxes, which are often called "supply-side effects."

Economic Policies

The government's response to the economic crisis was unusual. We now turn to the government's usual economic policies and the institutions, most of which we have already mentioned, responsible for deciding on and implementing the policies.

The Federal Budget Process

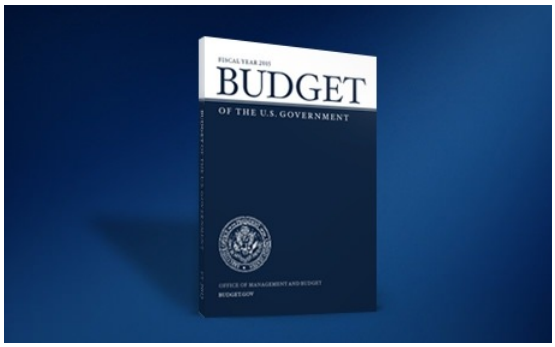
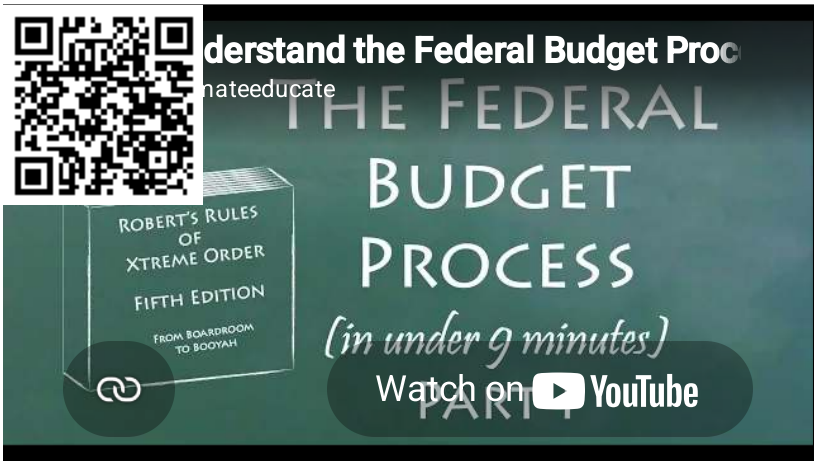


Figure 5.3.3: Each fiscal year the President submits a proposed budget containing both revenues and proposed expenditures to the Congress. This becomes more of a wish list while the actual budget process can be very contentious.

Video: The Federal Budget Process Explained



The budget is a statement of the president's policy goals and priorities for the next fiscal year. It consists of two main parts. Receipts are the amounts anticipated in taxes and other revenue sources. Expenditures (outlays) are what the federal government expects to spend.

The budget is supposed to be submitted to Congress by February 1 of each year. It is studied by the House and Senate Budget Committees with the help of the Congressional Budget Office (CBO). The two committees prepare a budget resolution that sets ceilings for each of the items in the budget. In May, Congress adopts these budget resolutions. Over the summer, the House and Senate Appropriations Committees and their subcommittees decide on the specific appropriations.

In September, Congress passes a second budget resolution that reconciles the overall and itemized budget ceilings with the overall and itemized appropriations. By the end of this process, the specific budgetary allocations to various spending areas such as health, education, and defense have been approved by Congress. The modified document is then submitted to the president for signing, which he does if he accepts the congressional modifications. The president may choose to veto them, compelling the process of reconciliation to continue.

In reality, the timing of the passage of budget resolutions and the budget itself are dependent on the degree and intensity of partisan conflict, disagreement between Congress and the White House, disagreement between the House and Senate, and other clashes.

What happens if Congress and the president cannot agree on a budget? If Congress does not pass an appropriations bill (aka "budget") before the start of the fiscal year on October 1, it must pass, and the president must sign, a continuing resolution (CR) to provide temporary "stopgap" funding for affected agencies and for discretionary programs. Without a Continuing Resolution, a "government shutdown" ma be the result. In 2013, a dispute over delaying or defunding health reform legislation ("Obamacare") led to a 16-day shutdown of ordinary government operations beginning October 1 of that year. In the winter of 1995-1996, a 21-day shutdown of substantial portions of the federal government resulted from a dispute between President Clinton and the congressional Republicans.

WEB LINK

For more information on the federal budget process, visit Policy Basics: Introduction to the Federal Budget Process

Controls on Deficit Spending

Deficit spending occurs when the expenses and appropriations in a federal budget exceed the revenues for the same period. There are limits that have been placed on the annual budget process with regards to deficit spending. Congress operates under statutory deficit-control mechanisms that are aimed ant preventing tax and mandatory spending legislation from increasing the deficit and that place constraints on discretionary spending. These include:

PAYGO

The 2010 Pay-As-You-Go (PAYGO) Act requires that any legislative changes to taxes or mandatory spending that increase multi-year deficits must be "offset" or paid for by other changes to taxes or mandatory spending that reduce deficits by an equivalent amount. If Congress violates PAYGO, this triggers across-the-board cuts (known as "sequestration") in selected mandatory

programs in order to restore the balance between budget costs and savings. This legislation is designed to “zero out” the effects of appropriations that might cause the federal deficit to increase.

Discretionary Funding Caps

The Budget Control Act of 2011 (BCA) imposed limits or “caps” on the level of discretionary spending for defense and non-defense programs each year through 2021. Appropriations that exceed the cap in either category trigger sequestration in that category to reduce funding to the capped level.

BCA Sequestration

On top of any sequestration that is triggered by PAYGO or funding cap violations, the BCA also requires additional sequestration each year through 2021 in discretionary and selected mandatory programs which are split evenly between defense and non-defense funding. The BCA sequestration was implemented as a result of a BCA-created congressional joint select committee’s failure to propose a legislative plan that would reduce federal deficits by $1.2 trillion over ten years. If Congress passes appropriations that violates these statutes, forced spending cuts and sequestration penalties will be applied automatically unless Congress specifically modifies these requirements. As an example, policymakers modified the 2013 BCA sequestration requirement in the American Taxpayer Relief Act of 2012. Congress also arranged a similar deal with the Bipartisan Act of 2013 which called for reduced sequestration cuts in 2014 and 2015 while extending BCA sequestration of mandatory programs through 2023.

Figure 5.3.4: Mandatory spending accounts for over half of all federal outlays.

Mandatory Spending

Social Security, Medicare, and Medicaid expenditures are funded by more permanent congressional appropriations and so are considered *mandatory spending*. Social Security and Medicare are sometimes called "entitlements," because people meeting eligibility requirements are legally entitled to benefits, although most pay taxes into these programs throughout their working lives. Some programs, such as Food Stamps, are appropriated entitlements. Some mandatory spending, such as Congressional salaries, is not part of any entitlement program. Mandatory spending accounts for more than half of total federal outlays.

Medicare

Medicare was established in 1965. Spending for Medicare during 2016 was $692 billion. In 2013, the program covered an estimated 52.3 million people. Medicare consists of four distinct parts which are funded differently: Hospital Insurance, mainly funded by a dedicated payroll tax of 2.9% of earnings, shared equally between employers and workers; Supplementary Medical Insurance, funded through beneficiary premiums (set at 25% of estimated program costs for the aged) and general revenues (the remaining amount, approximately 75%); Medicare Advantage, a private plan option for beneficiaries, funded through the Hospital Insurance and Supplementary Medical Insurance trust funds; and the Part D prescription drug benefits, for which funding is included in the Supplementary Medical Insurance trust fund and is financed through beneficiary premiums (about 25%) and general revenues (about 75%). Spending on Medicare and Medicaid is projected to grow dramatically in the coming decades. The number of persons enrolled in Medicare is expected to increase from 47 million in 2010 to 80 million by 2030. While the same demographic trends that affect Social Security also affect Medicare, rapidly rising medical prices appear to be a more important cause of projected spending increases

Social Security

Social Security is a social insurance program officially called "Old-Age, Survivors, and Disability Insurance" (OASDI), in reference to its three components. It is primarily funded through a dedicated payroll tax of 12.4%. During 2010, an estimated 157 million people paid into the program and 54 million received benefits.

Since the Greenspan Commission in the early 1980s, Social Security has cumulatively collected far more in payroll taxes dedicated to the program than it has paid out to recipients—nearly $2.6 trillion in 2010. This annual surplus is credited to Social Security trust

funds that hold special non-marketable Treasury securities. This surplus amount is commonly referred to as the "Social Security Trust Fund." The proceeds are paid into the U.S. Treasury where they may be used for other government purposes. Social Security spending will increase sharply over the next decades, largely due to the retirement of the baby boom generation. The number of program recipients is expected to increase from 44 million in 2010 to 73 million in 2030.

Because of the mandatory nature of the program and large accumulated surplus in the Social Security Trust Fund, the Social Security system has the legal authority to compel the government to borrow to pay all promised benefits through 2036, when the Trust Fund is expected to be exhausted. Thereafter, the program under current law will pay approximately 75–78 percent of promised benefits for the remainder of the century.

Discretionary Spending

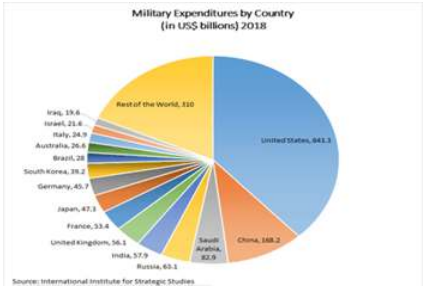


Figure 5.3.5: A pie chart showing global military expenditures by the country for 2018, in US$ billions, according to the International Institute for Strategic Studies.

Military Spending

During 2016, the Department of Defense spent $585 billion, an increase of $1 billion from 2015. This is a partial measure of all defense-related spending. The military budget of the United States during Fiscal Year 2014 was approximately $582 billion in expenses for the Department of Defense (DoD), $149 billion for the Department of Veterans Affairs, and $43 billion for the Department of Homeland Security, for a total of $770 billion. This was approximately $33 billion or 4.1% below 2013 spending. DoD spending has fallen from a peak of $678 billion in 2011. The U.S. defense budget (excluding spending for the wars in Iraq and Afghanistan, Homeland Security, and Veteran's Affairs) is around 4 percent of GDP. Adding these other costs places defense spending around 5 percent GDP.

The DoD baseline budget, excluding supplemental funding for the wars, grew from $297 billion in FY 2001 to a budgeted $534 billion for FY 2010, an 81 percent increase. According to the CBO, defense spending grew 9 percent annually on average from fiscal years 2000–2009. Much of the costs for the wars in Iraq and Afghanistan have not been funded through regular appropriations bills but through emergency supplemental appropriations bills. As such, most of these expenses were not included in the military budget calculation prior to FY 2010. Some budget experts argue that emergency supplemental appropriations bills do not receive the same level of legislative care as regular appropriations bills. During 2011, the U.S. spent more on its military budget than the next 13 countries combined.

Non-defense discretionary spending is used to fund the executive departments (e.g., the Department of Education) and independent agencies (e.g., the Environmental Protection Agency), although these do receive a smaller amount of mandatory funding as well. Discretionary budget authority is established annually by Congress, as opposed to mandatory spending that is required by laws that span multiple years, such as Social Security or Medicare. The federal government spent approximately $600 billion during 2016 on the Cabinet Departments and Agencies, excluding the Department of Defense, up $15 billion or 3 percent versus 2015. This represented 16 percent of budgeted expenditures or about 3.3 percent of GDP. Spending is below the recent dollar peak of $658 billion in 2010.

> See 2019 FY budget here: https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf

Tax Cuts Under President Trump

President Trump signed the Tax Cuts and Jobs Act into law in December 2017. CBO forecasts that the 2017 Tax Act will increase the sum of budget deficits (debt) by $2.289 trillion over the 2018-2027 decade, or $1.891 trillion after macro-economic feedback. This is in addition to the $10.1 trillion increase forecast under the June 2017 policy baseline and existing $20 trillion national debt.

The Tax Act will reduce spending for lower-income households while cutting taxes for higher-income households, as CBO reported on December 21, 2017: "Overall, the combined effect of the change in net federal revenue and spending is to decrease deficits (primarily stemming from reductions in spending) allocated to lower-income tax filing units and to increase deficits (primarily stemming from reductions in taxes) allocated to higher-income tax filing units."

Figure 5.3.6

Study/Discussion Questions

1. Explain the economic impact of taxes

2. List three criteria for effective taxes

3. What are the two primary principles of taxation?

4. How are taxes classified?

5. Explain the federal budget process. What is the role of the President? What is the role of Congress?

6. What happens if the President and Congress cannot agree on a federal budget by October 1?

7. What is deficit spending? What types of controls has Congress put into place in order to place limits on the use of deficit spending?

8. Do you think automatic sequestration (forced spending cuts) is an appropriate remedy for deficit spending? What would you recommend as an alternative? Defend your answer.

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5.4: Role of Government in the Free Enterprise System

Figure 5.4.1: Yellowstone National Park was affected by the Government Shutdown.

So you trekked all the way to Wyoming to see Yellowstone National Park in the beautiful month of December 2018, only to find it closed. Closed! Why?

In December 2018, the U.S. federal government shut down because an agreement could not be reached regarding federal funding and immigration issues. Many federal services, like the national parks, closed and 800,000 federal employees were furloughed. Tourists were shocked and so was the rest of the world: Congress and the President could not agree on a budget.

The shutdown was caused by disputes over the status of protection of persons affected by the Deferred Action for Childhood Arrivals (DACA) immigration policy, and therefore whether those covered under the program should face deportation. There was also a dispute over whether funding should be funded towards building a Mexico–United States border wall, a keystone policy during Donald Trump's presidential campaign.

Shutdowns cause the disruption of government services and programs, including the closure of national parks and institutions (in particular, due to shortages of federal employees). A major loss of government revenue comes from lost labor from furloughed employees who are still paid, as well as the loss of fees that would have been paid during the shutdown. Shutdowns also cause a significant reduction in economic growth (depending on the length of the shutdown).

Video: What the Government Shutdown Means for Travel, Mail, and Social Security

Budgeting

Why does the federal budget create such intense debates? What would happen if the United States actually defaulted on its debt? In this section, we will examine the federal budget, taxation, and fiscal policy. We will also look at the annual federal budget deficits and the national debt.

All levels of government—federal, state, and local—have budgets that show how much revenue the government expects to receive in taxes and other income and how the government plans to spend it. Budgets, however, can shift dramatically within a few years, as policy decisions and unexpected events shake up earlier tax and spending plans.

Fiscal Policy

In this section, we review fiscal policy. Fiscal policy is one of two policy tools for fine-tuning the economy (the other is monetary policy). While monetary policy is made by policymakers at the Federal Reserve, fiscal policy is made by Congress and the President.

The discussion of fiscal policy focuses on how the federal government taxing and spending affects aggregate demand. All government spending and taxes affect the economy, but fiscal policy focuses strictly on the policies of the federal government. We begin with an overview of U.S. government spending and taxes. We then discuss fiscal policy from a short-run perspective; that is,

how the government uses tax and spending policies to address recession, unemployment, and inflation; how periods of recession and growth affect government budgets; and the merits of balanced budget proposals.

Government Spending

Government spending covers a range of services provided by the federal, state, and local governments. When the federal government spends more money than it receives in taxes in a given year, it runs a budget deficit.

In contrast, when the government receives more money in taxes than it spends in a year, it runs a budget surplus. If government spending and taxes are equal, it is said to have a balanced budget. For example, in 2009, the U.S. government experienced its largest budget deficit ever, as the federal government spent $1.4 trillion more than it collected in taxes. This deficit was about 10 percent of the size of the U.S. Gross Domestic Product (GDP) in 2009, making it by far the largest budget deficit relative to GDP since the mammoth borrowing used to finance World War II.

Total U.S. Government Spending

The major federal spending categories: national defense, Social Security, health programs, and interest payments. From the graph, we see that national defense spending as a share of GDP has generally declined since the 1960s, although there were some upward bumps in the 1980s buildup under President Ronald Reagan and in the aftermath of the terrorist attacks on September 11, 2001. In contrast, Social Security and healthcare have grown steadily as a percent of GDP. Healthcare expenditures include both payments for senior citizens (Medicare), and payments for low-income Americans (Medicaid). Medicaid is also partially funded by state governments. Interest payments are the final main category of government spending shown in the figure.

Federal Spending, 1960–2010

Figure 5.4.2

Since 1960, total federal spending has ranged from about 18 percent to 22 percent of GDP, although it climbed above that level in 2009. The share spent on national defense has generally declined, while the share spent on Social Security and on healthcare expenses (mainly Medicare and Medicaid) has increased. (Source: *Economic Report of the President*, Tables B-80 and B-1, http://www.gpo.gov/fdsys/pkg/ERP-201...nt-detail.html)

Each year, the government borrows funds from U.S. citizens and foreigners to cover its budget deficits. It does this by selling securities (Treasury bonds, notes, and bills)—in essence borrowing from the public and promising to repay with interest in the future. From 1961 to 1997, the U.S. government has run budget deficits, and thus borrowed funds, in almost every year. It had budget surpluses from 1998 to 2001, and then returned to deficits.

The interest payments on past federal government borrowing were typically 1–2 percent of GDP in the 1960s and 1970s but then climbed above 3 percent of GDP in the 1980s and stayed there until the late 1990s. The government was able to repay some of its past borrowing by running surpluses from 1998 to 2001 and, with help from low interest rates, the interest payments on past federal government borrowing had fallen back to 1.4 percent of GDP by 2012.

These four categories—national defense, Social Security, healthcare, and interest payments—account for roughly 71 percent of all federal spending, as Figure 2 shows. The remaining 29 percent wedge of the pie chart covers all other categories of federal government spending: international affairs; science and technology; natural resources and the environment; transportation; housing; education; income support for the poor; community and regional development; law enforcement and the judicial system; and the administrative costs of running the government.

Slices of Federal Spending, 2012

Figure 5.4.3

About 71 percent of government spending goes to four major areas: national defense, Social Security, healthcare, and interest payments on past borrowing. This leaves about 29 percent of federal spending for all other functions of the U.S. government. (Source: *Economic Report of the President*, Table B-80, http://www.gpo.gov/fdsys/pkg/ERP-2013/content-detail.html)

In 2015 the total government expenditures, by all levels of government was $6.2 trillion. On a per capita, or per person basis that would have been $19,386/person. The pie chart shows the total spending, or the percentage of spending by categories, for the U.S. in the fiscal year 2015.

Figure 5.4.4

Government spending is often described as spending in the "public sector" or the part of the economy that is made up of the federal, state, and local governments. Economists agree that government spending began to grow significantly during the Great Depression (1929-1939), and then grew exponentially during World War II.

The economic crisis of the Great Depression and the programs instituted by Franklin D. Roosevelt changed public opinion about what the government's role should be in everyday economic affairs. The success of the New Deal programs to provide relief, recovery, and reform for Americans, set the stage for the unprecedented growth in government spending.

Over the years, many Americans have accepted the expansion of government spending as part of the increase in government regulation of the free market economy and the development of social programs since 1932.

What the government does not provide, the private sector, or the part of the economy made up of private individuals and privately owned businesses, provides. So the economy is either categorized as either the public sector (government) or the private sector (not government).

Types of Spending

Spending is also termed expenditures, and the government spends money in the form of purchasing goods and services or as transfer payments. The government is a significant "consumer" in the private sector. It purchases vast amounts of goods to be used by its employees in its office such as computers, paper, copy machines or tables. It buys equipment for schools and universities, for the military and even for various departments that the government has created such as the Department of the Interior, or the Department of Transportation. The government also provides services to the public by spending money to hire workers that staff the various departments, agencies, and the military.

Transfer payments are another form of expenditure. Transfer payments are paid out to certain individuals, such as those who receive Social Security, disability for military service, welfare, or unemployment compensation. The government does not receive a good or service for these payments, however, the money that the government provides to these recipients makes it possible for them to participate in the economy.

Another type of transfer payment is known as a "grant in aid" where one level of government transfers money to another level of government. The federal government grants money to the states and local governments for specific purposes such as road construction, education, and urban renewal. The money generally has "strings attached" which means that it can only be spent for the reason that it was given and that recipient must follow the rules for how it is to be spent. If the money is not spent correctly, the money must be repaid to the federal government.

The size of the expenditures from "public sector" has an enormous impact on the allocation of resources. When the government spends money it impacts both state and local economies. If the government decides to fund a particular state program or local agency it can bring jobs and growth to that area, however, the opposite is also true. If the government cuts a program or ends funding for a project it may increase unemployment or impact a local economy.

Another way that funding impacts the economy is the distribution of income. When the government increases or decreases transfer payments it directly impacts those who receive those payments. If the government decides to spend money on defense and the military, then it can shift which part of the economy will benefit. In addition, the government can help a particular group that may be in need, such as farmers.

Finally, some economists believe that the government can compete with the private sector when it provides goods and services. For example, public schools and universities compete with private educational facilities; or veteran's hospitals have the same health services that public hospitals provide.

Figure 5.4.5

Study/Discussion Questions

1. Explain why and how government expenditures have grown since the 1940s.

2. Describe the two kinds of government expenditures.

3. Explain how government spending impacts the economy.

4. Why has the federal government's role in the national economy grown over the last 100 years?

5. Has the national government helped or hindered the nation's economic growth since the 1940s?

6. How have current economic goals of the government impacted government spending?

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5.5: U.S. Government Taxation and Regulation Affects Private Enterprise

Figure 5.5.1

What is Private Enterprise?

Private enterprise is defined as a business or industry that is managed by independent companies or private individuals rather than by the state. To participate in a free enterprise system, it is necessary to have entrepreneurs, consumers, a market, and a promoter.

The entrepreneur is the “risk taker.” The individual can make his or her own decisions about what to produce, sell, invent, etc. He or she is the one that comes up with a product, or an idea for a better product than is currently available in the market. They may even find a better way to shop for a product (Amazon) or deliver a product (FedEx). The entrepreneur is the one that is willing to risk failure while trying to gain a position in the market place.

If successful, the entrepreneur will be rewarded with monetary success, and the market will benefit from a new or better product than one that is currently in the store. In fact, more products of better quality benefit the consumer as prices will generally drop due to more competition in the market.

A free enterprise system also requires a government that is willing to limit its intervention in the economy. In the United States, the government plays various roles such as regulator, protector, provider, consumer, and promoter. As a regulator, the government is charged with ensuring competition in the market. It oversees businesses and its own agencies to make sure that industries are playing by certain rules. The role of protector the government enforces laws to prevent businesses from abusing or taking advantage of consumers. The government is also a provider of certain goods and services such as national defense, roads, public education, hospitals, libraries, and public welfare. In addition, the government is a consumer of goods. It purchases goods and services from the private sector such as office goods, buildings, and automobiles, to run its offices and operate daily. Finally, this government is a promoter of national goals.

The president, Congress, and administration of federal programs work to promote the goals of this economic system. By allowing the individual the opportunity to compete in the market while remaining on the sidelines, the government has promoted the concept of free enterprise.

Business Structures

When beginning a business, you must decide what form of business to establish. The most common forms of business are the sole proprietorship, partnership, corporation, and S corporation. A Limited Liability Company (LLC) is a relatively new business structure allowed by state statute. The larger the profit, the more taxes for which you will be responsible.

Who Pays?

The government requires income, or revenue, to operate. Business and corporations generate that income. The type of business determines the type of taxes. Employers usually pay federal, state, and local taxes.

Business owners are required to pay taxes on their business. For example, a business is charged an income tax just like an individual. A business must also pay employment tax, unemployment compensation, social security insurance, and excise tax. Some state government also charge payroll taxes.

Of course, the consumer also absorbs the cost of the taxes that the business pays. This cost is added to the cost of the product. These taxes are used by the business to improve the safety of a product, to reduce environmental harm, and to expand services.

Although the government provides guidelines in the form of regulations, free enterprise allows the entrepreneur to make the decision on production.

Video: Crash Course Economics: Taxes

Figure 5.5.2

Study/Discussion Questions

1. What is a free enterprise?

2. What are the roles in a free enterprise?

3. How are businesses taxed?

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5.6: U.S. Economic Resources in Foreign Policy

Figure 5.6.1

Theories of Economic Policy

Economic policy refers to the actions that governments take in order to influence the economy. This usually involves controlling interest rates, regulating businesses, income redistribution, and various other monetary controls. Due to the global connectedness of financial markets, such policies must consider events on the international stage. Global financial institutions, such as the International Monetary Fund and the World Bank, work with countries to foster monetary cooperation, financial stability, and sustainable economic growth. Under Article 1, Section 8 of the U.S. Constitution, the federal government and the states are given the concurrent powers to enact taxing and spending policies for the “general welfare” of the country. The Founding Fathers believed it critical to include this clause. Under the Articles of Confederation (the first written constitution of the U.S.) the central government had no authority to lay and collect taxes and was forced to rely on donations from individual states. This policy wreaked havoc on the fiscal system and brought the new nation to the brink of economic collapse. Over time, the courts have interpreted the tax and spend clause to be very broad; however, beliefs about how this power should be utilized has been intensely debated by U.S. policymakers for years. Differences of opinion on this issue are usually based on competing philosophies about how much government should be involved in regulating the economy. The onset of the 2008 financial crisis, subsequent recession, and stubbornly high unemployment rates have only served to intensify the ongoing debate over U.S. economic policy.

Economic Goals

To maintain a strong economy, the federal government must strive to achieve three broad economic goals: (1) stable prices; (2) full employment; and (3) economic growth. But economic policy activities do not end there. The federal government seeks to maintain sound economic health through a variety of other objectives. These include maintaining low or stable interest rates, striving for a balanced budget (or at least a budget that strives to reduce the deficit from the previous year), and a positive trade balance with other countries (meaning more exports than imports).

Stable Prices

When prices for goods and services increase sharply (known as inflation), the value of money is reduced, and it costs more to buy the same things. When inflation rates are kept low, prices remain at the same level. But a variety of circumstances beyond the government's control can affect prices. A prolonged drought in the corn belt or an early freeze that hits the orange crop in Florida creates shortages that lead to higher prices. Higher prices for certain critical goods, such as oil, can create inflationary prices throughout the economy.

Video: Inflation Explained Part 1

Full Employment

Absolute full employment is impossible to achieve; at any given time, people are quitting their jobs or are unable to work for a variety of reasons. An unemployment rate, the percentage of the labor force that is out of work, of 4 percent or less is considered full employment. The unemployment rate varies from region to region and from state to state. For example, California's rate was higher than the national average in the early 1990s because of cutbacks in the aerospace industry and companies moving out of the state.

Video: Unemployment and Employment

Economic Growth

Economic growth is measured by the gross domestic product (GDP), the dollar value of the total output of goods and services in the United States. A thriving economy may have a GDP growth rate of four percent a year; a stagnant economy may grow at less than one percent a year. In a stagnant economy, unemployment is high, productivity is low, and jobs are hard to find. A recession is defined as two consecutive quarters of negative GDP. In the 1970s, the United States experienced a strange combination of high unemployment and high inflation, which is known as stagflation.

Video: GDP Explained

Sources of Revenue and Expenditures

Federal economic policy relies on the use of taxing and spending to provide for government services but taxing and spending decisions also affect the stability of the U.S. economic system, the value of currency, and the decisions of business owners and consumers which lead to either economic growth or decline. Therefore, it is important to understand where governmental revenues come from and how the government spends those revenues.

The primary source of revenue for the federal government is through federal income taxes to individuals and corporations as well as taxes on the payrolls of business operations in order to fund social security and federal unemployment and disability benefits. The United States uses a graduated progressive tax system, which increases the percentage of income paid in taxes in relation to the total income an individual makes each year. In other words, the more money an individual makes, the more money (in theory) that individual will pay in income taxes.

The chart below demonstrates the progressive nature of the federal income tax system. As income rises, so does the percentage of income one must pay in federal income taxes until it reaches a maximum rate of 39 percent. But other countries such as Sweden have tax rates between 79 percent and 90 percent of income at higher tax brackets.

Figure 5.6.2

Look at the table provided below. Individual income taxes and payroll taxes accounted for 82 percent of all federal revenues in the fiscal year 2010. Corporate income taxes contributed another nine percent. Excise taxes, estate and gift taxes, customs duties, and miscellaneous receipts (earnings of the Federal Reserve System and various fees and charges) made up the balance. The composition of tax revenue has changed markedly over the past half century. The share coming from individual income taxes has remained roughly constant, while payroll taxes have accounted for a larger share and corporate income and excise taxes smaller shares.

Figure 5.6.3

In 2010 the federal government collected $2.2 trillion, an amount equal to 14.9 percent of GDP. Federal revenue has ranged from 14.4 of GDP in 1950 to 20.6 percent in 2000 over the past five decades, averaging 17.9 percent.

The individual income tax has been the largest single source of federal revenue since 1950, averaging 8 percent of GDP.

Payroll taxes swelled following the creation of Medicare in 1965. Taxes for Medicare, combined with periodic increases in Social Security taxes, caused payroll tax revenue to grow from 1.6 percent of GDP in 1950 to 6 percent or more since 1980. Payroll taxes also include railroad retirement, unemployment insurance, and federal workers' pension contributions.

Revenue from the corporate income tax fell from between 5 and 6 percent of GDP in the early 1950s to 1.3 percent of GDP in 2010.

Excise taxes fell steadily throughout the same period, from nearly 3 percent of GDP in 1950 to 0.5 percent in recent years.

The remaining sources of revenue have fluctuated less, together claiming between 0.5 and 1.0 percent of GDP since 1950 and standing near the bottom of that range in 2010.

Federal Spending

Federal revenues are collected for the purpose of providing government services. Besides those expenses that are mandated (like Social Security, federal pensions and other entitlements), a large amount of money is spent annually on discretionary spending (which is those areas and services where Congress makes yearly decisions as to what services the government will spend on and how much will be spent for each. This is called discretionary spending and it tends to be the area with the most amount of debate and contention in both the Executive and the Legislative branches.

According to the National Priorities Project, the 2015 discretionary budget was set at more than $1.26 Trillion with money allotted to such services as the military and national defense ($640 Billion 55.2 percent), Education ($71.5 billion, 6.2 percent), Veterans Benefits ($65.5 billion, 5.6 percent), Government ($63.9 billion, 5.5 percent), Housing and Community ($63.9 billion, 5.5 percent), Medicare and Health ($56.7 billion, 4.9 percent), Social Security, Unemployment and labor ($56.1 Billion, 4.8 percent), Energy and Environment ($38.4 billion, 3.3 percent), International Affairs ($38.2 billion, 3.3 percent), Science and Technology ($29.2 billion, 2.5 percent), Transportation ($26.1 billion, 2.3 percent), Food and Agriculture ($12.8 billion, 1.1 percent). But these numbers are for new spending only and do not include already committed funds (nondiscretionary) such as interest payments on the federal debt and individual entitlements which amount to the approximately $2 trillion in spending and cannot be changed.

One of the most important jobs of Congress is to determine how federal revenue will be distributed and on which programs will receive priority funding. Of course, the president (who recommends a budget) and the members of Congress who vote on appropriations (how much will be spent on each federal program) rarely see eye to eye on the federal budget and this has been particularly true in recent years. Below is a chart with expenses for the 2015 Fiscal Year. A more detailed discussion of the budget process and the governmental policymaking process will be provided in a later section.

Figure 5.6.4

How income is collected and spent play a major role in determining overall economic policy for the United States. But just as important is an understanding of economic theory and how it is used to plan for and maintain a stable national economy. The following sections will discuss the economic theories and models used in the United States economic policymaking.

Macroeconomic Theories of U.S. Market Activities

Four macroeconomic theories of performance, structure, and behavior of markets have dominated U.S. governmental policies. The country's varying degrees of successes and failures with each of these policies underscores the complicated and volatile nature of economic supply and demand.

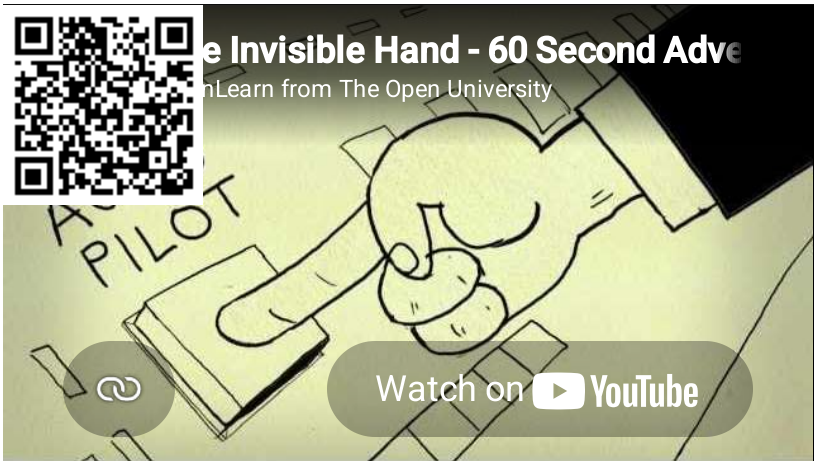
Laissez Faire

Laissez-faire economics is the belief that economic markets should operate entirely free of government intervention in order to operate most effectively and efficiently. The term, sometimes referred to as "let it be economics," hit its zenith in the U.S in the late 1800s during widespread industrialization. American businesses were able to operate virtually unencumbered from the government; however, by the early 20th century this policy resulted in shrinking competition as competing companies began to merge. President Theodore Roosevelt fought to "bust" unlawful monopolies and increase government regulation, especially in the booming railroad and oil industries. In addition, numerous laws were passed to regulate child labor, create safer working conditions, and institute price controls.

After the U.S. stock market crash in 1929, many blamed the unfettered capitalism of the 1920s; however, the causes were more complex. President Herbert Hoover attempted to stave off the depression with a number of government interventions that only exacerbated the problem (contrary to the historical view that he was a strong laissez-faire proponent). After Franklin D. Roosevelt

was elected president in 1932 and established his “New Deal” policies, government intervention became the centerpiece of American economic policy.

Video: Sixty Second Economics: Laissez Faire (“The Invisible Hand”)



Keynesian Economics

Keynesian economics is based upon the school of thought developed by John Maynard Keynes, a 20th-century British economist. Keynes’ central belief was that, in order to keep people employed, governments need to run up deficits during economic downturns through increased spending and tax breaks. Conversely, during prosperous times, governments should cut spending and institute tax hikes to curb inflation. The theory supposes a strategic interventionist role for the government in order to smooth out the bumps in market cycles. Keynesian theory was put to the test during the 1930s—the height of the Great Depression. President Franklin D. Roosevelt embraced the idea only after other policies failed to stimulate the economy. In one of his notable “fireside chats,” he explained to the American public that it was up to the government to “create an economic upturn” and make additions to the “purchasing power of the nation.” Precipitated by U.S. entry into World War II, Roosevelt increased deficit spending, which had the effect of lowering unemployment and increasing demand for war time labor.

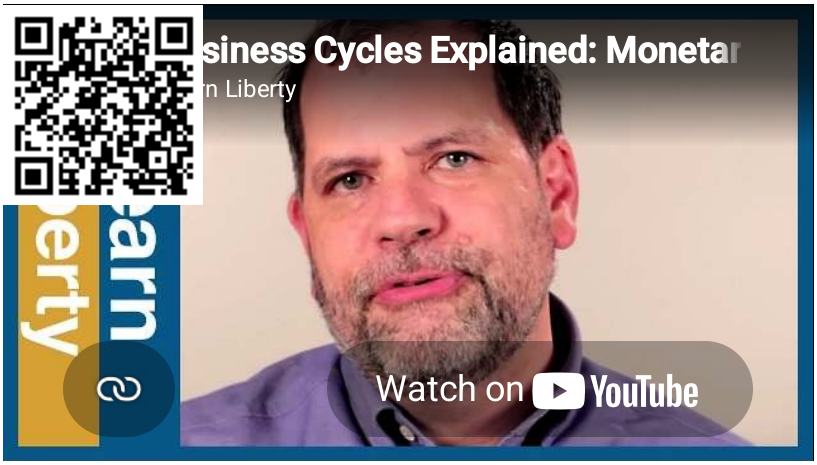
For the next quarter century, Keynesian economics became the centerpiece of U.S. fiscal policy. The economy boomed until the late 1970s when inflation and an energy crisis shook the American public’s confidence in the Carter Administration’s ability to effectively address the problems. When Ronald Reagan became president in 1981, Keynesian economics fell out of favor.

Video: Keynsian Economics Explained (The Role of Keynes in the Great Depression)

Monetarism Theory

Monetarism theory emphasizes that one of the most important roles of government is to control the amount of money in circulation. Monetarism gained strength during the 1970s as the country grappled with unprecedented inflation coupled with the supply "shocks" of increasing oil prices. Economists argued that Keynesian theory could not address the economic variations within a given system, such as changing rates of inflation, which are most often caused by increases or decreases in the money supply. In 1979, the Federal Reserve (the central banking system of the United States) announced that it would adopt a monetarism policy to stabilize the economy. The result was a deep recession in the early 1980s, although the policy did help to lower inflation. Monetarism was then abandoned in favor of a return to Keynesian policy.

Video: Monetarism Explained



Supply-Side Economics

Supply-side economics argues that economic growth can best be achieved by lowering barriers to production. More specifically, the supply-side economic theory rests on the notion that lowering tax rates and reducing business regulation allows for more flexibility, resulting in a greater supply of goods and services at lower prices. This theory developed as a direct response to Keynesian policy's perceived failure to stabilize Western economies. However, its critics were quick to label it "trickle-down economics," arguing that tax breaks and deregulation have a very

The most notable proponent of supply-side theory was Ronald Reagan; indeed, he made this theory the cornerstone of his economic policy known as "Reaganomics." Upon assumption of the presidency in 1981, Reagan pursued an aggressive policy of reducing the growth of government spending (particularly on social programs), lowering income and capital gains taxes, increasing defense spending, tightening the money supply, and reducing government regulation. This economic approach was a marked departure from previous administrations.

The policies had mixed effects. The economy during the 1980s experienced significant turbulence despite generally favorable economic conditions. Interest rates, inflation, and unemployment fell significantly during this time; however, these were coupled with rising income disparities and a ballooning federal deficit. The success of Reaganomics continues to be debated by economists and policymakers alike.

Video: Supply Side ("Trickle Down") Economics

Figure 5.6.5

Study/Discussion Questions

1. What role does economic policy play in the United States system of government?
2. List and describe each of the economic goals for the United States government and give an example of how the government addresses each.
3. What is the role of international global financial institutions and why are they important to U.S. Economic policy?
4. What are the major sources of government revenue and expenditures?
5. Which governmental expenditure accounts for the majority of discretionary spending (in 2014/15)?
6. In your opinion is it more important for the federal government to spend money in the area of military spending or on domestic spending (social programs and governmental operations)? Explain and defend your answer.
7. What are the four basic theories of economic policy? Which of these do you see as being the most effective? Why?

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5.7: Roles of the Executive and Legislative Branch in Trade and Policy

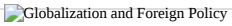

Figure 5.7.1: The trend towards global trade, culture, and political exchange has created a greater need for well-planned and implemented foreign policy.

The Executive Branch and the Congress have constitutional responsibilities for U.S. foreign policy. Within the Executive Branch, the Department of State is the lead U.S. foreign affairs agency, and the Secretary of State is the President's principal foreign policy adviser. The Department advances U.S. objectives and interests in shaping a freer, more secure, and more prosperous world through its primary role in developing and implementing the President's foreign policy. The Department also supports the foreign affairs activities of other U.S. Government entities including the Department of Commerce and the U.S. Agency for International Development. It also provides an array of important services to U.S. citizens and to foreigners seeking to visit or immigrate to the U.S.

International Trade

International trade is the exchange of goods and services across national borders. In most countries, it represents a significant part of the Gross Domestic Product (GDP). While international trade has been practiced throughout much of history, its economic, social, and political importance have become increasingly relevant in recent times, mainly due to industrialization, advanced transportation, globalization, the growth of multinational corporations, and outsourcing.

Figure 5.7.2: Flags representing the participating nations in the Bretton-Woods Agreement

The Bretton Woods Agreement

During World War II, 44 countries signed the Bretton Woods Agreement. This system of monetary management established the rules for commercial and financial relations among the world's major industrial states, and was the first example of a fully negotiated monetary order intended to govern monetary relations among independent nation-states. The agreement was intended to prevent national trade barriers that could create global economic depressions. The political basis for the Bretton Woods Agreement was in the confluence of two key conditions: the shared experiences of the Great Depression, and the concentration of power in a small number of states which was further enhanced by the exclusion of a number of important nations due to ongoing war.

The agreement set up rules and institutions to regulate the international political economy, resulting in the creation of organizations such as the the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (later divided into the World Bank and Bank for International Settlements). These organizations became operational in 1946 after enough countries ratified the agreement. Currently, the Doha round of World Trade Organization negotiations aims to lower barriers to trade around the world, with a focus on making trade more favorable for so-called "developing" countries, though talks have faced a divide between "developed" countries and the major "developing" countries.

The World Trade Organization

The World Trade Organization (WTO) is an organization that was formed in 1995 to supervise and liberalize international trade . The organization deals with regulation of trade between participating countries; it provides a framework for negotiating and formalizing trade agreements, and a dispute resolution process aimed at enforcing participants' adherence to WTO agreements, which are signed by representatives of member governments and ratified by their parliaments.

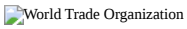

Figure 5.7.3: The WTO, succeeding GATT in 1995, is an organization that seeks to liberalize international trade.

International trade greatly contributes to the process of globalization, the processes of international integration arising from the interchange of world views, products, ideas, and other aspects of culture. Advances in transportation and telecommunications infrastructure, including the rise of the telegraph and its posterity the Internet, are major factors in globalization, generating further interdependence of economic and cultural activities. In 2000, the International Monetary Fund (IMF) identified four basic aspects of globalization: trade and transactions, capital and investment movements, migration and movement of people, and the dissemination of knowledge.

Globalization has been criticized in recent decades for the unequal power dynamics of international trade, and the policies that are used to exploit developing countries for the profit of the developed Western world. The anti-globalization movement is critical of

the globalization of corporate capitalism for these reasons. Many anti-globalization activists, however, call for forms of global integration that provide better democratic representation, advancement of human rights, fair trade and sustainable development and therefore feel the term "anti-globalization" is misleading.

In general, the anti-globalization movement is especially opposed to the various abuses which are perpetuated by globalization and the international institutions which are believed to promote neoliberalism without regard to ethical standards. Common targets include the World Bank (WB), International Monetary Fund (IMF), the Organization for Economic Co-operation and Development (OECD) and the World Trade Organization (WTO) and free trade treaties like the North American Free Trade Agreement (NAFTA), Free Trade Area of the Americas (FTAA), the Trans Pacific Trade Agreement (TPPA), the Multilateral Agreement on Investment (MAI) and the General Agreement on Trade in Services (GATS). In light of the economic gap between rich and poor countries, movement adherents claim "free trade" without regulations in place to protect the environment, the health and well being of workers, and the economies of "developing" countries contributes only to strengthening the power of industrialized nations (often termed the "global North" in opposition to the developing world's "global South").

The anti-globalization movement is considered a rather new and modern day social movement, as the issues it is fighting against are relevant in today's time. However, the events that occurred which fuels the movement can be traced back through the lineage of the movement of a 500-year old history of resistance against European colonialism and U.S. imperialism, in which the continent of Africa and many other areas of the world were colonized and stripped of their resources for the profit of the Western world.

One of the most infamous tactics of the movement is the Battle of Seattle in 1999, where grassroots activists organized large and creative protests against the World Trade Organization's Third Ministerial Meeting in order to gain the attention towards the issue of globalization. It is still one of the most significant and memorable social movement protests in the past 20 years.

Contemporary Issues in International Trade

Issues currently associated with international trade include the following: intellectual property rights, in that creations of the mind for which exclusive rights are recognized in law are considered essential for economic growth; smuggling, especially as it relates to human and drug trafficking; outsourcing, the contracting out of business processes to another country, generally one with lower wages; fair trade, which promotes the use of labor, environmental, and social standards for the production of commodities; and trade sanctions, in which punitive economic measures are taken against a defaulting country.

More information about U.S. Government Trade Agencies can be found here: U.S. Government Trade Agencies

Immigration and Border Security

Immigration and border security are two important issues for U.S. policy.

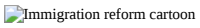

Figure 5.7.4: Immigration has become a hotly debated issue with calls for immigration reform being unheard by those elected members of Congress who fear losing the support of their constituents.

Though immigration to the United States has been a major source of economic growth and cultural change throughout American history, the recent discourse surrounding immigration deals mostly with illegal immigration. Illegal immigrants are those non-citizens who enter the United States without government permission and are in violation of United States nationality law or stay beyond the termination date of a visa, also in violation of the law.

The illegal immigrant population in the United States in 2008 was estimated by the Center for Immigration Studies to be about 11 million people, down from 12.5 million people in 2007. Other estimates range from 7 to 20 million. According to a Pew Hispanic Center report, in 2005, 56 percent of illegal immigrants were from Mexico; 22 percent were from other Latin American countries, primarily from Central America; 13 percent were from Asia; 6 percent were from Europe and Canada; and 3 percent were from Africa and the rest of the world.

Figure 5.7.5: Immigration to the United States relative to sending countries' population size, 2001–2005.

The number of Illegal immigrants who come generally for economic opportunities or to escape political oppression, continue to outpace the number of legal immigrants - a trend that has held steady since the 1990s. While the majority of illegal immigrants

continue to concentrate in places with existing large Hispanic communities, an increasing number of them are settling throughout the rest of the country.

Executive Summary Statement Regarding Immigration

In a fact sheet issued by the White House on October 8, 2017, the following Immigration policy priorities were published:

The Trump Administration is ready to work with Congress to achieve three immigration policy objectives to ensure safe and lawful admissions; defend the safety and security of our country; and protect American workers and taxpayers.

BORDER SECURITY: Build a southern border wall and close legal loopholes that enable illegal immigration and swell the court backlog.

- Fund and complete construction of the southern border wall.
- Authorize the Department of Homeland Security to raise and collect fees from visa services and border-crossings to fund border security and enforcement activities.
- Ensure the safe and expeditious return of Unaccompanied Alien Children (UAC) and family units.
- End abuse of our asylum system by tightening standards, imposing penalties for fraud, and ensuring detention while claims are verified.
- Remove illegal border crossers quickly by hiring an additional 370 Immigration Judges and 1,000 ICE attorneys.
- Discourage illegal re-entry by enhancing penalties and expanding categories of inadmissibility.
- Improve expedited removal.
- Increase northern border security.

INTERIOR ENFORCEMENT: Enforce our immigration laws and return visa overstays.

- Protect innocent people in sanctuary cities.
- Authorize and incentivize States and localities to help enforce Federal immigration laws.
- Strengthen law enforcement by hiring 10,000 more ICE officers and 300 Federal prosecutors.
- End visa overstays by establishing reforms to ensure their swift removal.
- Stop catch-and-release by correcting judicial actions that prevent ICE from keeping dangerous aliens in custody pending removal and expanding the criteria for expedited removal.
- Prevent gang members from receiving immigration benefits.
- Protect U.S. workers by requiring E-verify and strengthening laws to stop employment discrimination against U.S. workers.
- Improve visa security by expanding the state department's authority to combat visa fraud, ensuring funding of the Visa Security Program, and expanding it to high-risk posts.

MERIT-BASED IMMIGRATION SYSTEM: Establish reforms that protect American workers and promote financial success.

- End extended-family chain migration by limiting family-based green cards to include spouses and minor children.
- Establish a points-based system for green cards to protect U.S. workers and taxpayers.

More Information on immigration may be found here: Immigration

The challenge of illegal immigration is closely linked with that of border security, the concept of which is related to the persistent threat of terrorism. Border security includes the protection of land borders, ports, and airports and after the September 11, 2001, terrorist attacks, many questioned whether the threat posed by the largely unchecked 3,017-mile Canadian border, the 1,933-mile Mexican border, and the many unsecured ports.

Terrorism

The threat of terrorism is one of the greatest challenges facing the United States and the international community. Common definitions of terrorism refer to those violent acts that are intended to create fear (terror). The acts are perpetrated for a religious, political, and/or ideological goal. They deliberately target or disregard the safety of civilians in order to gain publicity for a group,

cause, or individual. Terrorism has been practiced by a broad array of political organizations, including right-wing and left-wing political parties, nationalistic groups, religious groups, revolutionary groups, and ruling governments.

Islamic Terrorism

In current international affairs, the threat of Islamic terrorism, a form of religious terrorism committed by Muslims for the purpose of achieving varying political and/or religious ends, has been particularly prevalent. Islamic terrorism has taken place in the Middle East, Africa, Europe, South Asia, Southeast Asia, and the United States since the 1970s. Islamic terrorist organizations have been known to engage in tactics including suicide attacks, hijackings, kidnappings, and recruiting new members through the Internet. Well-known Islamic terrorist organizations include Al-Qaeda, Hamas, Hezbollah, and Islamic Jihad.

The 9/11 Attacks and the War on Terror

The September 11, 2001, terrorist attacks, in which members of Al-Qaeda under the leadership of Osama bin Laden hijacked and crashed four passenger jets in New York, Virginia, and Pennsylvania, left nearly 3,000 people dead. These attacks marked the beginning of the "War on Terror," an international military campaign led by the United States and the United Kingdom (with the support of NATO and non-NATO allies) against Al-Qaeda and other associated militant organizations with the stated goal of eliminating them. The War on Terror would include military campaigns in Afghanistan and Iraq.

Video: 9-11 and Bush 43 Era

Nuclear Weapons

The proliferation of nuclear weapons, explosive devices which derive their destructive force from nuclear reactions (either fission or a combination of fission and fusion), is an important challenge of foreign policy.

Only a few nations possess such weapons or are suspected of seeking them. The only countries known to have detonated nuclear weapons—and that acknowledge possessing such weapons—are (chronologically by date of the first test) the United States, the Soviet Union (succeeded as a nuclear power by Russia), the United Kingdom, France, China, India, Pakistan, and North Korea. In addition, Israel is also widely believed to possess nuclear weapons, though it does not acknowledge having them. One state, South Africa, fabricated nuclear weapons in the past but has since disassembled their arsenal and submitted to international safeguards.

Only two nuclear weapons have been used in the course of warfare, both by the United States near the end of World War II. On August 6, 1945, a uranium gun-type fission bomb was detonated over the Japanese city of Hiroshima. Three days later, on August 9, a plutonium implosion-type fission bomb was exploded over Nagasaki, Japan. These two bombings resulted in the deaths of approximately 200,000 Japanese people—mostly civilians—from acute injuries sustained from the explosions.

Since the bombings of Hiroshima and Nagasaki, nuclear weapons have been detonated on over two thousand occasions for testing purposes and demonstrations. Because of the immense military power they can confer, the political control of nuclear weapons has been a key issue for as long as they have existed; in most countries, the use of nuclear force can only be authorized by the head of government or head of state. In 1957, the International Atomic Energy Agency (IAEA) was established under the mandate of the United Nations to encourage the development of peaceful applications for nuclear technology, provide international safeguards against its misuse, and facilitate the application of safety measures in its use.

By the 1960s, steps were being taken to limit both the proliferation of nuclear weapons to other countries and the environmental effects of nuclear testing. The Partial Test Ban Treaty (1963) restricted all nuclear testing to underground facilities, to prevent contamination from nuclear fallout, while the Nuclear Non-Proliferation Treaty (1968) attempted to place restrictions on the types of activities signatories could participate in, with the goal of allowing the transference of non-military nuclear technology to member countries without fear of proliferation. Currently, the prospect of nuclear technology falling into the hands of rogue states and terrorist organizations is considered a major threat to international security.

Particularly since the beginning of Operation Iraqi Freedom in 2003, U.S. relations with Iraq have been central to its foreign policy.

Iraq

Since the United States recognized an independent Iraq in 1930, relations with that nation have been an important aspect of U.S. foreign policy.

After the September 11, 2001 attacks, the governments of the United States and the United Kingdom claimed that Iraq's alleged possession of weapons of mass destruction (WMD) posed a threat to their security and that of their coalitional and regional allies. Some U.S. officials also accused Iraqi President Saddam Hussein of harboring and supporting al-Qaeda, but no evidence of a meaningful connection was ever found. Other proclaimed accusations against Iraq included its financial support for the families of Palestinian suicide bombers, Iraqi government human rights abuses, and an effort to spread democracy to the country.

On March 20, 2003, a U.S.-led coalition conducted a military invasion of Iraq without declaring war. The invasion, referred to as Operation Iraqi Freedom, led to an occupation and the eventual capture of President Hussein, who was later tried in an Iraqi court of law and executed by the new Iraqi government. Violence against coalition forces and among various sectarian groups soon led to the Iraqi insurgency, strife between many Sunni and Shia Iraqi groups, and the emergence of a new faction of al-Qaeda in Iraq.

Figure 5.7.6: A U.S. Marine tank cruises down the street in Baghdad.

The "One weekend a month, two weeks a year" slogan has lost most of its relevance since the Iraq War when nearly 28 percent of total US forces in Iraq and Afghanistan at the end of 2007 consisted of mobilized personnel of the National Guard and other Reserve components. [35] In July 2012, the Army's top general stated his intention to increase the annual drill requirement from two weeks per year to up to seven weeks per year.

As public opinion favoring troop withdrawals increased and as Iraqi forces began to take responsibility for security, member nations of the Coalition withdrew their forces. In late 2008, the U.S. and Iraqi governments approved a Status of Forces Agreement, effective through January 1, 2012. The Iraqi Parliament also ratified a Strategic Framework Agreement with the U.S., aimed at ensuring cooperation in constitutional rights, threat deterrence, education, energy development, and in other areas.

In late February 2009, newly-elected U.S. President Barack Obama announced an 18-month withdrawal window for combat forces, with approximately 50,000 troops remaining in the country "to advise and train Iraqi security forces and to provide intelligence and surveillance. " On October 21, 2011, President Obama announced that all U.S. troops and trainers would leave Iraq by the end of the year, bringing the U.S. mission in Iraq to an end. The last U.S. troops left Iraqi territory on December 18, 2011.

Afghanistan

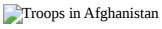

Figure 5.7.7: Military actions in Afghanistan have far exceeded any previous military involvement for United States troops abroad. Here, U.S. troops from the 2nd Battalion, 503rd Infantry Regiment in Afghanistan, August 2006

The relationship between the United States and Afghanistan has become an integral aspect of U.S. foreign policy. Following the attacks of September 11, 2001-- thought to be orchestrated by Osama bin Laden, who was residing in Afghanistan under asylum at the time-- the United States launched and led Operation Enduring Freedom. This major military operation was aimed at removing the Taliban government from power and capturing Al-Qaeda members, including Osama bin Laden himself. Following the overthrow of the Taliban, the U.S. supported the new government of Afghan President Hamid Karzai by maintaining a high level of troops in the area, as well as by combating Taliban insurgency. Afghanistan and the United States resumed diplomatic ties in late 2001.

The United States has taken a leading role in the overall reconstruction of Afghanistan by investing billions of dollars in national roads, government and educational institutions, and the Afghan military and national police force. In 2005, the United States and

Afghanistan signed a strategic partnership agreement, committing both nations to a long-term relationship.

The U.S. Armed Forces has been gradually increasing its troop level in Afghanistan since 2002, reaching about 100,000 in 2010. They are scheduled to begin leaving between mid-2011 to the end of 2014. In 2012, Presidents Obama and Karzai signed a strategic partnership agreement between their respective countries, designating Afghanistan as a major non-NATO ally. Concerns remain regarding the Taliban insurgency, the role of Pakistan in training those insurgents, the drug trade, the effectiveness of Afghan security forces, and the risk of Afghanistan degenerating into a failed state after the withdrawal.

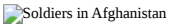

Figure 5.7.8: American soldier on patrol in Afghanistan.

China

Three issues of particular importance in Chinese-American relations are economic trade, the contested status of Taiwan, and human rights.

Examine the social, political and economic issues that are significant for U.S.-China relations

The political, economic, and military rise of China, with its enormous population of more than 1.3 billion people, is a key foreign policy challenge for the United States. Within current U.S.-China relations, three issues of particular importance stand out: economic trade, the status of Taiwan, and human rights.

Figure 5.7.9: President Obama and Chinese Premier Wen Jiabao.

Since China and the United States resumed trade relations in 1972 and 1973, U.S. companies have entered into numerous agreements with Chinese counterparts that have established more than 20,000 equity joint ventures, contractual joint ventures, and wholly foreign-owned enterprises. The American trade deficit with China exceeded $350 billion in 2006 and is the U.S.'s largest bilateral trade deficit.

China, which became the world's second largest economy in 2010, may overtake the United States and become the world's largest economy by 2030 if current trends continue (although this growth might be limited by domestic challenges facing China, including income inequality and pollution). Among foreign nations, China holds the largest amount of U.S. public debt and has been a vocal critic of U.S. deficits and fiscal policy. In turn, the United States has criticized China's undervaluation of its currency, the Renminbi.

American support for the island of Taiwan, which China claims as one of its provinces and has threatened to take over by force, is another source of tension. The U.S. maintains sympathy for an independent Taiwan due to its liberal, pluralistic democracy, and gives Taiwan extensive political and military support. This support has resulted in threats of retaliation from China.

The Chinese government's policy toward human rights is another source of controversy. International human rights organizations have identified a number of potential violations in China, including the use of capital punishment, the application of the one child policy, the denial of independence to Tibet, the absence of a free press, the absence of an independent judiciary with due process, the absence of labor rights, and the absence of religious freedom.

President Trump's current economic policy toward China as issued on May 29, 2018

For many years, China has pursued industrial policies and unfair trade practices—including dumping, discriminatory non-tariff barriers, forced technology transfer, over capacity, and industrial subsidies—that champion Chinese firms and make it impossible for many United States firms to compete on a level playing field.

China imposes much higher tariffs on United States exports than the United States imposes on China. China has banned imports of United States agricultural products such as poultry, cutting off America’s ranchers and farmers from a major market for their goods.

Undermining American Innovation and Jobs: China has aggressively sought to obtain technology from American companies and undermine American innovation and creativity.

The cost of China’s intellectual property theft costs United States innovators billions of dollars a year, and China accounts for 87 percent of counterfeit goods seized coming into the United States.

Standing Up to China's Unfair Trade Practices: President Trump has taken long overdue action to finally address the source of the problem, China’s unfair trade practices that hurt America’s workers and our innovative industries.

In January 2018, President Trump announced his decision to provide safeguard relief to United States manufacturers injured by surging imports of washing machines and solar products. This was the first use of Section 201 of the Trade Act of 1974 to impose tariffs in 16 years.

Protecting American Innovation and Creativity: President Trump has worked to defend America's intellectual property and proprietary technology from theft and other threats.

Under President Trump's leadership:

The United States will impose a 25 percent tariff on $50 billion of goods imported from China containing industrially significant technology, including those related to the "Made in China 2025" program. The final list of covered imports will be announced by June 15, 2018. The United States will implement specific investment restrictions and enhanced export controls for Chinese persons and entities related to the acquisition of industrially significant technology. The list of restrictions and controls will be announced by June 30, 2018.

Israel and Palestine

The conflict between the State of Israel and the Palestinians is an important issue affecting American and international policy.

The conflict between the State of Israel and the Palestinians is an important issue affecting American and international policy. While the United States has a longstanding policy of political, military, and economic support for Israel, it often must balance such support with its relations with Arab nations and its commitment to a Palestinian state.

The conflict dates back to early Arab opposition to Jewish national sovereignty and numerous wars fought between Israel and neighboring Arab states. However, many currently consider the central foreign policy issue to be the creation of an independent Palestinian state next to the existing Jewish state of Israel. Most of the West Bank and the Gaza Strip, territories taken by Israel during the Six-Day War in 1967, are considered acceptable locations for a future Palestinian state.

Numerous efforts have been made to achieve peace through a negotiated settlement between the Israeli government and its Palestinian counterparts. Most prominently, the Oslo Accords of 1993 allowed the Palestinian National Authority to have autonomy over large parts of the West Bank and the Gaza Strip, although a campaign of terrorism from Palestinian extremist groups and the assassination of Israeli Prime Minister Yitzhak Rabin in 1995 would derail further negotiations.

Figure 5.7.10: The signing of the Oslo Accords in 1993.

Current issues for negotiations include mutual recognition, borders, terrorism and security, water rights, control of Jerusalem, Israeli settlements, Palestinian incitement, and finding a solution for Palestinian refugees from Israel's War of Independence in 1948. Another challenge is the lack of unity among Palestinians, reflected in the political struggle between Fatah, which controls the Palestinian areas of the West Bank, and the terrorist group Hamas, which has controlled the Gaza Strip since Israel's withdrawal from that territory in 2005.

Humanitarian Aid

Humanitarian aid is material or logistical assistance in response to crises including natural and man-made disasters.

Humanitarian aid is material or logistical assistance in response to crises including natural and man-made disasters. The primary objective of humanitarian aid is to save lives, alleviate suffering and maintain human dignity. Humanitarian aid differs from development aid, which seeks to address the underlying socioeconomic factors leading to a crisis.

Aid is funded by donations from individuals, corporations, governments and other organizations. The funding and delivery of humanitarian aid have become increasingly international in scope. This makes it much more responsive and effective in coping with major emergencies. With humanitarian aid efforts sometimes criticized for a lack of transparency, the humanitarian community has initiated a number of inter-agency initiatives to improve its accountability, quality, and performance.

The People in Aid initiative, for example, links seven areas that would improve the operations of aid organizations - health, safety, and security learning; training and development; recruitment and selection; consultation and communication; support management and leadership; staff policies and practices; and human resources strategy.

Prominent humanitarian organizations include Doctors Without Borders, Mercy Corps and the International Red Cross. Major humanitarian projects include the Berlin Airlift, in which U.S. and U.K governments flew supplies into the Western-held sectors of Berlin during the Soviet blockade of 1948-1949. Another example is the aid efforts for refugees felling from the fighting in Bosnia and Kosovo in 1993 and 1999, respectively.

Figure 5.7.11

Study/Discussion Questions

1. Why/how does a nation's international trade operations translate to political foreign policy?
2. How did the Bretton Woods Agreement contribute to Post World War II foreign relations?
3. What is the purpose/role of the World Trade Organization?
4. How does international trade contribute to globalization?
5. What is the anti-globalization movement?
6. Why has immigration become such a hot button foreign relations issue in the United States? What is your view on the current state of immigration policy? Explain your answer with research-based evidence.
7. How has terrorism changed U.S. foreign relations? Give examples.
8. What threat do nuclear weapons pose today? How is this threat different from that of the "cold war era?"
9. What do you see as the future of U.S. foreign policy in Afghanistan and Iraq? Can this nation ever "break free" of its military and security commitments to these nations? Defend your answer with examples and evidence.
10. Even though China is considered a Communist nation with a poor human rights record, the United States maintains a political and trade relationship with this nation. Why do you think this is the case? What changes in American foreign policy with China would you recommend?

Research

1. List and discuss some contemporary problems and issues that you see as creating a barrier to foreign trade and political relations between nations.

2. President Obama recently began to "thaw" foreign relations with Cuba for the first time in close to 60 years. Do some Internet database research on U.S. foreign relations with Cuba and write a report on whether or not the United States should pursue an open and normalized trade and political relationship with Cuba. Provide evidence to support your position.

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5.8: Issues Raised by Judicial Activism and Judicial Restraint

Figure 5.8.1: The Supreme Court hears cases that involve the Constitution or laws.

Established by the United States Constitution, the Supreme Court began to take shape with the passage of the Judiciary Act of 1789 and has enjoyed a rich history since its first assembly in 1790. The Supreme Court is deeply tied to its traditions: Of the federal government's three branches, the Court bears the closest resemblance to its original form – a 225 year old legacy.

Figure 5.8.2

Judicial Activism

Judicial Activism is when the court strikes down a duly enacted law created by Congress. That is the FORMAL meaning, its descriptive meaning, but in politics, commentators and critics often call a decision to strike down a law "judicial activism" if they don't like the court's action. If they do like the court's decision, they don't use that term.

The suspicion is that the judge is striking down a law due to personal reasons. The controversy with judicial activism is the perception that it crosses the scope of the Judicial branch; thereby negating the separation of powers.

The 2008 Republican platform declared that "judicial activism is a grave threat to the rule of law because unaccountable federal judges are usurping democracy, ignoring the Constitution and its separation of powers, and imposing their personal opinions upon the public."

Cases that Demonstrate Judicial Activism:

Engel v. Vitale

Facts of the Case

The Board of Regents for the State of New York authorized a short, voluntary prayer for recitation at the start of each school day. This was an attempt to defuse the politically potent issue by taking it out of the hands of local communities. The blandest of invocations read as follows: "Almighty God, we acknowledge our dependence upon Thee, and beg Thy blessings upon us, our teachers, and our country."

Question

Does the reading of a nondenominational prayer at the start of the school day violate the "establishment of religion" clause of the First Amendment?

Conclusion

Decision: 6 votes for Engel, 1 vote(s) against

Legal provision: Establishment of Religion

Yes. Neither the prayer's nondenominational character nor its voluntary character saves it from unconstitutionality. By providing the prayer, New York officially approved religion. This was the first in a series of cases in which the Court used the establishment clause to eliminate religious activities of all sorts, which had traditionally been a part of public ceremonies. Despite the passage of time, the decision is still unpopular with many Americans.

Importance

Prohibited organized prayer in public schools and has become an important linchpin in the current "separation of church and state" policies. This remains a hotly debated topic with extreme divisiveness and disagreement on both sides of the debate. Ultimately, this case created a clear boundary between the business of government and the institution/endorsement of religious practices in public institutions (primarily public schools but extended to other government institutions at the federal, state, and local level as well)

Miranda v. Arizona (1966)

Facts of the Case

The Court was called upon to consider the constitutionality of a few instances, ruled on jointly, in which defendants were questioned: "while in custody or otherwise deprived of [their] freedom in any significant way." In Vignera v. New York, the petitioner was questioned by police, made oral admissions, and signed an inculpatory statement all without being notified of his right to counsel. Similarly, in Westover v. United States, the petitioner was arrested by the FBI, interrogated, and made to sign statements without being notified of his right to counsel. Lastly, in California v. Stewart, local police held and interrogated the defendant for five days without notification of his right to counsel. In all these cases, suspects were questioned by police officers, detectives, or prosecuting attorneys in rooms that cut them off from the outside world. In none of the cases were suspects given warnings of their rights at the outset of their interrogation.

Question

Does the police practice of interrogating individuals without notifying them of their right to counsel and their protection against self-incrimination violate the Fifth Amendment?

Conclusion

Decision: 5 votes for Miranda, 4 vote(s) against

Legal provision: Self-Incrimination

The Court held that prosecutors could not use statements stemming from custodial interrogation of defendants unless they demonstrated the use of procedural safeguards "effective to secure the privilege against self- incrimination." The Court noted that "the modern practice of in-custody interrogation is psychologically rather than physically oriented" and that "the blood of the accused is not the only hallmark of an unconstitutional inquisition." The Court specifically outlined the necessary aspects of police warnings to suspects, including warnings of the right to remain silent and the right to have counsel present during interrogations.

Importance

In a 5-4 vote, the Court agreed that Miranda's rights had been violated and ordered his conviction struck down. Today, the issues of due process and the rights of those accused of a crime are still of great importance. While some may argue that protecting individual rights of accused persons places an undue burden on the victims of crimes and makes it harder for the state to get a conviction there are those who also argue that having too few protections for the accused would result in abuses of power. They fear that innocent people might be subject to coercion through violence resulting in false confessions. The courts are required to balance the rights of those who are accused of crimes with the rights and protections that society must afford to those who would be the victim of a crime. We see this decision on every "police officer show" and in the news when people are arrested or interrogated and are read the famous "Miranda Warning."

Example Miranda Warning:

> *You have the right to remain silent when questioned. Anything you say or do may be used against you in a court of law. You have the right to consult an attorney before speaking to the police and to have an attorney present during questioning now or in the future. If you cannot afford an attorney, one will be appointed for you before any questioning, if you wish. If you decide to answer any questions now, without an attorney present, you will still have the right to stop answering at any time until you talk to an attorney. Knowing and understanding your rights as I have explained them to you, are you willing to answer my questions without an attorney present?*

Figure 5.8.3

Judicial Restraint

Judicial restraint is a theory of judicial interpretation that encourages judges to limit the exercise of their own power. It asserts that judges should hesitate to strike down laws unless they are obviously unconstitutional, though what counts as obviously unconstitutional is itself a matter of some debate. Judicial restraint is sometimes regarded as the opposite of judicial activism. In

deciding questions of constitutional law, judicially restrained jurists go to great lengths to defer to the legislature. Judicially restrained judges respect *stare decisis*, the principle of upholding established precedent handed down by past judges

Those who hold judicial restraint views believe that the courts should leave policy decisions to the legislative and executive branches. Advocates of this view argue that the federal courts, composed of unelected judges, are the least democratic branch of government and that judges should not get involved with politics.

Example of Judicial Restraint

Schenck v. United States (1919)

Facts of the Case

During World War I, Schenck mailed circulars to draftees. The circulars suggested that the draft was a monstrous wrong motivated by the capitalist system. The circulars urged "Do not submit to intimidation" but advised only peaceful action such as petitioning to repeal the Conscription Act. Schenck was charged with conspiracy to violate the Espionage Act by attempting to cause insubordination in the military and to obstruct recruitment.

Question

Are Schenck's actions (words, expression) protected by the free speech clause of the First Amendment?

Conclusion

Decision: 9 votes for United States, 0 vote(s) against

Legal provision: 1917 Espionage Act; US Constitution Amendment 1

Holmes, speaking for a unanimous Court, concluded that Schenck is not protected in this situation. The character of every act depends on the circumstances. "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." During wartime, utterances tolerable in peacetime can be punished.

Importance

This decision limited First Amendment right to free speech if it imposes a “clear and present danger” to the security of the United States or its people.

Figure 5.8.4

Judicial Review

Judicial Review is the power of the courts to overturn laws or other actions of Congress and the Executive Branch based on their constitutionality. This principle allows courts to establish quasi-legislation (legislation created from the bench) which often leads to accusations of “judicial activism”.

The Constitution is silent on the subject of judicial review, so the Supreme Court gave itself and lower courts power of judicial review in case of *Marbury vs. Madison*. Judicial review is rarely used. In fact, the Court has struck down only around 170 national laws (less than .25 percent of all passed) and around 1400 state laws in its more than 200-year history.

Figure 5.8.5

Study/Discussion Questions

1. Define Judicial Activism.

2. Explain why Judicial Activism is considered controversial.

3. Define Judicial Revies.

4. Explain how the case of Schenk v. United States illustrated a "clear and present" danger.

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5.9: U.S. Governmental Policies or Court Decisions Affecting Racial, Ethnic, or Religious Groups

President Obama and Hillary Clinton Picture

Figure 5.9.1: In 2008, a mixed-race man (Barrack Obama) and a white woman (Hillary Clinton) make history as the leading contenders for the Democratic nomination for president.

The campaign for the Democratic party's nomination for president in 2008 culminated in a contest between a mixed-race man and a white woman. Both candidates addressed their identities directly and with pride. Barack Obama gave a notable speech about race, saying that black anger and white resentments were grounded in legitimate concerns and that Americans must work together to move beyond their racial wounds. Conceding defeat in June, Hillary Clinton told her supporters, "Although we weren't able to shatter that highest, hardest glass ceiling this time, it's got about eighteen million cracks in it."

Civil rights protect people against discrimination. They focus on equal access to society and to political activities such as voting. They are pursued by disadvantaged groups who, because of a single characteristic, have historically been discriminated against. In this chapter, we consider race and ethnicity, gender, sexual orientation, and disability.

Video: An Introdction to the Civil Rights Era

The Civil War Amendments

Equality did not enter the Constitution until the Civil War Amendments (the Thirteenth, Fourteenth, and Fifteenth) set forth the status and rights of former slaves.

The Thirteenth Amendment

In early 1865, with the Union's triumph in the Civil War assured, Congress passed the Thirteenth Amendment. Quickly ratified by victorious Union states, it outlawed slavery and "involuntary servitude." It authorized Congress to pass laws enforcing the amendment—giving it the power to eradicate not simply slavery but all "badges of servitude."

Abraham Lincoln, assassinated in 1865, was succeeded as president by Andrew Johnson who pushed for a quick reunion of North and South. Republicans in Congress feared that the rights of newly freed slaves would be denied by a return to the old order. Distrusting Johnson, they decided protections had to be put into the Constitution. Congress enacted the Fourteenth Amendment in 1868 and made its ratification a condition for the Southern states' reentry into the Union.

The Fourteenth Amendment

First, anyone born in the United States is a U.S. citizen, and anyone residing in a state is a citizen of that state. So it affirmed African Americans as U.S. and state citizens.

Second, the amendment bars states from depriving anyone, whether a citizen or not, of "life, liberty, or property, without due process of law." It thereby extended the Bill of Rights' due process requirement on the federal government to the states.

Third, the amendment holds that a state may not "deny to any person within its jurisdiction the equal protection of the laws." This equal protection clause is the Supreme Court's major instrument for scrutinizing state regulations. It is at the heart of all civil rights. Though the clause was designed to restrict states, the Supreme Court has ruled that it applies to the federal government, too.

The Fifteenth Amendment

The 15th Amendment, ratified in 1870, bars federal and state governments from infringing on a citizen's right to vote "on account of race, color, or previous condition of servitude."

The Bill of Rights limited the powers of the federal government; the Civil War Amendments expanded them. These amendments created new powers for Congress and the states to support equality. They recognized for the first time a right to vote.

Political debate and conflict surround how, where, and when civil rights protections are applied. The complex U.S. political system provides opportunities for disadvantaged groups to claim and obtain their civil rights. At the same time, the many divisions built into the Constitution by the separation of powers and federalism can be used to frustrate the achievement of civil rights.

The status of African Americans continued to be a central issue of American politics after the Civil War.

Disenfranchisement and Segregation

The federal government retreated from the Civil War Amendments that protected the civil rights of African Americans. Most African Americans resided in the South, where almost all were disenfranchised and segregated by the end of the 19th century by Jim Crow laws that enforced segregation of public schools, accommodation, transportation, and other public places.

Link: Jim Crow Laws

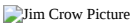

Figure 5.9.2

Jim Crow in Durham - "Jim Crow" was a derogatory term for African Americans, named after "Jump Jim Crow," a parody of their singing and dancing as performed by a white actor in blackface.

Voting Rights

Enforcing the 15th Amendment's right to vote proved difficult and costly. Blacks voted in large numbers but faced violence from whites. Vigilante executions of blacks by mobs for alleged or imagined crimes reached new highs. In 1892 alone, 161 lynchings were documented, and many more surely occurred.

In 1894, Democrats took charge of the White House and both houses of Congress for the first time since the Civil War. They repealed all federal oversight of elections and delegated enforcement to the states. Southern states quickly restricted African American voting. They required potential voters to take a literacy test or to interpret a section of the Constitution. Whites who failed an often easier test might still qualify to vote by virtue of a "grandfather clause," which allowed those whose grandfathers had voted before the Civil War to register.

The Supreme Court also reduced the scope of the Civil War Amendments by nullifying federal laws banning discrimination. The Court ruled that the Fourteenth Amendment did not empower the federal government to act against private persons.

De jure segregation—the separation of races by the law—received the Supreme Court's blessing in the 1896 case of *Plessy v. Ferguson*. A Louisiana law barred whites and blacks from sitting together on trains. A Louisiana equal rights group, seeking to challenge the law, recruited a light-skinned African American, Homer Plessy, to board a train car reserved for whites. Plessy was arrested. His lawyers claimed the law denied him equal protection. By a vote of 8–1, the justices ruled against Plessy, stating that these accommodations were acceptable because they were "separate but equal." Racial segregation did not violate equal protection, provided both races were treated equally.

Plessy v. Ferguson gave states the green light to segregate on the basis of race. "Separate but equal" was far from equal in practice. Whites rarely sought access to areas reserved for blacks, which were of inferior quality. Such segregation extended to all areas of social life, including entertainment media. Films with all-black or all-white casts were shot for separate movie houses for blacks and whites.

Mobilizing Against Segregation

At the dawn of the twentieth-century, African Americans, segregated by race and disenfranchised by law and violence, debated how to improve their lot. One approach accepted segregation and pursued self-help, vocational education, and individual economic advancement. Its spokesman, Booker T. Washington, head of Alabama's Tuskegee Institute, wrote the best-selling memoir *Up from Slavery* (1901) and worked to build institutions for African Americans, such as colleges for blacks only. Sociologist W. E. B. Du Bois replied to Washington with his book *The Soul of Black Folk* (1903), which argued that blacks should protest and agitate for the vote and for civil rights. Du Bois's writings gained the attention of white and black Northern reformers who founded the National Association for the Advancement of Colored People (NAACP) in 1909. Du Bois served as director of publicity and research, investigating inequities, generating news, and going on speaking tours.

The NAACP brought test cases to court that challenged segregationist practices. Its greatest successes came starting in the 1930s, in a legal strategy led by Thurgood Marshall, who would later be appointed to the Supreme Court. Marshall urged the courts to nullify programs that provided substandard facilities for blacks on the grounds that they were a violation of "separate but equal." In a key 1937 victory, the Supreme Court ruled that, by providing a state law school for whites without doing the same for blacks, Missouri was denying equal protection. Such triumphs did not threaten segregation but made Southern states take "separate but equal" more seriously, sometimes forcing them to give funds for black colleges, which became centers for political action.

During World War I, Northern factories recruited rural Southern black men for work, starting a "Great Migration" northward that peaked in the 1960s. In Northern cities, African Americans voted freely, had fewer restrictions on their civil rights, organized themselves effectively, and participated in politics. They began to elect black members of Congress and built prosperous black newspapers. When the United States entered World War II, many African Americans were brought into the defense industries and the armed forces. Black soldiers who returned from fighting for their country engaged in more militant politics.

President Harry S.Truman saw black citizens as a sizable voting bloc, a group of voter motivated by a specific cause or concern. In 1946, he named an advisory commission to recommend civil rights policies. Amid his 1948 election campaign, Truman issued executive orders that adopted two of its suggestions: desegregating the armed forces and creating review boards in each cabinet department to monitor discrimination. With the crucial help of Northern black votes, Truman won in an upset.

The End of *De Jure* Segregation

In the 1940s, Supreme Court decisions on lawsuits brought by the NAACP and argued by Thurgood Marshall chipped away at "separate but equal." In 1941, Arthur Mitchell, a black member of Congress from Chicago, was kicked out of a first-class sleeping car when his train entered Arkansas. The Court ruled that the Arkansas law enforcing segregation was unconstitutional. In 1944, the Court ruled that the 15th Amendment barred Texas from running an all-white primary election. In 1948, it stopped enforcement of covenants that home buyers signed that said they would not resell their houses to blacks or Jews.

Marshall decided to force the justices to address the issue of segregation directly. He brought suit against school facilities for blacks that were physically equal to those for whites. With the 1954 decision, *Brown v. Board of Education*, the Supreme Court overturned *Plessy v. Ferguson*and ruled unanimously that racial segregation in public education violated the Constitution.

Video: Brown v. Board of Education

Only six percent of Southern schools had begun to desegregate by the end of the 1950s. In 1957, Arkansas Governor Orval Faubus, backed by white mobs, mobilized the National Guard to fight a federal court order to desegregate Little Rock's public schools. President Eisenhower took charge of the Arkansas National Guard and called up US troops to enforce the order. Television images of the nine Little Rock students attempting to enter Central High surrounded by troops and an angry mob brought the struggle for civil rights into American living rooms.

Link: Central High Conflicts

Figure 5.9.3

Learn more about the conflicts at Central High online at Little Rock Central High School National Historic Site.

The Effects of *De Facto* Segregation

While the Supreme Court effectively put an end to *De Jure* segregation (segregation enforced by law) with the landmark case of *Brown v. Board of Education* and through federal legislation such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965, it was limited in its ability to change the way people acted towards each other. Centuries of cultural segregation between whites and blacks could not be ended by simply changing the law or enforcing federal control over the states. It takes many generations to change the way people think and act towards each other. When people are segregated through tradition, behavior, and custom, this is called *De Facto Segregation*.

In Southern states, the tradition of *De Jure* segregation (Jim Crow Laws) were ended during the Civil Rights era of the 1950s and 1960s BUT many Northern states had long-held traditions of *De Facto* segregation which were reinforced through unofficial (yet equally crippling) forms of segregation. When African Americans began to move to northern states in the late 1800s, this was called "The Great Migration." Yet as the "Great Migration" took place, many urban whites began to leave the cities and moved to newly established suburbs (particularly in the 1940s through 1970s). This has been characterized by the term *"White Flight"* and is the best example of how *De Facto* segregation continued even as *De Jure* segregation was ending in the South.

As a result of "white flight" in such large cities as Boston, Massachusetts, many urban schools became segregated, not through law but through action, as white families fled the inner city for suburban school districts, leaving inner city schools underfunded and unable to provide the same level of education as their suburban neighbors. In response to this phenomenon, the federal courts began to take action in the late 1960s and early 1970s through a system of forced bussing which required white students from the suburbs to be sent to inner city schools and allowed predominantly African American students from the inner city to attend schools in the suburban school districts.

As one might expect, this was not a popular decision among the families of students who were bussed from suburban neighborhoods to inner city schools. In the late 1990s, the last of the forced-bussing plans was ended by the federal courts as the

level of integration in urban and suburban school districts was deemed to be equal, and the system was argued to be no longer necessary. There is a great deal of evidence even today that *De Facto* segregation is still a problem and equal access to a quality education has yet to be achieved.

More Information about De Facto Segregation:

Go to the links below to discover more about the history of De Facto Segregation and the forced-busing system in Boston.

http://en.Wikipedia.org/wiki/Boston_busing_desegregation

http://socialistworker.org/2013/03/29/struggle-for-busing

http://greatergreaterwashington.org/post/19285/de-facto-segregation-threatens-montgomery-public-schools/

http://www.wbur.org/2014/09/05/boston-busing-anniversary

http://www.wbur.org/2014/09/05/boston-busing-effects

The Civil Rights Act of 1964, enacted July 2, 1964, is a landmark civil rights and labor law in the United States that outlaws discrimination based on race, color, religion, sex, or national origin. It prohibits the unequal application of voter registration requirements, and racial segregation in schools, employment, and public accommodations.

Initially, powers given to enforce the act were weak, but these were supplemented during later years. Congress asserted its authority to legislate under several different parts of the United States Constitution, principally its power to regulate interstate commerce under Article One, its duty to guarantee all citizens equal protection of the laws under the Fourteenth Amendment, and its duty to protect voting rights under the Fifteenth Amendment.

The legislation had been proposed by President John F. Kennedy in June 1963, but opposed by filibuster in the Senate. After Kennedy was assassinated in November 1963, President Lyndon B. Johnson pushed the bill forward, which in its final form was passed in the U.S. Congress by a Senate vote of 73–27 and House vote of 289–126. The Act was signed into law by President Johnson on July 2, 1964, at the White House.

Affirmative Action

In recent years, the main mass-media focus on African American civil rights has been affirmative action: efforts made or enforced by government to achieve equality of opportunity by increasing the percentages of racial and ethnic minorities and women in higher education and the workplace. Most members of racial and ethnic minorities support affirmative action; majorities of whites are opposed. Supporters tend to focus on remedying the effects of past discrimination; opponents respond that the government should never discriminate on the basis of race. The media largely frame the issue as a question of one side winning and the other side losing.

The Supreme Court first weighed in on affirmative action in 1978. Allan Bakke, a white applicant, was denied entrance to the medical school of the University of California, Davis. Bakke noted that his test scores were higher than other applicants admitted on a separate track for minorities. He sued, charging “reverse discrimination.” The Court concluded that UC Davis’s approach of separating white and minority applicants into two separate groups violated the principle of equal protection. School programs like Harvard’s, which considered race as one of many criteria, were permissible.

Grutter vs. Bollinger

The 2003 Supreme Court decision in *Grutter vs. Bollinger* affirmed this position by voiding the undergraduate admission program at the University of Michigan that added points to a candidate’s application on the basis of race but upholding the graduate admission approach that considered race in a less quantitative way.

The United State Supreme Court case of *Grutter v. Bollinger* (539 U.S. 306, (2003) would ultimately uphold the use of an affirmative action admissions policy at the University of Michigan Law School with an extremely close 5-4 decision on June 23, 2003.

In 1996, Ms. Grutter, applied to the University of Michigan Law School and despite her 3.8 GPA and 161 LSAT score was ultimately denied admission. Ms. Grutter would allege that she was rejected because the Law School uses race as a “predominant” factor, giving applicants belonging to certain minority groups a significantly greater chance of admission than students with similar

credentials from disfavored racial groups; and that the university had "no compelling interest to justify that use of race." Ms. Grutter was basically alleging that the school had discriminated against her on the basis of race in violation of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and 42 U.S.C. § 1981. In essence, she claimed "reverse discrimination" in that she was denied enrollment not because she wasn't academically qualified but because she was white.

This case would first go to the District Court, where it was ruled that the Law School's use of race as an admissions factor was, indeed, unlawful. The district court concluded that the law school's use of race as a factor in making admission decisions was unlawful and initially granted the Ms. Grutter's request to stop the law school from using race as a factor in its admissions decisions. But as the case proceeded through the appeals process, the Sixth Circuit reversed the lower court's decision justifying their decision on the basis of a Supreme Court case that took place almost 25 years earlier (*California v. Bakke* 1978) which considered the topic of race classifications as an important tool in achieving minority equality in university admissions.

When the case was argued before the Supreme Court, the justices affirmed the Sixth Circuit's reversal of the District Court decision, thereby upholding the University's admissions policy. Their decision was based on the Equal Protection Clause of the Fourteenth Amendment which provides that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The United States Supreme Court, in the Grutter decision, determined that a Michigan law school's admissions program, designed to reach the goal of attaining a "critical mass" of underrepresented minority students by using race as a "plus factor" in admissions decisions to promote student body diversity, met the requirements of the Equal Protection Clause.

The majority of justices in the Grutter case held that "the Law School had a compelling interest in attaining a diverse student body" and that the Law School's plan was narrowly tailored to that end but that the Law School's program had to have a "logical endpoint," probably in about 25 years. But as a reaction to this ruling the people of Michigan held a public referendum (vote) in November 2006 and a majority of voting Michiganders (58%), apparently disagreeing with the Court majority, passing the referendum and banning state-education affirmative action, essentially negating the effect of Grutter in Michigan (*Grutter v. Bollinger*, 2003).

Fisher v. University of Texas and the Future of Affirmative Action

In the fall of 2012, the Supreme Court heard oral arguments from attorneys representing Abigail Fisher – a young woman denied entrance to the University of Texas in 2008 – and the U.S. Solicitor General representing the university. Ms. Fisher, a Caucasian woman, filed suit against the university claiming it violated the equal protection clause of the 14th Amendment when it used race as a factor during its admissions selection process. Previous affirmative action cases involving admissions to publicly funded universities, such as UCLA and the University of Michigan, set a precedent that race could be used as a factor in admissions. However, Ms. Fisher contends that the University of Texas' policy of using race does not meet the standard set in those cases.

Universities nationwide have used race as a factor when determining which students to admit because they claim to have a compelling interest to create a "critical mass" of diverse students make up their student body. Roughly half (49.9%) of the students at the University of Texas are Caucasian and the remaining half are minority and international students. Until recently, the University of Texas has practiced a Top Ten Percent (TTP) policy where any student in the top ten percent of their class automatically is accepted to the university.

Over 80% of the student body at UT is accepted this way. Given the de facto racial segregation of the school districts throughout Texas, the TTP policy diversifies the overall student body makeup at the UT. The remaining 20% of students are admitted based on test scores, grades, and a Personal Achievement Index (PAI). Some of the factors within the PAI are written essays, leadership experience, and race. Ms. Fisher was in the top twelve percent of her class and believes she did not get accepted to UT because of the race component of the PAI.

The question before the Court is to what extent may race be a factor in the admissions process at the University of Texas? The Court ruled in a 4-3 majority that the university's consideration of race in the admissions process did not violate the Equal Protection Clause of the 14th Amendment.

Civil Rights Issues Persist

The legacy of slavery and segregation is evident in not only the higher rates of poverty, unemployment, and incarceration but also the lower life expectancy and educational test scores of African Americans compared to whites. Visitors to the website of the

NAACP will find many subjects connected to race, such as police practices of racial profiling of suspects. But the NAACP also deals with issues that disproportionately affect African Americans and that some might think to have "nothing to do with race." These include a practice the NAACP labels "environmental racism," whereby polluting factories are placed next to poor, largely African American neighborhoods.

The mass media tend to focus on incidents of overt discrimination rather than on damage caused by the poverty, poor education, and environmental hazards that disadvantaged groups often face. This media frame explains why television reporters, facing the devastation of New Orleans by Hurricane Katrina, were so thunderstruck by the overwhelming number of black faces among the victims. The topic of black urban poverty is simply not something the press routinely covers.

Other Minorities

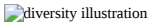

Figure 5.9.4

Policies protecting African Americans' civil rights automatically extend to other racial and ethnic minorities. Most prominent of these groups are Latinos, Asian Americans, and Native Americans. They all have civil rights concerns of their own.

Latinos

Latinos have displaced African Americans as the largest minority group in the United States. They are disproportionately foreign-born, young, and poor. They can keep in touch with issues and their community through a burgeoning Spanish-language media. Daily newspapers and national television networks, such as Univisión, provide a mix of news and advocacy.

Politicians court Latinos as a growing bloc of voters. [1] As a result, Latinos have had some success in pursuing civil rights, such as the use of Spanish in voting and teaching. After Latino groups claimed that voting rights were at risk for citizens not literate in English, the Voting Rights Act was amended to require ballots to be available in a language other than English in election districts where that language was spoken by five percent or more of the electorate. And the Supreme Court has ruled that school districts violate the Civil Rights Act of 1964 when students are taught in a language that they do not understand. [2]

Latino success has not carried over to immigration. [3] Illegal immigrants pose vexing questions in terms of civil rights. If caught, should they be jailed and expelled? Should they be eligible to become citizens?

In 2006, Congressman Jim Sensenbrenner (R-WI) introduced legislation to change illegal immigration from a violation of civil law to a felony and to punish anyone who provided assistance to illegal immigrants, even church ministers. Hundreds of thousands rallied in cities across the country to voice their opposition. President George W. Bush pushed for a less punitive approach that would recognize illegal immigrants as "guest workers" but would still not allow them to become citizens.

Other politicians have proposed legislation. Mired in controversy, none of these proposals have become law. President Obama revisited one aspect of the subject in his 2011 State of the Union message:

> *"Today, there are hundreds of thousands of students excelling in our schools who are not American citizens. Some are the children of undocumented workers, who had nothing to do with the actions of their parents. They grew up as Americans and pledge allegiance to our flag, and yet they live every day with the threat of deportation.…It makes no sense.*
>
> *Now, I strongly believe that we should take on, once and for all, the issue of illegal immigration. I am prepared to work with Republicans and Democrats to protect our borders, enforce our laws, and address the millions of undocumented workers who are now living in the shadows. I know that debate will be difficult and take time.* [4]

President Trump's controversial plan to build a wall along the border has once agian stirred the pot of racial segreagation and discrimination. Additionally, the practice of separating illegal immigrant children from their parents at border crossings and keeping them in fenced areas or tent cities has provoked an outcry from leaders across the country.

Video: How Donald Trump Plans to Build a U.S.-Mexico Border Wall

Hernandez v. Texas

Pete Hernandez, an agricultural worker, was indicted for the murder of Joe Espinoza by an all-Anglo (white) grand jury in Jackson County, Texas. Claiming that Mexican-Americans were barred from the jury commission that selected juries, and from petit juries, Hernandez' attorneys tried to quash the indictment. Moreover, Hernandez tried to quash the petit jury panel called for service because persons of Mexican descent were excluded from jury service in this case. A Mexican-American had not served on a jury in Jackson County in over 25 years and thus, Hernandez claimed that Mexican ancestry citizens were discriminated against as a special class in Jackson County. The trial court denied the motions. Hernandez was found guilty of murder and sentenced by the all-Anglo jury to life in prison. In affirming, the Texas Court of Criminal Appeals found that "Mexicans are...members of and within the classification of the white race as distinguished from members of the Negro Race" and rejected the petitioners' argument that they were a "special class" under the meaning of the Fourteenth Amendment. Further, the court pointed out that "so far as we are advised, no member of the Mexican nationality" challenged this classification as white or Caucasian.

Question Before the Court

Is it a denial of the Fourteenth Amendment equal protection clause to try a defendant of a particular race or ethnicity before a jury where all persons of his race or ancestry have, because of that race or ethnicity, been excluded by the state?

The Ruling of the Court

In a unanimous 9-0 ruling, the Supreme Court said “Yes”. The Court held that the Fourteenth Amendment protects those beyond the two classes of white or Negro, and extends to other racial groups in communities depending upon whether it can be factually established that such a group exists within a community. In reversing, the Court concluded that the Fourteenth Amendment "is not directed solely against discrimination due to a 'two-class theory'" but in this case covers those of Mexican ancestry. This was established by the fact that the distinction between whites and Mexican ancestry individuals was made clear at the Jackson County Courthouse itself where "there were two men's toilets, one unmarked, and the other marked 'Colored Men and 'Hombres Aqui' ('Men Here')," and by the fact that no Mexican ancestry person had served on a jury in 25 years. Mexican Americans were a "special class" entitled to equal protection under the Fourteenth Amendment.

To learn more about Latino civil rights, visit the National Council of La Raza online at UnidosUS.

Asian Americans

Many landmark cases on racial discrimination going back to the nineteenth century stemmed from suits by Asian Americans. World War II brought more discrimination out of an unjustified, if not irrational, fear that some Japanese Americans might be loyal to Japan and thus commit acts of sabotage against the United States: the federal government imposed curfews on them. Then after President Roosevelt signed Executive Order 9066 on February 19, 1942, roughly 120,000 Japanese Americans (62 percent of them U.S. citizens) were forcibly moved from their homes to distant, desolate relocation camps. Ruling toward the end of the war, the Supreme Court did not strike down the internment policy, but it did hold that classifying people by race is unconstitutional. [5]

Japanese Americans who had been interred in camps later pressed for redress. Congress eventually responded with the Civil Liberties Act of 1988, whereby the U.S. government apologized to and compensated camp survivors. [6]

Korematsu v. United States

On December 18, 1944, the Supreme Court handed down one of its most controversial decisions when it upheld the government's decision to intern of all persons of Japanese ancestry (both alien and non-alien) on the grounds of national security. Over two-thirds of the Japanese in America were citizens, and the internment took away their constitutional rights.

In 1942, Fred Korematsu, a 22-year-old Japanese American, refused an evacuation order and was arrested, then convicted of a felony. He challenged his conviction in court on constitutional grounds, and the case was appealed to the Supreme Court. Korematsu lost his Supreme Court case in a 6-3 decision, but when new evidence surfaced 40 years later proving the government had withheld evidence, Korematsu went back to federal court to have his conviction vacated. This time, he won.

> *As long as my record stands in federal court, any American citizen can be held in prison or concentration camps without trial or hearing. I would like to see the government admit they were wrong and do something about it, so this will never happen again to any American citizen of any race, creed, or color. Fred Korematsu (1983), on his decision to again challenge his conviction 40 years later*

Today, however, the troublesome Supreme Court precedent still stands as "good law." Fred Korematsu was an ordinary citizen who took an extraordinary stand. Through his pursuit of justice, the country learned about what can happen when national security trumps civil liberties.

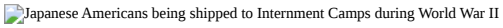

Figure 5.9.5: Japanese Americans being shipped to internment camps during World War II.

Asian Americans have united against discrimination. During the Vietnam era, Asian American students opposing the war highlighted its impact on Asian populations. Instead of slogans such as "Bring the GIs home," they chanted, "Stop killing our Asian brothers and sisters."

These Asian American student groups—and the periodicals they spawned—provided the foundation for a unified Asian American identity and politics. [7]

A dazzling array of Asian American nationalities, religions, and cultures has emerged since 1965 after restrictions on immigration from Asia were removed. Yet vestiges of discrimination remain. For example, Asian Americans are paid less than their high education would warrant. [8] They point to mass-media stereotypes as contributing to such discrimination.

Native Americans

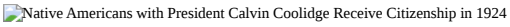

Figure 5.9.6: Native Americans from the Osage tribe have their picture taken with President Calvin Coolidge after he signed legislation officially granting citizenship to Native Americans in 1924.

Native Americans represent many tribes with distinct languages, cultures, and traditions. Nowadays, they obtain protection against discrimination just as members of other racial and ethnic groups do. Specifically, the Indian Civil Rights Act (ICRA) of 1968 guaranteed them many civil rights, including equal protection under the law and due process; freedom of speech, press, and assembly; and protection from unreasonable search and seizure, self-incrimination, and double jeopardy.

Native Americans' civil rights issues today center on tribal autonomy and self-government on Indian reservations. Thus some of the provisions of the Bill of Rights, such as the separation of church and state, do not apply to tribes. [9] Reservations may also legally discriminate in favor of hiring Native Americans.

For much of history, Native Americans residing outside of reservations were in legal limbo, being neither members of self-governing tribal nations nor US citizens. For example, in 1881, John Elk, a Native American living in Omaha, claimed that he was denied equal protection of the laws when he was prevented from voting. The Supreme Court ruled that since he was "born to an Indian nation," Elk was not a citizen and could not claim a right to vote. [10] Today, Native Americans living on or outside reservations vote as any other citizens.

Women

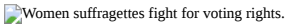

Figure 5.9.7: Women fought for the right to vote and were finally victorious when the 19th Amendment took effect in 1920.

Women constitute a majority of the population and of the electorate, but they have never spoken with a unified voice for civil rights, nor have they received the same degree of protection as racial and ethnic minorities.

The First Wave of Women's Rights

In the American republic's first years, the right to vote was reserved for property owners, most of whom were male. The expansion of the franchise to "universal white manhood suffrage" served only to lock in women's disenfranchisement.

Women's activism arose in the campaign to abolish slavery. Women abolitionists argued that the case against slavery could not be made as long as women did not have political rights as well. In 1848, women and men active in the antislavery movement, meeting in Seneca Falls, New York, adopted a Declaration of Sentiments. Emulating the Declaration of Independence, it argued that "all men and women are created equal" and cataloged "repeated injuries and usurpations on the part of man toward woman." [11]

After the Civil War, women abolitionists hoped to be rewarded with the vote, but women were not included in the Fifteenth Amendment. In disgust, Susan B. Anthony and Elizabeth Cady Stanton, two prominent and ardent abolitionists, launched an independent women's movement. [12] Anthony drafted a constitutional amendment to guarantee women's right to vote: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex." [13] Modeled on the 15th Amendment, it was introduced in the Senate in 1878.

At first, the suffragists demurely petitioned and testified. By 1910, their patience was at an end. They campaigned against members of Congress and picketed the White House. They went to jail and engaged in hunger strikes. Such efforts, widely publicized in the news, eventually paid off in 1920 when the 19th Amendment was added to the Constitution. [14]

Figure 5.9.8: Women picketing in front of the White House embarrassed President Woodrow Wilson during World War I. They pointed out that his promise "to make the world safe for democracy" did not include extending the vote to women. Wilson changed his position to one of support for the 19th Amendment.

The Second Wave of Women's Rights

When the vote won, the women's movement lost its central focus. Women were split by a proposed Equal Rights Amendment (ERA) to the Constitution, mandating equal treatment of men and women under the law. It was proposed in 1923 by well-to-do Republican working professional women but was opposed by women Democrats in labor unions, who had won "specific bills for specific ills"—minimum wage and maximum hours laws for working women. Meanwhile, women constituted an increasing proportion of voters and made inroads in party activism and holding office. [15]

Then came an unexpected breakthrough: Conservative Southern House members, hoping to slow down passage of the 1964 Civil Rights Bill, offered what they deemed frivolous amendments—one of which expanded the act to protect women. Northern and Southern male legislators joined in derision and laughter. The small contingent of congresswomen berated their colleagues and allied with Southern conservatives to pass the amendment.

Thus, the Civil Rights Act ended up also barring discrimination in employment based on sex. However, the Equal Employment Opportunity Commission (EEOC), created to implement the act, decided that its resources were too limited to focus on anything but race.

In 1967, women activists reacted by forming the National Organization for Women (NOW), which became the basis for a revived women's movement. NOW's first president was Betty Friedan, a freelance writer for women's magazines. Her 1963 best seller, *The Feminine Mystique*, showed that confining women to the domestic roles of wife and mother squelched opportunities for middle-class, educated women. [16] Women's organizations adopted the slogan "the personal is political." They pointed out that even when men and women in a couple worked outside the home equally, housework and child care fell more heavily on wives, creating a "second shift" limiting women's opportunity for political activism.

By 1970, Democrats and Republicans alike backed the ERA and women's rights. One House member, Bella Abzug (D-NY), later exulted, "We put sex discrimination provisions into everything. There was no opposition. Who'd be against equal rights for women?" [17]

Such laws could be far reaching. Title IX of the Education Act Amendments of 1972, outlawing sex discrimination in federally funded educational programs, prompted little debate when it was enacted. Today it is controversial. Some charge that it pushes funds to women's sports, endangering men's sports. Defenders respond that all of women's sports put together get less funding at universities than men's sports, such as basketball or football. [18]

NOW and other organizations focused on the ERA. It passed by huge bipartisan margins in the House in 1970 and the Senate in 1972; thirty of the thirty-eight states necessary to ratify approved it almost immediately. However, opposition to the ERA, led and generated by conservative women, arose among the general public, including women. While women working outside the home generally favored the ERA to fight job discrimination, housewives feared that the ERA would remove protection for them, such as the legal presumptions that women were more eligible than men for alimony after a divorce. The public's support of the ERA declined because of fears that it might allow military conscription of women and gay marriage. The political consensus crumbled, and in 1980, the Republican platform opposed ERA for the first time. ERA died in 1982 when the ratification process expired. [19]

Although women have made strides toward equality, they still fall behind on important measures. The United States is twenty-second among the thirty most developed nations in its proportion of women in Congress. The percentage of female state legislators and state elective officials is between 20 and 25 percent. The top twenty occupations of women are the same as they were fifty years ago: they work as secretaries, nurses, and grade school teachers and in other low-paid white-collar jobs.

Sexual Harrassment

In 1980, the EEOC defined sexual harassment as unwelcome sexual advances or sexual conduct, verbal or physical, that interferes with a person's performance or creates a hostile working environment. Such discrimination on the basis of sex is barred in the workplace by the Civil Rights Act of 1964 and in colleges and universities that receive federal funds by Title IX. In a series of decisions, the Supreme Court has ruled that employers are responsible for maintaining a harassment-free workplace. Some of the elements of a sexually hostile environment are lewd remarks and uninvited and offensive touching. [20]

Schools may be held legally liable if they have tolerated sexual harassment. [21]Therefore, they establish codes and definitions of what is and is not permissible. The College of William and Mary, for example, sees a power difference between students and teachers and prohibits any and all sexual contact between them. Others, like Williams College, seek to ensure that teachers opt out of any supervisory relationship with a student with whom they are sexually involved. The news often minimizes the impact of sexual harassment by shifting focus away from a public issue of systematic discrimination to the question of personal responsibility, turning the issue into a private "he said, she said" spat.[22]

Gay Rights

Gay people, lesbians and gay men are at the forefront of controversial civil rights battles today. They have won civil rights in several areas but not in others. [23]

Gay people face unique obstacles in attaining civil rights. Unlike race or gender, sexual orientation may or may not be an "accident of birth" that merits constitutional protection. The gay rights movement is opposed by religious conservatives, who see homosexuality as a flawed behavior, not an innate characteristic. Moreover, gay people are not "born into" a visible community and identity into which they are socialized. A history of ostracism prompts many to conceal their identities. According to many surveys of gay people, they experience discrimination and violence, actual or threatened.

Election exit polls estimate that lesbians, gay men, and bisexuals make up 4 percent of the voting public. When candidates disagree on gay rights, gays vote by a three-to-one margin for the more progay of the two. [24] Some progay policies are politically powerful. For instance, the public overwhelmingly condemns discrimination against gay people in the workplace.

The anti-Communist scare in the early 1950s spilled into worries about "sexual perverts" in government. Gay people faced harassment from city mayors and police departments pressured to "clean up" their cities of "vice."

The first gay rights movement, the small, often secretive Mattachine Society, emerged to respond to these threats. Mattachine's leaders argued that gay people, rather than adjust to society, should fight discrimination against them with collective identity and pride. Emulating the African American civil rights movement, they protested and confronted authorities. [25]

In June 1969, during a police raid at a gay bar in New York City's Greenwich Village, the Stonewall Inn, customers fought back. Street protests and violent outbursts followed over several days and catalyzed a mass movement. The Stonewall riots were

overlooked by network television and at best got only derisive coverage in the back pages of most newspapers. But discussion of the riot and the grievances of gay people blossomed in alternative newspapers such as *The Village Voice* and emerging weeklies serving gay urban enclaves. By the mid-1970s, a national newsmagazine, *The Advocate*, had been founded.

Lesbian and gay activists picked up a cue from the African American civil rights movement by picketing in front of the White House in 1965—in demure outfits—to protest government discrimination. Drawing on this new openness, media discussion in both news and entertainment grew dramatically from the 1950s through the 1960s.

By the early 1980s, the gay movement boasted national organizations to gather information, lobby government officials, fund electoral campaigns, and bring test cases to courts. [26] The anniversary of the Stonewall riots is marked by "gay pride" marches and celebrations in cities across the country.

Political Efforts

The gay rights movement's first political efforts were for laws to bar discrimination by sexual orientation in employment, the first of which were enacted in 1971. [27] President Bill Clinton issued an executive order in 1998 banning discrimination on the basis of sexual orientation in federal government employment outside the military. By 2003, nondiscrimination laws had been enacted in 40 percent of American cities and towns.

The first legal victory for lesbian and gay rights occurred in 1965: a federal district court held that the federal government could not disqualify a job candidate simply for being gay. [28] In 1996, the Supreme Court voided a 1992 Colorado ballot initiative that prevented the state from passing a law to ban discrimination on the basis of sexual orientation. The justices said the amendment was so sweeping that it could be explained only by "animus toward the class" of gay people—a denial of equal protection. [29]

In 2003, the Court rejected a Texas law banning same-sex sexual contact on the grounds that it denied equal protection of the law and the right to privacy. The decision overturned a 1986 ruling that had upheld a similar law in Georgia. [30]

In 1992, presidential candidate Bill Clinton endorsed lifting the ban on gay people serving openly in the military. In a post-election press conference, Clinton said he would sign an executive order to do so. The news media, seeing a dramatic and clear-cut story, kept after this issue, which became the top concern of Clinton's first days in office. The military and key members of Congress launched a public relations campaign against Clinton's stand, highlighted by a media event at which legislators toured cramped submarines and asked sailors on board how they felt about serving with gay people. Clinton ultimately supported a compromise that was closer to a surrender—a "don't ask, don't tell" policy that has had the effect of substantially increasing the number of discharges from the military forhomosexuality. [31]

Over years of discussion and debate, argument, and acrimony, opposition to the policy increased and support declined. President Obama urged repeal, as did his secretary of defense and leaders of the military. In December 2010, Congress passed and the president signed legislation repealing "don't ask, don't tell." As the president put it in his 2011 State of the Union message, "Our troops come from every corner of this country—they are black, white, Latino, Asian, and Native American. They are Christian and Hindu, Jewish and Muslim. And yes, we know that some of them are gay. Starting this year, no American will be forbidden from serving the country they love because of who they love." [32]

Figure 5.9.9

Same-Sex Marriage

Same-sex couples brought suits in state courts on the grounds that preventing them from marrying was sex discrimination barred by their state constitutions. In 1996, Hawaii's state supreme court agreed. Many members of Congress, concerned that officials might be forced by the Constitution's "full faith and credit" clause to recognize same-sex marriages from Hawaii, quickly passed a Defense of Marriage Act, which President Clinton signed. It defines marriage as the union of a man and a woman and denies same-sex couples federal benefits for married people. Many states followed suit, and Hawaii's court decision was nullified when the state's voters amended the state constitution before it could take effect.

In 2000, the highest state court in Vermont ruled that the state may not discriminate against same-sex couples and allowed the legislature to create civil unions. These give same-sex couples "marriage lite" benefits such as inheritance rights. Going further, in 2003, Massachusetts's highest state court allowed same-sex couples to legally wed. So did the California and Connecticut Supreme Courts in 2008.

Voters in thirty states, including California in 2008 (by 52 percent of the vote), passed amendments to their state constitutions banning same-sex marriage. President George W. Bush endorsed an amendment to the US Constitution restricting marriage and its benefits to opposite-sex couples. It received a majority of votes in the House, but not the two-thirds required.

In 2010, a federal judge in San Francisco struck down California's voter-approved ban on same-sex marriage on the grounds that it discriminates against gay men and women. In 2011 New York allowed same-sex marriage.

The Supreme Court heard the case of *Obergefell v. Hodges* (2013-2015) and found that state bans on same-sex marriage to be unconstitutional under the 14th Amendment. (Overturned *Baker v. Nelson*)

On 26 June 2015, the US Supreme Court ruled that same-sex marriage is a constitutional right under the 14th Amendment to the Constitution, thereby making same-sex marriage legal throughout the United States

Americans With Disabilities Act

People with disabilities have sought and gained civil rights protections. When society does not accommodate their differences, they view this as discrimination. They have clout because, by U.S. Census estimates, over 19 percent of the population has some kind of disability.

Figure 5.9.10: President George H. W. Bush signs the Americans With Disabilities Act into Law in 1990.

Early in the twentieth-century, federal policy began seeking the integration of people with disabilities into society, starting with returning veterans of World War I. According to these policies, disabilities were viewed as medical problems; rehabilitation was stressed.

By the 1960s, Congress began shifting toward civil rights by enacting a law requiring new federal construction to be designed to allow entrance for people with disabilities. In 1972, Congress voted, without debate, that work and school programs receiving federal funds could not deny benefits to or discriminate against someone "solely by reason of his handicap." [33] Civil servants in the Department of Health, Education and Welfare built on this language to create a principle of reasonable accommodation. In the workplace, this means that facilities must be made accessible (e.g., by means of wheelchair ramps), responsibilities restructured, or policies altered so that someone with disabilities can do a job. At schools, it entails extra time for tests and assignments for those with learning disabilities.

The Americans with Disabilities Act (ADA) passed Congress by a large margin and was signed into law in 1990 by President George H. W. Bush. The act moves away from the "medical model" by defining disability as including a physical or mental impairment that limits a "major life activity." It gives the disabled a right of access to public building. It prohibits discrimination in employment against those who, given reasonable opportunity, could perform the essential functions of a job.

However, the courts interpreted the law and its definition of disability narrowly; for example, to exclude people with conditions that could be mitigated (e.g., by a hearing aid or artificial limb), controlled by medication, or were in remission.

In response, on September 29, 2008, President Bush signed legislation overturning the Supreme Court's decisions. It expanded the definition of disability to cover more physical and mental impairments and made it easier for workers to prove discriminatory.

Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.

Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion.

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

It is illegal to harass a person because of his or her religion. Harassment can include, for example, offensive remarks about a person's religious beliefs or practices. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Title VII also prohibits workplace or job segregation based on religion (including religious garb and grooming practices), such as assigning an employee to a non-customer contact position because of actual or feared customer preference.

Figure 5.9.11

Study/Discussion Questions

1. What basic protections did the Civil War Amendments introduce? How would life in America be different if these amendments had never been passed?
2. How were blacks denied the right to vote and equal protection even after the Civil War Amendments passed? When did that begin to change and why?
3. How did civil rights protestors seek to bring discrimination to the public's attention? Why do you think their strategy worked?
4. To what extent do you think that the legacy of slavery and segregation is responsible for the inequalities that persist in America? How do you think the law should deal with those inequalities?
5. What is the difference between De Jure and De Facto segregation? Which do you consider to be the biggest problem today? Explain your answer and defend with examples. What civil rights challenges have Latinos, Asian Americans, and Native Americans faced?
6. What is the 19th Amendment?
7. What is the Equal Rights Amendment?
8. What is sexual harassment?
9. What political and legal challenges do lesbians and gay men face?
10. What is the Americans with Disabilities Act?
11. Are there differences between discriminating on the basis of race or ethnicity and discriminating on the basis of gender, sexual orientation, or disability? What might be some legitimate reasons for treating people differently?
12. Would you favor the passage of an Equal Rights Amendment today? Are there contexts in which you think men and women should be treated differently?
13. Do you feel you have faced discrimination? How do you think the type of discrimination you have faced should be addressed in the law?

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5.10: Changes in American Culture Brought About by Governmental Policies

Figure 5.10.1: Marchers rally at the March on Washington, 1963

Without a doubt, many governmental policies have brought about significant changes for the citizens of America. Whether these policies reformed voting rights, allocated servicemen rights, granted immigrant's rights, enforced affirmative action, or deemed an end to segregation, they have made a lasting change on the American public.

The Voting Rights Act

When the Civil War ended, leaders turned to the question of how to rebuild the nation. A major issue was the right to vote. Foremost were the rights of African Americans and former Confederate men.

Congress passed several acts that were designed to address the question of rights. These acts included forming the Freedman's Bureau and the Civil Rights Act of 1866. Former male slaves were given the right to vote and to hold public office.

Congress also passed two amendments to the Constitution. The 14th Amendment made African Americans citizens while protecting citizens from discriminatory state laws. Southern states were to ratify this amendment before being readmitted to the Union.

The 15th Amendment to the U.S. Constitution, ratified in 1870, stated that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." This amendment was the last of the Reconstruction amendments and was concerned with providing voting rights to freedmen.

Unfortunately, other acts were proposed and ratified that circumvented these amendments. The Black Codes were passed by southern states to restrict freedmen. These codes restricted property ownership, travel, voting rights, and work contracts. Although the thirteenth amendment provided former slaves with the privileges of citizenship, this was not really the case.

By 1965 significant efforts were made to break the cycle of disfranchisement, but they were not successful. President Johnson issued a call for a strong voting rights law and soon the Voting Rights Act was proposed.

Congress determined that the existing federal anti-discrimination laws were not sufficient to overcome the resistance of state officials to enforce the 15th Amendment. Even the courts' efforts were unsuccessful. The discrimination continued.

President Johnson signed the legislation into law on August 6, 1965. The Act mimicked the 15th Amendment but also contained special enforcement provisions targeted at areas of the country that had the most potential for discrimination.

The Act was extended in 1970 and 1975 and updated to include other groups that often faced discrimination: Hispanics, Asians, and Native Americans.

The Act was renewed in 1982 and 2006 to again enforce the abolishment of discriminatory practices.

Figure 5.10.2: The 111th Naval Construction Battalion landing at Omaha Beach before the Mulberry was installed, 6 June 1944.

The Servicemen's Readjustment Act of 1944 (GI Bill of Rights)

The Department of Labor estimated that 15 million men and women would be unemployed after World War II, so the National Resources Planning Board began studying the postwar work demand in 1942 before the war even ended.

In June 1943, the American Legion created a series of programs designed to educate and train returning military. The bill passed both chambers of Congress in the spring of 1944. President Franklin D. Roosevelt signed it into law on June 22, 1944.

The "GI Bill" provided federal assistance to veterans to help them adjust as they returned to civilian life. Aid was offered in the areas of hospitalization, purchase of homes and business, and education. The Bill would pay tuition, books, supplies, and living expenses if a veteran returned to school or attended college. Almost eight million former servicemen utilized these educational benefits. This doubled the number of college degrees awarded in the decade postwar.

Approximately 4.3 million home loans were given by 1955. The impact on the economy was significant—the depression that the Department of Labor so greatly feared did not occur because GIs were working, attending school, and purchasing homes.

The GI Bill has been extended several times, and it was recently signed by President Trump as the Forever GI Bill.

Figure 5.10.3

The Immigration and Nationality Act of 1965 (Hart-Celler Act)

America has always been the land of opportunity. Many individuals have chosen to immigrate to the U.S. in search of a better life and better opportunities. However, the National Origin Formula that utilized a percentage based on proportions of the population to restrict immigration—especially from non-northern European countries prevented this opportunity for many. This formula essentially prohibited immigration based on race and ethnicity.

The National Origin Formula was presented, adopted, and enforced in 1921. It was not until 1965, when a large movement for civil rights was gaining ground, that the enactment of the Immigration and Nationality Act ended this discriminatory practice. This allowed many immigrants from Latin America, Asia, Africa, and the Middle East into the U.S. The demographic mix of culture was changed by this act.

Long Term Effects

Approximately 59 million immigrants have arrived in America since the passage of the INA; forever changing the demographics of the U.S.

These demographic trends became the target of anti-immigration activists beginning in the 1980s, which led to a larger military and border patrol presence and the media's sensationalism of crimes committed by immigrants.

In January 2017, Donald Trump signed Executive Order 13769 which stopped immigration from seven nations that were primarily Muslim. This order was ruled in violation of the INA's prohibitions against discrimination. In June, the U.S. Supreme Court allowed the second ban to continue apart from persons with family already in the U.S. In December the Supreme Court allowed the full travel ban.

Figure 5.10.4: "I believe in the idea of amnesty for those who have put down roots and lived here, even though sometime back they may have entered illegally," Ronald Reagan said in 1984

Immigration Reform and Control Act of 1986 (Simpson-Mazzoli Act or Reagan Amnesty)

This act was an amendment to the Immigration and Nationality Act written to reform immigration laws. The INA had an unintended result; it created an illegal immigration problem. In 1986, steps were taken to curtail this problem with a series of consequences, including fines, for anyone knowingly supporting illegal immigration.

The law made it a crime to participate in the "pattern or practice" of knowingly hiring an "unauthorized alien" and established financial and other penalties for those employing illegal immigrants under the theory that low prospects for employment would reduce undocumented immigration. Obviously, this was to deter employers from hiring illegal immigrants.

Under provisions in the act, employers had to prove the employee had the right to work in this country. Also, the act made it illegal to knowingly hire or recruit illegal immigrants.

On the other side, some seasonal agricultural illegal immigrants were given legal status and amnesty was given to those who had entered the U.S> before January 1, 1982. In theory it sounded good; however, this section of the act also penalized those immigrants with a fine, back taxes, and required them to admit their guilt to this crime. Additionally, they had to prove that they were not criminals, that they were present in the country before the specified date, and that they were familiar with U.S. history, government, and the English language.

Effects of the IRCA

Discriminatory hiring practices were utilized because some workers were believed to be foreign looking, so they were passed over for employment. Also, a subcontractor acted as a middleman to vet and hire workers.

In 1987, President Ronald Reagan signed a bill providing amnesty for the children of illegal immigrants who met the above conditions.

Figure 5.10.5: In his first State of the Union Address in January 1961, President Kennedy said, "The denial of constitutional rights to some of our fellow Americans on account of race – at the ballot box and elsewhere – disturbs the national conscience, and subjects us to the charge of world opinion that our democracy is not equal to the high promise of our heritage."

Affirmative Action

The Council for Equal Employment Opportunity was created in 1961 by President Kennedy to ensure that projects funded by the government take “affirmative action” when hiring and employing workers. President Johnson and President Nixon continued this plan with stronger consequences for those entities not complying with the program.

Affirmative Action was presented with the goal of curbing an ongoing problem with discrimination. It was “intended to end and correct the effects of a specific form of discrimination.” These Affirmative Action policies were aimed at underrepresented groups such as women and minorities that have historically been discriminated against. By requiring equal employment opportunities to minorities, the wrongs in hiring, employment, and wage practices were being addressed. Affirmative Action policies cover employment education, public services, and health programs.

Affirmative Action provided a significant opportunity in the workplace and created diversity. Underrepresented groups in the workforce given hiring preference resulted in an outcry claiming reverse discrimination. Statistical data was used to determine a proportion of workers that should be employed in federal agencies. The courts used these number to rule against programs that required quotas.

This trend was also prevalent in education, especially in college admissions.

In 1978, Robert Bakke, a white male, applied and was twice rejected entry to the University of California’s medical school. Bakke’s test scores and college grade point average was higher than some of those admitted to the school. Bakke’s claim was he was not granted admission solely because of his race.

The case of *Bakke v. University.* of California was a landmark decision because the court ruled that the university could not use fixed quotas in making admissions decisions as it was a violation of the Civil Rights Act of 1964. It was also decided that the Equal Protection Clause of the Fourteenth Amendment was violated by using racial quotas as admission standards.

In 1997 the case of *Grantz v. Bollinger* and *Grutter v. Bollinger* was filed against the University of Michigan law school. The claim was that admission had been denied to the qualified candidate due to race or gender. After lower court decisions and back and forth with the Supreme Court. It was ruled this practice constitutional. In 2006 it was decided that Affirmative Action was allowable to diversify colleges and universities and that this practice did not harm nonminority students.

Figure 5.10.6

Racial Integration

Along with the Civil Rights movement came a push for racial integration. This social movement encouraged the acceptance of African Americans in neighborhoods, schools, and the workforce. Integration seeks to remove barriers, to provide equal opportunities, and to promote diversity for minorities.

Although CORE and the NAACP are not governmental polilcies, both grassroots organizations formed in the 1900s and have worked consistently to promote the enforcement of the 13th, 14th, and 15th admendments to the Constitution that promise equality for all United States citizens.

Congress for Racial Equality

The Congress for Racial Equality, commonly referred to as CORE, was founded by a group of both black and white students in 1942 on the campus of the University of Chicago. CORE is an African-American civil rights organization in the United States that played a pivotal role for African Americans in the Civil Rights Movement. CORE’s mission is "to bring about equality for all people regardless of race, creed, sex, age, disability, sexual orientation, religion or ethnic background.

Its founders drew inspiration from Mahatma Gandhi’s practice of nonviolent civil disobedience. CORE sent some of its members to help in the Montgomery Bus Boycott and supported student sit-ins at lunch counters across the South. In 1961, CORE's national director James Farmer organized an effort to integrate interstate bus stations and buses in the Deep South with a series of Freedom Rides. Freedom Riders were groups of white and black civil rights activists who rode buses to challenge segregation in interstate transportation in southern states.

In 1960, the Chicago chapter of CORE began to challenge racial segregation in the Chicago Public Schools. By the late 1950s, the Board of Education's maintenance of the neighborhood school policy resulted in a pattern of racial segregation in the CPS.

Predominantly black schools were situated in predominantly black neighborhoods on the south and west sides of the city, while predominantly white schools were located in predominantly white areas in the north, northwest and southwest sides of Chicago.

Many segregated schools were overcrowded, and in order to ease overcrowding, the Board instated double-shifts at some schools. Double-shifts meant that students in affected schools attended less than a full day of class. In another measure to alleviate overcrowding at some schools, the Board sanctioned the construction of mobile classroom units. Moreover, a significant proportion of students dropped out before finishing high school.

Faculty was segregated, and many teachers in predominantly black schools lacked full-time teaching experience compared to teachers in white schools. In addition, the history curriculum did not mention African Americans.

Between 1960 and 1963, CORE wrote letters about the conditions of schools to the Board of Education (headed by Superintendent Benjamin Willis), Mayor Richard J. Daley, the Illinois State House of Representatives and the U.S. Department of Health, Education and Welfare. In addition, CORE attended the Board's school budget hearings, speaking against segregation and asking for the Board to implement transfer plans to desegregate the schools.

In July 1963, CORE staged a week-long sit-in and protest at the Board office in downtown Chicago in response to the Board's inaction. Finally, Board President Claire Roddewig and Willis agreed to meet with CORE to negotiate integration, but no significant changes came to the schools.

During the mid-1960s, CORE turned towards community involvement, seeking to equip Chicagoans with ways to challenge segregation. Freedom Houses, transfer petitions, community rallies, and meetings served to educate Chicagoans about segregation and provide them with tools to circumnavigate the neighborhood school policy.

National Association for the Advancement of Colored People (NAACP)

Founded on February 12, 1909, the NAACP is the nation’s foremost, largest, and most widely recognized civil rights organization. Its more than half-million members and supporters throughout the United States and the world are the premier advocates for civil rights in their communities, leading grassroots campaigns for equal opportunity and conducting voter mobilization.

In 1908, a deadly race riot rocked the city of Springfield, Illinois. Such eruptions of anti-black violence – particularly lynching – were horrifically commonplace, but the Springfield riot was the final tipping point that led to the creation of the NAACP.

Appalled at this rampant violence, a group of white liberals that included Mary White Ovington and Oswald Garrison Villard (both the descendants of famous abolitionists), William English Walling and Dr. Henry Moscowitz issued a call for a meeting to discuss racial justice. Some 60 people, seven of whom were African American (including W. E. B. Du Bois, Ida B. Wells-Barnett, and Mary Church Terrell), signed the call, which was released on the centennial of Lincoln’s birth.

Echoing the focus of Du Bois’ Niagara Movement for civil rights, which began in 1905, the NAACP’s aimed to secure for all people the rights guaranteed in the 13th, 14th, and 15th Amendments to the United States Constitution, which promised an end to slavery, the equal protection of the law, and universal adult male suffrage, respectively. Accordingly, the NAACP’s mission was and is to ensure the political, educational, social and economic equality of minority group citizens of the United States and eliminate race prejudice. The NAACP seeks to remove all barriers of racial discrimination through democratic processes.

Figure 5.10.7

Questions for Study/Discussion

Copy and complete the table with details about the governmental policies that have impacted American society.

Policy	purpose	pros	cons
the Voting Rights Act			
the GI Bill			
Immigration and Nationality Act			
Immigration and Reform Control Act			
Affirmative Action			
Racial Integration			

Sources:

https://www.migrationpolicy.org/article/fifty-years-1965-immigration-and-nationality-a
continues-reshape-united-states

www.eeoc.gov/eeoc/history/35th/thelaw/irca.html

https://www.law.cornell.edu/wex/affirmative_action

Feinberg, Walter (2005-09-15). Affirmative Action. doi:10.1093/oxfordhb/978019928423
3.0012.

https://www.cnn.com/2013/11/12/us/affirmative-action-fast-facts/index.html

https://www.oyez.org/cases/2002/02-241

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5.11: U.S. Constitutional Protections that Foster Competition, Entrepreneurship, and Research

Figure 5.11.1

To promote competition and entrepreneurship, the government has created agencies that support the individual inventor, bring governemntal inventions to the consumer, research medical issues and advances, and regulates the federal airwaves.

Patents

Office of Patent and Trademark

This office, a division of the U.S. Department of Commerce, was created as part of the Constitution, which states, "Congress shall have power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

The United States Patent and Trademark Office (USPTO) is the federal agency for granting U.S. patents and registering trademarks. In doing this, the USPTO fulfills the mandate of Article I, Section 8, Clause 8, of the Constitution that the legislative branch "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." The USPTO registers trademarks based on the commerce clause of the Constitution (Article I, Section 8, Clause 3).

By patenting an invention, the inventor then holds the license that allows manufacture, use, or sale of their invention. A patent is usually granted for 20 years. Although acquiring a patent may be an expensive and daunting process, the inventor’s intellectual property, or idea, if registered through this office is protected under governmental policies. The patent office also maintains a list of patents that may be searched.

Types of Patents

Patents may be granted for three types of inventions: utility, design, or plant.

Utility - invention or discovery of a new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement;

Design - the invention of a new, original, and ornamental design for an article of manufacture;

Plant - may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

Under this system of protection, American industry has flourished. New products have been invented, new uses for old ones discovered, and employment opportunities created for millions of Americans. The strength and vitality of the U.S. economy depend directly on effective mechanisms that protect new ideas and investments in innovation and creativity.

Figure 5.11.2: A trademark is a symbol, word, or words legally registered or established by use as representing a company or product.

Trademarks

A trademark is a word, name, symbol, or device used in manufacturing or creating a product that a consumer recognizes. Trademarks are granted on form and style, not the actual idea. For example, many companies create an orange drink, but Fanta has the trademark on their orange drink.

Take the 2018 trademark infringement case of the Texas travel-stop Buc-ee’s. Buc-ee’s logo is a bright yellow circle with a smiling beaver sporting a ballcap. Recently Buc-ee’s sued Choke Canyon travel-stops because they claimed the Choke Canyon logo was too similar to Buc-ee’s, and it was intended to confuse the consumer. Choke Canyon’s logo of a yellow circle and a smiling alligator wearing a cowboy hat has the company name clearly displayed in the circle.

The federal court ruled that the Buc-ee’s logo was trademark and the store's intellectual property was being copied.

A trademark often becomes inseparable from the product that it represents. Think Coke or McDonalds.

Figure 5.11.3: The Copyright Symbol

Copyright

Copyright is a form of protection provided by the laws of the United States to the authors of “original works of authorship” that are fixed in a tangible form of expression. An original work of authorship is a work that is independently created by a human author and possesses at least some minimal degree of creativity. A work is “fixed” when it is captured (either by or under the authority of an author) in a sufficiently permanent medium such that the work can be perceived, reproduced, or communicated for more than a short time. Copyright protection in the United States exists automatically from the moment the original work of authorship is fixed.

According to "Copyright Basics", a circular from the United States Copyright Office, examples of copyrightable works include:

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorials, graphics, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings, which are works that result from the fixation of a series of musical, spoken, or other sounds
- Architectural works

With a copyright, the owner has all say in how, when, and where to sell, display, or reproduce their work. As with the trademark, the copyright guards the form, not the idea. For example, there are many songs about “love.” Many may about write this idea, but only John Legend may legally produce, sell, or perform “All of Me”.

What Are the Rights of a Copyright Owner?

Copyright provides the owner of copyright with the exclusive right to:

- Reproduce the work in copies or phonorecords
- Prepare derivative works based upon the work
- Distribute copies or phonorecords of the work to the public by sale or other transfer of ownership or by rental, lease, or lending
- Perform the work publicly if it is a literary, musical, dramatic, or choreographic work; a pantomime; or a motion picture or other audiovisual work
- Display the work publicly if it is a literary, musical, dramatic, or choreographic work; a pantomime; or a pictorial, graphic, or sculptural work. This right also applies to the individual images of a motion picture or other audiovisual work.

Who Can Claim Copyright?

The copyright in a work initially belongs to the author(s) who created that work. When two or more authors create a single work with the intent of merging their contributions into inseparable or interdependent parts of a unitary whole, the authors are considered joint authors and have an indivisible interest in the work as a whole. By contrast, if multiple authors contribute to a collective work, each Copyright Basics 3 author’s individual contribution is separate and distinct from the copyright ownership in the collective work as a whole.

“Works made for hire” are an important exception to the general rule for claiming copyright. When a work is made for hire, the author is not the individual who actually created the work. Instead, the party that hired the individual is considered the author and the copyright owner of the work. Whether a work is made for hire is determined by the facts that exist at the time the work is created.

There are two situations in which a work may be made for hire:

1. When the work is created by an employee as part of the employee’s regular duties, or
2. When an individual and the hiring party enter into an express written agreement that the work is to be considered a “work made for hire” and the work is specially ordered or commissioned for use.

How Long Does Copyright Last?

In general, for works created on or after January 1, 1978, the term of copyright is the life of the author plus 70 years after the author's death. If the work is a joint work with multiple authors, the term lasts for 70 years after the last surviving author's death. For works made for hire and anonymous or pseudonymous works, the duration of copyright is 95 years from publication or 120 years from creation, whichever is shorter.

Research

According to the United States Patent Office and Trademark website, their resources also include The Scientific and Technical Information Center of the United States Patent and Trademark Office where, "available for public use over 120,000 volumes of scientific and technical books in various languages, about 90,000 bound volumes of periodicals devoted to science and technology, the official journals of 77 foreign patent organizations, and over 40 million foreign patents on paper, microfilm, microfiche, and CD-ROM."

National Science Foundation

The National Science Foundation (NSF) is an independent federal agency created by Congress in 1950 "to promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense..." NSF is vital because we support basic research and people to create knowledge that transforms the future. This type of support:

- Is a primary driver of the U.S. economy.
- Enhances the nation's security.
- Advances knowledge to sustain global leadership.

With an annual budget of $8.1 billion (FY 2019), we are the funding source for approximately 24 percent of all federally supported basic research conducted by America's colleges and universities. In many fields such as mathematics, computer science, and the social sciences, NSF is the major source of federal backing.

According to the National Science Foundation website, "Unlike many other federal agencies, NSF does not hire researchers or directly operate our own laboratories or similar facilities. Instead, we support scientists, engineers, and educators directly through their own home institutions (typically universities and colleges). Similarly, we fund facilities and equipment such as telescopes, through cooperative agreements with research consortia that have competed successfully for limited-term management contracts."

This government-assisted research has also improved consumer products and communication technology. The largest contribution to governmental research comes from NASA.

Figure 5.11.4: NASA churns out new inventions that help society.

Important NASA Contributions

Beginning in the last half of the 20th century and continuing today, the research and exploration efforts of NASA have contributed to the discovery and development of many important technological innovations. These contributions fall into many categories including Health and Medicine, Transportation, Public Safety, Consumer, Home, and Recreation, Environmental and Agricultural Resources, Pollution Remediation, Software, and Industrial Productivity. *Since 1976, the annual NASA publication, "Spinoff", has detailed the influence and impact on society of agency activities.*

Some examples of these products include the LED, artificial limbs, radial tires firefighter gear, portable cordless vacuum, freeze-dried food, etc. The list goes on and on.

More information on this topic may be found in Section 4.5 and in the links below.

For more information on NASA's technological contributions, check out the following resources:

https://www.nasa.gov/50th/50th_magazine/benefits.html
http://spinoff.nasa.gov/
http://www.independent.co.uk/news/science/50-years-50-giant-leaps-how-nasa-rocked-our-world-879377.html
https://scepticalprophet.wordpress.com/2012/10/24/why-spend-money-on-science-nasas-contributions-to-society/
http://www.post-gazette.com/life/lifestyle/2009/07/20/From-cell-phones-to-computers-technology-from-NASA-s-space-program-continues-to-touch-everyday-life

The National Institute of Health

The National Institutes of Health (NIH), a part of the U.S. Department of Health and Human Services, is the nation's medical research agency where important discoveries are made to improve health and to save lives.

The Marine Hospital Service (MHS) was established in 1798 to give medical care to merchant seamen. The job grew as Congress recognize an avenue to prevent epidemics by requiring the MHS doctors to inspect arriving ships for signs of infectious disease. This organization slowly turned in to the NIH.

Charged with the purpose of serving the public's health, the NIH began as a one-room laboratory y in 1887. Within month's the NIH's main doctor was making discoveries regarding bacteria and germs. The progress continues with over 80 Nobel prizes awarded to NIH sponsored research. Advances in genetics, cancer research, aging, heart attack, strokes, and preventive programs have all been made.

The National Institute of Health was not created or structured by the constitution as there is not an explicit right to health care. However, the Supreme Court has ruled that the government should provide healthcare in certain situations, such as prisoners.

Congress has enacted programs like Medicare, Medicaid, and Children's Health Insurance Program which all establish government-funded health care programs. Most of these statutes have been enacted due to Congress's authority to "make all Laws which shall be necessary and proper" to carry out its mandate "to … provide for the … general Welfare." (Source: Health Care: Constitutional Rights Legislative Powers)

Internet

The advancement made in communication has reached into all aspects of our lives. This includes not only the way that information is spread, but also the way politicians communicate with the public. Social media has been standard practice for the last two presidents, Obama and Trump. They regularly took to Twitter to voice their opinion or update the public.

Instant communication technology has required new policymaking in order to supervise it. Agencies such as the Federal Communications Commission and the Federal Trade Commission oversee regulations to protect American citizens.

Based on the information provided by the Federal Trade Commission, the FCC and the FTC will work jointly to protect consumers from internet scammers and internet deceptive trade practices.

- The FCC will review informal complaints concerning the compliance of Internet service providers (ISPs) with the disclosure obligations set forth in the new transparency rule. Those obligations include publicly providing information concerning an ISP's practices with respect to blocking, throttling, paid prioritization, and congestion management. Should an ISP fail to make the required disclosures—either in whole or in part—the FCC will take enforcement action.
- The FTC will investigate and take enforcement action as appropriate against ISPs concerning the accuracy of those disclosures, as well as other deceptive or unfair acts or practices involving their broadband services.
- The FCC and the FTC will broadly share legal and technical expertise, including the secure sharing of informal complaints regarding the subject matter of the *Restoring Internet Freedom Order*. The two agencies also will collaborate on consumer and industry outreach and education.

Federal Communications Commission (FCC)

The FCC is an independent agency of the United States government, created by Congressional statute (see 47 U.S.C. § 151 and 47 U.S.C. § 154) to regulate interstate communications by radio, television, wire, satellite, and cable in all 50 states, the District of Columbia and U.S. territories. The FCC works towards six goals in the areas of broadband, competition, the spectrum, the media, public safety, and homeland security. The Commission is also in the process of modernizing itself.

The FCC was formed by the Communications Act of 1934 to replace the radio regulation functions of the Federal Radio Commission. The FCC took over wire communication regulation from the Interstate Commerce Commission. The FCC's mandated authority covers the 50 states, the District of Columbia, and U.S. possessions. The FCC also provides varied degrees of cooperation, oversight, and leadership for similar communications bodies in other countries of North America.

Mission

The FCC's mission, specified in Section One of the Communications Act of 1934 and amended by the Telecommunications Act of 1996 (amendment to 47 U.S.C. §151) is to "make available so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, rapid, efficient, Nation-wide, and world-wide wire and radio communication services with adequate facilities at reasonable charges."

The Act also provides that the FCC was created "for the national defense" and "for the purpose of promoting safety of life and property through the use of wire and radio communications."

What does the FCC do?

- The FCC has been charged with several tasks related to the communications infrastructure of the United States. These include:
- Promoting competition, innovation, and investment in broadband services and facilities
- Supporting the nation's economy by ensuring an appropriate competitive framework for the unfolding of the communications revolution
- Encouraging the highest and best use of spectrum domestically and internationally
- Revising media regulations so that new technologies flourish alongside diversity and localism
- Providing leadership in strengthening the defense of the nation's communications infrastructure

More information on the FCC may be found at Section 4.5 of this text.

Federal Trade Commission (FTC)

As a consumer or businessperson, you may be more familiar with the work of the Federal Trade Commission than you think. The FTC deals with issues that touch the economic life of every American.

The FTC is the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy. The FTC pursues vigorous and effective law enforcement; advances consumers' interests by sharing its expertise with federal and state legislatures and U.S. and international government agencies; develops policy and research tools through hearings, workshops, and conferences; and creates practical and plain-language educational programs for consumers and businesses in a global marketplace with constantly changing technologies.

Figure 5.11.5

Study/Discussion Questions

1. Name three agencies the government has created to fostered competition and entrepreneurship.

2. What is a patent? How does the patent process work? How can a patent protect an inventor?

3. What is a trademark? Name a trademark that is familiar to you.

4. What is copyright? What is the benefit to copyrighting your written work?

5. List 5 important contributions that arose from NASA experimentation.

6. Why is the National Institute of Health important?

7. What is the function of the FCC?

8. What is the function of the FTC?

> Sources:

> www.commerce.gov/news/blog/2014/11/five-steps-protecting-your-invention

> https://www.uspto.gov/

> https://history.nih.gov/museum/

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CHAPTER OVERVIEW

6: The Political Process

6.1: Processes Used to Affect Public Policy
6.2: Impact of Political Changes
6.3: Voting Patterns, Political Boundaries, and Political Divisions
6.4: Methods of Filling Public Offices
6.5: Political Parties and the Electoral Process
6.6: Two- and Three-Party Systems
6.7: Opportunities, Responsibilities, and Obligations of Citizenship
6.8: Political Participation and the Voting Process
6.9: Citizen Movements
6.10: Influences on Individual's Political Actions and Attitudes
6.11: Political Parties and Interest Groups Point of View
6.12: First and Second Amendment Rights
6.13: Scientific and Technological Innovations Impact on Society
6.14: The Impact of Electronic Information on the Political Process

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6.1: Processes Used to Affect Public Policy

Figure 6.1.1

Public opinion is one of the most frequently used terms in American politics. At the most basic level, public opinion represents people's collective preferences on matters related to government and politics. However, public opinion is a complex phenomenon, and scholars have developed a variety of interpretations of what public opinion means. One perspective holds that individual opinions matter; therefore, the opinions of the majority should be weighed more heavily than opinions of the minority when leaders make decisions. A contrasting view maintains that public opinion is controlled by organized groups, government leaders, and media elites. The opinions of those in positions of power or who have access to those in power carry the most weight.

Public opinion is often made concrete through questions asked on polls. Politicians routinely cite public opinion polls to justify their support of or opposition to public policies. Candidates use public opinion strategically to establish themselves as front-runners or underdogs in campaigns. Interest groups and political parties use public opinion polls to promote their causes. The mass media incorporate reports of public opinion into news stories about government and politics.

What is Public Opinion?

Scholars do not agree on a single definition of public opinion. The concept means different things depending on how one defines "the public" and assumptions about whose opinion should or does count the most—individuals, groups, or elites.

Most simply, the public can be thought of as people who share something in common, such as a connection to a government and a society that is confronted by particular issues that form the bases of public policies. Not all people have the same connection to issues. Some people are part of the attentive public who pay close attention to government and politics in general. Other individuals are members of issue publics who focus on particular public policy debates, such as abortion, or defense spending, and ignore others. They may focus on a policy that has personal relevance. A healthcare activist, for example, may have a close relative or

friend who suffers from a prolonged medical problem. Some members of the public have little interest in politics or issues, and their interests may not be represented.

An opinion is the position—favorable, unfavorable, neutral, or undecided—people take on a particular issue, policy, action, or leader. Opinions are not facts; they are expressions of people's feelings about a specific political object. Pollsters seeking people's opinions often say to respondents as they administer a survey, "there are no right or wrong answers; it's your thoughts that count." Opinions are related to but not the same as attitudes, or persistent, general orientations toward people, groups, or institutions. Attitudes often shape opinions. For example, people who hold attitudes strongly in favor of racial equality support public policies designed to limit discrimination in housing and employment.

Public opinion can be defined most generically as the sum of many individual opinions. More specific notions of public opinion place greater weight on individual, majority, group, or elite opinion when considering policy decisions.

Video: Constructing Public Opinion

Equality of Individual Opinions

Public opinion can be viewed as the collection of individual opinions, where all opinions deserve equal treatment regardless of whether the individuals expressing them are knowledgeable about an issue or not. Thus, public opinion is the aggregation of preferences of people from all segments of society. The use of public opinion polls to gauge what people are thinking underlies this view. By asking questions of a sample of people who are representative of the U.S. population, pollsters contend they can assess the American public's mood. People who favor this perspective on public opinion believe that government officials should take into account both majority and minority views when making policy.

Another perspective maintains that public opinion is the opinion held by most people on an issue. In a democracy, the opinions of the majority are the ones that should count the most and should guide government leaders' decision making. The opinions of the minority are less important than those of the majority. This view of public opinion is consistent with the idea of popular election in that every citizen is entitled to an opinion—in essence, a vote—on a particular issue, policy, or leader. In the end, the position that is taken by the most people—in other words, the position that receives the most votes—is the one that should be adopted by policymakers.

Majority Opinion

Rarely, if ever, does the public hold a single unified opinion. There is often significant disagreement in the public's preferences, and clear majority opinions do not emerge. This situation poses a challenge for leaders looking to translate these preferences into policies. In 2005, Congress was wrestling with the issue of providing funding for stem cell research to seek new medical cures. Opinion polls indicated that a majority of the public (56 percent) favored stem cell research. However, views differed markedly

among particular groups who formed important political constituencies for members. White evangelical Protestants opposed stem cell research (58 percent), arguing the need to protect human embryos, while mainline Protestants (69 percent) and Catholics supported research (63 percent).

How Individuals Affect Public Policy

Public policy is a complex and many-layered process. It involves the interplay of many parties such as business, interest groups, and individuals as they all compete and collaborate to influence policymakers to act in a particular way and on a variety of policies.

These individuals use numerous tactics to advance their interests. The tactics can include lobbying, advocating their positions publicly, attempting to educate supporters and opponents, and mobilizing allies on a particular issue. Most often policy outcomes involve compromises among interested parties.

Public opinion and individual priorities have a strong influence on public policy over time. A citizen may choose to become involved in politics by voting, campaigning, contributing to campaigns, demonstrating, or writing to elected officials. These actions influence public policy through electoral politics, citizen rallies, and actions that affect governmental decision makers.

How Groups Affect Public Policy

Groups work hard to frame issue debates to their advantage. They often will gauge public preferences and use this information when devising media tactics to gain support for their positions. Opposing groups will present competing public opinion poll data in an effort to influence decision-makers and the press. In 1997, the United States' participation in a summit in Kyoto, Japan, where nations signed a climate-control treaty, sparked a barrage of media stories on the issue of global warming and the potential for deadly gasses to induce climate change. Most Americans believed then that global warming existed and that steps should be taken to combat the problem. Groups such as the Environmental Defense Fund, Greenpeace, and the Sierra Club who favor government-imposed regulations on fossil-fuel companies and automobile manufacturers to curb pollution cited opinion poll data showing that over 70 percent of the public agreed with these actions.

Organizations representing industry interests, such as the now-defunct Global Climate Coalition, used opinion polls indicating that the public was reluctant to sacrifice jobs or curb their personal energy use to stop global warming. The debate in the media among competing groups influenced public opinion over the following decade. There was a massive shift in opinion, as only 52 percent believed that global warming was a problem in 2010. Social media facilitate people's ability to express their opinions through groups, such as those related to environmental activism.

Political Parties and Public Opinion

Typically, a political party is a political organization seeking to influence government policy by nominating its own select candidates to hold seats in political office, via the process of electoral campaigning. Parties often promote a certain vision that is supported by a written platform with specific goals that form a coalition among disparate interests.

The type of electoral system is a major factor in determining the type of party political system. In countries with a simple plurality voting system, there can be as few as two parties elected in any given jurisdiction. In countries that have a proportional representation voting system, as exists throughout Europe, or a preferential voting system, such as in Australia or Ireland, three or more parties are often elected to parliament in significant proportions, allowing more access to public office. In a nonpartisan system, no official political parties exist, sometimes due to legal restrictions on political parties. In nonpartisan elections, each candidate is eligible for office on his or her own merits. In nonpartisan legislatures, no formal party alignments within the legislature are common.

Most likely, the party that is not in power, criticizes the policies and beliefs of the party that is in power in an attempt to sway public opinion and to garner support for their candidate or platform.

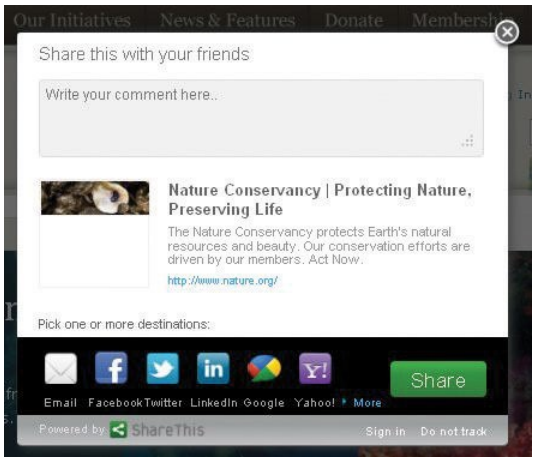

Figure 6.1.2: Social media facilitate people's ability to express their opinions through groups, such as those related to environmental activism.

Video: Social Media and Public Opinion on Politics

Video Comprehension Check

After watching the above video, answer the following questions.

1. How does social media differ from mass media?
2. Why are many politicians utilizing social media rather than mass media?
3. Which do you think has more influence in your life - mass media or social media?
4. Does social media "trap" people into following the majority rather than voting with their own political beliefs? Explain your answer.

Politicians, pollsters, policy specialists, activists, and journalists have assumed the position of opinion leaders who shape, create, and interpret public opinion. These political elites are devoted to following public affairs—it's their job. Noted journalist and social commentator Walter Lippmann observed that average people have neither the time nor the inclination to handle the impossible task of keeping up with the myriad issues that confront the nation. They do not have the opportunity to directly experience most political events and must rely on second-hand accounts conveyed by elites primarily through mass media. In Lippmann's view, public opinion is best managed by specialists who have the knowledge and capabilities to promote policies. Thus, elite opinion, and not the views of average citizens, should count the most.

The mass media rely heavily on the opinions of government elites, especially when covering foreign policy and domestic issues, such as the economy and employment. The breadth of news coverage about foreign affairs is constrained to reflect the range of viewpoints expressed by officials such as members of Congress who are debating the issues. The voices of average Americans are much less prominent in news coverage. As political scientist V. O. Key stated, "The voice of the people is but an echo."

Figure 6.1.3: "Talking heads," who provide elite opinions about issues, events, and leaders, populate cable news.

Elite opinion is increasingly articulated by pundits who offer their opinion or commentary on political issues. College professors, business and labor leaders, lobbyists, public relations representatives, and pollsters are typical pundits who provide expert opinions. Some pundits represent distinctly partisan or ideological viewpoints and use public opinion data selectively to support these positions. Pundits can establish their credentials as experts on governmental affairs and politics through their frequent media appearances as "talking heads" on cable television programs such as CNN, MSNBC, and Fox News.

The Media and The Presidency

For over fifty years, pollsters have asked survey respondents, "Do you approve or disapprove of the way that the president is handling his job?" Over time there has been variation from one president to the next, but the general pattern is unmistakable. Approval starts out fairly high (near the percentage of the popular vote), increases slightly during the honeymoon, fades over the term, and then levels off. Presidents differ largely in the rate at which their approval rating declines. President Kennedy's support eroded only slightly, as opposed to the devastating drops experienced by Ford and Carter. Presidents in their first terms are well aware that, if they fall below 50 percent, they are in danger of losing re-election or of losing allies in Congress in the midterm elections.

Events during a president's term—and how the news media frame them—drive approval ratings up or down. Depictions of economic hard times, drawn-out military engagements (e.g., Korea, Vietnam, and Iraq), unpopular decisions (e.g., Ford's pardon of Nixon), and other bad news drag approval ratings lower. The main upward push comes from quick international interventions, as for President Obama after the killing of Osama bin Laden in 2011, or successfully addressing national emergencies, which boost a president's approval for several months. Under such conditions, official Washington speaks more in one voice than usual, the media drop their criticism as a result, and presidents depict themselves as embodiments of a united America.

The successful war against Iraq in 1991 pushed approval ratings for the elder Bush to 90 percent, exceeded only by the ratings of his son after 9/11. It may be beside the point whether the president's decision was smart or a blunder. Kennedy's press secretary, Pierre Salinger, later recalled how the president's approval ratings actually climbed after Kennedy backed a failed invasion by Cuban exiles at the Bay of Pigs: "He called me into his office and he said, 'Did you see that Gallup poll today?' I said, 'Yes.' He said, 'Do you think I have to continue doing stupid things like that to remain popular with the American people?'"

But as a crisis subsides, so too does official unity, tributes in the press, and the president's lofty approval ratings. Short-term effects wane over the course of time. Bush's huge boost from 9/11 lasted well into early 2003; he got a smaller, shorter lift from the invasion of Iraq in April 2003 and another from the capture of Saddam Hussein in December before dropping to levels -perilously near, then below, 50 percent. Narrowly re-elected in 2008, Bush saw his approval sink to new lows (around 30 percent) over the course of his second term.

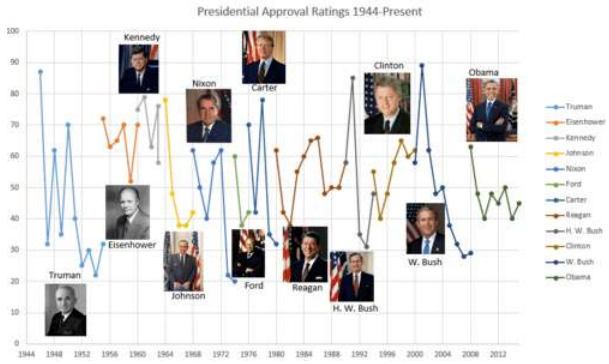

Figure 6.1.4

The public's approval of the president fluctuates wildly over time depending upon such factors as the economy, national security, and other events that take place during the presidential term.

INTERPRETING CHARTS:

Using the chart above, respond to the following questions
1. In most cases, when do presidents see the highest levels of public approval?
2. When do presidents often see the lowest levels of public approval?
3. What historical events most likely impacted each the following presidents? What impact can be seen in the chart?
Truman:
Eisenhower:
Johnson:
Nixon:
Gerald Ford:
Jimmy Carter:
Ronald Reagan:
H. W. Bush:
Bill Clinton:
W. Bush:
Barack Obama:
*Donald Trump: use the link Real Clear Politics - Latest Polls for President Trump
4. What factors can you think of that would cause a "rally effect" in the polls? What factors can you think of that would cause a great drop in approval ratings? Give examples from the chart for each.

Naturally and inevitably, presidents employ pollsters to measure public opinion. Poll data can influence presidents' behavior, the calculation, and presentation of their decisions and policies, and their rhetoric.

After the devastating loss of Congress to the Republicans midway through his first term, President Clinton hired public relations consultant Dick Morris to find widely popular issues on which he could take a stand. Morris used a "60 percent rule": if six out of ten Americans were in favor of something, Clinton had to be too. Thus the Clinton White House crafted and adopted some policies knowing that they had broad popular support, such as balancing the budget and "reforming" welfare.

Even when public opinion data has no effects on a presidential decision, it can still be used to ascertain the best way to justify the policy or to find out how to present (i.e., spin) unpopular policies so that they become more acceptable to the public. Polls can identify the words and phrases that best sell policies to people. President George W. Bush referred to "school choice" instead of "school voucher programs," to the "death tax" instead of "inheritance taxes," and to "wealth-generating private accounts" rather than "the privatization of Social Security." He presented reducing taxes for wealthy Americans as a "jobs" package.

Polls can even be used to adjust a president's personal behavior. After a poll showed that some people did not believe that President Obama was a Christian, he attended services, with photographers in tow, at a prominent church in Washington, D.C.

Presidential Polling Data
For current polling data from a variety of sources, go to Real Clear Politics

Presidents speak for various reasons: to represent the country, address issues, promote policies, and seek legislative accomplishments; to raise funds for their campaign, their party, and its candidates; and to berate the opposition. They also speak to control the executive branch by publicizing their thematic focus, ushering along appointments, and issuing executive orders. They aim their speeches at those physically present and, often, at the far larger audience reached through the media.

In their speeches, presidents celebrate, express national emotion, educate, advocate, persuade, and attack. Their speeches vary in importance, subject, and venue. They give major ones, such as the inauguration and State of the Union. They memorialize events such as 9/11 and speak at the site of tragedies (as President Obama did on January 12, 2011, in Tucson, Arizona, after the shootings of Rep. Gabrielle Giffords and bystanders by a crazed gunman). They give commencement addresses. They speak at party rallies. And they make numerous routine remarks and brief statements. Presidents are more or less engaged in composing and editing their speeches. For speeches that articulate policies, the contents will usually be considered in advance by the people in the relevant executive branch departments and agencies who make suggestions and try to resolve or meld conflicting views, for example, on foreign policy by the State and Defense departments, the CIA, and National Security Council. It will be up to the president, to buy in on, modify, or reject themes, arguments, and language.

The president's speechwriters are involved in the organization and contents of the speech. They contribute memorable phrases, jokes, applause lines, transitions, repetition, rhythm, emphases, and places to pause. They write for ease of delivery, the cadence of the president's voice, mannerisms of expression, idioms, pace, and timing.

In search of friendly audiences, congenial news media, and vivid backdrops, presidents often travel outside Washington to give their speeches. In his first 100 days in office in 2001, George W. Bush visited 26 states to give speeches; this was a new record even though he refused to spend a night anywhere other than in his own beds at the White House, at Camp David (the presidential retreat), or on his Texas ranch.

Memorable settings may be chosen as backdrops for speeches, but they can backfire. On May 1, 2003, President Bush emerged from a plane that just landed on the aircraft carrier USS Abraham Lincoln and spoke in front of a huge banner that proclaimed "Mission Accomplished," implying the end of major combat operations in Iraq. The banner was positioned for the television cameras to ensure that the open sea, not San Diego, appeared in the background. The slogan may have originated with the ship's commander or sailors, but the Bush people designed and placed it perfectly for the cameras and choreographed the scene.

Speechmaking can entail *"going public"* where presidents give a major address to promote public approval of their decisions, to advance their policy objectives and solutions in Congress and the bureaucracy, or to defend themselves against accusations of illegality and immorality. Going public is "a strategic adaptation to the information age."

According to a study of presidents' television addresses, they fail to increase public approval of the president and rarely increase public support for the policy action the president advocates. There can be a rally phenomenon where people are motivated around an event or action of the president that sees a rapid rise in public approval (such as the first Iraq War and the response to the September 11 attacks in 2001). The president's approval rating rises during periods of international tension and likely use of American force. Even at a time of policy failure, the president can frame the issue and lead public opinion. Crisis news coverage likely supports the president.

Moreover, nowadays, presidents, while still going public—that is, appealing to national audiences—increasingly go local: they take a targeted approach to influencing public opinion. They go for audiences who might be persuadable, such as their party base and interest groups, and to strategically chosen locations.

Public Opinion Polling

Public opinion polling is prevalent even outside election season. Are politicians and leaders listening to these polls, or is there some other reason for them? Some believe the increased collection of public opinion is due to the growing support of delegate

representation. The theory of delegate representation assumes the politician is in office to be the voice of the people.

If voters want the legislator to vote for legalizing marijuana, for example, the legislator should vote to legalize marijuana. Legislators or candidates who believe in delegate representation may poll the public before an important vote comes up for debate in order to learn what the public desires them to do.

Others believe polling has increased because politicians, like the president, operate in permanent campaign mode. To continue contributing money, supporters must remain happy and convinced the politician is listening to them. Even if the elected official does not act in a manner consistent with the polls, he or she can mollify everyone by explaining the reasons behind the vote.

Regardless of why the polls are taken, studies have not clearly shown whether the branches of government consistently act on them. Some branches appear to pay closer attention to public opinion than other branches, but events, time periods, and politics may change the way an individual or a branch of government ultimately reacts.

Public Opinion and Elections

Elections are the events on which opinion polls have the greatest measured effect. Public opinion polls do more than show how we feel on issues or project who might win an election. The media use public opinion polls to decide which candidates are ahead of the others and therefore of interest to voters and worthy of interview. From the moment President Obama was inaugurated for his second term, speculation began about who would run in the 2016 presidential election. Within a year, potential candidates were being ranked and compared by a number of newspapers.

The speculation included favorability polls on Hillary Clinton, which measured how positively voters felt about her as a candidate. The media deemed these polls important because they showed Clinton as the frontrunner for the Democrats in the next election.

During the presidential primary season, we see examples of the bandwagon effect, in which the media pays more attention to candidates who poll well during the fall and the first few primaries. Bill Clinton was nicknamed the “Comeback Kid” in 1992 after he placed second in the New Hampshire primary despite accusations of adultery with Gennifer Flowers. The media’s attention on Clinton gave him the momentum to make it through the rest of the primary season, ultimately winning the Democratic nomination and the presidency.

Polling is also at the heart of horserace coverage. Just like an announcer at the racetrack, the media calls out every candidate’s move throughout the presidential campaign. Horserace coverage can be neutral, positive, or negative, depending upon what polls or facts are covered. During the 2012 presidential election, the Pew Research Center found that both Mitt Romney and President Obama received more negative than positive horserace coverage, with Romney’s growing more negative as he fell in the polls.

Horserace coverage is often criticized for its lack of depth; the stories skip over the candidates’ issue positions, voting histories, and other facts that would help voters make an informed decision. Yet, horserace coverage is popular because the public is always interested in who will win, and it often makes up a third or more of news stories about the election.

Exit polls, taken the day of the election, are the last election polls conducted by the media. Announced results of these surveys can deter voters from going to the polls if they believe the election has already been decided.

Exit polling seems simple. An interviewer stands at a polling place on Election Day and asks people how they voted. But the reality is different. Pollsters must select sites and voters carefully to ensure a representative and random poll. Some people refuse to talk and others may lie. The demographics of the polled population may lean more towards one party than another.

Studies suggest that exit polls can affect voter turnout. Reports of close races may bring additional voters to the polls, whereas apparent landslides may prompt people to stay home. Other studies note that almost anything, including bad weather and lines at polling places, dissuades voters. Ultimately, it appears exit poll reporting affects turnout by up to 5 percent.

On the other hand, limiting exit poll results means major media outlets lose out on the chance to share their carefully collected data, leaving small media outlets able to provide less accurate, more impressionistic results. And few states are affected anyway since the media invest only in those where the election is close. Finally, an increasing number of voters are now voting up to two weeks early, and these numbers are updated daily without controversy.

Public opinion polls also affect how much money candidates receive in campaign donations. Donors assume public opinion polls are accurate enough to determine who the top two to three primary candidates will be, and they give money to those who do well.

Candidates who poll at the bottom will have a hard time collecting donations, increasing the odds that they will continue to do poorly.

Presidents running for reelection also must perform well in public opinion polls, and being in office may not provide an automatic advantage. Americans often think about both the future and the past when they decide which candidate to support.

They have three years of past information about the sitting president, so they can better predict what will happen if the incumbent is reelected. That makes it difficult for the president to mislead the electorate. Voters also want a future that is prosperous. Not only should the economy look good, but citizens want to know they will do well in that economy.

For this reason, daily public approval polls sometimes act as both a referendum of the president and a predictor of success.

Public Opinion and Government

Individually, of course, politicians cannot predict what will happen in the future or who will oppose them in the next few elections. They can look to see where the public is in agreement as a body. If public mood changes, the politicians may change positions to match the public mood. The more savvy politicians look carefully to recognize when shifts occur. When the public is more or less liberal, the politicians may make slight adjustments to their behavior to match. Politicians who frequently seek to win office, like House members, will pay attention to the long- and short-term changes in opinion. By doing this, they will be less likely to lose on Election Day.

If presidents have enough public support, they use their level of public approval indirectly as a way to get their agenda passed. Immediately following Inauguration Day, for example, the president enjoys the highest level of public support for implementing campaign promises. This is especially true if the president has a *mandate*, which is more than half the popular vote. Barack Obama's recent 2008 victory was a mandate with 52.9 percent of the popular vote and 67.8 percent of the Electoral College vote.

When presidents have high levels of public approval, they are likely to act quickly and try to accomplish personal policy goals. They can use their position and power to focus media attention on an issue. Modern presidents may find more success in using their popularity to increase media and social media attention on an issue. Even if the president is not the reason for congressional action, he or she can cause the attention that leads to change.

In some instances, presidents may appear to directly consider public opinion before acting or making decisions. However, further examples show that presidents do not consistently listen to public opinion.

While presidents have at most only two terms to serve and work, members of Congress can serve as long as the public returns them to office. We might think that for this reason public opinion is important to representatives and senators, and that their behavior, such as their votes on domestic programs or funding, will change to match the expectation of the public. In a more liberal time, the public may expect to see more social programs. In a non-liberal time, the public mood may favor austerity, or decreased government spending on programs. Failure to recognize shifts in public opinion may lead to a politician's losing the next election.

House of Representatives members, with a two-year term, have a more difficult time recovering from decisions that anger local voters. And because most representatives continually fundraise, unpopular decisions can hurt their campaign donations. For these reasons, it seems representatives should be susceptible to polling pressure.

The Senate is quite different from the House. Senators do not enjoy the same benefits of incumbency, and they win reelection at lower rates than House members. Yet, they do have one advantage over their colleagues in the House: senators hold six-year terms, which gives them time to engage in fence-mending to repair the damage from unpopular decisions. In the Senate, Stimson's study confirmed that opinion affects a senator's chances at re-election, even though it did not affect House members. Specifically, the study shows that when public opinion shifts, fewer senators win re-election. Thus, when the public as a whole becomes more or less liberal, new senators are elected. Rather than the senators shifting their policy preferences and voting differently, it is the new senators who change the policy direction of the Senate.

Beyond voter polls, congressional representatives are also very interested in polls that reveal the wishes of interest groups and businesses. If AARP, one of the largest and most active groups of voters in the United States, is unhappy with a bill, members of the relevant congressional committees will take that response into consideration. If the pharmaceutical or oil industry is unhappy with a new patent or tax policy, its members' opinions will have some effect on representatives' decisions, since these industries contribute heavily to election campaigns.

There is some disagreement about whether the Supreme Court follows public opinion or shapes it. The lifetime tenure the justices enjoy was designed to remove everyday politics from their decisions, protect them from swings in political partisanship, and allow them to choose whether and when to listen to public opinion. More often than not, the public is unaware of the Supreme Court's decisions and opinions. When the justices accept controversial cases, the media tune in and ask questions, raising public awareness and affecting opinion. But do the justices pay attention to the polls when they make decisions?

Studies that look at the connection between the Supreme Court and public opinion are contradictory. Early on, it was believed that justices were like other citizens: individuals with attitudes and beliefs who would be affected by political shifts.

Other studies have revealed a more complex relationship between public opinion and judicial decisions, largely due to the difficulty of measuring where the effect can be seen. Some studies look at the number of reversals taken by the Supreme Court, which are decisions with which the Court overturns the decision of a lower court. In one study, the authors found that public opinion slightly affects cases accepted by the justices. Whether the case or court is currently in the news may also matter. A study found that if the majority of Americans agree on a policy or issue before the court, the court's decision is likely to agree with public opinion.

Figure 6.1.5

Study/Discussion Questions

1. Have you ever participated in an opinion poll? Did you feel that you were able to adequately convey your feelings about the issues you were asked about?

2. What are the different ideas about what public opinion really is? What might the advantages of looking at public opinion in each of those different ways be?

3. What is the difference between an attitude and an opinion?

4. What drives presidential approval ratings?

5. What role does a president's television address play in presidential approval ratings?

Sources:

[1] James A. Stimson, Public Opinion in America, 2nd ed. (Boulder, CO: Westview, 1999)

[2] Carroll J. Glynn, Susan Herbst, Garrett J. O'Keefe, and Robert Y. Shapiro, Public Opinion (Boulder, CO: Westview, 1999).

[3] Susan Herbst, Numbered V

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6.2: Impact of Political Changes

Figure 6.2.1: Third party candidates draw attention to issues and causes.

Communication is a central activity of everyone engaged in politics—people asserting, arguing, deliberating, and contacting public officials; candidates seeking to win votes; lobbyists pressuring policymakers; presidents appealing to the public, cajoling Congress, addressing the leaders and people of other countries. All this communication sparks more communication, actions, and reactions.

The bulk of information that Americans obtain about politics and government comes through the mass and new media. Mass media are well-established communication formats, such as newspapers and magazines, network television and radio stations, designed to reach large audiences. Mass media also encompass entertainment fares, such as studio films, best-selling books, and hit music.

Media Informs the Public

New media are forms of electronic communication made possible by computer and digital technologies. They include the Internet, digital video cameras, cellular telephones, and cable and satellite television and radio. This media provides quick, interactive, targeted, and potentially democratic communication, such as social media, blogs, podcasts, websites, wikis, instant messaging, and e-mail.

The media, old and new, are central to American politics and government in three ways. First, they depict the people, institutions, processes, issues, and policies involved in politics and government. Second, the way in which participants in government and politics interact with the media influences the way in which the media depict them. Third, the media's depictions can have effects (positive AND negative) on our daily lives.

Figure 6.2.2: International media giants now dominate the distribution and broadcast of mass media. Many have criticized this trend as having a limiting impact on free speech and open communication of major events.

Media Empires

A few multinational conglomerates dominate the mass media; indeed, they are global media empires. Between them, they own the main television networks and production companies, most of the popular cable channels, the major movie studios, magazines, book publishers, and the top recording companies, and they have significant ownership interests in Internet media.

Other large corporations own the vast majority of newspapers, major magazines, television and radio stations, and cable systems. Many people live in places that have one newspaper, one cable-system owner, few radio formats, and one bookstore selling mainly best sellers. Furthering consolidation, in January 2011 the Federal Communications Commission (FCC) approved the merger of Comcast, the nation's largest cable and home Internet provider, with NBC Universal, one of the major producers of television shows and movies and the owner of several local stations as well as such lucrative cable channels as MSNBC, CNBC, USA, Bravo, and SyFy.

Some scholars criticize the media industry for pursuing profits and focusing on the bottom line. They accuse it of failing to cover government and public affairs in-depth and of not presenting a wide range of views on policy issues.

The reliance of most of the mass media on advertising as their main source of revenue and profit can discourage them from giving prominence to challenging social and political issues and critical views. Advertisers usually want cheery contexts for their messages. While many criticize media conglomerates as having biased agendas, the reality is that media companies are biased only

towards the maximization of profits to their investors and it is the viewers who establish the agenda that media companies follow in their viewing patterns.

For this reason, many experts have noted that we are moving from an era of mass broadcasting to very specialized “narrowcasting” meaning that viewers select the source of news and entertainment they wish to see based on their personal and cultural backgrounds and interests. The era of depending upon broadcasters to deliver the news is quickly coming to an end and is being replaced with a new era of consumer generated news and information resources. Nonetheless, the mass media contain abundant information about politics, government, and public policies and are still a vital part of our daily lives.

Types of Media

Newspapers

Figure 6.2.3: In the past, newspapers were the primary source of news and information for the average citizen. Today, newspapers still have an important role but the industry is under massive threat from new media sources.

The core of the mass media of the departed twentieth-century was the newspaper. Even now, newspapers originate the overwhelming majority of domestic and foreign news.

During recent years, sales have plummeted as many people have given up or, as with the young, never acquired the newspaper habit. Further cutting into sales are newspapers’ free online versions. Revenue from advertising (automotive, employment, and real estate) has also drastically declined, with classified ads moving to Craigslist and specialist job-search sites. As a result, newspapers have slashed staff, closed foreign and domestic bureaus (including in Washington, DC), reduced reporting, and shrunk in size.

Nonetheless, there are still around 1,400 daily newspapers in the United States with estimated combined daily circulations of roughly forty million; many more millions read the news online. Chains of newspapers owned by corporations account for over 80 percent of circulation.

A few newspapers, notably the Wall Street Journal (2.1 million), USA Today (1.8 million), and the New York Times (877,000), are available nationwide.

The Wall Street Journal, although it has erected a paywall around its Internet content, claims an electronic readership of 450,000. Its success suggests that in the future some newspapers may go completely online—thus reducing much of their production and distribution costs.

Most newspapers, including thousands of weeklies, are aimed at local communities. But after losing advertising revenue, their coverage is less comprehensive. They are being challenged by digital versions of local newspapers, such as AOL’s Patch.com. [5] It has seven hundred sites, each in an affluent community, in nineteen states and the District of Columbia. AOL has hired journalists and equipped each of them with a laptop computer, digital camera, cell phone, and police scanner to publish up to five items of community news daily. Some of their stories have achieved prominence, as, for example, a 2009 report about the hazing of high school freshmen in Millburn, New Jersey. But the most popular posts are about the police, schools, and local sports; and “often the sites are like digital Yellow Pages.” [6]

Magazines

Figure 6.2.4: Just as with newspapers, traditional magazines have been threatened with extinction by new media sources. But the industry is responding to this threat with new and interactive forms of electronic media products.

There are roughly five thousand magazines published on every conceivable subject. Five publishers account for around one-third of the total revenue generated. Political and social issues are commonly covered in newsweeklies such as Time and also appear in popular magazines such as People and Vanity Fair.

To survive, journals of political opinion usually depend on subsidies from wealthy individuals who support their views. The Weekly Standard, the voice of Republican neoconservatives and one of the most influential publications in Washington, with a circulation of approximately 75,000, loses around $5 million annually. It was initially owned and funded by media mogul Rupert Murdoch's News Corporation, which makes big profits elsewhere through its diverse holdings, such as Fox News and the Wall Street Journal. In 2009, it sold the Weekly Standard to the conservative Clarity Media Group.

Television

Figure 6.2.5: Even today, television viewing takes up an average of 34 hours of our time per week. But TV viewing has changed from a "spectator sport" to a much more interactive activity with the viewer having intense control over the product. This trend has great implications for politics in the future.

People watch an average of thirty-four hours of television weekly. Over one thousand commercial, for-profit television stations in the United States broadcast over the airwaves; they also are carried, as required by federal law, by local cable providers. Most of them are affiliated with or, in fewer cases, owned by one of the networks (ABC, CBS, NBC, and Fox), which provide the bulk of their programming. These networks produce news, public affairs, and sports programs.

The commission and finance from production companies, many of which they own, the bulk of the entertainment programming shown on their stations and affiliates. The most desired viewers are between eighteen and forty-nine because advertisements are directed at them. So the shows often follow standard formats with recurring characters: situation comedies, dramas about police officers and investigators, and doctors and lawyers, as well as romance, dance, singing, and other competitions. Sometimes they are spin-offs from programs that have done well in the audience ratings or copies of successful shows from the United Kingdom. "Reality" programming, heavily edited and sometimes scripted, of real people put into staged situations or caught unaware, has become common because it draws an audience and usually costs less to make than written shows. The highest-rated telecasts are usually football games, exceeded only by the Academy Awards.

Unusual and risky programs are put on the air by networks and channels that may be doing poorly in the ratings and are willing to try something out of the ordinary to attract viewers. Executives at the relatively new Fox network commissioned The Simpsons. Matt Groening, its creator, has identified the show's political message this way: "Figures of authority might not always have your best interests at heart.…Entertain and subvert, that's my motto." The show, satirizing American family life, government, politics, and the media, has become one of television's longest running and most popular series worldwide.

Cable is mainly a niche medium. Of the ninety or so ad-supported cable channels, ten (including USA, TNT, Fox News, A&E, and ESPN) have almost a third of all the viewers. Other channels occasionally attract audiences through programs that are notable (Mad Men on American Movie Classics) or notorious (Jersey Shore on MTV). Cable channels thrive (or at least survive) financially because they receive subscriber fees from cable companies such as Comcast and Time-Warner.

The networks still have the biggest audiences—the smallest of them (NBC) had more than twice as many viewers as the largest basic cable channel, USA. The networks' evening news programs have an audience of 23 million per night compared with the 2.6 million of cable news.

Politics and government appear not only on television in news and public-affairs programs but also in courtroom dramas and cop shows. In the long-running and top-rated television show (with an audience of 21.93 million viewers on January 11, 2011), NCIS (Naval Criminal Investigative Service), a team of attractive special agents conduct criminal investigations. The show features technology, sex, villains, and suspense. The investigators and their institutions are usually portrayed positively.

Public Broadcasting

Figure 6.2.6: Michelle Obama made an appearance on Sesame Street, a PBS show, promoting her healthy lifestyle initiative for children.

The Corporation for Public Broadcasting (CPB) was created by the federal government in 1967 as a private, nonprofit corporation to oversee the development of public television and radio. [8] CPB receives an annual allocation from Congress. Most of the funds are funneled to the more than three hundred public television stations of the Public Broadcasting Service (PBS) and to over six hundred public radio stations, most affiliated with National Public Radio (NPR), to cover operating costs and the production and purchase of programs.

CPB's board members are appointed by the president, making public television and radio vulnerable or at least sensitive to the expectations of the incumbent administration. Congress sometimes charges the CPB to review programs for objectivity, balance, or fairness and to fund additional programs to correct alleged imbalances in views expressed. [9] Conservatives charge public broadcasting with a liberal bias. In 2011 the Republican majority in the House of Representatives sought to withdraw its federal government funding.

About half of public broadcasting stations' budgets come from viewers and listeners, usually responding to unremitting on-air appeals. Other funding comes from state and local governments, from state colleges and universities housing many of the stations, and from foundations.

Corporations and local businesses underwrite programs in return for on-air acknowledgments akin to advertisements for their image and products. Their decisions on whether or not to underwrite a show tend to favor politically innocuous over provocative programs. Public television and radio thus face similar pressure from advertisers as their for-profit counterparts.

Public broadcasting delves into politics, particularly with its evening news programs and documentaries in its Frontline series. National Public Radio, with an audience of around 27 million listeners weekly, broadcasts lengthy news programs during the

morning and evening with reports from domestic and foreign bureaus. NPR has several call-in current-events programs, such as The Diane Rehm Show. Guests from a spectrum of cultural life are interviewed by Terry Gross on her program Fresh Air. On the Media analyzes the news business in all its aspects, and Ira Glass's This American Life features distinctive individuals delving into important issues and quirky subjects. Most of these programs are available via podcast from iTunes. Public Radio Exchange, PRX.org, has an abundance of programs from independent producers and local NPR stations.

Commercial Radio

Figure 6.2.7: Conservative radio talk show personality Rush Limbaugh has impacted the political scene through his radio program for the past three decades.

Around ten thousand commercial FM and AM radio stations in the United States broadcast over the airwaves. During the 1990s, Congress and the Federal Communications Commission (FCC) dropped many restrictions on ownership and essentially abandoned the requirement that stations must serve the "public interest." This led to the demise of much public affairs programming and to a frenzy of mergers and acquisitions. Clear Channel Communications, then the nation's largest owner, bought the second largest company, increasing its ownership to roughly 1,150 stations. The company was sold in 2008 to two private equity firms.

Most radio programming is aimed at an audience based on musical preference, racial or ethnic background and language, and interests (e.g., sports). Much of the news programming is supplied by a single company, Westwood One, a subsidiary of media conglomerate Viacom. Even on all-news stations, the reports are usually limited to headlines and brief details. Talk radio, dominated by conservative hosts, reaches large audiences.

Music

Figure 6.2.8: Groups such as Green Day have had a dramatic impact on American politics through their use of political content and criticism in their lyrics. Green Day has been particularly critical of the music industry's control over their music and lyrical content.

Four major companies produce, package, publicize, advertise, promote, and merchandise roughly 5,000 singles and 2,500 compact discs (CDs) each year. A key to success is getting a music video on MTV or similar stations. Around twelve million CDs used to be sold nationwide every week. This number has significantly decreased. The companies and performers now make music that is cheaply available online through services such as Apple's iTunes store. Many people, especially students, download music from the Internet or burn CDs for themselves and others.

Music often contains political content. Contrast Green Day's scathing 2005 hit song "American Idiot" and its lyric "One nation controlled by the media" with Lee Greenwood's patriotic "God Bless the USA." Some rap lyrics celebrate capitalism and consumerism, promote violence against women, and endorse—or even advocate—attacks on the police and other authority figures.

Films

Figure 6.2.9: Hollywood and its famous "Hollywood Sign" has become the symbolic and geographic heart of the film industry in the United States. Today, it is dominated by six major studios and has become criticized as the financial and social centerpiece of "liberal politics."

The movie business is dominated by six major studios, which finance and distribute around 130 feature films each year. Mass-market logic usually pushes them to seek stories that "are sufficiently original that the audience will not feel it has already seen the movie, yet similar enough to past hits not to be too far out." [10] Superheroes, science fiction and fantasy, sophomoric comedies, and animation dominate. Sequels are frequent. Special effects are common. In Robert Altman's satire The Player, the protagonist says that the "certain elements" he needs to market a film successfully are violence, suspense, laughter, hope, heart, nudity, sex, and a happy ending.

It can cost well over $100 million to produce, advertise, and distribute a film to theaters. These costs are more or less recouped by the U.S. and overseas box office sales, DVD sales (declining) and rentals, revenue from selling broadcast rights to television, subscription cable, video on demand, and funds received from promoting products in the films (product placement). Increasingly important are Netflix and its competitors, which for a monthly charge make movies available by mail or streaming.

Many independent films are made, but few of them are distributed to theaters and even fewer seen by audiences. This situation is being changed by companies, such as Snag Films, that specialize in digital distribution and video on demand (including over the iPad). [11]

It is said in Hollywood that "politics is box office poison." The financial failure of films concerned with U.S. involvement in Iraq, such as In the Valley of Elah, appears to confirm this axiom. Nonetheless, the major studios and independents do sometimes make politically relevant movies.

Books

Figure 6.2.10: While books have been an important means of transmitting information since the days of Gutenberg's first printing press, the publishing industry is changing from traditional paper/print based media to electronic "e-books."

Some 100,000 books are published annually. About "seventy percent of them will not earn back the money that their authors have been advanced." [12] There are literally hundreds of publishers, but six produce 60 percent of all books sold in the United States. Publishers' income comes mainly from sales. A few famous authors command multimillion-dollar advances: President Bill Clinton received more than $10 million and President Bush around $7 million to write their memoirs.

E-books are beginning to boom. The advantage for readers is obtaining the book cheaper and quicker than by mail or from a bookstore. For publishers, there are no more costs for printing, shipping, warehousing, and returns. But digital books could destroy bookstores if, for example, publishers sold them directly to the iPad. Indeed, publishers themselves could be eliminated if authors sold their rights to (say) Amazon.

Books featuring political revelations often receive widespread coverage in the rest of the media. They are excerpted in magazines and newspapers. Their authors appear on television and radio programs. An example is President George W. Bush's former press secretary Scott McClellan, who, while praising the president in his memoir as authentic and sincere, also accused him of lacking in candor and competence. [13]

Figure 6.2.11: Social media has become a force of tremendous change among all forms of traditional media. Also referred to as “new media,” internet-based technologies have changed the way we deliver and receive news and information as well as entertainment and print-based media such as newspapers, magazines, and even textbooks.

Recent technological innovations have shifted the entire media field from one of mass communication to a new arena that can best be described as “new media.” For our purposes, we will define new media as any type of media communication that relies on electronic technology (particularly the Internet). In just the past decade, rapid and, most likely, enduring shifts have taken place in the way in which we communicate with each other. The rising popularity of “smartphones” has meant that most of us have easy access to seemingly unlimited sources of news, information, and interpersonal communications (such as social media like Facebook, Twitter, and Instagram).

Rather than relying on traditional mass media sources to deliver content to us, we ourselves have become both the creators AND consumers of digital content at astounding speed. Where just a decade ago, the “24-hour news cycle” seemed impressive, we are now in an era where personal electronics and digital cameras on most phones have allowed us to stream, tweet, blog, etc. in real time. Our daily lives are seemingly lived online and in real time. The implications of these new forms of technology are just beginning to be realized and utilized in the political process but it is fair to predict that the use and impact of new media will overshadow that of traditional media sources in the government process for many decades to come.

Figure 6.2.12: Media crews and television cameras are a welcome presence at many events staged by politicians and candidates.

Mass Media and Politics

Political advertising is a form of campaigning used by political candidates to reach and influence voters. It can include several different mediums and span several months over the course of a political campaign. Unlike the campaigns of the past, advances in media technology have streamlined the process, giving candidates more options to reach even larger groups of constituents with very little physical effort.

Political advertising has changed drastically over the last several decades. During the 1952 Presidential elections, Dwight D. Eisenhower was the first candidate to extensively utilize television commercials, creating forty twenty-second spots to answer questions from everyday Americans. During the 1960 elections, both candidates--Vice President Richard Nixon and Senator John F. Kennedy--utilized television, although Kennedy's televised speech about his Catholic heritage and American religious tolerance is considered by many to be more memorable.

One of the first negative political advertisements was titled "The Daisy Girl" and was released by Lyndon Johnson's campaign during the 1964 election. The commercial showed a young girl picking the petals off a daisy, while a voice off camera began a countdown to a nuclear explosion. The ad ended with an appeal to vote for Johnson, "because the stakes are too high for you to stay home." Though the ad ran for under a minute and only aired once, it helped Johnson win the electoral votes of 44 states. Throughout the 1970s and 1980s, political attack ads became even more prevalent, with Presidents Nixon, Carter, Reagan and George H. W. Bush all utilizing the method against their opponents.

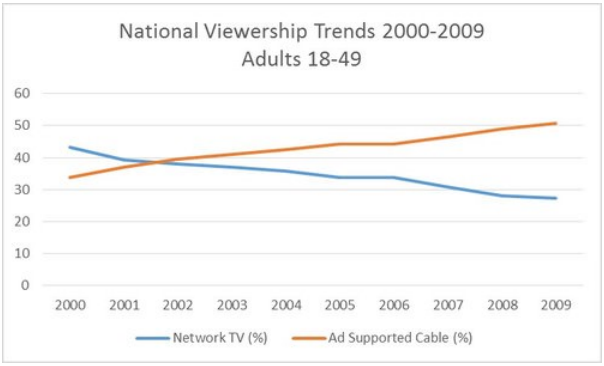

Figure 6.2.13: As demonstrated in the chart above, cable (and satellite) viewership has outpaced traditional network viewership since sometime in 2001. This trend is anticipated to continue well into the future.

The growth of cable television networks heavily influenced political advertising in the 1992 election between incumbent President George H. W. Bush and Governor Bill Clinton, particularly in reaching new target demographics such as women and young voters. The 2004 election saw yet another, and possibly the biggest, change yet in political advertising--the growth of the Internet. Web-based advertising was easily distributed by both incumbent President George W. Bush and Senator John Kerry's campaigns, and both campaigns hired firms who specialized in the accumulation of personal data. This resulted in advertisements which were tailored to target specific audiences for the first time (a process known as narrowcasting). The 2008 election was notable for Senator Barack Obama's use of the Internet to communicate directly and personally with supporters and constituents, a tactic that would help in his eventual victory.

Video: Political Ads in 2014 – "Good, Bad and Ugly

Politicians have learned that the media is the fastest and most efficient means of promoting themselves, drawing attention to a social or political issue, and proposing a government program or policy. But this must be balanced with the media's traditional role as the "fourth estate" in overseeing, monitoring and exposing the actions of politicians.

One way that politicians attempt to guide the media's focus is to give the members of the media carefully scripted events that they wish covered. Media events are carefully staged and highly publicized events where members of the media and the press are invited and encouraged to attend in order for politicians to gain exposure in an environment that is controlled by well prepared and high "handlers." In most media events, little if any attention would be paid to the politician or candidate if the media were not there and the media benefits by having extended access to the candidate or politician.

A very good example of such a media event would be Barack Obama's decision to invite TV and media crews to follow him as he went door to door thanking candidates for their support and asking them for continued support in his presidential campaign. While it was a media event, it made little difference on a personal level to the outcome of the Obama campaign as he reached out to only around 13 such households before ending the event when the cameras were turned off.

Figure 6.2.14: Barack Obama visits an Ohio neighborhood as part of a carefully crafted media event in 2007 as part of his 2008 run for the Presidency.

As seen earlier, the production of highly crafted TV commercials is an important tool, especially for candidates seeking office. Approximately 60 percent of presidential campaign spending is now devoted to Television ads but recent analysis says that about two-thirds of ads tend to carry a negative tone. The reason such negative ads tend to dominate the airwaves in tightly contested races is that they can carry a larger impact in 30 seconds than a much longer advertisement with a more positive image can, but the tradeoff is that the American public may actually consider a candidate's use of negative ads as a detriment and may not respond in the way the candidate intended.

For this reason, some political scholars believe the use of negative campaign ads will eventually prove less effective and we *should* anticipate fewer of them in the future. But this may also be a result of social media campaigns which can carry negative messages to an even larger degree and may not be directly attributed to the candidate.

Ronald Reagan has been referred to as "the great communicator" because of his effective use of media strategies. This is as a result of President Reagan's media and Hollywood background in radio and films. He truly understood the effectiveness of a well-crafted media persona.

Journalist Mark Hertsgaard has described the Reagan White House strategy as involving seven principles of media management. These include: (1) plan ahead; (2) stay on the offensive; (3) control the flow of information; (4) limit reporters' access to the president; (5) talk about the issues you want to talk about; (6) speak in one unified voice; and (7) repeat the same message many times. [source: Mark Hertsgaard, *On Bended Knee: The Press and the Reagan Presidency* (New York: Farrar, Straus & Giroux, 1988), [34]. This proactive approach to media management has now become the standard not only for the president but also for the majority of government officials and candidates across the nation.

Figure 6.2.15: President Franklin D. Roosevelt in his wheelchair with a young polio patient. It was an unwritten rule of the Roosevelt Whitehouse that no pictures were to be taken or published in the media of him in his wheelchair. Pictures such as this were extremely rare.

Media management did not, of course, begin with Ronald Reagan's administration. As recently as Herbert Hoover's presidency, reporters were required to submit their questions to the president in writing and he always responded to them in writing. Under the Roosevelt administration, media politics became an even greater part of the overall political process. It is under Roosevelt's administration that such staples of the political process as *press conferences* and *media events* took place. One of the most important strategies of the Roosevelt administration was the use of radio with the now famous "fireside chats."

Another example of media management during this period of time was Roosevelt's ability to control the stories the media decided to report on. For instance, most of the public was totally unaware that President Roosevelt was in a wheelchair throughout his entire presidency (because he suffered from adult-onset polio). It was an unwritten yet heavily enforced rule that no mention was to be made nor pictures taken by the press of the president in his wheelchair or on crutches/braces.

Figure 6.2.16: Walter Cronkite was often described as "the most trusted man in America" because of his role as chief commentator and host of the CBS Nightly News. When he publicly criticized the Johnson administration on its handling of the Vietnam War, Lyndon Johnson was said to have said "If I've lost Cronkite, I've lost America." He publically announced his decision not to run for another term as President in the 1968 election.

By the 1960s, the "cozy relationship" between the press and the president had almost entirely evaporated. By the 1960s, reporters began to change their perceived role as passively covering the president's activities to a more adversarial one in which a new type of reporting began to develop, known as *investigative reporting*. While media coverage had once only been favorable to the president this began to change as events such as the Vietnam War and Watergate began to unravel. Today, many journalists see their

role as an *investigative* one yet most media owners and operators view the role of media today as providing *entertainment*. However, there is little doubt that media reporting had a great impact on many events in the 1960s and 1970s.

Questions to Ponder:

What is the role of the media today? Should it be an investigative one or should it be focused solely on entertaining and attracting audiences? Explain and defend your answer.

While, as we have seen in previous chapters, the First Amendment to the Constitution guarantees Freedom of the Press, the government does regulate some media. For the most part, print media are mostly unregulated, with newspapers and magazines given the freedom to print nearly anything as long as they don't *slander* anyone. To date, the Internet has remained largely unregulated, despite ongoing congressional attempts to place restrictions on some controversial content.

Traditional broadcast media, however, are subject to the most government regulation. Radio and television broadcasters must obtain a license from the government because, according to American law, the public owns the airwaves. The agency in charge of issuing these licenses and overseeing and regulating the airwaves is The Federal Communications Commission (FCC).

Police Powers of the FCC

As a government regulatory agency, the FCC also has the responsibility to police the airwaves, and it can fine broadcasters for violating public decency standards on the air. In some cases, the FCC even has the power revoke a broadcaster's license, keeping it off the air permanently. As an example, the FCC has fined radio host Howard Stern numerous times for his use of profanity, and fined CBS heavily for Janet Jackson's "wardrobe malfunction" during the halftime performance at the Super Bowl in 2004.

Figure 6.2.17: Shocked Jock Howard Stern (Left) and Entertainer Janet Jackson (Right) have both been the center of regulatory action by the FCC due to alleged indecent acts which were broadcast over the public airwaves. In both cases, the media companies Westwood One (Stern's company) and CBS/Viacom/MTV (the company that hired Jackson for the Super Bowl) were fined heavily

The FCC has not enforced the fairness doctrine since 1985, and some allege that the FCC has taken a lax approach to enforce the other rules as well. In May 2014, the last of these rules to be enforced (the equal time rule) was suspended leaving these provisions unenforced by the FCC.

Media Policing and Political Campaigns

The FCC has also established rules for broadcasts concerning political campaigns (also referred to as campaign media doctrines):

The ***r**ight of rebuttal doctrine* requires broadcasters to provide an opportunity for candidates to respond to criticisms made against them. In short, a station cannot air an attack on a candidate and fail to give the target of the attack a chance to respond.

The *fairness doctrine*, which states that a broadcaster who airs a controversial program must provide time to air opposing views.

Figure 6.2.18

Study/Discussion Questions

1. What is the prime motivating factor/bias of mass media companies today? Why?
2. How have traditional media sources been impacted by "new media"?
3. Is social media a positive or negative trend in connecting the people with their government? Explain and defend your answer.

4. What role does Hollywood play in connecting the people to the government? Give an example.
5. How does music impact our political lives? What complaint did Green Day have about the music industry with this regard?
6. What type of media access has traditionally been the most important to candidates running for elected office? Why?
7. How did Ronald Reagan secure his reputation as "The Great Communicator?" What can other politicians learn from this?
8. What role does the Federal Communications Commission (FCC) play with respect to the media?

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6.3: Voting Patterns, Political Boundaries, and Political Divisions

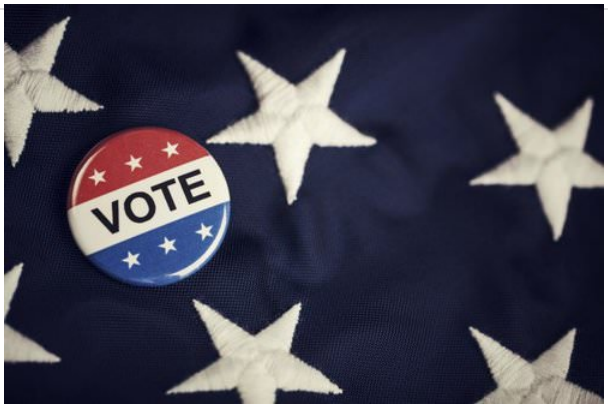

Figure 6.3.1: Voting has played an important part in U.S. history.

Campaign managers worry about who will show up at the polls on Election Day. Will more Republicans come? More Democrats? Will a surge in younger voters occur this year, or will an older population cast ballots? We can actually predict with strong accuracy who is likely to vote each year, based on identified influence factors such as age, education, and income. Campaigns will often target each group of voters in different ways, spending precious campaign dollars on the groups already most likely to show up at the polls rather than trying to persuade citizens who are highly unlikely to vote.

Political Divisions

Voting Rights on the Eve of the Revolution

The basis of political participation and voting in colonial America was the belief that voters should have an active stake in their society. Many of the colonial leaders associated the idea of democracy with a sort of “mob rule” and disorganization and believed that political participation should be reserved for those who owned property or paid taxes. In their view, only those “elite” individuals who had a direct financial stake in their communities were sufficiently qualified to vote. For this reason, each of the thirteen colonies had property ownership and/or tax requirements in order to be allowed to vote. In addition, many of the colonies imposed their own restrictions on voting, including religious tests. For example, Catholics were barred from voting in five colonies and Jews were prohibited from voting in four of them.

Overall, the number of those eligible to vote varied from place to place. In frontier areas, between seventy and eighty percent of white men could but in some colonial cities, only 40 to 50 percent of were eligible to vote.

The Revolution Changes Voting

It is important to remember that the American Revolution was fought, at least partially, over the issue of voting. American patriots rejected the British argument that representation in Parliament could be virtual (that is, that English members of Parliament could

adequately represent the interests of the colonists). Instead, the leaders of the American Revolution argued that government derived its legitimacy from the consent of the governed.

This made many restrictions on voting seem to be a violation of fundamental rights. For this reason, some states replaced property qualifications with a requirement to pay taxes instead. This is a direct reflection of thee “no taxation without representation” principle so fervently fought for during the revolution. Other states, in a more progressive vein, allowed anyone who served in the army or militia to vote while Vermont was the first state to eliminate all property and taxpaying qualifications for voting.

All states had removed religious requirements for voting by 1790. This resulted in *suffrage* (the right to vote) being extended to approximately 60 to 70 percent of adult white men. Six states (Maryland, Massachusetts, New York, North Carolina, Pennsylvania, and Vermont) even permitted free African Americans to vote.

Voting Rights and the U.S. Constitution

Remember that the United States Constitution left the issue of voting rights up to the states. The only thing that the Constitution said about voting was that those entitled to vote for the “most numerous Branch of the state legislature” could vote for members of the House of Representatives. For this reason, states were able to establish their own requirements and restrictions on voting for the first century of our nation’s existence. But the post-civil war era would require a more intrusive role for the national government in order to ensure that the right to vote was equitably and fairly applied to all eligible citizens.

Political Democratization

During the first half of the nineteenth century, the election process changed dramatically. Voting by voice was replaced by voting by written ballot. This was not the same thing as a secret ballot, which was instituted only in the late 19th century; parties printed ballots on colored paper, so that it was still possible to determine who had voted for which candidate.

The most significant political innovation of the early nineteenth century was the abolition of property qualifications for voting and officeholding. Hard times resulting from the Panic of 1819 led many people to demand an end to property restrictions on voting and officeholding. In 1800, just three states (Kentucky, New Hampshire, and Vermont) had universal white manhood suffrage. By 1830, ten states permitted white manhood suffrage without qualification. Eight states restricted the vote to taxpayers, and six imposed a property qualification for suffrage. In 1860, just five states limited suffrage to taxpayers and only two still imposed property qualifications. And after 1840, a number of states, mainly in the Midwest, allowed immigrants who intended to become citizens to vote.

Pressure for expansion of voting rights came from men who did not own property yet paid taxes; from territories eager to attract settlers; and from political parties seeking to broaden their base.

Ironically, the period that saw the advent of universal white manhood suffrage also saw new restrictions imposed on voting by African Americans. Every new state that joined the Union after 1819 explicitly denied blacks the right to vote. In 1855, only five states—Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont—allowed African Americans to vote without significant restrictions. In 1826, only 16 black New Yorkers were qualified to vote.

The era of universal white manhood suffrage also saw other restrictions on voting. In New Jersey, the one state that had allowed women property holders to vote, women lost the right to vote. Twelve states forbade paupers from voting and two dozen states excluded felons. After 1830, interest in voting registration increased. There were also some attempts to impose literacy tests and prolonged residence requirements (ranging up to 21 years) in the 1850s.

Transitioning to Universal "White" Suffrage

The transition from property qualifications to universal white manhood suffrage occurred gradually, without violence and with surprisingly little dissension, except in Rhode Island, where lack of progress toward democratization provoked an episode known as the Dorr War.

In 1841, Rhode Island, still operating under a Royal Charter granted in 1663, restricted suffrage to landowners and their eldest sons. The charter lacked a bill of rights and grossly underrepresented growing industrial cities, such as Providence, in the state legislature. As Rhode Island grew increasingly urban and industrial, the state’s landless population increased and fewer residents were eligible to vote. By 1841, just 11,239 out of 26,000 adult males were qualified to vote.

In 1841, Thomas W. Dorr, a Harvard-educated attorney, organized an extralegal convention to frame a new state constitution and abolish voting restrictions. The state's governor declared Dorr and his supporters guilty of insurrection, proclaimed a state of emergency, and called out the state militia. Dorr tried unsuccessfully to capture the state arsenal at Providence. He was arrested, found guilty of high treason, and sentenced to life imprisonment at hard labor. To appease popular resentment, the governor pardoned Dorr the next year, and the state adopted a new constitution in 1843. This constitution extended the vote to all taxpaying native-born adult males (including African Americans). But it imposed property requirements and lengthy residence requirements on immigrants.

Rhode Island was unusual in having a large urban, industrial, and foreign-born working class. It appears that fear of allowing this group to attain political power explains the state's strong resistance to voting reform.

The Civil War and Reconstruction

Although Abraham Lincoln had spoken about extending the vote to black soldiers, opposition to granting suffrage to African American men was strong in the North. Between 1863 and 1870, fifteen Northern states and territories rejected proposals to extend suffrage to African Americans.

During Reconstruction, for a variety of reasons, a growing number of Republicans began to favor extending the vote to African American men. Many believed that African Americans needed the vote to protect their rights. Some felt that black suffrage would allow the Republican Party to build a base in the South.

The Reconstruction Act of 1867 required the former Confederate states to approve new constitutions, which were to be ratified by an electorate that included black as well as white men. In 1868, the Republican Party went further and called for a 15th Amendment that would prohibit states from denying the vote based on race or previous condition of servitude. A proposal for a stronger amendment that would have prohibited states from denying or abridging the voting rights of adult males of sound mind (with the exception of felons and those who had engaged in rebellion against the United States) was defeated.

A variety of methods—including violence in which hundreds of African Americans were murdered, property qualification laws, gerrymandering, and fraud—were used by Southern whites to reduce the level of black voting. The defeat in 1891 of the Federal Elections Bill, which would have strengthened the federal government's power to supervise elections, prevent suppression of the black vote, and overturn fraudulent elections, ended congressional efforts to enforce black voting rights in the South.

The Mississippi Plan-Voting Rights and Jim Crow Laws

In 1890, Mississippi pioneered new methods to prevent African Americans from voting. Through lengthy residence requirements, poll taxes, literacy tests, property requirements, cumbersome registration procedures, and laws disenfranchising voters for minor criminal offenses, Southern states drastically reduced black voting. In Mississippi, just 9,000 of 147,000 African Americans of voting age were qualified to vote. In Louisiana, the number of black registered voters fell from 130,000 to 1,342.

Meanwhile, grandfather clauses in these states exempted whites from all residence, poll tax, literacy, and property requirements if their ancestors had voted prior to the enactment of the Fifteenth Amendment.

The Late Nineteenth-Century

Fears of corruption and of fraudulent voting led a number of northern and western states to enact "reforms" similar to those in the South. Reformers were especially troubled by big-city machines that paid or promised jobs to voters. Reforms that were enacted included pre-election registration, long residence qualifications, revocation of state laws that permitted non-citizens to vote, disfranchisement of felons, and adoption of the Australian ballot (which required voters to place a mark by the name of the candidate they wished to vote for). By the 1920s, 13 northern and western states barred illiterate adults from voting (in 1924, Oregon became the last state to adopt a literacy test for voting). Many western states prohibited Asians from voting.

Women's Suffrage

In 1848, at the first women's rights convention in Seneca Falls, New York, delegates adopted a resolution calling for women's suffrage. But it would take seventy-two years before most American women could vote. Why did it take so long? Why did significant numbers of women oppose women's suffrage?

The Constitution speaks of “persons”; only rarely does the document use the word “he.” The Constitution did not explicitly exclude women from congress or from the presidency or from juries or from voting. The 14th Amendment included a clause that stated, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”

In the presidential election of 1872, supporters of woman suffrage, including Susan B. Anthony, appeared at the polls, arguing that if all citizens had the right to the privileges of citizenship, they could certainly exercise the right to vote. In *Minor v. Happersett* (1875) the Supreme Court ruled that women could only receive the vote as a result of explicit legislation or constitutional amendment, rather than through interpretation of the implications of the Constitution. In a unanimous opinion, the Court observed that it was “too late” to claim the right of suffrage by implication. It also ruled that suffrage was a matter for the states, not the federal government, to decide.

One group of women led by Elizabeth Cady Stanton and Susan B. Anthony sought a constitutional amendment. Another group, led by Lucy Stone, favored a state-by-state approach. In 1890, the two groups merged to form the National American Woman Suffrage Association. Rather than arguing in favor of equal rights, the NAWSA initially argued that women would serve to uplift politics and counterbalance the votes of immigrants. Meanwhile, opponents of women’s suffrage argued that it would increase family strife, erode the boundaries between masculinity and femininity, and degrade women by exposing them to the corrupt world of politics.

Women succeeded in getting the vote slowly. Wyoming Territory, eager to increase its population, enfranchised women in 1869, followed by Utah, which wanted to counter the increase in non-Mormon voters. Idaho and Colorado also extended the vote to women in the mid-1890s. A number of states, counties, and cities allowed women to vote in municipal elections, for school boards or for other educational issues, and on liquor licenses.

During the early 20th century, the suffrage movement became better financed and more militant. It attracted growing support from women who favored reforms to help children (such as increased spending on education) and the prohibition of alcohol. It also attracted growing numbers of working-class women, who viewed politics as the way to improve their wages and working conditions.

World War I helped to fuel support for the Nineteenth Amendment to the Constitution, extending the vote to women. Most suffragists strongly supported the war effort by selling war bonds and making clothing for the troops. In addition, women’s suffrage seemed an effective way to demonstrate that the war truly was a war for democracy.

At first, politicians responded to the 19th Amendment by increasingly favoring issues believed to be of interest to women, such as education and disarmament. But as it became clear that women did not vote as a bloc, politicians became less interested in addressing issues of particular interest to them. It would not be until the late twentieth century that a gender gap in voting would become a major issue in American politics.

Declining Participation in Elections

Voter turnout began to fall after the election of 1896. Participation in presidential elections fell from a high of about 80 percent overall to about 60 percent in the North in the 1920s and about 20 percent in the South. Contributing to the decline in voter participation was single-party dominance in large parts of the country; laws making it difficult for third parties to appear on the ballot; the decline of urban political machines; the rise of at-large municipal elections; and the development of appointed commissions that administered water, utilities, police, and transportation, reducing the authority of elected officials.

Voting Rights for African Americans

In 1944, in *Smith v. Allwright*, the U.S. Supreme Court ruled that Texas’s Democratic Party could not restrict membership to whites only and bar blacks from voting in the party’s primary. Between 1940 and 1947, the proportion of Southern blacks registered to vote rose from 3 percent to 12 percent. In 1946, a presidentially appointed National Committee on Civil Rights called for the abolition of poll taxes and for federal action to protect the voting rights of African Americans and Native Americans.

At the end of the 1950s, seven Southern states (Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia) used literacy tests to keep blacks from voting, while five states (Alabama, Arkansas, Mississippi, Texas, and Virginia) used poll taxes to prevent blacks from registering. In Alabama, voters had to provide written answers to a twenty-page test on the Constitution and on state and local government. Questions included: “Where do presidential electors cast ballots for president?” And “Name the rights a person has after he has been indicted by a grand jury.” The Civil Rights Act of 1957 allowed the Justice Department to seek injunctions and file suits in voting rights cases, but it only increased black voting registrations by 200,000.

Baker v. Carr,369 S. 186 (1962), was a landmark the United States Supreme Court case that decided that changing the way voting districts are created, or redistricting, created an option for the federal courts to decide redistricting cases.

In an effort to bring the issue of voting rights to national attention, Martin Luther King Jr. launched a voter registration drive in Selma, Alabama, in early 1965. Even though blacks slightly outnumbered whites in this city of 29,500 people, Selma's voting rolls were 99 percent white and one percent black. For seven weeks, King led hundreds of Selma's black residents to the county courthouse to register to vote. Nearly 2,000 black demonstrators, including King, were jailed by County Sheriff James Clark for contempt of court, juvenile delinquency, and parading without a permit. After a federal court ordered Clark not to interfere with orderly registration, the sheriff forced black applicants to stand in line for up to five hours before being permitted to take a "literacy" test. Not a single black voter was added to the registration rolls.

When a young black man was murdered in nearby Marion, King responded by calling for a march from Selma to the state capital of Montgomery, fifty miles away. On March 7, 1965, black voting-rights demonstrators prepared to march. As they crossed a bridge spanning the Alabama River, 200 state police with tear gas, nightsticks, and whips attacked them. The march resumed on March 21 with federal protection. The marchers chanted, "Segregation's got to fall . . . you never can jail us all." On March 25, a crowd of 25,000 gathered at the state capitol to celebrate the march's completion. Martin Luther King Jr. addressed the crowd and called for an end to segregated schools, poverty, and voting discrimination. "I know you are asking today, 'How long will it take?' . . . How long? Not long, because no lie can live forever."

Two measures adopted in 1965 helped safeguard the voting rights of black Americans. On January 23, the states completed ratification of the 24th Amendment to the Constitution barring a poll tax in federal elections. At the time, five Southern states still had a poll tax. On August 6, President Johnson signed the Voting Rights Act, which prohibited literacy tests and sent federal examiners to seven Southern states to register black voters. Within a year, 450,000 Southern blacks registered to vote.

The Supreme Court ruled that literacy tests were illegal in areas where schools had been segregated, struck down laws restricting the vote to property-owners or tax-payers, and held that lengthy residence rules for voting were unconstitutional. The court also ruled in the "one-man, one-vote" *Baker v. Carr* decision that states could not give rural voters a disproportionate sway in state legislatures. Meanwhile, the states eliminated laws that disenfranchised paupers.

Reducing the Voting Age

The war in Vietnam fueled the notion that young people who were young enough to die for their country were old enough to vote. In 1970, as part of an extension of the Voting Rights Act, a provision was added lowering the voting age to 18. The Supreme Court ruled that Congress had the power to reduce the voting age only in federal elections, not in state elections. To prevent states from having to maintain two different voting rolls, the 26th Amendment to the Constitution barred the states and the federal government from denying the vote to anyone eighteen or older.

An Unfinished History

The history of voting rights is not yet over. Even today, the debate continues. One of the most heated debates is whether or not convicted felons who have served their time be allowed to vote. Today, a handful of states bar convicted felons from voting unless

they successfully petition to have their voting rights restored. Another controversy—currently being discussed in San Francisco—is whether non-citizens should have the right to vote, for example, in local school board elections. Above all, the Electoral College arouses controversy, with critics arguing that our country's indirect system of electing a president overrepresents small states, distorts political campaigning, and thwarts the will of a majority of voters. History reminds us that even issues that seem settled sometimes reopen as subjects for debate. One example might be whether the voting age should be lowered again, perhaps to sixteen. In short, the debate about what it means to be a truly democratic society remains an ongoing, unfinished, story.

Figure 6.3.2

Resources:

> Winning the Vote: A History of Voting Rights *by Steven Mintz*

> Source: http://www.gilderlehrman.org/history-by-era/government-and-civics/essays/winni
> vote-history-voting-rights

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6.4: Methods of Filling Public Offices

Figure 6.4.1

State and Local Elections

State and local elections can take place in any year, at various times throughout the year. There can be statewide elections for governor or state legislature. A city may elect its mayor. There may be races for judges and local officials. Ballot initiatives may be up for a vote.

Congressional Elections and Midterm Elections

Congressional elections determine who represents your state in Congress. Congress is the branch of the federal government that makes laws. It includes the House of Representatives and the Senate. Congressional elections use the popular vote to choose winners. They don't use the Electoral College, which is used in presidential elections.

Midterm elections occur halfway between presidential elections. Voters choose one-third of senators and every member of the House of Representatives. The congressional elections in November 2018 were "midterms."

Midterms determine which party—Democratic or Republican—will control each chamber of Congress for the next two years. The party that controls a chamber usually wins that chamber's legislative votes. Proposed legislation must pass in the House and the Senate for it to reach the president's desk.

U.S. House of Representatives

Members of the U.S. House of Representatives serve two-year terms. All 435 members get elected every midterm and presidential election year. The number of representatives a state has depends on its population. Each representative serves a specific congressional district. A representative must be at least 25, a U.S. citizen for at least seven years, and live in the state he or she represents.

U.S. Senate

Senators serve six-year terms. One-third of senators get elected during each midterm and each presidential election year. There are 100 U.S. senators, two from each state. A senator must be at least 30 years old, a U.S. citizen for at least nine years, and live in the state he or she represents.

Figure 6.4.2: Congressional midterm elections take place between Presidential elections. State and local races happen every year.

Political Campaigns and the Election Process

Campaign managers know that to win an election, they must do two things: reach voters with their candidate's information and get voters to show up at the polls. To accomplish these goals, candidates and their campaigns will often try to target those most likely to vote. Unfortunately, these voters change from election to election and sometimes from year to year. Primary and caucus voters are different from voters who vote only during presidential general elections. Some years see an increase in younger voters turning out to vote. Elections are unpredictable, and campaigns must adapt to be effective.

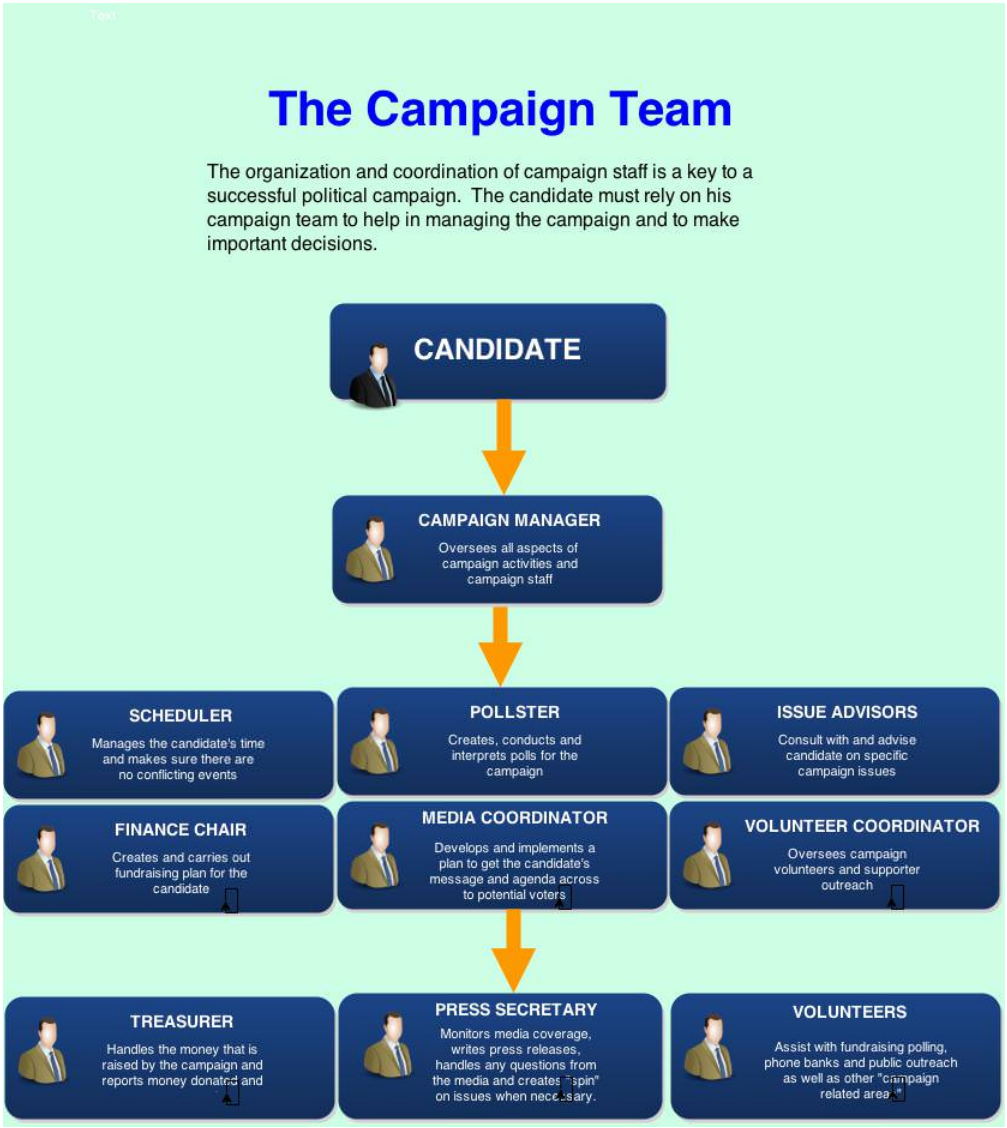

Figure 6.4.3: Political Campaigns require highly organized teams of workers who act as a team to get their candidate elected.

Campaign Organization

It takes the coordinated effort of a staff to run a successful campaign for office. The *campaign staff* is headed by the *campaign manager* who oversees personnel, allocates expenditures, and develops a strategy. The *political director* deals with other politicians, interest groups, and organizations supporting the candidate. The *finance director* helps the candidate raise funds directly and through a *finance committee.* The *research director* is responsible for information supporting the candidate's position on issues and for research on the opponents' statements, voting record, and behavior, including any vulnerabilities that can be attacked. The *press secretary* promotes the candidate to the news media and at the same time works to deflect negative publicity. This entails briefing journalists, issuing press releases, responding to reporters' questions and requests, and meeting informally with journalists. As online media have proliferated, the campaign press secretary's job has become more complicated, as it entails managing the information that is disseminated on news websites, such as blogs like the Huffington Post, and social media, such as Facebook. Campaigns also have consultants responsible for media strategy, specialists on political advertising, and speech writers.

Pollsters are essential because campaigning without polls is like "flying without benefit of a radar." 1] Polls conducted by campaigns, not to be confused with the media's polls, can identify the types of people who support or oppose the candidate and those who are undecided. They can reveal what people know and feel about the candidates, the issues that concern them, and the most effective appeals to win their votes. Tracking polls measure shifts in public opinion, sometimes daily, in response to news stories and events. They test the effectiveness of the campaign's message, including candidates advertisements.

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Focus Groups

Campaigns convene focus groups consisting of voters who share their views about candidates and the election in order to guide strategic decisions. Focus groups bring together a few people that are representative of the general public or of particular groups, such as undecided voters, to find out their reactions to such things as the candidate's stump speech delivered at campaign rallies, debate performance, and campaign ads.

Figure 6.4.4: People taking part in a campaign focus group

The Media Coordinator is the person responsible for getting the candidate's message and political agenda out to the greatest number of potential supporters in the most efficient and effective way possible. It is the media coordinator who also handles the purchase and scheduling of paid advertising for the candidate as well as coordinating social media efforts (web sites, Twitter, Facebook, etc.) and making sure the candidate has a presence at as many free public media opportunities as possible. Additional activities might include speeches, public debates and community forums, rallies, and nonpolitical events that the candidate might attend as his/her schedule permits.

The Scheduler manages the time demands on the candidate by ensuring he/she is properly scheduled to attend public events and that invitations for public appearances do not interfere or conflict with each other. In addition, it is the job of the scheduler to make sure that time commitments are used in a manner that most effectively allows the candidate to make contact with the voting public and get his/her message across to the greatest number of potential supporters. It is also the job of the scheduler to work with the

media coordinator to make sure the public appearances of the candidate are properly covered by news media and the press (newspapers) to get wide coverage of each event in the candidate's schedule.

Campaign Volunteers - No campaign would work without grassroots volunteers who help in canvassing neighborhoods, putting up signs, manning volunteer phone banks, helping with exit polls, handing out leaflets, and providing a face of public support at rallies and other media events.

Issue Advisors are experts in policy areas that advise the candidate on complex issues that may arise during the campaign. Their main function is to make sure the candidate is knowledgeable on a variety of issue topics that may be raised by the public, the media, and the opposition during the campaign. In general, the candidate is provided with written "position statements" on the issues that may be placed into campaign speeches and referred to as questions or concerns arise. They are particularly important in preparing candidates for formal debates and public Q&A forums where issues tend to be the focus.

Campaign Strategies

After deciding to run for office, the first questions that often arise from the staff are how many votes must we gain in order to win the election and where can the candidate find those votes? These then become the focus of most campaign strategies and will be used to guide the entire campaign process. Who the candidate reaches out to for support, what types of events he/she attends, whether or not to publically debate (and with whom), what type of media to utilize (TV, print, Internet) and how the message will be constructed and delivered will all be determined by the campaign strategy.

Identifying Supporters Many candidates will use polls and pollsters to find the greatest sources of public support. This information then helps determine what issues will be discussed, what type of message to deliver, and who the message will be targeted to. The polling information also determines how campaign funds will be raised and spent, where the candidate will visit during the campaign, how long the candidate will stay on the campaign trail, and a variety of other logistical issues. Political scholars do know that campaigns have a minimal effect in changing the minds of voters. Instead, campaigns need to concentrate on getting the votes of people who are acknowledged supporters of the candidates or feel that they are undecided.

Message Targeting Using such tools as polls and target groups, the campaign needs to determine the issues that potential supporters feel are most salient (important to them). This information is then used to construct a campaign message that can be converted into brief 30-second "sound bites" which the media often covers. Even the most complex of campaign messages needs to be made simple and easy to understand in order to be effective.

Selling the Candidate

Today, many critics question the value of modern campaigns. Many campaign organizations routinely bring in experts who manage a candidate's image, message, and media coverage into a "package" that can be marketed like any other product in a store. One of the best examples is the "packaging" of John F. Kennedy into a sleek, media-savvy product. His political "handlers" were able to market the young and handsome candidate as a family man with a beautiful wife and two adorable children. This made it easier to present the Kennedy ticket as a desirable product in comparison to Richard Nixon and the Republican ticket.

Consider the famous debate between John F. Kennedy and Richard Nixon. When Nixon began to sweat under the lights of the studio, the audience on television began to perceive Nixon as untrustworthy even though most policy experts and debate analysts saw Nixon as the clear winner in debating the issues.

After the overall campaign strategy has been determined, it becomes the task of the campaign team to implement the strategy and conduct an organized and well-planned campaign. This phase requires the candidate to go on "the campaign trail" in order to make personal appearances in a way that will gain optimal attention and reach the greatest number of potential supporters. Of course personal visits and "whistle stop" strategies are not as necessary today as they once were with the ability to reach and communicate with people over the Internet, social media, and focused Satellite and TV media.

It is also important that the candidate avoids "preaching to the choir" by speaking only with people who have decided to support the candidate already. At this point, the emphasis will be on identifying and reaching voters who live in "swing states" or "swing districts" that may be influenced to vote for the candidate. "swing states" and "swing districts" are areas that the political pollsters and statisticians have determined to be "up for grabs" because they have not yet exhibited solid support for either candidate.

Addressing the Issues and Stumping

All along the campaign, the candidates will make public appearances, deliver targeted speeches, and participate in political debates surrounding important issues. Most candidates will have a pre-prepared standard "stump speech" that they deliver just about everywhere they go. This speech will present the candidate's campaign platform and his/her stance on issues important to the candidate. It will also contain pre-prepared responses or defenses against issues or questions raised by the candidate's opposition during the campaign process.

But beyond the standard message, a series of issue-specific messages and responses are generally prepared in ways that can be presented as "30-second sound bites" or converted into campaign slogans that will appear on bumper stickers, signs, banners, etc.

As an example, in the 1960 campaign, Kennedy chose slogans like "Leadership for the 60s", and "Leadership we need" while the Nixon ticket chose "They understand what peace demands." What both of these slogans have in common is their intent to give the voters a simplified reason to choose the candidate.

Figure 6.4.5: Political Slogans from the Kennedy and Nixon Campaigns of 1960 show differences in the candidates' political message.

Negative Campaigning

One of the most popular trends in recent political campaigns has been the use of negative campaign tactics. With the increased availability of and access to social media, we all leave a digital footprint that remains for years to come. This digital footprint has become an easy target for negative campaigning (often referred to as "mud-slinging").

While negative campaigning tactics have been around since the beginnings of our nation, new technologies and the need to break messages into "sound bites" that can be delivered in conveniently packaged products has caused politicians to refer to this type of political tactic much more frequently. This is because it is much easier and more efficient to deliver a 30-second negative campaign message to the public than hours of political debate and speech making.

From the perspective of the press, "sex sells" and "if it bleeds it leads" tend to be the rule of thumb. But some political theorists believe the overuse of negative campaigning will have an impact on the trend and that politicians will eventually return to more issue-centered campaign messages.

Video: The Importance of the Media

Using demographic information about the pool of potential voters who might support the candidate, the media and campaign managers will determine what type of media campaign to prepare. This may include a mixture of billboards, fliers, TV and radio ads, and Internet/social media strategies. For instance, a Congressional district with a number of older voters may require the use of print (newspaper), television and radio advertising whereas a district with a younger voter population might require the use of social media, targeted satellite and cable advertising, and other more "trendy" strategies.

Broadcast Media

Video: Political Advertising Over Time

EVALUATING POLITICAL ADVERTISEMENTS

Watch the video above and answer the questions below:

1. How have political ads changed over the past 50 years?

2. Which of these ads would you classify as portraying a positive message? Explain.

3. Which of these ads would you classify as portraying a negative message? Explain.

4. Which type of ads do you see as being more effective (positive or negative)? Why?

5. Do you think television advertisements will still play a major role in conducting a political campaign or do you think the Internet and social media will replace it entirely in the future?

6. How would these ads be different if they were prepared for delivery on the Internet or social media?

Since television has traditionally been the primary medium of information for most voters since the 1950s, most campaigns will place as much of their available resources into TV ads as they can afford. But paid advertising is not the only way that candidates use TV media. The candidate will try to place him/herself in as many public "media opportunities" as possible in order to receive free television exposure.

Media directors will try to get their candidates on as many debates, talk shows, news programs, etc. as possible. Today, cable television shows like the Daily Show and the Colbert Show have become major sources of news and current event exposure and have been targeted by a great number of candidates.

The bottom line strategy for broadcast media is to get as much exposure on as many channels or networks as possible to reach the broadest spectrum of potential voters possible for the least amount of money. We have become accustomed lately to seeing candidates (like Barack Obama) make talk show appearances on broadcast television, but when Richard Nixon appeared on the television show "Laugh In" in 1968 it was unheard of. Richard Nixon famously said only four words – "Sock it to me?"

In another famous media event, Presidential Candidate Bill Clinton appeared on the Arsenio Hall television show in the late 1990s.

Video: Bill Clinton on Arsenio Hall Show

These two examples occurred when using commercial television shows for political gain was rather unheard of, but now it has become an expected and anticipated part of the campaign process.

Radio

Probably the least effective broadcast media today is radio. Most experts have determined that radio is effective in reaching voters in the age group 30-64 and only a limited number of those will actually respond to radio advertising. Social media and Internet has been much more successful than radio in reaching even this audience and at a much cheaper cost, so the use of radio as a media for political advertising has been on a steady decline. One exception to this trend may be in the area of local elections where radio still has a more localized impact.

Figure 6.4.6: Print media has recently been replaced by the Internet and social media as an effective means of getting a candidate's message to the average voter.

Print Media

Newspapers and magazines have traditionally been effective ways of reaching voters over the age of 50, but recent technological developments meant the cost-effectiveness of print advertising has been much less than that of the Internet and social media campaigns, so it can be anticipated that print media will play a much less important role in campaign advertising.

Figure 6.4.7: Social media has quickly become a critical component of most political campaigns.

Internet and Social Media

Recently candidates have come to realize the increasing importance and power of the Internet and social media campaign strategies. Political blogs, online newspapers and magazines, and social networks such as Twitter and Facebook provide a much less expensive way of delivering targeted messages to a broader audience without the “noise” and expense of traditional mass media (like television and radio). However, we must remember that the commercial and public use of the Internet is only around 30 years old, so the audience that it reaches tends to be younger and more technologically savvy. In addition, the audience that uses the Internet tends to be more educated, more thoughtful and has a higher percentage of professionals.

Figure 6.4.8: Candidate web pages have become another vital part of the campaign process.

Video: Role of Social Media in Politics

Today, it is expected that any candidate (local, state or national) should have at least a web site with an outline of their platform and the ability to directly connect to potential voters. Many candidates also create personal "blogs" that can disperse specifically targeted messages in a greater amount of detail than could be done through speeches, debates, or the use of traditional mass media advertising.

Figure 6.4.9

Study/Discussion Questions

1. Why is the campaign staff often called the "team"? What does this say about the campaign process?
2. What are the major staff positions on the campaign team? How do they each contribute to the campaign?
3. What is a campaign strategy and why is it important to have one?
4. What is the campaign platform? How is the campaign platform communicated to the voting public?
5. What type of voters does a good campaign strategy concentrate on? Why?
6. What is a demographic? What is the role of demographics and polling in conducting an effective election campaign?
7. Why do many candidates choose to use negative campaign strategies? If you were a campaign manager, under what circumstances would you recommend such a strategy? What are the hazards of using negative campaign strategies?

8. Do you think television advertising has had a positive or negative impact on political campaigns?
9. Under what circumstances would you emphasize television, radio and print advertising for a candidate? Explain your answer.
10. Under what circumstances would you emphasize the use of the Internet and social media to promote a candidate? Explain your answer.

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6.5: Political Parties and the Electoral Process

Figure 6.5.1: Congressional candidate Beto O'Rourke runs as Democratic Party Candidate for Texas Congressional District 16 in 2012.

An election is a formal decision-making process by which a population chooses an individual to hold public office. Elections have been the usual mechanism by which modern representative democracy has operated since the 17th century. Elections fill offices in the legislature, sometimes in the executive and judiciary, and for regional and local government. This process is also used in many other private and business organizations, from clubs to voluntary associations and corporations

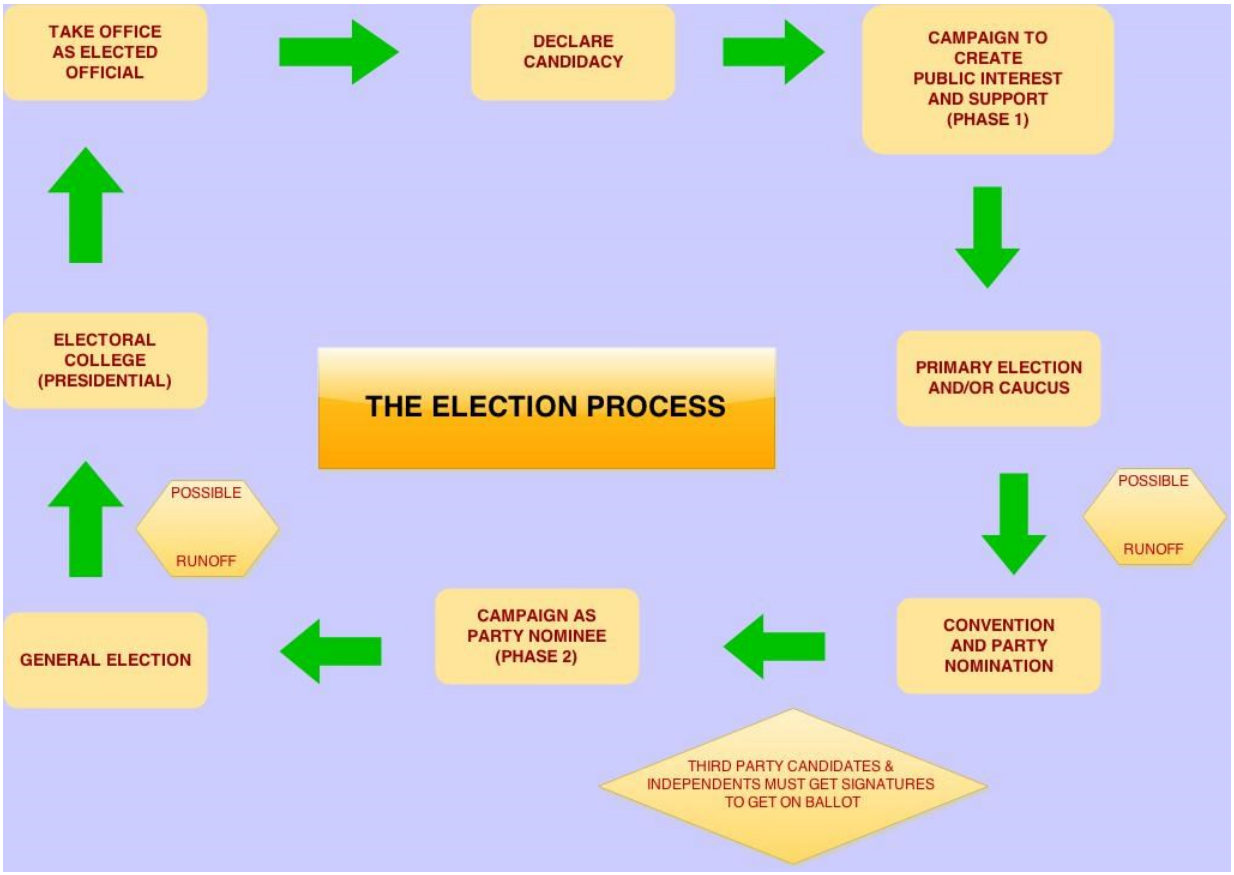


Figure 6.5.2: To become an elected official, there are many steps and hurdles to get through. This chart is just a simplified overview of the rather complicated process.

While the United States Constitution gives the states the power to conduct elections, the election process generally works the same way regardless of whether it is conducted on a local, state, or national level. The steps in getting a candidate elected include:

1. Declaring Candidacy
2. Generating Public Interest and Party Support (Campaign Phase 1)

3. Primary Elections and/or caucuses
4. Nomination
5. Campaigning as Party Nominee (Phase 2)
6. General Election

Step 1: Declaring Candidacy

When an individual wishes to be considered for office, the first step in the election process is to declare an interest in candidacy and to build a base of support. At this stage, a number of methods may be used including giving public speeches, attending public events, letter writing campaigns, media events, and social media. The use of social media as a means of gathering public interest and support has become particularly important in the past decade. In fact, President Obama chose to use social media as his avenue of publically declaring his candidacy for re-election in 2012 and it played a major role in acquiring a base of public support for his candidacy in 2008.

Video 2 – Obama declares candidacy in 2012 (via YouTube and social media)

Before being declared an official candidate for office, a potential candidate must meet requirements at the state or national level for the office they wish to achieve. Each state establishes specific requirements and deadlines for filing in order to get on a primary or general ballot.

Step 2: Campaigning Phase 1

After publically declaring an interest in running for office, the next phase is to campaign for the nomination of the candidate's party OR (if the candidate is part of a third party or is declaring as an independent) to get enough public support through signatures of registered voters on a petition to be placed on the ballot. If the candidate is running for president, this becomes much more difficult for an independent or third-party candidate as it requires getting enough signatures in each of the fifty states in order to be placed on the ballot. This is one of the reasons the two-party system is so powerful in our current system of government.

This phase of campaigning may involve public appearances, speeches, media events, and heavy use of social media. But the objective of the campaign is to earn enough delegates or signatures to become the party nominee or to be placed on the ballot. This requires a great deal of independent fundraising as the party does not assist with campaign costs until the candidate earns the nomination.

Step 3: Primaries and Caucuses

To earn the nomination of a political party, the candidate must earn delegates through either winning a series of political primaries and/or caucuses. Each state establishes its own rules for how political parties choose their candidates but all states allow for direct voter participation in selecting the party's nominee. When voters choose their nominee through a public election, this is called a primary. There are three basic types of primary elections:

1. ***Closed Primary:*** People may vote in a party's primary only if they are registered members of that party. Independents cannot participate.

2. ***Semi-closed Primary:*** As in closed primaries, registered party members can vote only in their own party's primary. However, it allows unaffiliated voters to participate as well. Depending on the state, independents either make their choice of party primary privately, inside the voting booth, or publicly, by registering with any party on Election Day.
3. ***Open Primary***: A registered voter may vote in any party primary regardless of his own party affiliation. When voters do not register with a party before the primary, it is called a pick-a-party primary because the voter can select which party's primary he or she wishes to vote in on Election Day. Because of the open nature of this system, a practice known as raiding may occur. Raiding consists of voters of one party crossing over and voting in the primary of another party, effectively allowing a party to help choose its opposition's candidate. The theory is that opposing party members vote for the weakest candidate of the opposite party in order to give their own party the advantage in the general election. An example of this can be seen in the 1998 Vermont senatorial primary with the nomination of Fred Tuttle as the Republican candidate in the general election.
4. ***Semi-open Primary***: A registered voter need not publicly declare which political party's primary in which they will vote before entering the voting booth. When voters identify themselves to the election officials, they must request a party's specific ballot. Only one ballot is cast by each voter. In many states with semi-open primaries, election officials or poll workers from their respective parties record each voter's choice of party and provide access to this information. The primary difference between a semi-open and open primary system is the use of a party-specific ballot. In a semi-open primary, a public declaration in front of the election judges is made and a party-specific ballot given to the voter to cast. Certain states that use the open-primary format may print a single ballot and the voter must choose on the ballot itself which political party's candidates they will select for a contested office.
5. ***Run-off***: A primary in which the ballot is not restricted to one party and the top two candidates advance to the general election regardless of party affiliation. (A run-off differs from a primary in that a second round is only needed if no candidate attains a majority in the first round.)
6. ***Mixed Systems***: In West Virginia, where state law allows parties to determine whether primaries are open to independents, Republican primaries are open to independents, while Democratic primaries were closed. However, on April 1, 2007, West Virginia's Democratic Party opened its voting to allow "individuals who are not affiliated with any existing recognized party to participate in the election process".

Video: Primary Elections Explained

Many states use another system called caucuses to select their candidates. In a caucus, voters attend a public meeting where they hear speeches from the different party candidates and at the end take a “straw vote” to select the candidate of their choice in a more public forum. This system is primarily used in smaller states like Iowa and often take place very early so they tend to get very early attention from candidates because they can generate a “buzz” of support for the candidate.

	Caucus	Primary
Voting method	Voting is conducted at local party meetings and is done by raising hands or breaking up into groups.	An election is held/ secret ballot
Who can vote	Only members registered with the political party can participate (if closed system)	Depends upon the state. Some states allow only registered party members to vote; some allow party registrations on the same day; some are completely open to all residents of the state.
States	States that use the caucus system are Alaska, Colorado, Hawaii, Kansas, Maine, Minnesota, Nevada, North Dakota, Wyoming, and Iowa	All others

> To get a better understanding of caucuses and primaries, go to Caucus Vs Primary

Video: Caucuses Explained

Step 4: Nomination

In order to be placed on the ballot, a candidate must either win his/her party's nomination by receiving enough delegates during the primary and/or caucus OR must receive enough signatures from registered voters in order to be placed on the ballot. In most states, getting on the ballot without the nomination of one of the major parties (Democrats or Republicans) is a daunting task that can often require more than 50,000 signatures from each state. For this reason, the primary acts as a way of narrowing the field of choices to two or three candidates. Statewide candidates and Congressional (House or Senate) candidates must win their state's primary or caucus in order to win a sufficient number of delegates at the state convention to be awarded the nomination of their party.

In the case of national presidential candidates, they must win more state primaries than the other candidates in order to be awarded their party's nomination at a national convention. In either case, the two-party system serves as a way of narrowing the number of candidates. Remember, it is still possible to run as an independent or third-party candidate for president, but the candidate must get on the ballot in every state (whereas the two major parties automatically get their nominees on the ballot in every state).

Step 5: Campaigning (Phase 2)

After earning the party's nomination OR earning enough signatures to be placed on the ballot, the candidate goes on "the campaign trail" as a candidate in the general election. In this phase of the campaign and election process, the party nominees have a great deal more financial and logistical support from their respective political party organizations. In fact, this is why political parties exist –

to help their chosen candidates win the general election. This is a major reason the two-party system has become such an important part of the American political process.

For candidates running as third-party nominees or as independents, this part of the campaign is much more difficult because they lack the financial and organizational resources the major political parties offer to their chosen candidates. So third party candidates must work much harder to raise money and support whereas the major party candidates can focus on getting their political agenda and the party's campaign platform across to the voters through debates, public forums, political advertising, personal appearances, media events and Internet/social media opportunities.

Third parties often place emphasis on topics that are of importance to the mainstream American public. Also, third parties can impact the result of an election because the vote is split. Current third parties include Libertarian, Reform, Green, and Constitution.

Video: A Look at Political Campaigns

Step 6: The General Election

The general election is the point at which the people directly participate in choosing their elected officials. In most cases, this will be the last step in the electoral process. In the case of presidential elections, there is still one more step (the Electoral College) in which electors who represent the winning candidate in each state meet to actually select the next president. The people do not directly elect the president in the United States. The Electoral College actually elects the president.

There are two types of general elections. The first type is called a ***plurality election***. In this type of election, the winner is the candidate with the most votes, regardless of how many votes that may be. For instance, if you had an election with five candidates and were selecting the winner by a plurality election, whichever candidate got the most votes would win the election. This type of election is usually conducted after having a primary (in order to narrow down the field of candidates on the ballot).

The second type of election is called a ***majority election***. In this type of election, the winning candidate must have at least 50 percent (plus ONE vote) of the total vote in order to be declared the winner. If no candidate has more than 50 percent plus one vote then another election must be conducted between the two top candidates. This is called a runoff election. This type of election is usually conducted when the general election does not follow a primary or caucus. This type of election is also sometimes described as "non-partisan" because candidates do not run in primaries before the general election and are not nominated by their party. The majority of elections are most common at the local level while plurality elections are more common at the state and national level.

Plurality	**Majority**
Winning candidate must earn "the most" votes	Winning candidate must get MORE THAN 50 percent of total votes.
Possible to win an election with less than 50 percent of votes. No runoff is necessary	If no candidate has more than 50% of the vote than the top two candidates must go against each other in a run-off election so that the winning candidate gets a majority.

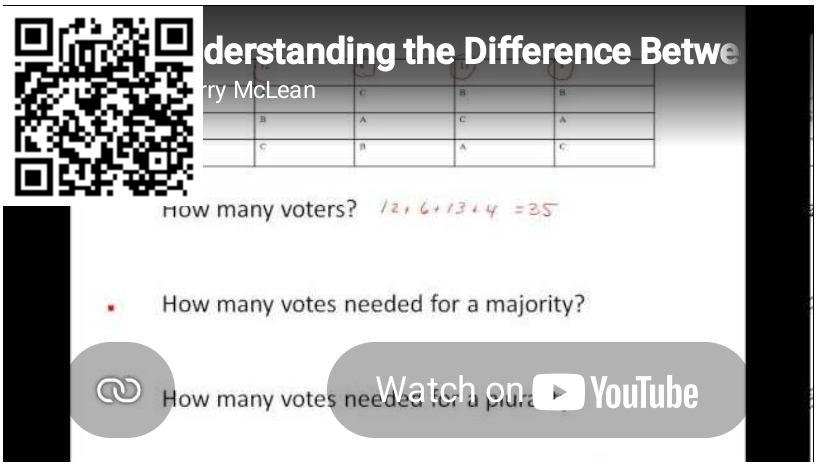
Example:

	Number of Votes	Percentage
Candidate A	200	16%
Candidate B	275	22%
Candidate C	225	18%
Candidate D	300	25%
Candidate E	245	20%
Total Votes Cast	1220	100%

Looking at the results of the sample election above, what would happen in a plurality and majority election?

In the case of a plurality election, Candidate D would be declared the winner (because the candidate got more votes than any other candidate). In the case of a majority election, there would be a runoff between Candidate D and Candidate B because no one candidate received more than 50 percent of the vote and these two candidates received the highest percentage of votes.

Video: Majority and Plurality Elections (Explaining the Math):



Step 7: The Candidate Takes Office

After being declared the winner of the general election (or after being selected by the Electoral College in the case of the President), the candidate will then be allowed to take office on a specific date. Most elected officials are required to take an "oath of office" in order to take elected office.

Figure 6.5.3

Study/Discussion Questions

1. How does the modern election process differ from the way in which citizens participated in Ancient Athens?
2. What role does the national government play in protecting the suffrage rights of citizens?
3. What are the most common requirements to vote in the United States?
4. What specific qualifications must you meet if you wish to register to vote in Texas?

5. If you were considering running for elected office, what methods would you use to gain public interest in your campaign? Which method would you place most of your effort into? Why?
6. What is the difference between a primary and a caucus? Which of these two is more representative of direct democracy where individuals directly participate In the decision process?
7. How do the two phases of campaigning differ from each other? What particular steps or activities are usually involved in each?
8. What is the difference between a general election and a primary?
9. What is the difference between plurality elections and majority elections? Give an example.
10. How does the presidential election system differ from other elections at the state or national level?

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6.6: Two- and Three-Party Systems

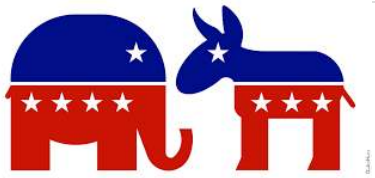

Figure 6.6.1: A two-party system is a party system where two major political parties dominate the political landscape.

It is easy to complain about petty bickering between Democrats and Republicans. What we sometimes forget is that Americans share a broad consensus, or agreement, of many basic political values. Both parties believe in liberty, equality, and individualism. Neither advocates that the Constitution be discarded. Both parties accept the election process and concede defeat to the winners. In many countries with multi-party systems, the range of beliefs is greater, and disagreements run deeper. For example, in modern day Russia, one party advocates a return to communism, some offer modified Socialism and/or Capitalism, and one promotes Ultra-Nationalism.

Video: The American Two-Party System Part 1

Historical Influence (Traditional):

The nation began with two political parties—the Federalists and the Democratic-Republicans. During early American history, politicians tended to take sides, starting with the debate over the Constitution, and continuing with the disagreements between two of George Washington's cabinet members—Alexander Hamilton and Thomas Jefferson. The tendency has persisted throughout American history.

The Winner-take-all System:

The single most important reason for a Two-Party System is the winner-take-all electoral system. In contrast to systems with proportional representation, the winner in American elections is the one who receives the largest number of votes. The winner does not need to have more than 50 percent, but only one vote more than his or her opponents. If a third party receives 15 percent of the vote for every contested Senate seat, that party wins zero seats in the United States Senate. Consequently, one of the two major parties almost always wins a plurality and third parties are completely shut out of national offices.

Even though political parties are often regarded as "necessary evils," they still play an important role in American government and politics today. The two broad-based major political parties offer alternatives to voters and help connect citizens to their government.

Video: Parties as a Linkage Institution

One of the reasons that the existence of political parties was inevitable from the beginnings of our governmental system (regardless of the warnings given by the Founding Fathers) is their role as *linkage institutions*, meaning they act as a mechanism to translate the concerns and desires of the people into law and policy. As linkage institutions, political parties help sift through the issues, identify the most important and most popular concerns, and then place these on the government agenda.

Picking Candidates: It is very rare for a candidate to get on the ballot and get elected without the endorsement (nomination) of a major political party. What many people don't realize is that before the progressive movement of the early 20th century, most political parties selected their candidates without direct input from the public through meetings in smoke-filled back rooms in a very secret process. The official endorsement of a political party is called a *nomination*; this entitles the nominee a guaranteed listing on the general election ballot as the party's candidate for a particular office.

Running Campaigns: In the past, national state and local party organizations were the prime mechanism for organizing and conducting political campaigns. With the rise of television, internet, and social media, it has become easier for a candidate to promote their own personal campaigns and take their campaign platform directly to the people with less help or influence from the political party organization.

Signaling Voters: Political parties often serve the same role as a brand name on a product you would purchase in a store. Just seeing the Democrat (D) or Republican (R) symbol next to a candidate's name on a ballot gives important signals to the voter as to what the candidate stands for. But the party platforms can be incredibly extensive and a particular candidate may not agree with a specific stance on an issue (plank) that the party has placed in their platform. In this case, the candidate may either disassociate him/herself from the issue altogether or may make a personal statement in his/her individual platform that doesn't agree with that of the party as a whole. This is why voters need to research the candidates on the ballot and NOT just rely on the party affiliation the candidate claims.

Policy Promotion: Each of the political parties will create a list of proposed policies and their specific position on a wide range of issues. This is called their *platform*. Each policy issue would be considered a *plank* in the platform. As an example, the Democratic Party platform advocates for women's choice and accessibility of family planning and contraception issues whereas the Republican Party platform has repeatedly demanded restrictions and limitations in the same policy area.

Policy-making: As President Obama promotes a major policy goal, like health insurance coverage or higher education funding, he generally seeks the support of his fellow Democrats. This is a part of his role as the head of his party in government. Because the political process is so fragmented and full of disagreement and debate, political parties are necessary in order to coordinate the policymaking process between the executive branch and the legislative branch of government.

By now, it should be evident that political parties play a role in promoting debate and competition in the process of creating legislation and implementing policy. This is why, even though it was not included in the Constitution, and was not considered as a desirable part of our system of government by the Founding Fathers, the two-party system plays an essential role in American government today.

Figure 6.6.2

The two-party system has held a perpetual hold in American government because of the "horse race" mentality many voters put into elections (particularly national presidential elections). Since most states have a "winner-take-all" set of rules, there can only be one winner and all other candidates are "losers." The major parties (Democrats and Republicans), with the help of the media, give out signals to voters as to who is in the lead by way of political polls, media coverage, etc. As voters see a potential winner they often cast "strategic votes" for the candidates they believe will win an election. Votes for major party candidates are considered much more effective than votes for third-party candidates they feel may not win anyway. Since voters don't see most third party candidates as viable, they don't support minor parties. Without popular support, minor parties have difficulty forming and maintaining a base of voters. In addition, the major parties, through their official roles in government, have the ability to make rules that give advantages to the major parties (such as automatically getting on the ballot vs. having to get signatures in every state).

Figure 6.6.3

While the story of political parties in the United States is primarily a study of the two major parties and the two-party system, third parties have been a regular feature on the political scene as well. There are three basic types of third parties in the United States system of government (Edwards P. 266):

Ideological Parties – tend to promote a single cause or a group of related and specific causes. These can surround a specific controversial issue (such as gun rights, women's choice, same sex marriage/gay rights and the legalization of drugs are examples of such controversial issues today. But they can also promote relative extreme ideological positions such as the libertarians or the tea party who tend to gravitate around issues involving States rights, personal liberties and the role of the national government.

Splinter Parties - are offshoots of a major party. For example, Teddy Roosevelt's Progressives were a splinter of the Republican Party in 1912 and Strom Thurmond's States' Righters (1948), as well as George Wallace's American Independents, were splintered from a conservative group of Democratic party members in the south.

Candidate-aligned parties – tend to form when a specific candidate has aspirations for higher office (such as the presidency) yet have little chance of obtaining the nomination of a major party. Examples would include John Anderson in 1980 and Ross Perot in

1992 and 1996 who offered voters that claimed to be dissatisfied with both the Republicans and the Democrats with a "moderate" third party choice that offered a platform that was appealing with conservative Democrats and moderate Republicans.

Video: Does Washington Need Third-Parties?

While third parties have popped up on the political scene from time to time, most third party candidates do not win office. Yet many political analysts believe they are still quite important. This is because they have often served as "safety valves" for those who are unhappy with both of the major parties and are seeking an alternative (Rosenstone).

If the United States had a truly multiparty system (like much of Europe), which accommodated a variety of third-party choices, would it really make that much of a difference? Many political scholars would argue "yes," because the more political party choices are available on a ballot, the more confusing and fractured the political spectrum becomes. If the United States had a large number of political parties vying for attention, each would have to make a special appeal to the public in order to differentiate itself. In such a political environment it would not be surprising to see political parties representing the interests of minorities (like African Americans and Latinos) or ideological issues (such as Environmentalism) or religious issues (such as the "moral majority") or other issues like gun rights, women's rights, marijuana legalization, immigration rights, etc. As all of these parties compete for attention, the political field would become crowded and full of "static," which would make it hard to arrive at decisions that would benefit the public interest. This phenomenon is referred to as *hyperpluralism* and can be compared to the old adage "too many cooks in the kitchen spoil the broth."

The two-party system in the United States contributes to a level of "ambiguity" in policy alternatives, meaning that political parties are not as apt to take a risk in standing behind a particularly controversial issue if it means that it would lessen their candidate's chances of getting elected to office. For this reason, many of the issues and positions of the major political parties tend to gravitate towards a more moderate or middle position between a far-left liberal stance that many Democrats would prefer to take and a far right conservative stance that many Republicans would favor.

Benefits of Third Parties:

- Third parties have forced major parties to deal with issues they wanted to ignore
- Many third parties have represented ignored groups in society and have raised otherwise ignored issues
- Third parties help keep the other two parties "on their toes."
- Third parties often act as a safety valve in our political system.

Reasons Third Parties Have Not Been Successful:

- Many see them as not being a viable party – why waste their vote?
- Many of the issues supported or introduced by third parties are not popular with a majority of Americans.
- The larger parties steal issues from them.
    - Ex: Ross Perot and the balanced budget.
- Many third parties have a "radical Image" – They are always having to fight a distorted image within the public.

- Third parties often serve the role of a *"spoiler"* – meaning they simply take votes away from one of the major parties and cause the other party to win an election (as in the case of the 2000 Bush v. Gore election where Ralph Nader and the Green Party took votes away from the Democrats who primarily agreed with them on most of the issues).
- Third parties are resource-poor in comparison to their major two-party counterparts.
- Lack of Media Coverage – Much of the media often sees a third-party candidate as "frivolous."
- Often, the issues introduced or supported by third-parties are too narrow and don't affect a wider audience.
- Election Rules have been deliberately written to make it difficult for third parties to get their candidates on the ballot.

Figure 6.6.4

Study/Discussion Questions

1. Explain the factors enabling the two-party system in the United States.
2. Investigate how political parties serve as linkage institutions to connect the people to their elected officials.
3. Describe the role of political parties in the two-party system.
4. Summarize the factors leading to the perpetuation of two-party politics in the United States.

5. According to the text, what are the three basic types of third parties in the United States?

6. Why do many political scholars today believe third parties are relevant and important in today's political environment?

7. Why do you think third parties are successful in other places in the world but not in the United States?

8. What is hyperpluralism and why is it a problem today?

9. What is a "spoiler"? Why are these types of candidates a problem?

10. Do you believe third parties are important in our government today? Explain your answer.

11.. Research at least one third party and its platform, and find the following information for your chosen party:

Name of party

Origins of party

Major party candidates

Platform and platform plan has perpetuated itself over the life of our country with little if any room for viable third party alternatives.

- Many third-parties have represented ignored groups in society and have raised otherwise ignored issues
- Third parties help keep the other two parties "on their toes."
- Third parties often act as a safety valve in our political system.

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6.7: Opportunities, Responsibilities, and Obligations of Citizenship

Figure 6.7.1: United States citizens have a responsibility to participate in the democratic process.

You have probably heard the saying, "Get a life!". An important part of your life, both now and in the future is your civic life. What is your civic life? Civics refer to the political rights and responsibilities of citizenship. Political rights are powers or privileges to which all citizens are due or entitled. Political responsibilities refer to obligations and actions regarding the exercise of political rights for the betterment of society. An important political right is the right to vote, a political responsibility directly associated with this right is deciding whether and how to vote.

Opportunities of U.S. Citizenship

According to the government publication, "A Guide for Naturalization", the Constitution and laws of the United States give many rights to both citizens and non-citizens living in the United States. However, some rights are only for citizens. These opportunities include:

Voting - Only U.S. citizens can vote in Federal elections. Most states also restrict the right to vote, in most elections, to U.S. citizens.

Bringing family members to the U.S. - Citizens generally get priority when petitioning to bring family members permanently to this country.

Obtaining citizenship for children born abroad to a U.S. citizen - In most cases, a child born abroad to a U.S. citizen is automatically a U.S. citizen.

Traveling with a U.S. passport - A U.S. passport allows you to get assistance from the government when outside the U.S.

Becoming eligible for Federal jobs - Most jobs with government agencies require U.S. citizenship.

Becoming an elected official - Many elected offices in this country require U.S. citizenship.

Showing your patriotism - In addition, becoming a U.S. citizen is a way to demonstrate your commitment to your new country.

Responsibilities of U.S. Citizenship

Representative democracy cannot work effectively without the participation of informed citizens, however. Engaged citizens familiarize themselves with the most important issues confronting the country and with the plans different candidates have for dealing with those issues. Then they vote for the candidates they believe will be best suited to the job, and they may join others to raise funds or campaign for those they support. They inform their representatives how they feel about important issues. Through these efforts and others, engaged citizens let their representatives know what they want and thus influence policy. Only then can government actions accurately reflect the interests and concerns of the majority. Even people who believe the elite rule government should recognize that it is easier for them to do so if ordinary people make no effort to participate in public life.

Support and defend the Constitution.

Stay informed of the issues affecting your community.

Participate in the democratic process.

Respect and obey federal, state, and local laws.

Respect the rights, beliefs, and opinions of others.

Participate in your local community.

Pay income and other taxes honestly, and on time, to federal, state, and local authorities.

Serve on a jury when called upon.

Defend the country if the need should arise.

Voting

Since voting is constitutionally assigned to the states, each of the states is allowed to create its own voter registration laws and procedures (subject the federal oversight and Constitutional requirements). In most states, the first step in the voting process is registration. To be eligible to register to vote, the individual must meet three basic requirements: (1) be at least 18 years of age at the time of the next election, (2) being a U.S. citizen and (3) be a resident of the jurisdiction where the individual is registering. Under federal law, every state must allow residents to register to vote at least 30 days before Election Day, though many states extend the deadline to register. Additionally, in some states individuals who have been convicted of a felony or have been found by a court to be incompetent may be ineligible to vote. For more information on voter registration eligibility in your state, call 1-866-OUR-VOTE.

There are many ways to register to vote. The National Voter Registration Act of 1993 (“the Motor Voter Act”) offers individuals the opportunity to register to vote when they apply for or renew a driver’s license, and requires states to offer voter registration at all offices that provide public assistance and state-funded programs to persons with disabilities.

A voter may use the federal mail-in form, which every state must accept and use and includes instructions for where to send it in each state. A person who registered to vote by mail and who is voting for the first time in a federal election must provide a form of voter identification, either a photo copy when they registered by mail or provide the identification in person when they go to go. Acceptable forms of identification may include a current and valid photo ID or paycheck, bank statement, utility bill, or government document with the voter’s full name and voting address. In some states, identification required for first-time voters may be stricter.

Some states have begun making it harder for people to register to vote, often in the name of preventing voter fraud. Even though such voter impersonation fraud is practically nonexistent, voter registration systems kept more than two million people from voting in 2008. States have begun to create new restrictions on voter registration drives, leading some community-based organization to stop voter registration drives altogether. These laws can lead to a big drop in the number of newly registered voters, especially for minority voters.

In addition to new restrictions on the ability to register, some states have also begun aggressive “purge” campaigns which occur when states remove voters from the voter rolls. Though purging voter rolls can be a legitimate state election activity to maintain current and accurate voter rolls, when the process is not done properly eligible, registered voters can end up being purged. Voters check their voter registration status to make sure that they have not been inadvertently removed from the voter rolls.

Many issues impact voter registration like inadequate resources, clerical errors and failures to timely notify registrants of problems with their registration forms. In recent elections, jurisdictions have not scheduled sufficient staff to work on the days prior to the registration deadline when demand for services is heightened. Additionally, elections office employees often make errors while inputting registration data into the jurisdiction’s database. These errors create problems for voters on Election Day, especially with respect to voter identification. Furthermore, elections employees frequently fail to timely notify registrants of errors or omissions in their applications. This means the individual does not have an opportunity to correct his/her registration and is subsequently ineligible to vote.

Video Report: Voter Turnout in 2014 Lowest Since World War II

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Voter turnout is the percentage of eligible voters who cast a ballot in an election. "Eligible voters" are defined differently in different countries, and the term should not be confused with the total adult population. After increasing for many decades, there has been a trend of decreasing voter turnout in most established democracies since the 1960s. In general, low turnout may be due to disenchantment, indifference, or contentment. Low turnout is often considered to be undesirable, and there is much debate over the factors that affect turnout and how to increase it. In spite of significant study devoted to the issue, scholars are divided on reasons for the decline. The causes of decreasing turnout have been attributed to a wide array of economic, demographic, cultural, technological, and institutional factors. There have been many efforts to increase turnout and encourage voting. Many Americans believe that it is a civic responsibility to vote, and the U.S. Citizenship Resource Center lists it as a responsibility to ensure that America remains a free and prosperous nation.

Video: Voter Turnout Traditionally Low in the U.S.

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ne parts of society are more likely to vote than others. In high-turnout nations, these differences tend to be approaches 90 percent, it becomes difficult to find differences of much significance between voters and nonvoters. In low turnout nations, however, the differences between voters and non-voters can be quite marked. Socioeconomic factors significantly affect whether or not individuals voting tendencies. The most important socioeconomic factor in voter turnout is education. The more educated a person is, the more likely he or she is to vote, even when controlling for other factors such as income and class that are closely associated with education level .

Why do Americans vote in small numbers? Political scientists have suggested a number of reasons:

- **Inconvenience:** For many, getting to the polling place on election day is very difficult: Many people have to work, and some have trouble getting to their precinct.
- **Registration:** All voters must register ahead of the election (sometimes a month or more in advance); the registration process can be confusing and at times difficult to follow.
- **Similarity of the parties:** Some citizens believe the parties are very similar, so voting will not make a difference
- **Alienation:** People do not vote because they feel that the government does not care about them or listen to their concerns.
- **Frequency of elections:** Americans hold elections more frequently than most other democracies; voters find it difficult to vote on so many different days.
- **Lack of competitiveness:** Many races in the United States are very lopsided, so voters are likely to stay home, thinking the outcome is a foregone conclusion. Some people argue that low turnout rewards the Republican Party in particular because

minorities, who tend to vote Democrat, are the least likely to vote. Others argue that election outcomes would be roughly the same even if everyone voted because the preferences of nonvoters are similar to those of voters.

Some scholars and pundits fret over low turnout, convinced that low turnout undermines democracy. Democracy is government by the people, they argue, and when people do not vote, they give up their part of popular sovereignty. Low turnout also reflects a strong sense of alienation among the public, a bad sign for America's legitimacy. Other scholars argue the opposite. Low turnout is a sign of a healthy democracy because it reflects satisfaction with the government. According to this view, people only vote when they feel threatened or angered about an issue. People who do not vote, then, are content with the status quo.

> Source: SparkNotes Study Guide – American Government and Politics

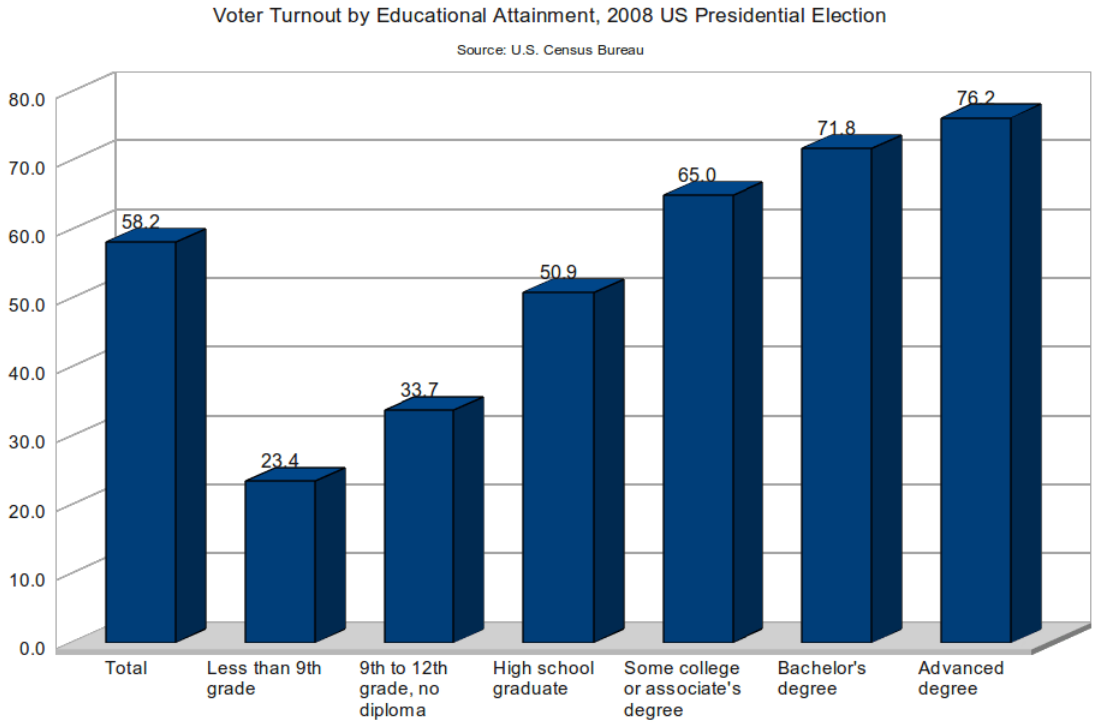

Figure 6.7.2: Educational attainment, an indicator of social class, can predict one's level of political participation. Those with high educational attainment are more likely to vote in elections than those with little education.

Video: Demographics and Voting Behavior:

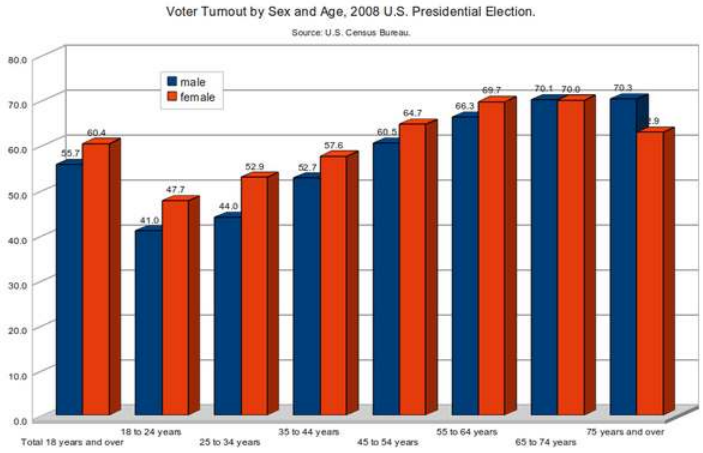

Figure 6.7.3

There is some debate over the effects of ethnicity, race, and gender on voter turnout. While women are generally as likely as men to vote in developed countries, women are underrepresented in political positions. Women make up a very small percentage of elected officials, both at local and national levels. In the U.S., for instance, in the 109th Congress (2005-2007) there were only 14 female Senators (out of 100) and 70 Congressional Representatives (out of 435).

Age is another crucial factor in determining voter turnout. Young people are much less likely to vote than are older people, and they are less likely to be politicians. The lower voting rates of young people in the U.S. help explain why things like Medicare and Social Security in the U.S. are facing looming crises: the elderly will retain many of the benefits of these programs and are unwilling to allow them to be changed even though young people will be the ones to suffer the consequences of these crises.

Generally, racial and ethnic minorities are less likely to vote in elections and are also underrepresented in political positions. If blacks were represented in proportion to their numbers in the U.S., there should be 12 senators and 52 members of the House. In 2009, there was one black senator (Roland Burris) and 39 members of the House. In 2010, the number in the House increased slightly to 41 (7.8 percent) but remained at just 1 percent of the Senate.

Political power is also stratified through income and education. Wealthier and more educated people are more likely to vote. Additionally, wealthier and more educated people are more likely to hold political positions. In the 2004 U.S. presidential election, the candidates, John Kerry, and George W. Bush, were both Yale University alumni. John Kerry was a lawyer and George W. Bush had an MBA from Harvard. Both were white, worth millions of dollars, and came from families involved in politics.

> Source: Boundless. “Voting Behavior.” Boundless Sociology. Boundless, 14 Nov. 2014. Re
> 25 Feb. 2015 from https://www.boundless.com/sociology/textbooks/boundless-sociology-te
> ook/government-15/the-u-s-political-system-116/voting-behavior-646-7854/

WHO VOTES?	
Factor	**Effect**
Age	Senior citizens vote in very large numbers, whereas young people (18–30) vote in small numbers
Education	Increased education leads to increased voting
Wealth	Wealthier people tend to vote more than poorer people, but the wealthiest people usually vote Democrat
Race	White people vote more than minorities
Competitiveness of Candidates	Overall, people are more likely to vote in hotly contested elections

Figure 6.7.4

High voter turnout is often considered to be desirable, though among political scientists and economists specializing in public choice, the issue is still debated. A high turnout is generally seen as evidence of the legitimacy of the current system. Assuming that

low turnout is a reflection of disenchantment or indifference, a poll with very low turnout may not be an accurate reflection of the will of the people. On the other hand, if low turnout is a reflection of contentment of voters about likely winners or parties, then low turnout is as legitimate as high turnout, as long as the right to vote exists. Still, low turnouts can lead to unequal representation among various parts of the population. In developed countries, non-voters tend to be concentrated in particular demographic and socioeconomic groups, especially the young and the poor.

Many causes have been proposed for this decline; a combination of factors is most likely. When asked why they do not vote, many people report that they *have too little free time*. However, over the last several decades, studies have consistently shown that the amount of leisure time has not decreased. *Wealth and literacy* have some effect on turnout but are not reliable measures. For example, the United Nations Human Development Index shows some correlation between higher standards of living and higher turnout. The *age of a* democracy is also an important factor. Elections require considerable involvement by the population, and it takes some time to develop the cultural habit of voting, and the associated understanding of and confidence in the electoral process. *Demographics* also have an effect. Older people tend to vote more than youths, so societies where the average age is somewhat higher, such as Europe; have higher turnouts than somewhat younger countries such as the United States.

Institutional factors have a significant impact on voter turnout. *Rules and laws* are also generally easier to change than attitudes, so much of the work done on how to improve voter turnout looks at these factors. Making voting compulsory has a direct and dramatic effect on turnout. Simply making it easier for candidates to stand through easier nomination rules is believed to increase voting. *Ease of voting* is a factor in rates of turnout. In the United States and most Latin American nations, voters must go through separate voter registration procedures before they are allowed to vote. This two-step process quite clearly decreases turnout. U.S. states with no, or easier, registration requirements have larger turnouts.

In politics, *voter fatigue* is the apathy that the electorate can experience under certain circumstances, one of which could be (in exceptional circumstances) that they are required to vote too often. Voter fatigue and voter apathy should be distinguished from what arises when voters are not allowed or unable to vote, or when disenfranchisement occurs. Similarly, voter suppression is a strategy to influence the outcome of an election by discouraging or preventing people from exercising their right to vote. It is distinguished from political campaigning in that campaigning attempts to change likely voting behavior by changing the opinions of potential voters through persuasion and organization.

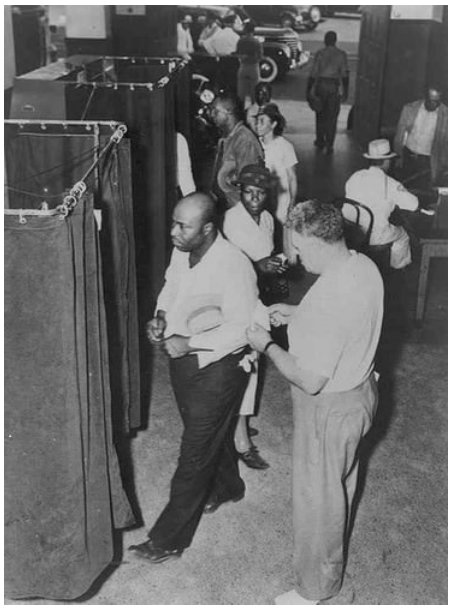

Figure 6.7.5: Voters at voting booths in the United States in 1945

Voter suppression instead attempts to reduce the number of voters who might vote against the candidate or proposition advocated by the suppressors. This suppression can be in the form of unfair tests or requirements to vote. For example, in the southern United States before and during the civil rights movement, white southerners used many methods to prevent minorities from voting. These included literacy tests, a poll tax, and if all else failed intimidation by threats of violence. The Civil Rights Act of 1964 put a stop to literacy tests and any other methods of preventing people from voting. Excluding convicted from voting and re-including them only

on case-by-case decisions by State Governors, as is the case in numerous U.S. states, can lead to voter suppression and can induce biased voting, as there can be a class bias in the state's decision.

They Don't Think Their Vote Will Count	Many Americans don't vote because they think their vote doesn't count. This is a common excuse that's rooted in the belief that the Electoral College chooses the President, not the voters. In reality, the popular vote in each state determines which candidate the Electoral College endorses for that state. Therefore, your vote does count within your state, and you should get out and exercise your right to vote.
Too Busy	Americans are busy people. Work, family, and other life obligations tend to get in the way of civic duties like voting. There's no doubt that voting presents scheduling challenges, but is that really a good excuse not to vote? After all, people all over the world have fought and died for the right to vote. The least we can do is carve out a few minutes to go to a polling center and cast our vote.
Registration requirements	Voting registration can be confusing, especially for citizens that have moved from county to county or from state to state. But registration itself is painless and takes little more than the presentation of identification. Therefore, to prevent registration requirements from preventing you from voting, make it a point to update your voter registration every time you move.
Apathy	Americans have a reputation for being apathetic to politics and voting in general, but politics, in particular, can cause Americans' eyes to glaze over. Many people don't like the partisan bickering underlying the voting process, and this is a valid concern. However, if you are too apathetic to vote, you should also be sure to hold your complaints about the way things are run. If you don't voice your opinion by voting, you shouldn't have the right to voice your complaints when things don't go the way you want them to.
Lines are too long	Voting lines can sometimes be long, and for busy people waiting in line is a horrible waste of time and energy. But in reality, voting lines are seldom long, even for high-profile presidential races. With the advent of new technology, voting is becoming easier and more efficient than ever before, and this allows voters to get in and out without having to wait in long lines. This excuse is becoming less and less relevant as time goes on.
Don't like the candidates	Politicians are sometimes easy to dislike. Their flaws are often aired publicly for the entire world to see, and many people generally distrust politicians based on this information. But even if you don't particularly like any of the candidates, do you really know them? And should it matter whether you like them or not? Perhaps a politician's stance on issues important to you is more important than whether or not they are likable. Even if it's choosing the lesser of two or more evils in your eyes, voting is still an important way for you to voice your opinion about the subjects you care about most.
Can't get to the polls	Getting to polling locations can be a hassle, especially for the disabled, the sick, and people without transportation. In addition,

voting becomes even more difficult for those citizens who are temporarily out of the country on vacation or business. But advocacy groups are making it much easier to get to the polls, even for those with special needs. In addition, absentee voting allows those people who are temporarily out of the country to cast their vote remotely. As a result, claiming that you can't get to the polls is not a very good excuse not to vote.

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Source:  http://www.zencollegelife.com/the-7-reasons-most-americans-dont-vote/
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Figure 6.7.6: Are voter ID laws a form of voter suppression?

> While voter ID has been one of the hottest topics in elections policy for the last several years, its legacy extends back to 1950. That was when South Carolina became the first state to request that voters show some kind of identification document at the polls. No photo was required—just a document bearing the voter's name. In 1970, Hawaii joined South Carolina with a voter ID requirement. Texas (1971), Florida (1977), and Alaska (1980) rounded out the first five. In some states the request was for an ID with a photo; in others, any document, with or without a photo, was fine. In all these states, provisions existed for voters to be able to cast a regular ballot even if they did not have the requested ID.

Over time, and with little fanfare, more states began to ask voters to present an identification document. By 2000, 14 states did so. These states had Democratic and Republican majorities. In the 2000s, voter ID as an issue began to take center stage. The Commission on Federal Election Reform (aka the Carter-Baker Commission), in 2005 made a bipartisan recommendation for voter identification at the polls.

Soon thereafter, Georgia and Indiana pioneered a new, "strict" form of voter ID. Instead of *requesting* an ID, these states required an ID. If a voter did not have the required ID at the polling place, he or she voted on a provisional ballot, and that ballot was not to be counted unless the voter returned within the next few days to an elections office and showed the required ID. These were first implemented in 2008 (after Indiana's law was given the go-ahead by the U.S. Supreme Court, in *Crawford v. Marion County).*

In 2011, 2012 and 2013, the pace of adoption accelerated. States without ID requirements continued to adopt them, and states that had less-strict requirements adopted stricter ones. Many of the stricter laws were challenged in court, with mixed results. Following is a chart with the progression of legislation on voter identification from 2000 to 2014, and below is a detailed timeline of enacted legislation.

What's wrong with Voter ID laws? Voting law opponents contend these laws disproportionately affect elderly, minority and low-income groups that tend to vote Democratic. Obtaining photo ID can be costly and burdensome, with even free state ID requiring documents like a birth certificate that can cost up to $25 in some places. According to a study from NYU's Brennan Center, 11 percent of voting-age citizens lack necessary photo ID while many people in rural areas have trouble accessing ID offices. During closing arguments in a recent case over Texas's voter ID law, a lawyer for the state brushed aside these obstacles as the "reality to life of choosing to live in that part of Texas."

Attorney General Eric Holder and others have compared the laws to a poll tax, in which Southern states during the Jim Crow era imposed voting fees, which discouraged blacks, and even some poor whites -- until the passage of grandfather clauses -- from voting.

Given the sometimes costly steps required to obtain needed documents today, legal scholars argue that photo ID laws create a new "financial barrier to the ballot box."

Source: by Suevon Lee, ProPublica, Nov. 5, 2012, http://www.propublica.org/article/eve
hing-youve-ever-wanted-to-know-about-voter-id-laws/single#republish. Accessed Feb. 26,

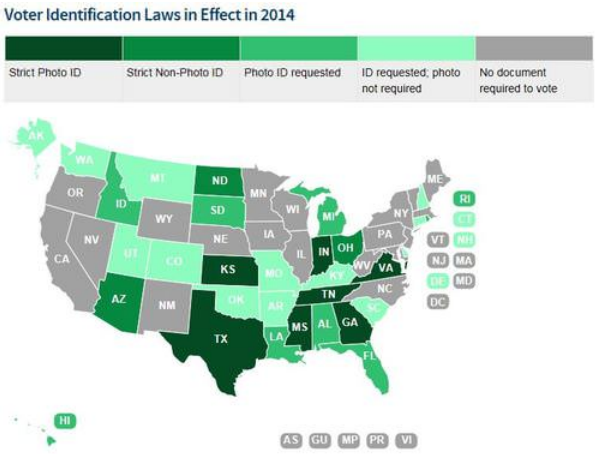

Figure 6.7.7

Source: National Council of State Legislatures,http://www.ncsl.org/research/elections-
-campaigns/voter-id.aspx. Accessed February 26, 20

Some political scientists contend that people engage in retrospective voting: Voters use the past few years to decide how to vote. In general, if a voter thinks that the country has done well over the last few years, he or she votes for the party in power. If the voter believes that the country has done poorly, he or she votes for the opposition party. Other scholars argue that Americans engage in prospective voting, which is voting with an eye to the future. People vote for the candidates that they believe will do the most to help the country in the next few years.

Source: SparkNotes Study Guide – American Government and Politics. http://www.sparkno
com/us-government-and-politics/american-government/the-political-process/section3.rhtr

Figure 6.7.8

Study/Discussion Questions

1. List and describes the steps in registering to vote.

2. What do you see as the most significant barrier(s) to voter registration among young adults?

3 What impact do other demographic factors such as race, ethnicity, and gender have on voter registration?

4. What factors help explain low turnout rates in the United States? What policies would you recommend in response to these factors and trends?

5. Do you consider voter ID laws as barriers to voter participation or a means to protect from voter fraud? Explain your answers by researching the topic online.

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6.8: Political Participation and the Voting Process

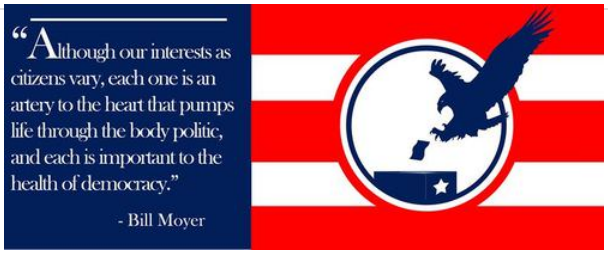


Figure 6.8.1: Voting is one of our most fundamental rights as U.S. citizens, and the Department of Defense encourages all members of the Armed Forces and Federal civilian employees to register and vote

> *The cornerstone of democracy rests on the foundation of an educated electorate.*
>
> ***Thomas Jefferson***

Jefferson's quote has been used many times by politicos, educators and candidates alike to explain how the founding fathers felt about the civic duty we call voting. While voting is the most important civic liberty a citizen can exercise in this nation, it is also a solemn act of civic responsibility and should be exercised with care and caution. This would seem to be the overall attitude of the founding fathers as they established the systems and practices by which we exercise our right to vote. In this section, we will look at the mechanical processes voters use to make their choices about the future leadership of our nation clear on Election Day.

Figure 6.8.2: Many people today, particularly those between the ages of 18 and 25 and those who are considered part of a minority group believe their vote does not matter. What would you say to such a person?

Voting is the most important civic responsibility entrusted to the American citizen. While not all of us take advantage of the right to run for office or to otherwise become politically engaged, it is essential that every eligible citizen register and participate in the voting process. Exercising the right to vote is critical in making sure that our elected officials are truly representative of the greatest possible number of citizens.

Candidates who win elections feel a sense of responsibility and accountability to those who participate and are active in the voting process. But they often find that only specific groups of citizens are actively engaged in the voting process and they tend to orient themselves and their policies to those groups. Groups who have lower levels of voting participation and engagement tend to feel disassociated from elected officials and often feel a sense of apathy, distrust, or a feeling of ineffective influence.

Video: Why People Don't Vote

When Do We Vote?

Figure 6.8.3: Dates and times for voting are determined by federal and state law and the voting process is the responsibility of each individual state. But the first Tuesday following the first Monday in November of even numbered years is reserved for general elections involving congressmen, senators and (every four years) the presidency.

Dates and times for voting are determined by federal and state law and the voting process is the responsibility of each individual state.

Federal general elections are generally held on the first Tuesday following the first Monday in November in even numbered years. Every four years the general election will include the presidential ticket while Congressional elections are held every two years and senators run every six years in staggered terms (meaning only one-third of the Senate is up for election every two years). What this means to you is that every November in even-numbered years, you will have the opportunity to participate in a national election to choose members of Congress while every four years you will have the ability to participate in the presidential election. Remember, you are not really choosing the presidential ticket directly – you are merely selecting which of the candidates will receive the Electoral College votes in your state.

State and local elections are the responsibility of each state as well as a variety of county and local level agencies. For instance, school board elections would be the responsibility of each individual school district, municipal (city) elections would be the responsibility of the city and county-wide elections are the responsibility of each county. Generally, elections are coordinated so that the expenses of conducting an election can be shared between these agencies and voters are not inundated with too many voting dates which can lead to a lack of voter participation (“turnout burnout”). To make the process even more complex, many governmental entities need to get public approval for bond elections so those are also generally included with other elections.

As an example, in El Paso, there are generally local elections piggybacked with the November election process as well as primary elections every other March and municipal elections, which are often held in May. But special elections may be scheduled at other times (with costs being the responsibility of the governmental entity that is conducting the election). A special election can be very costly so they are piggybacked on top of regularly scheduled election dates whenever possible.

How Do We Vote?

Figure 6.8.4: Citizens often make their candidate choices long before election day.

Voter Education

Figure 6.8.5: Women surrounded by posters in English and Yiddish supporting Franklin D. Roosevelt, Herbert H. Lehman, and the American Labor Party teach other women how to vote, 1936.

The first step in the voting process involves gathering information about candidates and their position on issues important to the voter. An “educated electorate” means that voters should be aware of each candidate’s experience, background information and the candidates’ stands on important issues. This knowledge is essential in helping voters select the best candidate from those who are listed on the ballot.

Question For Debate

The Founding Fathers believed that we needed a "well educated electorate" in order to guarantee democracy. But in their view, the average citizen did not meet that criterion. This is why they placed a firewall between the voters and the President (by way of the Electoral College). Recently, some politicos have promoted or debated the idea that people should be required to pass a basic civics

in order to be able to vote. Of course, this would most likely not happen any time soon because of the use of such tests in the past in order to restrict the rights of minority voters.

First: Read the following article and watch the video that follows it.

The article can be found at Should Voters Have to Pass a Test Before Pulling the Lever

The videos can be found at Rachel Maddow: Racist History Embraced by Tea Party and Politician: Sometimes Not Everyone Should Vote

Do you think people should be required to demonstrate a basic knowledge of civics before voting? Defend your answer.

Figure 6.8.6

Voter Registration

Unlike many other democratic nations, the United States government places the responsibility of registering voters and conducting elections on the states rather than taking it on as a national responsibility or activity. While federal law and the United States Constitution places limits and requirements on the states, we still look to the states as the governmental institution that undertakes election activities. The United States is also very unique in that it places the responsibility for voter registration and participation

Specific voter registration requirements vary from state to state but most states require a minimum length of residency in the state, a minimum length of residency in the country, declaration of United States citizenship, and registration at least 30 days prior to the election. Some states allow for same day registration but many states limit the ability to vote for convicted felons or those in treatment or guardianship for severe mental health or competency issues. A major concern in many states has been the expansion of identification requirements in order to vote, as many minorities have claimed that identification requirements are specifically targeted towards limiting their ability to vote.

Since 1993, the Motor Voter Law has allowed for automatic voter registration for any eligible citizen at the time they obtain their drivers' license. Some states also allow for same-day registration at the polls and others allow for online voter registration. When registering, citizens may be asked to declare political partisanship (which party they wish to associate themselves with). This information is required in many states before casting a vote in the primary elections. Citizens cannot be required to claim a party affiliation. If they do not affiliate themselves with a major party they will be automatically registered as "independents."

Political Party Declaration

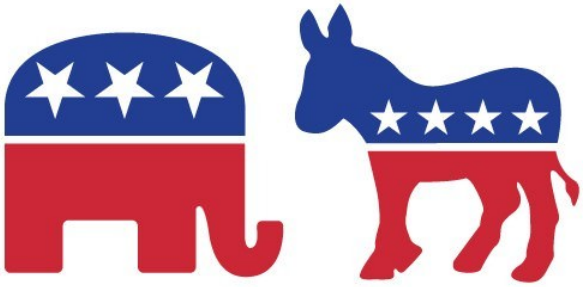


Figure 6.8.7: Before voting, you must often declare your political party affiliation. In some states this is done at the time of registration and in others it is done at the time the voter participates in the primary or caucus.

In many states, citizens may be required to declare their political party affiliation prior to participating in a primary or caucus. In these "closed" systems, a declaration must often be done at the time of registration. If the voter does not wish to declare a political party affiliation, he/she may be registered as an "independent." In other states (like Texas), the voter declares a party affiliation at

the time of the election. It is as simple as standing in a line for “Democrats” or “Republicans”. In other states, no party declaration is required and citizens may choose from a “blanket ballot” that does not separate the candidates by party and may vote on the candidate of their choice.

The Voting Process

Figure 6.8.8: Many states give voters stickers in order for them to publicly display the fact that they voted in an election.

Just as in the case of voter registration, voting is an action that is regulated and administered by the individual states. In some states or smaller precincts, citizens may vote by marking a paper ballot. In other states, mechanical voting machines, paper punch cards, or (most frequently today) electronic voting systems may be used. Whatever system is used, it is important that the votes be accurately and efficiently tabulated and that every citizen who votes have an equal voice in government. For this purpose, every vote must have equal weight (one person one vote). The law requires that every district in a legislative body (other than the Senate) contain an equal number of citizens and that it be apportioned periodically based on the official U.S. Census.

Reapportionment and Redistricting

Reapportionment and Redistricting are activities that take place periodically based upon changes in population (as measured by the U.S. Census every ten years). Since populations change over time, certain cities, states or regions (such as Texas) may see large increases in their population that require the addition of new Congressional or state-level representative districts. Other states or regions may see equivalent decreases in population and require the removal of representative districts.

The process or adding or removing representative districts is called reapportionment. When district lines are changed, it requires a process called **r**edistricting. This is the process of drawing new boundaries. Boundaries must create districts that are relatively equal in population and meet specific requirements of the Voting Rights Act which prohibits the drawing of districts in order to lessen the voting strength of minorities. When district lines are drawn in a way that gives advantage to one specific group or party or lessens the voting power of a specific group or political party we describe this as gerrymandering. Such practices may be deemed illegal if they are specifically targeted towards a specific minority.

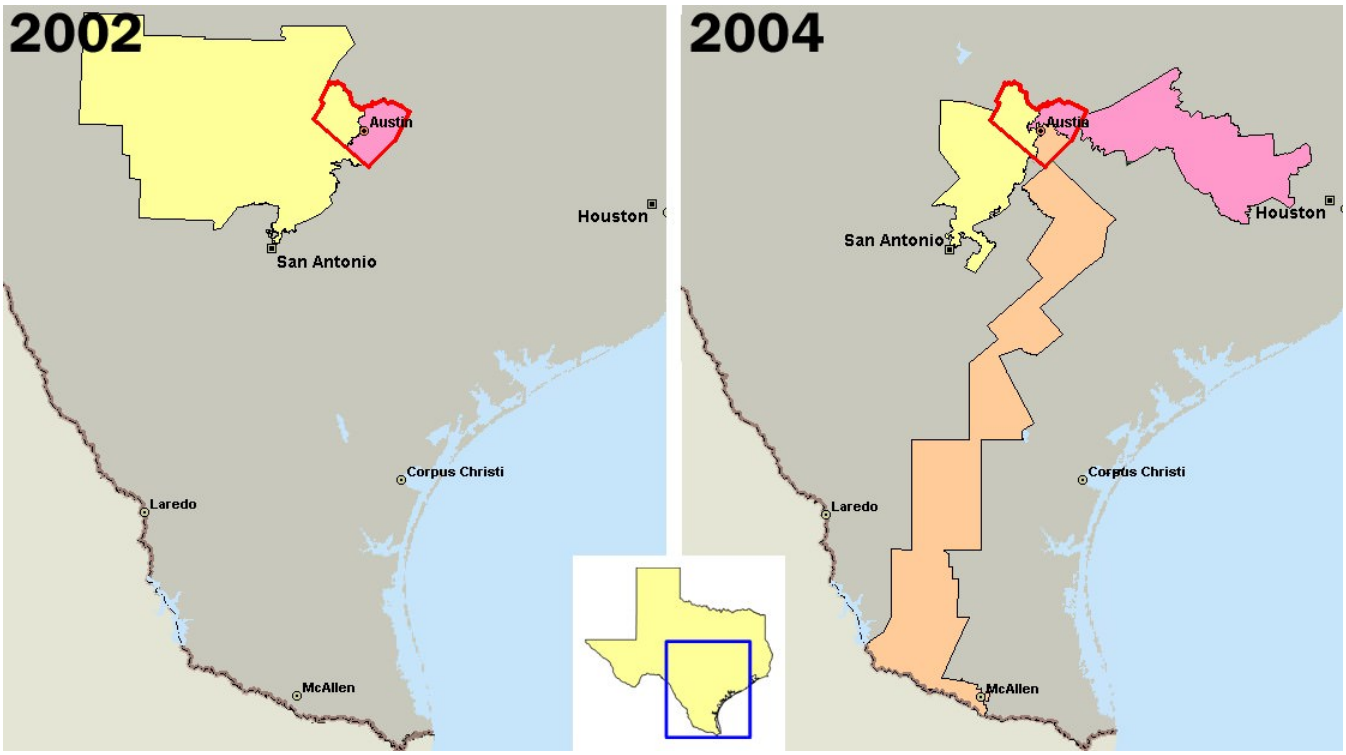


Figure 6.8.9: U.S. congressional districts covering Travis County, Texas (outlined in red) in 2002, left, and 2004, right. In 2003, the majority of Republicans in the Texas legislature redistricted the state. The plan diluted the voting power of this heavily Democratic county by distributing its residential areas among more Republican districts.

Election Day Campaigning

Election Day campaigning takes place in polling places all over the country. Candidates and their organizations (including volunteer supporters) can be seen at polling places and often approach voters before they enter the polls. For this reason, many states establish specific Election Day campaigning rules which are strictly enforced. In Texas, an electioneering perimeter is established around the polling place. No campaigning or electioneering is allowed within the boundaries of the election perimeter under penalty of law.

Figure 6.8.10: Campaign signs outside an early voting location in Houston, Texas.

Election Day Activities

Candidates and campaign staff are always concerned about knowing three things before Election Day. These include:

1. Where does the candidate have the strongest support (specific precincts and regions)?
2. Where is support for the candidate's opponent strongest?
3. Where could voting go either way (swing areas)?

Depending upon the candidate's research and campaign strategy, the campaign staff will concentrate their electioneering efforts in a variety of ways. One thing is for sure: candidates will campaign hardest in swing areas and in areas with the greatest amount of support. They will not "waste" their efforts attempting to convert voters who have already committed to supporting their opponent.

Efforts may include trying to get the candidate's supporters to vote instead of staying home (GOTV or "Get Out The Vote" efforts), and having a heavy campaign presence in voting precincts and polling places where voters have not yet made up their minds before entering the polling place (swing areas).

Figure 6.8.11: Students in Minneapolis, Minnesota attempt to attract voters with free Pizza during the 2008 General Election.

Getting Out The Vote (GOTV)

GOTV describes a set of strategies that are intended to make sure voters actually go to the polls. Much of a candidate's efforts will be expended in this area on Election Day as it has the highest impact on the candidate's success. These efforts may include heavy use of social media and telephone (including volunteer phone banks and "robo-calling"). In other areas, it may include door to door efforts within neighborhoods that have a large number of supporters. Other efforts may include arranging for transportation to the polls and assistance in getting registered and meeting legal voting requirements.

What Do You Think?

Read the article from MSNBC, State of the Union 2015

Do you think changes in Texas voting laws are a good thing or a bad thing for voter participation and engagement in Texas? Explain your answer.

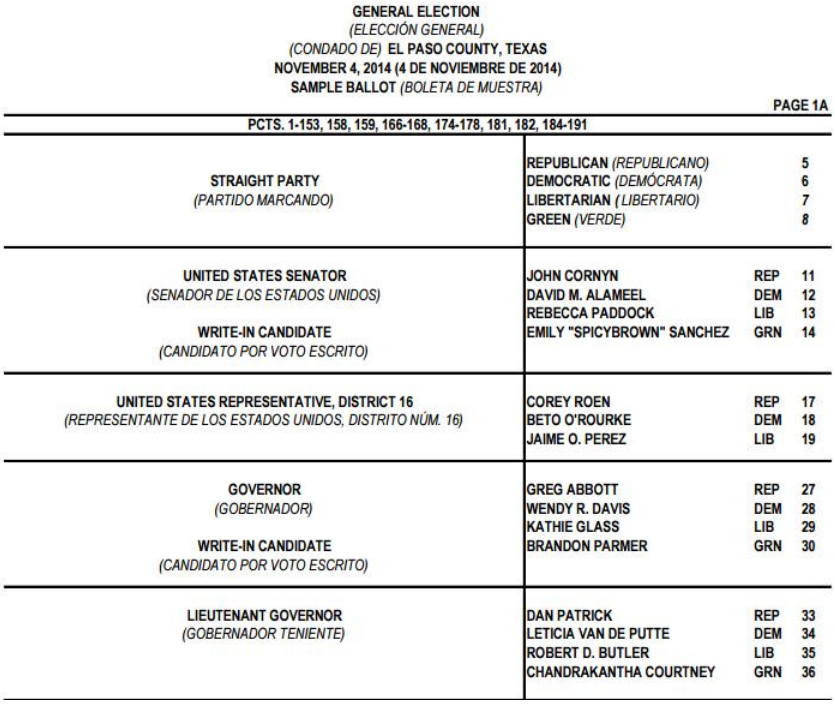
For specific information on voting day law and procedure in Texas, go to:

www.sos.state.tx.us/elections/forms/election_judges_handbook.pdf

votetexas.gov/voting/where/

http://www.texas.gov/en/discover/Pages/voting.aspx

http://www.sos.state.tx.us/elections/pamphlets/largepamp.shtml



GENERAL ELECTION
(ELECCIÓN GENERAL)
(CONDADO DE) EL PASO COUNTY, TEXAS
NOVEMBER 4, 2014 (4 DE NOVIEMBRE DE 2014)
SAMPLE BALLOT *(BOLETA DE MUESTRA)*

PAGE 1A

PCTS. 1-153, 158, 159, 166-168, 174-178, 181, 182, 184-191

STRAIGHT PARTY *(PARTIDO MARCANDO)*	REPUBLICAN *(REPUBLICANO)*		5
	DEMOCRATIC *(DEMÓCRATA)*		6
	LIBERTARIAN *(LIBERTARIO)*		7
	GREEN *(VERDE)*		8
UNITED STATES SENATOR *(SENADOR DE LOS ESTADOS UNIDOS)*	JOHN CORNYN	REP	11
	DAVID M. ALAMEEL	DEM	12
	REBECCA PADDOCK	LIB	13
WRITE-IN CANDIDATE *(CANDIDATO POR VOTO ESCRITO)*	EMILY "SPICYBROWN" SANCHEZ	GRN	14
UNITED STATES REPRESENTATIVE, DISTRICT 16 *(REPRESENTANTE DE LOS ESTADOS UNIDOS, DISTRITO NÚM. 16)*	COREY ROEN	REP	17
	BETO O'ROURKE	DEM	18
	JAIME O. PEREZ	LIB	19
GOVERNOR *(GOBERNADOR)*	GREG ABBOTT	REP	27
	WENDY R. DAVIS	DEM	28
	KATHIE GLASS	LIB	29
WRITE-IN CANDIDATE *(CANDIDATO POR VOTO ESCRITO)*	BRANDON PARMER	GRN	30
LIEUTENANT GOVERNOR *(GOBERNADOR TENIENTE)*	DAN PATRICK	REP	33
	LETICIA VAN DE PUTTE	DEM	34
	ROBERT D. BUTLER	LIB	35
	CHANDRAKANTHA COURTNEY	GRN	36

Figure 6.8.12: Excerpt from the November 2014 General Election in El Paso, Texas.

A ballot is a device used to cast votes in an election and may be a piece of paper or a small ball used in secret voting. Each voter uses one ballot, and ballots are not shared. In the simplest elections, a ballot may be a simple scrap of paper on which each voter writes in the name of a candidate, but governmental elections use pre-printed ballots to protect the secrecy of the votes. The voter casts his or her ballot in a box at a polling station. A ballot box is a temporarily sealed container, usually square box though sometimes a tamper resistant bag, with a narrow slot in the top sufficient to accept a ballot paper in an election. The ballot box is also designed to prevent anyone from accessing the votes cast until the close of the voting period.

The ballots used in elections have changed significantly in American history. Originally, political parties printed their own ballots, listing only their candidates. Voters took ballots from the party of their choice and deposited them in the ballot box within full view of other voters. As a result, vote choices were public. Since 1888, however, state governments have printed ballots that list all candidates for all offices. Votes are cast in secret. Because Australia was the first country to adopt the secret ballot, this ballot is called the Australian ballot.

Elections in the United States use one of two kinds of Australian ballots:

- The office-block ballot (also called the Massachusetts Ballot): Candidates are grouped by office.
- The party-column ballot (also called the Indiana Ballot): Candidates are grouped by party.

Political parties do not like office block ballots because these ballots encourage people to vote for candidates from different parties (a practice known as split-ticket voting). Instead, political parties prefer party-column ballots because these ballots make it easy to choose candidates only from a particular party. Some of these ballots even allow voters to choose all of a party's candidates by checking a single box, or pulling a single lever, a practice called straight-ticket voting.

Partisan Battles over Ballots

Political parties tend to support whatever ballot helps them get the most votes. In the 1998 election, the Democratic Party in Illinois won big, in part because of a very effective campaign to get voters to vote straight-ticket Democrat. After the election, Republicans in the Illinois state legislature sought to forbid those ballots with a single box, which allowed a straight-ticket vote.

Mechanical and Electronic Voting Systems

Figure 6.8.13: Mechanical and electronic voting systems have been in use for nearly a century. Today, we rely mostly on touch screen voting systems to record and tabulate voter choices at the polls.

Americans vote using a wide variety of machines. These may include “old fashioned” mechanical voting machines, punch-card and stylus systems and the newer, more advanced electronic touch screen voting systems.

- Mechanical voting machines: Voters flip switches to choose candidates and then pull a lever to finalize their vote.
- Punch-card machines: Voters mark their choices on a card using a pencil and then deposit their cards into a machine, which then tallies the vote based on the card’s holes.
- Touch-screen machines: Similar to ATMs, these increasingly popular machines “read” the voters’ choices.

But these methods have serious problems. Mechanical voting machines frequently break down, but many of the companies that made the machines have gone out of business. Punch-card machines are fallible because punching does not always create a complete hole (leading to debates about hanging and pregnant chads, as in the 2000 presidential elections). Many computer security experts see touch-screen voting as dangerously insecure. Others point out that most touch-screen machines leave no paper documents, a huge problem in cases of recounts.

Florida 2000

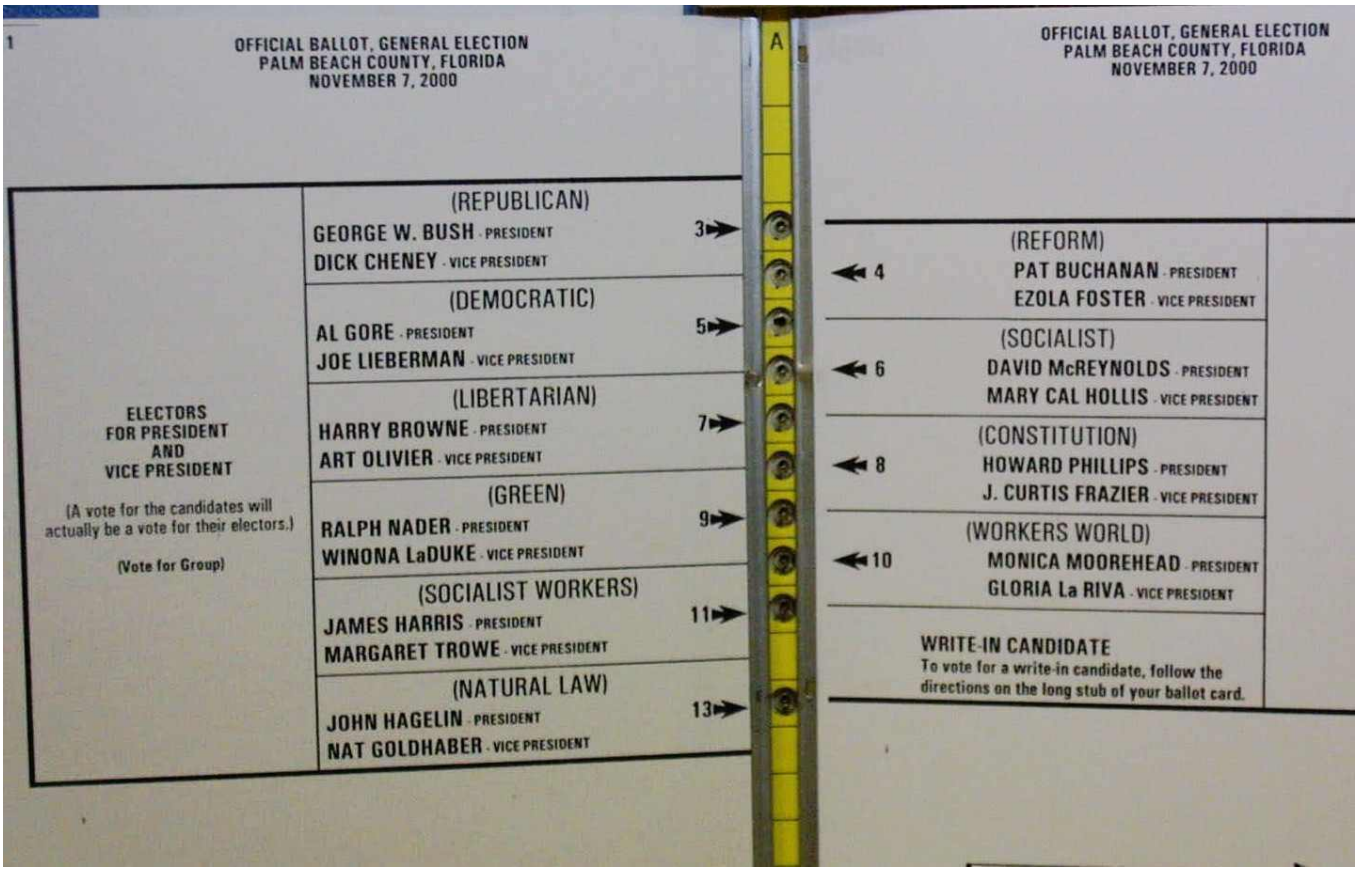


Figure 6.8.14: The infamous “butterfly ballot” shown above became a source of concern during the 2000 election between Al Gore and George W. Bush. While Bush was ultimately declared the winner in a Supreme Court decision, voters complained about the confusing system of voting used in Florida. As a result, most states turned to electronic touch screen voting systems.

The 2000 election in Florida and other states was shocking because of the inconsistency and imprecision of voting in many jurisdictions. Even within a single state, precincts use a wide variety of voting machines. And jurisdictions often have very different rules for counting votes and holding recounts. After the 2000 election, many wanted to standardize voting, but so far little has been done for one major reason: cost. Purchasing the same voting machines for all precincts would be prohibitively expensive.

Figure 6.8.15: Early voting in Rockville, Maryland.

Early Voting Differs by State

Traditionally, people vote by filling out a ballot at their local polling precinct or voting center. But some voters, such as college students or people serving in the military, cannot get to their polling place to vote. The states allow these voters to use absentee

ballots. Absentee voters usually receive their ballots in the mail several weeks before the election, fill them out, and mail them back to state election officials.

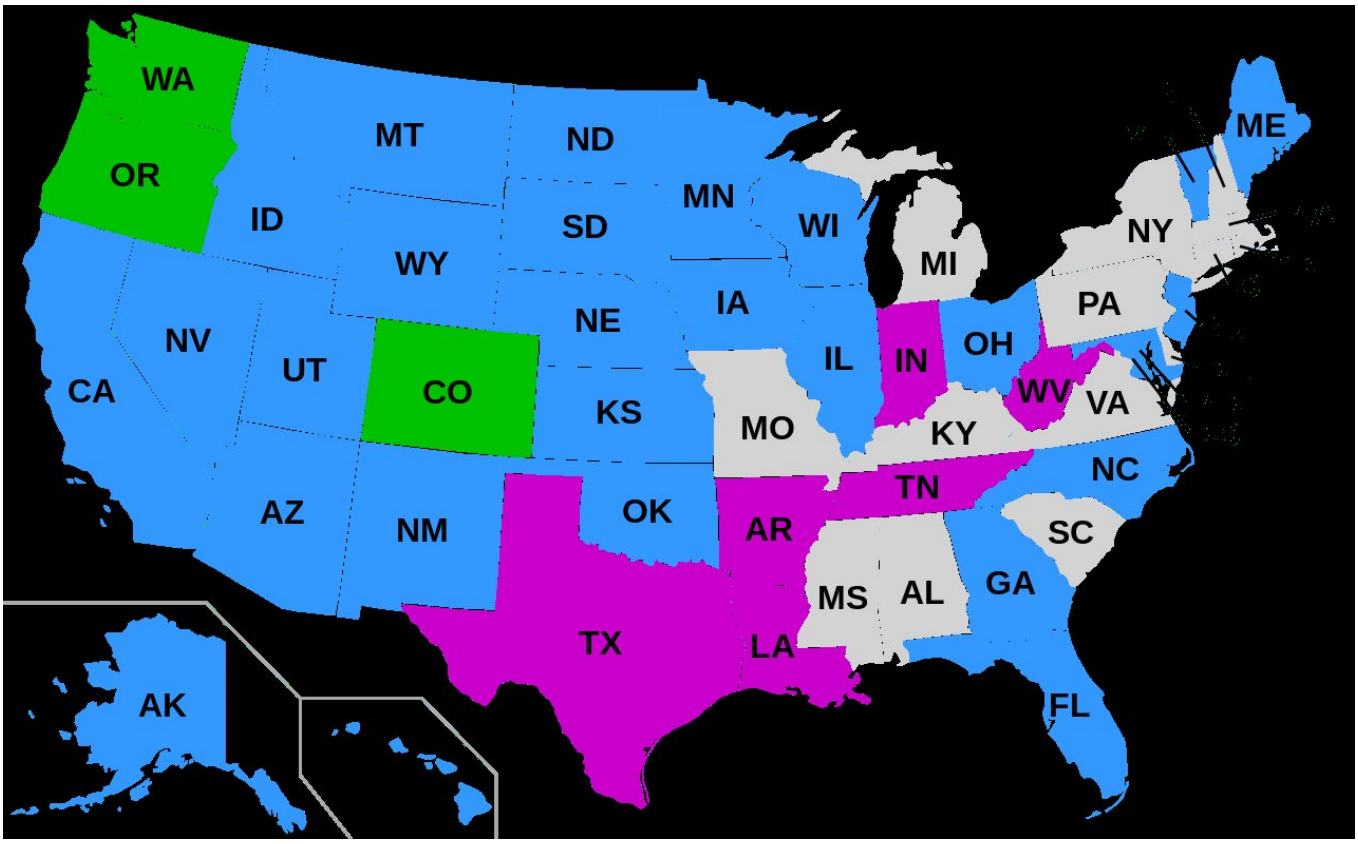


Figure 6.8.16: States in blue allow no excuse early/absentee voting by mail. States in purple allow for no excuse early voting in person, and states in grey do not yet have a “no excuse” voting system but allow for absentee voting in specific situations.

> Source: http://www.adamheckler.com/wordpress/wp-content/uploads/2015/02/no-excuse-ea
> voting-by-state.png credited as Creative Commons Public Domain

Absentee and Early Voting

Most states have a method for any eligible voter to cast a ballot before Election Day, either during the early voting period or by requesting an absentee ballot. In 14 states, early voting is not available and an excuse is required to request an absentee ballot.

States offer three ways for voters to cast a ballot before Election Day:

- **Early Voting**: In 33 states and the District of Columbia, any qualified voter may cast a ballot in person during a designated period prior to Election Day. No excuse or justification is required.
- **Absentee Voting:** All states will mail an absentee ballot to certain voters who request one. The voter may return the ballot by mail or in person. In 20 states, an excuse is required, while 27 states and the District of Columbia permit any qualified voter to vote absentee without offering an excuse. Some states offer a permanent absentee ballot list: once a voter asks to be added to the list, s/he will automatically receive an absentee ballot for all future elections.
- **Mail Voting**: A ballot is automatically mailed to every eligible voter (no request or application is necessary), and the state does not use traditional precinct poll sites that offer in-person voting on Election Day. Three states use mail voting.
- - Usually states have provided absentee ballots to those who had good reasons for not being able to go their polling place. In recent years, though, some states have made it easy for anyone to vote by mail, in an effort to encourage voting. In 2000, for example, Oregon allowed all voters in the presidential election to mail in their ballots. Voter participation surpassed 80 percent, a remarkable number. Due to this success, Oregon has completely abandoned precinct voting.

- But voting by mail has its critics. These people argue that voting by mail allows people to make their final choice early in the campaign, before debates or other events that could substantially change the race. Still, others feel that voting in person at precincts builds a sense of civic-mindedness, which is not possible through voting by mail. Supporters of voting by mail argue that the increased turnout outweighs these criticisms.

Early Voting:

- Two-thirds of the states--33, plus the District of Columbia--offer some sort of early voting. Early voting allows voters to visit an election official's office or, in some states, other satellite voting locations, and cast a vote in person without offering an excuse for why the voter is unable to vote on election day. Some states also allow voters to receive, fill out and cast their absentee ballot in person at the elections office or at a satellite location rather than returning it through through the mail. This is often referred to as in-person absentee voting. Satellite voting locations vary by state and may include other county and state offices (besides the election official's office), grocery stores, shopping malls, schools, libraries, and other locations.
- The time period for early voting varies from state to state:
- The date on which early voting begins may be as early as 45 days before the election, or as late as the Friday before the election. The average starting time for early voting across all 33 states is 22 days before the election.
- Early voting typically ends just a few days before Election Day: seven days before the election in two states, on the Thursday before the election in one state, the Friday before in seven states, the Saturday before in seven states, and the Monday before Election Day in 13 states.
- Early voting periods range in length from four days to 45 days; the average across all 33 states is 19 days.
- Of the states that allow early in-person voting, 22 and the District of Columbia allow some weekend early voting. This includes Massachusetts, which passed legislation in 2014 (to be implemented in 2016) allowing local and county clerks the discretion to expand early voting hours to weekends.
- Saturday: 18 states + the District of Columbia provide for voting on Saturday. 4 additional states (California, Kansas, Vermont, and Massachusetts, starting in 2016) leave it up to county clerks who may choose to allow Saturday voting.
- Sunday: 4 states (Alaska, Illinois, Ohio, and Maryland) allow for Sunday voting. 5 states (California, Florida, Georgia, Nevada, and Massachusetts, starting in 2016) leave it up to county clerks who may choose to be open on Sundays.

No-Excuse Absentee/Early Voting

- Absentee voting is conducted by mail-in paper ballot prior to the day of the election. States typically require that a voter fill out an application to receive an absentee ballot. Many states help facilitate this process by making absentee ballot applications available online for voters to print and send, and five states (Florida, Louisiana, Maryland, Minnesota, and Utah) permit a voter to submit an application entirely online. Arizona has some counties that have online absentee ballot applications, and in Detroit, Michigan voters can request an absentee ballot through a smartphone app.
- While all states offer some version of absentee voting, there is quite a lot of variation in states' procedures. For instance, some states offer "no-excuse" absentee voting, allowing any registered voter to request an absentee without requiring that the voter state a reason for his/her desire to vote absentee. Some states also allow a time frame before the election for voters to appear at the elections office or other designated location in person to request, fill out and cast an absentee ballot in on the spot. Still, other states permit voters to vote absentee only under a limited set of circumstances.

Online Voting?

- Many people think the future of voting is on the Internet, which would allow people to vote as easily and quickly as they send an email. Some states have experimented with online voting. Critics fear that online voting has the potential to compromise the secret ballot or to encourage voter fraud, and so online voting remains in its experimental stages.

Boundless. "Types of Ballots." Boundless Political Science. Boundless, 02 Jul. 2014. Retrieved 29 March 2015 from https://www.boundless.com/political-science/textbooks/boundless-political-science-textbook/campaigns-and-elections-8/elections-60/types-of-ballots-715/**Sources:**

The Election Process. http://www.sparknotes.com/us-government-and-politics/american-go
ment/the-political-process/section1.rhtml accessed March 28, 2015.

National Council of State Legislators. “Absentee and Early Voting.”. 11 Feb. 2015. Ret
March 28, 2015 from http://www.ncsl.org/research/elections-and-campaigns/absentee-and
y-voting.aspx.

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6.9: Citizen Movements

Figure 6.9.1: Social movements are any broad social alliances of people who are connected through their shared interest in blocking or affecting social change.

Social movements are purposeful, organized groups striving to work toward a common social goal. While most of us learned about social movements in history classes, we tend to take for granted the fundamental changes they caused. But from the anti-tobacco movement that has worked to outlaw smoking in public buildings and to raise the cost of cigarettes, to uprisings about police brutality, historical and contemporary movements have created social change.

Levels of Social Movements

Movements happen in our towns, in our nation, and around the world. Let's take a look at examples of social movements, from local to global. No doubt you can think of others on all of these levels, especially since modern technology has allowed us a near-constant stream of information about the quest for social change around the world.

Local

Chicago is a city of highs and lows, from corrupt politicians and failing schools to innovative education programs and a thriving arts scene. Not surprisingly, it has been home to a number of social movements over time. Currently, AREA Chicago is a social movement focused on "building a socially just city" (AREA Chicago 2011). The organization seeks to "create relationships and sustain community through art, research, education, and activism" (AREA Chicago 2011). The movement offers online tools like the Radicalendar—a calendar for getting radical and connected—and events such as an alternative to the traditional Independence Day picnic. Through its offerings, AREA Chicago gives local residents a chance to engage in a movement to help build a socially just city.

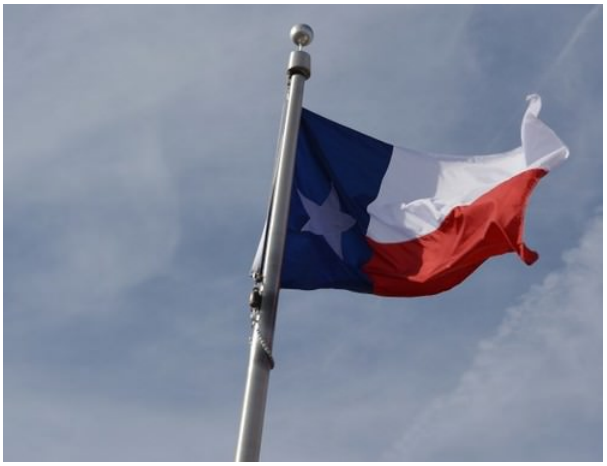

Figure 6.9.2: Texas Secede! is an organization that would like Texas to secede from the United States.

State

At the other end of the political spectrum from AREA Chicago is the Texas Secede! social movement in Texas. This statewide organization promotes the idea that Texas can and should secede from the United States to become an independent republic. The organization, which as of 2014 has over 6,000 "likes" on Facebook, references both Texas and national history in promoting secession. The movement encourages Texans to return to their rugged and individualistic roots and to stand up to what proponents believe is the theft of their rights and property by the U.S. government (Texas Secede! 2009).

National

A polarizing national issue that has helped create many activist groups is gay marriage. While the legal battle is being played out state by state, the issue is a national one. The Human Rights Campaign, a nationwide organization that advocates for LGBT civil rights, has been active for over thirty years and claims more than a million members. One focus of the organization is its Americans for Marriage Equality campaign. Using public celebrities such as athletes, musicians, and political figures, it seeks to engage the public in the issue of equal rights under the law. The campaign raises awareness of the over 1,100 different rights, benefits, and protections provided on the basis of marital status under federal law and seeks to educate the public about why these protections should be available to all committed couples regardless of gender (Human Rights Campaign 2014).

Global

Social organizations worldwide take stands on such general areas of concern as poverty, sex trafficking, and the use of genetically modified organisms (GMOs) in food. Nongovernmental organizations (NGOs) are sometimes formed to support such movements, such as the International Federation of Organic Agriculture Movement (FOAM). Global efforts to reduce poverty are represented by the Oxford Committee for Famine Relief (OXFAM), among others. The Fair Trade movement exists to protect and support food producers in developing countries. Occupy Wall Street, although initially a local movement, also went global throughout Europe and, as the Middle East.

Historical Movements in the United States

Abolitionists

While white interest in and commitment to abolition had existed for several decades, organized antislavery advocacy had been largely restricted to models of gradual emancipation (seen in several northern states following the American Revolution) and conditional emancipation (seen in colonization efforts to remove black Americans to settlements in Africa). By the 1830s, however, a rising tide of anti-colonization sentiment among northern free blacks and middle-class evangelicals' flourishing commitment to social reform radicalized the movement. Baptists such as William Lloyd Garrison, Congregational revivalists like Arthur and Lewis Tappan and Theodore Dwight Weld, and radical Quakers including Lucretia Mott and John Greenleaf Whittier helped push the idea of immediate emancipation onto the center stage of northern reform agendas. Inspired by a strategy known as "moral suasion," these young abolitionists believed they could convince slaveholders to voluntarily release their slaves by appealing to their sense of Christian conscience. The result would be national redemption and moral harmony.

William Loyd Garrison's early life and career famously illustrated this transition toward immediatism among radical Christian reformers. As a young man immersed in the reform culture of antebellum Massachusetts, Garrison had fought slavery in the 1820s by advocating for both black colonization and gradual abolition. Fiery tracts penned by black northerners David Walker and James Forten, however, convinced Garrison that African Americans possessed a hard-won right to the fruits of American liberty. So, in 1831, he established a newspaper called *The Liberator*, through which he organized and spearheaded an unprecedented interracial crusade dedicated to promoting immediate emancipation and black citizenship. Then, in 1833, Garrison presided as reformers from ten states came together to create the American Antislavery Society. They rested their mission for immediate emancipation "upon the Declaration of our Independence, and upon the truths of Divine Revelation," binding their cause to both national and Christian redemption. Abolitionists fought to save slaves and their nation's soul.

In order to accomplish their goals, abolitionists employed every method of outreach and agitation used in the social reform projects of the benevolent empire. At home in the North, abolitionists established hundreds of antislavery societies and worked with long-standing associations of black activists to establish schools, churches, and voluntary associations. Women and men of all colors were encouraged to associate together in these spaces to combat what they termed "color phobia." Harnessing the potential of steam-powered printing and mass communication, abolitionists also blanketed the free states with pamphlets and antislavery newspapers. They blared their arguments from lyceum podiums and broadsides. Prominent individuals such as Wendell Phillips and Angelina Grimké saturated northern media with shame-inducing exposés of northern complicity in the return of fugitive slaves, and white reformers sentimentalized slave narratives that tugged at middle-class heartstrings. Abolitionists used the United States Postal Service in 1835 to inundate southern slaveholders' with calls to emancipate their slaves in order to save their souls, and, in 1836, they prepared thousands of petitions for Congress as part of the "Great Petition Campaign." In the six years from 1831 to 1837, abolitionist activities reached large heights.

However, such efforts encountered fierce opposition, as most Americans did not share abolitionists' particular brand of nationalism. In fact, abolitionists remained a small, marginalized group detested by most white Americans in both the North and the South. Immediatists were attacked as the harbingers of disunion, rabble-rousers who would stir up sectional tensions and thereby imperil the American experiment of self-government. Fearful of disunion and outraged by the interracial nature of abolitionism, northern mobs smashed abolitionist printing presses and even killed a prominent antislavery newspaper editor named Elijah Lovejoy. White southerners, believing that abolitionists had incited Nat Turner's rebellion in 1831, aggressively purged antislavery dissent from the region. On the ground, abolitionists' personal safety was threatened by violent harassment. In the halls of congress, Whigs and Democrats joined forces in 1836 to pass an unprecedented restriction on freedom of political expression known as the "gag rule," which prohibited all discussion of abolitionist petitions in the House of Representatives.

In the face of such substantial external opposition, the abolitionist movement began to splinter. In 1839, an ideological dividion shook the foundations of organized antislavery. William Lloyd Garrison, a prominent leader, felt that the United States Constitution was a fundamentally pro-slavery document and that the present political system was irredeemable. They dedicated their efforts exclusively towards persuading the public to redeem the nation by re-establishing it on antislavery grounds. However, many abolitionists, reeling from opposition met in the 1830s, began to feel that moral suasion was no longer realistic. Instead, they believed, abolition would have to be effected through existing political processes. So, in 1839, political abolitionists split from Garrison's American Antislavery, forming the Liberty Party under the leadership of James G. Birney. This new abolitionist society was predicated on the belief that the U.S. Constitution was actually an antislavery document that could be used to abolish the stain of slavery through the national political system.

Significantly, abolitionist factions also disagreed on the issue of women's rights. Many abolitionists who believed full-heartedly in moral suasion nonetheless felt compelled to leave the American Antislavery Association because, in part, it elevated women to leadership positions and endorsed women's suffrage. The more conservative members saw this as evidence that, in an effort to achieve general perfectionism, the American Antislavery Society had lost sight of its most important goal. Under the leadership of Arthur Tappan, they left to form the American and Foreign Antislavery Society. Though these disputes were ultimately mere road bumps on the long path to abolition, they did become so bitter and acrimonious that former friends cut social ties and traded public insults.

Another significant shift stemmed from the disappointments of the 1830s. Abolitionists in the 1840s increasingly moved from agendas based on reform to agendas based on resistance. While moral suasionists continued to appeal to hearts and minds, and political abolitionists launched sustained campaigns to bring abolitionist agendas to the ballot box, the entrenched and violent opposition of slaveholders and the northern public to their reform efforts encouraged abolitionists to focus on other avenues of fighting the slave power. Increasingly, for example, abolitionists focused on helping and protecting runaway slaves, and on establishing international antislavery support networks to help put pressure on the United States to abolish the institution. Frederick Douglass is one prominent example of how these two trends came together. After escaping from slavery, Douglass came to the fore of the abolitionist movement as a naturally gifted orator and a powerful narrator of his experiences in slavery. His first autobiography, published in 1845, was so widely read that it was reprinted in nine editions and translated into several languages. Douglass traveled to Great Britain in 1845, and met with famous British abolitionists like Thomas Clarkson, drumming up moral and financial support from British and Irish antislavery societies. He was neither the first nor the last runaway slave to make this voyage, but his great success abroad contributed significantly to rousing morale among weary abolitionists at home.

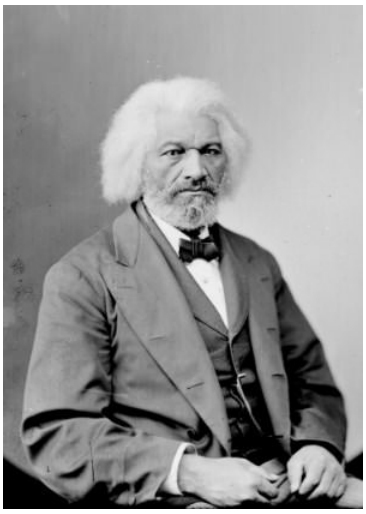

Figure 6.9.3: Frederick Douglass was born into slavery in 1818. He escaped and later became an active abolitionist.

The model of resistance to the slave power only became more pronounced after 1850, when a long-standing Fugitive Slave Act was given new teeth. Though a legal mandate to return runway slaves had existed in U.S. federal law since 1793, the Fugitive Slave Act of 1850 upped the ante by harshly penalizing officials who failed to arrest runaways and private citizens who tried to help them. This law, coupled with growing concern over the possibility of that slavery would be allowed in Kansas when it was admitted as a state, made the 1850s a highly volatile and violent period of American antislavery. Reform took a backseat as armed mobs protected runaway slaves in the north and fortified abolitionists engaged in bloody skirmishes in the west. Culminating in John Brown's raid on Harper's Ferry, the violence of the 1850s convinced many Americans that the issue of slavery was pushing the nation to the brink of sectional cataclysm. After two decades of immediatist agitation, the idealism of revivalist perfectionism had given way to a protracted battle for the moral soul of the country.

For all of the problems that abolitionism faced, the movement was far from a failure. The prominence of African Americans in abolitionist organizations offered a powerful, if imperfect, model of interracial coexistence. While immediatists always remained a minority, their efforts paved the way for the moderately antislavery Republican Party to gain traction in the years preceding the Civil War. It is hard to imagine that Abraham Lincoln could have become president in 1860 without the ground prepared by antislavery advocates and without the presence of radical abolitionists against whom he could be cast as a moderate alternative. - Though it ultimately took a civil war to break the bonds of slavery in the United States, the evangelical moral compass of revivalist Protestantism provided motivation for the embattled abolitionists.

Women's Rights

In the early 19th century, the popular understanding of gender claimed that women were the guardians of virtue and the spiritual heads of the home. Women were expected to be pious, pure, submissive, and domestic, and to pass these virtues on to their children. Historians have described these expectations as the "Cult of Domesticity," or the "Cult of True Womanhood," and they developed in tandem with industrialization, the market revolution, and the Second Great Awakening. In the early nineteenth century, men's working lives increasingly took them out of the home and into the "public sphere." At the same time, revivalism emphasized women's unique potential and obligation to cultivate Christian values and spirituality in the "domestic sphere." There were also real legal limits to what women could do outside of it. Women were unable to vote, men gained legal control over their wives' property, and women with children had no legal rights over their offspring. Additionally, women could not initiate divorce, make wills, or sign contracts. Women effectively held the legal status of children.

Because the evangelical movement prominently positioned women as the guardians of moral virtue, however, many middle-class women parlayed this spiritual obligation into a more public role. Although prohibited from participating in formal politics such as voting, office holding, and making the laws that governed them, white women entered the public arena through their activism in charitable and reform organizations. Benevolent organizations dedicated to evangelizing among the poor, encouraging temperance, and curbing immorality were all considered pertinent to women's traditional focus on family, education, and religion. Voluntary work related to labor laws, prison reform, and antislavery applied women's roles as guardians of moral virtue to address all forms of social issues that they felt contributed to the moral decline of society. As antebellum reform and revivalism brought women into

the public sphere more than ever before, women and their male allies became more attentive to the myriad forms of gender inequity in the United States.

Female education provides an example of the great strides made by and for women during the antebellum period. As part of the education reform movement lead by Horace Mann and William Holmes McGuffey, several female reformers worked tirelessly to increase women's access to education. In 1814, Emma Willard founded the Middlebury Female Seminary with the explicit purpose of educating girls with the same rigorous curriculum used for boys of the same age. Originally running the school out of her home in Middlebury, Vermont, Willard's efforts to expand her school struggled against financial difficulty and public opposition. It was not until 1821 that she could drum up enough private contributions to finance the opening of her Troy Female Seminary (now called Emma Willard School). The school educated future leaders of the women's rights movement such as Elizabeth Cady Stanton. Mary Lyons also worked to create opportunities in women's education, helping to establish several female educational seminaries before eventually founding Mount Holyoke College in 1837. Lyons and Willard specifically targeted the wealthy middle-class, but their work nonetheless opened doors for women that previously had remained closed.

Women's participation in the antislavery crusade most directly inspired specific women's rights campaigns. Many of the earliest women's rights advocates began their activism by fighting the injustices of slavery, including Angelina Grimké, Lucretia Mott, Sojourner Truth, Elizabeth Cady Stanton, and Susan B. Anthony. In the 1830s, women in cities like Boston, New York, and Philadelphia established female societies dedicated to the antislavery mission. Initially, these societies were similar to the prayer and fundraising-based projects of other reform societies. As such societies proliferated, however, their strategies changed. Women could not vote, for example, but they increasingly used their right to petition to express their antislavery grievances to the government. Impassioned women like the Grimké sisters even began to travel on lecture circuits dedicated to the cause. This latter strategy, born out of fervent antislavery advocacy, ultimately tethered the cause of women's rights to that of abolitionism.

Sarah Moore Grimké and Angelina Emily Grimké were born to a wealthy family in Charleston, South Carolina, where they witnessed firsthand the horrors of slavery. Repulsed by the treatment of the slaves on their own family farm, they decided to support the antislavery movement by sharing their experiences on Northern lecture tours. They were among the earliest and most famous American women to take such a public role in the name of reform. However, when the Grimké sisters met substantial harassment and opposition to their public speaking on antislavery, they were inspired to speak out against more than the slave system. They began to address issues of women's rights in tandem with the abolitionist cause by drawing direct comparisons between the condition of women in the United States and the condition of the slave.

As the anti-slavery movement gained momentum in the northern states in the 1830s and 1840s, so too did efforts for women's rights. These efforts came to a head at an event that took place in London in 1840. That year, Elizabeth Cady Stanton and Lucretia Mott were among the American delegates attending the World Antislavery Convention in London. However, due to ideological disagreements between some of the abolitionists, the convention's organizers refused to seat the female delegates or allow them to vote during the proceedings. Angered by this treatment, Stanton and Mott returned to the United States with a renewed interest in pursuing women's rights. In 1848, they organized the Seneca Falls Convention, a two-day summit in New York state in which women's rights advocates came together to discuss the problems facing women.

Figure 6.9.4: Lucretia Mott campaigned for women's rights, abolition, and equality in the United States

The result of the Seneca Falls Convention was the Declaration of Sentiments. Modeled on the Declaration of Independence in order to emphasize the belief that women's rights were part of the same democratic promises on which the United States was founded, the Declaration of Sentiments outlined fifteen grievances and eleven resolutions designed to promote women's access to civil rights. The Declaration begins, "We hold these truths to be self-evident: that all men and women are created equal…" and states

that “The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her.” While certainly radical, this statement expressed the reformers’ belief that white men had effectively prevented white women from exercising the natural rights afforded to every human being. Sixty-eight women and thirty-two men, all of whom were already involved in some aspect of reform, signed the Declaration of Sentiments. This document ushered in nearly a century’s worth of action on behalf of women’s rights.

Women’s inability to vote was the first grievance listed in the Declaration of Sentiments, but this was not the first time that white women in New York had demanded the right to vote. Two years earlier in 1846, a group of six women petitioned the New York state legislature to amended the constitution in order to grant women the elective franchise. Yet, while suffrage would prove to a steadfast cornerstone of the women’s rights movement, antebellum activists sought more than just formal political rights. They also pursued the reformation of laws that forced women into dependency on their husbands or male family members. Women’s rights advocates rallied against laws that prohibited married women from owning property independently of their husbands and all laws that rendered married women “civilly dead.” Above all else, antebellum women’s rights advocates sought civil equality for men and women. They fought what they perceived as senseless gender discrimination, such as barring women from attending college or paying female teachers less than their male colleagues, and they argued that men and women should be held to the same moral standards.

The Seneca Falls Convention was the first of many similar gatherings promoting women’s rights across the northern states. Yet the women’s rights movement grew slowly and experienced few victories: few states reformed married women’s property laws before the Civil War, and no state was prepared to offer women the right to vote during the antebellum period. At the onset of the Civil War, women’s rights advocates temporarily threw all of their support behind abolition, allowing the cause of racial equality to temporarily trump that of gender equality. But the words of the Seneca Falls convention continued to inspire activists for generations.

The end of the decade was marked by the Women's Strike for Equality celebrating the 50th anniversary of women's right to vote. Sponsored by NOW (the National Organization for Women), the 1970 protest focused on employment discrimination, political equality, abortion, free childcare, and equality in marriage. All of these issues foreshadowed the backlash against feminist goals in the 1970s.

Hoovervilles

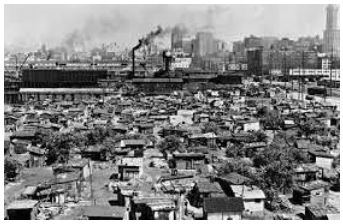

Figure 6.9.5: Hoovervilles developed across the United States during the Great Depression as people lost their jobs and their homes.

Desperation and frustration often create emotional responses, and the Great Depression was no exception. Throughout 1931–1932, companies trying to stay afloat sharply cut worker wages, and, in response, workers protested in increasingly bitter strikes. As the Depression unfolded, over 80 percent of automotive workers lost their jobs. Even the typically prosperous Ford Motor Company laid off two-thirds of its workforce.

In 1932, a major strike at the Ford Motor Company factory near Detroit resulted in over sixty injuries and four deaths. Often referred to as the Ford Hunger March, the event unfolded as a planned demonstration among unemployed Ford workers who, to protest their desperate situation, marched nine miles from Detroit to the company’s River Rouge plant in Dearborn. At the Dearborn city limits, local police launched tear gas at the roughly three thousand protestors, who responded by throwing stones and clods of dirt. When they finally reached the gates of the plant, protestors faced more police and firemen, as well as private security guards. As the firemen turned hoses onto the protestors, the police and security guards opened fire. In addition to those killed and injured, police arrested fifty protestors. One week later, sixty thousand mourners attended the public funerals of the four victims of what many protesters labeled police brutality. The event set the tone for worsening labor relations in the U.S.

Figure 6.9.6: Protesters filled the streets during the Ford Motor Company Hunger March.

Farmers also organized and protested, often violently. The most notable example was the Farm Holiday Association. Led by Milo Reno, this organization held significant sway among farmers in Iowa, Nebraska, Wisconsin, Minnesota, and the Dakotas. Although they never comprised a majority of farmers in any of these states, their public actions drew press attention nationwide. Among their demands, the association sought a federal government plan to set agricultural prices artificially high enough to cover the farmers' costs, as well as a government commitment to sell any farm surpluses on the world market. To achieve their goals, the group called for farm holidays, during which farmers would neither sell their produce nor purchase any other goods until the government met their demands. However, the greatest strength of the association came from the unexpected and seldom-planned actions of its members, which included barricading roads into markets, attacking nonmember farmers, and destroying their produce. Some members even raided small town stores, destroying produce on the shelves. Members also engaged in "penny auctions," bidding pennies on foreclosed farmland and threatening any potential buyers with bodily harm if they competed in the sale. Once they won the auction, the association returned the land to the original owner. In Iowa, farmers threatened to hang a local judge if he signed any more farm foreclosures. At least one death occurred as a direct result of these protests before they waned following the election of Franklin Roosevelt.

One of the most notable protest movements occurred toward the end of Hoover's presidency and centered on the Bonus Expeditionary Force, or Bonus Army, in the spring of 1932. In this protest, approximately fifteen thousand World War I veterans marched on Washington to demand early payment of their veteran bonuses, which were not due to be paid until 1945. The group camped out in vacant federal buildings and set up camps in Anacostia Flats near the Capitol building.

Many veterans remained in the city in protest for nearly two months, although the U.S. Senate officially rejected their request in July. By the middle of that month, Hoover wanted them gone. He ordered the police to empty the buildings and clear out the camps, and in the exchange that followed, police fired into the crowd, killing two veterans. Fearing an armed uprising, Hoover then ordered General Douglas MacArthur, along with his aides, Dwight Eisenhower and George Patton, to forcibly remove the veterans from Anacostia Flats. The ensuing raid proved catastrophic, as the military burned down the shantytown and injured dozens of people, including a twelve-week-old infant who was killed when accidentally struck by a tear gas canister.

As Americans bore witness to photographs and newsreels of the U.S. Army forcibly removing veterans, Hoover's popularity plummeted even further. By the summer of 1932, he was largely a defeated man. His pessimism and failure mirrored that of the nation's citizens. America was a country in desperate need: in need of a charismatic leader to restore public confidence as well as provide concrete solutions to pull the economy out of the Great Depression.

> Source: https://brewminate.com/brother-can-you-spare-a-dime-the-great-depression-1929-

War Protests

Vietnam was the first "living room war." Television, print media, and liberal access to the battlefield provided unprecedented coverage of the war's brutality. Americans confronted grisly images of casualties and atrocities. In 1965, *CBS Evening News* aired a segment in which United States Marines burned the South Vietnamese village of Cam Ne with little apparent regard for the lives of its occupants, who had been accused of aiding Viet Cong guerrillas.

While the U.S. government imposed no formal censorship on the press during Vietnam, the White House and military nevertheless used press briefings and interviews to paint a positive image of the war effort. The United States was winning the war, officials claimed. They cited numbers of enemies killed, villages secured, and South Vietnamese troops trained. American journalists in Vietnam, however, quickly realized the hollowness of such claims (the press referred to an afternoon press briefing in Saigon as "the Five O'Clock Follies"). Editors frequently toned down their reporters' pessimism, often citing conflicting information received from their own sources, who were typically government officials. But the evidence of a stalemate mounted. American troop levels climbed yet victory remained elusive. Stories like CBS's Cam Ne piece exposed the "credibility gap," the yawning chasm between the claims of official sources and the reality on the ground in Vietnam. Nothing did more to expose this gap than the 1968 Tet Offensive. In January, communist forces engaged in a coordinated attack on more than one hundred American and South Vietnamese sites throughout South Vietnam, including the American embassy in Saigon. While U.S. forces repulsed the attack and inflicted heavy casualties on the Viet Cong, Tet demonstrated that, despite repeated claims by administration officials, after years of war the enemy could still strike at will anywhere in the country. Subsequent stories and images eroded public trust even further. In 1969, investigative reporter Seymour Hersh revealed that U.S. troops had massacred hundreds of civilians in the village of My Lai. More and more American voices came out against the war.

Reeling from the war's growing unpopularity, on March 31, 1968, President Johnson announced on national television that he would not seek reelection. Eugene McCarthy and Robert F. Kennedy unsuccessfully battled against Johnson's vice president, Hubert Humphrey, for the Democratic Party nomination (Kennedy was assassinated in June). At the Democratic Party's national convention in Chicago, local police brutally assaulted protestors on national television. In a closely fought contest, Republican challenger Richard Nixon, running on a platform of "law and order" and a vague plan to end the War. Well aware of domestic pressure to wind down the war, Nixon sought, on the one hand, to appease anti-war sentiment by promising to phase out the draft, train South Vietnamese troops, and gradually withdraw American troops. He called it "Vietnamization." At the same time, however, Nixon appealed to the so-called "silent majority" of Americans who still supported the war and opposed the anti-war movement by calling for an "honorable" end to the war (he later called it "peace with honor"). He narrowly edged Humphrey in the fall's election.

Figure 6.9.7: Vietnam War protesters, 1967, Wichita, Kansas

Public assurances of American withdrawal, however, masked a dramatic escalation of the conflict. Looking to incentivize peace talks, Nixon pursued a "madman strategy" of attacking communist supply lines across Laos and Cambodia, hoping to convince the North Vietnamese that he would do anything to stop the war. Conducted without public knowledge or Congressional approval, the bombings failed to spur the peace process, and talks stalled before the Americans imposed the November 1969 deadline. News of the attacks renewed anti-war demonstrations. Police and National Guard troops killed six students in separate protests at Jackson State University in Mississippi, and, more famously, Kent State University in Ohio in 1970.

Another three years passed—and another 20,000 American troops died—before an agreement was reached. After Nixon threatened to withdraw all aid and guaranteed to enforce a treaty militarily, the North and South Vietnamese governments signed the Paris Peace Accords in January of 1973, marking the official end of U. S. force commitment to the Vietnam War. Peace was tenuous, and when war resumed North Vietnamese troops quickly overwhelmed Southern forces. By 1975, despite nearly a decade of direct American military engagement, Vietnam was united under a communist government.

The fate of South Vietnam illustrates of Nixon's ambivalent legacy in American foreign policy. By committing to peace in Vietnam, Nixon lengthened the war and widened its impact. Nixon and other Republicans later blamed the media for America's defeat, arguing that negative reporting undermined public support for the war. In 1971, the Nixon administration tried unsuccessfully to sue the New York Times and the Washington *Post* to prevent the publication of the Pentagon Papers, a confidential and damning history of U. S. involvement in Vietnam that was commissioned by the Defense Department and later leaked. Nixon faced a rising tide of congressional opposition to the war, led by prominent senators such as William Fulbright. Congress asserted unprecedented oversight of American war spending. And in 1973, Congress passed the War Powers Resolution, which dramatically reduced the president's ability to wage war without congressional consent.

The Vietnam War profoundly shaped domestic politics. Moreover, it poisoned Americans' perceptions of their government and its role in the world. And yet, while the anti-war demonstrations attracted considerable media attention and stand as a hallmark of the sixties counterculture so popularly remembered today, many Americans nevertheless continued to regard the war as just. Wary of the rapid social changes that reshaped American society in the 1960s and worried that anti-war protests further threatened an already tenuous civil order, a growing number of Americans criticized the protests and moved closer to a resurgent American conservatism that brewed throughout the 1970s.

Contemporary Movements in the United States

Civil Rights Movement

The Civil Rights Movement encompasses social movements in the United States aimed at ending racial segregation and discrimination against African Americans and securing legal recognition and federal protection of the citizenship rights enumerated in the Constitution and federal law. While black Americans had been fighting for their rights and liberties since the time of slavery, the 1950s and '60s witnessed critical accomplishments in their civil rights struggle.

Civil Resistance

The movement was characterized by major campaigns of civil resistance. Between 1955 and 1968, acts of nonviolent protest and civil disobedience produced crisis situations between activists and government authorities. Federal, state, and local governments, businesses, and communities often had to respond immediately to these situations that highlighted the discrimination African Americans faced. Actions included boycotts such as the successful Montgomery Bus Boycott in Alabama, sit-ins such as the influential Greensboro sit-ins, marches such as the Selma to Montgomery marches in Alabama and the march on Washington, as well as a wide range of other nonviolent activities.

The Montgomery bus boycott was a political and social protest campaign against the policy of racial segregation on the Montgomery, Alabama public transit system. The campaign lasted from December 5, 1955, when Rosa Parks, an African American woman, was arrested for refusing to surrender her seat to a white person, to December 20, 1956, when a federal ruling, *Browder v. Gayle*, took effect and led to a Supreme Court decision that declared the Alabama and Montgomery laws requiring segregated buses to be unconstitutional. Many important figures in the Civil Rights Movement took part in the boycott, including the Reverend Martin Luther King, Jr. and Ralph Abernathy.

The Greensboro sit-ins were a series of nonviolent protests in Greensboro, North Carolina, in 1960, which led to the Woolworth department store chain removing its policy of racial segregation in the southern United States. While not the first sit-in of the Civil Rights Movement, the Greensboro sit-ins were an instrumental action, and the most well-known sit-ins of the movement. They led to increased national sentiment at a crucial period in U.S. history. The primary event took place at the Greensboro Woolworth store; a site that is now the International Civil Rights Center and Museum.

The March on Washington was one of the largest political rallies for human rights in U.S. history. It demanded civil and economic rights for African Americans. Thousands of participants headed to Washington, D.C., on Tuesday, August 27, 1963. The next day,

Martin Luther King, Jr., standing in front of the Lincoln Memorial, delivered his historic “I Have a Dream” speech, in which he called for an end to racism.

The three Selma-to-Montgomery marches in 1965 were part of the voting rights movement underway in Selma, Alabama. By highlighting racial injustice in the south, they contributed to passage that year of the Voting Rights Act, a landmark federal achievement of the Civil Rights Movement. Activists publicized the three protest marches to walk the 54-mile (87-km) highway from Selma to the Alabama state capital of Montgomery as showing the desire of African American citizens to exercise their constitutional right to vote, in defiance of segregationist repression.

Figure 6.9.8: Martin Luther King at the 1963 Civil Rights March on Washington, D.C.

Legislation

A critical Supreme Court decision of this phase of the Civil Rights Movement was the 1954 ruling, *Brown v. Board of Education*. In the spring of 1951, black students in Virginia protested their unequal status in the state’s segregated educational system. Students at Moton High School protested the overcrowded conditions and failing facilities. Some local leaders of the National Association for the Advancement of Colored People (NAACP) had tried to persuade the students to back down from their protest against the Jim Crow laws of school segregation. When the students did not budge, the NAACP joined their battle against school segregation. The NAACP proceeded with five cases challenging the school systems; these were later combined under what is known today as *Brown v. Board of Education*.

On May 17, 1954, the Supreme Court ruled unanimously that mandating, or even permitting, public schools to be segregated by race was unconstitutional. Other noted legislative achievements during this critical phase of the civil rights movement were:

- Passage of the Civil Rights Act of 1964, which banned discrimination based on “race, color, religion, or national origin” in employment practices and public accommodations. It ended unequal application of voter registration requirements and racial segregation in schools, at the workplace, and by facilities that served the general public (known as “public accommodations”).
- The Voting Rights Act of 1965, which restored and protected voting rights. Designed to enforce the voting rights guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution, the act secured voting rights for racial minorities throughout the country, especially in the south. According to the U.S. Department of Justice, the act is considered the most effective piece of civil rights legislation ever enacted in the country.
- The Immigration and Nationality Services Act of 1965, which dramatically opened entry to the United States for immigrants other than traditional European groups.
- The Fair Housing Act of 1968 (also known as the Civil Rights Act of 1968), which banned discrimination in the sale or rental of housing.

Black Power Movement

During the Freedom Summer campaign of 1964, numerous tensions within the Civil Rights Movement came to the forefront. Many black Americans in the Student Nonviolent Coordinating Committee (SNCC; one of the major organizations of the movement) developed concerns that white activists from the north were taking over the movement. The massive presence of white students was also not reducing the amount of violence that the SNCC suffered; instead, it seemed to be increasing it. Additionally, there was profound disillusionment with Lyndon Johnson’s denial of voting status for the Mississippi Freedom Democratic Party. Meanwhile, during the work of the Congress of Racial Equality (CORE) in Louisiana that summer, that group found the federal government would not respond to requests to enforce the provisions of the Civil Rights Act of 1964 or to protect the lives of activists who challenged segregation. For the Louisiana campaign to survive it had to rely on a local African American militia called the Deacons for Defense and Justice, who used arms to repel white supremacist violence and police repression. CORE’s collaboration with the Deacons was effective against breaking Jim Crow in numerous Louisiana areas.

In 1965, the SNCC helped organize an independent political party, the Lowndes County Freedom Organization, in the heart of Alabama Klan territory, and permitted its black leaders to openly promote the use of armed self-defense. Meanwhile, the Deacons for Defense and Justice expanded into Mississippi and assisted Charles Evers' NAACP chapter with a successful campaign in Natchez. The same year, the Watts Rebellion took place in Los Angeles and seemed to show that most black youths were now committed to the use of violence to protest inequality and oppression.

During the March Against Fear in 1966, the SNCC and CORE fully embraced the slogan of Black Power to describe these trends toward militancy and self-reliance. In Mississippi, Stokely Carmichael, one of the SNCC's leaders, declared, "I'm not going to beg the white man for anything that I deserve, I'm going to take it. We need power." Black Power was made most public, however, by the Black Panther Party, which was founded by Huey Newton and Bobby Seale in Oakland, California, in 1966. This group followed the ideology of Malcolm X, a former member of the Nation of Islam, using a "by-any-means-necessary" approach to stopping inequality. They sought to rid African American neighborhoods of police brutality and created a 10-point plan among other efforts.

A wave of inner-city riots in black communities from 1964 through 1970 undercut support from the white community. The emergence of the Black Power movement, which lasted from about 1966 to 1975, challenged the established black leadership for its cooperative attitude and its nonviolence, and instead demanded political and economic self-sufficiency.

Many popular representations of the movement are centered on the leadership and philosophy of Martin Luther King, Jr., who won the 1964 Nobel Peace Prize for his role in the movement. However, historians note that the movement was too diverse to be credited to one person, organization, or strategy.

Figure 6.9.9: President Johnson signs the Civil Rights Act of 1964.

Little Rock Nine

In 1957 a crisis erupted in Little Rock, Arkansas, when Arkansas Governor Orval Faubus called out the National Guard on September 4 to prevent entry to the nine African American students, known as the Little Rock Nine, who had sued for the right to attend the integrated Little Rock Central High School. The nine students had been chosen to attend Central High because of their excellent grades. Faubus' resistance received the attention of President Dwight Eisenhower. Little Rock Mayor Woodrow Wilson Mann asked the president to send federal troops to enforce integration and protect the nine students. Critics had charged Eisenhower was lukewarm, at best, on the goal of desegregation of public schools. However, he federalized the National Guard in Arkansas and ordered them to return to their barracks. He also deployed elements of the 101st Airborne Division to the school to protect the students.

Figure 6.9.10: Protesting the attendance of 9 African American students at Central High School escalated, so the Arkansas governor called in the National Guard.

Lesbian, Gay, Bisexual, and Transgender Social Movements

LGBT is a political ideology and social movement that advocate for the full acceptance of LGBT people in society. In these movements, LGBT people and their allies have a long history of campaigning for what is now generally called LGBT rights, sometimes also called gay rights or gay and lesbian rights. Although there is not a primary or an overarching central organization that represents all LGBT people and their interests, numerous LGBT rights organizations are active worldwide.

A commonly stated goal among these movements is social equality for LGBT people. Some have also focused on building LGBT communities or worked towards liberation for the broader society.

LGBT movements organized today are made up of a wide range of political activism and cultural activity, including lobbying, street marches, social groups, media, art, and research. Sociologist Mary Bernstein writes: "For the lesbian and gay movement, then, cultural goals include (but are not limited to) challenging dominant constructions of masculinity and femininity, homophobia, and the primacy of the gendered heterosexual nuclear family (heteronormativity). Political goals include changing laws and policies in order to gain new rights, benefits, and protections from harm." Bernstein emphasizes that activists seek both types of goals in both the civil and political spheres.

LGBT movements have often adopted a kind of identity politics that sees gay, bisexual and/or transgender people as a fixed class of people; a minority group or groups. Those using this approach aspire to liberal political goals of freedom and equal opportunity and aim to join the political mainstream on the same level as other groups in society. In arguing that sexual orientation and gender identity are innate and cannot be consciously changed, attempts to change gay, lesbian and bisexual people into heterosexuals ("conversion therapy") are generally opposed by the LGBT community. Such attempts are often based on religious beliefs that perceive gay, lesbian and bisexual activity as immoral.

Figure 6.9.11: The rainbow or "pride" flag has come to represent the gay rights movement.

Success of the early informal homosexual student groups, along with the inspiration provided by other college-based movements and the Stonewall riots, led to the proliferation of Gay Liberation Fronts on campuses across the country by the early 1970s. These first LGBT student movements passed out gay rights literature, organized social events, and sponsored lectures about the gay experience. Through their efforts, the campus climate for GLBTQ people improved. Also, by gaining institutional recognition and

establishing a place on campus for GLBTQ students, the groundwork was laid for the creation of GLBTQ groups at colleges and universities throughout the country and generation of wider acceptance and tolerance.

During the 1980s, high school and junior high school students have begun to organize Gay-Straight Alliances, enabling even younger LGBT people to find support and better advocate for their needs.

As a federal republic, absent of many federal laws or court decisions, LGBT rights often are dealt with at the local or state level. Thus the rights of LGBT people in one state may be very different from the rights of LGBT people in another state.

Same-sex couples: On June 26, 2015, the U.S. Supreme Court struck down all state bans on same-sex marriage, legalized it in all fifty states, and required states to honor out-of-state same-sex marriage licenses in the case Obergefell v. Hodges.

Freedom of Speech - Homosexuality as a way of expression and life is not as obscene, and thus protected under the First Amendment. However, states can reasonably regulate the time, place and manner of speech.

Civil rights - Sexual orientation is not a protected class under Federal civil rights law, but it is protected for federal civilian employees and in federal security clearance issues. The United States Supreme Court implied in Romer v. Evans that a state may not prohibit gay people from using the democratic process to get protection, prescribed by antidiscrimination law.

Education - Public schools and universities generally have to recognize an LGBT student organization, if they recognize other social or political organizations, but high school students may be required to get parental consent.

Hate crimes and criminal law - Area in which, perhaps, the biggest progression is made. Federal hate crime law now includes sexual orientation and gender identity. The Matthew Shepard Act, officially the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which expands the 1969 United States federal hate-crime law to include crimes motivated by a victim's actual or perceived gender, sexual orientation, gender identity, or disabilities, is an Act of Congress, passed on October 22, 2009, and was signed into law by President Barack Obama on October 28, 2009, as a rider to the National Defense Authorization Act for 2010 (H.R. 2647).

The Tea Party Movement

The Tea Party movement is an American fiscally conservative political movement within the Republican Party. Members of the movement have called for lower taxes, and for a reduction of the national debt of the United States and federal budget deficit through decreased government spending.

The movement supports the small-government principle and opposes government-sponsored universal healthcare. The Tea Party movement has been described as a popular constitutional movement composed of a mixture of libertarian, right-wing populist, and conservative activism. It has sponsored multiple protests and supported various political candidates since 2009. According to the American Enterprise Institute, various polls in 2013 estimate that slightly over 10 percent of Americans identified as part of the movement.

The Tea Party movement was launched following a February 19, 2009 call by CNBC reporter Rick Santelli on the floor of the Chicago Mercantile Exchange for a "tea party," several conservative activists agreed by conference call to unite against Obama's agenda and scheduled series of protests. Supporters of the movement subsequently have had a major impact on the internal politics of the Republican Party.

Although the Tea Party is not a party in the classic sense of the word, some research suggests that members of the Tea Party Caucus vote like a significantly farther right third party in Congress. A major force behind it was Americans for Prosperity(AFP), a conservative political advocacy group founded by businessmen and political activist David H. Koch. It is unclear exactly how much money is donated to AFP by David and his brother Charles Koch. By 2019, it was reported that the conservative wing of the Republican Party "has basically shed the tea party moniker".

The movement's name refers to the Boston Tea Party of December 16, 1773, a watershed event in the launch of the American Revolution. The 1773 event demonstrated against taxation by the British government without political representation for the American colonists, and references to the Boston Tea Party and even costumes from the 1770s era are commonly heard and seen in the Tea Party movement.

The rights gained by these activists and others have dramatically improved the quality of life for many in the United States. Civil rights legislation did not focus solely on the right to vote or to hold public office; it also integrated schools and public

accommodations, prohibited discrimination in housing and employment, and increased access to higher education. Activists for women's rights fought for and won, greater reproductive freedom for women, better wages, and access to credit. Only a few decades ago, homosexuality was considered a mental disorder, and relations between those of the same sex was illegal in many states. Now same-sex couples have the right to legally marry.

Activism can improve people's lives in less dramatic ways as well. Working to make cities clean up vacant lots, destroy or rehabilitate abandoned buildings, build more parks and playgrounds, pass ordinances requiring people to curb their dogs, and ban late-night noise greatly affects people's quality of life. The actions of individual Americans can make their own lives better and improve their neighbors' lives as well.

Source

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(**LGBT**)

- Passage of the Civil Rights Act of 1964, which banned discrimination based on "race, color, religion, or national origin" in employment practices and public accommodations. It ended unequal application of voter registration requirements and racial segregation in schools, at the workplace, and by facilities that served the general public (known as "public accommodations").
- The Voting Rights Act of 1965, which restored and protected voting rights. Designed to enforce the voting rights guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution, the act secured voting rights for racial minorities throughout the country, especially in the south. According to the U.S. Department of Justice, the act is considered the most effective piece of civil rights legislation ever enacted in the country.
- The Immigration and Nationality Services Act of 1965, which dramatically opened entry to the United States for immigrants other than traditional European groups.
- The Fair Housing Act of 1968 (also known as the Civil Rights Act of 1968), which banned discrimination in the sale or rental of housing.

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6.10: Influences on Individual's Political Actions and Attitudes

Figure 6.10.1: The Civil Rights March on Washington, D.C. — Leaders marching from the Washington Monument to the Lincoln Memorial, August 28, 1963.

Citizen participation in a representative republic matters. The right of citizens to participate in government is an important principle of representative government. The purpose of voting–and other forms of civic engagement--is to ensure that the government serves the people and not the other way around. The pluralist theory asserts the republic cannot function without active participation by at least some citizens. No matter who we believe makes important political decisions–the majority, special interests, or a group of elites–participation through voting changes those who are in powerful positions of authority.

How Do People Become Involved

People can become civically engaged in many ways, either as individuals or as members of groups. Some forms of individual engagement require very little effort. Awareness is the first step toward engagement. Information is available from a variety of reputable media sources, such as newspapers like the *Wall Street Journal*, *The Washington Post*, and the *New York Times*; national news shows, including those offered by the Public Broadcasting Service and National Public Radio; and reputable internet sites.

Representative government cannot work effectively without the participation of *informed* citizens. Engaged citizens familiarize themselves with the most important issues confronting the country and with plans different candidates have for dealing with these issues. They vote for the candidates they believe will be best suited to the job, and they may join others to raise funds or campaign for those they support. They inform their representatives how they feel about important issues. Through these efforts and others, engaged citizens let their representatives know what they want and thus influence policy. Only then can government action accurately reflect the interests and concerns of the people.

Voting is a fundamental way to engage with the government. Individual votes do matter. City council members, local judges, some local law enforcement officials, mayors, state legislators, governors, and members of Congress are all chosen by popular vote. Although the president of the United States is not chosen directly by popular vote but by a group of presidential electors (informally called the Electoral College), the votes of individuals in their home states determine how these electors ultimately vote.

Figure 6.10.2: A paper voting ballot along with a sticker that shows "I voted" is an image from the 2012 election.

Responding to public opinion polls, actively contributing to a political blog, or starting a new blog are all examples of active engagement. Individuals may engage by attending political rallies, donating money to campaigns, and signing petitions.

Starting a petition of one's own is relatively easy. Some websites connected to various causes and interest groups encourage involvement and provide petitions that can be circulated through email.

Helping people register to vote, making campaign phone calls, and driving voters to the polls on Election Day are all important activities for citizen engagement.

Some people prefer to work with groups when participating in political activities whether these are organized or informal. Group activities can be as simple as hosting a book club or a discussion group to talk about politics. Coffee Party USA provides an online forum for people from a variety of political perspectives to discuss issues of concern to them.

Figure 6.10.3: In 2017, citizens, students, and teachers gather during Betsy DeVos Protest, Washington, D.C. USA

Individual citizens can also join interest groups promoting causes they favor. *Civic engagement through organized group activity may increase the power of ordinary people to influence government actions.* Even those without significant wealth or individual connections to influential people may influence the policies affecting their lives and change the direction of government through active participation in organized groups or movements. U.S. history is filled with examples of people actively challenging the existing structure of power, gaining rights for themselves and others, and protecting their interests by mutually working together to advance the causes they believe in.

Organized groups utilize more active and direct forms of engagement including protest marches, demonstrations, and civil disobedience. Such tactics were used successfully in the African American civil rights movement of the 1950s and 1960s and remain effective today. Other tactics, such as boycotting businesses of whose policies the activists disapproved, are also still common practice of many interest groups.

Factors that Contribute to Political Engagement

Certain factors like age, gender race, and religion help describe why people vote and who is more likely to vote. Some people are motivated to vote because they identify very strongly with one party. People can be motivated to vote based on their political ideology, or how they think the government, economy, and society should be structured. Oftentimes, people vote based on specific candidate's characteristics, experiences, or likeability. In some elections, voters are motivated to vote a certain way based on specific policy preferences, which is called issue voting.

Voting

Political participation differs notably by age. People between the ages of 35 and 65 are the most politically active. At this stage in life, people are more likely than younger people to have established homes, hold steady jobs, and be settled into communities. Those with stable community roots often have strong incentives and greater resources for becoming involved in politics. Senior citizens, people age 65 and older, also have high turnout rates of around 70 percent.

Historically, young people have been less likely to vote as they often lack the money and time to participate. However, the youth vote has been on the rise: turnout among 18 to 24-year-olds was at 36 percent in 2000, but this rose to 47 percent in 2004 and 51 percent in 2008. This rise in youth vote is partly a result of voter registration and mobilization efforts by groups like Rock the Vote. An important factor in the increase of younger voters in 2008 was the greater appeal of a younger, non-white candidate in Barack Obama. According to the Pew Research Center, 66 percent of voters under 30 chose Obama in 2008. New technology, especially the internet, is also making it easier for candidates to reach the youth. Websites such as Facebook and YouTube not only allow students to acquire information about the polls but also allow them to share their excitement over the polls and candidates.

Gender and Political Participation

Political scientists and journalists often talk about the gender gap in participation, which assumes women lag behind men in their rates of political engagement. However, the gender gap is closing for some forms of participation, such as voting. Since 1986, women have exceeded the turnout rate for men in presidential elections; 66 percent of women cast a ballot in 2008 compared with

62 percent of men. This may be due to the political prominence of issues of importance to women, such as abortion, education, and child welfare.

Racial Groups and Participation

Participation and voting differ among members of racial and ethnic groups. Discriminatory practices kept the turnout rate of African-Americans low until after the passage of the Voting Rights Act of 1965. Poll taxes, literacy tests, and intimidation kept black voters from the polls. Eventually, civil rights protests and litigation eliminated many barriers to voting. Today, black citizens vote at least as often as white citizens who share the same socioeconomic status. Collectively, African Americans are more involved in the American political process than other minority groups in the United States, indicated by the highest level of voter registration and participation in elections among these groups in 2004. Sixty-five percent of black voters turned out in the 2008 presidential election compared with 66 percent of white voters.

Figure 6.10.4: Protesters sit in at the Texas State Capitol

Group Participation as Civic Engagement

Joining interest groups can help facilitate civic engagement, which allows people to feel more connected to the political and social community. Some interest groups develop as grassroots movements, which often begin from the bottom up among a small number of people at the local level. Interest groups can amplify the voices of such individuals through proper organization and allow them to participate in ways that would be less effective or even impossible alone or in small numbers.

Over the past decades, there has been a rise in the number of interest groups.

Video: Interest Groups and Elections

Endorsing Candidates

Interest groups may endorse candidates for office and, if they have the resources, mobilize members and sympathizers to work and vote for them. President Bill Clinton blamed the NRA for Al Gore losing the 2000 presidential election because it influenced voters

in several states, including Arkansas, West Virginia, and Gore's home state of Tennessee. Had any of these states gone for Gore, he would have won the election.

Interest groups can promote candidates through television and radio advertisements. During the 2004 presidential election, the NRA ran a thirty-minute infomercial in battleground states favoring President George W. Bush and calling his opponent "the most anti-gun presidential nominee in United States history." In 2008, the NRA issued ads endorsing Republican presidential candidate John McCain and his running mate, Sarah Palin.

Endorsements do carry risks. If the endorsed candidate loses, the unendorsed winner is likely to be unsympathetic to the group. Thus relatively few interest groups endorse presidential candidates and most endorsements are based on ideology.

Figure 6.10.5

Campaign financing has become a critical issue of debate among candidates. With provisions of the Federal Election Campaign Act being weakened by court rulings and the rise of PAC and Super PAC funding sources, the amount of outside campaign financing remains an important topic.

Funding Candidates

Made possible by the 1971 Federal Election Campaign Act (FECA), political action committees (PACs) are a means for organizations, including interest groups, to raise funds and contribute to candidates in federal elections. Approximately one-third of the funds received by candidates for the House of Representatives and one-fifth of funds for Senate candidates come from PACs. The details of election funding are discussed in our chapter on "Campaigns and Elections".

However, in January 2010 the Supreme Court ruled that the government cannot ban political spending by corporations in candidate elections. The court majority justified the decision on the grounds of the First Amendment's free speech clause. The dissenters argued that allowing unlimited spending by corporations on political advertising would corrupt democracy. [16]

Many interest groups value candidates' power above their ideology or voting record. Most PAC funds, especially from corporations, go to incumbents. Chairs and members of congressional committees and subcommittees who make policies relevant to the group are particularly favored. The case of Enron, although extreme, graphically reveals such funding. Of the 248 members of Congress on committees that investigated the 2002 accounting scandals and collapse of the giant corporation, 212 had received campaign contributions from Enron or its accounting firm, Arthur Andersen. [17]

Some interest groups fund candidates on the basis of ideology and policy preference. Ideological and public interest groups base support on candidates' views even if their defeat is likely. Pro-life organizations mainly support Republicans; pro-choice organizations mainly support Democrats.

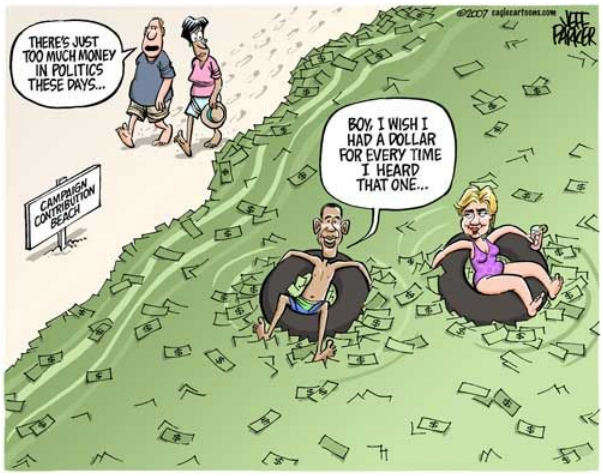

Figure 6.10.6

Many observers today believe the relationship between interest groups and political candidates has become too dependent on political campaign contributions. What do you think?

The interest group–candidate relationship is a two-way street. Many candidates actively solicit support from interest groups on the basis of an existing or the promise of a future relationship. Candidates obtain some of the funds necessary for their campaigns from interest groups; the groups who give them money get the opportunity to make their case to sympathetic legislators. A businessman defending his company's PAC is quoted as saying, "Talking to politicians is fine, but with a little money they hear you better." [18]

Much better. The Center for Responsive Politics shows correlations between campaign contributions and congressional voting. After the House of Representatives voted 220–215 in 2003 to pass the Medicare drug bill, the organization reported that "lawmakers who voted to approve the legislation have raised an average of roughly twice as much since 1999 from individuals and PACs associated with health insurers, HMOs [Health Maintenance Organizations] and pharmaceutical manufacturers as those who voted against the bill." [19]

Lobbying

Figure 6.10.7: Lobbying depends on cultivating personal relationships over many years. Photo: Lobbyist Tony Podesta (left) with Senator Kay Hagan (center) and her husband.

Besides participating in electioneering activities (political endorsements and campaign contributions), interest groups use the strategy of lobbying as their primary strategy. Lobbying is any activity that involves contacting a public official to persuade that official to support the interest of a specific group of constituents. These strategies may involve directly contacting and meeting with officials or government workers, providing information about a specific policy or issue for the purposes of educating a policy maker, or other means of direct persuasion such as email, letter writing, or telephone message campaigns.

A lobbyist may visit with officials at any level of government from local to national. For instance, a group of citizens who want to create a new zoning law prohibiting adult businesses within 1500 feet of a store might lobby their city representative, the mayor, the zoning board or even their state legislator in order to create a new law or enforce a new policy.

Today, there are many more types of lobbying available than the traditional personal meeting. Social media, e-mail and instant messaging have meant that members can be kept informed of meetings and lobbying opportunities and policymakers may be inundated with electronic messages, emails, and phone calls trying to persuade them to take a particular stand on a bill or policy. But face to face communication still tends to prove most effective in the long run.

Figure 6.10.8

After years of being in an irreversible vegetative state, the husband of Terry Schiavo fought to have her feeding tube removed so that she could be allowed to "die with dignity." But many protesters appeared outside the hospital when a judge ordered her feeding tube removed. Congress attempted to intervene in response to intense public protest but the courts overturned them.

Many times, interest groups provide information and expert testimony in order to explain the group's interests to the policymakers and the public. Often times, this public information role generates more support for the group and heavily influences the behavior of decision makers.

Another way of influencing public opinion is the use of "grassroots" politics. This means that an issue gains support at the lowest level of an organization or society and makes its way to policymakers through public outcry from the ground up. But today, many interest groups and lobbyists have used social media and public opinion to create artificially generated grassroots movements that do not originate from the ground up but from the interest group down to the public. Many political experts have come to know this strategy as "Astroturfing" because it resembles the creation of artificial grassroots. Many grassroots organizations influence decision makers by organizing marches, demonstrations, and other forms of high-pressure and high attendance events which depend upon high levels of voluntary participation and effort.

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Figure 6.10.9: Thurgood Marshall famously argued the case of Brown v. The Board of Education of Topeka Kansas on behalf of the NAACP and the Brown Family.

Many interest groups have taken to the courts in order to change or implement public policy. Perhaps the best example of this is the famous case of Brown vs. The Board of Education of Topeka, Kansas, which was filed on behalf of Linda Brown by the NAACP. In this case, the court agreed that racially segregated schools were illegal and ordered African American students to be admitted in public schools "with all deliberate speed." Since this landmark case, many other cases have been brought before the Supreme Court by similar interest groups such as the ACLU in order to enforce constitutional provisions for equitable treatment or fair access to government resources or protections.

Benefits of Public Interest

One of the most important benefits provided by interest groups is that they give minority interests a greater voice in the political process. This was particularly true during the civil rights era of the 1950s and 1960s. Other political minorities, including neighborhood associations, hunters, gun owners, etc. may form their own interest groups. As an example, when officials around Austin, Texas wanted to allow the building of a Formula One racetrack. Many citizens in the area banned together and complained as a group, but the track was built anyway.

Figure 6.10.10: "Crowds at Circuit of the Americas" outside of Austin, Texas

Criticism of Interest Groups

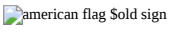

Figure 6.10.11: Many critics argue that the current state of public interests and lobbies gives too much power to those with money and financial resources, such as large corporations and not enough power to groups with much smaller levels of financial support.

Many critics believe interest groups have been given too much power in the political process today. Influence has become synonymous with money in the modern era of lobbies, PACs and Super PACs. For instance, a well-funded group may exercise unlimited spending and influence in a political race where a smaller grassroots organization could never compete with such resources. The truth is that the size of the group in membership is not as critical as the financial resources available to the group. There are, in fact, groups that rely strictly on the financial resources of one or two major benefactors that can exert much more influence than groups with thousands of "grassroots" members.

Another criticism often placed against interest groups is that they tend to focus on one narrow issue. The defense for this would be that single issue groups help get recognition and reception to issues that, left alone, would never get attention in a purely democratic system (majority rules). But critics say this causes policy makers to take a very narrow focus and to ignore the much greater picture and agenda of national issues that impact us all. Yet another criticism is seen in the argument that interest groups often use emotional appeals rather than appealing to logical or reason-based solutions to social problems.

An even more common criticism today is that the single-issue focus of interest group based politics has led to an era of "policy gridlock" where politicians cannot come to an agreement on important issues or policies so they simply choose to ignore those issues, in effect making the decision not to make a decision. Failing to make a decision or ignoring an issue because of its controversial nature is actually a policy-making process and "non-decisions" become public policy simply by the level of inaction of decision makers.

Limiting Interest Groups

Figure 6.10.12: The amount of money donated by lobbies and the number of lobbyists have both shown steady increases.

After a number of highly publicized scandals involving public officials and lobbyists, ethics and lobbying reform legislation was passed by Congress. These new rules placed stricter limits on House and Senate ethics rules for legislators and limited many types of lobbying activities.

But while these reforms were extensive and necessary, many critics have claimed that Congress has passed similar rules and legislation in the past and that these reform efforts have shown only minimal success at best. This is because it is in the nature of interest groups to find ways around such limitations and to find more ingenious ways of circumventing the system in order to continue the profitable business of brokering outside influence over the lawmaking process. This is why it is an important obligation for well-informed citizens to become actively knowledgeable of the issues, who is supporting them, and the methods being used to influence lawmakers by special interests.

Figure 6.10.13

Study/Discussion Questions

1. What is the focus of an interest group?

2.. Name three key ingredients to an interest group’s success.

3. How can an interest group affect public policy?

4. What are two techniques utilized by interest groups to mobilize members?

5. Explain what is meant by top-down changes in policy.

6. Which amendment supports the right for interest groups to lobby public policy makers?

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6.11: Political Parties and Interest Groups Point of View

Figure 6.11.1: K Street in Washington, D.C., is the geographic and symbolic center of special interest and lobbying groups. This is where many of the most powerful lobbying firms have their offices—a major industry in our nation's capitol.

Lisa Simpson Goes to Washington

The media often depict interest group lobbyists negatively in the news and in entertainment. One particular episode of The Simpsons provides an extreme example. Lisa Simpson writes an essay titled "The Roots of Democracy" that wins her a trip to Washington, D.C., to compete for the best essay on patriotism award. She writes, "When America was born on that hot July day in 1776, the trees in Springfield Forest were tiny saplings…and as they were nourished by Mother Earth, so too did our fledgling nation find strength in the simple ideals of equality and justice."

In Senator Bob Arnold's office a lobbyist proposes to raze the Springfield National Forest. Arnold responds, "Well, Jerry, you're a whale of a lobbyist, and I'd like to give you a logging permit, I would. But this isn't like burying toxic waste. People are going to notice those trees are gone." The lobbyist offers a bribe, which Arnold accepts.

Lisa sees it happen and tears up her essay. She sits on the steps of the Capitol and envisions politicians as cats scratching each other's backs and lobbyists as pigs feeding from a trough. Called to the microphone at the "Patriots of Tomorrow" awards banquet, Lisa reads her revised essay, now titled "Cesspool on the Potomac." A whirlwind of reform-minded zeal follows. Congressman Arnold is caught accepting a bribe to allow oil drilling on Mount Rushmore and is arrested and removed from office. Lisa does not win the essay contest.

Congressman Arnold is corrupt, but the cartoon's unpunished instrument of corruption is the lobbyist.

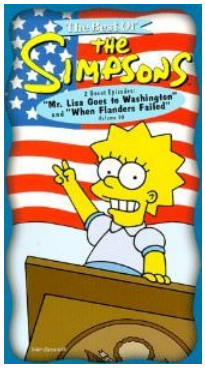

Figure 6.11.2: In an episode of the Simpsons, Lisa Simpson learned a hard lesson of politics. Special interests and lobbies have a great influence on how and why laws are made.

Questions to Consider:

To what extent do interest groups pose a real threat to democracy today? How do interest groups contribute to our democratic system of government?

Video: A Critical View of Interest Groups

Interest groups are intermediaries linking people to government, and lobbyists work for them. These groups make demands on the government and try to influence public policies in their favor. Their most important difference from political parties is that they do not seek elective office but target their activities towards government officials and seek to have their ideological political agenda made into law or policy. Interest groups can be single entities, join associations, and have individual members.

The University of Texas at Austin is an educational institution. Its main purposes are teaching and research. Like other educational institutions, it is an interest group when it tries to influence government policies. These policies include government funding for facilities and student grants, loans, and work study. It may also try to influence laws and court decisions applying to research, admissions, gender equality in intercollegiate sports, and student records. It may ask members of Congress to earmark funds for some of its projects, thereby bypassing the normal competition with other universities for funds based on merit. [1B]

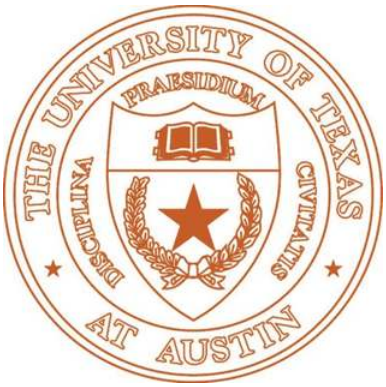

Figure 6.11.3: Devoted to education (and sports), universities try to influence government policies that affect their interests.

Single entities often join forces in associations. Associations represent their interests and make demands on the government on their behalf. The University of Texas belongs to the Association of American Universities. General Electric (GE) belongs to over eighty trade associations, each representing a different industry such as mining, aerospace, and home appliances. [2]

Many interest groups have individuals as members. People join labor unions and professional organizations (e.g., associations for lawyers or political scientists) that claim to represent their interests.

Types of Interest Groups

Interest groups can be divided into five types: economic, societal, ideological, public interest, and governmental.

Economic Interest Groups

Figure 6.11.4: Interest Groups and Lobbies represent a wide spectrum of American policy concerns.

The major economic interest groups represent businesses, labor unions, and professions. Business interest groups consist of industries, corporations, and trade associations. Unions usually represent individual trades, such as the International Brotherhood of Teamsters. Most unions belong to an association, the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO).

Economic interest groups represent every aspect of our economy, including agriculture, the arts, automobiles, banking, beverages, construction, defense, education, energy, finance, food, health, housing, insurance, law, media, medicine, pharmaceuticals, sports, telecommunications, transportation, travel, and utilities. These groups cover from head (i.e., the Headwear Institute of America) to toe (i.e., the American Podiatric Medical Association) and from soup (i.e., the Campbell Soup Company) to nuts (i.e., the Peanut Butter and Nut Processors Association). [3]

> Source: blog.cozic.fr/wp-content/uploads/2007/11/logo_service_non_20.jpg Creative Commons Fair Use (Bing Image Search)

Societal Interest Groups

Figure 6.11.5: Rev. Anthony Witherspoon, left, and national president of the NAACP Cornell William Brooks, right, lead a group of marchers past the Osage County Courthouse on Dec. 4, 2014. Brooks said it's important for people to come support the NAACP mission on Friday saying, "We need you."

Societal interest groups focus on interests based on people's characteristics, such as age, gender, race, and ethnicity, as well as religion and sexual preference. The National Association for the Advancement of Colored People (NAACP) is one of the oldest societal interest groups in the United States. Other similar groups are the League of United Latin American Citizens (LULAC), the Mexican American Legal Defense and Education Fund (MALDEF), and the National Council of American Indians.

Ideological Interest Groups

Figure 6.11.6: Members of Earthfirst interest group protest against fracking in North Carolina.

Ideological interest groups promote a reactionary, conservative, liberal, or radical political philosophy through research and advocacy. Interest groups that take stands on such controversial issues as abortion and gun control are considered ideological, although some might argue that they are actually public interest groups.

Public Interest Groups

Figure 6.11.7: Mothers Against Drunk Drivers has been effective in the creation and implementation of stricter drunk driving laws and penalties across the country. This is an example of a public interest group.

Public interest groups work for widely accepted concepts of the common good, such as the family, human rights, and consumers. Although their goals are usually popular, some of their specific positions (e.g., environmental groups opposing offshore drilling for oil) may be controversial and challenged.

Governmental Interest Groups

Figure 6.11.8: Governors hold a panel discussion at the winter meeting of the National Governors Association, a public interest group aimed at influencing governmental policy in favor of state governments.

Government interest groups consist of local, state, and foreign governments. They seek to influence the relevant policies and expenditures of the federal government.

Life Stages of Interest Groups

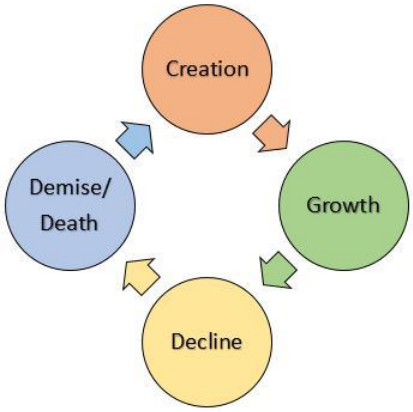

Figure 6.11.9: Interest groups commonly experience a life cycle of creation (or birth), growth and change (or evolution), and sometimes death.

As the United States has become more complex with new technologies, products, services, businesses, and professions, the US government has become more involved in the economy and society. People with common interests organize to solicit support and solutions to their problems from the government. Policies enacted in response to the efforts of these groups affect other people, who then form groups to seek government intervention for themselves. These groups may give rise to additional groups. [4]

Some interest groups are created in reaction to an event or a perceived grievance. The National Right to Life Committee (NRLC) was founded in 1973 in response to the US Supreme Court's Roe v. Wade decision earlier that year legalizing abortion. However, groups may form long after the reasons for establishing them are obvious. The NAACP was not founded until 1909 even though segregation of and discrimination against black people had existed for many years.

Link: Oral Arguments in Roe v. Wade

Listen to oral arguments in the Roe v. Wade at Oyez: Roe v. Wade.

Interest Group Entrepreneurs

Interest group entrepreneurs are individuals who organize, promote, and often lead an interest group in its activities. Often they are responding to events in their lives. After a drunk driver killed one of her daughters, Candy Lightner founded Mothers Against Drunk Driving (MADD) in 1980. She thereby identified latent interests: people who could be grouped together and organized to pursue what she made them realize was a shared goal, punishing and getting drunk drivers off the road. She was helped by widespread media coverage that brought public attention to her loss and cause.

Evolution

Interest groups can change over time. The National Rifle Association (NRA) started out as a sports organization in the late nineteenth century dedicated to improving its members' marksmanship. It became an advocate for law and order in the 1960s until its official support for the 1968 Gun Control Act brought dissension in its ranks. Since the election of new leaders in 1977, the NRA has focused on the Second Amendment right to bear arms, opposing legislation restricting the sale or distribution of guns and ammunition. [5]

Demise

Interest groups can also die. They may run out of funds. Their issues may lose popularity or become irrelevant. Slavery no longer exists in the United States and thus neither does the American Anti-Slavery Society.

How Interest Groups are Organized

Leaders and Staff

Interest groups have leaders and staff. They control the group, decide its policy objectives, and recruit and represent members. Leaders and top staff usually run the interest group. They do so because they command its resources and information flow and have the experience and expertise to deal with public policies that are often complex and technical. Almost a century ago, Robert Michels identified this control by an organization's leaders and staff and called it "the iron law of oligarchy." [6]

This oligarchy, or rule by the few, applies to single-entity interest groups and to most associations. Their leaders are appointed or elected and select the staff. Even in many membership organizations, the people who belong do not elect the leaders and have little input when the leaders decide policy objectives. [7] Their participation is limited to sending in dues, expressing opinions and, if membership is voluntary, leaving when dissatisfied.

Figure 6.11.10: This political cartoon represents the view of government as an oligarchy controlled by a few influential economic interests and was used to explain the "Iron Law of Oligarchy" in the early 1900s. How can this theory explain the relationship between special interests and government officials? How does it apply to group memberships (such as belonging to a labor union?) Explain your answer.

Voluntary Membership

Figure 6.11.11: Many organizations such as Planned Parenthood depend upon voluntary members in order to survive. Still, other organizations such as many labor unions depend upon "union shop" relationships with employers that force employees to become dues-paying members of the union before starting work.

People join membership interest groups voluntarily or because they have no choice. When a membership is voluntary, interest groups must recruit and try to retain members. Members help fund the group's activities, legitimize its objectives, and add credibility with the media.

Some people may not realize or accept that they have shared interests with others on a particular issue. For example, many young adults download music from the Internet, but few of them have joined the Future of Music Coalition, which is developing ways to do this legally. Others may be unwilling to court conflict by joining a group representing oppressed minorities or espousing controversial or unpopular views even when they agree with the group's views.[8]

People do not need to join an interest group voluntarily when they can benefit from its activities without becoming a member. This is the problem of collective goods. Laws successfully lobbied for by environmental organizations that lead to cleaner air and water benefit members and nonmembers alike. However, the latter get a free ride. [9]

Membership Incentives

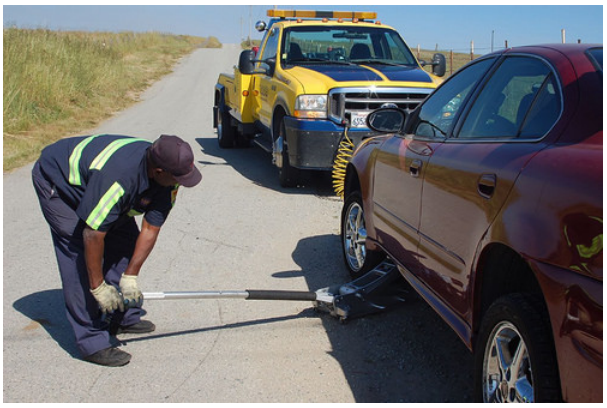

Figure 6.11.12: Membership in AAA or other similar organizations often carries the benefit of roadside assistance. In order to receive this benefit, you must be a dues-paying member of the AAA in good standing. Roadside assistance is known as a material incentive because it is exclusive only to those who have contributed to the organization through membership dues.

There are three types of incentives that, alone or in combination, may overcome this free-rider problem. A purposive incentive leads people voluntarily to join and contribute money to a group because they want to help the group achieve its goals. Membership in the American Civil Liberties Union (ACLU) increased by one hundred thousand in the eighteen months following the 9/11 attacks as the group raised concerns that the government's antiterrorism campaign was harming civil liberties. [10] In addition, people may join groups, such as the Union of Concerned Scientists, because of a solidary incentive. The motivation to join the group stems from the pleasure of interacting with like-minded individuals and the gratification of publicly expressing one's beliefs.

People may also join groups to obtain material incentives available only to members. AARP, formerly the American Association of Retired Persons, has around thirty-five million members. It obtains this huge number by charging a nominal annual membership fee and offering such material incentives as health insurance and reduced prices for prescription drugs. The group's magazine is sent to members and includes tax advice, travel and vacation information, and discounts.

Recruitment

Figure 6.11.13: Interest groups use a variety of methods to recruit and fund their operations. This has led to a variety of media savvy "marketing" techniques to increase the membership base.

One way interest groups recruit members is through media coverage. The appealingly named Center for Science in the Public Interest (CSPI) is a consumer organization that focuses on food and nutrition issues, produces quality research, and has media savvy. It is a valuable source of expertise and information for journalists. The frequent and favorable news coverage it receives brings the group and its activities to the public's attention and encourages people to support and join it.

Video: Media Coverage of Science in the Public Interest Lawsuit

News coverage of an interest group does not always have to be favorable to attract members. Oftentimes, stories about the NRA in major newspapers are negative. Presenting this negative coverage as bias and hostility against and attacks on gun owners, the group's leaders transform it into purposive and solidary incentives. They use e-mail "to power membership mobilization, fund raising, single-issue voting and the other actions-in-solidarity that contribute to [their] success." [11]

Video: ASPCA Recruiting

Groups also make personalized appeals to recruit members and solicit financial contributions. Names of people who might be sympathetic to a group are obtained by purchasing mailing lists from magazines, other groups, and political parties. Recruitment letters and e-mails often feature scare statements, such as a claim that Social Security is in jeopardy.

Interest groups recruit members, publicize their activities, and pursue their policy objectives through the new media. The Save Our Environment Action Center consists of twenty national environmental groups pooling their databases of supporters and establishing a website. Through this network, people can receive informational newsletters via e-mail, sign petitions, and contact their representatives.

Required Membership

Figure 6.11.14: The American Federation of Laborers/Congress of Industrial Organizations (AFL-CIO) is the largest labor unions in the nation.

Many labor unions in the united states place contractual obligations in their employment agreements that require new hires be enrolled as dues paying members of the union before they can begin work. Employment in most automobile plants requires that workers are members of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Workers fought to establish unions to improve their wages, working conditions, and job opportunities. One way of achieving these objectives was to require all workers at a plant to be union members. But union membership has plummeted as the United States has moved from a manufacturing to a service economy and employers have effectively discouraged unionization. Many jobs do not have unions for workers to join whether they want to or not. Today only about 12 percent of workers belong to a union compared to a high of 35.5 percent in 1945. Only 7 percent of private sector workers belong to a union. A majority of union members now work for the government.

Video: Labor Unions: The Costs and Benefits

Figure 6.11.15

Study/Discussion Questions

1. Why do you think some interest groups have a bad reputation? What social purpose do interest groups serve?
2. Do you support any interest groups? What made you decide to support them?
3. What are the different ways interest groups can influence policies? Do you think interest groups should be allowed to contribute as much as they want to political campaigns?

Research

Use the Internet and other sources to investigate and identify examples of as many types of interest groups as you can. Use PowerPoint or other presentation software to compare and contrast these interest groups and their activities.

For each interest group, consider:

1. What are the basic ideologies or policies this group believes in?
2. Which political party is this group most attractive to – Democrats (liberal) or Republicans (conservative)?
3. How does the group recruit and retain its members?
4. What selective or exclusive benefits does the group offer its members?
5. What type of lobbying does this group do?
6. How does this group raise its funding? Member dues, voluntary contributions? Political Action Committee donations?
7. What type of contributions has this group made to candidates?
8. How successful has this group been in influencing political policies or lawmakers?

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6.12: First and Second Amendment Rights

There are contemporary examples of cases where the First Amendment would appear to be under attack. These issues include such questions as to what extent does the First Amendment allow for freedom of speech and expression in schools?

Which is more important – the right to freely exercise and express one's religious beliefs or the requirement that government actively separate issues of church and state?

- Does the government have the right to limit or forbid the expression of unpopular views in a public forum?
- Can members of the press be threatened with jail time for reporting on important government programs?

> *Source: Amendment I: Freedom of Religion, Speech, Press, and Assembly,* Rutherford Institute, https://www.rutherford.org/constitutional_corner/amendment_i_freedom_of_religion_speech_press_and_assembly/accessed 1/28/2015

FOR A LIST OF FIRST AMENDMENT CASES AND ISSUES GO TO:

Institute for Justice

The New York Times: First Amendment (U.S. Constitution)

First Amendment Schools

First Amendment: Free Speech, Press, and Assembly

In December 1965, a group of students in Des Moines, Iowa held a meeting in the home of 16-year-old Christopher Eckhardt to plan a public showing of their support for a truce in the Vietnam war. They decided to wear black armbands throughout the holiday season and to fast on December 16 and on New Year's Eve. The principals of the Des Moines school learned of the plan and met on December 14 to create a policy that stated that any student wearing an armband would be asked to remove it. A refusal to do so would result in suspension. On December 16, Mary Beth Tinker and Christopher Eckhardt wore their armbands to school and were sent home. The following day, John Tinker did the same with the same result. The students did not return to school until after New Year's Day, the planned end of the protest.

Through their parents, the students sued the school district for violating the students' right of expression and sought an injunction to prevent the school district from disciplining the students. The district court dismissed the case and held that the school district's actions were reasonable to uphold school discipline. The U.S. Court of Appeals for the Eighth Circuit affirmed the decision without opinion.

The question before the court was:

Does a prohibition against the wearing of armbands in public school, as a form of symbolic protest, violate the students' freedom of speech protections guaranteed by the First Amendment?

The answer from the court was expressed by Justice Abe Fortas who delivered the opinion of a 7-2 majority.

The Supreme Court held that the armbands represented pure speech that is entirely separate from the actions or conduct of those participating in it. The Court also held that the students did not lose their First Amendment rights to freedom of speech when they stepped onto school property. In order to justify the suppression of speech, the school officials must be able to prove that the conduct in question would "materially and substantially interfere" with the operation of the school. In this case, the school district's actions evidently stemmed from a fear of possible disruption rather than any actual interference.

The Court has been particularly protective of political speech (and less protective of other kinds of speech such as commercial speech). In several different ways, individuals have greater leeway in speaking about politics than they do about other subjects. For example, the First Amendment does not give individuals the right to lie about others. If someone lies about you in writing (libel) or in speech (slander), you can sue them and collect monetary damages from them for defaming your character. However, if you were a public official, you would have to meet a higher legal standard to collect your money. In a landmark Supreme Court case, *New York Times Co. v. Sullivan*, a Montgomery, Alabama city commissioner sued the New York Times for running an ad that contained

false information about him. While an Alabama court ruled in his favor, the Supreme Court overruled the lower court's decision declaring that:

V*ideo: 50th Anniversary of New York Times v. Sullivan*

The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice" - that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

The Court has also provided broad protection for things that are said, written or broadcast during the course of a political campaign. The Court has even upheld the right of candidates to spend as much of their own money as they choose. In 1974, the Congress passed the Federal Election Campaign Act, part of which sets limits on the total amoun oft candidates for federal elective office could spend on their campaigns. In response to challenges brought by several candidates in *Buckley v. Valeo*, the Court declared the limits on spending a violation of the candidates' First Amendment rights. In its decision, a unanimous Court observed:

Video: Buckley v. Valeo

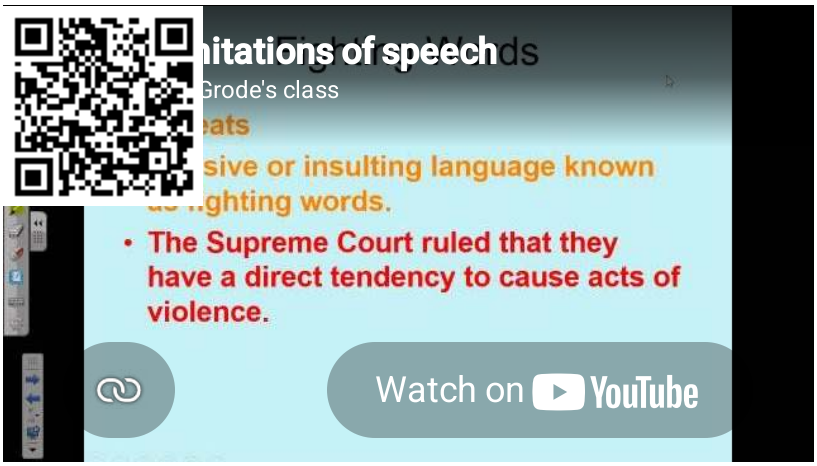
However, while the Court rejected overall spending limits for candidates and their campaigns, it let stand limits on the amount that individuals can give to candidates. Why the distinction? When a candidate spends his or her own money on a political campaign, the voters know what they're getting. They can make any adjustments in their voting decisions they choose based on how wealthy a candidate is and how much he or she spent to get elected. In any case, a wealthy individual bankrolling his or her own campaign only directly influences the outcome of one election. However, if a wealthy individual were to give large amounts of money to

numerous candidates, that single person would be exerting an inordinate amount of influence on the political process. At the same time, the influence of other less-wealthy individuals would be diluted. To preserve the amount of influence wielded by average citizens in the course of an election, then, the Court let stand limits on the amount of money wealthy individuals can contribute to political campaigns.

Exceptions such as letting the limits on campaign contributions stand are rare in the area of political expression. This seems consistent with what the Framers of the Constitution intended. Indeed, there are protections provided in the Constitution itself for the things House members and Senators say in the course of their official duties as Members of Congress. Among other legal immunities, Article I, Sec. 6 states that Members of the House and Senate "shall not be questioned in any other Place" for "any Speech or Debate in either House." To a large degree, the Framers intended political speech to be as free and open as possible, for it was through the expression of ideas that the people could contribute to, influence and change their government.

Standards for Limiting Expression

In addition to giving the freedom of speech a "preferred" position as it weighs the merits of cases that come before it, the Supreme Court also applies four very specific and strict standards that must be met before a limitation on speech or expression can be deemed constitutional.



First, laws must not exercise what the Court calls "prior restraint." Only in the most extreme circumstances can the government constitutionally prevent someone from speaking or expressing themselves. To do so would be censorship and the standards for taking such an extreme measure to bear the "heaviest burden in constitutional law." 1 The Court has declared that "a prior restraint . . . has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication 'chills' speech, prior restraint 'freezes' it, at least for the time." 2 Instead of limiting speech that *might* be defamatory or otherwise illegal before it happens, the Court has ruled that the appropriate action is to undertake civil or criminal proceedings *after* the fact.

Second, laws limiting speech must be content neutral. If the government enacts a limit on a particular kind of speech or form of expression, such as posting flyers on telephone poles, it must ban *all* flyers, and not just flyers with a particular subject matter. If only commercial flyers or religious flyers were banned, the law would not be content neutral. The Court has allowed some content-based limitations where public interests seem to overwhelm the individual's rights of expression. Kinds of speech that have been constitutionally limited on a content basis include obscenity (see "Defining Obscenity" on the right), libel and slander, "fighting words" (words clearly aimed at starting a fight or provoking violence), and "subversive speech" or speech promoting the violent overthrow of the government.

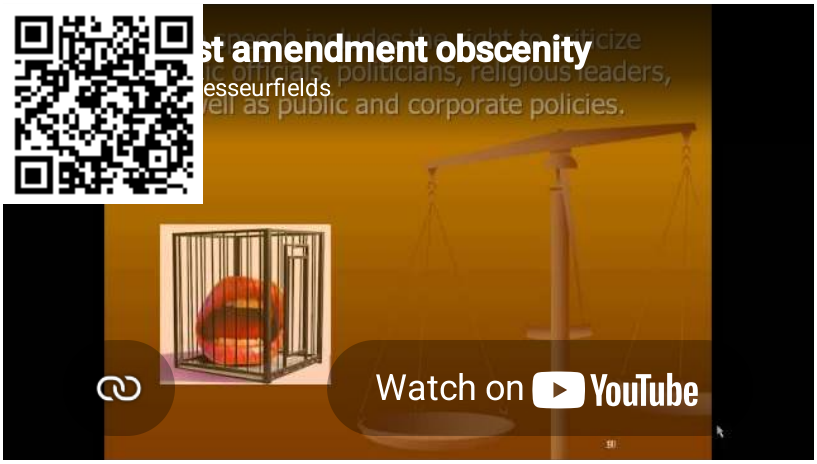
Third, laws limiting speech or expression cannot be vague to the extent that they cause a "chilling effect" on speech. If ambiguous or unclear restrictions are placed on expression, individuals may not know what is acceptable under the law and what is not. To avoid the penalty of breaking the law, some people may choose to limit the the things they say and express more severely than the law intended. When this occurs, the law has produced a "chilling effect" on speech, making individuals less likely to speak openly and freely. Such laws, the Court has ruled, are unconstitutional.

Finally, a law (or ordinance) limiting speech or expression can only be deemed constitutional if it is the least drastic means available for accomplishing its stated objectives. For example, there is a clear public interest in keeping streets safe and, to the

degree possible, free from congestion. Toward this end, a city might decide to ban all parades or marches on its streets. Such a ban, however, would not be the least restrictive means available. Instead, limiting the time and duration of parades and marches and requiring prior public notice of them would achieve the stated goals of the more restrictive law without unduly infringing on the individual freedom of expression.

Defining Obscenity

Video: First Amendment-Obscenity



While the Court has made it clear that obscenity is not protected by the First Amendment, defining obscenity is another matter altogether. Ultimately, the Court has left to juries to decide based on guidelines it has provided. Defendants can then appeal the decision of the jury if they believe the guidelines were misapplied. What are the standards? In *Miller v. California*, the Court found that a form of speech or expression can be ruled obscene if:

1. The "average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest."
2. The work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law.
3. The work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

These guidelines are necessarily vague and leave open the possibility of having different definitions of obscenity in Norman, Oklahoma and San Francisco, California. The Internet has further complicated the definition of obscenity because there is no obvious community standard on which to base it.

Freedom of Expression on the Internet

The Internet presents a classic example of the difficulties that often arise in the Supreme Court's efforts to distinguish between acceptable and unacceptable speech and expression. While the Internet affords ordinary citizens unprecedented access to information and gives them the ability to communicate with large numbers of people without ever leaving their homes, it has also given rise to several new First Amendment controversies. Most notably, there are thousands of sites on the internet that contain pornographic and violent material. Much of it would be considered obscene in many communities in the United States. Such materials have always existed--the Internet just makes it more easily accessible. The problem posed by the presence of these materials on the Internet, however, is that children can gain access to text and images that are intended for adults or that may even be illegal.

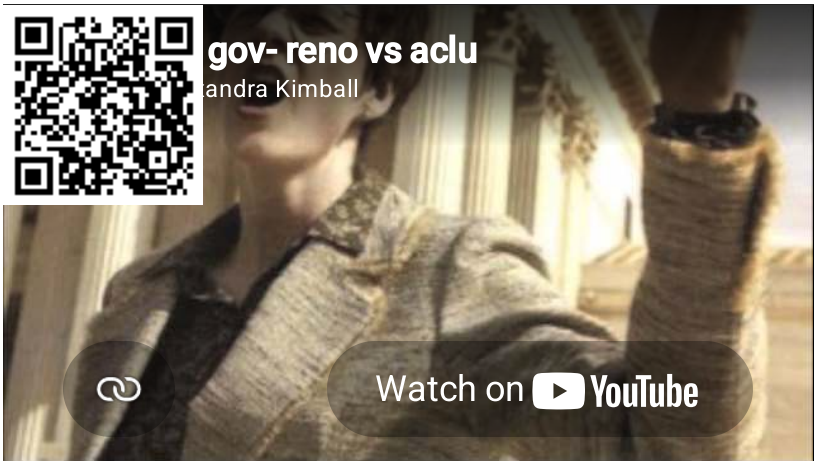
In an effort to protect children from being exposed to pornographic or violent images on the Internet, the Congress passed the Communications Decency Act in 1995 (CDA). The law would have made it a crime to transmit "indecent material" to minors over the Internet. Doing so would have been punishable by up to two years in prison and a fine of $250,000.

What Can't You Say (Write) on the Internet?

The kinds of material that can legally be published on the Internet, however, is still being defined by the Court. A federal court judge ruled in favor of a high school student who was suspended for publishing information critical of his band instructor on his personal web site, ordering the school to terminate the suspension and to cease efforts to control what the student published on his

web page. 4 In another case, however, a federal judge ordered the authors of an anti-abortion web site to take the site off the Internet. The site included a list of names of doctors who performed abortions. Doctors who had been murdered had their names crossed out and those who had been injured in attacks on abortion clinics had their names listed in gray. In spite of the court's order, however, there are still several sites on the Internet with lists of abortion doctors, similar to the one on the original site. 5

Video: Reno v. ACLU



In response to a challenge of the Act, *Reno v. ACLU*, the Court declared the CDA unconstitutional because it:

1. Was not content neutral. In fact, Justice Stevens, who wrote the decision, declared that "the CDA is a content based blanket restriction on speech" because it explicitly singles out indecent material, i.e. profanity, vulgarity and pornography.
2. It was too vague. While the Congress sought to limit "indecent" material on the Internet, what the law meant by "indecent" was unclear. Because of this ambiguity, several web sites removed constitutionally protected materials from their pages. The Court found that the "chilling effect" of the CDA's ambiguity "suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another."
3. It was not the least drastic means available for keeping minors from viewing indecent material. Instead of making the transmission of such materials a criminal act, the Congress could have encouraged (and possibly mandated) a web site rating system or the use of filtering software.

Because the Internet presents challenges so different from those we have seen in the past, and because the Court makes decisions on a case by case basis, it is difficult to summarize the broad principles that guide the Court's approach to expression on the Internet. As more cases arise and are heard by the Supreme Court and lower courts, however, a clearer pattern will eventually emerge.

Exceptions to Free Speech Protection

Some exceptions to the Supreme Court's usually broad definition of protected speech have been mentioned above (obscenity, libel and slander). In general, constitutional limits on speech and expression fall into three categories: content restrictions, place restrictions and symbolic speech. Under the circumstances that apply in each of these categories, speech and expression may not be afforded as much protection as they would be under ordinary conditions.

Content Restrictions

As has been noted, obscenity and defamation are not protected by the First Amendment. Additionally, the Court has allowed speech to be restricted in certain places. While public forums, such as parks and the steps of the United States Capitol, are offered almost blanket protections on speech, public libraries, court rooms, public schools and jails are not. The Court has ruled that in the interests of order and decorum, speech and expression may be reasonably limited in these places.

Additionally, speech that presents a "clear and present danger" may, in some instances, be unprotected by the First Amendment. The most famous statement of this doctrine is found in a decision arising from the Espionage Act of 1917 and the Sedition Act of 1918 which, among other things, made it a punishable offense to obstruct the draft, cause insubordination in the armed forces or make false statements that might hamper the war effort. The case centered on the actions of a man who had mailed circulars to

draft-eligible men claiming that the draft was unconstitutional. Writing for the Court, Justice Oliver Wendell Holmes wrote in *Schenck v. United States* (1919):

We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. . . . The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right.

Video: Schenck v. The United States

While the Court no longer relies on the "clear and present danger" test to determine if limits on speech are constitutional, support remains for the notion that certain kinds of speech or expression can be limited, especially during wartime, if they would clearly harm the nation, its people or its military forces. The Court makes a distinction between abstract or theoretical statements that are critical of the government and clear calls to action promoting violence against the government (see Footnote 3).

Commercial speech has also been afforded less protection than other kinds of speech. In the case of advertising, for example, the Court has generally ruled that the public interest demands that claims made about a product or service be accurate and not misleading. Commercial speech is still afforded a great deal of protection under the First Amendment, but not the same degree as other forms of speech.

A final type of expression that can be constitutionally limited is symbolic speech. While the First Amendment explicitly forbids the Congress from abridging the freedom of speech, there are many forms of communication that do not, in whole or in part, rely on words. Although the Supreme Court has provided protection for many different modes of "expression," the more action that is involved in a form of expression, the less First Amendment protection it receives. For example, the First Amendment protects the rights of individuals to use words to express racist attitudes, but it does not always protect their right to burn crosses to express those views. (Cross burnings have been allowed under some circumstances, but, where other laws, such as prohibitions on open fires or no trespassing ordinances, are violated by doing so, the action is not protected by the First Amendment.)

One of the most famous cases involving symbolic speech addressed the burning of a draft card. The defendant in the case burned his draft card in front of a large crowd to express his belief that the war in Vietnam was unjust and immoral. He was subsequently arrested and convicted of violating the Universal Military Training and Service Act. In response to an appeal of the conviction (*United States v. O'Brien*), the Court emphatically stated that burning one's draft card was not a form of expression protected by the First Amendment:

We cannot accept the view that an apparently limitless variety of conduct can be labeled "speech" whenever the person engaging in the conduct intends to express an idea. However, even on the assumption that the alleged communicative element in O'Brien's conduct is sufficient to bring into play the First Amendment, it does not necessarily follow that the destruction of a registration

certificate is constitutionally protected activity. This Court has held that when "speech" and "non-speech" elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the non-speech element can justify incidental limitations on First Amendment freedoms. . . . [W]e think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

Freedom of the Press

The Framers of the Constitution considered the freedom of the press one of the fundamental rights of the people in a republic. Illustrative of this belief is a statement of Thomas Jefferson in a letter written to Edward Carrington in 1787:

The basis of our government being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.

Given the widespread use of "papers" and pamphlets in the battle for ratification of the Constitution, it is not surprising that the Framers placed such a high value on the ability of people to write, print and distribute statements of their beliefs.

Prior Restraint

The government is rarely able to stop material from being published. Even the Sedition Act of 1798, did not include this prior restraint. The Supreme Court extended the ban to the states in 1931 when it struck down a Minnesota law allowing the state to suppress a “malicious, scandalous and defamatory” publication as a “public nuisance”—in this case, an abusively anti-Semitic periodical.

Prior restraint is rarely justified. In 1971, the Court refused to issue an injunction sought by the Executive Branch against the *New York Times* and *The Washington Post* on grounds of national security violations. In the absence of the government’s proof that the national interest would be harmed, the Court allowed the publication of the Pentagon Papers, a leaked classified set of documents revealing decisions leading to the Vietnam War. [9]

Video: The Pentagon Papers

News Media Privileges

Reporters have privileges that the public lacks. These include greater access to the workings of government, the ability to question officeholders, legal protection from revealing confidential sources, and access to government public information offices that feed them quotations and stories. Such privileges stem from policy and practice, not from constitutional rights. Laws aimed at public disclosure benefit reporters. For example, the Sunshine Laws passed to prevent the government from working behind closed doors. The Freedom of Information Act (FOIA), enacted in 1966, allows for access to executive agencies and commissions’ records and files closed to public inspection. [10] Information obtained under the FOIA provides documentation for stories like *USA Today*’s discovery of a huge increase in the use and dealing of crack cocaine by individuals under age fifteen. Such information can also

reveal scandals. In 1990, *Washington Post* reporter Ann Devroy was frustrated with White House Chief of Staff John Sununu's refusal to answer her dogged questions about his rumored use of perquisites of office for private gain. Devroy filed for documents under the FOIA and found Sununu had used government planes to get to a dentist's appointment and to attend postage-stamp auctions. Sununu resigned in disgrace.

Broadcast Regulation

Public policy treats different media differently. Broadcast and cable slots, being inherently limited, can be regulated by the government in ways that are not allowed for print media or the Internet. [11]

The Federal Communications Commission (FCC), established in 1934, has the power to issue licenses for a given frequency on the basis of "the public interest, convenience, or necessity." From the start, the FCC favored big commercial broadcasters aiming at large audiences. Such limits on competition enabled the establishment of hugely profitable radio (and later television) stations and networks, whose licenses—sometimes jokingly termed licenses to print money—the FCC almost automatically renewed.

The FCC has regulatory authority to penalize the broadcast media, but not cable television, for indecent content. During the halftime show at the 2004 Super Bowl, televised by CBS, singer Justin Timberlake tore singer Janet Jackson's costume and briefly exposed her right breast. The FCC fined CBS $550,000 for the Super Bowl "wardrobe malfunction." The fine was overturned by a federal court of appeals in July 2008. In May 2009, the Supreme Court returned the case to the court for reconsideration.

The Press in Other Countries

Americans often take for granted many of the liberties they enjoy. For example, we just assume that the press will not be punished for writing articles or reporting stories critical of the government. The press in other nations does not enjoy such latitude. In the summer of 1999, the government of Tanzania imposed a seven-day ban on a newspaper that ran a story about a proposed salary increase for government officials. The government claimed the article in question was "fanning discontent and hatred among the people towards the government." 6

Consistent with the Framer's support for the freedom of the press and the First Amendment, the Supreme Court has generally upheld the ability of the press to print or broadcast messages and images of its choice. (The obvious exceptions to this protection include obscenity and defamation.)

Several cases have arisen challenging the freedom of the press to report what it chooses or of laws limiting that freedom. Many of these cases overlap significantly with other First Amendment cases, such as the New York Times defamation case cited above. Consequently, the same privileges that are protected at the individual level are also enjoyed by the press. One major exception is the Court's stance that the First Amendment does not give reporters the right to withhold information gathered confidentially. If called to testify, the reporter may have to divulge the sources of information they have reported (see *Branzburg v. Hayes*).

In two separate cases, the Court ruled that the rights enjoyed by the print media are, in some cases, broader than those enjoyed by the broadcast media (radio and television). While newspapers do not have to provide space for persons to respond to negative stories about them, radio and television stations may be required to provide airtime. Why the difference? The government regulates the number of radio and television signals that can be broadcast in a given geographical area. Consequently, there are a limited number of radio and television stations in a city or town. If someone is criticized on television or on the radio, there are a limited number of places he or she can go to respond. Newspapers, however, are not limited by the government. Anyone with a printing press (or a copying machine) can produce a "paper" and distribute it. If someone is criticized in a newspaper, the Court does not require that paper to give them the chance to respond because there are numerous different ways in which they could respond, even printing their own paper.

Freedom of Assembly and Petition

The last and most frequently neglected rights guaranteed by the First Amendment are the right to assemble and to petition the government. While the rights of assembly and petition are intimately connected to the freedom of expression, they are necessarily limited in important ways. In particular, in cases involving the freedom of assembly, the Supreme Court has not given as much weight to individual rights as it does in other First Amendment cases. For example, when a man gave a speech on a public street in New York protesting racial discrimination and a large unruly crowd assembled, the Court ruled that the police were justified in

stopping the speech and sending the crowd home (see Feiner v. New York). In that case, the Court gave greater weight to the preservation of public safety and order than it did to the rights of the people to assemble and express themselves in public.

In other ways, however, the Court has upheld the rights of the people to assemble and to have some realm of privacy within the context of their meetings. Alabama's efforts to force the NAACP to make public its membership lists, for example, were found unconstitutional. When people assemble peacefully and there is no immediate threat to public safety, the Court has upheld the right to assemble in public places.

One of the more recent assembly controversies centers on the rights of protesters at or around abortion clinics.

In 1991, the United States Congress passed the Freedom of Access to Clinic Entrances Act (FACE) (U.S. Code 18 Sec. 248). The Act made unlawful any action that:

. . . by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services.

The law also allows for the Courts to "award appropriate relief, including temporary, preliminary or permanent injunctive relief" in response to violations of the law. Pro-Life activists have repeatedly challenged the law on the grounds that it violates their First Amendment rights of expression and assembly. The courts have consistently rejected such arguments maintaining that protesters may assemble and express themselves as long as they do not forcibly attempt to prevent people from entering abortion clinics.

The Second Amendment

Created on December 15, 1791, the Second Amendment to the United States Constitution is part of the United States Bill of Rights that establishes the right of citizens to possess firearms for lawful purposes. It says, "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." There has been increased conflict over the Second Amendment in recent years due to school shootings and gun violence. As a result, gun rights have become a highly charged political issue.

But the relative simplicity of its text has not kept it from controversy; arguably, the Second Amendment has become controversial in large part because of its text. Is this amendment merely a protection of the right of the states to organize and arm a “well regulated militia” for civil defense, or is it a protection of a “right of the people” as a whole to individually bear arms?

Before the Civil War, this would have been a nearly meaningless distinction. In most states at that time, white males of military age were considered part of the militia, liable to be called for service to put down rebellions or invasions, and the right “to keep and bear Arms” was considered a common-law right inherited from English law that predated the federal and state constitutions. The Constitution was not seen as a limitation on state power, and since the states expected all able-bodied free men to keep arms as a matter of course, what gun control there was mostly revolved around ensuring slaves (and their abolitionist allies) didn’t have guns.

With the beginning of selective incorporation after the Civil War, debates over the Second Amendment were reinvigorated. In the meantime, as part of their black codes designed to reintroduce most of the trappings of slavery, several southern states adopted laws that restricted the carrying and ownership of weapons by former slaves. Despite acknowledging a common-law individual right to keep and bear arms, in 1876 the Supreme Court declined, in *United States v. Cruickshank*, to intervene to ensure the states would respect it.

In the following decades, states gradually began to introduce laws to regulate gun ownership. Federal gun control laws began to be introduced in the 1930s in response to organized crime, with stricter laws that regulated most commerce and trade in guns coming into force in the wake of the street protests of the 1960s. In the early 1980s, following an assassination attempt on President Ronald Reagan, laws requiring background checks for prospective gun buyers were passed. During this period, the Supreme Court’s decisions regarding the meaning of the Second Amendment were ambiguous at best. In *United States v. Miller*, the Supreme Court upheld the 1934 National Firearms Act’s prohibition of sawed-off shotguns, largely on the basis that possession of such a gun was not related to the goal of promoting a “well regulated militia.”

This finding was generally interpreted as meaning that the Second Amendment protected the right of the states to organize a militia, rather than an individual right, and thus lower courts generally found most firearm regulations—including some city and state laws that virtually outlawed the private ownership of firearms—to be constitutional.

However, in 2008, in a narrow 5–4 decision on *District of Columbia v. Heller*, the Supreme Court found that at least some gun control laws *did* violate the Second Amendment and that this amendment does protect an individual's right to keep and bear arms, at least in some circumstances—in particular, "for traditionally lawful purposes, such as self-defense within the home."

Because the District of Columbia is not a state, this decision immediately applied the right only to the federal government and territorial governments. Two years later, in *McDonald v. Chicago*, the Supreme Court overturned the *Cruickshank* decision (5–4) and again found that the right to bear arms was a fundamental right incorporated against the states, meaning that state regulation of firearms might, in some circumstances, be unconstitutional. In 2015, however, the Supreme Court allowed several of San Francisco's strict gun control laws to remain in place, suggesting that—as in the case of rights protected by the First Amendment—the courts will not treat gun rights as absolute.

Figure 6.12.1

Study/Discussion Questions

1. Give an example of the "competing interests" between freedom of speech and freedom of religion. Explain your answer.

2. Why was the *Tinker v. Des Moines* case so important to students (especially during the 1960s).

3. What standards do the courts use in placing limits on the First Amendment right to freedom of expression?

4. Why is freedom of expression on the Internet such a complicated and critical issue? What factors limit the courts' ability to protect and/or limit internet communications?

5. What is the "clear and present danger" test? Give a current example of what you would see today as a "clear and present danger" what would allow for the limitation of First Amendment rights. Explain and defend your answer.

7. Why is prior restraint considered unconstitutional in most cases? Under what circumstances would you consider the use of prior restraint appropriate? Explain your answer.

8. Why should working journalists have legal protections that others might lack when reporting on controversial topics? Should these protections extend to an amateur "blogger" who posts inflammatory or controversial issues on the Internet? Explain and defend your answer.

NOTES/Sources

1. Rex Lee, *A Lawyer Looks at the Constitution* (Provo: Brigham Young University, 1981)

2. United States Supreme Court, *CBS, INC. v. DAVIS* (1994)

3. In cases dealing with "subversive speech," the Supreme Court has ruled that only if speech or expression under review can be show to have directly promoted and led to a conspiracy or actual effort to overthrow the government, it cannot be limited. Speaking of the overthrow of the government in abstract terms, without laying out or calling for specific actions to accomplish it, is protected by the First Amendment.

4. Associated Press, "Court lets student keep Web site," *USA Today* 19 March 1998, Tech Report.

5.Courtney Macavinta, "Anti-abortion sites vs. free speech," CNET News.com 12 March 19

6. Associated Press, "Newspaper Banned," 24 July 1999.

Source: www.thisnation.com/textbook/billofrights-

7. Pew Center. PEW VALUES UPDATE: AMERICAN SOCIAL BELIEFS 1997 - 1987 Part 1 , PEW VAL
UPDATE: AMERICAN SOCIAL BELIEFS 1997 - 1987 Part 2. 8. Pew Center. Millennium Survey.

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6.13: Scientific and Technological Innovations Impact on Society

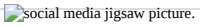

Figure 6.13.1

The availability of "new media" and social media resources on the Internet has had a great impact on politics and government. The early 1980s saw the development of what we call the new media: new technologies and old technologies in new combinations. They are muddying if not eliminating the differences between media. On the iPad, newspapers, television, and radio stations look similar: they all have text, pictures, video, and links. Increasingly, Americans, particularly students, are obtaining information on tablets and from websites, blogs, discussion boards, video-sharing sites, such as YouTube, and social networking sites, like Facebook, podcasts, and Twitter. And of course, there is the marvel of Wikipedia, the free encyclopedia to which so many people (400 million every month) go to for useful, if not always, reliable information.

Changing Relationships

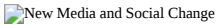

Figure 6.13.2: New media are changing the relationship between communication and government and politics in four significant ways.

More Information Available and Accessible

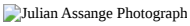

Figure 6.13.3: Julian Assange founded wikileaks.org as an electronic repository of stolen classified information in the belief that all government information should be accessible to the public. In doing this, he became one of the most wanted and vilified men in the world from the perspective of government but has become something of an international folk hero among many others in the general public.

Julian Paul Assange founded WikiLeaks.org in 2007 to expose the secrets of governments, corporations, and other institutions. In 2010 he released a classified video showing a U.S. helicopter killing civilians, including two journalists, in Baghdad—an edited version was viewed several million times on YouTube. [1] He has since released thousands of intelligence and military field reports from the war in Afghanistan and from the front lines of the conflict in Iraq.

Assange followed up in November 2010 with a dump of classified cables sent by U.S. diplomats from their embassies during the last three years. The cables detailed the diplomats' dealings with and honest assessments of both the foreign countries where they were stationed and their leaders, revealing the reality beneath the rhetoric: that Saudi Arabia has urged that Iran be bombed, that Shell dominates the government of Nigeria, that China launched a cyber attack on Google, and that the U.S. State Department urged its employees to collect biometrical information on foreign diplomats serving at the United Nations.

WikiLeaks released the material to selected leading newspapers in the United States (New York Times), the United Kingdom (Guardian), and elsewhere, deferring to the journalists to decide which ones were news, which could be made public, and whether to redact names from them. Nonetheless, their release could damage the careers of some U.S. diplomats and discloses the names of informants, thereby endangering them. The cables could be subject to foreign governments' and private companies' data-mining and pattern-analysis programs. Consequently, the U.S. Justice and Defense Departments and other organizations tried to stop Assange, to avoid further leaks, and to punish the leakers.

Video: Wikileaks Explained

Online Presence of News and Information

Figure 6.13.4: The Internet has transformed the mission and product of news agencies like Reuters, Associated Press, the New York Times, CNN, Newsweek and Time into the reporting of real time news events using multi-media publications as well as traditional print media.

News organizations, with their legitimacy and experienced journalists, have gone online. They often add details and links missing from their broadcast or published versions of their stories. Their sophisticated technology keeps their sites fresh with the latest news, photos, and real-time audio and video. In February 2011, Rupert Murdoch's News Corporation announced the arrival of The Daily, a general-interest publication for tablet computers. It will cost ninety-nine cents weekly or forty dollars for a year. [2]

Journalists incorporate the Internet into their reporting. They read the sites of other news organizations, get story ideas, background information, check facts, search for and receive press releases, and download data.

The nonprofit investigative site Pro-Publica—which has exposed the involvement of doctors in torture, the contamination of drinking water through gas drilling, and other outrages—is generating and sharing content with many print publications that have cut back their investigative reporting.

Talking Points Memo was primarily responsible for tenacious investigative journalism, pursuing and publicizing the firing of eight U.S. attorneys by the Bush administration's Justice Department. The result was a scandal that sparked interest by the mainstream media and led to the resignation of President Bush's attorney general, Alberto Gonzales, in 2008. The ideologically conservative Drudge Report came to fame when Matt Drudge used his web portal to spread the latest news and rumors about the relationship between President Bill Clinton and Monica Lewinsky. The site is now looked to by television producers, radio talk-show hosts, and reporters, for scoops, the latest leaks, gossip, and innuendo.

Andrew Breithbart, a former colleague of Matt Drudge, founded his site in 2005. It aggregates news from the wire services and is viewed by an average of 2.4 million people monthly. He is also responsible for the websites Big Hollywood, Big Government, and Big Journalism, which provide some original reporting and commentary from a conservative perspective by unpaid bloggers, as well as references to articles on other sites.

Breithbart made a splash with videos posted on Big Government in September 2009 regarding ACORN (Association of Community Organizations for Reform Now). Since 2006, conservatives had attacked ACORN, accusing it of voter fraud. This became the dominant frame and set the agenda for media coverage of the organization. Now the hidden-camera, heavily edited footage (the complete original video footage has never been fully disclosed) showed ACORN employees offering advice to a man and woman, who were posing as a pimp and a prostitute, proposing to bring underage Salvadoran girls into the United States to be sexually enslaved. The footage became a top story on the Glenn Beck Show, the rest of Fox News, and conservative talk radio. In

December 2009, the Congressional Research Service issued a report exonerating ACORN of any wrongdoing. A few months later, ACORN went out of business. [3]

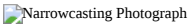

Figure 6.13.5: Today, many major networks are increasingly involved in narrowcasting which involves segmenting programming into genres such as reality TV, sports, drama, comedy and news/weather with specialized content and a variety of channels and choices that are targeted towards specific audiences and can be interactively selected by the viewer.

Narrowcasting

The new media can aim at more discrete, specialized audiences, narrowcasting rather than broadcasting. Often controlled by individual communicators, their content is usually aimed at smaller and more socially, economically, and perhaps politically distinct audiences than the mass media. This fragmentation of the mass audience means that the old mass-media pursuit of lowest-common-denominator content may no longer be financially necessary or viable.

There are cable channels devoted to women, African Americans, and Hispanics, as well as for buffs of news, weather, history, and sports. DVDs and CDs enable the cheap reproduction of a wide range of films and recordings that no longer have to find a mass market to break even. Although the recording industry is selling fewer and fewer CDs and is phasing out music formats with small audiences (e.g., classical, jazz), artists can produce their own CDs and find a far-flung audience, particularly through web-based commerce such as Amazon.

Satellite radio is the fastest growing radio market. It uses technology that broadcasts a clear signal from space to receivers anywhere in the world. Providers XM and Sirius offer uninterrupted programming for a subscription fee. Listeners have hundreds of program options. Broadcast radio stations are no longer limited by the range of a signal across terrain but through the web can reach listeners who make up an audience that is less bounded by geography than by shared cultural, social, and political interests.

For people interested in government, politics, and public affairs, there are web magazines such as *Slate*, *Salon*, and *Politico* with its staff of established political reporters.

Creating Content

As major news organizations have gone online, they have hired technologically skilled young people. At first, these people would primarily reprocess content. Now they create it, as they know how to take advantage of the technology. Thanks to cell-phone cameras, webcams, and social networks, ordinary people can create, store, sort, share, and show digital videos. YouTube is the go-to website for finding obscure and topical streaming video clips. Home videos, remixes, and television excerpts are posted by users (also by the television networks). YouTube has millions of videos and daily viewers.

People can use video clips to hold politicians accountable by revealing their gaffes, showing the contradictions in their statements and behavior, and thereby exposing their dissembling, their exaggerations, and even their falsehoods. Democratic candidate Hillary Clinton had to say that she had misremembered when her claim that she had been under sniper fire at the airport during her 1996 visit to Bosnia as First Lady was refuted by videos shown on YouTube that attained millions of views.

People can become citizen journalists and create contents by reporting on subjects usually ignored by the news media. Examples include OneWorldTV's human rights and development site and short videos on subjects such as land expropriation in Kenya, gang reform in Ecuador, and LiveLeak's coverage of executions in Saudi Arabia.

People can become citizen journalists as eyewitnesses to events. Examples of their reporting include the earthquake and tsunami that hit Japan in 2011, Hurricane Katrina that hit the U.S. Gulf Coast in 2005, and the massacre of students at Virginia Tech University in 2006. They showed some of what happened and documented the effectiveness or ineffectiveness of the authorities' responses. Mainstream media have incorporated citizen journalism into their news products. CNN's "iReport," in which "you take control of the news," encourages average people to submit stories with accompanying images. Reports span numerous topics, including candidates on the campaign and pet stories.

The Free Press now has a site called Media Watch where people can post egregious examples of media derelictions and failures.

Blogging

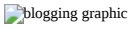

Figure 6.13.6: Blogging has made news consumers into news reporters. But blogs are often written with a certain point of view or agenda in mind which can produce bias. What kind of care should viewers take when reading a blog?

Blogs are online diaries whose authors post information, including ideas and opinions. Blogs may permit feedback from readers and provide hyperlinks to other online contents that may enrich the discussion. Many people blog; the most popular political blog sites, Instapundit and DailyKos, claim over 75,000 visitors per day, but few are widely read. Nonetheless, there are thousands of political blogs on the web: the Huffington Post, a news aggregator with some original material, claims more than 1800 bloggers—none of them paid.

Blogging can be seen as a new form of journalism without deadlines or broadcast schedules. But it does not replace reporting. Most bloggers rely on material issued elsewhere for their information: domestic and foreign newspapers, government documents, academic papers, and other media.

Nonetheless, the "blogosphere" can hold public officials accountable by amplifying and spreading information, especially when many bloggers cover the same subject, a phenomenon known as "blogswarm." For example, Mississippi Republican senator Trent Lott, at a reception honoring his South Carolina colleague Strom Thurmond's hundredth birthday, spoke approvingly of the latter's pro-segregationist 1948 presidential campaign: "When Strom Thurmond ran for president we voted for him. We're proud of it. And if the rest of the country had followed our lead we wouldn't have had all these problems over all of these years either." The journalists in attendance little noted his comment. Bloggers saw the quote in a story on ABC News's daily online comment "The Note." They highlighted and linked it to previous statements on racial issues by Thurmond and Lott. The bloggers' comments were picked up by the news media. As a result, Lott subsequently resigned as Senate Majority Leader.

Bloggers can hold the news media accountable. One important way is by challenging the media's framing of a story. For example, conservative bloggers criticize reporters for framing stories about abortion, gay rights, and religion from a liberal perspective.

Bloggers also challenge the media's stories themselves. On the *60* Minutes Wednesday segment of September 8, 2005, anchor Dan Rather presented documents purportedly showing that President George W. Bush had received preferential treatment in joining the Texas Air National Guard in the early 1970s and thus avoided military service in Vietnam. The report was a scoop that had been rushed onto the air. Conservative Internet forums and bloggers immediately pointed out that, because of their format and typography, the documents were forged. The accusation quickly gained national attention by the news media and was soon corroborated. Rather's long career at CBS was ended sooner than he and the network had planned.

Limitations

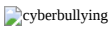

Figure 6.13.7: Cyberbullying has become a major problem as new media and social media sites. This is just one of the many limitations and problems associated with the use of social media and Internet resources.

The ability of new media to realize their potential and promise for improving citizen education and enhancing public life is limited in five ways.

First, political websites and bloggers generally lack the resources of the news media and the knowledge and expertise of journalists to cover and investigate government, politics, and public policies in depth. They react to rather than originate the news.

Second, the new media encourage people to expose themselves to contents (people and perspectives) they already agree with. The audience for Fox News is overwhelmingly Republican, while Democrats gravitate to MSNBC and Comedy Central. Liberals find stories that support their views on the Huffington Post, conservatives on the National Review Online. Liberal blogs link to other liberal blogs, conservative blogs to other conservative blogs.

Third, the new media are rife with muddle and nonsense, distortion, and error. When the journalist Hunter S. Thompson died, an Internet site reported President Nixon's opinion that Thompson "represented the dark, venal and incurably violent side of the American character." In fact, Thompson said that about Nixon. Worse, the new media are a fount of rumor, innuendo, invective, and lies. The Indian wire service Press Trust quoted an anonymous Indian provincial official stating that President Obama's official state visit to India would cost $2 billion ($200 million a day). The story was picked up by the Drudge Report, other online sites, and conservative talk-radio hosts such as Rush Limbaugh and Michael Savage. Glenn Beck presented the trip as a vacation accompanied by 34 warships and three thousand people. Congresswoman Michele Bachmann (R-MN) repeated the claim to Anderson Cooper on his CNN program. This inspired him to track it down, reveal its falsity, and show how it had been perpetuated. [4]

Even worse, the new media can promote and express anger, hatred, rage, and fanaticism. When American journalist Daniel Pearl was beheaded by his Al Qaeda captors in Pakistan in May 2002, the action was videotaped and distributed over the Internet on a grainy video titled “The Slaughter of the Spy-Journalist, the Jew Daniel Pearl.” [5]

Fourth, is the possibility of the new media falling increasingly under the control of media conglomerates and giant corporations. Google has purchased YouTube. This could eventually subject them to the same demands placed on the mass media: how to finance the production of content and make a profit. Indeed, advertising has become far more prevalent in and on the new media. Of course, acquisitions don’t always succeed: Rupert Murdoch’s News Corporation bought and then sold MySpace after failing to make it a financial or social networking success.

Fifth, the new media are a threat to privacy. Google logs all the searches made on it and stores the information indefinitely. Relatedly, the new media tend to defer to government. AOL, Microsoft, and Yahoo, but not Google, have complied with requests from the U.S. Justice Department for website addresses and search terms. Google in China omits links to sites that the Chinese government does not want its citizens to see.

In the United States, there are Gawker and its network, including the gossip sites Jezebel and Deadspin. They have no compunctions about breaching people’s privacy—even if it means violating journalistic norms by paying for information, as they did in the case of the diary written in the form of a thesis of a recent Duke University graduate and also a story concerning quarterback Brett Favre’s behavior.

Political Potential

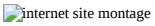

Figure 6.13.8: The Internet gives users a wide array of choices and allows for debate and discussion on public policy. But savvy users know that this information must be filtered for content, accuracy, reliability, bias, and other potential limitations.

Relatively few Internet users attend to politics or government or public policies.[6] Nonetheless, the new media are rife with political potential. They can convey a wide range of information and views. There are sites for people of every political persuasion interested in any policy issue (e.g., drugs, education, health, environment, immigration). These sites can encourage discussion and debate, stimulate political participation, raise funds, mobilize voters, and inspire civic engagement.

The new media allow politicians, political parties, interest and advocacy groups, as well as individuals to bypass the traditional media and reach the public. They can try to control their image by deciding what information to release and selecting congenial media through which to communicate it—to their benefit but not necessarily our enlightenment. Sarah Palin, for example, uses Twitter, Facebook, appearances on Fox News (the network paid for a television studio in her home), a reality television show, newspaper columns, and two best-selling books to communicate her message. She usually avoids appearing on shows whose hosts may be hostile to or even critical of her. (The belief that public figures, including Palin, personally write everything issued in their names is questionable; President Obama has admitted that he doesn’t write his Twitter feeds).

The new media offer people the potential opportunity to transcend the mass media. As newspaper columnist Thomas L. Friedman wrote rather hyperbolically, “When everyone has a blog, a MySpace page or Facebook entry, everyone is a publisher. When everyone has a cell phone with a camera in it, everyone is a paparazzo. When everyone can upload a video on YouTube, everyone is a filmmaker. When everyone is a publisher, paparazzo or filmmaker, everyone else is a public figure.” [7]

Figure 6.13.9

Continue your research by reading the following online articles:

- *How Whistle Blowers Can Revolutionize the role of Government*
- *DARPA's Plan to Trap the Next WikiLeaker*
- *WikiLeaks Asks For Bitcoin Donations*
- *Is This the Wiki End?*

Study/Discussion Questions

Construct a “blog post” that discusses the following. Make references to the documentary and the articles.

1. What is WikiLeaks and what do they do?

2. Who is Bradley Manning and what was his involvement in WikiLeaks?

3. What has the financial blockade done to Wikileaks and how can technologies like BitCoin help?

4. Discuss the social, ethical and cultural impacts of:

Leaking classified material

Keeping secrets

The WikiLeaks financial blockade

Sources:

[1] See Raffi Khatchadourian, “No Secrets,” The New Yorker, June 7, 2010, 40–51.

[2] Jeremy W. Peters and Brian Stelter, “News Corp Heralds Debut of The Daily, an iPa

[3] Peter Dreier and Christopher R. Martin, “How ACORN Was Framed: Political Controve

[4] Reported by Thomas L. Friedman in “Too Good to Check,” his column in the New York

[5] Mariane Pearl’s memoir of her husband, A Mighty Heart (New York: Scribner, 2004),

[6] For a critical view of the political effectiveness of the Internet, see Matthew H

[7] Thomas L. Friedman, “The World Is Watching,” International Herald Tribune, June 2

[8] On the importance of civic education for young people, see Peter Levine, The Futu

[9] Laura Smith-Spark, “Young US Voters May Get Scoop in 2008,” BBC News, November 4,

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6.14: The Impact of Electronic Information on the Political Process

Figure 6.14.1: News reporting is an important function of the media. This section will investigate the role of news media in the political process.

Sometimes referred to as the "fifth branch of government," the news media plays an important role in the political process. This is because Americans get their news and understanding of major local, national, and international events from the media rather than from other people or other sources. Media coverage shapes how Americans see and understand their world and what issues and values they see as being important to them. This sense of importance is often called *salience* and is a major factor in voter and citizen behavior. Citizens and politicians must pay attention to the media and understand its important role in the American political system.

We must also understand that the media perform a number of important roles in the political and democratic process. These include reporting the news, serving as a linkage institution to connect the government and the people, helping determine the public agenda, including which issues should be discussed, and motivating people to become actively engaged in the community both socially and politically.

Perhaps the most important role of the media in politics is to report the news. As noted above, the vast majority of people must trust the media to provide them with information. Democracy requires that citizens be informed because they must be able to make educated voting choices.

Video: The Five Functions of Journalism

Video: A Short History of News Media in America

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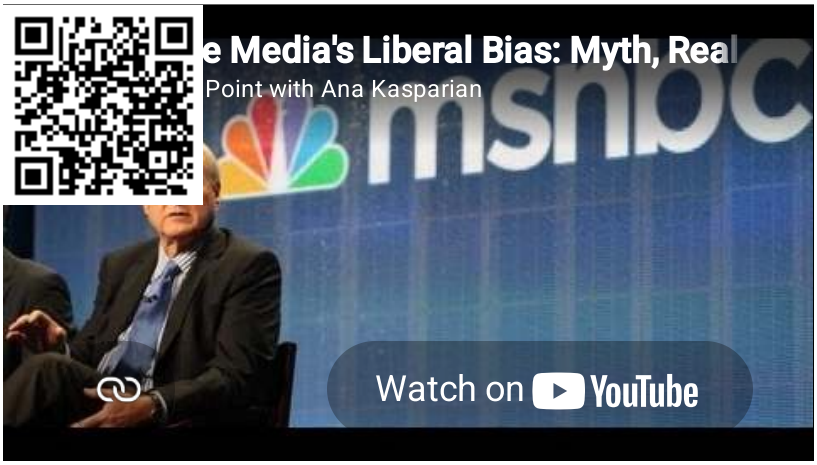
Video: Journalism and Politics Today

Types of Media Bias

Today, many politicians complain of bias in the media. The common observation is that the media (particularly news reporting institutions) tend to carry a liberal bias against the views of conservative politicians. They also complain that the media demonstrates a partisan "slant" in its decisions about which stories to report. While this may be true to some extent, most major newspapers and television news stations tend to focus their attention on the same stories and professional journalists pride themselves in their abilities to report the news fairly and objectively. But changes in how news media organizations are owned and operated has had an impact on the focus they take on issues around them.

For instance, the three major cable/satellite news organizations tend to be MSNBC, CNN and Fox News. If one were to watch these three stations simultaneously, it would not be unexpected to observe that MSNBC will carry a more liberal bias in their reporting of the issues, with Fox News taking a more conservative approach to its reporting and CNN maintaining a more moderate perspective in reporting the same issue. In the past, bias has been restricted to the media outlet's commentary and opinion pages but viewers now anticipate and expect these agencies to combine their reporting with editorial commentary. This is a distinct change in the field of television journalism, but it is certainly nothing new when studying how journalists have covered events in the past.

Video: Is There a Liberal Media Bias?



Types of Media Bias

Framing - Framing, as a theory of mass communication, refers to how the media packages and presents information to the public. According to the theory, the media highlights certain events and then places them within a particular context to encourage or discourage certain interpretations. In this way, the media exercises a selective influence about how people view reality. Today, the media can package and deliver a slick product that is designed to attract audiences from specific sectors or markets. By selectively framing the stories and events it reports on, the media can impact the way the public views a particular issue or event. This can be seen in how news channels present the same stories. For example, MSNBC may place a positive "spin" on an announcement by President Obama about health care while Fox News may frame the same story and the same event in a negative light with commentary and experts criticizing the actions of the president. In both cases, the media has framed the story in order to attract a specific audience rather than to report the event with complete objectivity. Framing bias may be accomplished in a number of ways which will be discussed below.

Bias by Omission-leaving one side out of an article, or a series of articles over a period of time; ignoring facts that tend to disprove liberal or conservative claims, or that support liberal or conservative beliefs; bias by omission can occur either within a story, or over the long term as a particular news outlet reports one set of events, but not another. To find instances of bias by omission, be aware of the conservative and liberal perspectives on current issues. See if both the conservative and liberal perspectives are included in stories on a particular event or policy.

Bias by a Selection of Sources - including more sources that support one view over another. This bias can also be seen when a reporter uses such phrases as “experts believe,” “observers say,” or “most people believe.” Experts in news stories are like expert witnesses in trials. If you know whether the defense or the prosecution called a particular expert witness to the stand, you know which way the witness will testify. And when a news story only presents one side, it is obviously the side the reporter supports. (Journalists often go looking for quotes to fit their favorite argument into a news story.) To find bias by use of experts or sources, stay alert to the affiliations and political perspective of those quoted as experts or authorities in news stories. Not all stories will include experts, but in those that do, make sure about an equal number of conservatives and liberals are quoted. If a story quotes non-experts, such as those portrayed as average citizens, check to be sure that about an equal number come from both sides of the issue in question.

Bias by Story Selection - a pattern of highlighting news stories that coincide with the agenda of either the Left or the Right, while ignoring stories that coincide with the opposing view; printing a story or study released by a liberal or conservative group but ignoring studies on the same or similar topics released by the opposing group. To identify bias by story selection you’ll need to know the conservative and liberal sides of the issue. See how much coverage conservative issues get compared to issues on the liberal agenda, or liberals compared to conservatives. For example, if a liberal group puts out a study proving a liberal point, look at how much coverage it got compared to a conservative study issued a few days or weeks earlier, or vice versa. If charges of impropriety are leveled at two politicians of approximately equal power, one liberal and one conservative, compare the amount of coverage given to each.

Bias by Placement - Story placement is a measure of how important the editor considers the story. Studies have shown that, in the case of the average newspaper reader and the average news story, most people read only the headline. Bias by placement is where on a website (or newspaper) or in an article a story or event is printed; a pattern of placing news stories so as to downplay information supportive of either conservative views or liberal views. To locate examples of bias by placement, observe where a media outlet places political stories. Or whenever you read a story, see how far into the story each viewpoint first appears. In a fair and balanced story, the reporter would quote or summarize the liberal and conservative view at about the same place in the story. If not, you've found bias by placement.

Bias by Labeling - Bias by labeling comes in two forms. The first is the tagging of conservative politicians and groups with extreme labels while leaving liberal politicians and groups unlabeled or with more mild labels, or vice versa. The second kind of bias by labeling occurs when a reporter not only fails to identify a liberal as a liberal or a conservative as a conservative, but describes the person or group with positive labels, such as "an expert" or "independent consumer group." In so doing, the reporter imparts an air of authority that the source does not deserve. If the "expert" is properly called a "conservative" or a "liberal" the news consumer can take that ideological slant into account when evaluating the accuracy of an assertion. When looking for bias by labeling, remember that not all labeling is biased or wrong.

Bias by labeling is present when the story labels the liberal but not the conservative, or the conservative but not the liberal; when the story uses more extreme sounding labels for the conservative than the liberal ("ultra-conservative", "far right", but just "liberal" instead of "far left" and "ultra-liberal") or for the liberal than the conservative ("ultra-liberal", "far left", but just "conservative" instead of "far right" and "ultra-conservative"; and when the story misleadingly identifies a liberal or conservative official or group as just an expert or independent watchdog organization.

Bias by Spin - Bias by spin occurs when the story has only one interpretation of an event or policy, to the exclusion of the other; spin involves tone – it's a reporter's subjective comments about objective facts; makes one side's ideological perspective look better than another. To check if it's spin, observe which interpretation of an event or policy a news story matches – the liberal or conservative. Many news stories do not reflect a particular spin. Others summarize the spin put on an event by both sides. But if a story reflects one to the exclusion of the other, then you've found bias by spin.

Types of Writing

For much of American history (until the early 20th century), most news media were clearly and openly biased. Many newspapers, for example, were simply the voices of the political parties. This type of journalism is called partisan journalism**.** Other newspapers practiced yellow journalism, reporting shocking and sordid stories in order to attract readers and sell more papers. Objective reporting (also called descriptive reporting) did not appear until the early twentieth century. Newspaper publishers such as Adolph Ochs of *The New York Times* championed objective journalism and praised reporters for simply reporting the facts. Although most journalists today still practice objective journalism, more and more are beginning to analyze and interpret the material they present, a practice called interpretive reporting.

Video: Yellow Journalism

The media has influenced politics throughout American history. The most prominent—and notorious—example is the role of William Randolph Hearst's newspapers in starting the Spanish-American War in 1898. According to the legend, Hearst's papers ran many stories chronicling the cruelty of Spanish colonial rule. When the American battleship Maine exploded under mysterious circumstances, Hearst seized the moment, alleging that the Spanish had destroyed the ship. War soon followed. Few media moguls have this much direct influence, but with media consolidation, some worry that the media has too much power.

Figure 6.14.2: The media often serves as a "common carrier" or linkage institution in order to connect the people and their government.

Being the Common Carrier

The media plays a common-carrier role by providing a line of communication between the government and the people. This communication goes both ways: The people learn about what the government is doing, and the government learns from the media what the public is thinking. Political scientists often refer to the news media as a linkage institution because it acts as an agent to link the people to the government and to link government officials back to the people.

Setting the Agenda

Journalists cannot report on an infinite number of stories, so they must choose which are the most newsworthy. By choosing which stories to present to the public, the news media helps determine the most important issues; in other words, the journalists set the agenda. Agenda-setting is crucial because it shapes the issues that will be debated in public. Sometimes political scientists refer to agenda-setting as signaling because the media signals which stories are the most important when they decide what to report.

Video: Agenda Setting in Broadcast News Parts 1 and 2

Pack Journalism

Critics allege that journalists often copy one another without doing their own investigating. When one newspaper runs a story, for example, many others will run similar stories soon afterward. Critics refer to this tendency as pack journalism.

Acting as the Public Representative

The media sometimes acts as a public representative by holding government officials accountable on behalf of the people. Many people argue that the media is ill equipped to play this role because the media does not face the same type of accountability that politicians face. Serving as the representative of the public, moreover, could undermine the media's objectivity because the act of representing the people might require reporters to take a position on an issue.

> *Example: The classic example of watchdog journalism, or activist reporting that attempts to hold government officials and institutions accountable for their actions, is the Watergate investigations of Bob Woodward and Carl Bernstein. The Washington Post reporters doggedly pursued allegations of campaign misdeeds and presidential crimes*

> *despite the fact that many Americans did not care. Journalists have exposed many other government scandals and misdeeds, including the Iran-Contra affair and the Lewinsky scandal.*

Attack Journalism

Since the Watergate scandal brought down a president, investigative journalism has become more prestigious, and many reporters try to make a career around uncovering scandals. Some people complain, though, that all reporters want to be the new Woodward or Bernstein, interested only in breaking the next big story. These critics say that investigative journalism has become attack journalism: Journalists only care about bringing down a prominent person, not about the truth or the common good. Critics of attack journalism believe that President Bill Clinton's impeachment in 1998 was the result of attack journalism and partisan politics. The rise of attack journalism has brought to light questions about the proper role of journalism.

Socializing People

In the United States, the media plays a big role in socializing people to American society, culture, and politics. Much of what young people and immigrants learn about American culture and politics comes from magazines, radio shows, and television. Many people worry that young people are exposed to too much violence and sex in the media, knowing the effect it will have on children's views and development.

Providing a Political Forum

Figure 6.14.3: Candidates Barack Obama and John McCain participate in a publicly televised debate. This is just one of many the press hosted as a part of their political forum role.

The media also provides a public forum for debates between political leaders. During campaigns, opposing candidates often broadcast advertisements and debate with each other on television. Many voters learn a great deal about the candidates and the issues by watching these ads and debates. Even during years without elections, though, the news media allows elected official to explain their actions via news stories and interviews.

How Politicians Use The News Media

Figure 6.14.4: Politicians often have well-crafted strategies to utilize media opportunities in order to present their agenda and issues in a positive light.

Politicians and their consultants, who are often referred to as "spin doctors" have become skilled in the use of the news media as a way of getting their message and agenda out to the public in a variety of ways. These can include press conferences, press releases, media events and media "spin" tactics. Each of these will be briefly discussed in this section.

Press Conferences - One of the oldest and most effective political strategies in the media age has been the televised press conference. We have all become familiar with television and news coverage of press conferences in a variety of circumstances from politicians trying to set their agenda and communicate it to the public, to presidents using pre-planned press conferences to promote a favored piece of legislation or public policy to those same politicians trying to respond in a controlled way to an ongoing crisis or event. In all of these scenarios, the politicians and government officials use press conferences to exert a level of control on the message and level of coverage that news media deliver to the public.

Press Releases - Politicians and government officials often communicate with the media through press releases in order to make the media aware of issues, policies, and events that are of interest or importance to the public. These press releases are generally crafted by people with experience in both politics and public relations in order to meet all legal or regulatory requirements as well as to present the politician, agency or government branch in the best light possible.

Media Events- When a politician or candidate wishes to attract news media in order to deliver a message or gain public attention, staged or planned media events may be used. These are events or press opportunities that are staged solely for the purpose of garnering attention or publicity.

Figure 6.14.5

Study/Discussion Questions

1. Why is the news media sometimes referred to as "the fifth branch of government?"
2. What roles do news agencies play in the political process?
3. What main complaint is made against many news agencies today by politicians? What evidence, if any, is there to support this complaint?
4. What is "framing?" Give an example of how the media and politicians frame issues, stories, and messages.
5. What are the sources of bias in media reporting? Explain each and give an example.
6. What four types of reporting does the text discuss? Explain each.
7. How does the media serve as a linkage institution? Give an example.
8. What is agenda setting? How can we see examples in the media and in government?
9. What is meant by the media's role as a "public representative?" Give an example.
10. How do politicians use media "spin" strategies to better control the way in which they are covered by the press? Give an example

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judicial activism

5.8: Issues Raised by Judicial Activism and Judicial Restraint

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