AMERICA - THE USER'S MANUAL 3E



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America - The User's Manual 3e (Kantack)

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Licensing

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Dedication

To Sergio,
who needs no user's manual
to be an American.

Preface to the Third Edition

This third edition of *America: The User's Manual* updates the text and figures to reflect developments in American politics since the second edition was published. The chapters remain intentionally brief (no longer than 12 pages each), but five new figures have been added, and several chapters have been expanded to cover topics that were previously given short shrift, particularly campaign finance, filibusters, gerrymandering, iron triangles, Supreme Court decision-making, and news media regulation.

For the first time, official instructor materials for the textbook are available, including chapter learning objectives, vocabulary lists, supplemental readings, activities, and a test bank. Also for the first time, paperback copies of the textbook are available for purchase. These paperback copies are sold "at cost," meaning purchasers pay only the cost of printing and shipping the book, plus tax. The author earns no profit from paperback sales. To access instructor materials and find out more about purchasing paperback copies, visit TekakwithaPress.com or email TekakwithaPress@gmail.com.

With each new edition, the list of people who contributed to the project through their thoughtful comments and suggestions grows. Thanks are due to Isaiah Baggett, Monique Bruner, Paul Davis, James Dawson, Moira Fleming, Mary Hallock Morris, Allison Kantack, Kelly Kantack, Ronda Kantack, Bryan McQuide, and Jakob Miller for making this third edition better that it otherwise would have been. What errors or deficiencies remain are solely my responsibility.

Preamble

Preamble

> *The science of government it is my duty to study, more than all other sciences; the arts of legislation and administration and negotiation ought to take the place of, indeed exclude, in a manner, all other arts. I must study politics and war, that our sons may have liberty to study mathematics and philosophy. Our sons ought to study mathematics and philosophy, geography, natural history and naval architecture, navigation, commerce and agriculture in order to give their children a right to study painting, poetry, music, architecture, statuary, tapestry and porcelain.*
>
> *John Adams*

This is a free textbook written for introductory undergraduate courses in American politics. It may also be suitable for precocious high school students, as well as for non-students who want to learn how American government works.

I wrote this book for two main reasons. The first is that I regularly teach an introductory undergraduate course in American politics. I wanted a textbook that covered the basic principles and functions of American government without a lot of obscure trivia and minute details. None of the textbooks I considered struck the balance I desired. The only way to get the textbook I wanted was to write it myself.

The second reason I wrote this book is that the American higher education system is facing a looming crisis. Textbook prices have skyrocketed in recent years and are continuing to rise, increasing the financial burden borne by college students. This economic trend is rooted in the noncompetitive nature of the textbook industry, which is unlikely to change in the near future. I believe students and instructors ought to have as many free, quality textbook options as possible. This is but one of a small but growing number of “open” textbooks written by political scientists and made freely available to anyone who wishes to use them. It may not be the best of the bunch, but it is one more free option for instructors to consider adopting.

No textbook is perfect, and this one is no exception. Despite my best efforts, there are probably still mistakes, inaccuracies, and omissions. Moreover, American politics can change quickly, and before long any textbook on the subject becomes out of date and stale. I intend to regularly update and publish new editions of this book to correct any errors I find and keep up with the evolving American political landscape.

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The United States and its higher education system have been good to me, probably better to me than to most. To the citizens and students they serve, I humbly offer this textbook as a token of my gratitude, free in perpetuity.

DEUS PURIFICARET AURUM TUUM

CHAPTER OVERVIEW

1: Introduction

On January 6, 2021, two weeks before Joe Biden was scheduled to become the 46th President of the United States, thousands of supporters of outgoing President Donald Trump amassed at the U.S. Capitol in Washington, D.C., overwhelmed the Capitol Police officers attempting to secure the building, and forced their way into the congressional chambers and offices. Egged on by the president himself at a rally earlier that day, the protesters were trying to prevent Congress from certifying Biden as the winner of the 2020 presidential election. Biden's victory, they claimed, was illegitimate: the election had been "stolen" from Trump through massive voter fraud. Ultimately, the protesters succeeded only in postponing the certification, which was completed shortly after midnight the following morning.



Supporters of President Donald Trump storm the U.S. Capitol on January 6, 2021, to protest the results of the 2020 presidential election.

No angry mob breached the Capitol in the aftermath of the 2016 presidential election four years prior when Trump defeated Hillary Clinton, but dozens of U.S. cities did experience mass protests. Some of these events escalated into violent riots, in which Clinton supporters vandalized businesses, set fire to cars and garbage cans, and attacked police officers. The protesters' arguments in 2016 were different — Clinton had won more votes than Trump, Russians had "hacked" the election, Trump was morally unfit for the office — but their underlying message was the same: "This man has no right to be president, and the fact that he has been elected proves something is seriously wrong with the American political system."

Anyone who regularly reads, watches, or listens to the news in the United States has encountered sentiments like this. As Figure 1.1 below shows, at least a quarter (and usually more than half) of Americans have been dissatisfied with the way things are going in their country since pollsters began asking the question — and they blame government for their dissatisfaction. Skim the headlines and you'll find countless claims that something about American government — Congress, the Electoral College, the two-party system, the Constitution — is "broken," desperately in need of repair or replacement. Not everyone agrees on which parts are broken or how they should be fixed, but you would be hard-pressed to find someone who firmly believed everything about government and politics in the United States was working perfectly.

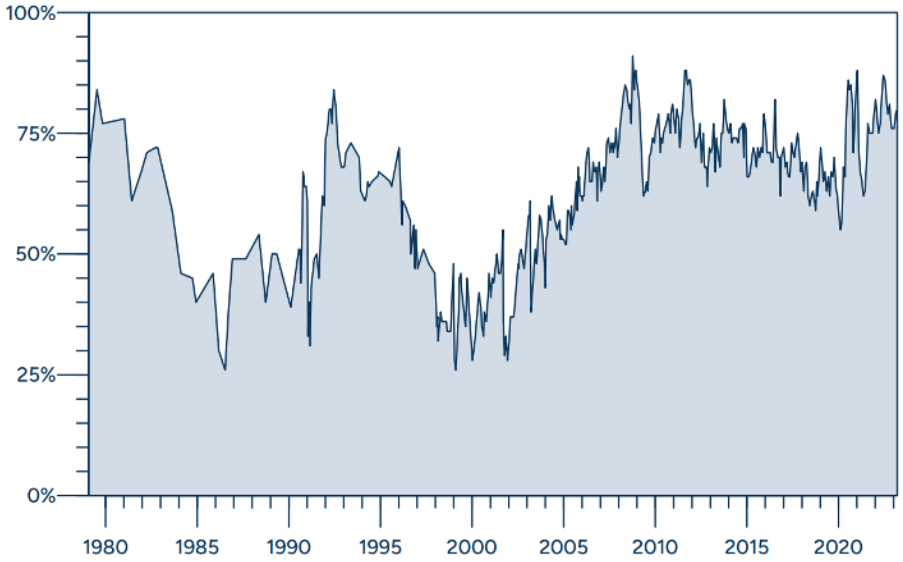


Figure 1.1: Percentage of Americans dissatisfied with "the way things are going in the United States," 1979-2023 (Source: Gallup)

And yet, paradoxically, America trundles along in spite of this “brokenness.” For almost a quarter of a millennium, the United States has operated under the same basic political system, even as many other countries have repeatedly overhauled their own governments. Overall, Americans enjoy a degree of prosperity and security of which most of the rest of the world can only dream. In virtually any other country, an event like what occurred on January 6, 2021, would be taken as a sign of an imminent coup, yet most Americans who saw the siege on the news went about their daily lives as usual, confident that their country’s democratic institutions would still be intact when the dust settled.

Why is it so easy for people to agree that America’s government is broken and yet so hard for them to agree on exactly how it is broken? And, if it is in fact broken, how has it managed to overcome so many obstacles for hundreds of years?

1.1: What Is a User's Manual?
1.2: Who Is the User?
1.3: Why a User's Manual?
1.4: Warranty Information

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1.1: What Is a User's Manual?

Nowadays, cars, cell phones, and pretty much every other sufficiently advanced machine comes packaged with a user's manual. User's manuals vary in size and detail, but they all tend to cover the same basics of operation and maintenance: how to turn the machine on and off, what its buttons do, how to interpret the lights and sounds it makes, what to do if it breaks.

You've likely held at least a dozen user's manuals in your lifetime, but how many have you actually read or even opened? Think about the last time you drove a car you hadn't driven before or upgraded to a new cell phone. If you're like most people, you didn't take time to read the instructions before getting started. You didn't need to: you simply put the key in the ignition or pressed what you assumed to be the on/off button and began using the machine.

Our tendency to operate complex machinery without reading the user's manuals isn't so much a failure of judgment as it is a triumph of engineering. Cars, cell phones, and many other consumer products are meticulously designed to be as intuitive and "user-friendly" as possible. These machines are built specifically for use by people who do not understand how they work. In fact, one measure of a machine's quality is how little a person needs to know about how it works to be able to use it effectively. If a well-designed machine is functioning properly, we only need to think about how it works when performing basic maintenance, like filling the gas tank or charging the battery. If we're lucky, we may never need to know what's really going on under the hood or inside the case, so long as we keep the fuel indicator above E or the battery icon above 0%.

Like a car or a cell phone, America was designed so that people could use it without reading the instructions first. Indeed, surveys of political knowledge (such as the one represented in Figure 1.2 below) regularly confirm that many Americans are unfamiliar with some of the most basic aspects of how America works. Beyond the basics, few Americans ever acquire deep knowledge of their government. Those who do usually specialize in a small area of expertise — accountants must become intimately acquainted with the U.S. tax code, trial lawyers must know the ins and outs of the legal system, journalists must be familiar with the political actors and institutions they cover, and so on. The rest of us mostly allow America the machine to keep on working in the background, only stopping to think about it when something unusual happens and gets our attention.

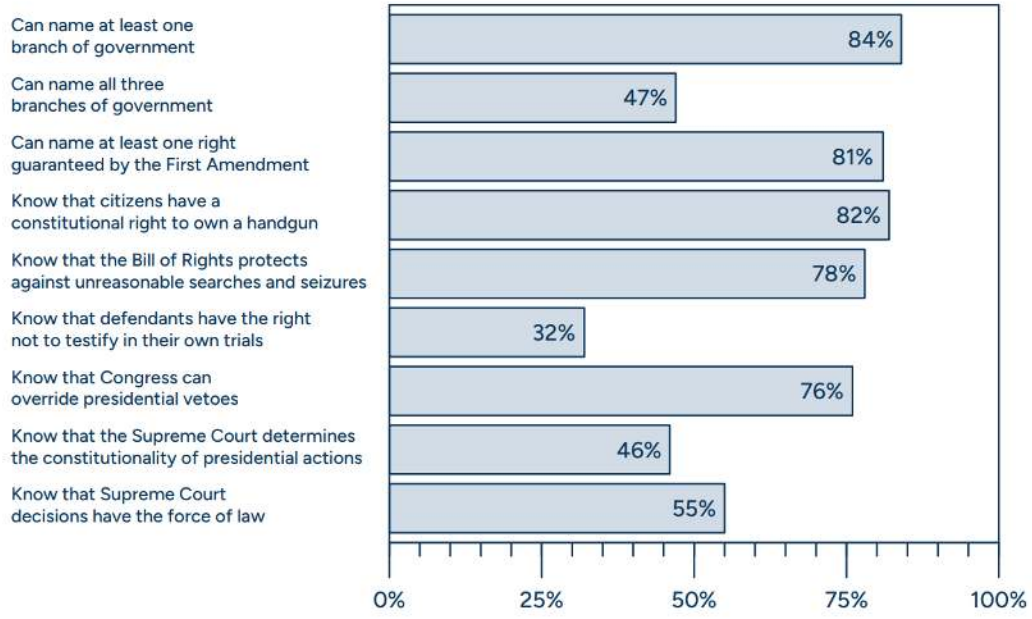


Figure 1.2: Knowledge of selected civics facts among Americans, 2022 (Source: Annenberg Public Policy Center)

Americans' lack of familiarity with their government is often a target of criticism. Some shake their heads or wag their fingers whenever the latest disappointing results from a political knowledge survey are reported, wondering what the Founders who labored over the U.S. Constitution would think of us. But the Founders knew they were crafting a political system that most Americans would never understand well. The fact that we can use the machine they built so effectively in spite of our general ignorance of how it works is a testament to the quality of their craftsmanship.

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1.2: Who Is the User?

If you are reading this, chances are you are a student in a course on American government at an American college or university. You may be a political science major just beginning your study of politics, or a major in some other subject for whom this is the last political science course you will ever take. Perhaps you love politics, can't get enough of the news, and enjoy debating and discussing political issues with friends (or even enemies). Or perhaps you hate politics, wish you never had to think about it, and can't understand why other people (especially people like those in the photograph above) get so worked up about it.

No matter who you are, if you are reading this in the United States, you are a user of America. This is true even if you are not a U.S. citizen, for both citizens and non-citizens can and do benefit, in different ways, from the American political system. When President Abraham Lincoln, in his famous 1863 Gettysburg Address, described American government as "of the people, by the people, for the people," he was referring to you. Whether you call this country your home temporarily or permanently, you are one of *the people* for whom America itself was designed, even if it doesn't always seem that way. This user's manual is therefore written for you.

Knowing that you are a user of America raises another question: for what purpose are you using it? This question is a hard one for a user's manual to answer, especially for such a versatile product. The user's manual for your car will tell you *how* to drive but not *where*; the one for your cell phone will tell you *how* to contact someone but not *whom*. Likewise, America can be (and has been) used for many purposes. The first sentence of the U.S. Constitution (known as the Preamble) lists six: union, justice, tranquility, defense, welfare, and liberty. Ultimately, what you will use America for is your decision; this user's manual is designed to help you make that decision by showing you what's possible.

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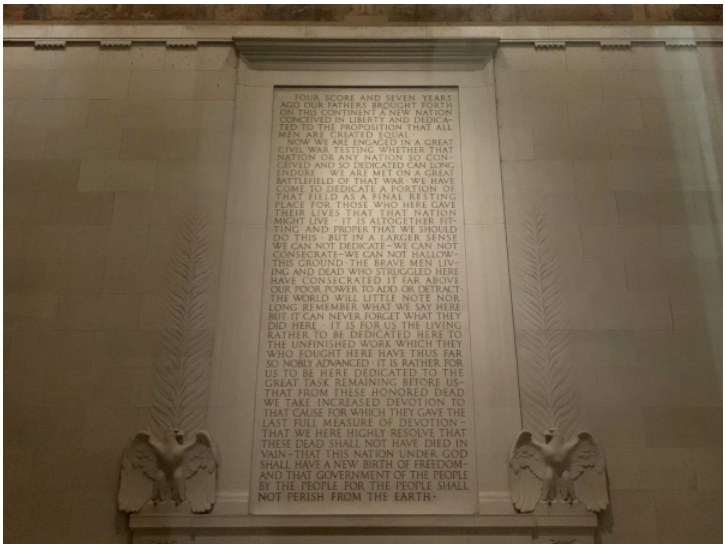
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1.3: Why a User's Manual?

Even if you are a user of America, the fact that it was designed to be intuitive and user-friendly raises the question of whether it needs a user's manual at all, and why, assuming one exists (which it does — you're looking at it right now), anyone should bother reading it.

The most obvious reason to read this book is probably "to pass this class." After all, if this is part of the assigned reading for a course, odds are the instructor expects you to know the material in it, and will quiz or test you to make sure you do. That might be enough motivation to keep you turning pages (and it's certainly the case that too many instructors assume it will be). But it's a rather unsatisfying answer, sort of like when frustrated parents tell their children "Because I said so." It leaves open the more important question of why the instructor assigned the book in the first place.

A better reason to read this book is that its contents will be useful to you if you intend to major or minor in political science, and particularly if you intend to pursue a career that is somehow related to politics. But that answer too leaves something to be desired. For one thing, it only applies to people whose educational or professional aspirations are political in nature. Furthermore, even if you count yourself among those people, you might not be all that keen on reading a textbook, especially when there's so much political news and commentary to read and watch that is far more exciting and interesting than even the best textbooks.



The south wall of the Lincoln Memorial in Washington, D.C., bears Lincoln's Gettysburg Address, including the phrase "government of the people, by the people, for the people."

An even better reason to read this book is that it will enable you to use America more effectively. Although it's true that America is designed for users who don't know much about it, knowing even just a little bit more can make you a much more proficient user. You might think you know all that's worth knowing about your car or cell phone, but reading the user's manual can alert you to buttons or levers you never noticed before (or that you noticed but never understood what they were for) that can make your "user experience" more comfortable, efficient, or fulfilling. Reading this user's manual won't make you a full-blown political expert, any more than reading your car's user's manual will make you a mechanic or a stunt driver. Still, knowing the basics covered in this book will enable you to vote better, speak more intelligently about politics, and understand more deeply what's going on in the news and why.

Perhaps the best reason to read this book, though, is that sometimes America doesn't work. Like any machine, it occasionally fails, breaks down, malfunctions, leaks, or makes a funny noise. Some of these problems are minor; others are major. Some are caused when working parts are replaced with cheap substitutes; others are caused when old parts are not properly maintained or replaced. Sometimes what seems like a problem at first is actually evidence that America is working exactly as designed; sometimes the problem is a flaw in the design itself. A good user's manual tells you what warning signs to watch out for, which problems are serious and which are not, and whether a problem is preventable or inevitable. Similarly, this book will help you identify problems in American government and politics, understand what causes them, and decide what — if anything — to do about them.

> User’s manuals don’t usually include a lot of information about the history of a product — how it was made, how its design has changed over time, and so on. This user’s manual does contain quite a bit of that history, because to properly understand how America works today one must also understand how it got that way.

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1.4: Warranty Information

Many user's manuals contain a warranty — a promise that the product will function properly for some period of time, combined with an offer to refund the purchase price or to repair or replace the product if it breaks down or malfunctions within that period. Lifetime warranties are the best, both because they never run out and because they indicate that the manufacturer is very confident in the quality of the product. Other warranties are limited, covering only certain issues and only for a certain number of days, months, or years.

Unfortunately, America does not come with a warranty, not even a limited one. There are no refunds, no replacements, no money-back guarantees. You can't pack America up and send it back to the manufacturers if it doesn't meet your expectations: the manufacturers (whose names you can find in the appendices of this book) are all long dead.

America, as a product, is sold as is. As you'll soon discover (if you haven't already), it is a brilliantly designed product in many ways, but it still has flaws and limitations. Some of those can be fixed with the right modifications; others are essentially unavoidable, because "fixing" them would only cause even bigger problems. This user's manual will help you recognize which is which, but it can only do so much. People disagree about which of America's problems we should be trying to fix, or even whether they should be considered problems at all. One thing's for certain, though: if anything about America needs to be fixed, it's up to the users to do the fixing.

An unconfirmed story goes that in 1787, near the end of the writing of the U.S. Constitution, a Philadelphia woman asked Benjamin Franklin what kind of government had been created. He replied, "A republic...if you can keep it." Franklin understood that the government outlined in the Constitution would not last long if it were simply left to rust. Lincoln understood it too, remarking 76 years later in his Gettysburg Address that "whether that nation...can long endure" depends on how dedicated its people are to ensuring that it "shall not perish from the earth."

If America is to last, we the people — we the users — must use it properly, maintain it carefully, and try to find ways to improve it where we can, without forgetting why it was designed this way in the first place. In order to do that, it helps to understand what America is for and how it works. In other words, it helps to read the user's manual.

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CHAPTER OVERVIEW

2: Politics

The word *America* — derived from the name of Italian explorer Amerigo Vespucci — has multiple meanings. It can refer to a patch of land, primarily located between the Atlantic and Pacific oceans, or to a system of government for administering that patch of land. But it can also refer to the people who reside there: America is as much a *them* as it is a *that*.



The Main Building on Ellis Island in New York Harbor, entry point for over 11 million immigrants to the United States from 1892 to 1924, today serves as a museum.

Most of the people who make up America were born there, but many were born elsewhere, and most of those who were born in America have ancestors who were born elsewhere and came to America not so long ago. They came (some more willingly than others) from all corners of the globe, bringing their religions and languages and cultures along with their hopes and fears and dreams.

For almost as long as it has been a country, Americans have spoken of the idea that the United States is a “melting pot,” one that blends many different peoples into a single American polity. However desirable or undesirable this outcome would be, it clearly hasn’t happened completely, as many Americans today still maintain the identities (cultural and otherwise) of their ancestors. Furthermore, the groups of people who make up America are themselves diverse, made up of subgroups with different beliefs, perspectives, and aspirations.

The diversity of America the people — not only of race, nationality, and religion, but also of interest, opinion, and condition — is what makes America the system of government necessary. This system of government is not the only one available, and many of those dissatisfied with the way things are going in the United States wish it were different in one way or another. Before examining that system of government, however, it is worth establishing what politics and government are more generally. Then it will be easier to recognize America for what it is: a machine for conducting politics, allocating power democratically, and solving collective action problems.

2.1: Politics and Power

2.2: Why Do We Need Politics?

2.3: Democratic Government

2.4: Collective Action Problems

2.5: The Political Machine

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2.1: Politics and Power

Politics is the contest over and exercise of power. Usually people associate politics with aspects of government, such as elections, politicians, and policies, but politics occurs in any situation where there is competition over power. For example, the phrase “office politics” is commonly used to refer to the contest over power in the workplace, such as when employees compete for promotions or complain about incompetent bosses.

Politics can occur outside of government because power can exist outside of government. **Power** is the ability to cause someone to do something he or she would not otherwise do. Governments have many powers with which to influence the behavior of their citizens or of other governments, but nongovernmental organizations and everyday people also have various powers of their own.

> Power is sometimes thought of only in terms of violent force, but violence or the threat thereof is by no means the only form of power, even if it is one of the most visible forms. We influence others’ behavior — and have our behavior influenced by others — many times each day, usually without violence and often without even noticing. Those influences are forms of power, too.

Politics exists because power is scarce. There is not enough power for everyone to have as much as he or she wants, because power is relative. Whenever one person becomes more powerful, everyone else becomes less powerful relative to that person.

Political scientist Harold Lasswell defined politics as “who gets what, when, and how.” Whenever people, groups, or countries compete over territory, wealth, privileges, or status, they are competing over power. Sometimes this competition occurs through formal processes, such as elections, lawmaking, and trials. Other times it occurs through informal processes, such as protests, rebellions, and terrorist attacks. Whatever form it takes, the contest over power is, by definition, political.

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2.2: Why Do We Need Politics?

Many people dislike politics. To some, the competitive nature of politics is a turnoff, especially when politics seems to consist of nothing more than bitter arguments. To others, politics is too complex to understand or too boring to take interest in. You yourself may wonder whether politics is even necessary, or why leaders don't simply put politics aside and take action to solve problems.

As much as we sometimes try to get away from politics, it is an essential part of human society. The ancient Greek philosopher Aristotle famously wrote that "man is by nature a political animal." What he meant was that humans are creatures of the *polis*, the Greek word for "city." (The word *politics* comes from the Greek *politiká*, for "affairs of the city.") Humans are the only animals who naturally form large, non-familial groups. Wolf packs and beehives may contain many members, but all are close blood relatives, whereas even the smallest human towns generally consist of several distinct families. In Aristotle's view, the traits that make humans unique are their ability and desire to organize themselves in such communities.

Because we humans tend to live in groups, we often encounter situations in which we need to make group decisions. When a prehistoric tribe debates whether to move on to new hunting grounds or an industrialized country chooses which side of the road to drive on, it's not practical to let everyone decide for himself or herself. A decision-making process for the whole group is needed, one that most group members will accept, even if they don't always like the outcome. Families typically accomplish this goal by deferring to a parent or other senior member, but in groups of multiple families there is no such natural or default leader. Instead, the group must settle on some other process for making collective decisions. The system of institutions, rules, and leaders tasked with making decisions for a group is called a **government**.

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2.3: Democratic Government

Many different forms of government exist in the world today. Some are based on hereditary rule, with leaders passing on their titles to their children. Others are grounded in a specific religious tradition, with laws and practices heavily influenced by that religion's teachings. Still others are controlled by whoever in the area happens to have the most military power at the time, which can lead to a great deal of political instability. Each government is shaped by the cultures, experiences, and values of the people who established it.

Like others around the world, the American government is a product of its people's shared history and beliefs. The core principle of American government is **democracy**, a word which comes from the Greek for "people" (*demos*) and "rule" (*kratia*) — hence, "rule by the people." Democracy is a way of empowering the people as a whole to make decisions about issues that affect them, rather than having those decisions made for them without their input.

Democratic government is based on the principles of popular sovereignty and majority rule. **Popular sovereignty** is the principle that people have a right to govern themselves and that it is generally wrong or unfair to deny someone a chance to participate in that process. **Majority rule** is the principle that, when a group is split between two courses of action, the course of action with the most supporters is the one that should be taken. These two principles are not absolutes — children are not allowed to vote in elections, and not all decisions democracies make are majoritarian — but they are nonetheless core aspects of any democratic system.

You probably intuitively recognize both popular sovereignty and majority rule, even if you didn't know what these principles were called until now. Most Americans will accept the result of a vote or election as long as they believe that everyone had a chance to participate and that the winning side was supported by the majority. Nobody likes to lose, but the losers of an election will usually go along with the outcome if they feel they lost fair and square. If, however, they feel they were cheated out of a victory somehow — if either popular sovereignty or majority rule seems to have been violated in some way — the loss becomes much harder to swallow (as we saw in Chapter 1).

Democracy can be direct or indirect. In a **direct democracy**, citizens vote directly on government policy. Some U.S. states occasionally practice direct democracy by letting their citizens decide whether to raise specific taxes or enact new laws, but most of American politics is conducted indirectly. In **indirect democracy**, citizens vote for representatives — presidents, members of Congress, governors, mayors, etc. — who then choose policies for them. This extra step makes American democracy less majoritarian but more efficient: instead of having to decide multiple complex policy decisions every day, we vote once or twice a year for representatives to decide those policy questions on our behalf.

> You may have heard it said that the United States is not a democracy but rather a republic. *Republic* — from the Latin *res* (thing, affair) and *publica* (of the public, of the people) — is another word for indirect democracy, a system in which citizens vote for leaders to decide policies rather than for the policies themselves.
>
> In the past, *democracy* and *republic* were used to distinguish direct and indirect democracy from one another as separate forms of government. Today, however, *democracy* is commonly used to describe both forms. The United States, therefore, is both a republic *and* a democracy (albeit a mostly indirect one).

America did not "invent" democracy, nor was it the first country to be governed democratically. Nevertheless, it was the first country of its size to establish and maintain a democratic form of government for an extended period. It was once widely believed that a territory as big as America was impossible to govern democratically, and that any attempt to do so would eventually decay into nondemocracy. Today, the longevity of American democracy is taken as proof that democracy can work on a large scale, and people all around the world express support for democracy in some form or another (as shown in Figure 2.1 below). Many countries have modeled their own governments on the American system, and America itself has been both directly and indirectly involved in spreading democracy around the globe.

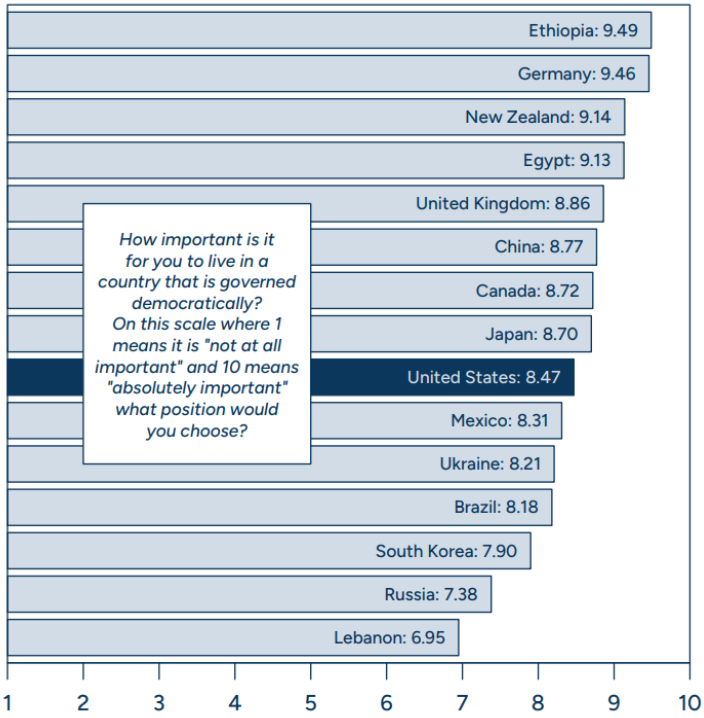


Figure 2.1: Average support for democracy in selected countries, 2017-2022 (Source: World Values Survey, Wave 7)

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2.4: Collective Action Problems

The purpose of government is to make decisions for a group when it would be impractical to let each group member decide for himself or herself. Tribal migration and traffic laws are two examples of situations where group decision-making is desirable, but we can also generalize from them to define more broadly the kinds of decisions governments make.

Human societies establish governments to provide public goods. A **public good** is a benefit that can be enjoyed by all group members. National security, law and order, transportation infrastructure, fire departments, and clean air are all examples of public goods provided by the American government. Public goods differ from private goods, like the sandwich you had for lunch, because anyone can enjoy a public good without diminishing anyone else's enjoyment of it. You can legally prevent someone else from eating your sandwich (it is yours, after all), and you probably will, because the more of it they eat the less of it there will be for you to eat. By contrast, you cannot legally prevent someone else from breathing the same clean air you breathe, but their enjoyment of that clean air does not prevent you from enjoying it as well.

Public goods can be expensive. As shown in Figure 2.2 below, each year the American government spends trillions of dollars on public goods which most of us would be unable to obtain individually. This is one of the main reasons why humans form groups: to be able to enjoy public goods which they could not enjoy otherwise. Almost no American could afford to pay for a military large enough to protect him or her from foreign invasion, but all Americans working together can chip in enough money to fund a military capable of protecting them all. This is the primary purpose of taxes: to collect enough money for the government to provide expensive public goods.

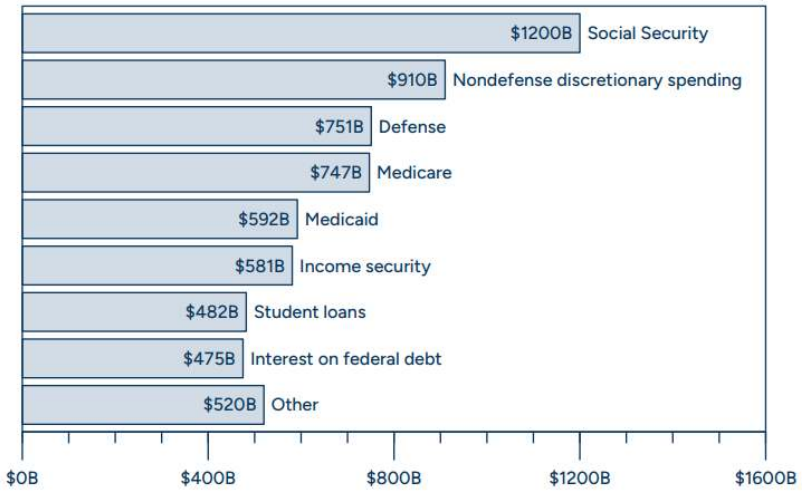


Figure 2.2: U.S. federal budget outlays, Fiscal Year 2022 (Source: Congressional Budget Office)

The tricky part about public goods is that people do not have to contribute to them in order to enjoy them. With private goods, only those who pay for the good get the benefit (unless they choose to give it to someone else for free). Public goods are different. If you were to stop paying your taxes — that is, if you decided to become a **free rider**, someone who benefits from a public good without contributing to it — you would not suddenly be denied the enjoyment of tax-funded public goods. The air you breathe would be just as clean, the roads you drive on just as well-maintained, the home you live in just as safe from foreign invaders. Even if the government wanted to deny free riders those public goods, it couldn't, because public goods are by definition enjoyable by those who do not contribute to them.



"Hoodoos" — rocky spires — abound in Utah's Bryce Canyon National Park, part of the National Park Service, one of many public goods provided by the American government.

If the number of free riders in a group is small, there will probably still be enough contributors to provide public goods. The trouble is that everyone has an incentive to free-ride, because it is preferable to enjoy a public good without contributing to it. When the number of free riders becomes too large, the group will no longer have enough contributors to provide the public good. This is known as a **collective action problem**: the group and all of its members benefit if the public good is provided, but each individual member would prefer to free-ride instead of contributing.

Government solves collective action problems mainly through coercion: they force citizens to contribute instead of free-riding. Few people would freely choose to pay the taxes on which the government relies to provide public goods, which is why the government does not give them that choice. If you decide not to pay your taxes, the government will attempt to change your mind. They might begin by asking nicely, but if you continue to refuse their requests will become increasingly demanding. Eventually, people with guns will come to your home to arrest you and confiscate the money you owe in unpaid taxes, plus an additional amount for the trouble you've caused. If you resist even then (perhaps with a gun of your own), they will use deadly force against you, possibly even killing you, all because you refused to pay your taxes.

Coercion is not pleasant, so most of the time we try not to think about it. We prefer to imagine that a good, free, democratic America works by everyone just asking nicely and everyone else responding in kind. Indeed, most Americans pay taxes, obey laws, and heed the instructions of police officers without having to be asked twice. However, they do so because they recognize that refusing to follow the rules comes with harsh penalties, up to and including the government's use of deadly force to ensure their compliance. If governments did not have the option to use violence as a last resort, they would be unable to solve collective action problems and provide public goods. Every government, democratic or otherwise, is predicated on its ability to bring violence to bear against its own citizens if necessary.

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2.5: The Political Machine

America, its politics, and its government are products of human nature. As humans, we desire the fulfillment of living in a society and the enjoyment of public goods that only society can reliably provide. We need politics to manage a diverse society, and we need government to provide public goods by coercing individuals to contribute to them. For anyone who does not want to live as a hermit, politics in some form or another is an inescapable part of human existence.

The upside of American politics is that it can provide these benefits, increasing the happiness and quality of life of its users. This makes America a very popular product, one that hundreds of thousands of people every year adopt by applying for and obtaining U.S. citizenship. But America, like many machines, can fall into disrepair, be used for ill instead of good, or even misfire with terrible consequences. The same power that enables American government to solve collective action problems for the good of its users can be (and has been) used to make their lives much worse, both intentionally and unintentionally. That's just how power works: any government that is powerful enough to do very good things is also powerful enough to do very bad things.

As we'll see beginning in the next chapter, America's democracy was carefully crafted to limit the dangers inherent in any government. Like many products, it comes with a set of "safety features" designed to prevent injury or harm from careless or malicious use. These safety features tend to make government slower and less efficient, which can cause people to be dissatisfied and impatient with how their government works. While it's always possible that some of these limitations on government are excessive and should be relaxed, it's important to remember that power is a double-edged sword, and that the political allocation of that power often has unintended consequences.

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CHAPTER OVERVIEW

3: The Constitution

America is a nation of laws. Its people and institutions are bound by rules telling them what they must do and what they must not do. When we think about laws, what usually come to mind first are statutes. A statute statute: A specific law passed by a legislature. is a law passed by a legislature for some specific purpose, such as a new tax, a disaster relief package, or a ban on a hazardous chemical.

What gives legislatures the right to pass laws? It cannot be that they passed laws giving themselves the ability to pass laws, for in order to do so they must already have had that ability. Rather, they draw their legitimacy from another type of law, not passed by a legislature, laying out the process by which laws can be made. This type of law is a constitution, a set of basic laws that structure a government. A constitution is the rules by which all other rules are made.



Independence Hall, meeting site of the Constitutional Convention, still stands in Philadelphia's Old City neighborhood.

Written in 1787 and ratified by the states in 1788, the United States Constitution is the oldest active codified constitution in the world today. (San Marino's and the United Kingdom's constitutions are older but uncodified, meaning parts of them are not technically written into law.) Parts of it have changed since then, but its core has remained intact and in use for almost a quarter of a millennium. This level of constitutional stability is unusual among the world's countries. In the time since America adopted its current constitution, France has adopted 16 constitutions, and the Dominican Republic has adopted 32 constitutions.

The U.S. Constitution is not without controversy. People disagree on how to interpret the words of the Founders, which are often vague and nonspecific. Many also feel strongly that certain things should be added to, removed from, or changed in the Constitution. Still, the durability and longevity of the Constitution suggest the Founders hit upon some fundamental truths about politics and power when they designed America's system of government. To understand their way of thinking, it helps to remember the historical context in which the Constitution was written.

3.1: The Declaration of Independence
3.2: The Articles of Confederation
3.3: The Constitutional Convention
3.4: The Constitution of the United States
3.5: Principles of the Constitution
3.6: Ratification
3.7: A Practical Constitution

3.8: New Page

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3.1: The Declaration of Independence

Before America became an independent country, it was a set of 13 British colonies, established between 1607 and 1732. The first inhabitants of these colonies included European entrepreneurs looking to make or increase their fortunes in the New World, religious outcasts fleeing persecution in other lands, native peoples who saw their territory decrease in size as the new settlements became larger and more numerous, and slaves bought or captured in Africa and shipped across the Atlantic Ocean.

By the 1770s, over two million people lived in colonial America. The colonies were governed by the British parliament and by decrees issued by the King of Great Britain, George III. The colonials generally regarded themselves as British subjects — which they were — but a distinctly American culture had begun to emerge.

Being governed by a distant King and Parliament displeased the colonials. The British Crown placed heavy tax burdens on the colonies to pay off its war debts and imposed many economic and political restrictions. Unlike British subjects living in Great Britain, the colonials had no voting representation in Parliament, meaning they could not influence or block these laws. Popular sovereignty was lacking: the colonials were ruled by a government in which they had no formal say and which ignored their appeals for relief from the negative effects of its policies.

After many failed attempts to persuade King George III to address their concerns, the colonials took extreme action. The Second Continental Congress, comprising delegates from all 13 colonies, signed the **Declaration of Independence**, a document written mainly by Thomas Jefferson.

The first part of the Declaration (which you can find in Appendix A) tallied the colonials' grievances against the King. He had failed to pass laws the colonies wanted, and would not allow colonial governments to pass them in his name. He controlled the appointment of colonial judges, causing them to be biased in favor of the Crown in court cases. Large numbers of British troops were present in the colonies even during peacetime, forcing colonials to provide them free room and board. The British parliament had imposed burdensome taxes on the colonials, who lacked representation in Parliament to speak and vote against those taxes.

The Declaration of Independence was highly critical of King George III, labeling him a "tyrant." However, most of its complaints were not specific to King George III. Had they been, the colonials might have demanded that the King abdicate and allow himself to be replaced by a better ruler. Rather, the Declaration made it clear that the problems were rooted in the British monarchy itself, and would therefore persist no matter who was King. Because of this, the only sensible solution in the colonials' view was "to throw off such government" — to declare their independence — and "to institute new government" to prevent these problems from recurring.

In the opinion of the delegates who signed the Declaration of Independence, America was already an independent country even before the ink had dried on the parchment. From the King's perspective, America was simply a rebellious region of the British Empire that needed to be reminded who was in charge. The American Revolutionary War was fought between the two sides to settle this dispute. Had the colonials lost, the British Crown would have restored control over the colonies, and the Declaration would have gone down in history as the treasonous spark of a failed insurrection. But the colonials — henceforth the Americans — won their war for independence, and in 1783 the British government acknowledged as much by signing the Treaty of Paris, ending the war and establishing the United States as a free and independent nation.

> When the 56 men whose names appear at the bottom of the Declaration of Independence declared "we mutually pledge to each other our Lives, our Fortunes and our sacred Honor," it was not just a figure of speech. They knew war was coming, and that if they lost they would have signed their own death warrants by adding their names to the Declaration.
>
> With the benefit of hindsight, it's easy for us to envision ourselves confidently signing our names alongside theirs with untrembling hands. We tend to underestimate the courage it took to do what they did, because we, unlike them, never had to imagine our own necks in a traitor's noose.

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3.2: The Articles of Confederation

As far as the Americans were concerned, the Declaration of Independence severed their ties with Great Britain. That meant the 13 former colonies were now without a national government. War was looming, and they needed a new institutional structure to replace the one they had just cast off. Otherwise, the American war effort would be a disorganized mess, incapable of countering the military might of the British Empire.

In 1777, the Second Continental Congress — the same one that signed the Declaration of Independence — drafted the **Articles of Confederation**, America's first constitution. The Articles, which went into effect in 1781 after being ratified by the states, established a barebones national government. Congress consisted of a single chamber, in which each state was represented by between two and seven delegates but had only one vote, regardless of its population. Nine of the 13 states had to vote for a law for it to pass, and amending the Articles themselves required the support of all 13. There was no independent executive or judiciary; Congress could (and did) elect presidents from among its members, but those presidents could only wield the limited powers Congress decided to grant them.

The Articles of Confederation were effective enough for the Americans to fend off the British army and secure their independence, but not by much. Congress tried to raise money through taxes to fund the war effort, but the collection of those taxes was up to the states, which often refused to pay some or all of what they owed. This left the Continental Army led by George Washington constantly low on vital supplies, forcing Washington himself to repeatedly beg Congress for enough money to feed, clothe, and arm his soldiers.

After the war, the Articles of Confederation continued to cause problems for the newly independent nation by failing to resolve conflicts between states. Sometimes these conflicts were territorial, with two states claiming the same piece of land and arguing over borders. Other times they were economic, with states owing money to other states and passing laws canceling their debts or printing worthless paper money to pay them off. Under the Articles, the national government lacked the authority to settle these disputes; even if Congress decided that one state was in the wrong, it had no power to enforce its decision.

The problems with the Articles were laid bare in 1786, when a Massachusetts farmer named Daniel Shays organized a debtors' revolt. Shays, a former captain in the Continental Army, had left the army without ever receiving his five years' worth of officer's pay. Deep in debt, Shays led thousands of citizens in a protest to obstruct the proceedings of the Massachusetts state government, which was jailing debtors and confiscating their property. Congress tried and failed to generate enough tax money from the states for a military force to quash Shays' Rebellion, which was eventually broken up by a combination of the Massachusetts state militia and a privately funded local militia.

Shays' Rebellion forced America to reckon with the fundamental failing of the Articles of Confederation. The weak national government they had designed reflected their suspicion of centralized power, which they feared would lead to tyranny like what they had endured under British rule. They had good reason to be wary, but in their efforts to avoid a tyrannical government they had created an ineffectual one, powerless to resolve interstate disputes or respond to national emergencies. Shays' Rebellion did not bring the fledgling nation crashing down, but without a major change to America's system of government it was only a matter of time before some other crisis would.

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3.3: The Constitutional Convention

In the summer of 1787, 12 states — all but Rhode Island — sent delegates to Philadelphia to revise the Articles of Confederation. Today, this meeting is known as the **Constitutional Convention**, although at the time it was not referred to as such. The official purpose of the convention was revision, but even before it began many delegates had already concluded that the Articles were hopelessly flawed and that the only solution was to craft an entirely new constitution from scratch.

Not all of the 55 delegates who gathered in Philadelphia's Independence Hall shared this view. Some were concerned that a stronger national government would threaten their prized liberties. Virginia delegate Patrick Henry, who had famously proclaimed "Give me liberty or give me death!" in a fiery speech prior to the Revolutionary War, refused to attend the convention at all, claiming that he "smelt a rat" in Philadelphia. Others, including New York's John Lansing and Robert Yates, left early when they realized that the government outlined in the new constitution would be much stronger than the one established by the Articles.

For more than three months, the Constitutional Convention brainstormed and debated how to design a government strong enough to bind the Union together but limited enough to prevent tyranny. George Washington was elected president of the convention but did not make many speeches, preferring to act as an impartial moderator. Some delegates arrived late or left early, either to attend to personal matters or in protest against the convention's activities. Independence Hall was hot and stuffy in the Philadelphia summer, but all of the windows stayed closed with the curtains drawn so that the delegates could speak freely without fear of being overheard by passersby.

In the end, 39 of the 55 delegates affixed their signatures to the new constitution. Not everyone was satisfied with the result: Virginia delegate George Mason, claimed he would rather chop off his right hand than use it to sign the document. Benjamin Franklin did sign, reasoning that, while he disliked some aspects of the new constitution, he might grow to like them in the future, and that even if he didn't the new design was still a major improvement on the Articles.

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3.4: The Constitution of the United States

The U.S. Constitution departed from the Articles of Confederation in several key ways. One major change involved the balance of power between national and state governments: the confederal system which existed under the Articles was replaced with a federal system which increased the national government's power over the states. The purpose of this change was to make America less like a loose league of feuding countries and more like a unified nation — or, as the Founders put it in the Preamble to the Constitution, "to form a more perfect Union."

Under the new constitution, Congress would have two chambers instead of one: a House of Representatives and a Senate. This change resolved a dispute between large states and small states at the convention. Delegates from large states wanted congressional representation to be proportional to each state's population, arguing that it was only fair for more populous states to have more influence in Congress, because they had more citizens who would be subject to Congress's laws. Small-state delegates wanted to preserve the equal representation for states as outlined in the Articles, fearful of being constantly outvoted by larger states and forced to accept laws that went against their interests. To settle the disagreement, Roger Sherman and Oliver Ellsworth proposed the **Great Compromise** (sometimes called the Connecticut Compromise, as Sherman and Ellsworth were delegates from Connecticut), under which the House would be proportional according to population and the Senate would be equal, with each state electing two senators.

Because representation in the House of Representatives would be determined by population, the Founders needed to establish how each state's population would be counted. This seemingly simple process was complicated by the issue of slavery, as demonstrated in Figure 3.1 below. Delegates from Southern states wanted to count slaves when determining population, because doing so would increase their number of votes in the House of Representatives (even though slaves themselves would not have the right to vote). Delegates from Northern states hoped that not counting slaves would hasten the end of slavery by reducing Southern states' power in Congress. This dispute was resolved by the **Three-Fifths Compromise**, which established that slaves would be counted as three-fifths of a person for determining each state's representation in the House.

> The Three-Fifths Compromise is sometimes misunderstood as an attempt to dehumanize slaves by declaring them to be worth 40% less than free persons. This myth falls apart upon closer inspection: the more slaves counted for in states' populations, the more influence Southern states would have in Congress to perpetuate the institution of slavery. The Three-Fifths Compromise had nothing to do with a slave's "worth" relative to a free person and everything to do with the states jockeying for power. In this contest, slaves were merely mathematical pawns.

Another change from the Articles was that the new Congress had lower thresholds for passing laws and amendments. Although laws would now need to be passed by two chambers instead of one, they would only require majority support in each chamber to pass. The amendment process was also made easier. Unanimous consent was no longer needed to pass an amendment; instead, amendments only required the support of two thirds of Congress (or of a national constitutional convention) and three fourths of all states. This ensured that no single state's opposition could block constitutional reform (the flaw which had made the Articles virtually unamendable). Congress would also be empowered to make all laws deemed "necessary and proper" for carrying out its duties, according to the **necessary and proper clause** in Article I.

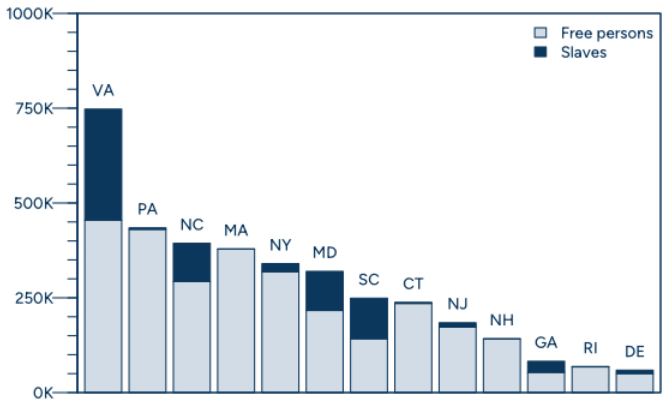


Figure 3.1: Populations of the original 13 states, 1790 (Source: U.S. Census Bureau)

Besides changing Congress, the Constitution also added an independent chief executive — the president — and an independent Supreme Court. Unlike the weak executives under the Articles of Confederation who were chosen by Congress and wielded only the powers Congress decided to give them, the new presidents would be chosen by an Electoral College and have a set of powers granted by the Constitution. Likewise, the Supreme Court would consist of judges appointed for life with the authority to settle disputes between the states. Both the presidency and the Supreme Court were included to prevent the problems under the Articles that had been caused by Congress's inability to enforce its laws, respond quickly to crises, and pacify squabbling states.

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3.5: Principles of the Constitution

Although most delegates at the Constitutional Convention recognized the need for a stronger national government, they were also aware of the dangers such a government would pose. The powers granted by the Constitution could be used for the good of the country, but they could also be abused if they fell into the wrong hands. Without safeguards to prevent such abuse, America might suffer the same sort of tyranny it had endured under British rule, if not a worse one.

To prevent the new national government from getting out of hand, the Constitution introduced a system of **separation of powers**. Rather than vest all power in a single person or institution, the Constitution divided it among three branches: a legislative branch (Congress), an executive branch (the presidency), and a judicial branch (the Supreme Court and other federal courts). Dividing power in this fashion would make it harder for a tyrant to take control. Even if America elected a bad president, that president would only have access to roughly one-third of the government's capabilities.

Alongside separation of powers, the Constitution also implemented a system of **checks and balances**: each of the three branches possessed certain abilities to limit or block the actions of the other two. This gave each branch a degree of control over the other branches, preventing any one branch from exercising unchecked power. The president could veto bills passed by Congress, but Congress could override vetoes if the bills had enough support and could even remove the president through the impeachment process. The federal courts could strike down laws and executive actions as unconstitutional, but Congress and the president would select the judges who sat on those courts. Figure 3.2 below lists ways in which the three branches can check one another.

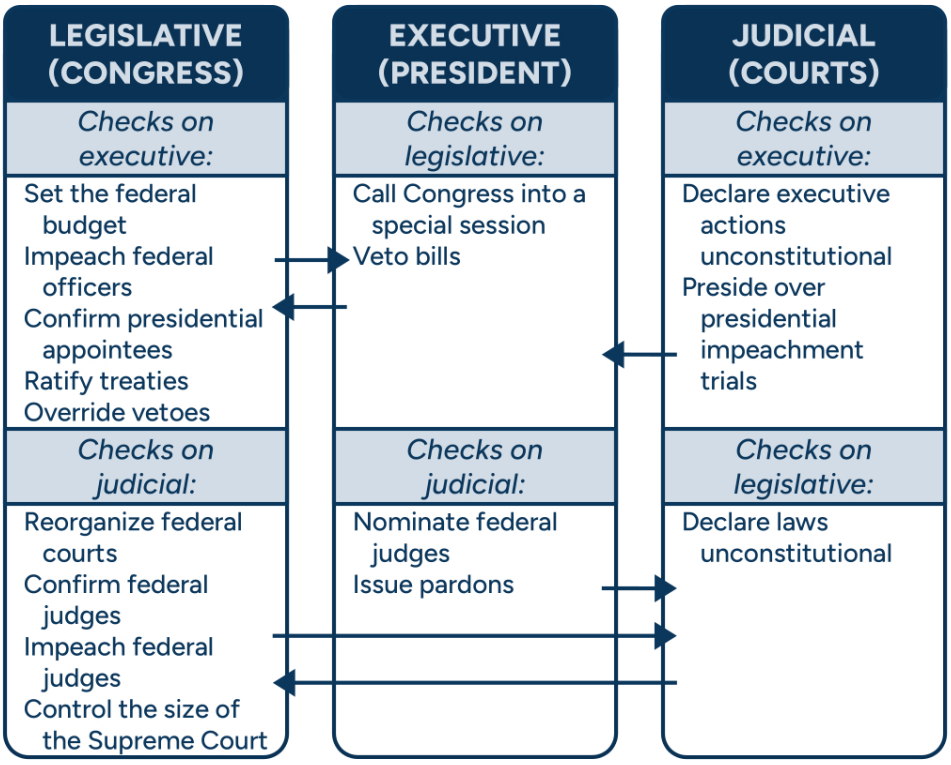


Figure 3.2: Checks and balances in the U.S. Constitution

The Constitution's separation of powers and checks and balances reflect the Founders' distrust of politicians. They recognized that not all presidents, members of Congress, and judges would be devoted to America's national interest and the principles of limited government. On the contrary, they anticipated that the new, more powerful American government would attract ambitious, power-hungry people with selfish motivations for holding public office. For this reason, they designed a system to channel that selfishness for good. In theory, the branches would, by hoarding their powers from one another, prevent any one branch from becoming too potent. Even office-holders who only wanted to increase their own power would have a self-interested reason to use their checks in a way that the Founders hoped would prevent tyranny.

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3.6: Ratification

After the Constitution was written and signed, it was the states' turn to decide to accept or reject it. Article VII of the Constitution specified that the new American government would not be officially established until nine states had ratified the Constitution. Twelve states — with Rhode Island again being the exception — elected delegates to statewide ratifying conventions to vote on whether they should approve the new plan for American government.

The ratification debate was a crucial moment in American history. The delegates to the Constitutional Convention had clearly not kept to their stated purpose of proposing amendments to the Articles of Confederation. Instead, they had designed an entirely new system of government and were essentially asking the states to secede from the old system and join the new one. What they were attempting was nothing short of a rebellion against the existing government — a bloodless rebellion with noble intentions, but a rebellion nonetheless.

Leading the fight in favor of ratifying the Constitution was a faction calling themselves the **Federalists**, which included George Washington, Benjamin Franklin, Alexander Hamilton, and James Madison. The Federalists had supported a stronger national government during the Constitutional Convention and were generally satisfied with the final document the convention produced. They believed separation of powers and checks and balances would prevent the new American government from using its new powers in a tyrannical fashion.



Tourists visit the National Archives Building in Washington, D.C., where America's founding documents are displayed beneath a mural of 25 signers of the Constitution.

Opposing ratification and the Federalists were the **Anti-Federalists**, including Samuel Adams, George Clinton, Patrick Henry and George Mason. To the Anti-Federalists, the Constitution represented a major power grab by the national government that would strip the states of their sovereignty and leave America back where it started: with an oppressive government and no safeguards for the rights of the people. Their perspective was informed by historical examples of countries, such as the Roman Republic, that had attempted large-scale democratic government only to fall back on imperial or monarchic systems instead.

The Federalists and Anti-Federalists waged a war of words at the state ratifying conventions and in the press. After the Constitutional Convention, essays by Anti-Federalists began appearing in New York newspapers criticizing the new Constitution and urging the states to reject it. The authors of these essays often wrote pseudonymously, using pen names such as "Cato" and "Brutus" to underscore their argument that the Constitution would lead to tyranny. (Cato was a Roman senator who committed suicide rather than live under Julius Caesar's dictatorial rule; Brutus was one of the senators who eventually stabbed Caesar.)

In response, three Federalists — Alexander Hamilton, James Madison, and John Jay — wrote 85 essays (known today as the *Federalist Papers*) defending the Constitution, using the shared pen name "Publius" in honor of one of the founders of the Roman Republic. The ***Federalist Papers*** responded directly to the Anti-Federalists' arguments by explaining and justifying each part of the Constitution. Hamilton wrote the most essays and Jay the fewest, but the ones written by Madison (particularly *Federalist No. 10* and *No. 51*) eventually became the most famous and widely read.

In the end, the Federalists won the ratification battle. Anti-Federalist contingents at state ratifying conventions were convinced to support the Constitution on the condition that amendments be made to it to secure certain liberties, a condition that would eventually lead to the creation of the Bill of Rights. One by one the states accepted the Constitution, until New Hampshire became the ninth state to ratify it in June of 1788. This ninth ratification satisfied the requirement in Article VII, and America's second — and, so far, last — constitution went into effect a year later in 1789.

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3.7: A Practical Constitution

A Practical Constitution

The Founders who crafted the United States Constitution were among the most knowledgeable and clever political theorists of their era and perhaps any era. Yet the Constitution they created was not a purely theoretical document; it was molded and shaped by the political, economic, and social realities of the time. To succeed, the system of government produced by the Constitutional Convention needed support throughout the new nation. In other words, it needed to please various conflicting factions — large states and small states, Northern states and Southern states, Federalists and Anti-Federalists — all while maintaining its functionality.

Notwithstanding the constraints under which it was produced, the Constitution has remained in effect to the present day. America has changed in many ways the Founders did not and could not predict, but it is still governed according to a plan first put to parchment in Philadelphia over 200 years ago. That plan has been amended 27 times since its ratification, but the underlying structure of American government it established — three branches, each with distinct powers and the ability to check the other two — is still intact.

Americans tend to take a great deal of pride in their constitution. At times they exhibit a certain degree of reverence for it, exalting the delegates to the Constitutional Convention as almost mythological figures and using the words *constitutional* and *unconstitutional* as though they were synonyms for *good* and *evil*. Yet the Founders were mortals, constrained by political realities, and the 27 amendments testify to the fact that their handiwork was not perfect (even though Americans still disagree on whether all of those amendments were necessary or beneficial).

One area where the Constitution has not aged well is on the topic of slavery. The Founders tiptoed delicately around the issue — the words *slave* and *slavery* did not appear anywhere in the original Constitution — and made compromises they felt were necessary to prevent Southern states from walking out of the Constitutional Convention and fracturing the young nation. Today, the idea of compromising on the issue of slavery in any way and for any reason strikes most people as morally reprehensible. Perhaps Northern delegates could have persuaded Southern delegates to accept terms less favorable to slavery. Or perhaps refusing to compromise would have split the Union from the very beginning, resulting in an independent South where slavery would have lasted much longer. There is no way to know for sure.

Ultimately, the best approach to the Constitution is neither excessive deference nor rash revisionism. Constitutions sometimes need to change, and America's is no exception. The fact that things have been done a certain way since 1789 is no guarantee that they should continue to be done the same way going forward. At the same time, constitutions are hard to change for a reason, and the durability of the Constitution should give us users pause before we clamor for amending it anew. Tinkering with intricate machines, though often justified, can lead to unpredictable consequences that may even be worse than the original problems. Every word in the Constitution was put there for a reason, and we should always endeavor to understand why the Constitution is the way it is before attempting to change it.

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3.8: New Page

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CHAPTER OVERVIEW

4: Federalism

In early 2020, as the novel coronavirus known as COVID-19 overwhelmed the world, the United States did not fight back as a single cohesive unit. President Donald Trump did convene a White House Coronavirus Task Force to coordinate a national plan of action, and Americans did become well-acquainted with the personal hygiene recommendations of one of its lead members, Dr. Anthony Fauci. Yet many crucial decisions — on mask mandates, business closures, remote schooling, and other matters — were left up to America's governors, who have long borne the responsibility for managing public health policy in their respective states.



A member of the Nevada National Guard administers a drive-thru COVID-19 test as part of her state's response to the coronavirus pandemic in 2020.

On the one hand, this piecemeal approach undermined America's pandemic response. U.S. states have no legal or practical ability to close their borders, meaning that an outbreak in any state could easily spread to others. Even if a state effectively managed its infection rate, it could still suffer the consequences of its neighbors' inability to do so. A virus doesn't care where the lines are drawn on a map.

On the other hand, decentralization gave America flexibility. The challenges of densely populated Massachusetts were not the same as those of sparsely populated Montana; elderly Florida faced different threats than youthful Utah. Governors' authority to determine their states' pandemic responses allowed them to tailor policies to fit their states' unique needs. It also helped contain the damage from policy mistakes. For example, New York's decision to admit COVID-19 patients to nursing homes resulted in the deaths of many elderly New Yorkers. Had a similar policy been instituted nationwide, the impact would have been far more devastating.

The COVID-19 pandemic demonstrated both the strengths and the weaknesses of American federalism, the delicate balance of power between national and state governments. From the outset, the Founders crafted the Constitution so as to unite the states enough to respond to national crises while giving them the freedom to manage their own affairs as they saw fit. That balance has shifted dramatically over the centuries, as have Americans' beliefs about what it should be. At the heart of many contemporary issue debates in American politics — abortion, the death penalty, education, the environment, healthcare, immigration, marijuana, policing — lies this fundamental question about the proper roles of state and nation.

4.1: Systems of Government
4.2: Federalism in America
4.3: Limits to Federalism
4.4: Evolving Federalism
4.5: Federalism Today

4.6: E Pluribus Unum?

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4.1: Systems of Government

Most countries are composed of multiple subnational regions. In America, these regions are called states; in other countries, they may be called provinces, cantons, departments, prefectures, parishes, or oblasts. Subdividing a country in this way has many advantages, but it also raises the question of how and to what extent the subdivisions should be integrated into the country's political system.

The most common system of government in the world today is a **unitary system**, in which power is concentrated at the national level and most decisions are made by a strong national government. Subnational governments may exist, but usually they are much weaker and have far fewer responsibilities than the national government. Countries with unitary systems benefit from uniform, centralized decision-making but tend to enact "one-size-fits-all" policies that allow for little regional variation. Because of this, unitary systems are best suited to countries that are small and culturally homogeneous. Chile, France, and Japan are some examples of countries with unitary systems.

The opposite of a highly centralized unitary system is a highly decentralized **confederal system**, in which power is concentrated at the subnational level and the national government is comparably weak. The United States under the Articles of Confederation had a confederal structure, as did the Confederate States of America during the Civil War: although both had national governments, their subnational governments wielded most of the power. Confederal systems give considerable leeway to their regions at the expense of national unity. No modern country operates under a truly confederal system, but some international organizations (such as the United Nations and the European Union) are confederal in nature, with countries acting as the "subnational" units within the larger overall structure.

Falling between unitary and confederal systems, a **federal system** is one in which power is divided roughly evenly between national and subnational governments. Although the abilities and responsibilities assigned to national and subnational governments in federal systems are different, the two levels are approximately equal to each other in terms of power. The modern United States has a federal structure, as do other countries such as Brazil and Germany.

These systems are not "pure" types, such that each country fits neatly into one of three categories. Rather, they exist on a spectrum of centralization, with unitary systems at one end, confederal systems at the other end, and federal systems in the middle. The world's countries can be arranged at different points along this spectrum. For example, the United States and Canada both have federal systems, but the United States' is less centralized than Canada's. Countries can also centralize or decentralize over time. The United States has gradually become more centralized since its founding, although it has remained a federal system since the Constitution was ratified.

> In the United States, the term federal is often used to mean "national." When someone says "the federal government" or "federal law," they usually mean national government and national law, as contrasted with state government and state law.

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4.2: Federalism in America

The delegates to the Constitutional Convention faced the difficult challenge of designing a government that would avoid both the oppressiveness of the British monarchy and the fecklessness of the Articles of Confederation. Most delegates recognized that America's national government needed more power to maintain the fractious union. Yet they understood equally the danger of a government with too much power, which could easily fall into the hands of a tyrant.

At the time of the Constitutional Convention, it was not obvious that the United States *could* be governed democratically. Most democratic governments in history, Greece and Rome among them, had either devolved to nondemocratic forms to deal with the strain of administering a large territory or collapsed when they refused to do so. A few long-term, stable democracies existed, such as the merchant republics of Florence and Venice, but these were generally very small. Even with just 13 states, America was already much larger than every successful democracy in history up to that point, and its descent into either tyranny or anarchy seemed a very real possibility. As John Adams would later write, "There never was a Democracy yet, that did not commit suicide."

Federalism was the solution proposed by the Founders to prevent history from repeating itself. The Constitution would empower the national government to act in areas where nationwide consistency was necessary, such as diplomatic and monetary policy, but it would allow the states to handle everything else. Ideally, the individual states would emulate the successful small republics of the past in managing their own affairs, while the national government would have enough power to keep the states together without completely dominating them.

Under America's federal system, the national government has certain **enumerated powers** which the state governments do not have. These powers are listed (*enumerated*) in the Constitution and deal with national concerns, such as raising armies, coining money, and declaring war. The state governments have **reserved powers** which the national government lacks, such as the powers to conduct elections, issue licenses, and provide public education. Most of these powers are not mentioned in the Constitution and are therefore reserved for the states according to the Tenth Amendment. The remaining powers can be exercised by both the national government and the state governments, and are therefore considered **concurrent powers**. For example, both the national government and the state government can establish courts, make laws, and impose taxes on their citizens, although the jurisdictions in which they can do these things differ. (See Figure 4.1 below for a summary of which powers fall into each category.)

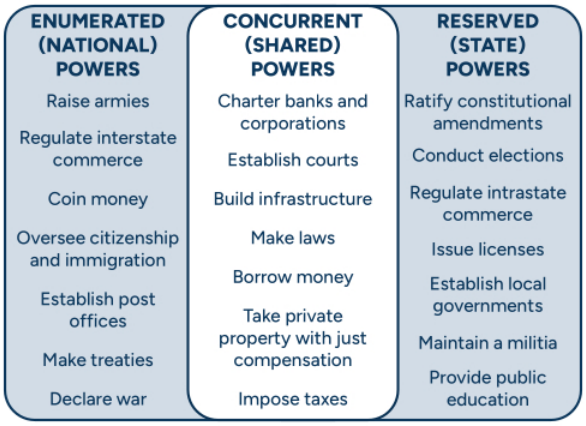


Figure 4.1: Enumerated, reserved, and concurrent powers in the United States

> The relationship between the national and state governments in the United States is similar in some ways to the relationships between state and local governments. An important difference is that local governments lack the sovereign status of state governments. This means states have much more power over localities — including the power to create, abolish, divide, or merge them — than the national government has over states.

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4.3: Limits to Federalism

There are many advantages to a federal system of government. Giving states the freedom to make their own laws turns them into what former Supreme Court Justice Louis Brandeis called “laboratories of democracy.” Each state can experiment with different policies to find which ones work best. Sometimes this leads to states learning from one another’s successes and failures: Wisconsin might adopt an education program that seems to be working well in Minnesota, or Tennessee might steer clear of a tax system that backfires in Kentucky. But federalism also enables states to craft laws specifically suited to their wants and needs. The ideal tourism policy for Florida is probably very different from the ideal tourism policies for Nevada and Alaska.

Federalism gives states flexibility to govern themselves as they wish. However, as the Articles of Confederation proved, too much flexibility is disadvantageous. The “patchwork of laws” produced by federalism — in which laws vary from state to state — can cause confusion and conflict if one state’s laws negatively impact another state in some way.

To reduce the likelihood of such conflict, the Constitution imposes several limits on how much states can customize their laws. One of these limits is the full faith and credit clause in Article IV, which stipulates that states must respect one another’s laws. This clause is what enables Pennsylvanians to drive across the New Jersey border without breaking the law: their driver’s licenses are valid nationwide. Likewise, marriage licenses, adoption certificates, and court judgments issued by one state are valid in all other states. The full faith and credit clause also prevents Americans from moving to a state to avoid paying alimony, child support, or credit card debts owed in another state.



The first political cartoon ever printed in America, commissioned by Benjamin Franklin and published in the Pennsylvania Gazette *in 1754, makes the case for a union of the American colonies.*

Another limit on federalism specified in Article IV is the privileges and immunities clause, which prohibits states from denying basic rights to citizens of other states. This clause protects Arizonans living in New Mexico from losing their property rights, access to courts, or welfare benefits. The privileges and immunities clause does not ban *all* unequal treatment of citizens and non-citizens, only that which infringes upon basic rights. Thus, public universities can charge more for out-of-state tuition than they do for in-state tuition without violating the privileges and immunities clause (in part because in-state students already support those universities with their tax dollars).

A third limit on federalism outlined in Article VI is the **supremacy clause**, which establishes that national law is superior to state law whenever the two contradict. This clause prevents states from passing laws that violate the Constitution or statutes passed by Congress, ensuring that national laws are truly national. The supremacy clause prevents Louisiana from legalizing dogfighting, which was banned nationwide by Congress in 2007, because the national ban supersedes state law.

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4.4: Evolving Federalism

The ratification of the Constitution in 1788 began the process of adjusting the United States from a confederal system to a federal one. From the very beginning, the Supreme Court was frequently called upon to interpret the Founders' language in situations where its meaning was unclear. Several of the Court's earliest decisions in matters pertaining to federalism reinforced the preeminence of the national government. These decisions included *McCulloch v. Maryland* in 1819, which established that states could not impose taxes on the national bank, and *Gibbons v. Ogden* in 1824, which struck down a steamboat monopoly on the Hudson River that inhibited the national government's ability to regulate interstate commerce.

Although these early decisions solidified the supremacy of the national government, the Supreme Court generally abided by a philosophy of **dual federalism**. This approach sharply divided the domains in which national and state governments could exercise their powers and gave states broad authority to manage their own affairs without national interference.

One rationale for dual federalism had to do with slavery, an issue on which the Founders had struck a tenuous bargain in order to ratify the Constitution. In theory, giving states the power to set their own policies on slavery without the national government stepping in would preserve the fragile harmony between free states and slave states. In practice, such harmony proved impossible to maintain. The Fugitive Slave Act of 1850 forced free states to return escaped slaves to their owners if captured, and the Supreme Court's 1857 ruling in *Dred Scott v. Sandford* affirmed that slaveowners could bring their slaves with them into parts of the country where slavery was illegal while still maintaining ownership of them. Free states bristled at the fact that national law forced them to be complicit in an abhorrent act which they themselves had made illegal but which some of their neighbors had not.

The unworkable patchwork of laws pertaining to slavery was eventually torn apart and stitched back together by the Civil War. In the half-century that followed, five constitutional amendments shifted power from the state level to the national level. The Thirteenth Amendment abolished slavery nationwide, the Fourteenth Amendment guaranteed equal protection of the law for citizens in all states, the Fifteenth Amendment extended the right to vote to citizens of all races, the Sixteenth Amendment granted Congress the authority to impose a national income tax, and the Seventeenth Amendment removed the power to elect U.S. senators from the state legislatures and gave it to the citizens instead.

America's federal balance tilted further toward the national government and away from the states in the 1930s. The Great Depression brought severe hardships to the United States, leading the national government to take unprecedented actions to rebuild the American economy. President Franklin D. Roosevelt's **New Deal** expanded the national government in both size and scope, enabling it to take on challenges of reducing unemployment, building infrastructure, regulating the financial system, and providing pensions in the form of Social Security. Although some initiatives were blocked by the Supreme Court as unconstitutional power grabs, the Court ultimately relented and allowed most of the New Deal to go into effect. The 1960s brought additional expansion of the national government's role. President Lyndon B. Johnson's **Great Society** policies led to the creation of Medicare (to lower healthcare costs for the elderly) and Medicaid (to do the same for the poor), as well as other programs aimed at eradicating poverty, promoting education, and ending racial discrimination. By this point, the United States had moved from dual federalism to **cooperative federalism**, with national and state governments working in tandem to solve problems.

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4.5: Federalism Today

Modern American federalism continues to be cooperative rather than dual. States still play an important role in governing themselves, but increasingly they operate with direction and assistance from the national government on matters which they were previously expected to handle on their own. Today, many national-level organizations — among them the Department of Education, the Environmental Protection Agency, and the Federal Emergency Management Agency, — administer policies and programs that Americans in prior centuries never expected would fall under the purview of the national government.

Much of this national-state cooperation involves grants of money authorized by Congress and distributed to the states for them to spend. These grants can be either categorical or block. A **categorical grant** is an amount of money issued to a state by Congress to spend for some specific purpose according to specific guidelines. A **block grant** is similar to a categorical grant but comes with fewer strings attached, giving the state more leeway to decide how to spend it. Categorical and block grants fall in and out of fashion over time in Washington: categorical grants tend to be more popular when Congress is controlled by the Democratic Party (which generally favors national-level policymaking), whereas block grants tend to be more popular when the Republican Party (which generally favors state-level policymaking) is in power.

> Sometimes the national government uses grants to indirectly influence states to adopt certain policies. For example, in 1984, Congress wanted states to raise their drinking ages to 21, but a national mandate could have prompted a protracted legal battle with the states and might have been ruled unconstitutional.
>
> Instead of forcing states to change their alcohol consumption laws, Congress passed a law that would withhold 10% of a state's highway funding if it did not raise its drinking age to 21. Within 11 years, all 50 states and the District of Columbia had brought their laws in line with the new national standard rather than suffer the loss of funding.

The mere fact that the term *cooperative federalism* contains the word *cooperative* does not mean that the national and state governments always cooperate. Federalism, like many aspects of American government, is laid out in the Constitution vaguely enough to obscure what precisely the Founders intended. States regularly spar with the national government over competing interpretations of constitutional or statutory law that would afford one or the other more power, often resulting in the Supreme Court deciding which interpretation is correct.

One perennial battleground in the fight over American federalism is immigration. In 2010, Arizona passed a law to allow its state police officers to check the legal status of suspected illegal immigrants. President Barack Obama's administration objected that immigration control was the domain of the national government; Arizona countered that the national government's unwillingness to secure the border compelled the state to take matters into its own hands. (Some parts of Arizona's law were eventually struck down by the U.S. Supreme Court in *Arizona v. United States* in 2012.) When Obama was succeeded by President Donald Trump — who had made border security a centerpiece of his presidential campaign — California and other states made a point of limiting their cooperation with U.S. Immigration and Customs Enforcement (ICE) efforts to identify and deport illegal immigrants. Under President Joe Biden, national immigration policies were again relaxed. Frustrated, Texas Governor Greg Abbott began sending buses of illegal immigrants to Washington, D.C., to draw attention to what he considered to be a dereliction of duty on the part of the president.

Perhaps the most paradoxical federalism-related dispute concerns drug laws. Since the passage of the Controlled Substances Act in 1970, marijuana has been classified as a Schedule I drug, alongside much harder drugs such as ecstasy, heroin, and LSD. This classification effectively makes marijuana not just an illegal drug but one of the *most* illegal drugs in the United States. Despite this, 38 states have passed laws legalizing marijuana for medical or recreational use since 1996, in defiance of national law. (See Figure 4.2 below for a map of marijuana laws by states.) The supremacy clause clearly indicates that the Controlled Substances Act supersedes these state laws, but the national government has largely refrained from prosecuting marijuana users and dealers, except in the context of gang-related matters or major trafficking operations. Attempts by some members of Congress to "reschedule" marijuana to a less restricted category have thus far failed, leaving this contradiction in national and state policies unaddressed for the time being.

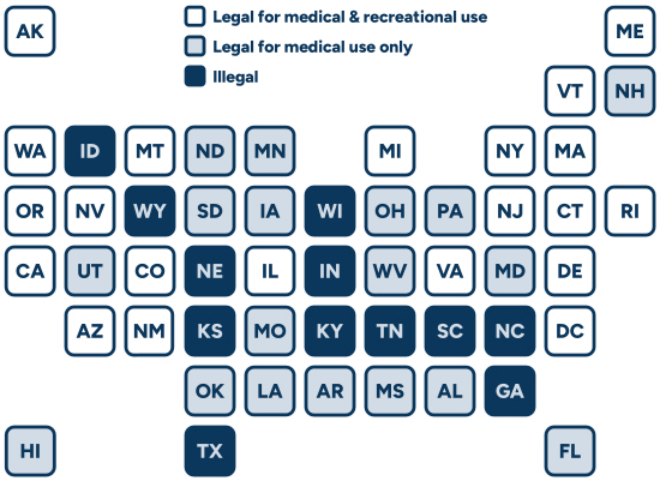


Figure 4.2: Legal status of marijuana according to state laws, 2023 (Source: Business Insider)

Many of the most contentious issues in American politics today are fundamentally about federalism. As the national government has become more involved in policy areas previously handled by states, new debates have arisen about the proper way to divide power between the two levels. These debates involve both constitutional interpretation of the Founders' intent as well as practical considerations about whether national or state government is better equipped to deal with the issues in question.

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4.6: E Pluribus Unum?

One of the peculiarities of America is its grammar. The word *United States* looks like a plural noun but is treated as singular in contemporary American English: we say *the United States is* rather than *the United States are*. This wasn't always the case: up until the early 20th century, it was much more common to refer to the United States plurally, as a union of distinct states rather than as a cohesive nation.

This singular-plural quirk reflects the United States' complicated history of national integration. It began as a collection of states uniting together under a common government, first to secure their independence from Great Britain and later to manage their peaceful coexistence on the continent. The unofficial motto of the United States, *E pluribus unum* — Latin for "Out of many, one" — expresses the Founders' hope that the states would stand strong together while retaining their own political institutions and cultural identities.

Just as the word *United States* has become less plural and more singular over time, the country itself has gradually become more integrated, with power becoming less diffuse and more centralized. No doubt the Founders would be surprised (and perhaps dismayed) at the extent to which power has shifted from the state level to the national level. Yet the individual states persist — and with them, the unique challenges of maintaining a country that is simultaneously one thing and 50.

Federalism has done its job of holding the country together under a democratic system of government, but it hasn't always been easy. At times the diversity of the states has made them seem nigh ungovernable. The Civil War strained the bonds of union almost to their breaking point. The Great Depression brought a mighty nation to its knees and prompted major changes to its governmental structure. The COVID-19 pandemic forced the United States to battle a devastating disease within the confines of a federal system. The next great test of American federalism might instigate a new evolution of the relationship between state and nation — or it might finally vindicate the doubters who believed large-scale democracies would inevitably either decay into dictatorship or crumble into anarchy.

Like most complex machines, America consists of many interlocking parts. Properly assembled and tuned, it can be a powerful and versatile tool for democratic governance. But keeping it in working condition is a delicate task. Tighten the parts too much and the machine might jam up; loosen them too much and the machine might fall apart. Finding that sweet spot in between too tight and too loose is a perennial challenge of American politics.

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CHAPTER OVERVIEW

5: Civil Liberties

Liberty is arguably the most cherished American value. It features prominently in our Declaration of Independence ("Life, Liberty, and the Pursuit of Happiness"), our Constitution ("the Blessings of Liberty"), our Pledge of Allegiance ("liberty and justice for all"), and our National Anthem ("land of the free"). Both the tiniest copper pennies — LIBERTY has appeared on every U.S. coin minted since 1792 — and the giant copper statue watching over New York Harbor — whose official name is *Liberty Enlightening the World* — testify to its importance.



The Statue of Liberty guards New York Harbor, where she has stood since 1886.

Liberty to Americans is more than just a word or symbol. We are fiercely protective of our liberties, also called freedoms or rights. A **right** is a privilege to which a person is entitled by virtue of who he or she is. Americans often refer to their rights as God-given, inalienable, or natural. Whether or not you believe these rights were actually given by God — "endowed by their Creator," in the words of the Declaration of Independence — is beside the point, which is that these rights are not simply permissions granted by the government. If they were, the government could in principle revoke them whenever it wished. Rather, the rights we have are inherent in our nature as humans and citizens, which means the government cannot take them away from us without a very good reason.

Rights are often controversial because they must be limited for society to function. If my rights to do things were unlimited, they would interfere with your rights to not have things done to you, and vice versa. As philosopher Zechariah Chafee put it, "Your right to swing your arms ends just where the other man's nose begins." To protect the rights we treasure most, the government must take away or restrict other rights that would interfere with them.

The question of how much rights should be limited becomes especially contentious when applied to civil liberties. A **civil liberty** is a protection from government overreach so fundamental that it is considered essential to the functioning of a liberal democracy (*liberal* meaning "free" in this context). The United States aspires and purports to be a liberal democracy, so it must take care not to unnecessarily curtail the civil liberties of its citizens. But civil liberties, like all rights, are not absolute. Some curtailment will always be necessary, lest the country descend into anarchy.

The Constitution does not always provide clear answers on the question of which civil liberties Americans have and how far they extend. As a result, America's history of rights is a long and contested one, beginning before its independence and continuing to the present day. The rights afforded to American citizens have been expanded, contracted, refined, and redefined many times in the United States' quest to determine how best to live up to its hallowed value of liberty.

5.1: The Bill of Rights

5.2: Incorporation
5.3: Religion
5.4: Speech
5.5: Arms
5.6: Due Process
5.7: The Paradox of Liberal Democracy

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5.1: The Bill of Rights

Civil liberties were at the heart of the debate between Federalists and Anti-Federalists over whether to ratify the Constitution. Both sides recognized the importance of securing the people's rights. Most delegates to the Constitutional Convention had fought in the American Revolutionary War and understood firsthand both how precious liberty was and how easily it could be lost. The question was not *whether* liberty needed protecting but rather *how* to protect it.

The Anti-Federalists feared the new Constitution would embolden the national government to pass laws that would chip away at the people's liberties. To stop this from happening, they demanded a clearly specified list of rights, like the ones featured in many of the states' constitutions. The Constitution's supporters promised it would not undermine liberty, but the Anti-Federalists wanted those promises in writing as part of the Constitution itself.

To the Federalists, this approach seemed wrongheaded. Firstly, it was redundant. The Constitution already imposed clear limits on the national government, so adding a list of rights would be unnecessary. (As Alexander Hamilton put it in *Federalist No. 84*, "Why declare that things shall not be done which there is no power to do?") Secondly, attempting to protect rights by listing them could backfire and *reduce* liberty. There were simply too many rights to include them all, and any right left off the list, whether accidentally or on purpose, would inevitably be viewed as less important or perhaps even nonexistent on account of its omission.

Ultimately, the Anti-Federalists won out. In exchange for Anti-Federalist support at the state ratifying conventions, the Federalists reluctantly pledged that the new Congress would immediately take up the task of crafting a statement of rights to append to the Constitution. James Madison begrudgingly led the effort to whittle down 124 amendments proposed by the states to a list of just 12. Ten of those 12 were ratified by the states in 1791, making them the first ten amendments to the Constitution, known as the **Bill of Rights**. (See Figure 5.1 below for a summary of the Bill of Rights, the full text of which can be found in Appendix B.)



Figure 5.1: Bill of Rights (summarized)

Each of the first eight amendments in the Bill of Rights explicitly enshrines one or more civil liberties. The Ninth Amendment addresses the Federalists' worry by noting that the presence of a Bill of Rights in the Constitution should not be interpreted as a sign that other, unlisted rights do not exist. The Tenth Amendment stipulates that any powers not granted to the national government in the Constitution are reserved for the states or the people, preventing the national government from arbitrarily claiming additional powers.

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5.2: Incorporation

The beginning of the First Amendment ("Congress shall make no law...") reveals that the Anti-Federalists were specifically concerned about the dangers of the national government. State governments, being less powerful and constrained by their own constitutions, were regarded as less of a threat to liberty. Therefore, the Founders saw no need to subject state governments to the restrictions in the Bill of Rights. The 1833 Supreme Court case *Barron v. Baltimore*, in which a wharf owner unsuccessfully sued the city for violating his Fifth Amendment right to just compensation for government-seized property, confirmed that the states were not bound by the Bill of Rights.

The national-only nature of the Bill of Rights changed in 1868 with the ratification of the Fourteenth Amendment, which declared, "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 stipulation obligated the states to respect the rights articulated in the Bill of Rights, which, as part of the Constitution, was included among the laws whose equal protection every American was now guaranteed.

Despite this change, the protections in the Bill of Rights did not apply to the states immediately. Instead, they gradually began to be imposed on the states one right at a time through a process called **incorporation**. When the Supreme Court hears a case involving a state violating a constitutional right, it can choose to "incorporate" that right against the states. Once a right has been incorporated, states no longer have the authority to deny their citizens that right.

The Supreme Court began using the incorporation process in the 1897 case *Chicago, Burlington & Quincy Railroad Co. v. City of Chicago*, when it incorporated the Fifth Amendment right to just compensation (the same right that was at the center of *Barron v. Baltimore*). Most recently, the 2020 case *Ramos v. Louisiana* incorporated the Sixth Amendment requirement that jury verdicts in criminal trials must be unanimous. (This requirement is not stated outright in the Sixth Amendment, but the court ruled that it was implied based on what the Founders would have understood "trial by jury" to mean at the time when the amendment was written.) Some rights in the Bill of Rights still have not been incorporated, but the Supreme Court could decide to incorporate them in the future if a relevant case was brought to it.

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5.3: Religion

The first right named in the Bill of Rights is freedom of religion. By the time the First Amendment was ratified in 1791, the United States was already a religiously diverse nation, populated with the descendants of Catholics, Jews, Puritans, and Quakers who had fled religious persecution elsewhere. These groups endured the hardships, risks, and sacrifices of transatlantic travel because the ability to live according to their faith was profoundly important. (For some, it was literally the difference between heaven and hell!) Thus, the right to worship or not worship as one pleases was then — and remains today — one of America's most precious civil liberties.

The First Amendment contains two distinct protections of the freedom of religion, as indicated by its opening statement: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." The first protection is the **establishment clause**, which prevents the government from establishing an official religion (such as those that exist today in countries like Costa Rica, Norway, and Saudi Arabia) or extending special legal privileges to practitioners of certain religions. The second protection is the **free exercise clause**, which prevents the government from interfering with citizens' religious practices, either by denying them the right to do things required by their religion (which happens today in countries like China, Iran, and Sudan) or by forcing them to do things forbidden by their religion.

Together, these two clauses form what Thomas Jefferson referred to as "a wall of separation between Church and State" in America. However, this separation is not absolute. Two centuries of Supreme Court jurisprudence has determined that the government can interact with religious organizations and pass laws limiting religious practices in certain circumstances.

Since *Lemon v. Kurtzman* in 1971, the Supreme Court has applied the ***Lemon* test** to cases involving the establishment clause. According to the Lemon test, a government action does not violate the establishment clause as long as it has a secular (non-religious) purpose, has a primary effect other than to advance or inhibit religion, and does not create an excessive government entanglement with religion. These criteria allow the government to print the United States' official motto — IN GOD WE TRUST — on all American currency and to display Judeo-Christian motifs such as the Ten Commandments and Nativity scenes on public property (under certain conditions). These actions, while religious in nature, are symbolic in a way that does not constitute excessively favorable treatment of a particular religion. Governments can also offer grants to religious schools, hospitals, and other institutions without violating the establishment clause, provided they make those same grants available to secular institutions.

With regard to the free exercise clause, the Supreme Court has ruled that the government can pass laws which limit certain religious practices, so long as those limitations are not the target of or motivation for the laws. This exception prevents Americans from using religion as a "Get Out of Jail Free" card for any illegal action they wish to commit, such as drug use (as the court decided in *Employment Division v. Smith* in 1990) or ritualistic human sacrifice. Laws against these practices have been passed for reasons of social order rather than religious persecution, and are therefore constitutional.



The Ground Zero Cross, a steel cruciform extracted from the rubble of the World Trade Center and now displayed at the National September 11 Memorial, has been found not to violate the establishment clause due to its historical nature and status as a “symbol of hope.”

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5.4: Speech

The First Amendment also forbids Congress from passing laws “abridging the freedom of speech.” This freedom includes both spoken and written words, as well as nonverbal forms of expression. Free speech is essential to what Supreme Court Justice Oliver Wendell Holmes called the “marketplace of ideas,” the free exchange of information and opinion that makes democracy possible. If citizens were prevented from speaking their mind about politics, it would be impossible to openly debate political issues or criticize government wrongdoing.

In spite of its importance, freedom of speech, like freedom of religion, is not absolute. Some limitations on speech rights are indispensable for maintaining an orderly society. In its rulings in the many speech-related cases it has heard over the years, the Supreme Court has striven (and often struggled) to define those limitations.

One relevant factor is the propensity for speech to result in violence. In the 1969 case *Brandenburg v. Ohio*, which centered on an inflammatory speech given at a Ku Klux Klan rally, the Supreme Court established that the government can restrict **incitement**, speech which advocates for “imminent lawless action” and is likely to provoke such action. By this standard, the government could punish you for leading an angry mob to vandalize a building, even if you yourself didn’t directly participate in the vandalism. However, a vague call for violence at some point in the future (like the speech at issue in *Brandenburg*) would not constitute incitement, as there would be no imminent risk of someone heeding such a call.

Another unprotected category of speech is **fighting words**. As defined in the 1942 case *Chaplinsky v. New Hampshire*, fighting words are speech directed at a target for the purpose of provoking a violent response. Unlike incitement, fighting words need not contain explicit instructions to commit violence. For example, if you goaded someone into a barfight through verbal attacks and insults, you could be held legally responsible for starting the ruckus even if the other person threw the first punch (and even if you weren't literally “asking for it”).

Free speech protections also do not extend to **obscenity**. Since the 1973 case *Miller v. California*, the Supreme Court has defined obscenity as being offensive depictions of sexual conduct which lack literary, artistic, political, or scientific value. This standard, however, is easier stated than applied. What is and isn’t considered offensive varies by place and time, and the court has often been asked to judge whether a particular example of speech is offensive enough to qualify as obscenity. (Former Supreme Court Justice Potter Stewart is most famous today for writing in one of his opinions that, while he might not ever be able to define *hard-core pornography* in precise terms, “I know it when I see it.”)

While offensiveness is part of the legal definition of obscenity, offensiveness by itself does not exclude speech from First Amendment protection. For example, the Supreme Court has prevented the government from imposing speech restrictions on flag burning (in the 1989 case *Texas v. Johnson*) and ethnic slurs (in the 2017 case *Matal v. Tam*). In general, for a speech restriction to be constitutional, it must be based on the context in which the message is expressed, rather than on the content of the message itself. Hate speech, the purpose of which is to demean members of a target group, may be restricted if it falls into another restricted category (such as incitement) but not solely on the basis of the hatred it expresses.

> Freedom of the press, another important First Amendment right, will be covered in depth in Chapter 15. However, as far as the Supreme Court is concerned, the protections afforded to freedom of the press are largely the same as those afforded to freedom of speech. Your own speech may lack the reach and impact of the *New York Times*, but from a constitutional perspective your expression is just as protected as the Gray Lady’s.

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5.5: Arms

The United States is the only country in the world that has more privately owned guns than it does citizens. America's appreciation for firearms predates its independence: most of the colonies required all adult white male citizens to own a gun so that they could be recruited into a militia in the event of a crisis. The Founders understood the right to bear arms as an essential bulwark against tyranny: the new Constitution enabled Congress to maintain a standing army and navy, which could easily be used to overpower the states and the people if they lacked the means to defend themselves.

The right to bear arms does not mean that any U.S. citizen can carry any weapon anywhere. In the 2008 Supreme Court case *District of Columbia v. Heller* (which declared D.C.'s handgun ban unconstitutional), the court emphasized that the government could constitutionally prohibit convicted felons and mentally ill persons from possessing firearms, and that it could restrict the carrying of firearms in places where they might be particularly dangerous or disruptive (such as schools or government buildings). In 1939's *United States v. Miller*, the court ruled that a ban on sawed-off shotguns was constitutional because the firearms in question were not the type that would be employed by a militia, establishing that not all guns were created equal in the eyes of the Second Amendment.

Since the days of the Founders, the United States military has gone from an underfunded and impermanent entity to the world's most expensive and most advanced fighting force, and the idea that a state militia could hold its own against the national government's vastly superior firepower has become increasingly implausible. Nevertheless, in the 2010 case *McDonald v. City of Chicago*, the Supreme Court incorporated the right to bear arms for self-defense. This was similar to the court's *Heller* decision two years prior, which had declared gun ownership for self-defense to be constitutionally protected but had stopped short of incorporating it against the states (because the case had originated in the District of Columbia, rather than one of the 50 states).

Gun rights are a controversial topic in the United States due to its high rate of gun-related homicides, suicides, and accidental deaths. Some gun control advocates argue that the Second Amendment protects the gun-ownership rights of militia members only, and that the right to bear arms was never meant to extend to private ownership for non-militia purposes. The Supreme Court has ruled otherwise, however, and its decisions have the force of law. States can (and do) impose various restrictions on firearms purchases, but the Second Amendment ensures that those restrictions can only go so far.

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5.6: Due Process

To maintain internal peace — "domestic Tranquility," in the words of the Preamble to the Constitution — the government must have the ability to enforce its laws and to punish those who violate them. Such power can easily be abused to quash political opposition, as it was prior to the American Revolutionary War in colonial courts beholden to the Crown. To prevent similar abuse, half of the Bill of Rights (Amendments IV through VIII) enshrines certain **due process** rights which guarantee citizens fair treatment in legal proceedings.

From the Founders' perspective, due process rights were so vital that some of them made it into the main body of the Constitution. Article I, Section 9 specifies three such rights. First, except in extreme circumstances, citizens have the right of *habeas corpus*, preventing them from being imprisoned indefinitely without a hearing and a trial. Second, the government cannot issue bills of attainder, which would allow it to declare certain acts illegal and punishable without a trial. Third, the government cannot pass *ex post facto* laws retroactively banning actions that were legal at the time they were committed.

The Fourth Amendment protects citizens against unlawful searches and seizures of their property. Under most circumstances, the police cannot search a person's home or belongings without that person's consent, a warrant issued by a judge authorizing a search, or a very good reason (referred to as "probable cause") for suspecting illegal activity. To discourage illegal searches and seizures, the Supreme Court ruled in 1914's *Weeks v. United States* and 1961's *Mapp v. Ohio* that illegally obtained evidence is inadmissible in court.

The Fifth Amendment lists a number of rights possessed by criminal defendants. Among them is the protection against **double jeopardy**, being tried for the same crime more than once. A defendant who has been found guilty can appeal the verdict, but once he or she has been found not guilty the government doesn't get a second chance at obtaining a conviction. Also included is the right against self-incrimination, which prevents defendants from being forced to testify against themselves in court. (A defendant who "pleads the Fifth" or "takes the Fifth" invokes this right.) Protection against self-incrimination extends to police interrogation, and the 1966 Supreme Court case *Miranda v. Arizona* further established that citizens have the right to know about this and other due process rights. This is why police officers read suspects their "*Miranda* rights," which famously begin with "You have the right to remain silent...."

> Depictions of arrests in film and television often feature police officers reading suspects their *Miranda* rights the moment they slap on the handcuffs. While this can make for a dramatic scene, it is not a legal necessity. A *Miranda* warning is only required prior to the interrogation of a suspect. Still, it is common practice to "Mirandize" suspects upon arrest, to ensure that any potentially incriminating statements they make prior to a formal interrogation can be used against them in court.

The Sixth and Seventh amendments secure additional due process rights, such as the rights to a speedy and public trial, to a trial by a jury of one's peers, and to confront witnesses. The 1963 Supreme Court case *Gideon v. Wainwright*, brought by a homeless drifter who was convicted of robbing a pool hall without a lawyer to defend him in court, resulted in the incorporation of defendants' right to counsel: defendants who are unable to afford a lawyer are entitled to a public defender, provided and paid for by the government, to represent them in court.

The Eighth Amendment prohibits excessive bail and fines as well as "cruel and unusual punishment." In the 1972 case *Furman v. Georgia*, the Supreme Court based its definition of "cruel and unusual" on the punishment's severity, degradation of human dignity (as in the case of torture), inconsistent application, societal rejection, and unnecessity. The *Furman* decision also deemed the death penalty cruel and unusual based on the inconsistency with which it was applied, leading to a nationwide moratorium on executions. States with the death penalty modified their procedures to meet the court's standards, and in 1976 the court lifted the moratorium in *Gregg v. Georgia*. Today, the death penalty is legal in 27 states (as depicted in Figure 5.2 below), although three of those states currently have their own moratoria on executions.

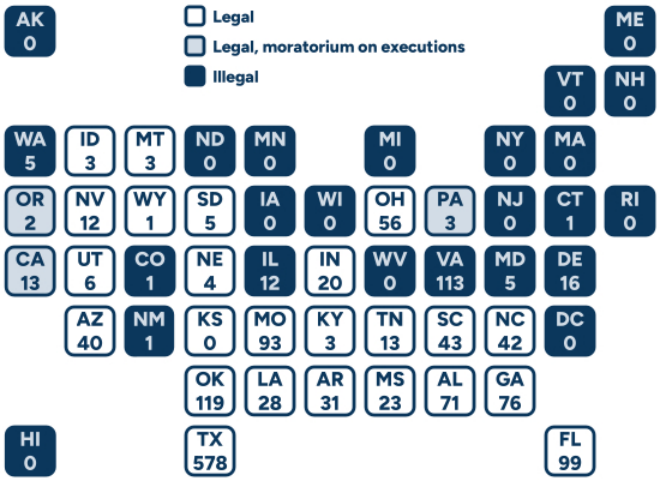


Figure 5.2: Executions by state, 1976–2022, with legal status of death penalty as of 2023 (Source: Death Penalty Information Center)

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5.7: The Paradox of Liberal Democracy

Americans' beloved civil liberties have been redefined and reinterpreted many times since they were articulated in the Constitution and the Bill of Rights. This is due in part to the Founders' brevity: phrases like "freedom of speech" and "cruel and unusual punishment" are vague enough to be interpreted numerous ways, and it often falls to the Supreme Court to determine which interpretations are most faithful to the Founders' intent.

Technological changes have also cast civil liberties in a new light. The right to bear arms has a decidedly different ring to it in an era of automatic and semiautomatic weapons. The proliferation of the automobile raised new questions about what constitutes an unlawful search when vehicles are involved. The invention of the Internet had major implications for unlawful searches, free speech, and self-incrimination. (Can the police demand that you give them your laptop password if they have a warrant to search it? The Supreme Court hasn't decided...yet.) In these and other instances, we have no choice but to go out on a limb to answer questions the Founders never anticipated.

Civil liberties are inextricably bound up with the idea of democracy: the diminishment of the former imperils the latter. Yet, paradoxically, protecting civil liberties is inherently *un*democratic. Democracies are predicated on majority rule, which dictates that the course of action favored by most citizens is the one government should undertake — but the Bill of Rights is a long list of things the government cannot do, even if a majority of the people favors them.

The antimajoritarian nature of civil liberties illuminates whom they are protecting from whom. A civil liberty protects the people, but which people? People with popular opinions hardly need legal protection for their expression, but people with abhorrent, fringe, offensive views rely on the First Amendment to protect their right to say things most of us find reprehensible. Those of us lucky enough never to be charged with a crime will never benefit from the Sixth Amendment right to counsel, but alleged murderers and rapists (who are often convicted in the "court of public opinion" long before their trials, and whom the public would likely deny the right to legal representation if it could) definitely will. The Sixth Amendment right to counsel will never benefit those of us lucky enough to never be charged with a crime, but alleged murderers and rapists (who are often convicted in the "court of public opinion" long before their trials, and whom the public would likely deny the right to legal representation if it could) definitely will. If civil liberties protect these people from their government, and if democratic government is of, by, and for the people, then civil liberties protect the people from *themselves* — specifically, they protect the minority and the marginal from the majority and the mainstream.

Civil liberties are a vital "safety feature" of the American political machine. As with many machines, users are often tempted to disable the safety features for one reason or another. When we hear someone spew hateful rhetoric or watch someone accused of a heinous crime get off on a technicality, we sometimes fantasize about modifying one civil liberty or another, just this once. The paradox of liberal democracy reminds us that such modifications can backfire on us the moment we find ourselves in the minority and facing the majority's wrath.

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CHAPTER OVERVIEW

6: Civil Rights

"We hold these truths to be self-evident, that all men are created equal...." So begins the second paragraph of the Declaration of Independence. Thomas Jefferson included a version of this statement in his initial draft of the Declaration, but it was Benjamin Franklin's idea to add the term *self-evident*. The implication was a bold one: not only was the equality of men a truth, it was a truth so obvious and indisputable that no further explanation or justification was needed to prove it.



The Martin Luther King, Jr. Memorial, situated south of the National Mall in Washington, D.C., has honored the civil rights leader since 2011.

Nearly two-and-a-half centuries hence, it's clear that this ambitious claim was aspirational at best and hollow at worst. The Constitution ensured that America's government would recognize no royal blood or noble titles, but it also allowed slavery to persist for almost a hundred years after independence and racial discrimination even longer. Declaring equality for all *men* rather than for all *persons* also grates on modern ears. Even if one charitably interprets *men* in the classical sense as referring to both sexes, the Constitution provided no practical protection for the rights of women, who were barred from voting in most states at the time of ratification and treated as inferior to men in many other legal domains.

America's struggle to live up to its egalitarian promise is represented in its civil rights history. A **civil right** is a protection from discrimination or unequal treatment. Civil rights limit the abilities of both public and private institutions to treat persons differently on the basis of demographic traits. The nature and extent of these limitations vary depending on the traits and contexts in question.

> Though the terms *liberties* and *rights* are interchangeable, *civil liberties* and *civil rights* are distinct categories of rights. To oversimplify: when you see or hear *civil liberties*, think "freedom," and when you see or hear *civil rights*, think "equality."

Throughout its history, America has changed its perspective on the meaning of equality, both as a governmental structure (with legal reforms) and as a people (with shifts in public opinion). These two types of change have mutually reinforced one another: societal pressures have played a key role in securing new civil rights protections, which in turn have normalized equalities between groups that were far less "self-evident" before they were enshrined in law. How far we have yet to go in the pursuit of equality, and how best to go about getting there, continue to be matters of heated debate in the United States.

6.1: Race
6.2: Sex
6.3: Sexual Orientation
6.4: Modern Civil Rights Challenges

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6.1: Race

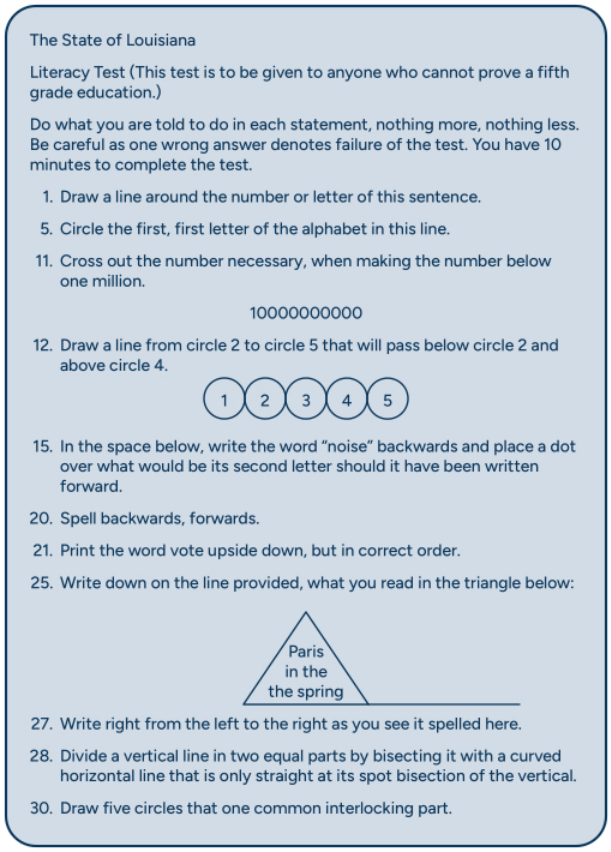
Beginning with the arrival of the first slave ship in Virginia in 1619, approximately ten million people of African descent were brought to or born in America as slaves, forced to labor under excruciating circumstances, brutally mistreated, and denied virtually all political and legal rights. Slavery divided the country at the time of the Constitutional Convention: several northern states had enacted policies to abolish or gradually phase out slavery, while agriculturally dependent southern states practiced it with alacrity. Roughly half of the delegates who gathered in Philadelphia in 1787 to draft a new constitution — including some of those who spoke most vociferously against slavery during the convention — either were or had been slaveowners.

The Constitution failed to settle the issue of slavery, and for several decades the new nation maintained an uneasy truce between "free" states and "slave" states. During the first half of the 19th century, new states were admitted to the Union in pairs — one free, one slave — to preserve a balance of power between the two factions, and dual federalism mostly left slavery up to the states to decide for themselves. Neither trend proved sustainable: with California's admission in 1850, free states began to outnumber slave states, at the same time that the Fugitive Slave Act and the Supreme Court's decision in *Dred Scott v. Sandford* were encroaching on free states' ability to exclude the practice of slavery from their territory.

It took four bloody years of fighting and a victory for the Union (the North) over the Confederacy (the South) in the Civil War to generate enough political momentum to end slavery. In the aftermath, Congress passed and the states ratified three constitutional amendments: the Thirteenth (abolishing slavery and involuntary servitude, except as punishment for crimes), the Fourteenth (establishing equal protection under the law for all citizens), and the Fifteenth (preventing the denial of **suffrage** — the right to vote — on the basis of race).

Although these three amendments made whites and blacks equal according to the letter of the law, that equality was not immediately realized. Southern states, which had supported slavery and joined the Confederacy during the Civil War, were reluctant to upend the racial hierarchy that privileged whites at the expense of blacks in the South. However, they could no longer pass laws which openly discriminated on the basis of race, because such blatantly unconstitutional laws would be struck down by the Supreme Court.

To get around these new restrictions, Southern states passed various **Jim Crow laws** to preserve the race-based social order of whites over blacks. For example, instead of directly barring blacks from voting, some states imposed a **literacy test**, requiring citizens to prove they could read before they were allowed to vote. (See Figure 6.1 below for sample questions from one such test.) To prevent literacy tests from disenfranchising illiterate whites, states also included a **grandfather clause** allowing citizens to skip the test if their ancestors had the right to vote prior to a certain date. This date varied from state to state, but it was always before, during, or just after the Civil War, when whites could vote but blacks could not. Thus, the combination of literacy tests and grandfather clauses was therefore able to prevent many blacks from voting, even though neither policy directly referenced race.



The State of Louisiana

Literacy Test (This test is to be given to anyone who cannot prove a fifth grade education.)

Do what you are told to do in each statement, nothing more, nothing less. Be careful as one wrong answer denotes failure of the test. You have 10 minutes to complete the test.

1. Draw a line around the number or letter of this sentence.
5. Circle the first, first letter of the alphabet in this line.
11. Cross out the number necessary, when making the number below one million.

10000000000

12. Draw a line from circle 2 to circle 5 that will pass below circle 2 and above circle 4.

15. In the space below, write the word "noise" backwards and place a dot over what would be its second letter should it have been written forward.
20. Spell backwards, forwards.
21. Print the word vote upside down, but in correct order.
25. Write down on the line provided, what you read in the triangle below:

27. Write right from the left to the right as you see it spelled here.
28. Divide a vertical line in two equal parts by bisecting it with a curved horizontal line that is only straight at its spot bisection of the vertical.
30. Draw five circles that one common interlocking part.

Figure 6.1: Sample questions from a 1963 Louisiana literacy test, with typos as they appeared in the original document (Source: Civil Rights Movement Archive)

> Literacy tests and grandfather clauses illustrate an important truth: the effect of a law depends not just on what it says but also the context in which it is enforced. To someone unfamiliar with American history, these laws would seem completely unrelated to race — yet, combined with the racial inequality in the United States at the time, they proved to be powerful tools of discrimination and suppression. The "letter of the law" rarely tells the whole story of what impacts a law will have once enacted.

In addition to denying blacks political power by suppressing their right to vote, Jim Crow laws were used to enforce **segregation**, dividing blacks and whites into separate schools, hospitals, restrooms, and other facilities. The 1896 Supreme Court case *Plessy v. Ferguson* (which concerned a mixed-race shoemaker who refused to leave a whites-only railroad car) upheld the constitutionality of segregation provided the facilities were "separate but equal." In practice, the **separate but equal doctrine** was a farce: public accommodations for blacks were often underfunded and poorly maintained compared to those for whites. Half a century later, the Supreme Court overturned *Plessy* in its 1954 decision *Brown v. Board of Education of Topeka*. *Brown* declared racial segregation unconstitutional in schools, and 1964's *Heart of Atlanta Motel, Inc. v. United States* extended this logic to ban racial segregation in all public accommodations.

Social movements played a vital role in the struggle for racial equality. Boycotts, acts of civil disobedience, and nonviolent demonstrations organized by Martin Luther King, Jr. and other civil rights leaders brought national attention to discriminatory state and local laws and put pressure on Congress to step in. This pressure ultimately resulted in three major pieces of legislation — the 1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1968 Fair Housing Act — which together formed a strong foundation for national government involvement in the protection of rights for citizens of all races.

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6.2: Sex

The postwar amendments targeted racial inequalities but dodged the question of equality between the sexes. Parts of the Fourteenth Amendment applied only to “male citizens,” and the Fifteenth Amendment prohibited disenfranchisement on the basis of race but not on the basis of sex. However, a parallel civil rights movement to extend rights to women had already been percolating since before the Civil War. The first women’s rights convention, held in Seneca Falls, New York, in 1848, produced a list of political goals (including the right to vote) and laid the groundwork for future conventions and organizations (such as the National American Woman Suffrage Association) in pursuit of those goals.

Whereas the Fifteenth Amendment struck down racial restrictions on voting in one fell swoop, the movement for women’s suffrage began more gradually as a state-by-state campaign. Wyoming became the first state to allow women to vote when it joined the Union in 1890, its territorial legislature having already passed a law granting women suffrage in 1869. Other states, predominantly western ones, followed suit. By the time the Nineteenth Amendment made women’s voting rights a nationwide standard in 1920, women had already won full suffrage in 18 states and partial suffrage in 22 others.



The cover of the program for the 1913 Women’s Suffrage Procession depicts women advancing on the U.S. Capitol to press their case for voting rights.

After the ratification of the Nineteenth Amendment, the women’s rights movement in the United States lost some of its cohesiveness as its constituent groups pursued different policy agendas. It regained its strength in the 1960s and converged with the movement for racial equality to push for the Civil Rights Act, which forbade employment discrimination on the basis of sex as well as race. Eight years later, Congress enacted **Title IX**, which prohibited sex discrimination in educational institutions receiving federal aid. Title IX continues to influence many aspects of education today, from the balance of men’s and women’s college sports to the handling of accusations of sexual harassment on campus.

> Though the movements for racial and sexual equality in the United States share many similarities, the two have not always been allied. Some anti-slavery organizations excluded women from their activities, and some women’s rights organizations did the same to blacks. Certain women’s rights groups also opposed the Fourteenth and Fifteenth amendments on the basis that they did not extend to women, whom they considered more deserving of the rights in question than blacks were.

In the same year Title IX was enacted, Congress also passed the Equal Rights Amendment, designed as a comprehensive statement of sexual equality that would have eliminated virtually all legal distinctions between men and women. As a proposed constitutional amendment, the ERA required ratification by three-fourths of the states. Opponents of the ERA (including many women) argued that it would end certain legal protections enjoyed by women, such as their exemption from being drafted into the military and their advantage in child custody hearings. This counter-mobilization was successful: when the deadline to ratify the ERA arrived in 1982, only 35 of the required 38 states had ratified it, and three of those had already rescinded their ratifications.

A particularly controversial area of women's rights — one that is sometimes classified as a civil liberties issue and other times as a civil rights issue — concerns sexual activity. In the 1965 case *Griswold v. Connecticut*, the Supreme Court struck down a Connecticut law banning contraceptives on the basis that the Constitution contains a **right to privacy**, which protects intimate personal activities — including the decision to use birth control — from excessive government intrusion. The court could not identify an explicit statement of a right to privacy in the Constitution; instead, it ruled that such a right could be inferred from parts of the First, Third, Fourth, Ninth, and Fourteenth amendments.

The right to privacy was again invoked eight years later in 1973, when the Supreme Court heard the landmark case *Roe v. Wade*, involving a woman who had been unable to obtain an abortion in Texas and was challenging the state's abortion ban. The court ruled that the right to an abortion was a fundamental component of the right to privacy and declared abortion bans unconstitutional. This was a major turning point in the decades-long debate between "pro-life" advocates who argued that the life of an unborn child outweighed the freedom of a woman to make her own reproductive decisions and "pro-choice" advocates who argued the opposite. In 2022, the court determined in *Dobbs v. Jackson Women's Health Organization* that *Roe* was wrongly decided, overturning it and sending control of abortion policy back to the states.

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6.3: Sexual Orientation

The movement for civil rights pertaining to sexual orientation in the United States rose to prominence beginning in the 1960s. Romantic relationships between people of the same sex existed in America before this time but were often concealed for fear of legal and societal condemnation. With the ’60s came a new, more critical perspective on traditional morality, particularly as it applied to sexual activity. Lesbian, gay, bisexual, and transgender Americans who had previously kept their identities and relationships secret began to not just admit but celebrate them openly in defiance of those who disapproved of their lifestyles.

As with other civil rights movements, the LGBT rights movement made federal litigation a key element of its strategy. The 1986 Supreme Court case *Bowers v. Hardwick* upheld a Georgia anti-sodomy law that criminalized homosexual sex (among other sexual activities). Seventeen years later, the court reversed itself in the 2013 case *Lawrence v. Texas*, citing the right to privacy as a reason for striking down all state laws forbidding same-sex sexual activity.

Following the Supreme Court’s decision in *Lawrence v. Texas*, Massachusetts became the first state to legalize same-sex marriage in 2004. Some states followed Massachusetts’s lead; others legalized “civil unions” between same-sex couples which were similar to but not technically marriages; still others passed constitutional amendments defining marriage as a relationship between one man and one woman. This patchwork of marriage laws was ultimately made uniform in 2015, when the Supreme Court ruled in *Obergefell v. Hodges* that the Fourteenth Amendment guaranteed same-sex couples the same right to marry as opposite-sex couples. Five years later, the court declared in 2020’s *Bostock v. Clayton County* that the 1964 Civil Rights Act protects employees from discrimination on the basis of their sexual orientation or transgender status.

At the same time as American laws have changed to be less hostile and more open to same-sex relationships, Americans themselves have become more accepting of them (as demonstrated in Figure 6.2 below). This shift in public opinion has been both a cause and an effect of legal change: as public support for previously frowned-upon lifestyles increases, so does the pressure on political actors to change laws, which in turn serves to normalize the newly legal activities in the minds of the public. For a sense of how rapidly this change occurred in the United States, consider that Barack Obama campaigned for president in 2008 as a Democrat while opposing same-sex marriage (though at the time he described his views on the issue as “evolving”). Obama was succeeded in office by Donald Trump, a Republican who ran for president in 2016 while supporting same-sex marriage and who even held up a rainbow pride flag at one of his campaign events.

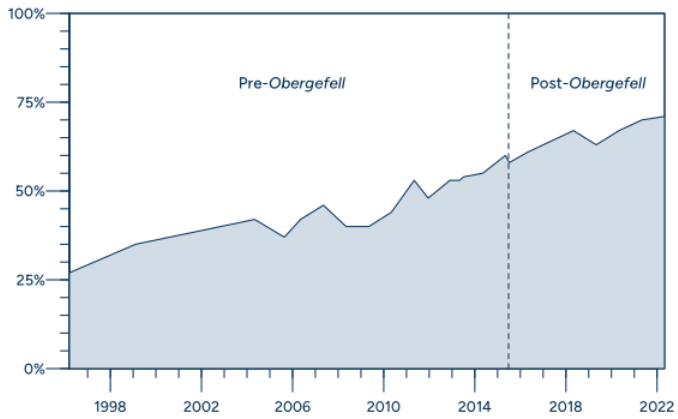


Figure 6.2: Percentage of Americans supporting same-sex marriage before and after Obergefell v. Hodges, *1996–2022 (Source: Gallup)*

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6.4: Modern Civil Rights Challenges

Though its laws have changed dramatically over time, America's long struggles with issues of civil rights are not over. Inequalities persist in various aspects of American society, despite laws and constitutional amendments testifying to the legal equality enjoyed by members of different demographic groups. Many of these inequalities are systemic in nature, so ingrained in American institutions and society that they cannot be simply or easily nullified by passing a law.

A particularly salient example of systemic inequality concerns race and criminal justice. In the United States today, blacks experience (on average) worse outcomes than whites at almost every stage of the criminal justice process, including being more frequently stopped and questioned by police. Disproportionate police stops could arise from deliberately racist policing strategies, but they could also result from the fact that many high-crime areas of cities — where police are particularly likely to patrol — have predominantly black populations. This latter explanation, if true, does not mean that racism is not at fault: centuries of slavery and racial discrimination in the United States have left blacks poorer than whites in general, and poorer areas of cities also tend to have higher crime rates. What it does mean, rather, is that eliminating racial imbalances in the criminal justice system would require something more than just identifying and removing individual racist cops and judges.

Another frequently discussed systemic inequality is the fact that the average working man earns a higher wage than the average working woman. This disparity could reflect the biased hiring and promoting of men over women, but it could also reflect the fact that women in the workforce tend to choose lower-paying career fields than men do. (When different career fields are taken into account, the wage gap between men and women is much smaller.) This tendency could itself be a consequence of sexist societal perceptions of what constitutes "women's work" that affects the types of careers young boys and girls aspire to. If sexism influences the wage gap in this way, how to undo its influence is by no means straightforward: societal perceptions are far more difficult to change than individual sexist bosses or job recruiters are to remove or punish.

One strategy for reducing inequality is **affirmative action**, the preferential treatment of members of underrepresented groups to compensate for past discrimination. The American government began using race- and sex-based affirmative action in the 1960s to diversity its employees and contractors, and the practice was later adopted by many private companies and both public and private colleges. Some praise affirmative action for "leveling the playing field" by mitigating systemic inequalities in employment and education; others consider it "reverse discrimination" that merely perpetuates unequal treatment on the basis of race, sex, or other demographic criteria. In 2023, the Supreme Court ruled in two cases (*Students for Fair Admissions v. Harvard* and *Students for Fair Admissions v. University of North Carolina*) that race-based affirmative action in college admissions is unconstitutional.

Civil rights disputes often involve one person's or group's rights conflicting with another's. One such clash of rights was apparent in the 2018 Supreme Court case *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, which involved a Christian baker refusing to bake a wedding cake for a gay couple. The couple claimed the baker's refusal was discriminatory and violated their civil rights; the baker claimed requiring him to bake a cake for a ceremony that contradicted his beliefs violated his freedoms of religion and speech. (The court issued a narrow ruling in favor of the baker and broadened that ruling five years later in *303 Creative v. Elenis* to cover other creative professions as well.) Another impasse has emerged in the realm of high school athletics over whether transgender athletes who identify as women should be allowed to compete in women's sports. Some argue that barring transgender women from women's sports discriminates against them, whereas others contend that allowing transgender athletes to compete with the unfair advantage of male physiology discriminates against women who are not transgender.

Debates over competing rights often produce some of the most emotionally charged political arguments in America today. Even the language is politicized: the word *right* implies absoluteness and inviolability, which is one reason why it is used so often by policy advocates. (Consider the policy battles over abortion between those championing "the right to life" and those promoting "reproductive rights.") But no right is truly absolute or inviolable, and expanding any particular right means curtailing the ability of other rights to prevail against it. Determining just how far each right should extend in relation to other rights is much easier said than done.

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6.5: The Promise of Equality

In the United States, consumers are protected by law from companies which engage in “false advertising” by making untrue or exaggerated claims about their products. If a product is packaged or sold in such a way as to give buyers false expectations about its functionality or quality, a court may force the company to compensate the buyers for having misled them.

At various points in America’s existence, its users would have had a compelling argument that their machine was falsely advertised. (Whether now is one of those times is a matter of much debate.) As nobly and high-mindedly as the Declaration of Independence and the Constitution described the ideals they were intended to pursue, reality often fell short of expectations, far more for some users than others. Liberty and democracy without equality hardly deserve to be called by their names, though it has often taken Americans longer to understand this than we would like to admit.

Some of the civil rights issues America deals with today have been around in one form or another since before the country itself existed, while others have emerged only recently. America’s working definition of equality has changed over time, and there is every reason to expect it will again in the future, in ways we would struggle to imagine (let alone condone) today. While we can be justifiably proud of how far the United States has come in some domains of civil rights, we must take care not to become too haughty. A hundred years from now, Americans may consider our present-day beliefs about equality and rights as antiquated and shortsighted as we today consider those of Americans a hundred years ago.

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7: Public Opinion

Democracy is meant to be a reflection of the people. The principles of popular sovereignty and majority rule obligate a government to pay attention to what its citizens want. By the same token, they obligate citizens to convey what they want to government. After all, the people cannot have a say in how they are ruled, nor the majority's preferred course of action be ascertained, unless the public somehow collectively expresses its political views.



Tourists' images are distorted and reflected back at them by Cloud Gate, a sculpture in Chicago's Millennium Park.

But how effective is government based on public opinion anyway? Are the people as a whole capable of sending clear, accurate signals to policymakers about what they want? If so, should policymakers listen? We all like to get what we want, but we also recognize that sometimes what we want isn't what we need, and that other times we don't even know what we want.

Before deciding whether or how much government should rely on public opinion, we must answer two more fundamental questions. First, does the public actually have opinions about political issues that could, in principle, be used to chart a course for a democracy? Second, is there a mechanism by which those opinions can be extracted and compiled in such a way as to give government officials an accurate sense of what the public wants them to do?

The answer to both of these questions is a qualified yes. People do have political views, though these views are often less stable than is commonly assumed. And these views are discoverable through sophisticated polling techniques, though even the best polls are limited in their ability to accurately sum up how the populace thinks and feels about political issues. Behind every presidential approval rating or issue poll is a thorny thicket of human psychology and statistical methodology that is both challenging and fascinating to untangle.

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7.1: Attitudes and Opinions

An **attitude** is an orientation or predisposition toward some object. This object could be a person (such as the president), a group (such as the Republican Party), an idea (such as the death penalty), or something else. An attitude must have an object: approval of the president, warmth toward the Republican Party, and opposition to the death penalty are all attitudes, but approval, warmth, and opposition by themselves are not.

Attitudes are highly influential on political behavior. It is no surprise, therefore, that many people — politicians, journalists, political scientists, average citizens — want to know what attitudes the public holds. But attitudes as they exist in people's minds are too intricate to be measured directly. The most advanced technology available for brain imaging cannot tell us exactly how someone thinks or feels about tax cuts or drone warfare, much less how strong or durable those thoughts or feelings are.

Although attitudes themselves cannot be directly measured, the expression of those attitudes can be. An **opinion** is a measurable manifestation of an attitude. Opinions can be spoken, written, or signaled in some other way that expresses an underlying attitude. Thus, the term *public opinion* refers not to the collective attitudes of a populace but rather the collective expressions of those attitudes.

At best, an opinion is only an imperfect representation of an attitude. Consider the classic public opinion survey question of whether someone approves or disapproves of the job the president is doing. You can probably think of at least a dozen factors that influence your approval or disapproval of the president's job performance, but pollsters cannot discern those factors from your one-word answer of "approve" or "disapprove," nor can they distinguish your answer from someone else's which is the as yours same but for completely different reasons. Like a two-dimensional photograph of a three-dimensional object, no opinion can fully express the attitude on which it is based.

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7.2: Opinion Dynamics

Opinions — political or otherwise — shift frequently. When asked the same or similar questions at different times, we often change our answers whether those times are months, days, hours, or even just minutes apart. Attitude change is one possible explanation for opinion change, but opinions can also vary even if the attitudes on which they are based remain constant.

The instability of opinions is rooted in human psychology. Generally, we do not store preformed opinions in our minds, ready to deploy one if someone asks. Instead, we generate opinions on the fly when they are required of us, based on pieces of information stored in our memory. This is why you can encounter totally novel decisions — whether to try an unusual food, what to tell a friend about his or her new outfit, how impressive an artistic or athletic performance was — and make snap judgments with no preparation. You won't always be satisfied with these snap judgments, but your ability to make them at all instead of being paralyzed with indecision demonstrates that opinion formation often happens in the moment.

When people generate opinions on demand, they generally do not consider all the relevant information in their minds before reaching a conclusion. You would likely think about only a handful of reasons to approve or disapprove of the president before stating your opinion, even though you might be able to list a hundred reasons if given enough time. Your attitude toward the president may consist of many factors, but only a few will influence the opinion you render. The **salience** of the information in your head — how likely each piece of information is to come to mind — determines which factors you consider when forming an opinion. The more salient a factor, the more likely you are to consider it.

The salience of information in a person's mind changes over time due to **priming**. Events and experiences can "prime" certain information, making it temporarily easier to recall and therefore more influential in opinion formation. This is why Americans are likely to report feeling more patriotic if they are asked in July than if they are asked in April. In July, Americans are primed by Independence Day celebrations to think about the benefits of their citizenship, whereas in April they are primed by the deadline for paying their federal income tax to think about its costs. Primes don't necessarily change people's attitudes, but they do change which parts of those attitudes come to mind most readily, for at least long enough to affect which opinions are expressed.

> Although primes can be surprisingly effective at changing opinions almost instantaneously, it's important to not overstate their impact. Primes tend to be most influential right when a person is first exposed to them, after which their potency declines rapidly. One reason for this phenomenon is that people are exposed to so many primes that the effect of any one prime is quickly superseded by multiple other primes, unless the initial prime is particularly powerful or repeatedly reinforced.

How opinions are solicited can influence the salience of factors in a person's mind, thereby influencing the opinions they report. **Framing** is a special category of priming which stems from how questions or issues are presented. For example, supporters of abortion often refer to "reproductive rights" when describing the issue, whereas opponents of abortion often mention "the right to life." These expressions are used specifically to frame the issue of abortion by emphasizing different factors (the rights of the mother versus the rights of the child) with the goal of making those factors more salient. Most public opinion researchers try to avoid biased framing when designing survey questions. Nevertheless, unintentional framing effects often produce noticeable effects on opinions, even when they have no lasting impact on underlying attitudes.

Primes and frames do not impact all people equally. The same prime or frame might impact one person strongly, a second weakly, and a third not at all. It is impossible to know based on a single survey response how much of a role a particular prime or frame played in shaping that response. Still, primes and frames can influence enough people to cause substantial shifts in public opinion overall. Understanding how and in what contexts opinions are solicited are asked is therefore crucial for interpreting public opinion data.

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7.3: Sources of Public Opinion

Political attitudes differ because people experience politics in different ways. Government enables a diverse society to solve collective action problems, but those problems (and their solutions) impact certain people more than others. Even defining what counts as a problem is tricky: a status quo that some find intolerable may be ideal for others. It is therefore no surprise that people disagree with one another about politics.

People's differential experiences with politics are often linked in some way to their identities. An **identity** is a stable, defining characteristic of a person that affects many aspects of their life. A person's identities might include their sex, age, race, ethnicity, education level, income level, religion, sexual orientation, occupation, and party, among others. (Note that identities are distinct from character and personality traits, such as "hardworking" or "shy.")

Not every personal characteristic is a strong identity for every person who shares it. Two people may both classify themselves as Catholic, but the one who regularly attends Mass, strives to abide by Catholic teachings, and is actively involved in parish activities probably identifies more strongly as a Catholic than the one who grew up Catholic but is no longer practicing. Similarly, two people may both consider themselves Chinese-American, but that identity is probably more central to the one who speaks Chinese, practices Chinese cultural customs, and maintains a social network of many other Chinese-Americans than to the one who does not. A person can be technically classified as a member of a group without necessarily identifying with that group.

Public opinion data suggest that identities strongly influence political attitudes and opinions. Large gaps persist between the political opinions of different demographic groups, indicating that these identities shape the ways people react to politics. For example, in the United States, on average, blacks tend to be significantly more supportive than whites of the Democratic Party. This does not mean that *all* blacks support the Democratic Party, nor does it mean that any specific person supports the Democratic Party *because* he or she is black. Nevertheless, the trend is sizable and stable enough to suggest that there is some important relationship between race and party support in the United States.

Not all influences on public opinion are as stable as identities. Local, state, regional, national, and international events can have temporary or lasting effects on how people think and feel about politics. The president's job approval (as recorded in Figure 7.1 below) tends to sharply increase at the start of a war but gradually decrease as costs and casualties mount. Presidents also tend to get credit or blame for economic booms and recessions that happen while they are in office, regardless of whether they deserve it. Natural disasters, terrorist attacks, and political scandals can have both short-term and long-term impacts on what issues citizens think are most important, what policies they support, whether and how much they trust their government, and many other elements of public opinion.

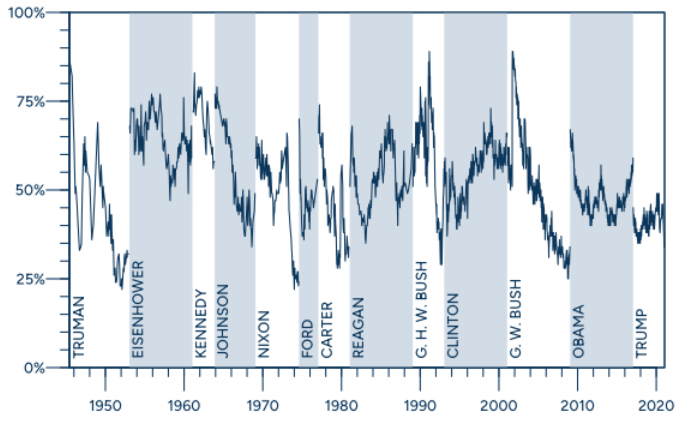


Figure 7.1: Presidential approval, 1945-2021 (Source: The American Presidency Project)

Events can also interact with identities to produce differential effects on public opinion. The September 11 attacks on the World Trade Center and the Pentagon shocked and horrified many Americans, but New Yorkers and Washingtonians experienced them most directly — and American Muslims encountered heightened levels of fear, suspicion, and hatred from non-Muslims in the aftermath of the attacks. The COVID-19 pandemic affected just about everyone around the world, but its effect differed depending

on whether a person was a healthcare worker, whether he or she had school-aged children, etc. In these and other cases, our identities shape how we experience events, which can in turn influence how those events impact our political perspectives.

The many different factors that influence our opinions make it impossible to credibly claim that any one person's opinion is caused by any one factor, or to determine precisely how much of that opinion is attributable to a specific identity or event. Even asking people why they believe, feel, or think a certain way may not produce an accurate answer, as we often don't know or don't want to admit the true reasons behind our opinions. Still, the public opinion trends we do observe related to identities and events are robust enough for us to make claims about public opinion overall, even if the individual opinions which make it up remain difficult or impossible to fully explain.

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7.4: Measuring Public Opinion

Public opinion is most commonly measured by polling. A **poll** or survey is a process of soliciting opinions from people about a particular topic. Polls purport to speak about a group's views, but they almost never include every member of the group, as this would be impractical or impossible unless the group is very small. Rather, pollsters ask questions of a **sample** (a small subset) of a **population** (the group whose opinions they want to know and understand).

> Outside of polling, the term *population* usually refers to every person living in a given territory. The population from which a sample is drawn for a poll, however, can be (and usually is) much narrower. A typical election poll might draw a sample of 1000 or so respondents from a population defined as all likely voters or all registered voters. People who can't or probably won't vote aren't part of the population, because the poll's purpose is to predict the result of the election. Including kindergartners (or anyone else unlikely to vote) in the population from which the sample is drawn wouldn't help the poll fulfill its purpose.

Although polls typically use samples which are less than 1% of the population they want to learn about, they can still capture public opinion quite accurately thanks to statistics. If 50% of Americans approve of the president's job performance and a pollster interviews a random sample of 100 Americans, it is likely that the number of respondents in the sample who approve will be close to 50. The pollster could be unlucky and draw a sample in which only ten people approve, but such instances are rare if the sampling is done properly. These likelihoods and unlikelihoods can be calculated mathematically, so we can look at the opinions expressed by a well-drawn sample and be reasonably confident that they closely resemble the opinions which would be expressed by the entire population.

The trustworthiness of a poll depends in large part on its **representativeness**. A representative sample is one that resembles the population from which it was drawn. If the population is 50% women, for example, a representative sample would also be 50% women (or very close to that). If the sample were 80% women instead, we might wonder whether it could accurately reflect the population's views, given how severely it overrepresents women and underrepresents men. The same concerns apply to other potentially relevant demographic characteristics, including age, race and ethnicity, education, income, ideology, and partisanship.

Although public opinion polls have been conducted in the United States since the 1820s, scientific polling based on representative samples only became common in the middle of the 20th century (which is why the presidential approval chart on the previous page begins with Harry S. Truman and not George Washington). Prior to this period, many polls relied on "convenience samples" which overrepresented the types of people who were easiest for pollsters to reach, often to the detriment of their accuracy. Modern polling techniques achieve a high degree of representativeness by using census and election data to draw samples that closely match the population in terms of demographics and "weighting" their results to correct for over- or underrepresentation.

Even a well-executed poll based on a representative sample will rarely match the population's opinions exactly. To acknowledge this, responsible pollsters report a **margin of error** alongside their poll results. This margin of error is calculated statistically and describes a range within which a pollster is reasonably sure — usually 95% sure, to be precise — the true value of public opinion is contained. If a poll indicates that 48% of Americans approve of the president's job performance with a ±3% margin of error, that means the pollster is 95% certain that the president's true approval rating is somewhere between 45% and 51%. (This still leaves a 5% chance that the president's true approval rating is less than 45% or greater than 51%.) The larger the sample, the smaller the margin of error (as shown in Figure 7.2 below).

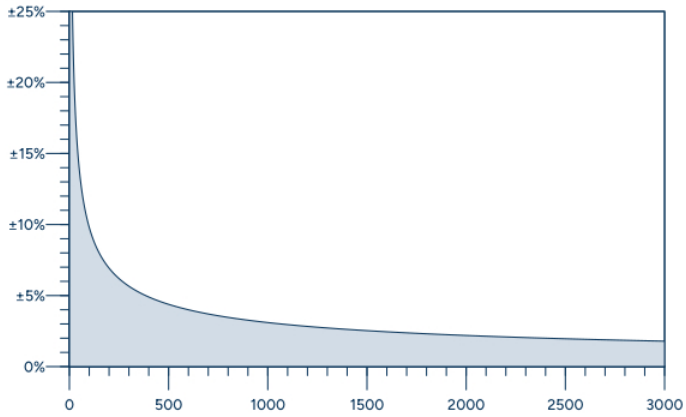


Figure 7.2: Margin of error by sample size (Note: Margins shown are based on evenly split public opinion. When public opinion is lopsided, margins of error are smaller.)

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7.5: Problems in Public Opinion Measurement

Polling is a science, but an inexact one. Often two polls purport to describe the same population over the same time period but contradict one another in such a way that both cannot be correct. There are several potential sources of error which can bias the polling process and therefore the accuracy of poll results.

Coverage error occurs when not everyone in the population is equally likely to be sampled. Some of the earliest (unscientific) polls in America were conducted in taverns and on trains, resulting in samples that were easily accessible but poor matches for the overall public. Until relatively recently, modern telephone pollsters often did not call cell phones, which led to them undersampling young people and non-homeowners (who tended to not own landline phones). These biases can change the composition of the sample in numerous ways, making it an inaccurate representation of the population.

Nonresponse error occurs when not everyone who was sampled responds to a poll. Over time, nonresponse rates in polling have increased: today, a telephone pollster who calls ten people can expect nine of them (on average) to hang up without completing the poll. If this pattern of nonresponse is nonrandom, it can make the poll less accurate, even if the sample itself is representative. The young, the employed, and the politically disengaged are less likely to respond to an invitation to take a public opinion poll about politics than the old, the unemployed, and the politically engaged, all of whom tend to have more time for and interest in sharing their political views.



A jubliant Harry S. Truman holds up a newspaper erroneously proclaiming his defeat in the 1948 presidential election, based on early polls that failed to capture Truman's eleventh-hour comeback.

Measurement error occurs when the questions asked on a poll fail to adequately capture the opinions being sought. This failure can occur because the questions are worded in a confusing or biased manner, because the answer choices given to respondents do not cover all plausible options, or because the respondents themselves are unable or unwilling to answer the questions accurately. In the United States, for example, self-reported voter turnout is typically much higher than actual voter turnout, because nonvoters have a tendency to lie to pollsters and claim that they performed their civic duty.

A poll about marijuana legalization could easily produce each of these types of error. The poll could frame marijuana use in unflattering terms, thereby artificially depressing support. It could also force respondents to choose only “support” or “oppose,” without including an option for people who believe marijuana should be legal for medical but not recreational purposes. Finally, respondents might lie when asked whether they smoke marijuana to avoid the social stigma attached to marijuana use. In each case, public opinion would be distorted by the error.

No poll is completely without error, and even an error-free poll would at best be a measurement of the way things are at a particular moment in time. Attitudes and especially opinions change with new events and circumstances, and there is no guarantee that a poll conducted today will still accurately reflect public opinion a year, month, week, or day later. If an election poll taken in October does not match the results of the election held in November, that does not mean the October poll was wrong, only that it was no longer accurate by the time the votes were cast.

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7.6: Vox Populi, Vox Dei?

Machines take inputs and convert them into outputs. The American political machine takes public opinion as its input and converts it into government policy. Americans tend to like this arrangement, at least in theory. To some, it seems like the most effective method of governing a country in a way that will please the populace. To others, it is a moral obligation, and it would still be the the right thing to do even if it weren't particularly effective.

Americans' faith in democracy can be summed up by the Latin phrase *vox populi, vox Dei*: "The voice of the people is the voice of God." We cite polling data on the popularity or unpopularity of politicians, parties, and policies with an air of finality, as though they were judgments issued from some almighty being. Whenever politicians pursue unpopular agendas over the public's objections, there is a sense that our democracy is in some way being diminished.

Of course, the will of the people is not almighty in America. Many crucial government decisions are made by political and legal experts, insulated from public influence. Often this is done for the public's own benefit. After all, public opinion has many shortcomings. Our opinions are inconstant, changing with the times and not always for good reason. We are uninformed or underinformed on many important issues, and it shows: many government policies that were popular to begin with turned out unsuccessful or even disastrous. The principle of "garbage in, garbage out" warns us not to be surprised when the machine that is America produces shoddy outputs from poor-quality inputs.

Thus, *vox populi* differs from *vox Dei* in at least two respects: the public is neither all-powerful nor all-knowing. As an indirect democracy, America is structured to channel the uninformed and fickle force that is public opinion into effective government action. It attempts to balance letting the people have a say in how they are ruled with trusting the judgment and expertise of government officials to occasionally go against the public's wishes when circumstances call for it. How well it achieves this goal is — like so many things in American politics — a matter of opinion.

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CHAPTER OVERVIEW

8: Interest Groups

m interest, as it pertains to interestThe deadliest high school shooting in U.S. history occurred at Marjory Stoneman Douglas High School in Parkland, Florida on February 14, 2018, when a 19-year-old former student killed 14 students and three staff members. Mass shootings — usually defined as incidents involving four or more victims — happen tragically often in America, enough that most Americans are familiar with what happens in their aftermaths. First, frantic news coverage scrambles to establish the details while the shooter is still active. Then begins the somber work of numbering and naming the dead. Statements of sympathy and vows of change are issued by politicians and other public figures. After a few days of grieving, the nation quietly moves on to the next news item, while those personally affected wish they could forget what happened as easily as the rest of us can.



Students protest in favor of stricter gun control laws in Washington, D.C., during March for Our Lives in 2018.

Parkland's survivors were determined not to let their tragedy fade into history like so many others had. Less than a week after the shooting, they announced that a march would take place the following month in Washington, D.C. Celebrities, corporations, and advocacy organizations pledged support. Companion events were planned in all 50 states. Students made appearances on national news programs to share their experiences and publicize the protest. Over a million Americans took part in the March for Our Lives, with thousands more joining in from around the world. It was hard to imagine a more effective way of sending the message that stricter gun control laws were urgently needed to prevent further bloodshed.

And yet, despite the protests, and despite the fact that a majority of Americans favored making it more difficult for people to obtain guns, very little changed in terms of policy. Florida tightened some of its laws regarding firearms purchases, and Congress allocated funding for increased school safety provisions such as metal detectors, but no major national gun control policies came to fruition. For many of the young people who took to the streets to demand government action to address gun violence, this outcome was a bitter disappointment.

In Chapter 7, we examined the American people and their opinions at the individual level and the American people as a unified entity whose collective view constitutes "public opinion." However, much of "government of the people, by the people, for the people" occurs somewhere between the individual level and the national level. To understand why March for Our Lives was so successful at drawing public attention to the issue of gun control and yet so unsuccessful at channeling that attention into government action, we must also examine the American people from a third perspective: as an assortment of groups.

8.1: Strength in Numbers
8.2: Types of Interest Groups
8.3: Interest Group Tactics

8.4: Influencing Elections
8.5: Interest Groups and Collective Action
8.6: Interest Groups and Democracy
8.7: Group Politics

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8.1: Strength in Numbers

Most people have political preferences of one sort or another. These preferences vary in their origin and strength, and not everyone has a firm stance on every issue. Still, almost all of us can articulate something about how the government works that we would either like to change or like to keep the way it is.

Although we have political preferences, most of us lack the power to do much of anything about them individually. Unless you are a government official, a celebrity, or some other highly influential person, your ability to impact national, state, or even local politics on your own is severely limited. Popular sovereignty means that power rests with the people, but large populations mean that each person possesses only a minuscule fraction of that power.

We can increase our power by combining it with that of others who share our interests. By yourself, you might struggle to get the government's attention if, for example, you protest a law you think is unjust. Find a handful of people who agree with you and are willing to protest alongside you, and together you might make the local news. Increase that handful to a hundred, or a thousand, or a million, and eventually you become impossible to ignore (though you still might not get what you want).

An **interest group** is essentially that: an organized group of people that seeks to influence public policy in some way. Its members may not agree on every issue, but they agree enough on one issue or set of issues to band together in pursuit of their desired policy outcomes. Interest group membership is generally not exclusive; a single person might be a member of multiple interest groups, each pursuing a different objective or set of objectives.

> The ideal The term *interest*, as it pertains to interest groups, is not synonymous with *hobby* (although interest groups can and sometimes do form based on hobbies). Any policy from which you stand to benefit is considered to be "in your interest." Politically speaking, your interests are not what fascinates or intrigues you (in the sense that you find them "interesting") but rather what things would be good for you if they existed or happened.law is easy to remember and apply in solving problems, as long as you get the **proper values a**

Interest groups are akin to parties (the subject of the next chapter), which also act collectively to influence public policy. The main difference between an interest group and a party is how they go about pursuing their goals. Parties strive to win elections and obtain government offices from which they can enact policies, whereas interest groups attempt to persuade government officials to act in certain ways. Parties want to put their members in government; interest groups want to influence government while remaining outside of it.

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8.2: Types of Interest Groups

Roughly half of the interest groups active in Washington, D.C., including all of the top ten groups by spending in 2022 (as shown in Figure 8.1 below), are economically focused. Some, such as the United States Chamber of Commerce, are made up of companies in multiple industries and advocate for policies that are good for business in general, such as lower taxes and deregulation. Others, such as the Pharmaceutical Research and Manufacturers of America, consist of companies in the same industry — in PhRMA's case, drug manufacturing — and push for policies beneficial to that industry. Individual corporations, such as Coca-Cola, sometimes function as interest groups to influence government policy in their favor. Professional associations representing specific occupations, such as the American Bar Association (which promotes the interests of lawyers), also fall under this economic umbrella.

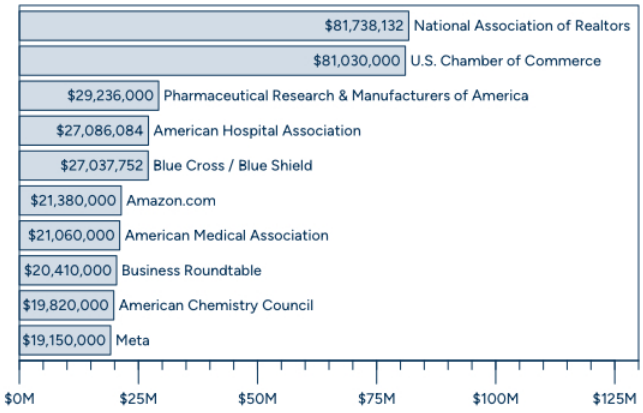


Figure 8.1: Top ten interest groups by lobbying expenses, 2022 (Source: Open Secrets)

An important subset of economic interest groups is labor unions. These organizations, such as the AFL-CIO (the largest federation of labor unions in the United States), stand for worker's rights and advocate for policies such as higher wages, safer working conditions, and generous benefits programs. Labor unions often find themselves at odds with business groups over these policies, with the former arguing that they are necessary for workers' well-being and the latter contending that they are bad for business. The power of unions, especially private-sector unions, in the United States has declined over time from its peak in the 1950s. No unions appear among the ten top-spending groups in 2022 — in fact, if the spending of all U.S. labor organizations was combined, they would only come in at number three on the list — but they nonetheless remain an influential force in American politics.

Some interest groups are primarily concerned not with economic issues but with other aspects of politics. These groups are sometimes called "public interest" or "single-issue" groups, depending on how broad their goals are. AARP (formerly the American Association of Retired Persons) and the National Association for the Advancement of Colored People (NAACP) exist to promote the interests of the groups represented in their names. The American Legion, the National Rifle Association, Planned Parenthood, and the Sierra Club all concentrate their advocacy on a specific issue or issue area (veterans affairs, gun rights, abortion, and the environment, respectively).

Yet another class of interest groups is made up of governments (or coalitions of governments) trying to influence other governments. One such group, the National League of Cities, advocates on behalf of municipal governments, focusing their efforts on policies related to American federalism that impact cities. Foreign governments also send representatives to the United States to push for diplomatic, economic, and security policies to benefit their countries; Israel, Japan, and Saudi Arabia are among the biggest spenders in this category. These organizations meet the definition of *interest group* because, although they are governments themselves, they are attempting to influence the actions of a different government (the U.S. national government) from outside that government.

> This chapter mostly focuses on interest groups that pressure America's national government in Washington, D.C., but interest groups can and do pressure state and local governments as well. America's federal system separates power across multiple levels of government, and outside organizations attempt to influence how that power is exercised wherever it resides.

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8.3: Interest Group Tactics

The main mechanism through which interest groups attempt to influence public policy is **lobbying**. Many interest groups hire registered lobbyists to contact members of Congress and persuade them to cast votes, sponsor bills, or make speeches favorable to their groups' interests. This persuasion involves providing members of Congress with information about issues they consider important. Congress relies heavily on interest groups for such information, though of course each interest group focuses on information that supports its side of the issues. Sometimes interest groups even write whole bills and present them to senators or representatives in the hope that they will formally introduce those bills into Congress.

Lobbying has a negative reputation among the American public, and lobbyists are often thought of as sleazy political operators, willing to bribe politicians to change their minds and break the promises they made to their constituents. This caricature is unfair in a few ways. First, lobbyists must abide by complex and strict laws that prohibit, among other things, outright bribery (though some do occasionally get caught breaking these laws). Second, rather than attempting to change minds, lobbyists prefer to seek out politicians who already agree with them on key issues and then persuade them to act on those issues. Finally, although some lobbyists lobby politicians to act against their constituents' interests, others lobby them from the other side to remember the wants and needs of the voters who elected them.

Besides contacting politicians through hired lobbyists, interest groups can do grassroots lobbying: so through average citizens. This practice, called **grassroots lobbying**, involves persuading a politician's constituents to write letters, make phone calls, or send emails to voice their opinions on an issue and demand action. An effective grassroots lobbying campaign can swamp a congressional office with messages of anger or concern, putting pressure on the member by demonstrating that his or her constituents are paying attention to an issue. (Protests, rallies, and demonstrations organized by interest groups can also be considered forms of grassroots lobbying.) If you've ever seen a commercial advising you to write to your representative or call your senator, you've experienced a grassroots lobbying appeal.

Lobbying is not confined to the legislative branch of government. Courts also experience pressure from interest groups in the form of ***amicus curiae*** briefs. If an interest group is not directly involved in a court case but cares about the outcome of that case, it can submit a brief to the judges as an *amicus curiae* (Latin for "friend of the court"). As with lobbying legislators, the purpose of an *amicus* brief is to provide information and arguments to persuade government officials — in this case, judges — to act a certain way. Some high-profile court cases involve hundreds of *amicus* briefs from concerned interest groups (and individual citizens) on both sides.

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8.4: Influencing Elections

Interest groups also attempt to influence the actions of government officials by participating in the electoral process. By definition, interest groups do not nominate their own candidates for office, but they can and do endorse, donate to, advertise on behalf of, volunteer for, and otherwise support candidates and parties they expect to act favorably to them if elected.

Investing in unelected politicians is a somewhat risky strategy, because politicians can't do much for the interest groups that support them if they lose their elections. For this reason, most interest groups concentrate their energies on lobbying rather than electioneering. However, electioneering efforts by interest groups can easily *seem* bigger than their lobbying efforts, because the former happen largely in public (with slick television ads and large events) whereas the latter take place mostly behind closed doors.

A **political action committee** (PAC for short) is a special type of interest group, established specifically to raise money and spend it on political campaigns. PACs can be formed by candidates, campaigns, parties, other interest groups, or individual citizens. Much of their electioneering activity involves advertising on behalf of candidates or parties. PAC contributions are limited by law: an individual voter, for example, may only donate a maximum of $5000 per year to PACs.

Related to the PAC is the **super PAC**. Like PACs, super PACs raise money to spend on political campaigns, largely on advertising. Fundraising rules for super PACs are much laxer than for PACs: an individual can donate as much money as he or she wants to a super PAC without breaking the law, enabling super PACs to raise and spend far more money than PACs. The catch is that super PACs cannot coordinate directly with candidates or parties, even though they are working toward the same goal.

> The precise legal definitions of PACs, and super PACs — as well as the laws that govern them — are extremely complex. The main thing to understand here is that political actors choose which type of group to form strategically based on their goals and the abilities and legal limitations of each type.

Super PACs emerged in 2010 as the result of the Supreme Court decision *Citizens United v. FEC*. Citizens United, a nonprofit organization which produces conservative and pro-Republican documentaries, had attempted to release its film *Hillary: The Movie* on video-on-demand prior to the 2008 presidential primaries (when Hillary Clinton was challenging Barack Obama for the Democratic nomination). The Federal Election Commission blocked the film's release on the grounds that Citizens United had not abided by campaign finance rules governing political advertising. Citizens United contended that, because they were not formally affiliated with any particular party or candidate, they should be exempt from these rules limiting their First Amendment freedom of speech.

The Supreme Court ruled in favor of Citizens United, and in doing so created the concept of a super PAC (though it did not coin that term) by establishing that other organizations like Citizens United could enjoy same leeway to raise and spend money on political advertising as long as they did not affiliate or coordinate with a candidate or party. Two years later, super PACs outspent PACs in the 2012 election cycle, as they have done in all but one election cycle since (as depicted in Figure 8.2 below).

Skyrocketing campaign spending has raised concerns about the influence of money in politics. Critics claim that *Citizens United v. FEC* opens a loophole for the wealthy to purchase political influence by contributing to super PACs. Supporters of the decision argue that overturning it would give the government too much power to stifle political speech using campaign finance laws, and that the political inequality created by *Citizens United* is outweighed by the freedom of speech it preserves.

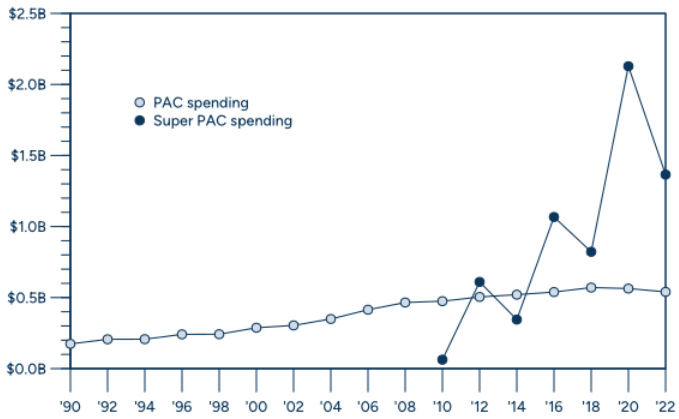


Figure 8.2: Total PAC and super PAC spending by election cycle, 1990–2022 (Source: Open Secrets)

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8.5: Interest Groups and Collective Action

Interest groups, like governments, form for the purpose of solving collective action problems to provide public goods. For interest groups, the public goods at stake are the policies that could be enacted (or prevented) if enough members of a group pooled their resources and coordinated their actions to influence government. A single college student has little power to influence education policy, for example, but millions of college students working together might be able to bring about significant change.

To organize effectively, interest groups, like all groups, must act collectively. They may represent a large segment of the population, but they can only leverage that size if a large number of people contribute time, money, and other resources to a shared cause. Each individual member, however, has an incentive to free-ride. If a coalition of college students succeeds in pressuring government to pass laws that lower the cost of tuition, *all* college students benefit, including those who personally contributed nothing to the group's success.

Governments solve collective action problems primarily through coercion: forcing citizens — at gunpoint if necessary — to contribute to public goods. Interest groups generally lack this ability to coerce their members, and must therefore resort to other means. One option is the offering of a **selective incentive** to members who contribute. AARP provides health insurance and other benefits to its paying members, just as the American Automobile Association (AAA) encourages contributions from its members in exchange for roadside assistance and exclusive discounts. These private goods are limited to people who pay their dues to the groups, dues which are in turn used to fund the groups' pursuit of public goods.

Material benefits like insurance and discounts are not the only upsides to contributing to interest groups. For some interest group members, the opportunity to work in solidarity with other like-minded people for a noble goal is enough of an incentive to motivate them to participate actively in the group's efforts. Such members, however, are limited in number, and there are usually too few for an interest group to rely on them alone for its effectiveness. This is why so many groups offer material benefits, and why those that don't or can't often struggle to influence policy.

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8.6: Interest Groups and Democracy

The Founders were wary of the power organized groups could wield in a democratic political system. In *Federalist No. 10*, James Madison cautioned against "the mischiefs of **faction**," by which he meant a group of people with shared interests distinct from the interests of the society as a whole. If a faction were to prevail, policies would be made for its benefit rather than for the benefit of all. Happily, Madison argued, the Constitution was well-designed to prevent these mischiefs: minority factions would naturally lose out in a democracy thanks to majority rule, and majority factions (if any managed to form in such a large and diverse country) would be thwarted by the Constitution's various safeguards, such as separation of powers and checks and balances.

Madison's view of factions reflects a belief in **pluralism**, the theory that democracy is ultimately a competition among interest groups to determine government policy. From a pluralist perspective, rather than leaving each individual citizen to attempt to influence politics with his or her vote in isolation, interest groups act as intermediaries between citizens and government, giving voice to their needs and wants in a way they would struggle to do for themselves. This competition makes for slow policymaking — because groups are fighting against one another to move policy in opposite directions — but larger groups or coalitions of groups should, in theory, win out in the long run due to the majoritarian nature of democracy.



For over a century, AAA members have enjoyed automobile-related selective incentives — such as this roadmap from 1918 — for paying their dues to the organization.

In reality, America's political system doesn't always deliver majoritarian outcomes when it comes to interest groups. The richer someone is, the more money he or she can give to interest groups; the more money an interest group has, the more influence it can wield. Moreover, minorities that strongly support policies have an edge over majorities that weakly oppose them. For example, many policies in the United States provide subsidies to certain industries using taxpayer dollars. These subsidies raise the prices of goods like gasoline and breakfast cereal, but not by enough for most Americans to notice or care about the additional cost. The recipients of these subsidies, on the other hand, benefit massively from them, and are therefore highly motivated to preserve them.

Under certain conditions, an interest group can informally unite with a congressional committee or subcommittee and a bureaucratic agency to form an **iron triangle**. Iron triangles coalesce around a policy status quo that each corner benefits from maintaining. The interest group provides electoral support to members of the congressional committee or subcommittee in return for favorable legislative activity related to their interests. The interest group also lobbies Congress on behalf of the bureaucratic agency — often requesting ample funding for the agency — in exchange for the agency imposing lax regulations on them. Meanwhile, the congressional committee or subcommittee directs support (monetary or otherwise) to the bureaucratic agency in exchange for the agency implementing its legislation in particular ways. A sufficiently powerful iron triangle can maintain policies indefinitely without majority public support, often without the public even becoming aware of what's happening.

The nonmajoritarian aspects of interest group politics are one reason why March for Our Lives — like many other efforts to strengthen gun control laws — fell short of its goals despite majority support for them. The families and friends of the victims of the Parkland tragedy may never fully recover from that fateful day, but the truth is that for most Americans it was just another

Wednesday, and their lives would have been much the same had the shooting never happened. Millions of Americans are sympathetic to the cause of stricter gun control, but motivating them to act on an issue that is unlikely to affect them personally is incredibly difficult. The National Rifle Association, one of the leading gun-rights organizations in the United States, occupies a minority position in the gun control debate, but it represents a class of people (gun owners) who are personally invested in the issue of gun control and willing to pay to contribute to defend their interests. The NRA's many selective incentives for members provide additional reasons for them to contribute to the group's efforts.

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8.7: Group Politics

Politics has been a competition between groups since long before the advent of modern democracy. Democratic institutions have changed how groups operate, but fundamentally the recipe for political influence is the same as it has always been: find enough people who share your interests and work together to pursue those interests.

Yet size is not destiny in this group competition. Small groups can beat larger groups if they are sufficiently motivated and organized to defend their interests. Nor is pluralism, strictly speaking, a “fair fight.” Some groups consist of members with certain advantages (of which disposable income is just one) that make them easier to marshal effectively to impact policy. The inertia of the American political machine creates yet another imbalance: it is far more difficult to generate momentum for change than it is to simply defend the status quo.

Like many inventors proud of their creations, Madison may have been a bit too optimistic in his sales pitch for the Constitution’s ability to temper the mischiefs of faction. The American political machine has many features to recommend it, but like any government it remains subject to the mathematics of group politics. Outcomes will not always be concordant with majority rule, and the diversity of the United States means that not everyone will get the policies they want all the time. That’s the thing about competitions, group-based or otherwise: they produce both winners and losers.

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CHAPTER OVERVIEW

9: Parties

It is difficult to think of American politics without also thinking of parties. Almost every aspect of the American political landscape — from the choices voters make in elections to the arguments and alliances between politicians that play out in government — is structured according to the familiar battle lines drawn between Democrats and Republicans. These two major parties permeate American politics so thoroughly that one could easily conclude that they are baked into the American political system, as fixed and permanent as checks and balances or the Bill of Rights.



Democrats cheer Hillary Clinton as she accepts her party's nomination for president at its 2016 national convention in Philadelphia.

Yet neither the Democratic Party nor the Republican Party — nor, for that matter, any party — is mentioned in the Constitution. No statute passed by Congress establishes Democrats and Republicans as the principal combatants in the American political arena or decrees that almost all elected positions shall be held by members of these organizations. Furthermore, nothing about the population of the United States suggests that it would naturally lend itself to being represented by *any* two parties, let alone these two parties. In fact, many Americans express frustration that their political participation always seems to boil down to a choice between one of two options, neither of which they find particularly appealing.

The two-party dominance that characterizes American politics today is neither a dictate of constitutional or statutory law nor a reflection of intrinsic social divisions among the populace. Rather, it arose as a natural consequence of the rules which govern American elections, as groups of people coordinated around shared interests to maximize their influence on politics. Contrary to the expectations of the Founders (who believed the country was too diverse for large coalitions to form), both major parties have survived more than a century of political upheaval, constantly adapting to new circumstances to maintain their competitiveness. To comprehend how any of America's official institutions function, it is necessary to grasp the nature of these unofficial institutions which shape so much of the American political experience.

9.1: Parties and Ideologies
9.2: Party Structure
9.3: The Origins of America's Parties
9.4: The Two-Party System
9.5: Partisanship
9.6: Indispensible Parties

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9.1: Parties and Ideologies

A **party** is an organized group that seeks to influence public policy. It pursues its goals by nominating candidates for political offices in hopes of winning elections and therefore being in a position to influence policymaking. This act of nominating candidates distinguishes parties from interest groups, which also attempt to influence public policy but from outside government (though interest groups do sometimes endorse candidates running for office).

Parties are often conflated with (but are not the same as) ideologies. An **ideology** is a system of beliefs about how society could be improved, whereas a party is a collection of people who work together to influence public policy. Parties often profess an ideology, but not always with one accord. Sometimes different wings of the same party advocate different ideologies and compete for control of the party's agenda. Other times a party may organize around a particular politician or narrow policy goal and lack any unifying ideology.

In the contemporary United States, the Democratic Party tends to pursue policies consistent with the ideology of **liberalism**. Liberals value both equality and freedom but tend to prioritize equality and are generally willing to accept less freedom if it means more equality. Liberals are skeptical of the virtues of an unregulated economy and favor government intervention to prevent problems such as environmental damage and the exploitation of the poor by the rich. They like "big government" programs (largely funded by taxes on the rich) which provide welfare, healthcare, education, and other services to those who can't afford them, but dislike it when government tries to impose traditional moral standards on "social issues" such as abortion, drug use, and same-sex marriage.

In contrast to the Democrats, today's Republican Party arranges its policy goals according to the principles of **conservatism**. Conservatives also value both equality and freedom, but unlike liberals they tend to prioritize freedom and are generally comfortable with less equality if it means more freedom. Conservatives see government intervention as more harmful than helpful and favor leaving the economy alone as much as possible to maximize competition, innovation, and prosperity. They prefer "small government" and want to cut taxes and turn programs like healthcare and education over to the private sector as much as possible so that they can be provided more effectively and efficiently. Despite their antipathy toward government, conservatives do see a role for government to play in maintaining traditional moral standards on social issues.

> *Left* and *right* are frequently used to refer to liberals and conservatives, respectively. This terminology comes from the French Revolution, during which members of France's National Assembly chose their seats according to their political faction: revolutionaries on the left, royalists on the right. This practice continued despite great political turmoil in France: institutions and factions changed, but the radicals consistently sat to the left of the traditionalists. Eventually, these positions became shorthand for the ideologies themselves.
>
> Today, parties around the world are often described as being *far-left*, *center-left*, *center-right*, or *far-right*, regardless of where they actually sit in the legislature.

Today, most Democrats are liberals and most Republicans are conservatives, which leads some to use the terms *Democrat* and *liberal* (or *Republican* and *conservative*) interchangeably. But this overlap has not always been the case. As recently as the 1970s, both conservative Democrats and liberal Republicans were commonplace. Today those ideological-partisan combinations are increasingly rare, and on average Democrats have become more liberal and Republicans more conservative (as shown in Figure 9.1 below).

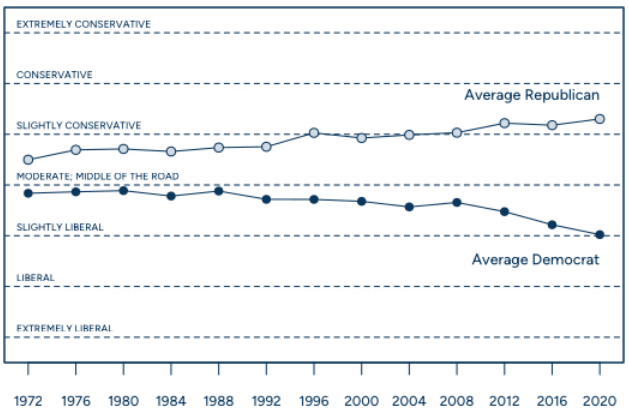


Figure 9.1: Average ideological positions of partisans, 1972–2020 (Source: American National Election Studies)

The increasing ideological uniformity of the major parties over the past half-century has raised concerns about **polarization**. As the ideological gap between the two parties widens, there is less opportunity for Democrats and Republicans to find common ground on policy and more reason for each party to firmly oppose the other, which can make for bitter politics. Political scientists generally agree that political elites (such as members of Congress) have become more polarized in recent decades, but they disagree on whether Americans as a whole have done the same. It's also possible for American politics to be more polarized than Americans themselves are. Many Americans hold moderate views on most political issues, but those same moderates tend to be less politically active in general and therefore less influential on politics. Thus, the American public may seem more polarized than it is because its loudest voices also happen to be its most extreme.

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9.2: Party Structure

In his 1942 book *Politics, Parties and Pressure Groups*, political scientist V. O. Key describes parties as having a three-part structure. Most prominent is the **party-in-government**, the party members who hold official government positions, including the president, vice president, members of Congress, governors, and other elected and appointed officials at different levels of government who affiliate with the party. By virtue of their official status, these members have formal legal powers to craft and implement the party's desired policies. A party's goal is to get as many of its members as possible into high-ranking or influential government positions to maximize its impact on policy.

The **party-as-organization** is the formal administrative structure of the party. The Democratic National Committee (DNC) and Republican National Committee (RNC) serve these roles for the Democratic and Republican parties, respectively. Members of the party-as-organization work behind the scenes to support and promote the success of the party. Their duties include campaigning on behalf of candidates, coordinating communication strategies, crafting party platforms, managing party primaries and nominating conventions, and recruiting new party members.

The **party-in-the-electorate** is the share of the electorate that supports the party, the average citizens who either are registered party members or simply think of themselves as members. They play their most crucial role on Election Day, as the votes they cast have the power to propel the party's candidates to victory. Because of their importance, both the party-in-government and the party-as-organization work hard to grow and maintain the party-in-the electorate by listening to what it has to say and trying to appeal to its policy interests.

One way to understand this tripartite party structure is by analogy to a professional sports team. The party-in-government is like the players on a team: they are the most famous and visible members of the party, the ones who actually go "on the field" to play a direct role in the policymaking process. The party-as-organization is akin to a team's managers, coaches, trainers, and doctors: they are not as famous as the party-in-government and do their jobs mostly out of sight, but they are nonetheless instrumental in keeping the party-in-government organized and able to perform to its maximum potential. The party-in-the-electorate is similar to a team's fans: they play no direct role in the party's "on-field" success in policymaking, but without their votes and donations the party would not have the resources to field a competitive team, which gives the party a strong interest in keeping its supporters passionate and satisfied.

Each of these three parts is essential to the overall effectiveness of a party. A professional sports team could not long exist if it had coaches and fans but no players, or players and fans but no coaches, or players and coaches but no fans. The same is true of a party: if it had no members in government, or lacked an organizational structure, or had no support from the electorate, it would be unable to gain or maintain enough political power to further its policy agenda.

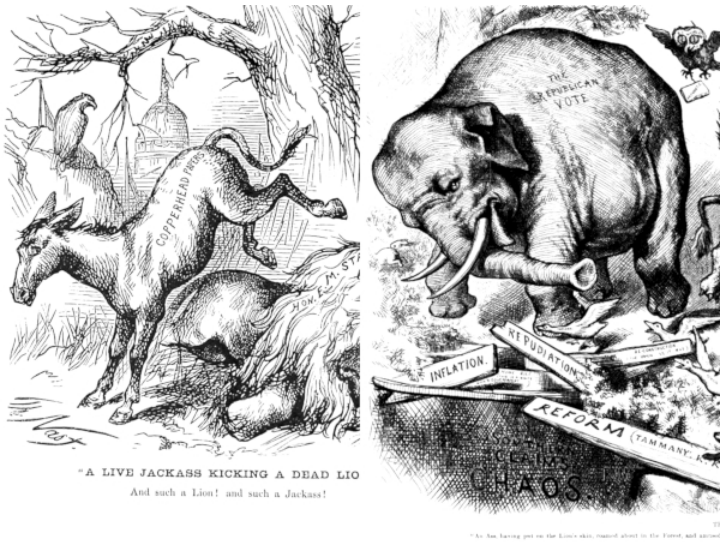
A professional sports team's success is closely tied to how well its parts work together. If the players ignore the advice of the coaches, or if the coaches berate and mistreat the players, or if the players and coaches act dismissively toward the fans, or if the fans stop buying tickets or boo from the stands, the team's competitiveness is undermined. Likewise, a party must maintain a certain level of cohesion among its parts in order to function as designed, lest its politicians and candidates stop cooperating, its organization stop assisting, or its supporters in the electorate stop voting or donating.

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9.3: The Origins of America's Parties

Though the Founders designed a constitution that would inevitably give rise to parties, they were nonetheless apprehensive about parties and their potential effects on government. Benjamin Franklin feared “the infinite mutual Abuse of Parties” would “[tear] to Pieces the best of Characters.” Thomas Jefferson declared, “If I could not go to heaven but with a party, I would not go there at all.” Most famously, George Washington dedicated a large portion of his farewell address to cautioning Americans against “the common and continual mischiefs of the spirit of party.”



The donkey and the elephant — illustrated here in two political cartoons from the 1870s by Thomas Nast — have been the unofficial mascots of the Democratic and Republican parties (respectively) for most of their existence.

Notwithstanding these warnings, parties began to take shape almost immediately after the Constitution was ratified. Supporters of strong central government and urban interests such as banking and manufacturing styled themselves the Federalist Party, while their opponents who favored decentralization and rural interests such as agriculture called themselves the Democratic-Republican Party. The Federalist Party lost power after 1800 and collapsed shortly thereafter; thus, for the first few decades of the 19th century, the major conflicts in American politics were intraparty ones, between different factions of the Democratic-Republican Party.

The Democratic Party (which began as one of these factions) became a dominant political force in 1828 with the election of Andrew Jackson to the presidency. Breaking with the tradition of elite-centric parties in the United States and elsewhere, the Democratic Party was the first to embody the party structure we are familiar with today (and remains the world’s oldest active party). Jackson was the first presidential candidate to build a national organization of loyal followers, including many average citizens, which propelled him to victory with a strong base of popular support. Jackson’s Democrats styled themselves the party of the common man, opposed national government intervention in states’ affairs, and supported slavery.

For a time, the Democrats were opposed by the Whig Party, which initially emerged as an anti-Jackson coalition. The Whigs broke up in the 1850s, largely due to their inability to agree on the issue of slavery, and were replaced by the newly-established Republican Party, founded in 1854. The first Republican presidential candidate, John C. Frémont, lost the 1856 presidential election. Four years later, the Republicans nominated Abraham Lincoln, who won the presidency in 1860 and established the Republican Party as a major party. Lincoln’s Republicans opposed slavery and supported both civil liberties and economic modernization.

Both the Democratic and Republican parties have evolved considerably since first appearing on the American political scene. Over time, each has abandoned its positions on certain issues and adopted new ones. Each has also been supported by different demographic groups at different points in history, with periodic realignments during which certain groups shift their support from one party to another. These changes reinforce one another: parties adjust their positions to recruit blocs of voters to their side, and those same blocs gain power and influence over parties as those parties become increasingly reliant upon them for votes. (Some of these blocs are visible in Figure 9.2 below, which displays a demographic breakdown of voting in the 2020 presidential election.)

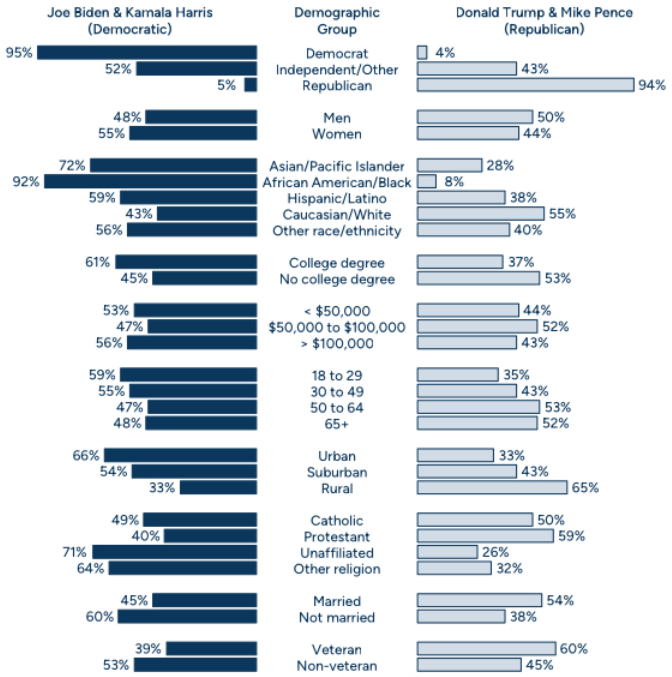


Figure 9.2: Presidential vote by demographic group, 2020 (Source: Pew Research Center)

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9.4: The Two-Party System

The Democratic and Republican parties are not the only parties in the United States. Minor parties (most prominently the Green Party and the Libertarian Party) also field candidates in elections and have organizations and supporters. Furthermore, independent candidates unaffiliated with any party often throw their hats into the electoral ring. When it comes to *winning* elections, though, Democrats and Republicans dominate. In 2023, for example, all but three U.S. senators, all U.S. representatives, and all state governors were either Democrats or Republicans, as have been all presidents since 1853.

This electoral dominance of the Democratic and Republican parties is referred to as a **two-party system**, and it is caused by the rules of American elections. This doesn't mean that minor-party and independent candidates are banned from participating in or winning elections in the United States. Rather, America's two-party system evolved organically from the fact that most elected officials are chosen in single-member districts (where there can be only one winner) by plurality vote (in which the candidate with the most votes wins). Under these conditions, electoral competition tends toward the development of two major parties. This tendency is called **Duverger's law**, named after the French sociologist (Maurice Duverger) who first proposed it.

To understand how Duverger's law works, consider a typical American general election involving two major-party candidates, one Democrat and one Republican. Suppose the election is expected to be close, with each candidate winning about half of the votes cast. Now suppose a candidate from the Green Party decides to run against the Democrat and the Republican. Of the two major-party candidates, the Green prefers the Democrat (though of course he prefers *himself* to both of them). However, by running in the election as a third-party candidate, the Green takes away more votes from the Democrat than from the Republican (because most of his supporters would have supported the Democrat if he hadn't run). The Green does not earn nearly enough votes to have a chance of winning, but he does earn enough to make it harder for the Democrat to win and easier for the Republican to win. By competing in the general election, the Green increases the likelihood of what he would consider the worst possible outcome: a Republican victory.

This phenomenon is known as the **spoiler effect**, and is a common occurrence in American elections featuring minor parties. In fact, the previous paragraph accurately describes the 2000 presidential election, in which Green candidate Ralph Nader siphoned enough votes from Democrat Al Gore to help Republican George W. Bush win the presidency. (Nader wasn't the *only* reason Bush won, but the election was so close that Gore probably would have won had Nader not run.) Minor-party and independent candidates usually lack the support necessary to win, but their presence on the ballot risks "spoiling" the election by reducing the chances of victory for the major party whose views are most similar to their own.

> Duverger's law is not a law in the sense that a constitution or statute is a law. No one voted on it or decided it should be applied to the United States, nor could anyone choose to amend it like a constitution or repeal it like a statute.
>
> Rather, Duverger's law is more like the law of gravity: it is how party politics works naturally under the rules of American elections, whether people like it or not. In countries with different electoral rules (such as Germany or Israel) or greater regional variation (such as Canada or the United Kingdom), multiparty systems have developed just as naturally as America's two-party system did.

The spoiler effect essentially punishes minor parties and independents for running in elections by increasing the likelihood of their least-desired electoral outcomes. In a sense, their inability to regularly win elections is a self-fulfilling prophecy: voters perceive minor parties as noncompetitive and choose not to vote for them, which makes them less competitive, which reinforces voters' perceptions of their noncompetitiveness, and so on.

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9.5: Partisanship

The party-in-the-electorate is key to any party's electoral success. A person's personal attachment to a party is known as his or her **partisanship** (alternatively called *party identification*, or *party ID* for short). For some Americans, this party membership is formal, in the sense that they have officially registered to vote in their state under a particular party label or have signed up with a national, state, or local party organization. But partisanship can also refer to the informal feeling of belonging or closeness to a party, which need not be accompanied by formal registration.

Partisanship functions differently for different people. In an instrumental sense, a person's party identification can serve as a **heuristic**, a mental shortcut for making decisions based on limited information. A typical American voting in a general election will be unfamiliar with most of the candidates on the ballot, especially those seeking lower-level offices such as city council or public utility commissioner. If that voter identifies with a party, however, she can use the candidates' party affiliation as shown on the ballot to help her choose which candidates to support.

Voting for candidates solely on the basis of their party affiliation is often criticized as ignorant or unsophisticated, but it would be wrong to dismiss it as voting blindly. A person's party identification in the United States contains a great deal of information about his or her ideology and political stances. A relatively uninformed voter can encounter an unfamiliar candidate, see that the candidate's partisanship matches her own, and reasonably assume that she and the candidate agree on abortion, gun control, healthcare, immigration, taxes, and a whole host of other issues. Because parties in America today tend to be ideologically uniform (thanks in part to polarization), most of these assumptions will turn out to be correct most of the time.

In addition to its instrumental use as a heuristic, partisanship can also be an identity. If a person's partisanship shapes his or her social relationships, leisure activities, geographical living preference, involvement in groups and organizations, or self-image, it may be as much of an identity as his or her race, ethnicity, religion, or sex. Like all identities, partisanship is more central or influential for some people than others, and can be more or less influential for any particular person at different times depending on the circumstances.

In the United States, a voter's partisanship is the single best predictor of his or her vote choice. Not all Democrats vote for Democrats all the time, and not all Republicans vote for Republicans all the time, but Democrats vote for Democrats and Republicans vote for Republicans more consistently than any other group votes for either of the major parties. Again, this consistency is not necessarily a reflection of blind loyalty. If a typical Republican took the time to research the positions of all the candidates on the ballot before voting, he or she would probably still vote for the Republican over the Democrat in almost every instance — and the reverse is true for a typical Democrat. Partisan voters use their party identification as a shortcut the same way a driver uses a stoplight to determine when it is safe to proceed through an intersection rather than checking each of a dozen or more cars individually: it is quicker, easier, and usually just as accurate.

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9.6: Indispensible Parties

Are parties a bug or a feature of the machine that is America? They're certainly useful tools for politicians seeking to win office and achieve policy goals, as well as for voters looking to make sense of a complex political world. They're also nearly as unpopular as they've ever been in the United States: polls show pluralities of Americans have unfavorable views of the Democratic and Republican parties.

Bug or feature, it's crucial to remember that America's parties exist not because the Founders, Congress, or anyone else decided that the country's political landscape should be divvied up between Democrats and Republicans, but because these groups formed naturally in their pursuit of political power. The election laws of the United States did not create a two-party system on purpose, but they did create an electoral environment in which a two-party system would naturally develop.

Of course, the fact that something is natural does not automatically make it good, and reasons for pessimism about America's parties are legion. Americans often express frustration at the limited options available to them, looking jealously at other countries' multiparty systems and feeling discontented with their binary choices. The tendency of both major parties to frame partisan conflict in the United States as an ultimate battle between good and evil, particularly in polarized times such as these, can make for uncomfortable and confrontational political conversations. Moderates, independents, and minor-party sympathizers who feel unrepresented by either major party may be inclined to disengage from politics rather than enter the fray or "waste" their votes on candidates and parties with no chance of winning.

The First Amendment guarantees the right of U.S. citizens to peaceably assemble. Unless and until that stipulation is removed, parties are here to stay. Changes to electoral rules might cause welcome or unwelcome changes in the parties or the party system, but as long as working in groups to influence politics is more efficient than going it alone, parties — or something like parties — will endure.

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CHAPTER OVERVIEW

10: Elections

Ask ten different Americans what it means to be a good citizen, and you might get ten different answers, each representing a distinct view of civic responsibility and the actions, beliefs, or characteristics it entails. Yet most if not all of them would include in their answer the act of voting. Unlike countries such as Australia and Brazil where voting is compulsory, America does not legally require its citizens to participate in elections. Nevertheless, voting is widely regarded as every adult American's duty, something which we often feel ashamed for not doing (and which we feel free to shame others for not doing).



Presidential candidate Pete Buttigieg speaks to supporters in Des Moines the night before winning the chaotic 2020 Iowa Democratic caucuses.

It's easy to understand why voting is so central to the American ideal of good citizenship. Elections are the main mechanism — though not the only one — by which public opinion is incorporated into democratic policymaking. Popular sovereignty and majority rule depend on regular input from the populace, and both are undermined when voting-eligible citizens abstain from elections. The fewer people participate in the electoral process, the less true it is that "the people rule," and the likelier it is that the majority which determines the outcome of the election will itself constitute only a minority of the population. Practically speaking, a democracy with extremely low participation is indistinguishable from an aristocracy in which only a handful of citizens wield political power.

Elections in the United States are designed to convert public opinion into government policy, but this conversion is neither simple nor direct. Public sentiment is mostly filtered through an indirect democratic process in which politicians are chosen to act on the behalf of the voters who elected them, and the rules for electing these politicians vary from state to state and from office to office. These complexities make American elections much more than merely counting votes to see who or what has the most.

10.1: Direct and Indirect Democracy
10.2: The Rules of American Elections
10.3: Presidential Primaries
10.4: The Electoral College
10.5: Voter Behavior
10.6: Our Democratic Faith

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10.1: Direct and Indirect Democracy

The first thing to note about American elections is that there is no one way of holding them. Administering elections, even presidential elections, is a power reserved for the states under the Constitution. The national government imposes some basic guidelines (for example, all elections must be democratic, and Americans' voting rights must be respected), but state governments determine registration requirements, design ballots, and count votes, among other tasks. As with other reserved powers, the placing of these responsibilities in the hands of the states leads to state-by-state variation in how elections work.

Some states allow their citizens to participate in direct democracy. In certain states, citizens can propose a law or an amendment to the state constitution as an **initiative**. If an initiative gathers enough signatures on a petition, it is placed on the ballot to be voted on by all citizens and enacted if it receives majority support. Another form of direct democracy is the **referendum**, in which a law or constitutional amendment passed by a state legislature is submitted to the people for their approval, either automatically or if enough citizens request it. A policy that fails to earn majority support in a referendum can be prevented from being enacted, or repealed if it is already in force.

Initiatives and referenda are relatively rare, even in states that allow them. Most American elections are examples of indirect democracy, in which citizens vote for someone — a legislator, an executive, occasionally a judge — to choose policies on their behalf. Like the British parliamentary system on which it was based, the American electoral system has a **single-member district** structure: most individual elections produce produces a single winner who represents a particular area, such as a state, a congressional district, a county, or a city ward. (This is true even for the Senate: although each state has two senators in Congress, they are chosen in separate elections, and each Senate election has only one winner.)

Compared to direct democracy, indirect democracy has many advantages. Governments must make a multitude of decisions in order to function, and putting each of those decisions up for a public vote would be hugely inefficient. Even if it could be done efficiently, the choices governments face involve complex issues of economics, science, organizational theory, diplomacy, and even warfare — issues which average citizens might struggle to comprehend. Consequently, we assign politicians to make political decisions for us for the same reason we assign doctors to make medical decisions for us: it makes sense to entrust such important matters to full-time experts.

Of course, representative democracy can only be as good as the representatives themselves. If we the people elect incompetent or corrupt politicians who fail to pursue the public interest, the results might be even worse than if we had tried to decide every policy question ourselves. Politicians' desire for reelection may prevent them from neglecting their constituents' interests completely, but for this mechanism to work voters must be sufficiently attentive to politicians' actions and both willing and able to hold them accountable for their misdeeds.

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10.2: The Rules of American Elections

American elections occur at regularly scheduled intervals, most commonly in even-numbered years. U.S. representatives serve two-year terms, and must therefore win reelection every two years if they want to keep their jobs. Presidents and most governors serve four-year terms; presidents can be reelected once, whereas some governors have unlimited opportunities for reelection (or, in the case of Virginia, none at all). Senators serve six-year terms, which are staggered so that only about a third of the Senate is up for reelection every two years.

In 1845, Congress established the first Tuesday after the first Monday of November as Election Day in the United States. An election held on this day is referred to as a **general election**. The winner of a general election in November is installed into whichever office he or she won the following January.

Usually there is only one candidate per party in a general election, but parties frequently disagree on whom they should nominate. Parties settle these disagreements through a **primary election**, commonly held in the summer before the general election. In a primary election, members of a party compete against one another for the opportunity to be nominated by their party for a particular office and advance to the general election, where they will compete against nominees from other parties (as well as any independent candidates). Depending on the state in which they are held, primary elections may be closed (only party members are allowed to vote), semi-open (party members and independents are allowed to vote), or open (anyone is allowed to vote, including members of other parties).

Typically, the winning candidate in an election is the one who receives a plurality of votes — that is, more votes than anyone else. A plurality is not necessarily a majority: in an election involving three candidates, for instance, the winning candidate might receive only 34% of the votes. To ensure that the winning candidate earns majority support from the electorate, some states hold runoff elections between the top two finishers of the general election if the general election winner receives less than a majority of the votes cast.

These rules apply to most American elections, but some states use their reserved powers of election administration to tweak the process. Alaska, California, Louisiana, and Washington hold two-stage elections: candidates from all parties (and any independents) compete in the first round, and the top two finishers (in Alaska, top four), regardless of party, advance to a runoff. New Hampshire and Vermont elect governors to two-year rather than four-year terms. Nebraska's state legislative elections are nonpartisan (although the legislators still identify as Democrats or Republicans). Alaska and Maine use ranked-choice voting, whereby voters order candidates according to their preferences and the least popular candidate's votes are redistributed based on voters' second choices, a process which repeats until one candidate has a majority. These and many other intricacies of America's electoral system reflect its federal nature.

> One reason electoral rules vary so widely among states is that there is no obviously best or most democratic way of counting votes. All methods of tallying ballots have pros and cons. Plurality elections are simple to administer and understand but can produce winners with minority support when three or more candidates are involved. Runoffs between two candidates can ensure the winner has majority support (in the final round at least) but are more expensive, requiring an additional round of campaigning, voting, and counting. Other systems for conducting elections have their own upsides and downsides.

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10.3: Presidential Primaries

Although most American elections follow a similar pattern, presidential elections are exceptional in a number of ways. Firstly, whereas most primary elections are held on a single day, the presidential primary process stretches over several months, with each state (as well as the District of Columbia and several U.S. territories) holding its own primary. Usually the first primaries are held in January or February of the election year, although the primary campaign itself begins long before that. (The first candidate to join the 2020 Democratic presidential primary announced his candidacy in July 2017, more than three years before Election Day.)

Presidential candidates who win or place highly in presidential primaries earn delegates to their party's national convention, where the nominee will be determined by a vote of delegates. Finishing strong in the early states is a top priority for candidates striving to prove they have what it takes to compete. This is why, every four years, politicians from all over the country have traditionally flocked to the early-primary states of Iowa and New Hampshire to lay the groundwork for their campaigns. The elongated primary calendar helps a party whittle down a large list of presidential hopefuls until a single nominee emerges. In 2016, 17 Republicans embarked on presidential campaigns, but by February when the first actual votes were cast only 12 were still running, and by early May only Donald Trump remained in the race. In 2020, of the 29 Democrats competing for their party's presidential nomination, only 11 made it to the first state contest in early February and only Joe Biden was left standing by early April.

As with other aspects of American elections, states differ in their approach to presidential primaries. Most hold a normal election (simply called a **primary**) in which voters show up at a polling place, wait in line, and cast their ballots. A minority of states instead hold a **caucus**, a group meeting at which campaign representatives (and voters themselves) attempt to recruit supporters for their preferred candidates before a vote is held. Caucuses require a greater time investment from would-be participants and are more complicated to administer. The 2020 Iowa Democratic caucuses, in fact, were so convoluted that the caucus organizers themselves struggled to overcome numerous mathematical errors and technical glitches, causing the results to be delayed for three days. Following this debacle, the Democratic Party announced in 2022 it was considering revisions to its primaries for the 2024 cycle, likely ending Iowa's traditional "first-in-the-nation" status in the Democratic primary calendar.

> The term *primary* is commonly used to refer to both primaries and caucuses. It can also be used to refer to all of a party's presidential primary elections combined: politicians and journalists might claim that a presidential candidate "won the primary" when what they mean is that he or she earned the party's nomination after winning multiple state primaries.

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10.4: The Electoral College

Presidential elections are the only American elections in which the winners — who become the president and vice president — represent the entire country rather than just part of it. As such, the Founders who designed the Constitution could not simply leave the electoral details up to the states to figure out for themselves. States were still responsible for administering elections using their reserved powers, but the Founders needed to establish an additional process to combine these state-level results and use them to select a president.

What they devised was the **Electoral College**. Voters on Election Day often believe they are casting their ballots for presidential candidates, when in fact they are casting them for slates of electors, who are usually loyal party members picked by their preferred candidate's campaign. Roughly one month after Election Day, the winning slates of electors meet in the capitals of the states that elected them and cast their votes for a presidential candidate. It is the electoral vote (the votes of these electors), *not* the popular vote (the votes of average citizens), which determines the winner of the presidential election.

By law, each state chooses a number of electors equal to the number of members of Congress it has (as shown in Figure 10.1 below). Pennsylvania, for instance, had 20 electors in 2020: two for its two U.S. senators, and 18 for its 18 U.S. representatives. Although each state's members of Congress are the basis for calculating its number of electoral votes, the Constitution specifies that members of Congress cannot serve as electors themselves, to ensure that the executive branch remains independent from Congress. Since the ratification of the Twenty-Third Amendment in 1960, the District of Columbia has had three electoral votes, even though it has no voting representation in Congress. In total, the Electoral College has 538 electors.

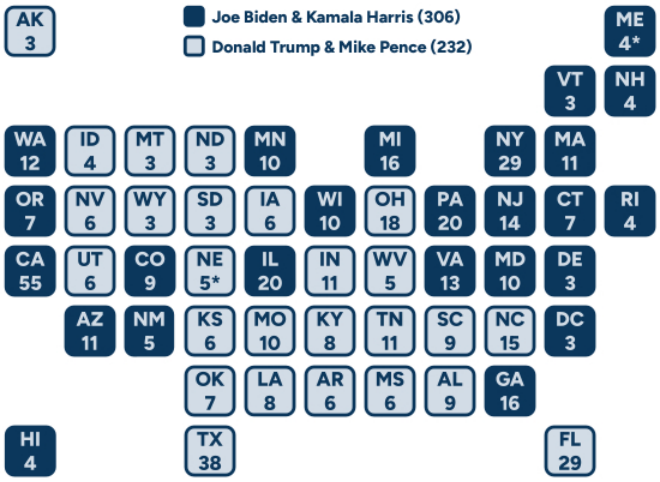


Figure 10.1: Electoral College results, 2020 (Note: Biden and Harris won one of Nebraska's electoral votes and Trump and Pence won one of Maine's, as indicated by asterisks.)

Almost all states, as well as the District of Columbia, choose their electors on a winner-take-all basis. Even if a presidential candidate wins a state by only one popular vote — that is, one vote by an average citizen — he or she receives all of that state's electoral votes. The two exceptions to this rule are Maine and Nebraska, both of which allow candidates who lose the statewide race to receive one electoral vote for each congressional district they win within the state. Each of these states has split its electoral votes this way twice: Nebraska's 2nd congressional district went Democratic in 2008 and 2020 despite the state as a whole going Republican, and Maine's 2nd congressional district turned Republican red in 2016 and 2020 while the state overall remained Democratic blue.

> Red and blue are commonly used to symbolize Republicans and Democrats, respectively. This tendency dates to the 2000 presidential election, during which major television networks settled on this color scheme for displaying the Electoral College map. Since then, politicians, journalists, and average citizens have described America's political divide as being between "red states" and "blue states."

> Although it is true that states differ in their political and cultural perspectives, the red/blue divide is to a certain extent a mirage. Every state has both Democratic-leaning and Republican-leaning regions, and many states are closely split between the two. Which color is more prominent matters in the winner-take-all Electoral College, but on closer examination America as a whole and most states turn out to be more “purple” than “red” or “blue.”

To win the Electoral College and therefore the presidency, a candidate must earn at least 270 electoral votes. If no candidate wins an Electoral College majority, the House of Representatives chooses the president (with each state voting as a bloc, rather than each member voting individually) while the Senate chooses the vice president (with each senator voting individually). This tiebreak system was established with the ratification of the Twelfth Amendment in 1803 and has only been used once: in 1824, when the House elected John Quincy Adams after none of the four candidates won a majority of electoral votes.

The Electoral College is one of the most controversial aspects of American elections, because it enables a candidate to lose the popular vote but still be elected president. The winner-take-all mechanism by which most states choose their electors, combined with the fact that electoral votes are not distributed perfectly proportionally according to states’ populations, means that the candidate who finishes second in the popular vote can nonetheless win a majority of electoral votes if his or her popular support is more efficiently spread across the states than his or her opponent’s. Five U.S. presidents — John Quincy Adams in 1824, Rutherford B. Hayes in 1876, Benjamin Harrison in 1888, George W. Bush in 2000, and Donald Trump in 2016 — have won the presidency despite losing the popular vote.



The word ballot comes from the white and black ballotte *(Italian for “small balls”) used to cast anonymous votes in the Republic of Venice — and in the early United States, as in the case of this ballot box from a social club in Washington, DC.*

This anti-majoritarian aspect is the most common complaint levied against the Electoral College, especially by supporters of popular-vote winners who lost the electoral vote. Proponents of the Electoral College — especially supporters of popular-vote *losers* who *won* the electoral vote — argue that the Electoral College preserves the federal nature of the American political system, prevents candidates from ignoring rural areas of the country in favor of big population centers, and reduces the impact of both voter fraud and recounts by ensuring they only affect the election results of the state(s) in which they occur.

Opponents of the Electoral College contend that these qualities are outweighed by the violation of majority rule. It is true that the Electoral College has sided against the majority of voters in the past and could easily do so again in the future. But it is also true that other American political institutions, from the Bill of Rights (which protects minority rights) to the U.S. Senate (which empowers small states at large states’ expense) to representative democracy itself (which empowers politicians to act against their constituents’ wishes) can do and have done the same. The question is not whether the Electoral College — or any aspect of American politics, for that matter — is anti-majoritarian, but rather whether the benefits of a more majoritarian process would outweigh the costs.

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10.5: Voter Behavior

Ultimately, the key to winning any elected office in the United States, from small-town city council all the way up to the presidency, is voter support. Every election cycle, millions of dollars are spent trying to predict and influence whether and how Americans will vote in elections. As with public opinion, it may be impossible to fully explain any individual American's voting behavior, but it is possible to identify overall trends in voter participation and choice that manifest more or less nationwide and tend to persist from one election to the next.

Voter participation, or **turnout**, varies across demographic groups. Older, richer, and more educated Americans are likelier to vote than their younger, poorer, and less educated counterparts. Whites vote more often than members of other racial and ethnic groups. Women, who were unable to vote in most states prior to the Nineteenth Amendment, now vote at a higher rate than men.

turnout: The percentage of people who vote in an election.

Electoral rules and campaign contexts also influence turnout. Strict voter registration and voter ID laws make voting more difficult, whereas mail-in and no-excuse absentee ballots make voting easier. General elections tend to draw higher turnout than primaries. More Americans vote in presidential elections than in midterm elections held halfway between presidential ones, as shown in Figure 10.2 below. Even fewer vote in "off-year" elections, when typically only a handful of state and local races are on the ballot.

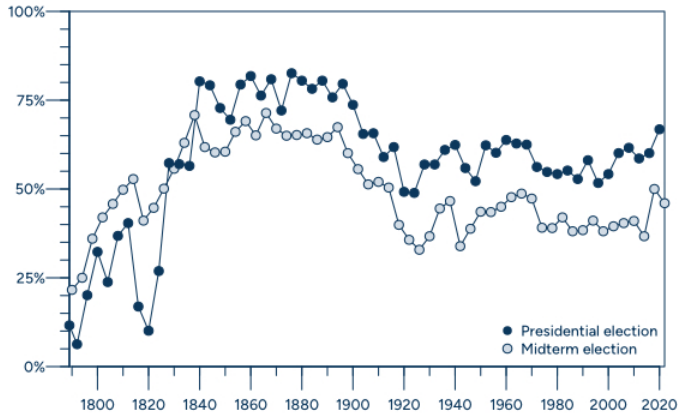


Figure 10.2: Turnout among eligible voters, 1789-2022 (Source: United States Elections Project)

The strongest predictor of how Americans will vote is partisanship. The two major parties in the United States — the Democratic Party and the Republican Party — count on the backing of distinct voting blocs. Democrats tend to earn more support than Republicans do from young voters, poor voters, racial and ethnic minorities, union members, and residents of the East and West coasts. Republicans draw more strength than Democrats do from old voters, rich voters, whites, religious conservatives, and residents of the South and Midwest. None of these voting blocs is monolithic: there are young Republicans and old Democrats, black Republicans and white Democrats. Nor are party coalitions permanent over time: realignments occasionally occur when existing blocs shift their loyalties or new blocs emerge. Still, these patterns are informative and reliable enough to help both average Americans and political practitioners understand and anticipate electoral outcomes.

Voters do not decide whether and how to vote in a vacuum. Candidates, parties, and other organizations actively campaign with the goal of shaping voter behavior. Broadly speaking, campaigns engage in two categories of politicking to influence voter choice and participation. **Persuasion** is the act of encouraging citizens to support a particular candidate, party, or issue position, and can include both positive campaigning (such as extolling the qualities and virtues of a candidate) and negative campaigning (such as criticizing an opponent for extreme views or scandalous behavior). **Mobilization** is the act of encouraging citizens to turn out to vote, which often entails voter registration drives or even physically transporting voters (with their permission) to polling stations. The most effective campaigns are the ones which use these tools efficiently, focusing their persuasion efforts on the voters who are most swayable to their side and their mobilization efforts on citizens who already favor them but need encouragement to actually go out and vote.

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10.6: Our Democratic Faith

In many ways, democracy in the United States functions as a sort of civic religion. Few if any Americans would claim that they "worship" democracy, of course, and modern campaigns, littered as they are with gaudy yard signs and vicious attack ads, seem more crass and worldly than reverent or sublime.

Look closely, though, and the religious aspects of American democracy are unmistakable. Like other religions, its adherents profess a creed of fundamental beliefs (about the people's right to rule, the primacy of the will of the majority, and the responsibility of each individual to make his or her voice heard at the ballot box). It has its schisms, passionate disagreements over the interpretation of those beliefs and which set of rules (for administering elections and counting votes) is most consistent with them. It even has its own holy festival (Election Day), when believers congregate to reaffirm their faith in its values and principles by performing an act of devotion with both practical and symbolic importance.

Yet, as Figure 10.2 demonstrates, we the democratic "faithful" don't always practice what we preach. When others (correctly) point out that each individual voter has so little influence on the outcome of an election that he or she could stay home without noticeably affecting the results, we tend to dismiss them the way heretics promoting sin and immorality would have been shunned in the Middle Ages. Still, many of us often fail to fulfill our civic duty of voting, as though we privately recognize the futility of our individual ballots, even if we're ashamed to admit it.

Ultimately, democracy is not so much mystical as it is mechanical. The American political machine that purports to discern the will of the people by soliciting their views through the electoral process can only work with input from the citizenry. Regardless of the specific electoral rules involved, that will can easily be distorted when millions of Americans abstain. Each individual voter can be confident that his or her abstention won't by itself change the results, but many voters abstaining together make it hard for elections to produce results that accurately reflect what the people want. In this way, popular sovereignty is itself a public good, and elections are yet another example of a collective action problem. As precious as we profess our right to vote to be, a large number of us seem perfectly comfortable to free-ride on the votes of our fellow citizens on Election Day.

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11: Congress

Congress is broken — at least that's what everyone seems to be saying these days. For decades the legislative branch of the American government has been less popular than either the president or the Supreme Court, even while members continue to be reelected at high rates (as illustrated in Figure 11.1 below). Citizens decry Congress as being filled with out-of-touch politicians who bicker endlessly instead of working together to pass the commonsense laws we need. Presidents and presidential candidates accuse Congress of playing politics and obstructing important legislation, sometimes threatening to use executive orders to go around it if it refuses to play ball. Even the members join in on the dogpile, often claiming that Washington is dysfunctional and that only they — and certainly not their electoral opponents — can fix it.



Beneath the dome of the U.S. Capitol, a marble statue of George Washington guards the corridor to the House of Representatives.

It is easy to look at Congress today and wonder why anyone ever thought it could properly function. Thomas Jefferson himself expressed some skepticism, admitting, "That one hundred and fifty lawyers should do business together ought not to be expected." Yet the Founders who designed the legislative branch clearly expected it to "naturally predominate" (in the words of *Federalist No. 51*), influencing policy more than either the presidency or the judiciary would. Moreover, they clearly intended for it to play such a role, regarding it as a safer repository of power than either of the other two branches.

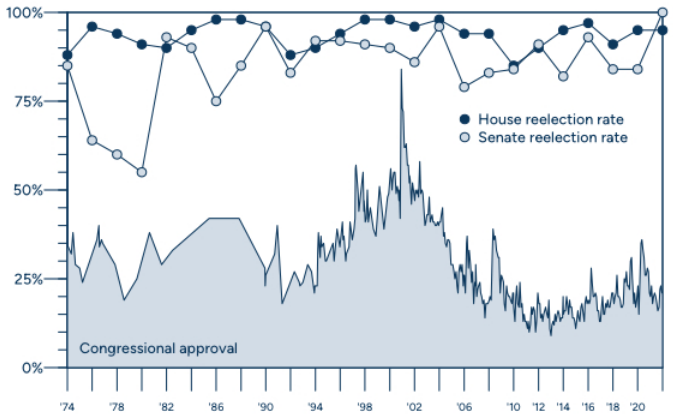


Figure 11.1: Congressional approval rating and reelection rates, 1974–2022 (Sources: Gallup, Open Secrets)

Many current traits and features of Congress were not anticipated by the Founders who originally formulated it, and would probably be regarded by them as negative developments. At the same time, much of what Americans dislike about Congress is also what the Founders expected and hoped would happen. Squaring Congress's original purpose with its modern reputation requires an awareness of both how this institution was designed in 1787 and how it operates more than two centuries later.

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11.1: Bicameralism

The Congress of the Constitution is an expansion of the Congress of the Articles of Confederation from one chamber to two: the House of Representatives, with 435 members (one per congressional district) and the Senate, with 100 members (two per state). The Great Compromise gave both large and small states something they wanted: proportionality in the House, equality in the Senate.

In crafting a **bicameral** (two-chamber) national legislature, the Founders had the British Parliament in mind, which also consists of two chambers (the House of Commons and the House of Lords). Many other world legislatures are bicameral, including Germany's parliament (the Bundestag and Bundesrat), the National Diet of Japan (the House of Representatives and the House of Councillors), and the Federal Assembly of Russia (the State Duma and the Federation Council). Forty-nine of America's 50 state legislatures are also bicameral, with Nebraska's unicameral state senate being the only exception.

In most bicameral legislatures, almost all of the political power is concentrated in the so-called "lower" chamber, which is usually the larger of the two. In the United Kingdom, for example, the House of Commons is led by the Prime Minister and handles virtually all lawmaking duties, whereas the House of Lords debates policy and holds inquiries but does not play a direct role in the creation of laws. American bicameral legislatures are unusual in that their lower and upper chambers both have lawmaking authority. In Congress, both representatives and senators can introduce bills, and bills require the support of both chambers to become law. This extra step makes Congress less efficient than many comparable bicameral legislatures, whose upper chambers are often bypassed almost completely in the lawmaking process.

The U.S. House of Representatives and U.S. Senate differ in several notable ways besides the size of their membership. Representatives serve two-year terms and senators six-year terms, though neither are term-limited (except by their own mortality). It is the Senate, not the House, that votes to ratify treaties and to confirm presidential cabinet appointees, Supreme Court justices, and the heads of certain government agencies. The House has the power to impeach a president, but the Senate holds the trial and votes to convict or acquit the president once he has been impeached. In rare cases where no presidential candidate wins a majority in the Electoral College, the House (voting by state) chooses the president, and the Senate (voting individually) chooses the vice president.

The differences between the House and Senate reflect the Founders' belief that the two chambers would play equal but distinct roles in the American government. The House, popularly elected every two years and with most of its members representing fewer constituents than senators do, was expected to be closer and therefore more beholden to average Americans. The Senate, with its six-year terms, was designed to remain more independent of public opinion. In fact, until the ratification of the Seventeenth Amendment in 1913, senators were elected indirectly by state legislatures rather than directly by voters. The idea was to strike the right democratic balance such that the people's will would be accurately represented in the House while their passions would be held in check by the intervention of the more aloof Senate.

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11.2: Congressional Leadership

The American two-party system extends to Congress, which is almost entirely elected by the plurality-rule process that mostly prevents minor-party candidates from winning. Of the 535 seats in the 118th Congress (which took office in January of 2023), only three are occupied by independents: Senator Angus King of Maine, Senator Bernie Sanders of Vermont, and Senator Kyrsten Sinema of Arizona (who was elected as a Democrat but left the party in 2022). All of the remaining members are either Democrats or Republicans.

The duopoly of the Democratic and Republican parties in American politics influences the leadership structure of Congress. The highest-ranking member of the House of Representatives is the **Speaker of the House**, elected by a vote of all members. The Speaker presides over the House while it is in session and is responsible for organizing its business. Technically, the Speaker can be anyone — even someone not in Congress — but the House has always elected one of its own members from the party which holds a majority of seats in the House at the time.

> Electing the Speaker of the House is usually an uneventful affair. The majority party generally rallies around its highest-ranking current member as its candidate for Speaker, and the majority party members who cast protest votes for someone else tend to be too few to prevent the that candidate from winning.
>
> The 2023 Speaker election was not so uneventful. With only a narrow majority in the House, the Republicans needed just about every vote they could get to cobble together a winning coalition for their leader, Kevin McCarthy. McCarthy ultimately won the speakership, but only after 15 rounds of voting and much negotiating with the handful of conservative Republicans blocking his ascent.

In addition to being the leader of the House, the Speaker is also the leader of his or her party within the House. On the other side of the aisle, the minority party is led by the House Minority Leader. There is also a House Majority Leader from the majority party who, ironically, does *not* lead his or her party in the House, instead serving as the party's second in command in the chamber behind the Speaker. The Democrats and Republicans in the Senate are similarly led by a Senate Majority Leader and a Senate Minority Leader (in some order, depending on which party has a majority in the Senate), but the Senate does not elect a speaker.



California Republican Kevin McCarthy breathes a sigh of relief upon being elected Speaker of the House in 2023 after 15 votes, the most required to elect a speaker in over a century.

In the party-congressional pecking order, the member immediately below each of the four leaders is his or her party's chief **whip** within the chamber. A whip's job is to "whip" votes — to persuade members of his or her party to vote in unison. Whips become especially important when their chambers are closely divided on key votes. For example, if the Senate is about to vote on a major and controversial bill, and if the final vote is expected to be close, the Senate Majority Whip (with his or her deputy whips) will

check in with majority party members to ensure they all plan to vote one way, whereas the Senate Minority Whip will deploy his or her deputy whips to convince minority party members to vote the opposite way.

Except for the Speaker of the House, none of these congressional leadership positions are specified in the Constitution. They, like the parties they serve, evolved naturally due to the rules of the institution. The major parties created these positions and maintain them today because they serve valuable organizational functions for the parties within Congress.

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11.3: The Legislative Process

As a legislature, Congress's primary duty is the making of laws. The American lawmaking process is long and complex, and not every law follows exactly the same series of steps. However, in general the legislative process proceeds as described in this section (and summarized in Figure 11.2 below).

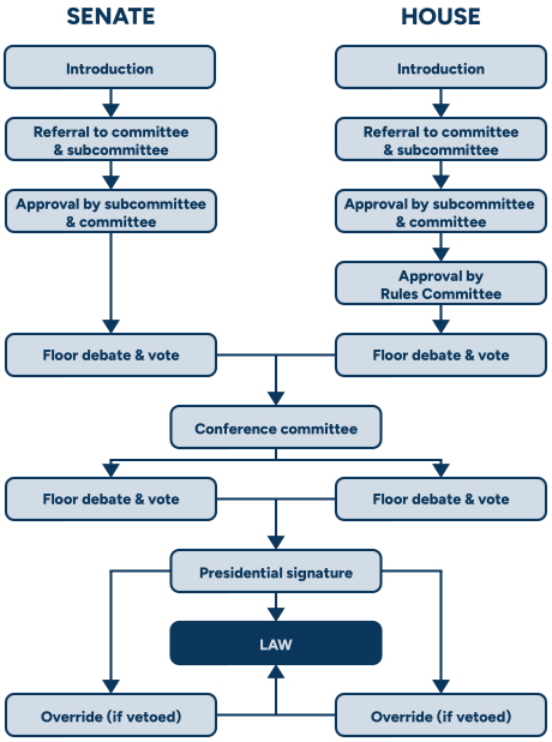


Figure 11.2: How a bill becomes a law (simplified)

The process begins when a member of Congress introduces a bill in either the House or the Senate. This bill need not be written by the member who introduces it; often, bills are written by a representative's or senator's staff, by the president or other executive branch employees, or by an interest group, and then given to a member of Congress to introduce. Except for revenue bills (such as taxes, budgets, or tariffs), any bill can originate in either the House or the Senate.

Once a bill is introduced, it is referred to a committee and then a subcommittee for further review. Committees and subcommittees are small groups of members whose job it is to consider bills proposed on particular topics. A bill introduced in the House that would change immigration policy related to deportations might be referred to the House Judiciary Committee. The House Judiciary Committee, in turn, might refer the bill to the Subcommittee on Immigration and Citizenship. The subcommittee to which a bill is referred reviews the bill, makes amendments to it as desired, and votes on whether to send it back to the committee. Once the subcommittee approves the bill, the full committee has its chance to review and amend the bill before voting on whether to send it back to the full chamber for consideration.

When a bill is sent by the committee back to the chamber where it originated (after being approved by the Rules Committee, if that chamber is the House), all members of that chamber can debate the bill and propose further amendments to it. Eventually, the chamber votes on whether to pass the bill. After passage in one chamber (if not before), the bill must be introduced in the other chamber, where it follows a similar process of referral, amendment, debate, and voting.

The versions of a bill passed by the House and the Senate may differ from one another due to amendments made by the subcommittees, committees, or full chambers. If so, a **conference committee** consisting of members from both chambers is appointed to reconcile those differences and combine the two bills into one. The reconciled version of a bill hammered out by a conference committee is then returned to both the House and the Senate. For the reconciled bill to move forward, both chambers must pass it unamended (because an amended bill would have to be reconciled with the other chamber's bill again).

Once both chambers pass identical versions of a bill, it is sent to the president, who can choose to either sign the bill or **veto** it. A signed bill becomes law. A vetoed bill is returned to Congress, where it can still become a law with a two-thirds vote of both chambers to **override** the president's veto.

The many steps of the lawmaking process explain why Congress often seems slow or unable to pass laws: there are many ways a bill can fail to become a law. Most bills "die in committee" by failing to clear the committee or subcommittee stage. Other bills are voted down by the chamber in which they originate, or pass one chamber but not the other, or are so amended by one or both chambers as to make the two versions impossible to reconcile. Even a reconciled bill approved by both chambers can be blocked by a presidential veto if Congress lacks the two-thirds consent required to override it (which is usually the case). Given all of these potential points of failure, members must craft bills carefully so as to avoid displeasing any person or group of people with the power to scuttle them.

> Despite the many pitfalls a bill can face on its way to passage, Congress does in fact pass many laws. Most of the bills that make it through the gauntlet, however, are relatively minor and uncontroversial: the renaming of a post office, the awarding of a Congressional Medal of Honor, the reauthorization of existing policies due to expire, and so on. Major bills — the ones most discussed by politicians and the public alike — have a much harder time, and a much lower success rate, of surmounting the many obstacles on the way to becoming a law.

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11.4: Legislator Behavior

Representatives and senators are often referred to as *legislators* or *lawmakers*, in recognition of their primary role of making laws. It is true that much of what Congress does falls under the umbrella of legislative activity. However, members of Congress also regularly engage in activities less directly connected to the legislative process.

In keeping with their role of representing the people who elected them, members of Congress and their staffs often use their positions of authority to provide services to constituents on an individual basis. This **casework** generally involves members contacting bureaucratic agencies in the executive branch to resolve particular issues brought to their attention by their constituents. Many of the letters, phone calls, and emails representatives and senators receive from the people they represent are not demands for them to vote for or against bills but rather requests for help with personal matters — lost or delayed Social Security checks, stalled immigration paperwork or payments for government contracts, letters of recommendation to military academies, and the like. Each case may only really matter to a single person or family, but members nevertheless try to fulfill as many casework requests as possible to develop a good reputation as legislators who care about the folks back home in their state or district.

Congress also uses its power of **oversight** to check the executive branch. When a Cabinet department or agency fails to do its job due to incompetence or corruption, congressional committees issue subpoenas and hold hearings to determine the extent of the problem and how it can be remedied. Cabinet secretaries and agency heads embroiled in scandal often find themselves "hauled before a committee" to account for their actions or those of their subordinates. Congressional hearings are not formal trials where the accused is subject to legal punishment if found guilty, but they can embarrass the subpoenaed officials (and the presidents who oversee them) and may lead to firings or demotions.

How and how much individual members of Congress choose to make use of the activities available to them depends upon a complex interaction of competing motivations. Contrary to the stereotype of the out-of-touch politician, many members have strong desires to act as true public servants and to enact policies that are in the interests of their constituents and the country as a whole. However, they also have an interest in promoting the success of their party (both within the chamber and in American politics more generally), as doing so will help it win or maintain a congressional majority, earn coveted committee chair positions, and pursue policy goals. Furthermore, they have strong individual motivations — reelection, status within the chamber, fame outside of it, and sometimes ambitions for higher office or comfortable careers as highly paid lobbyists after their retirement from Congress.

The times when these public, partisan, and personal motivations conflict often provide the most galling examples of Congress's "brokenness." The House and Senate are often mired in **gridlock**, unable to pass even widely popular and clearly necessary legislation, because one or both parties are unwilling to put aside their other goals to legislate in a bipartisan manner. When Congress does come together to pass bills, they are often loaded with **pork**, discretionary spending on pet projects in specific states or congressional districts (a potato research grant in Idaho, a new tennis court in Connecticut, a teapot museum in North Carolina, and so on). These spending items often sound more like undeserved giveaways than wise uses of taxpayer dollars, but they allow members of Congress to brag about having brought federal funding back to their constituents the next time they run for reelection. Individual members will also sometimes buck their party's position on controversial votes (to the chagrin of their party's whips) to avoid taking a position that could cost them electoral support in their state or district.

The degree to which members of Congress seem to orient their behavior around the goal of reelection — skipping votes to campaign or raise funds, inserting "earmarks" into bills to bring pork to their constituencies, going against their party to avoid damaging their popularity back home — strikes many Americans as distasteful, selfish, or even unethical. But being reelection-focused does not necessarily prevent a member from being an honest or good legislator. Senators and representatives can only use their power for as long as they retain their seats, which makes reelection a prerequisite for most of their other goals. Moreover, the fact that members care so much about reelection can be a good thing if it motivates them to act in the best interests of the constituents they represent (and on whose votes their legislative careers depend). Reelection is not merely a mechanism for voters to retain good and effective politicians; it is also an incentive for those politicians to do a good and effective job legislating. In some ways, we should be pleased that members of Congress care enough about being reelected to behave in ways that enable them to keep their seats term after term.

> Term limits for members of Congress are a perennially popular reform according to public opinion, and several states impose term limits on their state legislators. Supporters of term limits argue that forcing legislators to retire after a specified number of

terms prevents them from becoming “career politicians” and allows for more electoral competition and fresh ideas. Opponents counter that term limits rob legislatures of experienced members and remove the incentive of reelection that promotes good behavior on the part of legislators.

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11.5: The Antimajoritarian Congress

The basic structure of Congress, as befitting a democratic legislature, is majoritarian. Members are elected by pluralities or majorities of their constituents, and most committee and chamber decisions require either plurality or majority support to go forward. Some aspects of Congress, however, create opportunities for minorities to thwart majorities. Unsurprisingly, these same aspects are among Congress's most controversial traits.

To begin with, the distribution of congressional seats to states is not precisely proportional to those states' populations. Some disproportionality is inevitable with any legislature, but the equality of states in the Senate (each electing two senators) exacerbates this disproportionality. California (the most populous) has 67 times the population of Wyoming (the least populous state) but only 18 times as many members of Congress (54 versus 3). In other words, a Wyoming citizen has roughly four times as much representation in Congress as a California citizen does. In the same way that this disproportionality enables the Electoral College (as discussed in the previous chapter) to award the presidency to the popular vote loser, it allows for parties and policies supported by a minority of citizens to find majority support in Congress, even if each member of Congress votes the way a majority of his or her constituents would.

The disproportionate nature of congressional elections can be further manipulated by gerrymandering. A **gerrymander** is a district whose boundaries are drawn with the intent to influence election outcomes by including certain voters and excluding others. Most congressional districts in the United States are drawn by state legislatures, and a Democratic- or Republican-controlled state legislature can improve its party's performance in congressional elections by cleverly crafting maps that maximize the efficiency of its votes relative to its opponent's. Illinois Democrats used gerrymanders to their advantage when redrawing their congressional districts in 2021: under the squiggly new map (displayed on the right in Figure 11.3 below), Democratic candidates won 82% (14 out of 17) of Illinois's U.S. House seats in the 2022 midterm elections, despite only earning 56% of the popular vote in the state.

gerrymander: A district drawn to influence election outcomes by including certain voters and excluding others.

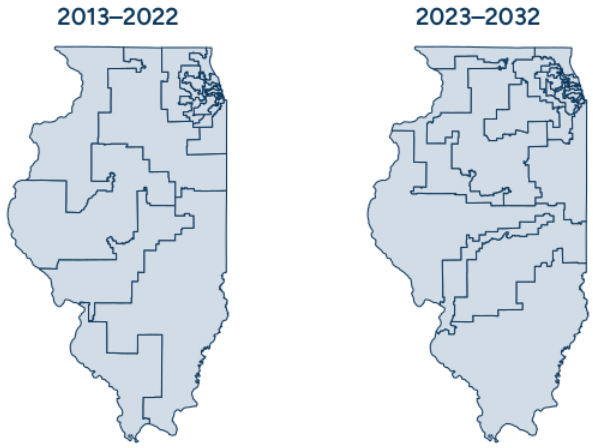


Figure 11.3: Illinois congressional districts, 2013–2032 (Source: U.S. Census Bureau)

Because state boundaries are not periodically withdrawn the way congressional districts are to keep up with population adjustments, the Senate is immune to the gerrymandering that afflicts the House. But the Senate does have its own unique antimajoritarian quirk in the form of the **filibuster**. Under Senate rules, it usually takes a supermajority of 60 votes to invoke cloture — that is, to end debate on a topic and move to a vote. The minority party in the Senate can leverage this requirement to block actions supported by the majority, either by giving interminably long speeches (sometimes many hours long) or, more commonly, by simply refusing to vote for cloture. The majority party has some procedural tools at its disposal to get around filibusters, but these are used sparingly, generally only in extreme circumstances. Thus, for most Senate business, a simple majority of votes is not enough to proceed if the minority is sufficiently committed to obstruction.

Some antimajoritarian aspects of Congress are established in the Constitution, making them highly resistant to change. This is especially true of the disproportionate nature of the Senate, which is not only laid out in Article I but also buttressed by Article V's insistence that "no State, without its Consent, shall be deprived of its equal Suffrage in the Senate." Others, such as gerrymanders

and filibusters, are far more pliable: some states delegate the task of district-drawing to independent, nonpartisan commissions, and the Senate can choose to amend its rules to limit or abolish the filibuster. The fact that these aspects persist suggests that a sufficient number of those with the power to change them perceive some advantage in maintaining the status quo, even if it means curtailing majority rule.

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11.6: The Broken Branch?

An old saying muses that, if *con* is the opposite of *pro*, then by the same logic *Congress* must be the opposite of *progress*. Such a cynical view may seem justified given how Congress works — or, perhaps more accurately, how Congress doesn't work. Lacking both the quick, decisive action of the presidency and the impartial, detached aura of the Supreme Court, America's national legislature can appear to be locked in a perpetual quarrel, one from which it only occasionally emerges to pass a major policy or two before descending back into dysfunction.

One might reasonably conclude from this that the American political machine is in need of repair. But Congress's tendency toward inaction is in a way proof that it is working as designed. The Founders intended for the national government to be able to pass laws only with difficulty, and fashioning a bicameral legislature with many choke points to ensure that any laws which did make it through the convoluted legislative process would be worthy of enactment. A more streamlined policymaking system would make bad laws as well as good laws easier to pass; the Founders decided that the risk of the former outweighed the possibility of the latter.

This is not to say that Congress is perfect. The strength of today's congressional parties, the increasing size of the federal budget, the democratization of the Senate through the Seventeenth Amendment's introduction of popular senatorial elections, and the fact that the average representative today is expected to speak on behalf of over 700,000 constituents would all be regarded by the Founders as changes for the worse. Perhaps they would be right. Or perhaps they wouldn't, and the features of Congress they favored — the slow, deliberate pace of lawmaking, the disproportionate nature of the Senate, and the ability of members to serve unlimited terms — should be done away with to modernize Congress.

Unfortunately, every congressional reform — both those enacted in the past and those that might be enacted in the future — involves trade-offs. Even a good or necessary reform will come with negative side effects. As with reforms of any kind, the trick to making Congress "work" (however we might define "working") is knowing whether the cure is worse than the disease.

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CHAPTER OVERVIEW

12: The Presidency

The qualifications are few — be a natural-born U.S. citizen at least 35 years old and a U.S. resident for 14 years — but the interview is more arduous and grueling than almost any hiring process ever devised. The $400,000 salary is attractive, but it requires being on call 24 hours a day, seven days a week, 365 days a year. Thousands have applied for this position since it was established, but only 45 men have ever actually held it. Of these 45, eight (18%) have died while doing so, including four (9%) who were shot, making President of the United States arguably the world's deadliest desk job.



President Joe Biden signs the Protecting Medicare and American Farmers from Sequester Cuts Act at his desk in the Oval Office in December 2021.

In spite of this danger, the American presidency and the power that comes with it are highly sought after. Yet this mighty office was designed by men who were keenly suspicious of any political system which gave so much power to one person. That the chief executive they established would one day be unable to leave the White House without being accompanied by "the nuclear football" — a briefcase containing codes which can be used to launch nuclear weapons at any world capital — would have seemed surreal in the early days of the republic. Nowadays, we expect nothing less.

How the presidency evolved from a mostly subservient functionary of Congress to the major player in American foreign and domestic policymaking parallels how the United States evolved from a fledgling gaggle of far-flung ex-colonies to the most powerful country on the face of the earth. Today America asks far more of its presidents than it did in the past and offers them a greater deal of legal authority to meet those loftier expectations. How the American political machine works today is closely tied to the role presidents have assumed, rightly or wrongly, in controlling that machine.

12.1: Presidential Roles

12.2: The Executive Branch

12.3: Presidential Powers

12.4: The President versus Congress

12.5: The Imperial Presidency?

12.6: Calibrating the Presidency

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12.1: Presidential Roles

The President of the United States fulfills several important roles in the political and civic life of the United States. Americans tend to be most familiar with the president's role as head of government. As the leader of the executive branch of the national government, it is the president's duty to, in the language of Article II of the Constitution, "take Care that the Laws be faithfully executed." Congress bears primary responsibility for lawmaking, but once laws are made it is up to the president — and the network of departments, agencies, and offices over which he has authority — to ensure that they are enforced. From IRS auditors collecting taxes to CIA operatives tracking suspected terrorists to NPS rangers monitoring national parks, the president's subordinates (and his subordinates' subordinates) act to carry out the will of Congress.

In addition to his practical role as head of government, the president also fulfills the symbolic role of head of state. As the only official other than the vice president chosen in a national election, the president represents the entire country in various ceremonial capacities, from pardoning turkeys each November to welcoming visiting foreign leaders to mourning national tragedies. The president personifies all of America, officially and unofficially, both within its borders and around the world.

Some countries, including Mexico, South Korea, and Turkey, fuse the roles of head of state and head of government similarly to the way America does. Others keep the roles separate. In the United Kingdom, the Prime Minister (elected by the House of Commons) fulfills the practical duties of head of government while the King assumes the symbolic responsibilities of head of state. A similar division occurs in Iran, where the secular President is head of government but the religious Supreme Leader is head of state (although the Supreme Leader does appoint some cabinet ministers directly). Ethiopia, Germany, India, and many other countries have both an elected head of government and a separately elected head of state.

> This distinction between head of government and head of state is why the United Kingdom and other "constitutional monarchies" are considered democracies despite having kings, queens, or emperors. The monarchs of these countries wield only symbolic power while the democratically-elected heads of government direct the policymaking process.

Aside from head of government and head of state, the President of the United States serves as the commander-in-chief of the United States Armed Forces, bearing responsibility for overall military strategy as well as specific tactical operations. The president is also America's chief diplomat, negotiating political and economic treaties with leaders of other countries, often with the aid of the Department of State (which handles diplomatic affairs). Finally, the president is the unofficial head of his party (by virtue of the fact that he is its highest-ranking member in government) and sets the tone for the party's policy agenda and electoral strategy, in both intentional and unintentional ways.

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12.2: The Executive Branch

In addition to the president and vice president, the executive branch of the national government consists of millions of other civilian and military employees, who combine to make it the largest of the three branches in terms of personnel. The president manages this bureaucracy primarily through his **Cabinet**, which consists of the vice president and 15 heads of Cabinet departments. (See Figure 13.2 in the next chapter for a list of Cabinet departments.)

Cabinet department heads are chosen by the president and confirmed by the Senate. Each holds the title “Secretary” (Secretary of State, Secretary of the Treasury, Secretary of Defense, and so on), with the exception of the head of the Department of Justice, whose title is Attorney General. Cabinet secretaries advise the president on policy and implement the presidential and congressional directives which fall under their jurisdiction. The Department of Agriculture, for example, distributes farm subsidies, provides food stamps to low-income families, and oversees the National School Lunch Program.

The president’s Cabinet also makes up most of the presidential line of succession. In the event that the president is unable to carry out his duties due to death, incapacitation, resignation, or removal from office, the vice president becomes the president. If the vice president is also unable to discharge the duties of the office, the presidency passes next to the Speaker of the House, then to the president pro tempore of the Senate (typically the longest-serving member of the majority party in the Senate), then to the Cabinet officials in order of their departments’ creation, until a person eligible to be president is reached. The order of succession after the vice president was established by an act of Congress in 1947, but it has never been used. Nine vice presidents have ascended to the presidency after a president’s death or resignation, but the United States has never needed to proceed further down the list to find an emergency replacement for its chief executive.

> The presidency and vice presidency require their occupants to be natural-born U.S. citizens, but the other positions in the current presidential line of succession do not. Two members of Joe Biden’s Cabinet are not natural-born U.S. citizens: Secretary of Energy Jennifer Granholm was born in Canada, and Secretary of Homeland Security Alejandro Mayorkas was born in Cuba. Were the United States forced to proceed that far down the line of succession to find a new president, Granholm and Mayorkas would be skipped over.

Besides the Cabinet departments, the President is in charge of 15 agencies grouped within the **Executive Office of the President**, including the Office of Management and Budget, the National Security Council, and the Council of Economic Advisers. The President also oversees various independent agencies, including the Central Intelligence Agency, the Environmental Protection Agency, and the National Aeronautics and Space Administration. The sheer number of departments and agencies under the president’s command reveals how much Americans expect out of their national government, an expectation which has grown greatly over time.

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12.3: Presidential Powers

The president derives his authority from two sources: the Constitution and the laws passed by Congress which delegate certain powers to him (and to the executive branch under his command). The president's constitutional powers have remained relatively stable over time, while his powers derived from acts of Congress have expanded considerably along with the size and scope of the national government.

Most of the president's constitutional powers are granted in Article II, though a few powers are tucked away in other parts of the Constitution. One such constitutional power, found in Article I, is the ability to sign bills into law. By implication, this power also gives the president the power to veto laws by refusing to sign them, thereby preventing them from becoming law (unless Congress overrides the veto with a two-thirds majority in both chambers).

Besides signing bills into law, the president can appoint Cabinet secretaries, federal judges, agency heads, and ambassadors to foreign countries. These appointees generally must be confirmed by the Senate before they can take office, but they can serve on a provisional basis if appointed while Congress is not in session. As commander-in-chief, the president is in charge of many aspects of military strategy. This does not include the power to declare war (which is granted to Congress in Article I), but it does allow the president to initiate certain military actions in both wartime and peacetime.

One of the president's less frequently used constitutional powers is the power to pardon people convicted of crimes. Pardons often occur in bunches near the end of a president's term, when he is no longer up for reelection and unlikely to receive major blowback from the media or the public for issuing controversial pardons. The president can also convene a special session of Congress. This power was more important back when transportation was less efficient and members of Congress spent far less time in Washington. Today, Congress is rarely out of session, so the president has few opportunities to wield this power.

Although the term does not appear in the Constitution, the president also has the constitutional authority to issue an **executive order**, which has the full force of law but does not require congressional approval. This power stems from Article II, which begins, "[t]he executive power shall be vested in a President of the United States." The Supreme Court has interpreted this clause to mean that the president can issue legally binding orders without congressional approval, provided these orders are not themselves unconstitutional. (Congress can pass legislation overturning executive orders, but it rarely does so.)

Beyond these constitutional powers, the president possesses statutory powers bestowed upon him by congressional legislation. Congress may authorize the president or the executive branch to perform certain tasks when executing laws, such as determining the specific standards, deadlines, and penalties that go along with a law to combat air pollution. Congress may also choose to delegate certain responsibilities to the president which he, being a single person with a national focus, is better equipped to handle than a roomful of senators and representatives with state and district loyalties. Trade policy is one such topic on which Congress, knowing that it would struggle to craft an effective policy for the whole country, abdicates its authority to do so and assigns the job to the president instead (although the Senate retains the power to ratify trade agreements).

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12.4: The President versus Congress

Of course, Congress does not always roll over and freely grant the president new statutory powers. The twin concepts of separation of powers and checks and balances were intended by the Founders to set Congress and the president against one another, and it doesn't take much effort to find proof that this design has succeeded in creating such conflict.

Modern presidents run for office promising many policy changes, but a great deal of these promises cannot be fulfilled without at least some cooperation from the legislative branch. Congressional cooperation is most easily obtained — though not guaranteed — in times of **unified government**, when the president's party also has majorities in both the House of Representatives and the Senate. Under **divided government**, when the president's party is the minority party in the House, the Senate, or both, policymaking often seems to be at a standstill. Laws can and do get passed under divided government, but they tend to be smaller in scope and limited to the set of issues on which the Democratic and Republican parties can find agreement — a set which has become smaller and smaller in recent decades due to polarization.

Congress and the president are more prone to use their constitutional checks to limit each other's power in times of divided government. One way the president can check congressional power is through vetoes, which successfully halt bills about 96% of the time when they are used (as depicted in Figure 12.1 below). The president can also limit Congress's power when choosing how to enforce the laws it passes, a choice which he often signals in a "signing statement" published when the law is enacted. Although the president cannot outright refuse to comply with or openly defy laws passed by Congress, his executive authority provides him leeway to decide how vigorously to enforce those laws.

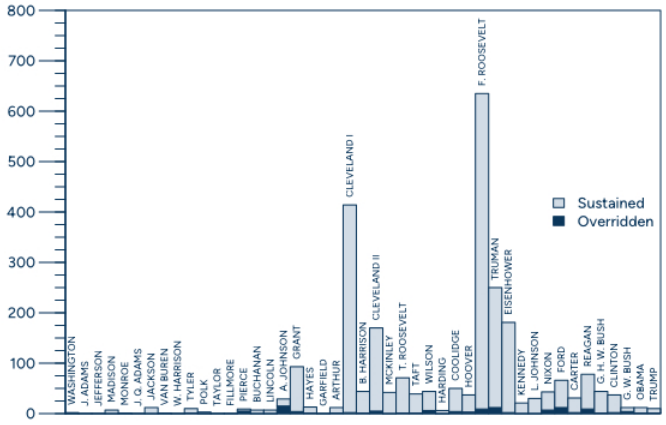


Figure 12.1: Total vetoes by president (Source: U.S. Senate)

Besides overriding vetoes, Congress can thwart the president through other means. Because it holds the power of the purse, Congress can choose to withhold funding from the president's preferred policies and projects. Although the president proposes budgets to Congress, Congress is free to ignore those proposals and craft budgets to suit its own preferences. Additionally, the Senate has the final say on presidential appointees and negotiated treaties, and can decline to confirm the former or ratify the latter.

The most extreme check Congress can use against the president is that of **impeachment**. To *impeach* is to formally accuse someone of wrongful conduct. The House of Representatives can, by a majority vote, impeach the president or any federal officer for treason, bribery, or "high crimes and misdemeanors," according to Article II. The impeached member of the executive branch is then tried in the Senate, with the Chief Justice of the Supreme Court presiding if (and only if) the president is the one being impeached. At the conclusion of the trial, a two-thirds majority vote of the Senate is required to remove an impeached president from office. (To prevent the president from using his pardon power to thwart this removal, Article II specifies that presidential pardons do not apply in cases of impeachment.)

impeachment: The charging of a federal officer with treason, bribery, or "high crimes and misdemeanors."

Impeachment has only been used against a president four times in American history: once against Andrew Johnson in 1868 (for firing his Secretary of War), once against Bill Clinton in 1998 (for lying to Congress about his sexual affair with a White House intern), and twice against Donald Trump in 2019 (for abusing his power to arrange a foreign investigation of his electoral opponent

Joe Biden) and 2021 (for inciting rioters to storm the U.S. Capitol). All four impeachments ended in acquittal by the Senate; no president has ever been removed from office through the impeachment process. (In anticipation of being impeached and removed for his involvement in the Watergate burglary, Richard Nixon chose instead to resign the presidency in 1974 so as to go out on his own terms.)

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12.5: The Imperial Presidency?

The Founders who designed the presidency at the Constitutional Convention knew at the time that George Washington, a war hero and nationally beloved figure, would almost certainly become the first person to occupy it. They trusted Washington to not abuse the power of the office to make himself a king or tyrant, but they nevertheless settled on a limited chief executive because they did not know who would succeed him. Wary that a powerful position would naturally attract the power-hungry, they assigned most of the Constitution's powers to Congress, which seemed less susceptible to tyrannical decay.

Over America's history, the presidency's power has gradually increased as individual presidents have stretched the boundaries of the office. Thomas Jefferson's authorization of the Louisiana Purchase without congressional approval, Abraham Lincoln's mobilization of the U.S. military to fight the Civil War while Congress was not in session, Theodore Roosevelt's aggressive diplomatic efforts in Latin America and elsewhere, and Franklin D. Roosevelt's expansive New Deal — along with many other large and small deeds by these and other presidents — were all unprecedented executive actions which tested the limits of the office's constitutional authority.



President Franklin D. Roosevelt, whose New Deal represented a substantial increase in the power of the presidency, addresses the nation over radio in one of his "fireside chats."

A major development in the military power of the presidency occurred in 1973 when Congress passed the **War Powers Act**, permitting the president to initiate military actions without a congressional declaration of war or authorization for use of military force. The act requires the president to inform Congress of such actions within 48 hours of when these actions commence, and they cannot last longer than 90 days (60, plus 30 for withdrawal) unless Congress approves an extension. Still, this flexibility, coupled with the fact that Congress rarely declines presidential requests for authorizations for use of military force, affords the president considerable unilateral military power.

> The last time the United States declared war on another country was in 1942, when Congress issued declarations of war against Bulgaria, Hungary, and Romania as part of World War II. All so-called "wars" involving the United States since then — including the Korean War, the Vietnam War, the Persian Gulf War, the War in Afghanistan, and the Iraq War — were not technically wars but rather military engagements with some form congressional support short of a declaration of war.

Critics point to this and other presidential powers as evidence that the executive branch has evolved into an "imperial presidency," in which the president essentially rules as an emperor would with mostly unchecked power. The powers wielded by modern presidents do indeed dwarf those of their predecessors, and presidents have ample options at their disposal for circumventing Congress, such as signing an executive order (instead of a law) or an **executive agreement** (instead of a treaty) to achieve their policy objectives without the need for congressional approval.

However, there are limits to what presidents can do on their own. Executive orders and executive agreements can function like laws and treaties, but they also lack durability, only lasting as long as they have the support of whoever happens to be president at the time. In 2016, for example, Barack Obama entered the United States into the Paris Agreement on climate change over the Senate's objection by signing it as an executive agreement rather than a treaty. His successor, Donald Trump, was able to withdraw from the agreement without the need for congressional approval, because it was never ratified as a treaty — and *his* successor, Joe Biden, was able to reenter the agreement just as easily. Furthermore, although modern presidents issue many executive orders (as shown in Figure 12.2 below), most are symbolic or procedural, involving minor issues like commemorations of holidays or historical events rather than major power grabs.

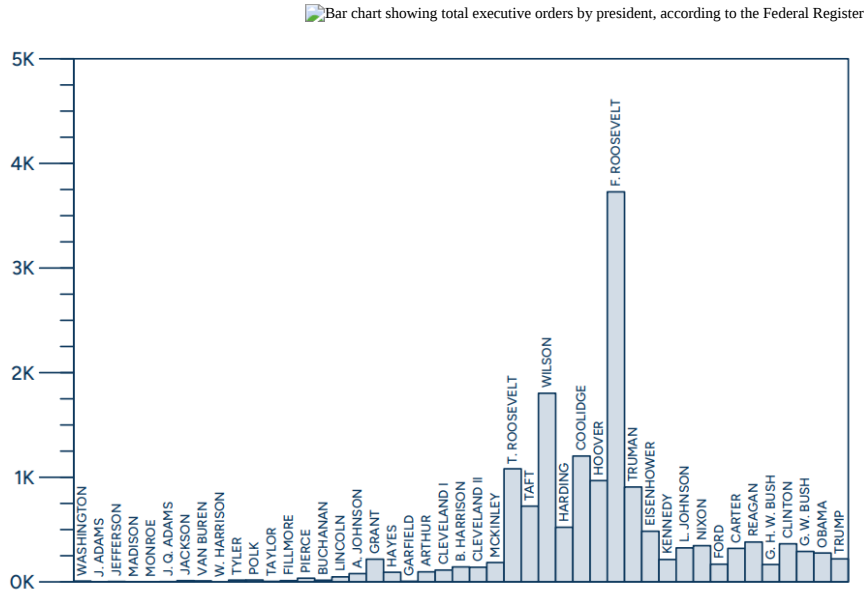


Figure 12.2: Total executive orders by president (Source: Federal Register)

Even though the executive branch has increased its power relative to the legislative branch since the 18th century, it would be wrong to suggest that this increase was entirely the doing of presidents. Many of the powers added to the executive branch's arsenal since the days of George Washington have not been seized by power-hungry presidents but rather handed over willingly by Congress, out of a desire for the president to achieve some policy objective they would not or could not achieve themselves. Meanwhile, the American people have generally approved of bold, decisive presidential actions, especially when contrasted with the perpetual logjam that so often seems to paralyze the legislative branch. Although Congress and the public often complain about presidents acting like kings or tyrants, both have enabled unilateral presidential behavior over the years.

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12.6: Calibrating the Presidency

The term *president* — meaning one who presides over a meeting — was chosen for America's chief executive largely on account of its implied weakness. John Adams, who would eventually succeed George Washington as president, considered it too feeble a name for America's chief executive. Adams predicted any man calling himself by such a label would be mocked by the kings and queens of Europe and disregarded by the citizens of his own country as unimportant and ineffectual. In Adams's view, a *magistrate*, an *excellency*, even an elected *king* would have been preferable to the meek title on which the Founders settled.

Since Adams's day, the presidency has been occupied by men both courageous and craven, virtuous and vile, forceful and feckless. Through their actions — and those of Congress and the federal courts — the presidency has become the world's most powerful political office. America's chief executive has even changed the meaning of the word *president*. Once deemed weak, it is now favored by national leaders (both democratic and dictatorial) all around the world who wish to aggrandize themselves by holding the same title as the so-called "Leader of the Free World," even if their actual powers are petty by comparison.

Whether the gradual empowerment of the presidency has made the American political machine better or worse is a fiercely debated question. The machine undoubtedly works faster when a decisive president is in charge rather than a deliberate Congress. But fast-moving machines can be dangerous as well as productive, and political machines are no exception to the rule.

Many Americans long for a more powerful presidency when the current president is one they support, only to pine for greater constraints on it as soon as a president they oppose takes office. Unfortunately, we can't have it both ways. A vexing but unavoidable challenge of institutional design is to create a system that works well when both good and bad leaders are at the controls.

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CHAPTER OVERVIEW

13: The Bureaucracy

Close your eyes and envision the American government. What do you see? If you are like most Americans, the faces that come to mind will be those of the most prominent actors in national politics: the president and vice president, the Speaker of the House and other congressional leaders, perhaps a Supreme Court justice or two if judicial matters are in the news. Or you might conjure up generic images of government in action: the president signing bills into law or making speeches, members of Congress arguing in the House or Senate chamber. Or you might picture the government's distinctive architecture: the U.S. Capitol, the White House, the Supreme Court building.



The world's second largest office building is the Pentagon in Arlington, Virginia, headquarters of the U.S. Department of Defense.

Although the subjects of these visions are frequently mentioned on the news and thought about by average Americans, they represent only a small fraction of the people who make up the national government of the United States. The overwhelming majority of the government — roughly four million people, more than one out of every 100 Americans — mostly operates anonymously and out of the public eye, either in the U.S. military or as civilians in the many departments and agencies within the government's executive branch. (Figure 13.1 below shows fluctuations in the American government's civilian workforce since 1940). Though not as prominent as the elected and appointed officials whose names and faces are far more recognizable, they perform many tasks which are essential for carrying out government policy.

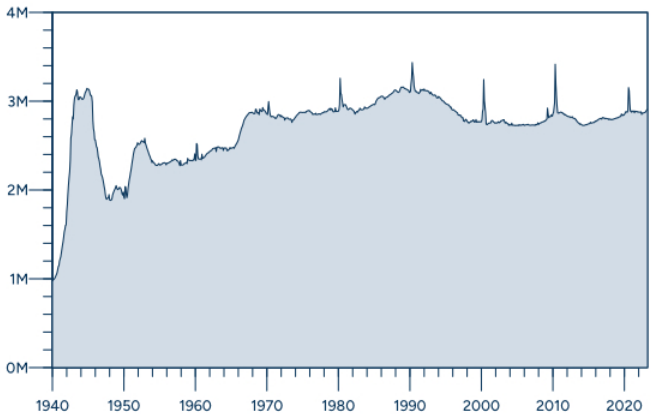


Figure 13.1: Millions of U.S. federal civilian employees, 1940–2023 (Source: U.S. Bureau of Labor Statistics)

The large bureaucratic organization that manages the many tasks required of America's government is a testament to the power of collective action. It can issue millions of Social Security checks, warn citizens of an approaching tornado, launch a satellite into orbit, and kill a terrorist halfway around the world all in the same day. But it is also an unwieldy leviathan, inefficient and impersonal and unresponsive, a byzantine maze of rules and regulations and red tape that frequently thwarts politicians' best intentions without even trying. And yet, in spite of this complexity, many of the most enduring problems of America's bureaucracy — the things Americans hate the most about their government — can be explained by a few basic principles of human interaction that characterize all bureaucracies.

13.1: Traits of Bureaucracies
13.2: Principal-Agent Problems
13.3: America's Evolving Bureaucracy
13.4: Divisions of the Bureaucracy
13.5: Big Government

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13.1: Traits of Bureaucracies

A **bureaucracy** is a formal, hierarchical organization for delegating tasks and duties. The term was coined in the 18th century to describe the French government, which at the time consisted of many administrative offices staffed by professional civil servants. Contrasted with democracy, or rule (*kratia*) by the people (*demos*), bureaucracy signified rule by officials, *bureau* being the French word for “desk” or “office.” (The undemocratic implication, of course, was that political power had been taken from the people and given to officials instead.)

In the context of American politics, “the bureaucracy” usually means the vast network of departments and agencies within the executive branch of the national government. However, bureaucracies also exist at other governmental levels and in many nongovernmental aspects of society, including businesses, religious denominations, and educational institutions. Virtually anything that could be considered an organization of some sort operates more or less according to bureaucratic principles, with a leadership structure made up of multiple members with distinct duties and responsibilities.

German sociologist Max Weber was one of the first to study the concept of bureaucracy scientifically. Recognizing that the European countries of his time increasingly relied on these complex organizations to manage governmental affairs, Weber examined several bureaucracies to determine what features contributed to their success. In doing so, he identified several traits that characterized an ideal bureaucracy.

In Weber’s view, a bureaucracy should take the form of a **hierarchy**, an organizational structure in which each individual bureaucrat is superior or inferior to at least one other bureaucrat. This structure make it clear who outranks whom in the bureaucracy. It also allows for communication to flow through an orderly chain of command. Instead of the boss at the top of the hierarchy issuing orders to and receiving reports from the people at the bottom, messages are passed through the intermediate levels of the hierarchy to keep everyone’s responsibilities as manageable as possible.

Weber’s ideal bureaucracy leverages the principle of **division of labor**, assigning each member a specific set of related duties. This enables specialization: instead of striving to be good at everything a bureaucracy does, each bureaucrat can concentrate on mastering a small number of skills. For a similar reason, bureaucracies should be staffed with expert officials, selected based on their ability to fulfill the duties of their positions, and their continued employment and potential promotion should likewise be based on the quality of their performance.

Bureaucracies endeavor to rely as much as possible on rule-based decision-making. Any task performed by bureaucrats should be done according to well-defined and standardized procedures. Some discretion may be unavoidable, but bureaucrats should be made to follow strict protocols rather than improvising as much as possible, as this will ensure fair and equal treatment across different situations.

Weber viewed bureaucracy as rational and efficient, necessary for the administration of a modern country. Nonetheless, he acknowledged that bureaucracy’s dedication to rule-based decision-making can have a dehumanizing effect on people if it makes them feel like animals or objects being processed by a machine rather than individual and unique human beings. (If your last experience with “customer service” over the telephone involved talking to someone who sounded bored, stuck to a script, and didn’t seem to recognize or care about you as a real person with wants and needs, you may have experienced a taste of bureaucracy’s potential to dehumanize.)

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13.2: Principal-Agent Problems

Weber identified his ideal characteristics of bureaucracies based on their close relationship to bureaucratic efficiency: to the extent that a bureaucracy embodies these characteristics, it will achieve its goals in a more efficient manner. Yet even bureaucracies which meet most or all of these requirements are often still inefficient. Because of this, bureaucracies tend to have a negative reputation for being slow and bungling, hampered by “red tape” that prevents them from solving problems quickly and sensibly.

Although their commitment to rules and protocols can be irksome, many of the problems associated with bureaucracies have less to do with the rules and more to do with the people following (or not following) those rules. A fundamental reason why bureaucracies often fail to achieve their goals is that they are rife with principal-agent problems. A **principal-agent problem** occurs when someone (a **principal**) asks someone else (an **agent**) to do something but the agent’s motivations differ from the principal’s. This difference can cause the agent to perform the assigned task in a way other than how the principal would prefer it to be done.

Any situation in which someone acts on behalf of someone else has the potential to become a principal-agent problem. When you take your car to a mechanic, order food at a restaurant, or ask your friend to dogsit for you while you are out of town, you become a principal by entrusting a task to an agent. You want the mechanic to work quickly and cheaply, the cook to wash his hands and give you generous portions, and your friend to be attentive to and careful with your dog — but the mechanic may prefer to work at a leisurely pace and overcharge you, the cook to save time by not washing his hands and money by not filling your plate, and your friend to just provide the bare minimum in pet upkeep because of how busy or lazy she is. In each case, the agent is unlikely to perform the task exactly the way you (the principal) would like it to be performed, simply because of how your motivations differ.

> Not every principal-agent *relationship* becomes a principal-agent *problem*. If a principal and agent do not differ substantially in their motivations regarding a certain task, the principal may be able to trust the agent to act as the principal himself or herself would have acted.

Though principal-agent problems are common, principals continue to delegate tasks to agents despite being aware of motivational differences and the issues that may arise from them. They do this out of necessity: for all of the negative outcomes that can arise from principal-agent relationships, it is still often more efficient for principals to delegate tasks to agents than to do them themselves.

Fortunately, principals are not helpless when confronted with agents who do not share their motives. First, they can monitor agents’ performance and evaluate it for quality. This can take the form of student evaluations of professors, CCTV cameras watching a store’s cash register to make sure the cashier is not stealing from the till, or a mother inspecting her child’s room for cleanliness. Second, they can reward or punish agents on the basis of their performance. This can be accomplished through a special parking place reserved for the “Employee of the Month,” a generous tip for a timely pizza delivery driver, or the impeachment of a president for committing high crimes and misdemeanors.

Crucially, neither monitoring nor reward or punishment is by itself sufficient to solve a principal-agent problem. If agents do not expect to be rewarded or punished for good or bad performance, it will not matter how closely they are being monitored by their principals. Likewise, promises of performance-based rewards or punishments will be ineffective if no one is keeping an eye on the agents to determine whether they deserve to be rewarded or punished.

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13.3: America's Evolving Bureaucracy

At its founding, the national government of the United States was considerably smaller than it is today. The Founders, firm believers in the principle of limited government, designed a federal system in which the national government retained only those powers considered to be indispensable, such as waging wars, coining money, and conducting diplomacy. The national bureaucracy began small: President George Washington's Cabinet contained only three departments — State, Treasury, and War — plus the office of the Attorney General. Anything that could be handled by state governments or private individuals and organizations was considered outside the national government's purview. Americans got little from their national government, but they also expected little from it.

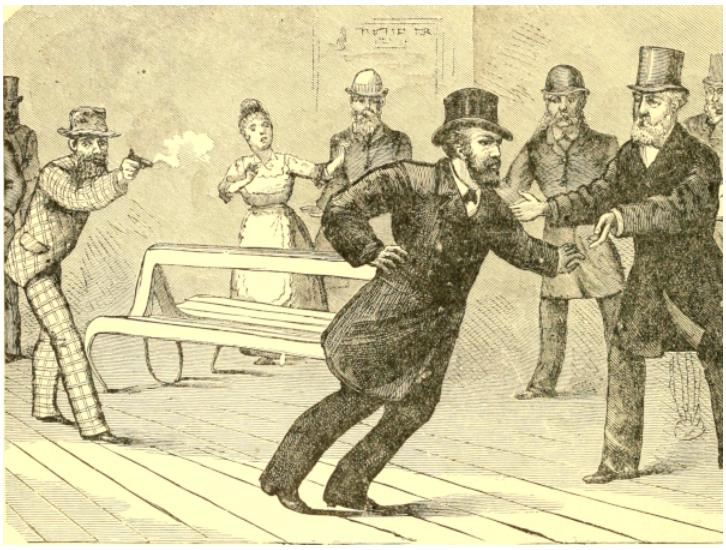
The early American bureaucracy lacked expertise as well as size. Beginning in earnest with the election of President Andrew Jackson in 1824, bureaucratic positions were routinely awarded to the president's supporters under the **spoils system**. To recruit campaign volunteers and donors, presidential candidates promised prestigious government jobs (and generous government salaries) on the condition that they won the presidential election. Consequently, positions were often filled by people with no particular abilities that would qualify them to execute their new responsibilities. Even if they managed to pick up some skills on the job, they could expect to be replaced within four to eight years by an ally of the next president, likely someone with no relevant job experience. Under this system, the bureaucracy was unstable, incompetent, and corrupt, more a tool for campaigning than an effective means of implementing government policy.

> The term *spoils system* comes from the proverb, "To the victor go the spoils." *Spoils* refers to plunder or treasure seized in a war or raid. Early U.S. presidents treated the appointed positions they could fill less as tools for effective governance and more as prizes to distribute to loyal backers.

The flaws of the spoils system proved fatal in 1881, when Charles Guiteau, an obsessed supporter of President James Garfield who falsely believed his actions to have been crucial to Garfield's victory, demanded to be appointed the American government's consul (a diplomatic position akin to an ambassador) in Paris, France. After being rebuffed repeatedly, Guiteau approached Garfield at a train station and shot him twice in the back, wrongly believing that the Vice President at the time, Chester A. Arthur, would reward him with a patronage job in gratitude for elevating him to the presidency. In the aftermath of the assassination, Congress acted to dismantle the spoils system by passing the **Pendleton Act** in 1883, preventing presidents from firing certain bureaucrats for political reasons and instituting qualifications-based procedures for filling many bureaucratic positions. These reforms led to the development of a **civil service** of bureaucrats employed for their merit and expertise, rather than on the basis of political favoritism.

The American bureaucracy evolved further in the early 20th century with the advent of **Progressivism**. Although it had already grown in size along with the country by hiring more personnel to deal with the nation's increased territory and population, this growth mostly entailed performing the same tasks as before but over a larger area and for more people. By contrast, Progressives — including Presidents Theodore Roosevelt, Woodrow Wilson and Franklin D. Roosevelt — advocated an increase in the government's scope as well as its size, enabling it to engage in activities that were previously considered to be the responsibility of state governments or nongovernmental actors.

The Progressives' political philosophy contrasted starkly with the Founders' belief in the virtues of limited government. Fearful of putting too much power in the hands of the national government, the Founders separated power among three branches and rigged the Constitution with a complex set of checks and balances to prevent its misuse. In the eyes of the Progressives, this intentionally inefficient system tied the government's hands too much, preventing it from dealing with policy problems — the Great Depression, the Dust Bowl, two World Wars — of which the Founders could never have dreamed. Franklin D. Roosevelt's New Deal, a set of programs aimed at combating the Great Depression, represented an unprecedented level of government involvement in the economy, including jobs programs, wage and price controls, and government-administered pensions in the form of Social Security.



Charles Guiteau assassinates President James Garfield in 1881, sparking the demise of the spoils system in the United States and the institution of a less politicized civil service.

Today, Americans expect their government to do many things that Americans two hundred years ago never would have, and the bureaucracy has grown to accommodate those expectations (as evidenced by the increasing size of the president's Cabinet shown in Figure 13.2 below). Many of these new government responsibilities, such as disaster relief, food and drug safety, and air traffic control, are relatively uncontroversial: most people accept the government's involvement in these realms. Other new responsibilities, such as welfare programs, national education standards, and publicly-administered health insurance, are topics of frequent and fierce debate.

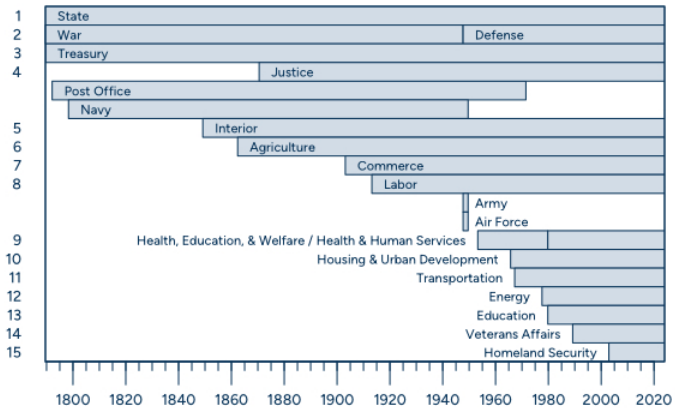


Figure 13.2: U.S. Cabinet departments by date and precedence, 1789–2023 (Note: Justice, as an expansion of the older Attorney General's office, takes precedence over Interior and Agriculture.)

What all of the executive branch's responsibilities have in common is that they are fulfilled primarily by bureaucrats, working behind the scenes and without direct accountability to voters. This shielding from political pressure enables them to develop expertise over long careers without having to worry about suddenly being fired by the president. It also makes it exceedingly difficult to remove incompetent or corrupt bureaucrats from office, even when their misdeeds do not escape public scrutiny (which isn't always the case).

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13.4: Divisions of the Bureaucracy

The modern American bureaucracy is a vastly complicated array of departments, agencies, commissions, offices, and other divisions. Although no two divisions of the bureaucracy are structured identically, they can be grouped into several different types based primarily on their level of independence from presidential and congressional control.

The vast majority of civilian employees in the American bureaucracy work for one of the 15 departments of the president's Cabinet. These departments are headed by secretaries (or, in the case of the Department of Justice, the Attorney General) appointed by the president and confirmed by the Senate. Presidents have a great deal of influence over Cabinet departments and can fire department heads whenever they choose. When a Cabinet secretary is fired, resigns, or dies, the position is filled by an acting secretary (usually a deputy in the same department) until a replacement can be appointed and confirmed.

Presidents exert even more influence over the 15 offices within the Executive Office of the President, such as the Office of Management and Budget, the National Security Council, and the Council of Economic Advisers. Created in 1939 by President Franklin D. Roosevelt, the EOP is overseen by the president's chief of staff and handles many duties not assigned to Cabinet departments. Most top positions in the EOP are not subject to Senate confirmation and can therefore be filled — or emptied — at the president's discretion.

Yet another portion of the bureaucracy consists of independent agencies (such as the Central Intelligence Agency, the Environmental Protection Agency, and the National Aeronautics and Space Administration) and independent regulatory commissions (such as the Federal Communications Commission, the Federal Election Commission, and the Securities and Exchanges Commission). These are intended to be mostly independent of presidential and congressional influence. Many of their heads serve terms of fixed lengths and are therefore protected from summary firing if they displease the president.

A small subset of the American bureaucracy is made up of government corporations. These agencies include Amtrak (which oversees passenger railroad service in the United States), the Tennessee Valley Authority (which provides electricity to parts of the southern United States), and the United States Postal Service (which delivers the mail). Government corporations depend partially on public funding to pay for their operating costs but otherwise function similarly to privately-owned businesses.

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13.5: Big Government

When Americans complain about “big government” or the “deep state” they are mostly complaining about the bureaucracy under the executive branch of the national government. Critics often deride the bureaucracy as bloated, expensive, sclerotic, complex, and hopelessly inefficient. So-called “faceless bureaucrats,” who mostly operate in the shadows and are not accountable to the public through regular elections, are accused of incompetence, corruption, or even active sabotage against the will of the people as expressed through their elected representatives in Congress and the White House.

But as much as Americans dislike big government’s problems, they also like the benefits it offers. The expansions of bureaucratic size and scope promoted by the Progressives were controversial, but many (such as Social Security and Medicare) have become so popular over time that today most politicians are afraid to even suggest paring them back. The more people expect from government, the more tax dollars and personnel government will need to provide it — and the larger and more unwieldy government gets, the more prone it becomes to principal-agent problems.

That the monumental and insulated nature of America’s bureaucracy lends itself to inefficiency is obvious. Congress strives to provide oversight of bureaucratic action and clear statements of its intent in laws, but there is no way to monitor the actions of an organization this massive without some of them slipping under the radar. Yet a smaller, more directly accountable one would sacrifice many of the traits of an ideal, Weberian bureaucracy. Whether a productive balance between these extremes can be struck, the American political machine as it exists today depends on constant maintenance by a vast supply of technicians — bureaucrats — to ensure that it runs smoothly.

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CHAPTER OVERVIEW

14: The Courts

On May 2, 2022, a leaked draft of a majority opinion written by Supreme Court Justice Samuel Alito was published by the news website Politico. The leak confirmed what court-watchers had long speculated: the Supreme Court was about to overturn its 1973 decision in *Roe v. Wade*, which had declared the right to abortion to be constitutionally protected. One month later, the reversal became official when the Supreme Court ruled in *Dobbs v. Jackson Women's Health Organization* that no right to abortion exists in the Constitution, and that *Roe* was "egregiously wrong" for having claimed otherwise. The question of whether to legalize abortion was now once again a matter for the states to decide on an individual basis.



Amy Coney Barrett is sworn in as a Supreme Court justice by Justice Clarence Thomas, as Barrett's husband Jesse and President Donald Trump look on.

The *Dobbs* ruling was a landmark victory for pro-life advocates, who had spent nearly half a century attempting to reverse *Roe* and return abortion policy to state control. Although *Dobbs* was technically a 6–3 decision, only five judges (the smallest possible majority) supported overturning *Roe*. The critical fifth vote belonged to Justice Amy Coney Barrett, who had been nominated by President Donald Trump and confirmed by the Senate in October of 2020 as the replacement for the recently deceased Justice Ruth Bader Ginsburg. Nominating a staunch conservative judge like Barrett to succeed Ginsburg — considered by many to have been the court's archliberal — caused a major shift in the average ideology of the court, making Barrett's nomination particularly controversial.

Compounding the controversy was the fact that Ginsburg's death had occurred less than two months before the 2020 presidential election. At the time, Democrats contended that the vacancy should not be filled until after the presidential inauguration in January (which might usher in a new president), while Republicans asserted Trump's right to nominate a replacement at any point during his presidency. This disagreement was the exact opposite of the one which occurred in 2016, when Republicans argued that a vacant Supreme Court seat should be left to the next president to fill and Democrats insisted that then-President Barack Obama was well within his constitutional authority to nominate a new justice.

The Dobbs leak was an exceedingly rare moment of transparency for the federal judiciary, generally the most mysterious branch of America's national government. Most of its work occurs out of the public eye. No cameras are allowed in the courtroom while the Supreme Court is in session (though audio recordings are permitted). Its deliberations and rulings are cloaked in the complexity and opaqueness of the law. Its justices do not crave the spotlight the way presidents and members of Congress do, nor do they openly articulate their political beliefs, preferring instead to maintain an aura of impartiality. In these and other ways, the judicial branch appears far less political than its legislative and executive counterparts, and federal judges strive to maintain that perception.

Yet in key moments — the death of a justice, the nomination of his or her replacement, a landmark ruling in a major case — the federal courts suddenly intrude upon America's political consciousness, often sparking bitter disputes over their intervention (or nonintervention) in governmental affairs in which many citizens feel they shouldn't (or should) intervene. What was once indisputably the weakest branch has evolved to profoundly shape public policy in the United States. Notwithstanding its cultivated image of aloofness and neutrality, the federal court system and the judges who sit on its benches are anything but nonpolitical.

14.1: The American Federal Judiciary

14.2: Federal and State Court Jurisdiction

14.3: Judicial Review

14.4: Supreme Court Decision-Making

14.5: Judicial Appointments

14.6: The Politicized Court

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14.1: The American Federal Judiciary

Article III of the Constitution establishes the judicial branch of America's national government and tasks it with interpreting both the Constitution and the laws made by Congress. The Founders believed a federal judiciary was necessary based on their experience under the Articles of Confederation. Without a court system capable of adjudicating interstate disputes, competing territorial claims and conflicting economic policies threatened to fracture the Union. State courts could not be relied upon to impartially resolve issues involving their own states, but a federal court could settle them without being obviously biased toward one side or the other.

Article III only names one federal court, the **Supreme Court**, but it bestows upon Congress the power to "ordain and establish" inferior courts as it sees fit. Using this power, Congress has established two other general categories of federal courts. Directly beneath the Supreme Court are 13 appellate courts. Each **appellate court** (also called a circuit court or court of appeals) presides over a "circuit" of lower courts. 11 of these 13 circuits, numbered First through Eleventh, cover the various states and territories of the United States (as depicted in Figure 14.1 below). The remaining circuits are the District of Columbia Circuit (which handles many issues involving Congress and the executive branch) and the Federal Circuit (which deals with topics such as patent and trademark law).

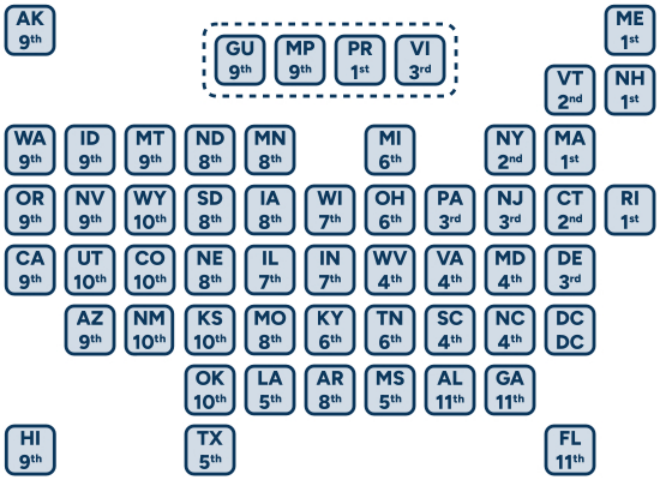


Figure 14.1: U.S. states and territories by appellate court jurisdiction (Not pictured: Federal Circuit).

Beneath the appellate courts are 94 district courts. Each **district court** covers all or part of a state or territory, with larger and more populous states being split into multiple districts. For example, Pennsylvania is divided into a Western District, a Middle District, and an Eastern District, whereas Oregon is encompassed by a single district.

Most federal cases begin at the district court level. The losing side in a district court case can appeal to an appellate court if it is dissatisfied with the outcome. The losing side in an appellate court case can likewise appeal to the Supreme Court. The Supreme Court is the "court of last resort," meaning that there is no appeal opportunity for the losing side in a Supreme Court case, although the Supreme Court can overturn its own prior decisions in subsequent cases.

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14.2: Federal and State Court Jurisdiction

The federal judiciary is not the only judiciary in the United States. American federalism gives both the national government and state governments the power to establish and administer courts. Thus, in addition to the federal court system, each state has its own court system, some of which have existed since before the Constitution was ratified.

Cases originate in either federal courts or state courts depending on the issues at stake and the parties involved. The specific criteria which determine whether a case belongs in the federal or state judiciary are complicated, but a useful rule of thumb is that cases which "fit" neatly within a state's borders start in that state's court system, whereas other cases start in the federal court system. Cases pertaining to the U.S. Constitution or to federal law originate in federal courts, as do cases that cross state lines, cases involving foreign parties, and cases in which at least one party is a state.

Some cases originate in a state court but escalate to a federal court when new issues arise during the judicial process. The 1963 Supreme Court case *Gideon v. Wainwright* is one prominent example. Originally, it was a standard case of breaking-and-entering, the sort of crime that state courts across the country handle on a daily basis. It became a federal matter when Florida violated Clarence Gideon's Sixth Amendment right to counsel by denying him a lawyer when he could not afford one of his own. Had Gideon appealed his conviction purely on the grounds that he was innocent, the case would have remained under state court jurisdiction. Instead, he appealed on the basis of Florida's unconstitutional denial of his Sixth Amendment right, which — because it involved a right guaranteed in the U.S. Constitution — made his appeal a matter for the federal courts to decide.

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14.3: Judicial Review

Originally, the federal judiciary was decidedly the weakest of the three branches of the national government. Preoccupied with debates over congressional representation and the power of the presidency, the Founders spent comparably little time during the Constitutional Convention debating the structure of the federal courts and left many of its powers undefined. Alexander Hamilton, writing in *Federalist No. 78*, remarked that the judiciary had "no influence over either the sword or the purse" — that is, no ability either to enforce its judgments or to raise and spend money to do so.

In its infancy, the Supreme Court had little clout with which to check either Congress or the president. It gained substantial power in 1803 as a result of the case *Marbury v. Madison*, in which it was asked to decide whether a federal judge appointed by outgoing President John Adams was entitled to his position under the Judiciary Act of 1789. Rather than side entirely with either William Marbury (the appointed judge) or James Madison (the new Secretary of State who had blocked the appointment), the Supreme Court (in an opinion written by Chief Justice John Marshall) ruled that the relevant section of the Judiciary Act under which Marbury was appointed was unconstitutional, thereby striking it down and rendering the question of Marbury's appointment moot.

The court's ruling in *Marbury* asserted for the first time the federal judiciary's power of **judicial review**, by which it has the power to strike down both laws passed by Congress and executive actions undertaken by the president if it deems them unconstitutional. At the time, this ruling was controversial for boosting the power of the courts. Today, more than two centuries since *Marbury*, judicial review has become an accepted part of the American system of checks and balances.

Although judicial review is widely regarded as the proper role of the federal judiciary today, specific instances of it often spark controversy. Critics often accuse courts of engaging in **judicial activism** when they go beyond a strict interpretation of the law. Their concern is that activist judges are in effect "legislating from the bench," usurping Congress's rightful role as lawmakers and stretching constitutional and statutory language far beyond what it was originally intended to mean. Conversely, proponents of giving judges wide latitude to interpret the law argue that it is important to have a "living constitution" that adapts to societal and technological change without needing to be amended. Such adaption, the argument goes, sometimes necessitates loose and creative interpretation of legal language.

> Accusations of judicial activism tend to crop up when the accuser is displeased with a court's decision, whether or not that decision actually represents a departure from the meaning of the text. As with executive power, Americans tend to be much more forgiving of questionable uses of judicial power when the outcome is one they like.



A statue of Chief Justice John Marshall, whose decision in Marbury v. Madison *greatly increased the Supreme Court's power, watches over Washington, D.C.'s Judiciary Square.*

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14.4: Supreme Court Decision-Making

The first decision the Supreme Court makes in a case is whether to hear it. Each year, thousands of petitions are submitted to the Supreme Court, either proposing new cases or requesting that a lower court's decision be reviewed. Only about one percent of these petitions are accepted by the court, which does so by issuing a **writ of *certiorari*** (Latin for "to be made certain") agreeing to consider the case. For the Supreme Court to issue a writ of *certiorari*, at least four justices must support hearing the case. When choosing whether to "grant cert," the Supreme Court tends to prioritize cases which are more controversial and have more significant implications for constitutional or statutory law.

Once a writ of *certiorari* is issued for a case, the Supreme Court schedules oral arguments, during which lawyers representing the petitioner (the side which submitted the petition) and the respondent (the other side) present the facts of the case as they see them and attempt to persuade the justices. Oral arguments are open to members of the public and audio-recorded, but video recordings of Supreme Court proceedings are prohibited. Justices may interrupt the lawyers during their oral arguments to ask questions, which are often carefully scrutinized by legal experts for clues about which side of the case the justices are leaning toward.

After oral arguments, the justices confer and determine which side has won the case by a simple majority vote. Most decisions are not made public immediately; instead, the court designates several days in June when rulings will be issued. The justices spend the interim period drafting opinions stating which side of the case they agree with and why. The **majority opinion**, written by one of the justices who voted for the winning side, represents the official statement of the court's opinion in the case. Other justices who supported the winning side may "join" with the majority opinion if they agree with its reasoning or write their own concurring opinion, or **concurrence**, if they agree with the majority opinion but wish to express additional or different reasons for doing so. Any justice who voted for the losing side may author a dissenting opinion, or **dissent**, expressing their disagreement and the reasons for it, and other justices can join a dissent or write their own dissents as they see fit.

The majority opinion in a Supreme Court case becomes a **precedent**, which carries the force of law unless and until it is overturned. Both oral arguments and opinions by the justices make frequent reference to precedents set in previous cases which relate to the case at hand. This reflects the doctrine of ***stare decisis*** (Latin for "to stand by decisions"), which maintains that the court's decisions should be guided by precedent. *Stare decisis* does not mean that precedents cannot or should not be overturned, only that the court tends to abide by precedent when applicable. When the court does overturn one of its precedents, the majority opinion will take pains to describe what errors were made when the precedent was set that justify its overturning.

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14.5: Judicial Appointments

At the state level, procedures for filling courts' benches vary as a consequence of federalism. Some states assign their governors or legislatures the responsibility of nominating judges, whereas others allow citizens to choose their own judges through either partisan or nonpartisan elections. For federal courts, all judges, including those on district and appellate courts as well as the Supreme Court, are nominated by the president and subsequently confirmed by the Senate. This procedure is outlined in Article II of the Constitution, which specifies that the president "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint...Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for...."

The process of nominating a district court judge, appellate court judge, or Supreme Court justice begins when a vacancy opens a court. This can occur when a new court or seat on a court is created by an act of Congress, but most commonly it happens when a sitting judge or justice dies, retires, is impeached and removed from office, or is promoted to fill a vacancy on a higher court. Once a seat is opened, the president nominates someone (usually a judge or other person with extensive legal experience) to fill it. The nominee is first submitted to the Senate Judiciary Committee for review, during which he or she may be called to testify before the committee. If the committee approves of the nomination, the whole Senate then debates and votes. If a majority of Senators vote in favor of the nominee, he or she is sworn in and fills the vacancy.

Since the 1980s, judicial nominations, especially Supreme Court nominations, have increasingly become fiercely partisan battles. Supreme Court nominees such as Robert Bork, Clarence Thomas, and Brett Kavanaugh — all nominated by Republican presidents — were subjected to hostile and withering Senate Judiciary Committee hearings, each time with most of the furor coming from Democratic senators. (Thomas and Kavanaugh were eventually confirmed to the Supreme Court; Bork was not.) The polarization of the parties in Congress has contributed to this conflict, as shown in Figure 14.2 below. Whereas in the past Supreme Court nominees could usually count on the votes of senators from both parties, recent confirmations have been entirely or almost entirely supported by members of the president's party.

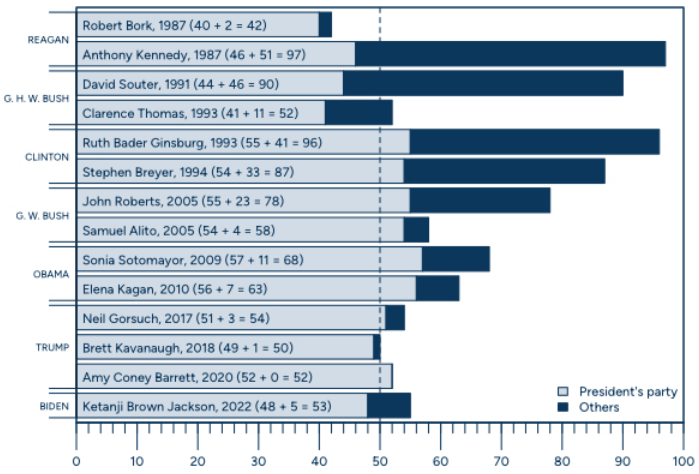


Figure 14.2: Supreme Court confirmation votes, 1987–2022 (Source: U.S. Senate)

Polarization has even led Congress to change the rules of the judicial confirmation process. During Barack Obama's presidency, Senate Republicans used the filibuster to block a series of lower-court nominees for partisan reasons, driving Senate Democrats (who controlled the chamber at the time) to lower the threshold for cloture from 60 votes to 51 for district and appellate court nominations. Obama's third Supreme Court nominee, Merrick Garland, was blocked by a Republican-controlled Senate which refused to even hold hearings on his nomination, preferring to gamble that a Republican victory in the 2016 presidential election would result in a more conservative judge being nominated. When this gamble paid off, embittered Democrats closed ranks to filibuster Donald Trump's first Supreme Court nominee, Neil Gorsuch, leading Senate Republicans to lower the cloture threshold for Supreme Court nominations to 51 votes as well.

The contentiousness of Supreme Court nominations stems from the power wielded by the court. Federal judges serve life terms unless resignation, impeachment, or promotion foreshortens their service. A president can therefore impact American politics long

after his time in office comes to an end by installing one or more Supreme Court justices who will interpret the laws in a way favorable to his policy desires for many years. The stakes are high: Supreme Court decisions in recent decades have decided the result of a close presidential election (*Bush v. Gore*), enabled an explosion of super PACs and campaign spending (*Citizens United v. FEC*), prohibited states from banning same-sex marriage (*Obergefell v. Hodges*), and allowed states to ban abortion (*Dobbs v. Jackson Women's Health Organization*).

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14.6: The Politicized Court

The Founders saw the federal judiciary as a critical piece of the new political machine they were building. Someone or something needed to interpret the Constitution and other laws when discrepancies arose, as well as to adjudicate disputes between states like those that once threatened to tear the Union asunder. In a sense, the courts would be the part of the machine whose job it was to read the fine print of the machine's own user's manual and ensure it was being used correctly.

At its inception, the federal judiciary was rather unformed and ill-defined compared to the other branches. Two-hundred-plus years of jurisprudence later, it has increased its power and influence, and both the other branches and the citizenry have taken notice. Witness, for example, how politicians, citizens, and the media circle the Supreme Court like vultures, closely monitoring the health of whichever Supreme Court justice happens to be the eldest or most infirm, or how, when a justice dies, Democrats and Republicans ravenously leap to battle over his or her replacement almost before the body turns cold.

These actions, while grim and distasteful to many, make sense from a coldly strategic perspective. The opportunity to fill a Supreme Court seat is among the most cherished prizes a president can receive in terms of its potential to cement his legacy. On a range of issues, from abortion and same-sex marriage to campaign finance and healthcare, interest groups and policy advocates often regard the judicial branch as one of the quickest and surest paths to policy change — and recent history suggests they're not entirely wrong to think this way. Though still officially nonpartisan and nominally impartial, the federal court system is increasingly viewed by politicians and the public through a partisan, political lens.

The manner in which America's attention is frequently trained on the judiciary is in some ways unsettling. In a nation that prides itself on its democratic institutions, major policy changes have in recent years been promulgated by the least democratic of the three branches: a panel of nine unelected men and women with law degrees from elite universities, lifetime appointments, and little to no accountability (either to politicians or to citizens) for their decisions. The courts may, to borrow Hamilton's terminology, still lack the advantages of the sword and the purse, but even without these abilities they are nonetheless vested with immense power — and wherever power is present, so too is politics.

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CHAPTER OVERVIEW

15: Media

In 1787, the year of the Constitutional Convention, an Irish member of the British Parliament named Edmund Burke described reporters as a "fourth estate," equal or superior to the three estates (the church, the nobles, and the commoners) that traditionally determined the course of European politics. Over a century later, American journalist Douglass Cater updated the concept for a democratic age when he deemed the press "the fourth branch of government." News media have long been recognized as a formidable political force, albeit one that (in the United States at least) operates largely outside of formal government institutions.



The New York Times, *one of the world's most influential news organizations, is headquartered in a skyscraper bearing its name in downtown Manhattan.*

Despite its powerful reputation, though, Americans pay surprisingly little attention to the media. We consume media, of course — staggering amounts of them, in fact. But when we read, listen to, or watch the news, we almost never look *at* the media themselves. Instead, we look *through* them at the events on the other side — the president giving a speech, the senators bickering in Congress, the candidates campaigning, the natural disasters or terrorist attacks whose images captivate us. Intellectually, we know the media are there, with their journalists and anchors and cameras and graphics, yet they become for all practical purposes invisible to us, just like the glass pane separating us from what we're seeing when we look through a window.

But neglecting the glass between us and what we see can be dangerous (as any pigeon will tell you). If we forget about it, we won't notice the ways it magnifies, minifies, blurs, obscures, or otherwise distorts our vision, and we might mistakenly attribute those qualities to something other than the window itself. Similarly, what we observe through media is not reality itself but one particular version of reality, filtered through a lens that, whether by accident or intention, does not always faithfully render the world as it truly is.

A media environment completely free of these distortions and limitations is impossible. Nor can we do away with media entirely and perceive the world directly: the world is far too big, and we are far to small, to personally encounter everything important to us. What we can do is will ourselves to think about media themselves — what they are, how they work, how they shape democratic politics — as a means of better understanding these windows to the world on which we rely.

15.1: Mass Media
15.2: The Evolution of News
15.3: Media Effects
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15.1: Mass Media

We experience almost none of what counts as “the news” firsthand. Occasionally we are in the right place at the right time — or, perhaps more accurately, the wrong place at the wrong time — to witness news happening with our own eyes and ears. The soldier in a war zone knows the outcome of the battle from having personally fought it; the congressional intern hears the roll call of votes leading up to the passage of a major bill; the victim of a tornado emerges from a basement to find what was once a house reduced to rubble. Each of these stories might appear in the same nightly news broadcast, but it would be extremely rare (and unlucky) for anyone to have personally lived through more than one of them that day, and most of us will have had direct experience with none.

Instead, we encounter most news through the prism of the media. The word *medium* can refer to anything that exists between two other things, such as a size of clothing between small and large. In the realm of communication, a medium is something — a newspaper, a radio show, a television program, a website — that passes on information about the world to us. In other words, a news medium exists in the space between us and the world about which we might like to know but which we cannot experience directly.

Almost anything can function as a medium. When your friends tell you about a party you didn’t attend, they are acting as media, placing themselves between you and the events on which they are reporting. Most of the time, however, we use the term media to refer to **mass media**, modes of communication that can reach large audiences relatively quickly. Your friends can only tell so many people about the party by themselves, but if they post about it on a mass medium like Twitter, millions of people might find out about it (for better or worse).

Recognizing the role of media in telling us about the world is essential to understanding its power. Because we experience nearly all news through media, we react not to the world as it is but rather to the world as our media present it. American journalist Walter Lippmann referred to this presentation as a *pseudo-environment*, the “picture in our heads” that is partly based on the real world but distorted by assumptions, misinterpretations, and stereotypes — both our own and those of our media. (Lippmann was the first to use the word *stereotype* to refer to prejudices about people or places.)

The concept of pseudo-environments can help explain why people frequently react to the same news in drastically different ways. Our own reactions to news seem perfectly natural and reasonable to us, and we are often baffled when others’ reactions seem wholly unnatural and unreasonable. We forget that what we are reacting to is not the world itself but rather a pseudo-environment shaped partly by the media we consume and partly by our own prejudices and preconceptions, most of which are not shared by all. Even if our own pseudo-environment happens to be the most accurate one — and we seem to always to be confident that it is, whether or not we should be — it’s entirely possible and even likely that the seemingly inexplicable behavior of other people is in fact an entirely sensible response to *their* pseudoenvironments.

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15.2: The Evolution of News

Something like news reporting has existed since at least 59 B.C., when Julius Caesar ordered that government deeds and other important events be publicized in the *Acta Diurna* ("Daily Acts"), stone carvings displayed on regularly-updated public message boards. Though technological advances dramatically improved the efficiency of the publishing industry over the centuries, by the time of the American Revolutionary War information still traveled at a rate that was extremely slow by today's standards. Printed pamphlets that could be passed from reader to reader were popular in the colonies, but it might take two months for news from Boston to travel down to Savannah this way. When Paul Revere famously rode from town to town in 1775 to alert colonists of approaching British regulars, the speed of breaking news was literally a horse's gallop.

> Early American pamphlets and newspapers were manufactured using hand-operated printing presses to stamp ink onto paper. The use of the term *press* to refer collectively to all news media — as in "freedom of the press," "press conference," or "press release" — is a holdover from the days when newspapers were essentially the only game in town. This and many other journalistic terms derived from the newspaper industry (such as *headline* and *column*) are still commonly used today, even for nonprint media.

For the first century-and-a-half of the United States' independence, the printed word was its dominant news source. Newspapers remained unchallenged until the arrival of commercial radio in 1920. Radio did not completely displace print publications, but it did offer the option to listen to the news rather than read it. During the Great Depression, Franklin D. Roosevelt's "fireside chats" brought the voice of the president into Americans' homes in a way that was impossible in the days before radio. When Roosevelt addressed Congress in 1941 to call for a declaration of war with Japan in the aftermath of the bombing of Pearl Harbor, almost four out of every five American households were tuned in to hear what he had to say.

On the heels of radio came television, which also dramatically changed mass media, this time by enabling Americans to not only listen to but also watch the news from the comfort of their living rooms. Television ownership in the United States exploded in the 1950s: fewer than 10% of households owned a television set at the start of the decade, but over 85% did by the end of it. By the 1960s, television had dethroned newspapers as Americans' number one source for news. (Around the same time, total newspaper circulation began to plateau and then decline.)

When television took over as the top news medium in the United States, the menu of televised news was extremely limited. The "Big Three" networks — ABC, CBS, and NBC — each offered only a few hours of news per day at most, using the rest of their airtime for entertainment programming unless there was a big event to cover, such as election results or a major party's national convention. The popularization of cable television greatly increased the number of channels from which viewers could choose and enabled the establishment of 24-hour news networks, beginning with CNN in 1980. (CNN's acronym stands for "Cable News Network," because at the time it was the only one of its kind.) Unlike network news, cable news was available anytime Americans wanted to watch it, although much of the 24-hour news cycle consisted of repeat broadcasts.

Television remains a major source of news in the United States, but the emergence of the Internet kick-started yet another upheaval in the news ecosystem. What was once the domain of only the most tech-savvy became commonplace as more and more American households gained broadband Internet access (as Figure 15.1 below demonstrates). Much of the news consumed on the Internet was — and still is — produced by "legacy" media (like the *New York Times*, National Public Radio, or CNN), which now publish online content in addition to their print, radio, and television offerings. However, the relatively low cost of setting up a website compared to starting a newspaper or television network also paved the way for "digitally native" news organizations (such as Breitbart News, *HuffPost*, or *Politico*) to become influential producers and disseminators of news.

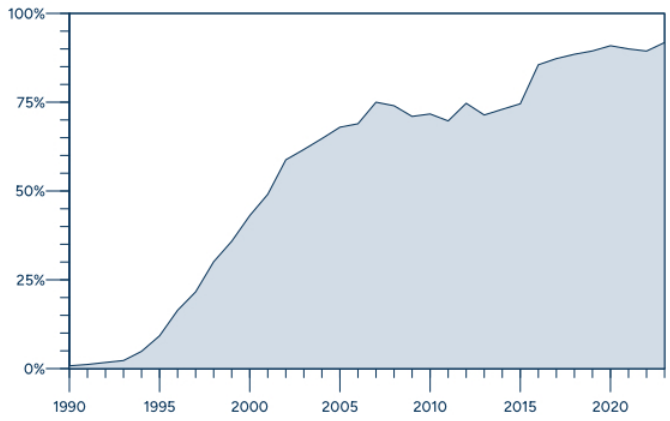


Figure 15.1: Percentage of Americans using the Internet, 1990–2023 (Sources: DataReportal, International Telecommunication Union)

Widespread Internet access paved the way for another revolution in news consumption in the form of social media. Although the meteoric rise of social networks such as Facebook, Instagram, and Twitter was not primarily motivated by a desire for news consumption, these platforms proved to be powerful conduits for information about current events. Social media offer unprecedented levels of news interactivity: users can instantaneously comment on and share stories with friends, relatives, and total strangers. They can also spread uncorroborated falsehoods this way, which for a number of reasons have a much easier time going viral on social media than being disseminated through other media. Concerns about so-called "fake news" have not dimmed social media's popularity: today, half of all Americans say they sometimes or often get news from social media.

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15.3: Media Effects

Americans have long been suspicious of the influence news media have on the political attitudes and opinions of their audiences. Early scholars of political communication shared these suspicions. When the horrors the Holocaust came to light in the aftermath of World War II, many feared that the extent to which the German people seemed to have condoned the atrocities committed by their government proved the almighty power of **propaganda** to manipulate public opinion, and worried that similar messages could warp America's democracy into a totalitarian regime like Nazi Germany.

This theory of media effects, that people would blindly adopt whatever viewpoints the media projected onto them, was not supported by scientific evidence. Media experiments repeatedly failed to alter political attitudes, and the minor opinion changes they did manage to produce were generally short-lived. These studies quelled academics' fears of a propaganda-driven descent into dictatorship, but they also raised another question: if Americans were so impervious to media effects, how could the media ever hope to inform them about the issues they were expected to understand as informed voters?

Modern assessments of media effects have concluded that media do influence the attitudes and opinions of their audiences, primarily through a process called **agenda setting**. Covering a topic in the news increases its perceived importance, especially when the coverage is particularly prominent, lengthy, or repeated. The media-consuming public, in turn, become more likely to think about the topic in question, and to evaluate other political objects — such as the president's job performance — with that topic in mind. One explanation for this effect is priming: seeing or hearing something in the news can increase its salience, just as seeing or hearing it from any other source would. Another explanation is that people are taking cues from their news media: if a topic is discussed on the news, someone must have thought it was important enough to discuss.

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15.4: The Adversarial Press

Exchanges between the news media and the government are often contentious and occasionally outright hostile. Reporters aggressively interrogate politicians in an attempt to trap them in contradictions, and politicians brusquely refuse to comment or question reporters' professionalism or integrity. Journalists seem to delight in pouncing on scandals and exposing the details for the world to see, and politicians relish when their journalistic foes get caught making embarrassing factual errors and are forced to eat crow. (Sometimes this animosity gets physical: the current Governor of Montana, Greg Gianforte, once body-slammed a reporter the day before an election.)



White House Press Secretary Jen Psaki takes questions from reporters during a White House daily briefing.

It can be challenging to interpret the way politicians and journalists get along — or fail to get along — as anything resembling a healthy relationship. But this tension, like many other seemingly dysfunctional aspects of American politics, is mostly by design. The freedom of the press enshrined in the First Amendment was put there because the Founders recognized the need for media to be a formidable adversary to government, capable of holding it accountable by asking tough questions and getting on politicians' nerves (though they probably weren't thinking of body slams at the time). Thomas Jefferson underscored the importance of the media when he wrote, "[W]ere 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."

The United States has long been one of world's strongest bastions of press freedoms. With very few exceptions (such as military secrets which could endanger the lives of Americans if published), information is not subject to **prior restraint**, meaning the government cannot prevent its publication. News organizations may face lawsuits if they publish false information that damages someone's reputation (which is called **libel** when published in print and **slander** otherwise). However, slander and libel laws are notoriously loose in the United States, particularly when public figures are involved, giving American media considerable leeway to report what they want, how they want.

> Americans have a long history of not taking kindly to attempts by the government to limit freedom of the press. The Sedition Act of 1798, which restricted the ability of newspapers to criticize the government, was so widely reviled by the public that it contributed to President John Adams's failed reelection bid and the collapse of his Federalist Party, which had supported the law.

A crucial component of the American news media's ability to check the government is its private nature. Though some news organizations, including NPR and the Voice of America, are wholly or partly dependent on government funding, most are owned and operated by private individuals or corporations. This privatization contrasts starkly with many other countries, particularly in Europe, where publicly-owned news organizations make up a much larger share of the media environment. Proponents of private media argue that public ownership and oversight make media less of a "watchdog," capable of alerting the public to government

corruption and misdeeds, and more of a “lapdog,” beholden to the government’s whims. Although some countries (such as Denmark, South Korea, and the United Kingdom) do a decent job of holding politicians accountable while relying heavily on public media, others (such as Hungary, Iran, and North Korea) clearly suffer from a lack of privatization and media independence.

Media privatization, however, is not a panacea. Privately owned news organizations may be better equipped to criticize government due to their lack of dependence on public funding, but this also means they must rely on other sources of revenue to stay in operation. This revenue often takes the form of advertising and subscriptions, which can make private media less willing to cover stories in ways that might displease their advertisers or subscribers.

The extent to which private media are influenced by their owners’ predilections also raises concerns. Amazon founder Jeff Bezos’s purchase of the *Washington Post* for $250 million in 2013 led to speculation that his ownership might dissuade the Post from reporting negative information about Amazon’s business practices. When former New York Mayor Michael Bloomberg launched his presidential campaign in 2019, the editor-in-chief of Bloomberg News — a company founded and still owned by its namesake — instructed his reporters not to investigate Bloomberg or any of his Democratic opponents (but to continue investigating President Donald Trump). Elon Musk’s acquisition of Twitter in 2022 brought major and controversial changes to the platform’s policies for content moderation and account verification, prompting questions about whether Musk was saving Twitter or sabotaging it. These and other incidents demonstrate the potential for conflicts of interest to influence private as well as public reportage.

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15.5: Media Bias

One of the central tenets of journalism is that of objectivity. A reporter's first loyalty, according to this ideal, should always be to the truth, warts and all. An objective news organization is a fair one, covering both sides of every story — or, if there are more than two, as many sides as there are — without favoring any side in particular, except insofar as the facts themselves clearly favor one side. Cherry-picking facts to promote a particular viewpoint or injecting one's own opinion into reporting runs counter to this standard.

Objectivity has not always been the norm for media in the United States. Early American newspapers gave little thought to projecting an aura of fairness and impartiality, openly advocating for and against parties, candidates, and policies with little concern for factual accuracy. In the late 1800s, publishers began attempting to cultivate reputations for objectivity as a way to attract wider audiences, even though their actual reporting didn't always live up to those reputations.

Technological changes created new reasons for news organizations to strive for objectivity. To prevent competing signals from crowding the airwaves and rendering them unusable, Congress established the **Federal Communications Commission** in 1934 to issue radio (and, later, television) broadcasting licenses and regulate frequencies. Radio and television stations were required to dedicate a portion of their broadcasting time to "public interest" programming such as news reports, and were initially required to remain neutral in their reporting. The adoption of the **fairness doctrine** in 1949 removed the neutrality stipulation but required radio and television broadcasters to present opposing political views in their reporting, a requirement which remained in force until 1987. These regulations bolstered Americans' faith in their news: Walter Cronkite, who anchored the *CBS Evening News* for almost two decades, was crowned "the most trusted man in America" by a national poll in 1972.

The arrival of cable television and the Internet brought new business models to the media industry. Whereas newspapers and television networks had in the past promoted their objectivity to appeal to as many people as possible, it was now possible to build a profitable news organization while catering to a smaller segment of the population. Moreover, many Americans actually *preferred* news coverage that was tilted toward their side of the issues. The Fox News Channel, launched in 1996, quickly became recognized as a conservative alternative to other network and cable channels, allowing it to lead all cable news networks in viewership for over two decades beginning in 2002. Other channels such as MSNBC followed Fox News's lead but in the opposite direction, taking a more openly liberal stance.

Most discussions of media bias center on **partisan bias**, which favors or opposes a particular party. (Ideological bias is also often mentioned, but because party and ideology overlap so closely in today's America the difference between it and partisan bias is slight.) Left-leaning media organizations produce news that makes Democrats look good and Republicans look bad, and right-leaning media organizations do the opposite. This bias needn't involve outright lying: news stories can be framed to make one side seem more noble or sympathetic than the other, or certain facts can be omitted while others are promulgated, or information can be interpreted in favorable or unfavorable terms. (Figure 15.2 below lists several dozen online news providers according to their reputations for partisan or ideological bias.)

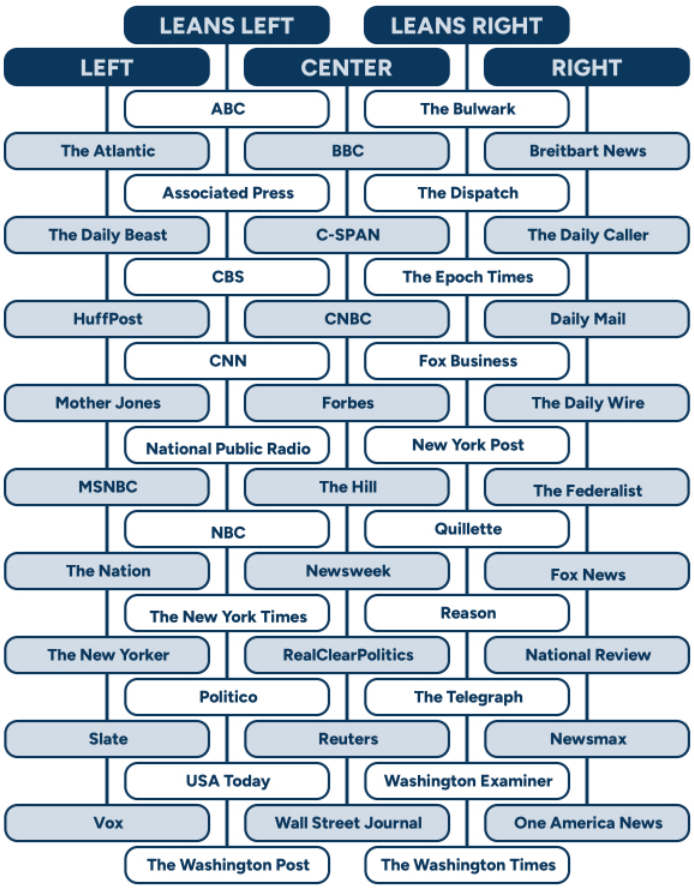


Figure 15.2: Selected online news sources by bias, 2023 (Source: AllSides. Note: Ratings apply to news only, not opinion pieces.)

A less commonly discussed but equally (if not more) important form of media bias is **newsworthy bias**. Whether a news organization leans to the left, right, or center, it must regularly draw enough readers, listeners, or viewers to remain attractive to advertisers or subscribers (if it is privately owned) or justify continued government spending on it (if it is publicly owned). The drive to increase and maintain an audience causes media to prioritize sensational, attention-grabbing stories at the expense of dull or boring ones, and to present the stories they cover in appealing ways. Another round of congressional haggling over the budget might have a greater impact on Americans' lives than the latest celebrity divorce, but the latter will sell far more magazines and get far more clicks than the former. Bad news holds the public's attention better than good news, and violence is especially irresistible — hence the old reporter's adage: "If it bleeds, it leads." And, of course, all of the foregoing will captivate news consumers more if accompanied by slick graphics packages and dramatic musical motifs. (Check YouTube for a stale Walter Cronkite broadcast from the 1970s and compare it to a flashy modern broadcast to see how much this presentation can add to — or subtract from — the news.)

Americans' trust in news media has eroded since its peak in the mid 20th century, in part because of concerns about media bias. Ultimately, though, it is impossible to report the news without bias. Every news organization has a finite "news hole" — pages in a newspaper, minutes or hours of broadcast time, space on a website's homepage — that it can fill with news, yet every day there are far more events than any one of them could possibly cover. Which events become "the news," how much coverage each one gets, and the order in which they are prioritized are all choices that reporters, editors, and media executives have to make on a daily or even hourly basis. There is no objective answer to the question of which stories "deserve" to be covered, nor to the question of how much more coverage any one story merits relative to any other. Whatever choices news media make will inevitably reflect their preferences, prejudices, and biases, no matter how hard they strive to avoid them.

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15.6: Politics, Filtered

Our ability to assess how well our government is working depends on our ability to see it in action, and the only way for us to do so beyond the limitations of our personal experience is through media. In that sense, media function somewhat like a control panel or dashboard for the American political machine. We tend to instinctively trust the indicators and gauges on machines to alert us when an issue requires our attention. We usually don't consider the possibility that a blinking light or beeping noise might be a false alarm — or, worse, that a serious problem might be present even though no warnings are announcing it.

The nature of news is such that any image of the world it can provide us will necessarily be incomplete, simplified, and warped to a certain degree by a combination of partisan, ideological, governmental, and commercial influences. The end result might be a faithful account of what actually happened, or it might bear little to no resemblance to reality. Occasionally, these distortions are so blatant that we almost can't ignore them, but the vast majority slip past our radars without us noticing.

Yet as powerful as the media are, they do not determine what the news is and how it will be covered entirely on their own. The private, commercialdriven media environment in the United States ensures that news organizations are constantly trying to guess what their audiences want so that they can give it to them and keep them tuned in. This compulsion creates a chicken-and-egg scenario: the media's agenda-setting capacity causes the public to believe that the stories they cover are important, but the media's choice of which stories to cover is guided largely by what they think the public wants them to cover.

The relationship between news media and their audiences demonstrates that we the people have some of the power to define the news. If we demand coverage that is accurate, unbiased, nuanced, and relevant to our role as democratic citizens (and choose our media based on these criteria), news organizations will offer it to us in order to keep us reading, listening, and watching. If instead we are content with dubious, one-sided, shallow, and trivial news stories — the media equivalent of junk food that satisfies without nourishing — news organizations have already proven they are more than willing to give it to us.

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CHAPTER OVERVIEW

16: Appendices

16.1: Appendix A - Declaration of Independence
16.2: Appendix B - U.S. Constitution

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16.1: Appendix A - Declaration of Independence

In Congress, July 4, 1776

The Unanimous Declaration of the Thirteen United States of America

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

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.–That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, –That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.–Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For Quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our Brittish brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the

support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

	John Hancock	
Button Gwinnett	Thos Nelson Jr.	Rich Stockton
Lyman Hall	Francis Lightfoot Lee	John Witherspoon
Geo Walton.	Carter Braxton.	Fras Hopkinson
Wm Hooper	Rob Morris	John Hart
Joseph Hewes	Benjamin Rush	Abra. Clark
John Penn	Benj. Franklin	Josiah Bartlett
Edward Rutledge	John Morton	Wm Whipple
Thos Heyward Junr.	Geo Clymer	Sam Adams
Thomas Lynch Junr.	Jas Smith.	John Adams
Arthur Middleton	Geo. Taylor	Robt Treat Paine
Samuel Chase	James Wilson	Elbridge Gerry
Wm Paca	Geo. Ross	Step. Hopkins
Thos Stone	Caesar Rodney	William Ellery
Charles Carroll of Carrollton	Geo Read	Roger Sherman
George Wythe	Tho McKean	Samel Huntingdon
Richard Henry Lee	Wm Floyd	Wm Williams
Th Jefferson	Phil. Livingston	Oliver Wolcott
Benj Harrison	Frans Lewis	Matthew Thornton
	Lewis Morris	

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16.2: Appendix B - U.S. Constitution

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I

Section 1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to

Indictment, Trial, Judgment and Punishment, according to Law.

Section 4

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

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;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article II

Section 1

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

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.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:– "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."

Section 2

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III

Section 1

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. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;–to all Cases affecting Ambassadors, other public Ministers and Consuls;–to all Cases of admiralty and maritime Jurisdiction;–to Controversies to which the United States shall be a Party;–to Controversies between two or more States;— between a State and Citizens of another State,–between Citizens of different States,–between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article IV

Section 1

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section 3

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence.

Article V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independance of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names,

	G^{o} Washington Presidt and deputy from Virginia	
Delaware Geo: Read Gunning Bedford jun John Dickinson Richard Bassett Jaco: Broom *Maryland* James McHenry Dan of St Thos. Jenifer Danl. Carroll *Virginia* John Blair James Madison Jr. *North Carolina* Wm. Blount Richd. Dobbs Spaight Hu Williamson	*South Carolina* J. Rutledge Charles Cotesworth Pinckney Charles Pinckney Pierce Butler *Georgia* William Few Abr Baldwin *New Hampshire* John Langdon Nicholas Gilman *Massachusetts* Nathaniel Gorham Rufus King	*Connecticut* Wm. Saml. Johnson Roger Sherman *New York* Alexander Hamilton *New Jersey* Wil: Livingston David Brearley Wm. Paterson Jona: Dayton *Pennsylvania* B Franklin Thomas Mifflin Robt. Morris Geo. Clymer Thos. FitzSimons Jared Ingersoll James Wilson Gouv Morris

Amendment I [1791]

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 [1791]

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 [1791]

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 [1791]

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 [1791]

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 [1791]

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 [1791]

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, than according to the rules of the common law.

Amendment VIII [1791]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX [1791]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X [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.

Amendment XI [1795]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XII [1804]

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit

sealed to the seat of the government of the United States, directed to the President of the Senate; – the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; – The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XIII [1865]

Section 1

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2

Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV [1868]

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, 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

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.

Amendment XV [1870]

Section 1

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–

Section 2

The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XVI [1913]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Amendment XVII [1913]

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.

Amendment XVIII [1919]

Section 1

After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2

The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XIX [1920]

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.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX [1933]

Section 1

The terms of the President and the Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2

The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3

If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4

The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5

Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI [1933]

Section 1

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2

The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XXII [1951]

Section 1

No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment XXIII [1961]

Section 1

The District constituting the seat of Government of the United States shall appoint in such manner as Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV [1964]

Section 1

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay poll tax or other tax.

Section 2

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV [1967]

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, transmit 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.

Amendment XXVI [1971]

Section 1

The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXVII [1992]

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of representatives shall have intervened.

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Glossary

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Articles of Confederation The first constitution of the United States, which loosely united the 13 states under a weak central government from 1781 to 1789. attitude: An orientation or predisposition toward an object. bicameral Consisting of two chambers. Bill of Rights: The first ten amendments to the Constitution. block grant An amount of money issued to a state by Congress with fewer restrictions than a categorical grant. bureaucracy A formal, hierarchical organization for delegating tasks and duties. Cabinet A group of advisers to the president, consisting of the vice president and the secretaries of the 15 Cabinet departments. casework Services rendered to individual constituents by members of Congress and their staffs. categorical grant An amount of money issued to a state by Congress to spend for a specific purpose and according to specific guidelines. caucus A type of primary election in which voters gather at group meetings before voting for a nominee. checks and balances A system in which each branch of government can limit or block the actions of the other branches. civil liberty A protection from government overreach that is considered necessary to the functioning of a liberal democracy. civil right A protection from discrimination or unequal treatment. civil service A system in which bureaucrats are employed based on merit. collective action problem The challenge of providing a public good as a group when members would rather free-ride than contribute. concurrence An opinion written by a Supreme Court justice agreeing with the majority opinion but for additional or different reasons. concurrent powers Powers that are shared by the national government and the state governments. confederal system A system of government in which power is concentrated at the subnational level. conference committee A committee consisting of both House and Senate members, created to reconcile two versions of a bill into one. conservatism An ideology which generally prioritizes freedom over equality and favors limited government, free markets, and maintenance of traditional social norms. constitution A set of basic laws that structure a government. Constitutional Convention The 1787 meeting in Philadelphia where the Constitution was written. cooperative federalism A system in which national and state governments exercise their powers collaboratively, with states implementing programs designed and administered by the national government. Declaration of Independence The document which formally declared the United States of America to be independent from Great Britain in 1776. democracy A form of government in which the people rule, either directly or indirectly through elected representatives. direct democracy A democracy in which citizens vote directly on government policy. dissent An opinion written by a Supreme Court justice disagreeing with the majority opinion. district court A court ranking below the appellate courts in the federal judiciary. divided government A period when the party which controls the presidency lacks control of the House, the Senate, or both. division of labor The separate assignment of tasks or sets of related tasks to allow for specialization. double jeopardy Being tried more than once for the same crime. dual federalism A system in which national and state governments exercise their powers in separate domains with minimal overlap or interaction. due process Fair treatment in legal proceedings. Duverger's law The tendency of electoral systems based on plurality rule and singlemember districts to produce two-party systems. Electoral College A set of 538 electors, chosen by the states and the District of Columbia, whose votes determine the winner of the presidential election. enumerated powers: Powers that are granted to the national government in the Constitution. establishment clause The part of the First Amendment which prevents the government from establishing an official religion or passing laws that favor or disfavor particular religions. executive agreement An agreement between the president and one or more other countries which functions like a treaty but does not require ratification by the Senate. Executive Office of the President A set of agencies that advise and act on behalf of the president on various administrative matters. executive order A presidential decree that has the force of law but does not require congressional approval. faction A group of people with shared interests that are distinct from the interests of society as a whole. fairness A requirement that news broadcasters represent opposing political views in their reporting. Federal Communications Commission The agency charged with regulating radio, television, and Internet communication in the United States. federal system A system of government in which power is divided roughly evenly between the national and subnational levels. *Federalist Papers* A collection of 85 essays written by Alexander Hamilton, John Jay, and James Madison in support of ratifying the Constitution. Federalists Supporters of the Constitution during the time when states were debating its ratification. fighting words Speech directed at a target in order to provoke a violent response. filibuster A tactic for delaying Senate proceedings by extending debate indefinitely. framing Priming based on how a question or issue is presented. free exercise clause The part of the First Amendment which prevents the government from interfering with citizens' religious practices. free rider A

person who benefits from a public good without contributing to it. full faith and credit clause The clause in Article IV of the Constitution which requires states to respect the laws of other states. general election: An election to determine who will hold an elected office. gerrymander A district drawn to influence its election outcomes by including certain voters and excluding others. government A system of institutions, rules, and leaders for making group decisions. grandfather clause An exemption to literacy tests for those whose ancestors had the right to vote prior to a certain date. grassroots lobbying A form of lobbying in which an interest group encourages the public to contact and attempt to persuade government officials. Great Compromise A compromise between large and small states at the Constitutional Convention which resulted in a two-chamber Congress with a proportional House of Representatives and an equal Senate. Great Society A policy agenda spearheaded by President Lyndon B. Johnson that created Medicare, Medicaid, and other programs to address issues of poverty, education, and racial discrimination. gridlock The absence of congressional action due to internal disagreement. head of government: The practical role of leading the government of a country. head of state The symbolic role of fulfilling ceremonial duties on behalf of a country. heuristic A mental shortcut for making a decision based on limited information. hierarchy An organizational structure in which each member is superior or inferior to at least one other member. identity A stable, defining characteristic of a person. ideology A system of beliefs about how to improve society. impeachment The charging of a federal officer with treason, bribery, or "high crimes and misdemeanors." incitement Speech that advocates (and is likely to provoke) imminent lawless action. incorporation The process by which the Supreme Court rules that a right mentioned in the Bill of Rights must be respected by the states. indirect democracy A democracy in which citizens vote for representatives who, in turn, determine government policy. initiative A policy proposed and voted on directly by citizens. interest group An organized group seeking to influence public policy which does not nominate its own candidates to run in elections. iron triangle A mutually beneficial relationship between a congressional committee or subcommittee, a bureaucratic agency, and an interest group. Jim Crow laws Laws passed after the Civil War to discriminate against blacks and preserve the existing racial order in the South. judicial activism Ruling based on something other than the strict meaning of a legal text. judicial review The judiciary's power to strike down acts of Congress or the president if it deems them unconstitutional. *Lemon* test A three-part test of whether a government action violates the establishment clause of the First Amendment. libel Written falsehoods that damage someone's reputation. liberalism An ideology which generally prioritizes equality over freedom and favors government intervention, redistributive programs, and non- maintenance of traditional social norms. literacy test A requirement to prove one's ability to read and write in order to vote. lobbying Attempting to persuade government officials to act in a certain way. majority rule The principle that a group should take the actions supported by most of its members. majority opinion The official statement of the Supreme Court's decision in a case. margin of error The range around a polling result within which the true value of public opinion is likely to be found. mass media Modes of communication with the power to quickly reach a large audience. mobilization The act of encouraging citizens to turn out to vote. necessary and proper clause The clause in Article I of the Constitution which authorizes Congress to make whatever laws are "necessary and proper" to carry out its duties. New Deal The set of programs initiated by President Franklin D. Roosevelt which increased the national government's economic powers in response to the Great Depression. newsworthy bias Favoritism for stories that will attract and maintain the audience's attention. obscenity Offensive depictions of sexual conduct with no redeeming social value. opinion A measurable manifestation of an attitude. override To make a vetoed bill law without the president's signature by a two-thirds vote of both the House and the Senate. oversight Congressional monitoring of the actions of executive branch officials. partisan bias Favoritism for (or opposition to) a particular party. partisanship Stable personal attachment to a party. party An organized group that seeks to influence public policy by nominating candidates in elections. party-as-organization The formal administrative structure of a party. party-in-government The members of a party who hold official government positions. party-in-the-electorate The average citizens who support or consider themselves members of a party. Pendleton Act An 1883 law that reformed the national bureaucracy from the spoils system to a civil service by protecting certain bureaucrats from being fired without cause. persuasion The act of encouraging citizens to vote for a particular candidate, party, or issue position. pluralism A theory of democracy as a competition among interest groups. plurality More than anyone else has of something. polarization Increasing ideological distance between parties. political action committee An interest group whose sole purpose is to raise money and spend it on political campaigns. politics The contest over and exercise of power. poll A process by which people are asked to give their opinions on a topic. popular sovereignty The principle that people should have a say in how they are governed. population The set about which a pollster wants to make inferences. pork National funding for projects in individual states or congressional districts. power The ability to cause someone to do something he or she would not otherwise do. precedent A past decision by a judge in a court case. primary A type of primary election in which voters vote for a nominee similarly to how they would in a general election. primary election An election to determine the nominee of a party for an elected office. priming The process by which a particular consideration is made more salient. principal Someone who asks someone else to do something. principal-agent problem When a principal asks an agent to do something but the agent's motivations differ from the principal's motivations. prior restraint Censorship of information prior to its publication. privileges and immunities clause The clause in Article IV of the Constitution which prohibits states from denying basic rights to citizens from other states. Progressivism A political philosophy which emerged in the United States in the late 1800s and advocated increasing the size and scope of government to improve its capacity to solve problems.

propaganda Information or misinformation disseminated for the purpose of manipulating public opinion. public good A benefit that can be enjoyed by all group members, regardless of whether they contributed to it. referendum A policy proposed by a legislature and voted on directly by citizens. representativeness The degree to which a sample resembles the population from which it is drawn. reserved powers Powers that are reserved for state governments by the Tenth Amendment of the Constitution. right A privilege to which a person is entitled. right to privacy A right against excessive government intrusion into one's personal life, often invoked in matters related to sexual activity. runoff A second election held between the top finishers of the first election. salience The quality of being readily called to mind. sample The subset of a population which is polled. segregation The division of groups into separate accommodations on the basis of race or some other criterion. selective incentive A benefit available only to those who contribute to a group effort. separation of powers The distribution of legislative, executive, and judicial powers among multiple branches of government. separate but equal doctrine The belief that racial segregation is constitutional as long as the separate accommodations are equivalent. single-member district A type of electoral system in which each individual election produces a single winner assigned to a particular area. slander Spoken falsehoods that damage someone's reputation. Speaker of the House The highest-ranking member of the House of Representatives and the leader of the majority party in the House, elected by a vote of all representatives. spoiler effect The tendency of minor parties to "spoil" elections by making it harder for their preferred major party to win. spoils system A system in which bureaucrats are employed based on political favoritism. *stare decisis* The doctrine that judges should rely on precedent when deciding cases. statute A specific law passed by a legislature. suffrage The right to vote. super PAC A type of political action committee without fundraising limits which cannot coordinate directly with candidates or parties. supremacy clause The clause in Article VI of the Constitution which establishes that national law supersedes state law. Supreme Court The highest-ranking federal court in the United States. Three-Fifths Compromise A compromise between Northern and Southern states at the Constitutional Convention, which resulted in slaves being counted as three-fifths of a person for determining seats in the House of Representatives. Title IX A 1972 law prohibiting sex discrimination in educational institutions that receive federal aid. turnout: The percentage of people who vote in an election. two-party system A system in which two parties win most elections and dominate the political process. unified government A period when the same party controls the House, Senate, and presidency. unitary system A system of government in which power is concentrated at the national level. veto To reject a bill passed by both chambers of Congress. War Powers Act A 1973 law that empowers the president to initiate military actions, provided he informs Congress within 48 hours of their commencement and subject to congressional authorization after 90 days. whip A member of Congress whose job it is to get fellow party members to vote together. writ of *certiorari* A statement issued by a court agreeing to consider a case.

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