

AMERICA - THE USER'S MANUAL 4E



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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

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 than 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.

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CHAPTER OVERVIEW

1: Introduction

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1.1: Introduction



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

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 Capitol Police officers attempting to secure the building, and forced their way inside. 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.

Four years later, though, Donald Trump was sworn in as the 47th President of the United States. Trump overcame a second impeachment (for his role in encouraging the Capitol storming), a felony conviction, three other criminal indictments, over a dozen primary challengers, and two assassination attempts on his way to a second term. No angry mob breached the Capitol to stop him, but many opposed him nonetheless. His Democratic opponents—first Joe Biden, then Kamala Harris after Biden dropped out—denounced him as not just a candidate with bad policies but a threat to American democracy itself. Their arguments were different from those of the protesters in 2020, 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, 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 have a hard time finding someone who thought everything about government and politics in the United States was working perfectly.

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 theirs. Overall, Americans enjoy a degree of prosperity and security of which most of the world can only dream. In many other countries, an event like the attack on the Capitol 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 democratic institutions would still be intact when the dust settled. More than four years later, their confidence seems justified: politics in America proceeds much the same as it has for a long time.

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?

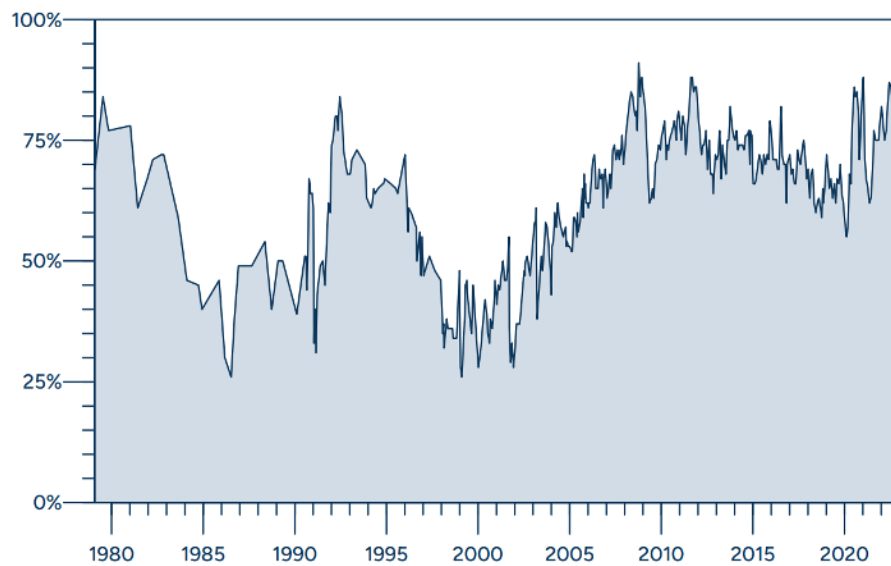


Figure 1.1: Percentage of Americans dissatisfied with "the way things are going in the United States," 1979-2023 (Source: Gallup)

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1.2: 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 is less a failure of judgment than a triumph of engineering. Cars, cell phones, and many other consumer products are designed to be as intuitive and "user-friendly" as possible. They are specifically built 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 it 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 $\frac{1}{2}$ or the battery icon above 0%.

Like a car or a cell phone, America was designed so that people could use it without needing instructions. Indeed, surveys of political knowledge (such as the one represented in Figure 1.2 below) confirm that many Americans are unfamiliar with some of the most basic aspects of how their country works. Few Americans ever acquire deep knowledge of their government, and 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 look more closely when something unusual gets our attention.

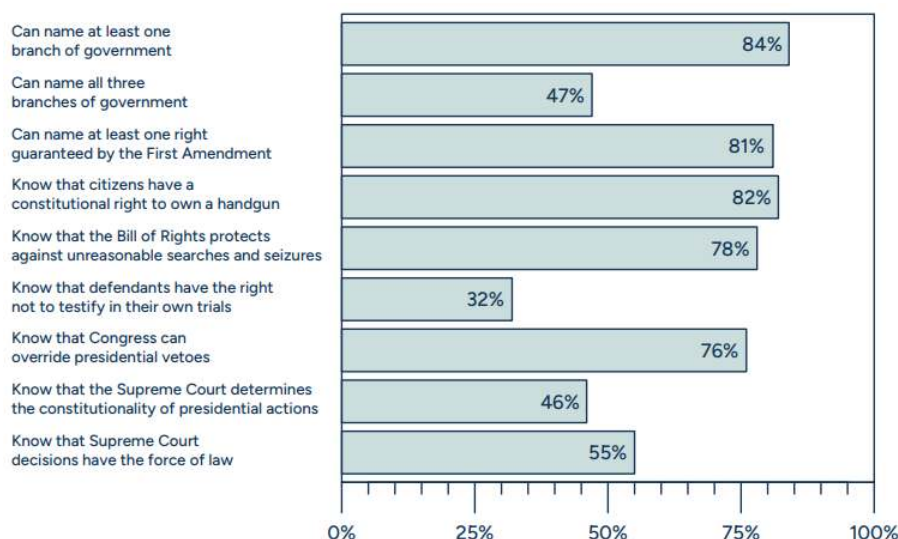


Figure 1.2: Americans' knowledge of selected civics facts, 2022 (Source: Annenberg Public Policy Center)

Americans' lack of familiarity with their government is often criticized. 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 of us would never understand well. The fact that we can use the machine they built so effectively despite our general ignorance of how it works is a testament to the quality of their craftsmanship.

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1.3: 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 current events with friends (or even enemies). 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 on page 1) 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 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 was designed, even if it doesn't always seem that way. This user's manual is therefore written for you.

Given that you are a user of America, for what purpose are you using it? This question is hard 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.

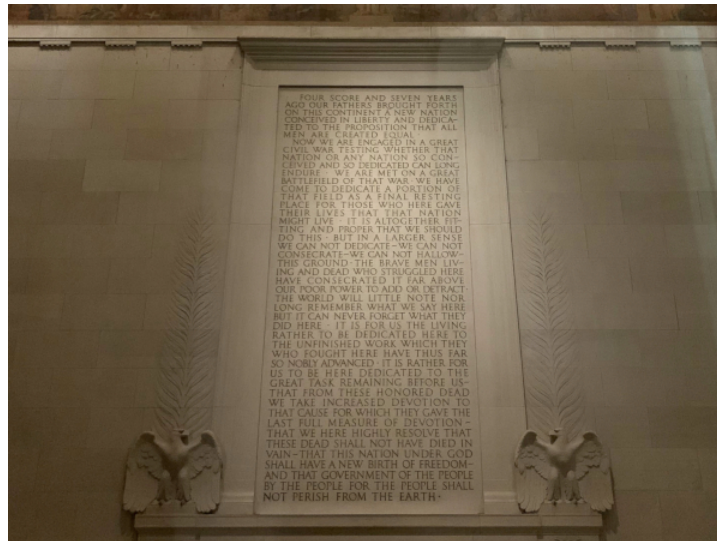
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1.4: Why a User's Manual?

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. Assuming one exists (which it does—you're looking at it right now), why should anyone should bother reading it?

The most obvious reason to read this book is probably to pass this class. After all, if this 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. (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." The obvious follow-up question of why the instructor assigned the book in the first place is left unanswered.

A better reason to read this book is that it will be useful to you if you intend to major or minor in political science, and particularly if you intend to pursue a career 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. Furthermore, even if you are one of those people, you might not be 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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1.5: 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 fails to meet your expectations. The manufacturers (whose names you can find on pages 180 and 192) are all long dead.

America, as a product, is sold as is. As you'll soon discover (if you haven't already), it is brilliantly designed 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 are 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: if anything about America is going 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. 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

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2.1: Introduction



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.

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*.

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.

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2.2: 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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2.3: 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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2.4: 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. Nonetheless, they are 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. However, 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, America's longevity is taken as proof that democracy can work on a large scale. Political experts generally rank the United States among the world's most democratic countries (as shown in Figure 2.1 below), even if Americans themselves don't always perceive their country that way.

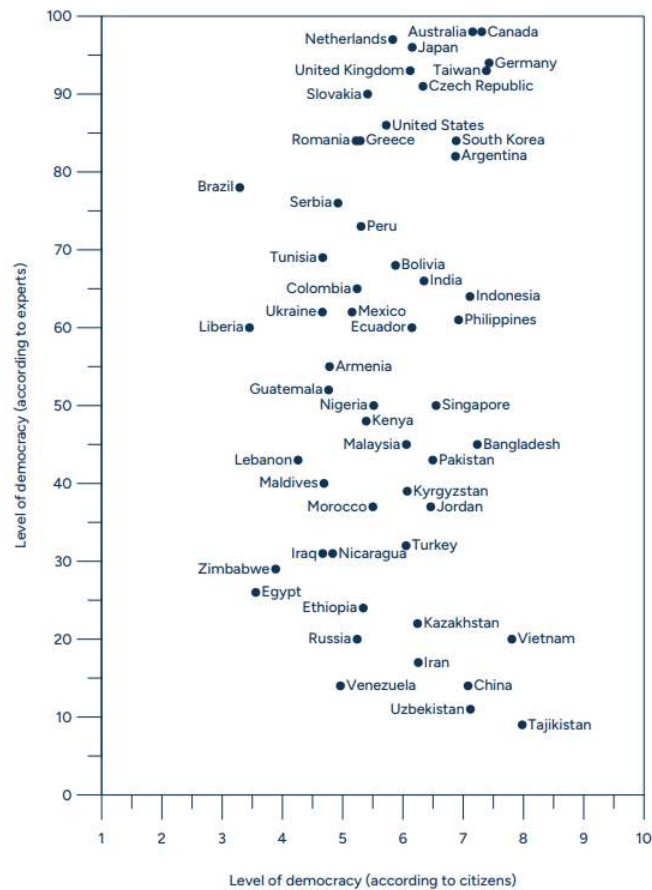


Figure 2.1: Democracy levels of selected countries according to their citizens and experts, 2017–2022 (Sources: Freedom House, World Values Survey)

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2.5: Goods

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 the role of government more broadly.

One way to understand the types of decisions we ask government to make is to consider the types of decisions we don't ask government to make. Suppose you buy a sandwich for lunch from a convenience store. You agree to purchase the sandwich for a certain amount of money because the sandwich is worth more to you than the money. The store agrees to sell you the sandwich because your money is worth more to it than the sandwich. It's a win-win: both you and the store are better off due to the exchange. Everyone involved in the transaction participated willingly, without the need of government to compel them.

The sandwich you bought from the store is an example of a **private good**. Private goods are characterized by two traits. First, they are *excludable*, meaning that only those who contribute to providing the good can consume it. You could share your sandwich with someone else if you wanted, but you don't have to. You paid for it, so it's your sandwich, and anyone who consumes it without your permission is a thief. Second, they are *rivalrous*, meaning that one person's consumption of them diminishes others' consumption. Each bite you take of your sandwich is a bite someone else can't take, and there are only so many bites anyone can take before the sandwich is gone.

Some goods are excludable but nonrivalrous: only those who contribute get to consume them, but one person's consumption does not diminish others' consumption. This type of benefit is known as a **club good**. Movie theaters are an example of a club good. You have to buy a ticket to see a movie in a theater, but the presence of other moviegoers doesn't lessen your experience. If you and a friend go to a movie and decide to split a large bucket of popcorn, each of you only gets to eat some of the popcorn, but both of you get to watch the whole movie.

Some goods can be rivalrous or nonrivalrous depending on the circumstances. Movie theaters, for example, become rivalrous if there are so many moviegoers that they block one another's view or make so much noise that it becomes hard to hear the movie. Likewise, roads and highways are nonrivalrous when there's little traffic but become rivalrous when they are congested.

Most of the time, government leaves the provision of private and club goods to the private sector. Excludability makes it possible for convenience stores, movie theaters, and other businesses to profit from selling these goods, so they don't need government to command them to do so. When goods are nonexcludable—that is, when those who did not contribute to the good can consume it—the situation changes. Consider a **common good** that is nonexcludable and rivalrous, like the books in a public library, or a **public good** that is nonexcludable and nonrivalrous, like a highway. If library cards are free and highways are free to use, no one can expect to make a profit by providing these goods. As a result, common goods and public goods are unlikely to be provided through voluntary exchanges the way private goods and club goods are. (See Figure 2.2 below for a summary of the four types of good.)

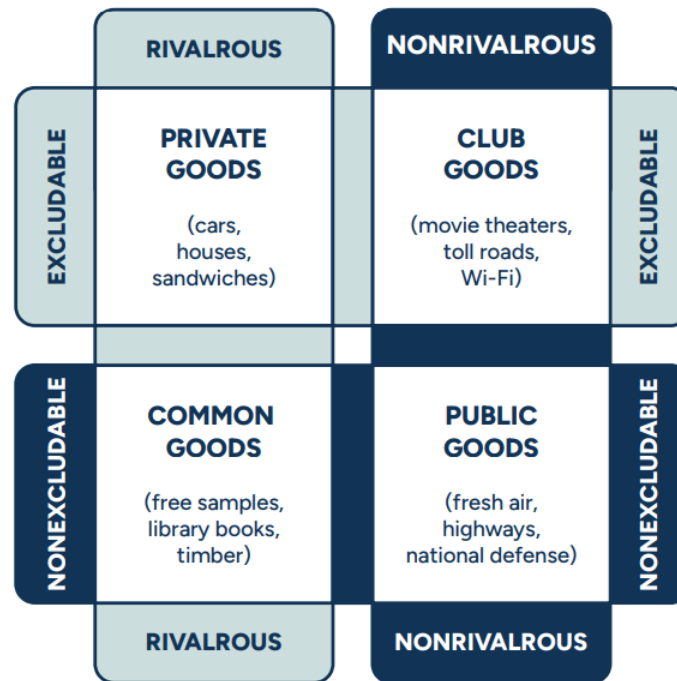


Figure 2.2: Examples of private, club, common, and public goods

In fact, many private goods and club goods are only reliably provided because of the presence of certain common goods or public goods which we often take for granted. The store where you purchased your sandwich probably would not have opened for business if not for a reliable electrical grid and the promise of police protection against shoplifters and vandalism. The movie you saw at the theater probably wouldn't have been made unless the studio was confident that it wouldn't be immediately pirated and watched for free. And neither business would have accepted your money if it wasn't sure that it could then spend that money elsewhere. Electricity, crime prevention, and a stable currency aren't strictly impossible for businesses to provide for themselves, but most could not afford to do these things. For private goods and club goods to be voluntarily exchanged, someone or something first has to mitigate a host of risks that could impede those exchanges.

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2.6: Collective Action Problems



“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.

Public goods and common goods can be expensive. As shown in Figure 2.3 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 goods.

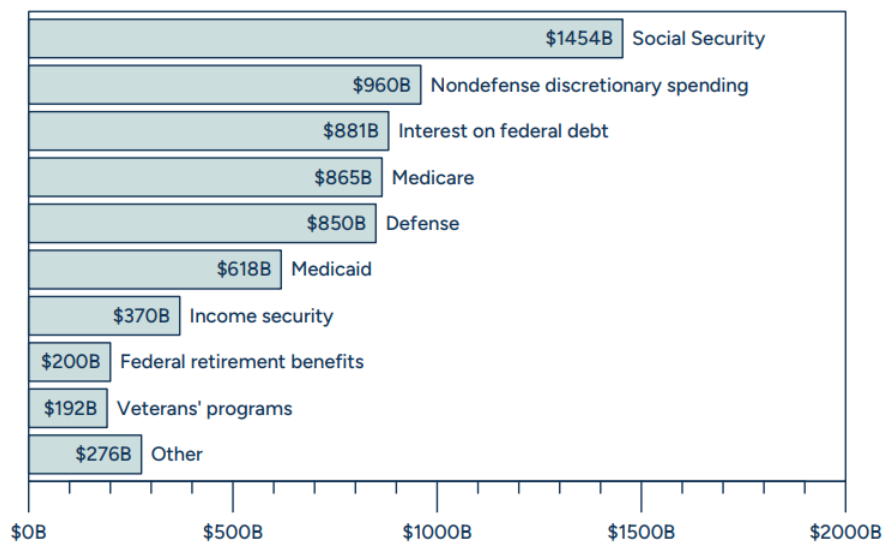


Figure 2.3: U.S. federal budget outlays, Fiscal Year 2024 (Source: Congressional Budget Office)

The tricky part about nonexcludable goods is that they can easily be exploited. If you stopped paying taxes—that is, if you decided to become a **free rider**, someone who benefits from a 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. Similarly, you could consume any amount of a common good, such as the timber or wild game in a forest, regardless of how much of it you need or can reasonably use. You could free-ride on the restraint of other consumers that allows the timber to replenish or the wild game to repopulate.

If free riders are few, nonexcludable goods can be provided and sustained. The trouble is that everyone has an incentive to free-ride, because it is preferable to enjoy a public good without contributing to it, or to consume extra of a common good. When the number of free riders becomes too large, there are no longer enough contributors to provide the public good, and common goods can be depleted quickly. 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 prefers to free-ride rather than contribute.

Government solves collective action problems mainly through coercion. Rather than allow citizens to free-ride, it forces them to contribute to public goods and limits their consumption of common goods. Few people would choose to limit their consumption of common goods to sustainable levels. Even fewer would freely choose to pay the taxes on which the government relies to provide public goods. This is why the government does not let them choose. If you decide to not pay taxes, or to consume more of a common good than you are allowed, the government will attempt to change your mind. It might begin by asking nicely, but if you continue to refuse its requests will become increasingly demanding. Eventually, people with guns will come to your home to arrest you and confiscate some of your property for the trouble you've caused. If you resist even then (perhaps with a gun of your own) they may use deadly force against you, possibly even killing you.

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. 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 compliance. If governments could not use violence as a last resort, they would be unable to provide and sustain the goods we expect from them. 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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2.7: 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 benefits that only society can reliably provide. We need politics to manage a diverse society, and we need government to provide public goods and sustain common goods. 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 its users' happiness and quality of life. 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 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 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 those inherent dangers. 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 dissatisfaction and impatience with how 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 allocation of that power often has unintended consequences.

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CHAPTER OVERVIEW

3: The Constitution

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3.1: Introduction



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

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** 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 some law that they passed themselves, for they would have had no right to do so. Rather, they draw their legitimacy from another law, one they did not pass, that lays out how laws can be made. This type of law is a **constitution**, a set of basic laws that structure a government.

Written in 1787 and ratified in 1788, the United States Constitution is the oldest active codified constitution in the world. (San Marino and the United Kingdom have constitutions that are older but uncoded, meaning they are compiled from numerous laws and customs rather than standalone documents.) Despite several amendments, its core has remained intact for almost a quarter of a millennium. Such constitutional stability is unusual. In the time since America adopted its current constitution, France has adopted 16, and the Dominican Republic has adopted 32.

The U.S. Constitution is not uncontroversial. People disagree on how to interpret its words, which are often vague and nonspecific. Many feel that certain things should be added to, removed from, or changed in it. Still, the durability and longevity of the Constitution suggest the Founders hit upon some fundamental truths about politics and power when they wrote it. To understand their way of thinking, it helps to remember the historical context in which the Constitution was written.

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3.2: 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 grow their fortunes in the New World, religious outcasts fleeing persecution, 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. They were governed by the British parliament and by decrees of the King of Great Britain, George III. The colonials generally saw themselves as British subjects (which they were) but a distinctly American culture had begun to emerge.

Being ruled by a distant King and Parliament displeased the colonials. The British Crown taxed the colonies heavily to pay off its war debts and imposed many economic and political restrictions. Unlike British subjects in Great Britain, the colonials had no voting representation in Parliament with which to influence or block these laws. Popular sovereignty was lacking: the colonials were ruled by a government that gave them no formal say and ignored their appeals for relief from its harmful policies.

After many failed attempts to persuade King George III to address their concerns, the colonials took extreme action. On July 4, 1776, the Second Continental Congress adopted the **Declaration of Independence**, a document written mainly by Thomas Jefferson. Over the next month, delegates from all 13 colonies signed the Declaration.

Most of the Declaration (which you can find beginning on page 177) consisted of a tally of the colonials' grievances against the King. He had failed to pass laws the colonies wanted or 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. He stationed many British troops in the colonies even during peacetime, forcing colonials to provide them free room and board. He imposed burdensome taxes on the colonials, who had no formal recourse to influence those taxes.

The Declaration of Independence was highly critical of King George III, whom it labeled a tyrant. However, most of its complaints were not specific to King George III. The colonials could have demanded that he abdicate and allow himself to be replaced by a better ruler. Instead, they made it clear that it didn't matter who was King: the problems were rooted in the British monarchy itself. The only sensible solution in the colonials' view was "to throw off such government"—to declare their independence—and "to institute new government" to avoid these problems in the future.

In the opinion of the signers of the Declaration of Independence, America was already independent even before the ink had dried on the parchment. From the King's perspective, America was simply a rebellious region 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 and the Declaration would have gone down in history as the treasonous spark of a failed insurrection. Instead, the colonials—henceforth the Americans—won the war. In 1783, Great Britain acknowledged its defeat by signing the Treaty of Paris, affirming that the United States was 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. We, unlike them, never had to imagine our own necks in a traitor's noose.

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3.3: 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 political system to replace the one they had just cast off. Otherwise, the war effort would be a disorganized mess, hopelessly outmatched by British military might.

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, established a barebones national government. Congress consisted of a single chamber in which each state had between two and seven delegates but only one vote. Nine of the 13 states had to vote for a law for it to pass, and amending the Articles 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 only wielded the limited powers Congress chose to grant them.

The Articles of Confederation enabled the Americans to fend off the British and secure their independence, but just barely. Congress tried to raise money to fund the Continental Army, but it lacked the power to collect taxes from the states to do so. The states' reluctance to contribute left the army constantly low on supplies, forcing General George Washington himself to repeatedly beg Congress for money to feed, clothe, and arm his soldiers.

After the war, the Articles of Confederation continued to trouble 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. Sometimes 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. 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 never received his full five years' worth of officer's pay. Deep in debt, he led thousands of citizens to obstruct the proceedings of the Massachusetts state government, which was jailing debtors and confiscating their property. Congress tried and failed to gather enough money from the states for a military force to quash Shays' Rebellion, which was eventually broken up by the Massachusetts state militia and a privately funded local militia.

Shays' Rebellion forced America to reckon with the fundamental failure 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. 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 deal with national emergencies. Shays' Rebellion did not bring the fledgling nation crashing down, but without major reform it was only a matter of time before some other crisis would.

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3.4: 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. Its official purpose was revision, but even before it began many delegates had concluded that the Articles were hopelessly flawed and 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 agreed. Some thought 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 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 new constitution would significantly strengthen the national government.

For over three months, the delegates brainstormed and debated how to design a government that could bind the Union together while still preventing tyranny. George Washington was elected president of the convention but spoke little, preferring to act as an impartial moderator. Some delegates arrived late or left early, either in protest or to attend to personal matters. Independence Hall was hot and stuffy in the Philadelphia summer, but the windows stayed closed and the curtains drawn so that delegates could speak freely without 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. Either way, he felt the new design was still a major improvement on the Articles.

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3.5: A New Constitution

The U.S. Constitution departed from the Articles of Confederation in several key ways. The confederal system of the Articles was replaced with a federal one, increasing the national government's power over the states. The goal was to make America less like a loose league of feuding countries and more like a unified nation. As the Founders put it in the Preamble to the Constitution, they wanted "to form a more perfect Union."

Under the new constitution, Congress would have not one but two chambers: a House of Representatives and a Senate. This change resolved a dispute between large states and small states. Delegates from large states wanted proportional representation based on population. They argued that it was only fair for states with more citizens who would be subject to Congress's laws to have more influence on those laws. Delegates from small states wanted to preserve the equal representation for states as outlined in the Articles. Otherwise, they feared they would be constantly outvoted by larger states and forced to accept laws that went against their interests. To settle this disagreement, Connecticut delegates Roger Sherman and Oliver Ellsworth proposed the **Great Compromise** (sometimes called the Connecticut Compromise), calling for a proportional House according to population and an equal Senate with two senators per state.

Because representation in the House of Representatives would be determined by population, the Founders needed to decide how each state's population would be counted. This 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. Doing so would increase their number of votes in the House, 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 counted slaves as three fifths of a person for determining each state's representation in the House.

The Three-Fifths Compromise is often misunderstood as an attempt to dehumanize slaves by declaring them to be worth 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 slavery. The Three-Fifths Compromise had nothing to do with slaves' moral worth and everything to do with the states competing for power. In this competition, slaves were merely political pawns.

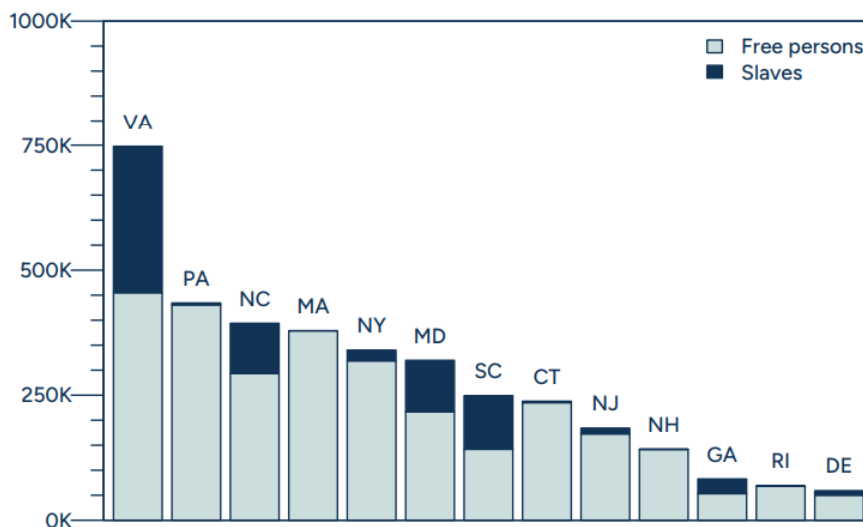


Figure 3.1: Populations of the original 13 states, 1790 (Source: U.S. Census Bureau)

The new Congress also had lower thresholds for passing laws and amendments than it did under the Articles. Laws would now only require majority support in each chamber to pass. Amendments would only require the support of two thirds of Congress (or of a national constitutional convention) and three fourths of all states, as depicted in Figure 3.2 below. This ensured that no single state could block constitutional reform (the flaw which had made the Articles virtually unamendable). Additionally, Congress would 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.

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 who were chosen by and subservient to Congress, 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.

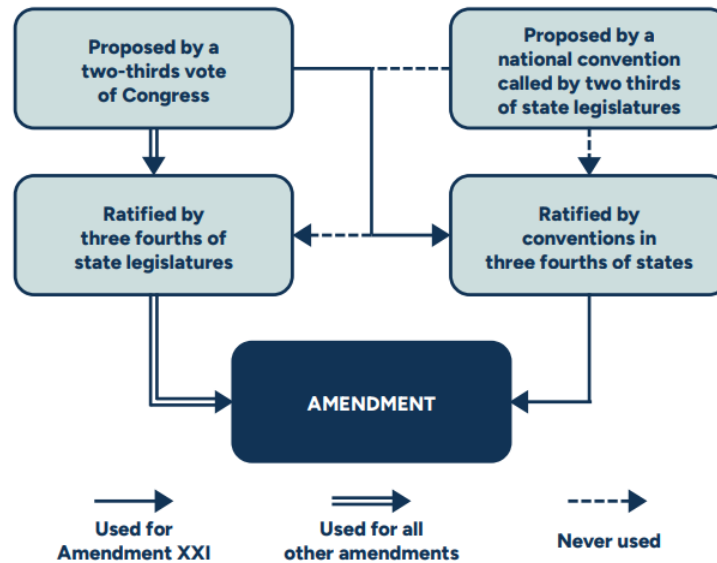


Figure 3.2: Methods of amending the U.S. Constitution

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3.6: 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 it would pose. The powers granted by the Constitution could be used for the good of the country. They could also be abused if they fell into the wrong hands. Without safeguards, 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). This division 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 might.

Along with separation of powers, the Constitution implemented a system of **checks and balances**. Each of the three branches had ways to limit or block the actions of the other two. This gave each branch a degree of control over the others, preventing any one from amassing too much power. The president could veto bills passed by Congress, but Congress could override vetoes if the bills had enough support or 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 could select which judges sat on those courts. (Figure 3.3 below summarizes how the three branches can check one another.)

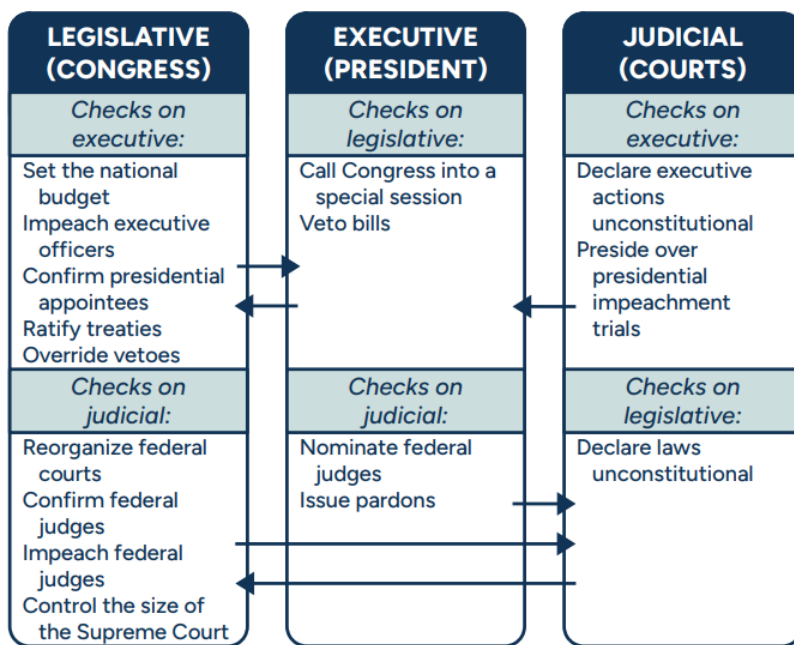


Figure 3.3: Checks and balances in the U.S. Constitution

The Constitution's separation of powers and checks and balances reflect the Founders' distrust of politicians. They knew that not all presidents, members of Congress, and judges would be devoted to America's national interest and the principles of limited government. They anticipated that the new 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, by jealously hoarding their powers from one another, the branches would prevent one another from becoming too potent. Even office-holders who only wanted to increase their own power would have self-interested reasons to use their checks in a way that the Founders hoped would prevent tyranny.

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3.7: Ratification

After the Constitution was written and signed, the states had to decide to accept or reject it. Article VII specified that the Constitution would not be official until nine states had ratified it. Twelve states—with Rhode Island again being the exception—elected delegates to conventions to vote on the new plan for America’s government.

The ratification debate was a crucial moment in American history. The Constitutional Convention had clearly not kept to its stated purpose of amending the Articles of Confederation. Instead, it had designed an entirely new system of government. It was essentially asking the states to secede from the old system and join the new one. This would be nothing short of a rebellion against the existing government—a bloodless rebellion with noble intentions, but a rebellion nonetheless.

Leading the fight to ratify 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 result. They believed separation of powers and checks and balances would prevent the new government from using its powers tyrannically.

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

The Federalists and Anti-Federalists waged a war of words at the state conventions and in the press. Essays by Anti-Federalists in New York newspapers criticized the new Constitution and urged the states to reject it. The authors of these essays often wrote pseudonymously, using pen names such as “Cato” (a Roman senator who committed suicide rather than live under Julius Caesar’s dictatorship) and “Brutus” (one of the senators who eventually stabbed Caesar) to emphasize that the Constitution would lead to tyranny.



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.

In 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. response, three Federalists—Alexander Hamilton, James Madison, and John Jay—wrote 85 essays defending the Constitution. These essays, known today as the **Federalist Papers**, were signed “Publius” in honor of one of the founders of the Roman Republic. The Federalist Papers responded directly to the Anti-Federalists’ arguments, explaining and justifying each part of the Constitution. Hamilton wrote the most essays and Jay the fewest, but Madison’s (particularly Federalist No. 10 and No. 51) eventually became the most famous and widely read.

The Federalists won in the end. Anti-Federalist at state ratifying conventions were convinced to support the Constitution on the condition that amendments be made 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, satisfying the requirement in Article VII. America's second—and, so far, last—constitution went into effect a year later in 1789.

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3.8: A Practical Constitution

The Founders who crafted the Constitution were among the cleverest political theorists of their era and perhaps any era. Yet their creation was not a purely theoretical document. Rather, it was shaped by the political, economic, and social conditions of the time. To succeed, it needed support throughout the new nation. In other words, it needed to please large states and small states, Northern states and Southern states, Federalists and Anti-Federalists, all while maintaining its functionality.

Despite these limitations, 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 its underlying structure—three branches, each with distinct powers and the ability to check the other two—persists.

Americans take a great deal of pride in their constitution. At times they exhibit reverence for it, exalting the delegates to the Constitutional Convention as almost mythical 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. 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 good.

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 in the original Constitution, and compromises were made to prevent Southern states from walking out of the Constitutional Convention and fracturing the young nation. Today, the idea of compromising on slavery strikes most people as morally reprehensible. Perhaps Northern delegates could have persuaded Southern delegates to accept terms less favorable to slavery. 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 does not prove that they should continue to be done the same way going forward. At the same time, constitutions are hard to change for a reason. 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 outcomes 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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CHAPTER OVERVIEW

4: Federalism

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4.1: Introduction



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.

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. In some ways, America's piecemeal approach to pandemic response undermined its effectiveness. U.S. states have no legal or practical means of closing their borders, so an outbreak in one state could easily spread to others. Even if a state managed its infection rate well, it might suffer the consequences of its neighbors' inability to do so. Viruses don't care where the lines are drawn on a map.

At the same time, 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 allowed them to choose policies for their states' unique needs. It also helped contain the damage from their mistakes. New York's decision to admit COVID-19 patients to nursing homes led to the deaths of many older New Yorkers. Had a similar policy been instituted nationwide, many more would have died.

COVID-19 revealed both the strengths and the weaknesses of American federalism. From the outset, the Founders sought a Constitution that could 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 substantially over the centuries, as have Americans' beliefs about what it should be. At the heart of many current issues 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.

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4.2: Systems of Government

Most countries consist 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 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, if they exist, are much weaker and have far fewer responsibilities than the national government. 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 small, culturally homogeneous countries. Chile, France, and Japan are examples of countries with unitary systems.

The opposite of a unitary system is a **confederal system** in which power is concentrated at the subnational level and the national government is comparably weak. The United States had a confederal structure under the Articles of Confederation, 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 broad discretion 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, with countries acting as the “subnational” units within the larger structure.

In contrast to unitary and confederal systems, a **federal system** divides power roughly evenly between national and subnational governments. Although they have different abilities and jurisdictions, the national and subnational levels are approximately equal in power. The modern United States has a federal system, as do Brazil, Germany, and India, among others.

These systems are not pure types. 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. Countries can be placed 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 centralized since the Constitution was ratified, although it remains a federal system.

In the United States, the term *federal* often means “national.” When someone says *federal government* or *federal law*, they usually mean “national government” or “national law,” as contrasted with state government or state law.

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4.3: Federalism in America

The delegates to the Constitutional Convention faced the challenge of avoiding both the oppressiveness of the British monarchy and the fecklessness of the Articles of Confederation. Most delegates recognized the need for a more powerful national government to maintain the fractious union. They also understood the danger of a too-powerful government falling 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 prior democratic governments, Greece and Rome among them, had either devolved to nondemocracy under 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 that had preceded it, and its descent into either tyranny or anarchy seemed a very real possibility. (In the words of John Adams, “There never was a Democracy yet, that did not commit suicide.”)

Federalism was the Founders’ way to prevent history from repeating itself. The Constitution would empower the national government to act when nationwide consistency was necessary, such as in matters of diplomacy and monetary policy, but the states would handle everything else. Ideally, the states would emulate the successful small republics of the past in managing themselves while the national government held them together without completely dominating them.

Under America’s federal system, the national government has certain **enumerated powers** which the state governments do not. These powers are listed (enumerated) in the Constitution and deal with national concerns, like raising armies, coining money, and declaring war. The state governments have **reserved powers** which the national government lacks, like conducting elections, issuing licenses, and providing public education. Most of these powers are not mentioned in the Constitution and are thus reserved for the states according to the Tenth Amendment. The remaining **concurrent powers** can be exercised by both the national government and the state governments. These include the powers to establish courts, make laws, and impose taxes on their citizens, although national and state governments exercise them in different jurisdictions. (See Figure 4.1 below for a summary of which powers fall into each category.)

ENUMERATED (NATIONAL) POWERS	CONCURRENT (SHARED) POWERS	RESERVED (STATE) POWERS
Raise armies	Charter banks and corporations	Ratify constitutional amendments
Regulate interstate commerce	Establish courts	Conduct elections
Coin money	Build infrastructure	Regulate intrastate commerce
Oversee citizenship and immigration	Make laws	Issue licenses
Establish post offices	Borrow money	Establish local governments
Make treaties	Take private property with just compensation	Maintain a militia
Declare war	Impose taxes	Provide public education

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. However, local governments lack the sovereign status of state governments. 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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4.4: Limits to Federalism

Federalism has many advantages. Giving states the freedom to make their own laws turns them into what former Supreme Court Justice Louis Brandeis called “laboratories of democracy.” States 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 work 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. However, as the Articles of Confederation proved, too much flexibility is disadvantageous. A “patchwork of laws,” in which laws vary from state to state, can cause confusion, conflict, or even chaos. To prevent these outcomes, the Constitution imposes several limits on how much states can customize their laws.



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.

One 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. 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 enables Pennsylvania drivers to cross the New Jersey border without breaking the law, because 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.

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.

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 stops Louisiana from legalizing dogfighting, which was banned nationwide in 2007, because the national ban supersedes state law.

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4.5: 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 outset, the Supreme Court was frequently called upon to interpret the Constitution in situations where its meaning was unclear. Several of the Court's earliest decisions 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 wide latitude 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, letting states set their own policies on slavery would preserve the fragile harmony between free states and slave states. In practice, this proved impossible. 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 to free states while still maintaining ownership. Free states bristled at the fact that national law forced them to be complicit in an abhorrent act which they 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 away from the states. 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. Finally, the Seventeenth Amendment removed the power to elect senators from the state legislatures and gave it to the citizens instead.

America's federal balance tilted further toward the national level and away from the state level in the 1930s. The Great Depression brought severe hardships, prompting the national government to take unprecedented actions to rebuild the economy. President Franklin D. Roosevelt's **New Deal** expanded the national government in both size and scope, enabling it to tackle challenges of reducing unemployment, building infrastructure, regulating the financial system, and providing pensions in the form of Social Security. Some initiatives were blocked by the Supreme Court as unconstitutional power grabs, but ultimately the Court allowed most of the New Deal to go into effect.

The 1960s brought further expansion of the national government's role. President Lyndon B. Johnson's **Great Society** programs 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 policies 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 to solve problems in tandem, rather than independently.

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4.6: Federalism Today

Modern American federalism continues to be cooperative rather than dual. States still largely govern themselves, but they increasingly operate with direction and assistance from the national government on matters they used to handle on their own. Today, many national-level organizations (including the Department of Education, the Environmental Protection Agency, and the Federal Emergency Management Agency) administer policies 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** comes with fewer strings attached, giving the state more freedom to decide how to spend it. Categorical grants tend to be more common, relative to block grants, when the Democratic Party controls Congress. When the Republican Party controls Congress, the opposite is true. These tendencies reflect the major parties' governing philosophies. Democrats generally favor national-level policymaking and thus provide more guidance for how grants should be spent, whereas Republicans tend to favor state-level policymaking and thus prefer less restrictive grants.

Sometimes the national government uses grants to indirectly influence state policy. In the 1980s, Congress wanted states to raise their drinking ages to 21, but a national mandate could have prompted a protracted court battle and might have been ruled unconstitutional.

Instead of forcing states to change their alcohol consumption laws, Congress tightened its purse strings. The National Minimum Drinking Age Act of 1984 threatened to withhold 10% of a state's highway funding if it did not raise its drinking age to 21. Within 12 years, all 50 states and the District of Columbia had conformed to 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. 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 leading the Supreme Court to step in and decide which interpretation is correct.

One perennial battleground in the fight over American federalism is immigration. In 2010, Arizona passed a law allowing its state police officers to check the legal status of suspected illegal immigrants. President Barack Obama's administration objected that immigration 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 not cooperating with national efforts to identify and deport illegal immigrants. Under Trump's successor, Joe Biden,, national immigration policies were again relaxed. Displeased, Texas began sending buses of illegal immigrants to Washington, D.C., to draw attention to what it considered a dereliction of duty on the part of the president.

Perhaps the most paradoxical federalism dispute concerns drug laws. The Controlled Substances Act of 1970 classifies marijuana as a Schedule I drug, alongside much harder drugs such as ecstasy, heroin, and LSD. This classification makes marijuana not just illegal 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 policy. (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. Nonetheless, the national government has largely refrained from prosecuting marijuana users and dealers, except when gangs or major trafficking operations are involved. 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.

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 how power should be

divided 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.

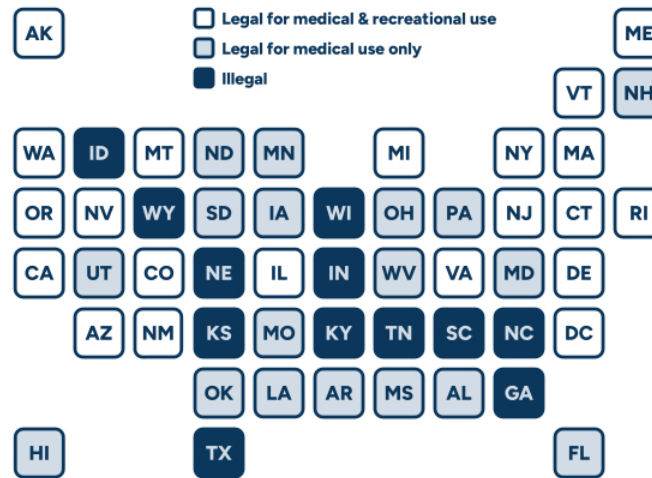


Figure 4.2: Legal status of marijuana according to state laws, 2023 (Source: Business Insider)

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4.7: E Pluribus Unum?

The word *United States* looks plural 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 joining together under a common government, first to secure independence from Great Britain and later to coexist peacefully 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 its name has become less plural and more singular over time, the United States itself has become more integrated, its power less diffuse and more centralized. No doubt the Founders would be surprised (and perhaps dismayed) at how much power has shifted from the state level to the national level. Yet the states persist – and, with them, the unique challenges of maintaining a country that is simultaneously one thing and 50.

Federalism has kept the country together under democratic 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 the nation to its knees and prompted major changes to its 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 could instigate a new evolution of the relationship between state and nation. It could also 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 between too tight and too loose is a perennial challenge of American politics.

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CHAPTER OVERVIEW

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5.1: Introduction



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

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”). The tiniest copper penny (liberty has been minted on every U.S. coin in circulation since 1792) and the giant copper statue in New York Harbor (whose official name is *Liberty Enlightening the World*) testify to its importance.

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 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 rights are not simply permissions granted by the government. If they were, the government could in principle revoke them at any point. Rather, the rights we have are inherent in our human nature and citizenship, and the government cannot take them away from us without a very good reason.

Rights are 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. 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 restrict other rights that would interfere with them.

The question of how 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 (meaning “free”) democracy. The United States aspires and purports to be a liberal democracy, so it must take care not to unnecessarily curtail civil liberties. But civil liberties, like all rights, are not absolute. Some curtailment will always be necessary, lest anarchy reign.

The Constitution does not always provide clear guidance on 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. 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.

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5.2: The Bill of Rights

Civil liberties were at the heart of the ratification debate between Federalists and Anti-Federalists. Both sides recognized the importance of liberty. Most delegates to the Constitutional Convention had fought in the American Revolutionary War and understood firsthand both how precious it was and how easily it could be lost. The question was not whether liberty needed protecting but 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 prevent this, they demanded a clearly specified list of rights, like the lists in many of the states' constitutions. The Federalists promised the Constitution 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. First, it was redundant. The Constitution already imposed clear limits on the national government, so a list of rights was 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?") Second, attempting to protect rights by listing them could backfire. There were simply too many rights to include them all, and any right left off the list would inevitably be perceived as less important or perhaps even nonexistent on account of its omission.

Ultimately, the Anti-Federalists won out. In exchange for their support for ratification, the Federalists reluctantly pledged that the new Congress would immediately take up the task of crafting a list of rights to append to the Constitution. James Madison begrudgingly led the effort to whittle down over 200 proposed amendments 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 beginning on page 193.)

AMENDMENT I Religion, speech, press, assembly, petition	AMENDMENT VI Speedy trial by jury, confronting of witnesses, counsel (in criminal cases)
AMENDMENT II Bear arms	AMENDMENT VII Trial by jury (in civil cases)
AMENDMENT III No quartering of soldiers	AMENDMENT VIII No excessive bail or fines, no cruel and unusual punishment
AMENDMENT IV No unreasonable search and seizure	AMENDMENT IX This list of rights does not imply other rights do not exist
AMENDMENT V Grand juries, no self-incrimination, no double jeopardy, no seizure of private property without just compensation	AMENDMENT X Powers not granted to the national government belong to the states or the people

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 one of the Federalists' worries 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 extra powers.

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5.3: Incorporation

The beginning of the First Amendment (“Congress shall make no law...”) reveals that the Anti-Federalists were mainly concerned about national government overreach. State governments, being less powerful and constrained by their own constitutions, were regarded as less of a threat. Therefore, the Founders saw no need to constrain state governments in the same way. 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 that no state could “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 obligated the states to respect the rights articulated in the Bill of Rights, which, as part of the Constitution, was among the laws whose equal protection every American was guaranteed.

Despite this change, the protections in the Bill of Rights did not apply to the states immediately. Instead, they were gradually imposed 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 incorporation 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 of unanimous verdicts for criminal convictions in jury trials. (The Sixth Amendment does not state this requirement outright, but the court ruled that it was implied based on the Founders’ understanding of trials by jury.) Some rights in the Bill of Rights have yet to be incorporated, but the Supreme Court could decide to incorporate them in the future if a relevant case comes up.

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5.4: 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 religiously diverse, populated with the descendants of Catholics, Jews, Puritans, and Quakers who had fled religious persecution. 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.) 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 protects freedom of religion in two ways, 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 but not others. 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 called "a wall of separation between Church and State." 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 restricting religious practices in limited circumstances.

The application of the establishment clause has evolved over time. The 1971 Supreme Court case *Lemon v. Kurtzman* resulted in the creation of the **Lemon test**. According to this test, government actions did not violate the establishment clause as long as they had secular (non-religious) purposes, had a primary effect other than advancing or inhibiting religion, and did not excessively "entangle" the government with religion. Although it was modified and simplified in subsequent cases, the *Lemon* test gradually fell out of favor for being both difficult to apply and an incorrect interpretation of the First Amendment. In 2022, the court ruled in *Kennedy v. Bremerton* that establishment clause disputes should instead be decided based on America's "historical practices and understandings." A year later, the court officially abandoned the *Lemon* test in *Groff v. DeJoy*.

With regard to the free exercise clause, the Supreme Court has ruled that the government can 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 determined in *Employment Division v. Smith* in 1990) or ritualistic human sacrifice. Laws against these practices exist 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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5.5: Speech

The First Amendment also forbids Congress from “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 open exchange of information and opinion makes democracy possible. If citizens were unable to speak their mind about politics, it would be impossible to effectively debate political issues or criticize government wrongdoing.

Despite its importance, freedom of speech, like freedom of religion, is not infinite. 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 delivered at a Ku Klux Klan rally) the Supreme Court ruled 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 would not constitute incitement, as there would be no immediate 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 with the aim 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 *Miller v. California* in 1973, the Supreme Court has defined obscenity as offensive depictions of sexual conduct which lack serious literary, artistic, political, or scientific value. This standard 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 that, while he might not ever be able to define *hard-core pornography* in precise terms, “I know it when I see it.”)

While it 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. 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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5.6: Arms

The United States is the only country in the world that has more privately owned guns than citizens. This appreciation for firearms predates America's independence. Most of the colonies required all able-bodied adult white men 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 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 upheld a ban on sawed-off shotguns 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 Founders' day, the United States military has become the world's most expensive and most advanced fighting force, and the idea of a state militia holding 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 controversial 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 other purposes. The Supreme Court has ruled otherwise. States can and do impose various restrictions on firearms, but the Second Amendment ensures that those restrictions can only go so far.

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5.7: Due Process

To maintain internal peace—“domestic Tranquility,” in the words of the Preamble to the Constitution—the government must be able 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.

To the Founders, 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 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, but if he or she has been found not guilty the government doesn’t get a second chance to convict. 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* 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. Technically, a *Miranda* warning is only required prior to interrogation. Still, it is common practice to “Mirandize” suspects upon arrest, to ensure that any incriminating statements they make prior to a formal interrogation can be used against them in court.

The Sixth and Seventh amendments also name 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 the 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 unnecessary. Furman deemed the death penalty cruel and unusual based on the inconsistency with which it was applied, leading to a nationwide moratorium on executions. This prompted states with the death penalty to modify 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 six of those states currently have their own moratoria on executions.

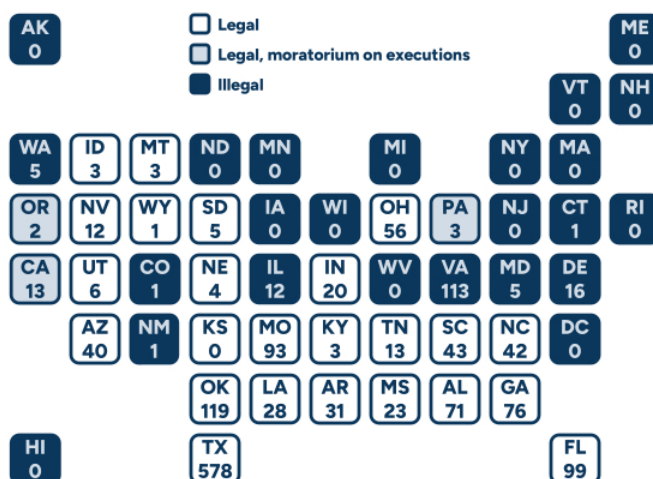


Figure 5.2: Executions by state, 1976–2022, with legal status of death penalty as of 2023 (Source: Death Penalty Information Center)

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5.8: 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 different ring to it in an age 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 democracy: the diminishment of one imperils the other. Yet, paradoxically, protecting civil liberties is inherently *undemocratic*. Democracies are predicated on majority rule, 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 reveals 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 need our 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. 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

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6.1: Introduction



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

“We The Martin Luther King, Jr. Memorial, situated south of the National Mall in Washington, D.C., has honored the civil rights leader since 2011. 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’s initial draft of the Declaration called them sacred and un-deniable, but Benjamin Franklin suggested self-evident instead. The implication was a bold one: not only was the equality of men a truth, it was obvious and indisputable. No further explanation or justification was needed to prove it.

Today, it’s clear that this ambitious claim was aspirational at best and hollow at worst. The Constitution ensured that America would recognize no royal blood or noble titles, but it also allowed slavery to persist for almost a century 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 interprets *men* in the classical sense as referring to both sexes, the Constitution did little to protect the rights of women. Most states barred women from voting at the time of ratification, and they were treated as inferior to men in many other ways.

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

Though the terms *liberties* and *rights* are synonyms, *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.”

Over time, America has changed its perspective on the meaning of equality, both as a government (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. In turn, those protections have normalized equalities between groups that were far less “self-evident” before. How far we have yet to go in the pursuit of equality, and how best to go about getting there, continue to provoke heated debate.

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6.2: Race

Beginning with the first slave ship to land in Virginia in 1619, roughly ten million people of African descent were brought to or born in America as slaves. They were forced to labor under excruciating circumstances, brutally mistreated, and denied virtually all political and legal rights. By the time of the Constitutional Convention, slavery divided the country. Several northern states had enacted laws to abolish or gradually phase out slavery, while agriculturally dependent southern states practiced it with alacrity. About 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 previously been slaveowners.

For several decades, “free” states and “slave” states maintained an uneasy truce. During the first half of the 19th century, new states were admitted to the Union in pairs—one free, one slave—to preserve balance between the two factions, and dual federalism mostly left slavery up to the states to decide. Neither trend proved sustainable. With California’s admission in 1850, free states began to outnumber slave states. At the same time, the Fugitive Slave Act and the Supreme Court’s decision in *Dred Scott v. Sandford* encroached on free states’ ability to exclude 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 end slavery. In the aftermath, Congress passed and the states ratified three constitutional amendments. The Thirteenth abolished slavery and involuntary servitude, except as punishment for crimes. The Fourteenth established equal protection under the law for all citizens. The Fifteenth prevented the denial of **suffrage** (the right to vote) on the basis of race.

These amendments made whites and blacks equal according to the letter of the law, but 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. However, laws that directly defied the new amendments were likely to be struck down by the Supreme Court as blatantly unconstitutional.

To get around these new restrictions, Southern states passed Jim Crow laws to preserve the race-based social order of whites over blacks. 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 avoid disenfranchising illiterate whites, states with literacy tests also included a **grandfather clause** allowing citizens to skip the tests 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. The combination of literacy tests and grandfather clauses prevented many blacks from voting, though neither policy directly referenced race.

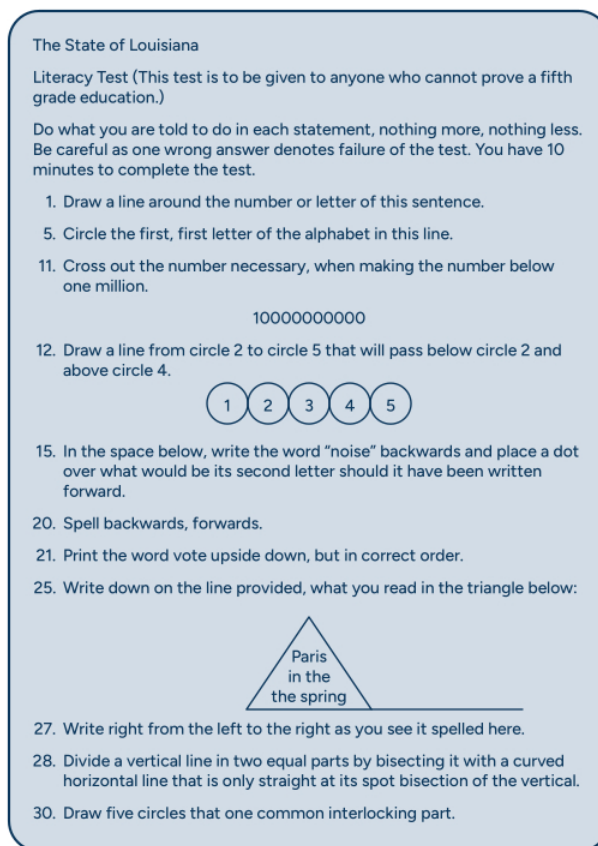


Figure 6.1: Sample questions from a 1963 Louisiana literacy test, with typos as they appeared in the original document (Source: Civil Rights Movement Archive)

Literacy tests and grandfather clauses show how the effect of a law can depend on 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 it will do once enacted.

In addition to denying blacks political influence by suppressing their right to vote, Jim Crow laws enforced **segregation**, dividing blacks and whites into separate schools, hospitals, restrooms, and other facilities. The 1896 Supreme Court case *Plessy v. Ferguson* (involving a mixed-race shoemaker who refused to leave a whites-only railroad car) permitted segregation so long as 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 court overturned *Plessy* in its 1954 decision *Brown v. Board of Education of Topeka*, which declared racial segregation unconstitutional in schools. In 1964, the court went further in *Heart of Atlanta Motel, Inc. v. United States* by banning racial segregation in all public accommodations.

Social movements played a vital role in the fight for racial equality. Boycotts, 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 pressured Congress to step in. This pressure ultimately resulted in 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 civil rights protection.

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6.3: 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 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) to pursue them.

Whereas the Fifteenth Amendment struck down racial restrictions on voting in one fell swoop, women’s suffrage developed more gradually, state by state. Wyoming became the first state to allow women to vote when it joined the Union in 1890, its territorial legislature having already done so in 1869. Other states, predominantly in the west, followed suit. By the time the Nineteenth Amendment extended women’s suffrage nationwide in 1920, women already had full voting rights in 18 states and partial voting rights in 22 others.



A 1915 illustration in Puck magazine depicts women’s suffrage rising in the west and proceeding eastward.

After A 1915 illustration in Puck magazine depicts women’s suffrage rising in the west and proceeding eastward. the Nineteenth Amendment was ratified, the women’s rights movement in the United States lost some of its cohesion as its constituent groups pursued different policy agendas. It regained 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**, prohibiting sex discrimination in educational institutions receiving aid from the national government. Title IX continues to influence 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 than blacks of the rights in question.

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. Its opponents (including many women) argued that it would end certain legal protections enjoyed by women, such as their exemption from the military draft and their advantage in child custody hearings. This counter-mobilization succeeded: when the deadline to ratify the ERA arrived in 1982, only 35 of the required 38 states had done so, 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 use of birth control) from excessive government intrusion. The court did 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*. *Roe* concerned a woman who had been unable to obtain an abortion in Texas and was challenging the state's abortion ban. The court ruled that 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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6.4: 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 condemnation. With the '60s came a new, more critical perspective on traditional morality, particularly regarding sexual activity. Lesbian, gay, bisexual, and transgender (LGBT) 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 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). In 2003, the court reversed itself in *Lawrence v. Texas*, citing the right to privacy as grounds to strike down all state laws forbidding sexual activity between same-sex partners.

Shortly after *Lawrence* was decided, 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 *Boockvar v. Clayton County* that the 1964 Civil Rights Act protects employees from discrimination on the basis of their sexual orientation or transgender status.

As American laws have become less hostile and more open to same-sex relationships, Americans themselves have as well (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 was, 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 a campaign event.

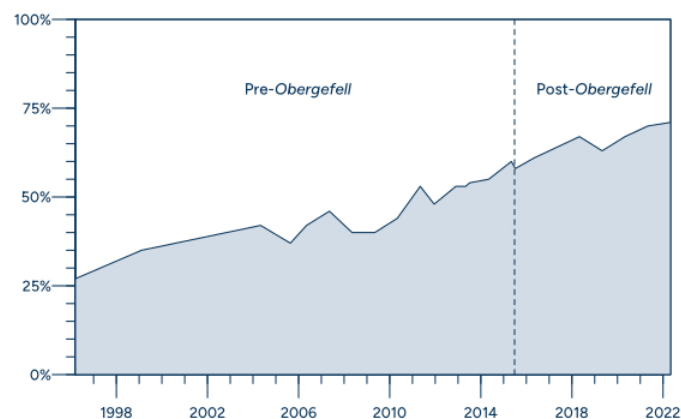


Figure 6.2: Percentage of Americans supporting same-sex marriage before and after *Obergefell v. Hodges*, 1996–2022 (Source: Gallup)

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6.5: Modern Civil Rights Challenges

Though its laws have changed greatly over time, America's long battle over civil rights is not over. Inequalities persist in American society, despite laws and constitutional amendments declaring the legal equality between 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, 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 overall, and poorer areas of cities also tend to have higher crime rates. However, it does mean that eliminating racial imbalances in the criminal justice system would require more than just identifying and removing individual racist cops and judges.

Another frequently discussed systemic inequality is the fact that, in the United States, the average working man earns a higher wage than the average working woman. This disparity could reflect biased hiring and promoting of men over women. It could also stem from the fact that women in the workforce tend to choose lower-paying career fields than men. (When different career fields are accounted for, 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 affect 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 not straightforward. Societal perceptions are far more difficult to change than individual sexist bosses or job recruiters are to fire 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 diversify its employees and contractors. This 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 *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*. When a Christian baker refusing to bake a wedding cake for a gay couple, the couple claimed the baker had 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.) 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. Calling something a right implies absoluteness and inviolability, which is one reason why it is done 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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6.6: The Promise of Equality

In the United States, consumers are protected by law from companies which engage in false advertising. If a product is packaged or sold in a way that sets unrealistic expectations about its functionality or quality, a court may force the company to compensate the buyers for misleading them.

At various points in America's existence, its users would have had a compelling argument that their machine was falsely advertised. As nobly and high-mindedly as the Declaration of Independence and the Constitution described the ideals they 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 its independence, 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 change again in the future, in ways we would struggle to imagine (let alone condone) today. We can be justifiably proud of how far the United States has come in some domains of civil rights, but 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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CHAPTER OVERVIEW

7: Public Opinion

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7.1: Introduction



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

Democracy Tourists' images are distorted and reflected back at them by Cloud Gate, a sculpture in Chicago's Millennium Park. is meant to reflect the people. 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 can the majority's preferred course of action be ascertained, unless the public somehow collectively expresses itself.

How effective is government based on public opinion? Are people 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. Sometimes we don't even know what we want.

Before deciding 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, guide a democracy? Second, can those opinions be extracted and compiled in a way that gives the government a good sense of what the public wants it to do?

The answer to both of these questions is a qualified yes. People do have political views, though they are often less stable than is commonly assumed. And these views are discoverable through polling, though even the best polls are limited in their ability to accurately sum up how the populace thinks and feels. 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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7.2: Attitudes and Opinions

An **attitude** is an orientation or predisposition toward an object: a person (such as the president), a group (such as the Republican Party), an idea (such as the death penalty), or something else. The object is necessary: 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. Unsurprisingly, 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 measure directly. The most advanced brain-imaging technology cannot tell us exactly what someone thinks about tax cuts or drone warfare, much less how strong or durable those thoughts are.

Attitudes themselves cannot be directly measured, but their expression 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, public opinion refers not to the collective attitudes of a populace but rather the collective expressions of those attitudes.

At best, an opinion is an imperfect representation of an attitude. Consider presidential approval. You can probably think of at least a dozen factors that influence your approval or disapproval of the president’s job performance, but no one can 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 same as yours but for completely different reasons. Like a two-dimensional photograph of a three-dimensional object, no opinion fully expresses the attitude it reflects.

Although it is sometimes possible to infer a person’s attitudes based on his or her opinions, it is important not to get carried away. Consider the act of voting. In the United States, the Democratic and Republican parties differ significantly in their positions on various issues (including those summarized in Figure 7.1 below). However, the fact that a person votes for a candidate from one of those two parties does not mean that he or she agrees with the majority of that party’s members on all or even any of the issues. The vote could have been based on the candidates’ personalities, the job performance of the incumbent candidate or party, or a plethora of other factors. Voting is an expression of an opinion, but the opinion being expressed is simply a preference for one candidate over another. We can speculate about the reasons for that preference, but we can’t be sure without more information.

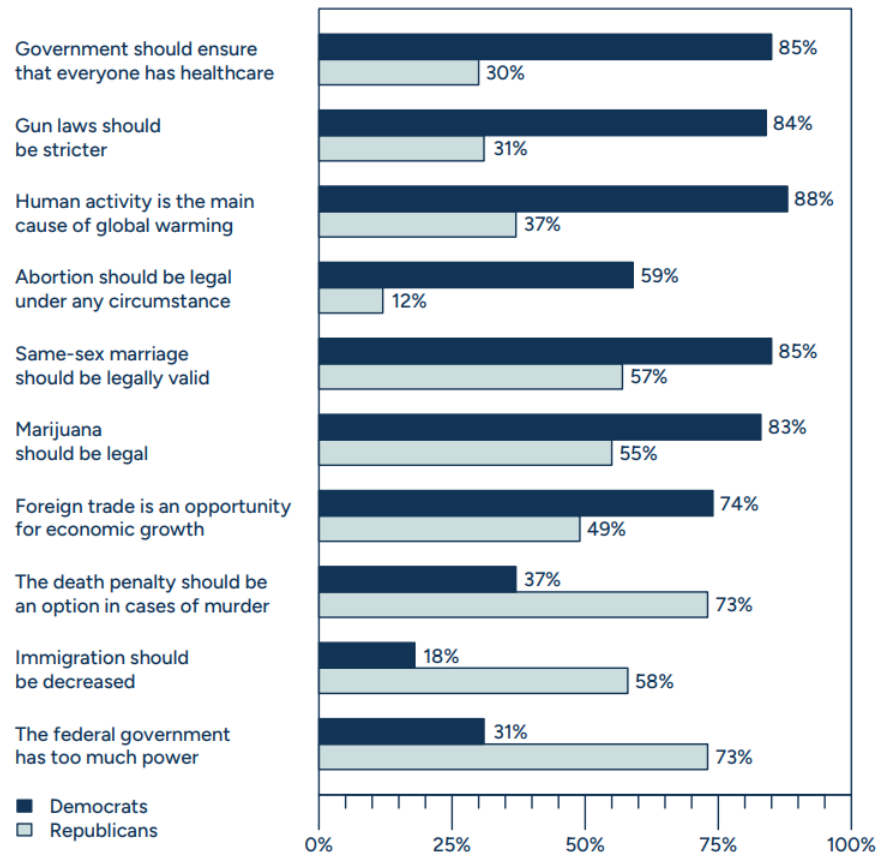


Figure 7.1: Percentage of Democrats and Republicans agreeing with select issue positions, 2023 (Source: Gallup)

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7.3: 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.

This instability is rooted in human psychology. Generally, we don't store preformed opinions in our minds. Instead, we generate opinions on demand, based on 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 can be instantaneous.

When people generate opinions on the fly, they rarely consider all the relevant information in their minds. 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 with enough time. Your attitude toward the president may consist of many factors, but only a few will influence your opinion. The **salience** of the information in your memory—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 likelier you are to consider it.

Information salience changes over time due to **priming**. Events and experiences can prime certain thoughts, making them temporarily easier to recall and therefore more influential on opinions. This is why Americans generally sound 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. In April they are primed by the deadline for paying their income tax to think about its costs. Primes don't necessarily change attitudes, but they do change which parts of those attitudes come to mind most readily, enough to change opinions.

Primes can be surprisingly effective at changing opinions, but it's important to not overstate their impact. They tend to be most influential at the point of exposure, after which their potency declines rapidly. One reason for this phenomenon is that people are constantly exposed to so many primes that the effect of any one prime is quickly superseded by others, unless the initial prime is particularly powerful or repeatedly reinforced.

How opinions are solicited can influence the salience of information, thereby influencing the opinions themselves. **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 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 often produces noticeable effects on opinions, even if it has no lasting impact on attitudes.

Primes and frames do not sway 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 from a single survey response how much primes or frames shaped 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 is therefore crucial for interpreting public opinion data.

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7.4: 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.

People's differential experiences with politics are often linked 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, class, religion, sexual orientation, occupation, or party. (Note that identities are distinct from character and personality traits, such as "hardworking" or "shy.")

Not every personal characteristic is an 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 participates in parish activities probably identifies more as a Catholic than the one who grew up Catholic but no longer practices. 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 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. For example, in the United States, on average, blacks tend to be significantly more likely than whites to support the Democratic Party. This does not mean that all blacks support the Democratic Party. It also does not 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 an important relationship between race and partisanship in the United States.

Not all influences on public opinion are as stable as identities. Events can have temporary or lasting effects on how people think and feel about politics. The president's job approval (as shown in Figure 7.2 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 the economy 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, how much they trust their government, and many other opinions.

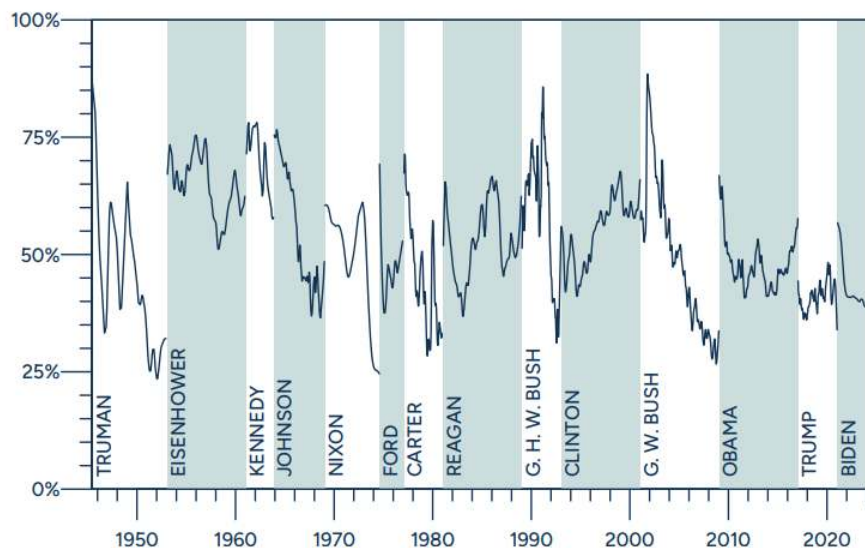


Figure 7.2: Presidential approval, 1945–2025 (Source: The American Presidency Project)

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. The COVID-19 pandemic affected just about everyone around the world, but its effect differed depending on whether a

person was a healthcare worker, had school-aged children, and so on. In these and other cases, our identities affect how we experience events, which in turn shapes 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 reveal the truth: we often don't know or don't want to admit the true reasons behind our opinions. Still, the trends we observe are robust enough to make conclusions about public opinion overall, even if the individual opinions underlying them remain hard to fully explain.

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7.5: 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. Doing so would be impractical or impossible unless the group in question were 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. In a polling context, the population can be (and usually is) much narrower. A typical election poll might draw a sample of 1000 respondents from 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 wouldn't help the poll fulfill its purpose.

Though polls typically sample less than 1% of the population they want to understand, they can still capture public opinion quite accurately. 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 a well-drawn sample and be reasonably confident that its opinions closely match those of the entire population.

The trustworthiness of a poll depends largely on its representativeness. A **representative sample** 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, 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 near the middle of the 20th century. (This 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. Some pollsters also weight their results to correct for overrepresentation or underrepresentation.



A jubilant 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.

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 is determined 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 $\pm 3\%$ margin of error, the pollster is 95% certain that the president's true approval rating is 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 7.3 below).

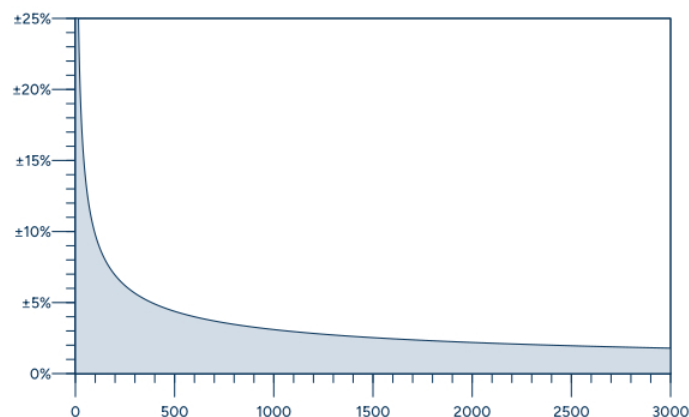


Figure 7.2: Margin of error by sample size (Note: Margins shown are based on evenly split public opinion. When public opinion is lopsided, margins of error are smaller.)

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7.6: Problems in Public Opinion Measurement

Polling is an inexact science. 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. Such differences could arise simply by luck of the draw, but there are also several types of error which can distort poll results.

Coverage error occurs when not everyone in the population is equally likely to be sampled. Some of the earliest American polls were conducted in taverns and on trains, resulting in samples that were easily accessible but poor matches for the overall public. In the early 2000s, telephone pollsters often did not call cell phones, which led them to undersample young people and non-homeowners, who tended to not own landline phones. (The Telephone Consumer Protection Act of 1991 banned the use of computer-based random-digit-dialing to call cell phones, making them more expensive to survey than landlines.) 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 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 complete 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.

Measurement error occurs when the questions asked on a poll fail to adequately capture the opinions being sought. This 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 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 often lie to pollsters by falsely claiming to have performed their civic duty.

A poll about marijuana legalization could easily produce each of these types of error. It 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 associated with it. In each case, the results would be distorted.

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. 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 prove the October poll was wrong, only that it was inaccurate by the time the votes were cast.

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7.7: 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. Most Americans prefer this arrangement, at least in theory. To some, it seems like the most effective method of governing a country. To others, it is a moral obligation, and it would still be 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 frequently cite polling data with an air of finality, as though they were judgments issued from some almighty being. Whenever politicians pursue unpopular agendas over the public's stated 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 benefit. After all, public opinion has many shortcomings. Our opinions are inconstant, and not always for good reason. We are uninformed or underinformed on many important issues, and it shows. Many government policies that start out popular turn 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.

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 of public opinion into effective government action. It attempts to balance letting the people decide how they are ruled with trusting experts to occasionally go against the public's wishes when appropriate. 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

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8.1: Introduction



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

The deadliest high school shooting in U.S. history occurred on February 14, 2018, at Marjory Stoneman Douglas High School in Parkland, Florida, where a 19-year-old former student killed 14 students and three staff members. Mass shootings happen tragically often in America, enough that most Americans are familiar with what happens in their aftermaths. First, frantic news coverage scrambles to establish what happened. Then comes the somber work of numbering and naming the dead. Politicians and other public figures issue statements of sympathy and vows of change. After a few days, the nation quietly moves on, while those personally affected wish they could forget what happened as easily as the rest of us can.

Parkland's survivors were determined not to let their tragedy fade into history. 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 appeared on the news to share their experiences and publicize the protest. Over a million Americans took part in the March for Our Lives, with thousands joining in from around the world. It was hard to imagine a more impactful message that stricter gun control laws were urgently needed to prevent further bloodshed.

And yet, despite the protests, and despite the fact that most Americans favored making it harder for people to obtain guns, little changed in terms of policy. Florida did tighten some 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 people who took to the streets to demand government action, this outcome was a bitter disappointment.

In Chapter 7, we examined the American people and their opinions, both at the individual level and 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 an issue yet so unsuccessful at channeling that attention into major policy change, we must also examine the American people from a third perspective: as an assortment of groups.

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8.2: Strength in Numbers

Most people have political preferences. These preferences vary in 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 like to either change or keep the way it is.

Although we have political preferences, most of us lack the individual power to do much about them. Unless you are a government official, a celebrity, or some other influential person, your ability to impact 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. Alone, you might struggle to get the government's attention if, for example, you protest an unjust law. Find a handful of people who agree with you and will protest alongside you, and together you might make the local news. Find 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 always agree, but they agree enough on one issue or set of issues to band together. Interest group membership is generally not exclusive; one person might be a member of multiple interest groups, each pursuing a different agenda.

The term *interest*, as it pertains to interest groups, is not synonymous with *hobby*. Any policy from which you stand to benefit more than from the alternative 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.

Interest groups are akin to parties, which also act collectively to influence public policy. The main difference between an interest group and a party is how they pursue 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 from the outside.

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8.3: Types of Interest Groups

Roughly half of the interest groups active in Washington, D.C. (including all of the top ten spenders in 2024, 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 on their own behalf. Professional associations representing specific occupations, such as the National Association of Realtors, also fall under this economic umbrella.

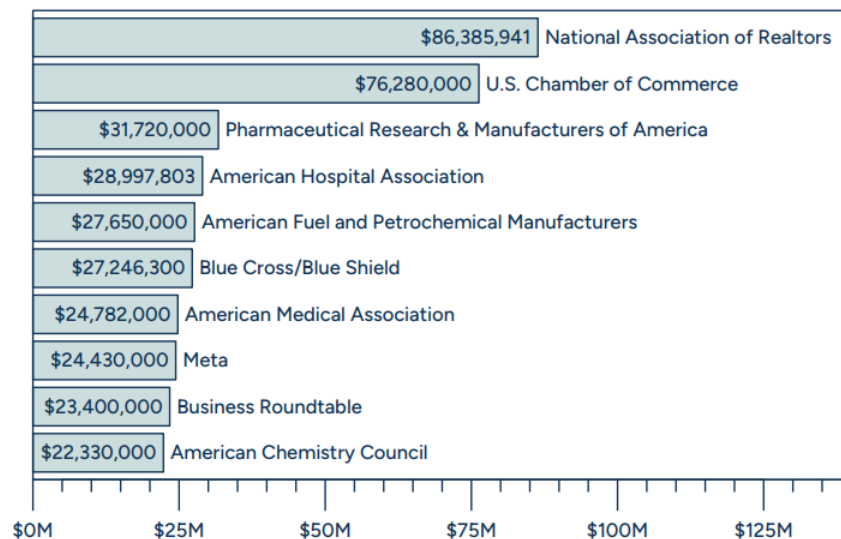


Figure 8.1: Top ten interest groups by lobbying expenses, 2024 (Source: Open Secrets)

Labor unions, such as the National Education Association (representing teachers) and the Teamsters (representing truck drivers and warehouse workers) are an important subset of economic interest groups. These organizations stand for worker’s rights and advocate for policies such as higher wages, safe working conditions, and generous benefits programs. Labor unions often contend 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 from its peak in the 1950s. No unions appeared among the top spenders in 2024—in fact, all U.S. labor organizations were combined, they would only come in at number three on the list. Still, they remain influential in American politics.

Some interest groups are primarily concerned with non-economic issues. 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 for municipal governments, focusing 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. (Israel, Japan, and Saudi Arabia are among the biggest spenders in this category.) These organizations qualify as interest groups because, although they are governments themselves, they are attempting to influence the actions of a different government (the U.S. national government) from the outside.

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 interest groups attempt to influence how that power is exercised wherever it resides.

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8.4: Interest Group Tactics

The main tool interest groups use to influence public policy is **lobbying**. Many 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 involves providing members of Congress with information about issues they consider important. Congress relies heavily on interest groups for such information, though each interest group focuses on information that supports its viewpoint. Sometimes interest groups even write whole bills and present them to senators or representatives, hoping they will formally introduce those bills into Congress.

Lobbying has a negative reputation. Lobbyists are often thought of as sleazy political operators, willing to bribe politicians to change their minds and break 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 outright bribery (though some do get caught breaking these laws). Second, rather than try 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, though some lobbyists lobby politicians to act against their constituents' interests, others lobby 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 so through average citizens. This practice, called **grassroots lobbying**, involves encouraging a politician's constituents to write letters, make phone calls, or send emails to voice their opinions and demand action. An effective grassroots lobbying campaign can swamp a congressional office with messages of anger or concern, showing that 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 been urged to write to your representative or call your senator, you've experienced a grassroots lobbying appeal.

Lobbying is not confined to the legislative branch. Courts also experience pressure from interest groups via *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 amicus briefs is to persuade government officials—in this case, judges—to act a certain way. Some high-profile cases involve hundreds of amicus briefs from concerned interest groups or individual citizens.

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8.5: Influencing Elections

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

Investing in unelected politicians is a somewhat risky strategy. Politicians can't do much for the interest groups that support them if they lose their elections. This is why most interest groups focus on lobbying rather than electioneering. However, electioneering efforts by interest groups can easily seem bigger than their lobbying efforts, because they happen largely in public (with slick television ads and large events) instead of 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 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 a given PAC.

Related to the PAC is the **super PAC**. Like PACs, super PACs raise money to spend on political campaigns, mostly 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. This allows 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 if 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 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* prior to the 2008 presidential primaries. (At the time, Hillary Clinton was challenging Barack Obama for the Democratic nomination.) The Federal Election Commission blocked the release because Citizens United had not abided by campaign finance rules for political advertising. Citizens United contended that, because they were not formally affiliated with any party or candidate, they were exempt from those rules.

The Supreme Court ruled in favor of Citizens United. In doing so, it made super PACs possible (though it did not coin the term) by establishing that organizations like Citizens United could raise and spend unlimited money on political advertising as long as they did not affiliate or coordinate with a candidate or party. By 2012, super PACs were outspending PACs, as they have 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 through super PACs, exacerbating political inequality. Supporters argue that overturning it would give the government too much power to stifle political expression, jeopardizing free speech.

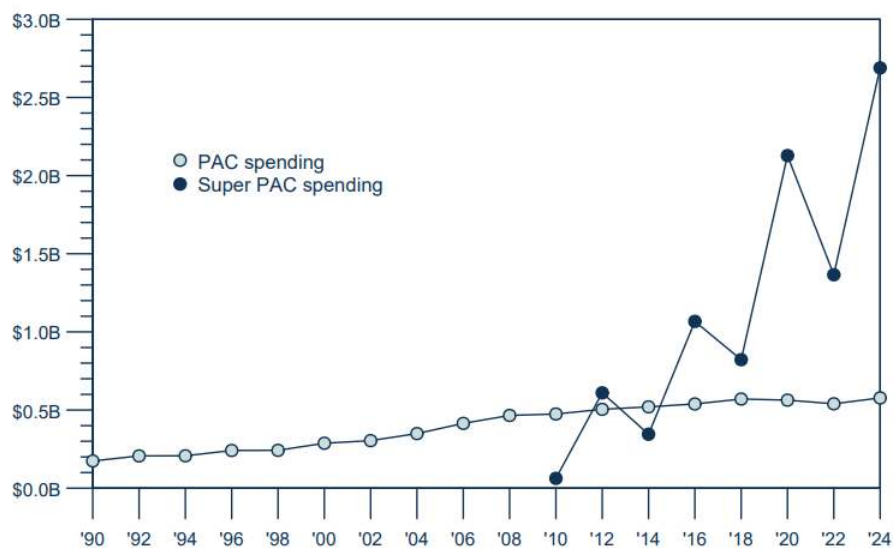


Figure 8.2: Total PAC and super PAC spending by election cycle, 1990–2024 (Source: Open Secrets)

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8.6: Interest Groups and Collective Action

Interest groups, like governments, form for the purpose of solving collective action problems. Interest groups that pools their resources and efforts can enact, maintain, or repeal policies that matter to them. A single college student has little power over education policy, for example, but millions of college students working together might produce significant change.

To organize effectively, interest groups, must act collectively. They may represent a large segment of the population, but they can only leverage that size if enough contribute time, money, and other resources to a 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 contributed nothing to the group's success.

Governments solve collective action problems primarily through coercion: forcing citizens—at gunpoint if necessary—to contribute rather than free-ride. Interest groups generally lack this ability to coerce their members and must therefore use other tactics. One option is a **selective incentive** for members who contribute. AARP provides health insurance and other benefits to its paying members, just as the American Automobile Association (AAA) encourages its members to contribute in exchange for roadside assistance and exclusive discounts. These private goods are limited to people who pay their dues to the groups. Those dues can then be used to fund the groups' mission.

Material benefits like insurance and discounts are not the only upsides to contributing to interest groups. For some members, the opportunity to work in solidarity with other like-minded people for a noble goal is enough of an incentive to participate. 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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8.7: Interest Groups and Democracy

The Founders were wary of the power of organized groups in a democratic political system. In Federalist No. 10, James Madison cautioned against “the mischiefs of faction.” By **faction**, Madison meant a group of people with shared interests distinct from those of the whole society. 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 safeguards such as the separation of powers and checks and balances.

Madison’s view of factions reflects a faith in **pluralism**. Pluralists argue that democracy is ultimately a competition among interest groups to determine government policy. Rather than leave each individual citizen to attempt to influence politics, 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. In theory, larger groups or coalitions of groups should win out in the long run due to the majoritarian nature of democracy.



Interest groups encourage members to contribute to their efforts by offering selective incentives, such as this roadmap published in 1918 by AAA.

In Interest groups encourage members to contribute to their efforts by offering selective incentives, such as this roadmap published in 1918 by AAA. reality, America’s political system doesn’t always deliver majoritarian outcomes. The richer someone is, the more money he or she can donate to interest groups. The more money an interest group has, the more influence it can wield. Furthermore, 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 of us to notice or care about the additional cost. By contrast, the recipients of these subsidies 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 and a bureaucratic agency to form an **iron triangle** (as diagrammed in Figure 8.3 below). Iron triangles coalesce around a policy status quo that benefits each corner. The interest group provides electoral support to members of the congressional committee in return for favorable legislative activity related to their interests. The interest group also lobbies Congress on behalf of the bureaucratic agency’s interests in exchange for the agency imposing (or not imposing) certain regulations on them. The congressional committee 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 or even widespread public knowledge.

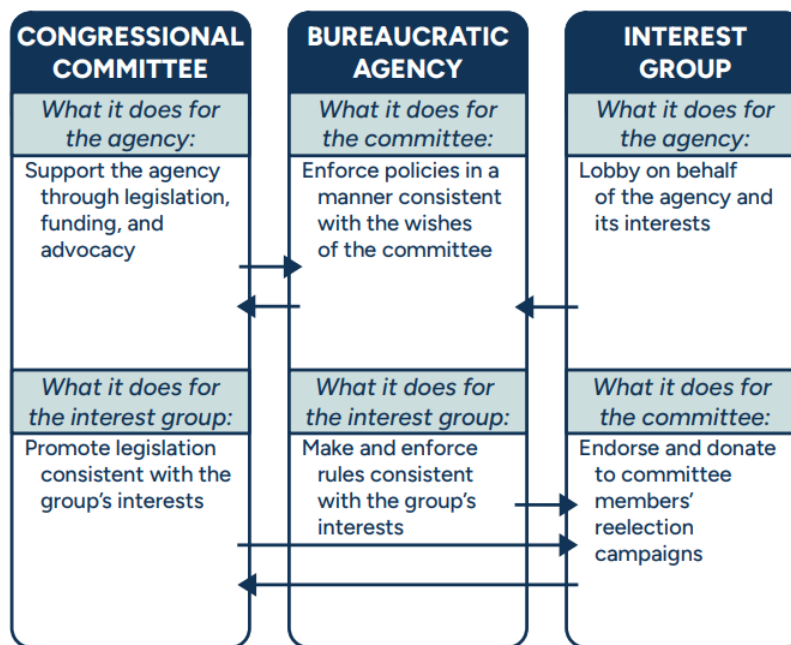


Figure 8.3: Relationships in an iron triangle

The nonmajoritarian aspects of interest group politics are one reason why March for Our Lives fell short of its goals despite majority support for them. The families and friends of the Parkland victims may never fully recover from that tragedy, but for most Americans it was just another Wednesday, and their lives would have been much the same had the shooting never happened. Millions are sympathetic to the cause of stricter gun control, but motivating them to act on an issue 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 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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8.8: 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 the basic recipe for political influence is the same as ever: find enough people who share your interests and work together to pursue those interests.

Yet size is not destiny. Small groups can beat larger groups if they are sufficiently motivated and organized. 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. The inertia of the American political machine creates yet another imbalance: it is much harder 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 commendable features, but it remains subject to the mathematics of group politics. Outcomes will not always be majoritarian, 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

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9.1: Introduction



Democrats cheer Kamala Harris as she accepts her party's nomination for president at its 2024 national convention in Milwaukee.

It is difficult to think of American politics without thinking of parties. The American political landscape, from the choices voters make in elections to the arguments and alliances between politicians that play out in government, reflects the familiar battle lines drawn between Democrats and Republicans. These two parties permeate our politics so thoroughly that one could easily assume they are baked into our political system, as fixed and permanent as the Constitution.

Yet neither the Democratic Party nor the Republican Party — nor, for that matter, any party — is mentioned in the Constitution. No law passed by Congress establishes Democrats and Republicans as the principal combatants in the American political arena or decrees that almost all elected officials shall belong to these organizations. Nothing about the population of the United States suggests that it would naturally be represented by any two parties, let alone these two. In fact, many Americans express frustration that their political choices always seem to boil down to two options, neither of which they find particularly appealing.

Two-party dominance in the United States is neither a dictate of constitutional or statutory law nor a reflection of intrinsic social divisions. It arose as a natural consequence of electoral rules, as groups of people coordinated around shared interests to maximize their influence on politics. Contrary to the expectations of the Founders, both major parties have survived more than a century of political upheaval, constantly adapting to maintain their competitiveness. To comprehend how any of America's official institutions function, one must understand these unofficial institutions which shape so much of our politics.

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9.2: Parties and Ideologies

A **party** is an organized group that seeks to influence public policy. It nominates candidates for political offices in hopes of winning elections. 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 not the same as ideologies. An **ideology** is a system of beliefs about how society could be improved. 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 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. They are skeptical of the virtues of an unregulated economy. They favor government intervention to prevent problems such as environmental damage and the exploitation of the poor by the rich. Liberals 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. However, they 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. They see government intervention as more harmful than helpful. They favor leaving the economy alone as much as possible to maximize competition, innovation, and prosperity. Conservatives 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 more effective and efficient. 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. At the time, members of France's National Assembly sat according to faction: revolutionaries on the left, royalists on the right. Despite great political turmoil in France that changed institutions and factions, 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 *far-left*, *center-left*, *center-right*, or *far-right*, regardless of where they actually sit.

Most Democrats are liberals and most Republicans are conservatives, which leads some to use 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 common. Since then, Democrats have become more liberal and Republicans more conservative on average (as shown in Figure 9.1 below), making these “mismatched” ideologies increasingly rare.

The increasing ideological uniformity of the major parties has raised concerns about **polarization**. As the ideological gap between the 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. Political scientists generally agree that members of Congress and other political elites have polarized in recent decades, but they disagree on whether Americans as a whole have done so. It's possible for American politics to be more polarized than Americans themselves. Many people hold moderate views on most issues, but moderates also tend to be less politically active 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.

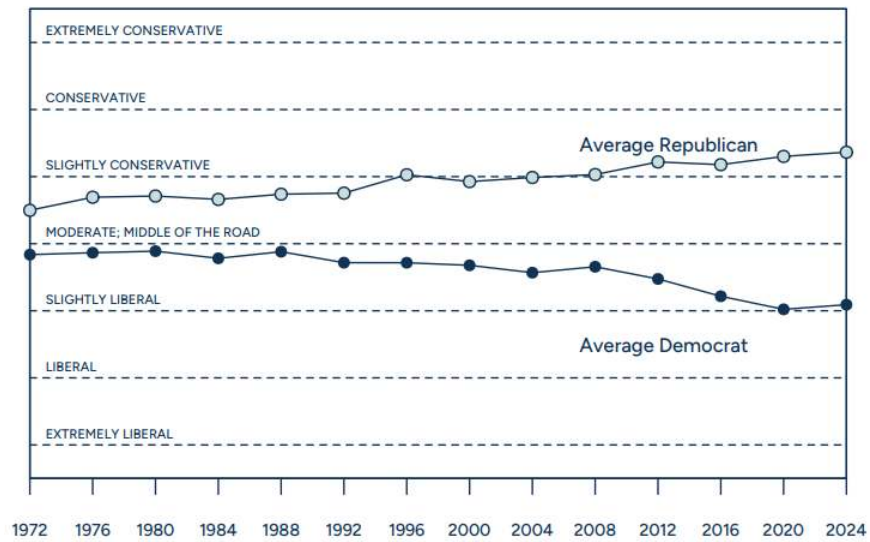


Figure 9.1: Average ideological positions of partisans, 1972–2024 (Source: American National Election Studies)

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9.3: Party Structure

Political scientist V. O. Key described parties as having a three-part structure. Most prominent is the **party-in-government**, the members who hold official elected or appointed government positions. Due to their official status, these members have formal authority to 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 influence.

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

The **party-in-the-electorate** is the share of the electorate that supports the party. It consists of 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 their votes can propel the party's candidates to victory. The party-in-government and the party-as-organization strive 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.

The party-in-government is like the players on a professional sports 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 policymaking. 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 operate mostly out of sight, but they are instrumental in keeping the party-in-government organized and performing at a high level. The party-in-the-electorate is similar to a team's fans. They play no direct role in the party's on-field successes, but without their votes and donations the party couldn't field a competitive team, which gives the party good reason to keep its supporters passionate and satisfied.

Each part of the party is essential to its overall effectiveness. A professional sports team could not long exist with 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 could not gain or maintain enough power to achieve its policy goals.

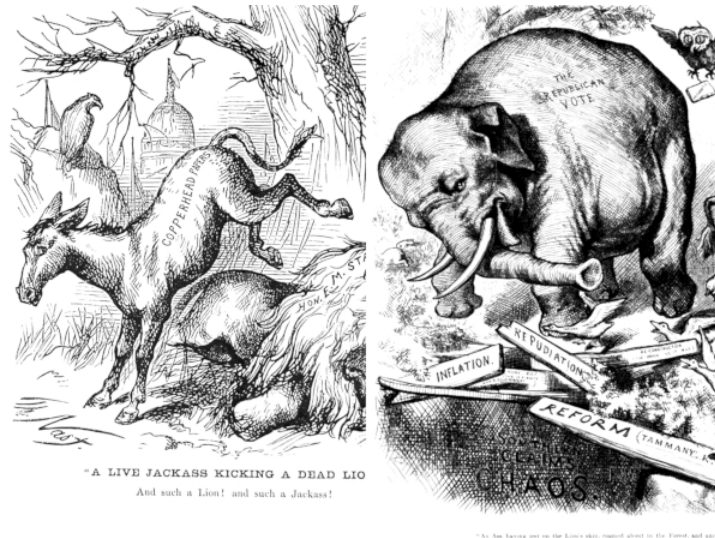
A professional sports team's success is closely tied to how well its parts work together. If the players ignore the advice of the coaches, or if the coaches berate and mistreat the players, or if the players and coaches act dismissively toward the fans, or if the fans stop buying tickets or boo from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

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9.4: The Origins of America's Parties

Though the Founders designed a constitution that would inevitably give rise to parties, they were apprehensive about the prospect. 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 much of his farewell address to warn Americans of “the common and continual mischiefs of the spirit of party.”

Notwithstanding these warnings, parties began forming almost immediately after the Constitution was ratified. Supporters of strong central government and urban interests like banking and manufacturing styled themselves the Federalist Party. 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 between different factions of the Democratic-Republican 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.

The Democratic Party (which began as one of these factions) became dominant in 1828 with the election of President Andrew Jackson. Breaking with the tradition of elite-centric parties in the United States and elsewhere, it was the first to embody the party structure we are familiar with today. Jackson built 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 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, Abraham Lincoln won the presidency and established the Republicans as a major party. Lincoln’s Republicans opposed slavery and supported civil liberties and economic modernization.

Since their emergence, both the Democratic and Republican parties have evolved considerably. Each has abandoned its positions on certain issues and adopted new ones. Each has also been supported by different demographic groups at different points, 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 2024 presidential election.)

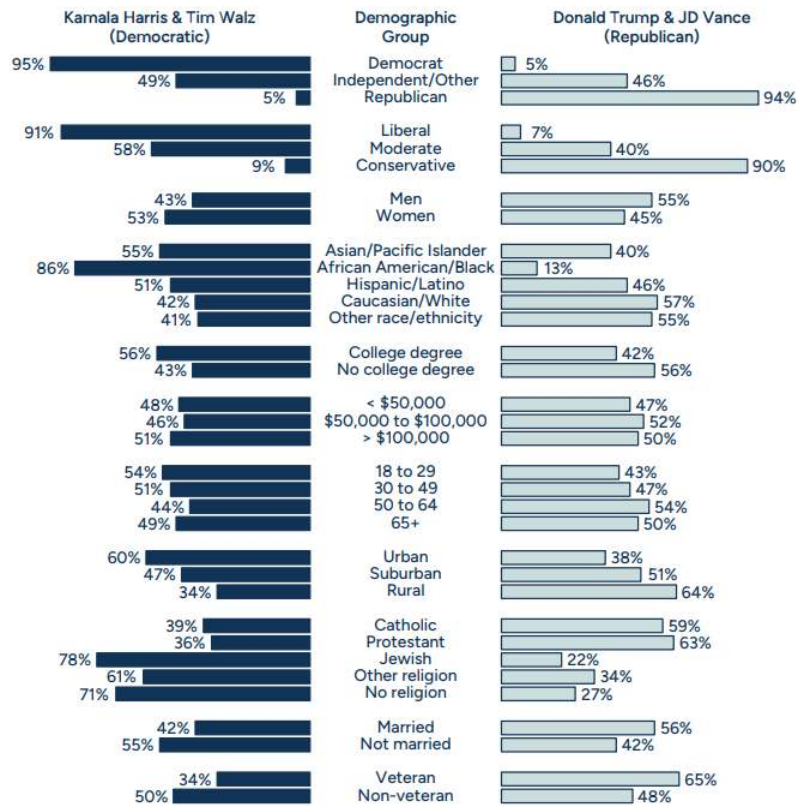


Figure 9.2: Presidential vote by demographic group, 2024 (Source: Pew Research Center)

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9.5: The Two-Party System

The Democratic and Republican parties are not the only ones in the United States. Minor parties, such as the Green Party and the Libertarian Party, also field candidates in elections and have organizations and supporters. Independent candidates unaffiliated with any party sometimes throw their hats into the ring as well. When it comes to winning elections, though, Democrats and Republicans dominate. In 2025, for example, all but two 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, known as a **two-party system**, is caused by the rules of American elections. This doesn't mean that minor-party and independent candidates are banned from running in or winning elections in the United States. Instead, 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 (where the candidate with the most votes wins). Under these conditions, electoral competition tends to result in 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 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 as well. 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 win, 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 a Republican victory, the outcome he would least prefer.

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 sat out.) Minor-party and independent candidates usually lack the support needed 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 like theirs.

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 diversity (such as Canada or the United Kingdom), multiparty systems have developed just as naturally as America's two-party system did.

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

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9.6: 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 some Americans, this party membership is formal, in the sense that they have officially registered to vote in their state under a party label or have signed up with a national, state, or local party organization. But partisanship can also refer to an informal feeling of belonging or closeness to a party, which need not include formal registration. As shown in Figure 9.3 below, roughly 90% of Americans either describe themselves as members of a major party or admit that they lean toward a major party. (Because self-described leaners tend to think and behave like partisans, they are often lumped in with admitted party members in polls.)

Partisanship functions differently for different people. In an instrumental sense, it 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 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 candidates' party affiliations as shown on the ballot to help her choose whom to support.

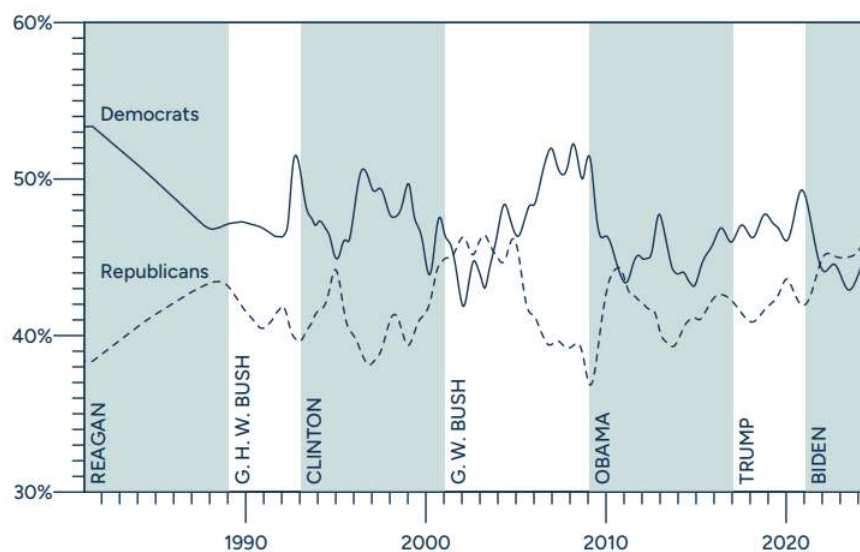


Figure 9.3: Percentage of Americans identifying as Democrats or Republicans (including leaners), 1981–2024 (Source: Gallup)

Voting for candidates solely on the basis of their party affiliation is often criticized as ignorant or unsophisticated, but it is by no means voting blindly. Party identification in the United States contains a great deal of information about a person's ideology and issue positions. 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 many other issues. Because today's parties-in-government tend to be ideologically uniform (thanks in part to polarization), most of these assumptions will be correct most of the time.

In addition to being a heuristic, partisanship can also be an identity. If it shapes a person's 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 for others. It can also be more or less influential for any particular person at different times depending on the circumstances.

In the United States, partisanship is the single best predictor of 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 major party. 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, he or she would probably still vote for the Republican over the Democrat in almost every instance. 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 individually checking each of a dozen or more cars: it is quicker, easier, and usually just as accurate.

Many local elections in the United States are officially nonpartisan. Democrats and Republicans are permitted to run in these elections, but their party affiliations do not appear on the ballot.

Advocates for nonpartisan elections sometimes argue that removing party labels from ballots improves elections by forcing voters to choose candidates based on more than just partisanship. However, this assumes voters won't figure out which parties the candidates belong to from other sources. Even if they don't, they might choose based on less relevant criteria, abstain altogether, or even pick randomly. Eliminating a heuristic can lead to better decisions, but it can also lead to worse ones.

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9.7: Indispensible Parties

Are parties a bug or a feature of the machine that is America? They're certainly useful 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 should be divided up between Democrats and Republicans. 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 chafe at these limited options, looking jealously at other countries with multiparty systems and feeling discontented with their binary choices. The penchant of both major parties for framing partisan conflict in the United States as an ultimate battle between good and evil, particularly in polarized times, can make for uncomfortable and confrontational political conversations. Moderates, independents, and minor-party sympathizers who feel unrepresented by either major party may disengage from politics rather than enter the fray or "waste" their votes on candidates 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 bring 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 them will endure.

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CHAPTER OVERVIEW

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10.1: Introduction



Presidential candidate Nikki Haley speaks to supporters in Iowa the night before the 2024 Iowa Republican caucuses.

Ask ten different Americans what good citizenship means, and you might get ten different answers, each representing a distinct view of civic responsibility. Yet most if not all would include voting in their answer. Unlike countries such as Australia and Brazil where voting is compulsory, America does not legally require participation in its elections. Nevertheless, voting is widely regarded as every adult American's duty, one we're often ashamed of not doing and which we feel free to shame others for not doing.

It's easy to understand why voting is so important to us. 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. This process is undermined when voting-eligible citizens abstain from elections. The fewer people vote, 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. A democracy with extremely low participation is little different from an aristocracy in which only a handful of citizens wield power.

Elections in the United States convert public opinion into government policy, but this conversion is neither simple nor direct. Voters choose politicians to act on their behalf, and the rules for electing those 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.

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10.2: Direct and Indirect Democracy

There is no one way of holding American elections. This is because the power to administer elections, even presidential ones, is reserved for the states under the Constitution. The national government imposes some basic guidelines to ensure elections are democratic and protect voting rights, but states determine registration requirements, design ballots, and count votes.

Some states practice direct democracy by allowing citizens to 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 practiced by some states is the **referendum**, in which a law or constitutional amendment passed by a state legislature is submitted to the people for their approval. 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 to choose policies on their behalf. Like the British system on which it was based, the American electoral system has a **single-member district** structure. Most individual elections produce 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, they are chosen in separate elections, each with only one winner.)

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

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

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10.3: 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. Senators serve six-year terms, which are staggered so that only about a third of them are 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 party membs frequently disagree on who it should be. They settle these disagreements through a **primary election**, commonly held in the summer before the general election. In a primary election, candidates compete for the nomination of their party in the general election, where they will compete against nominees from other parties (as well as any independent candidates). Depending on the state, 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 winner in an election is whoever receives a **plurality** of votes—that is, more votes than anyone else. A plurality need not be a majority. In an election involving three candidates, for instance, the winner might receive only 34% of the votes. To ensure that the winner earns majority support from the electorate, some states hold **runoff** elections between the top two finishers of the general election if the leading candidate receives less than a majority.

These rules apply to most American elections, but some states use their reserved powers to tweak the process. Alaska, California, 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. Virginia bars its governors from serving consecutive terms. Nebraska's state legislative elections are nonpartisan (although the legislators still identify as Democrats or Republicans). Alaska and Maine use ranked-choice voting: 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.

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

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10.4: Presidential Primaries

Although most American elections follow a similar pattern, presidential elections are exceptional in a number of ways. Timing is one: whereas most primary elections are held on a single day, the presidential primary stretches over several months. Each state, as well as the District of Columbia and several U.S. territories, holds its own primary. Typically 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 the general election.)

Presidential candidates who win or (in some states) place highly in 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 important for candidates striving to prove they have what it takes to compete. This is why 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 mounted 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.

States differ in their approach to presidential primaries. Most hold a normal election (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 meeting at which campaign representatives attempt to recruit supporters before a vote is held. Caucuses require more time from would-be participants and are more complicated to administer. The 2020 Iowa Democratic caucuses were so convoluted that the caucus organizers struggled to overcome numerous mathematical errors and technical glitches, delaying the results for three days. Following this debacle, the Democratic Party ended Iowa's "first-in-the-nation" status in the Democratic primary calendar and made South Carolina the site of their first primary in 2024.

Before 1972, state presidential primaries were nonbinding: winning could demonstrate a candidate's popular support but did not guarantee votes at the national convention. Hubert Humphrey, the 1968 Democratic nominee for president, chose not to compete in any state primaries. His controversial nomination (and eventual loss to Republican Richard Nixon) prompted both parties to switch to binding primaries.

Humphrey was the last major-party presidential nominee not to win a state primary until 2024. After nearly sweeping the primaries, President Joe Biden withdrew from the race less than a month before the convention due to his ailing health. His vice president, Kamala Harris, was nominated in his stead. Harris's nomination, like Humphrey's was controversial, with critics arguing that stronger nominees would have emerged from competitive primaries.

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10.5: The Electoral College

Presidential elections are the only American elections whose winners—the president and vice president—represent the entire country. As such, the Founders who designed the Constitution could not simply leave these elections entirely up to the states. States would still be responsible for administering elections, but an additional process would be needed to combine state-level results to determine a national winner.

What they devised was the **Electoral College**. Voters on Election Day often mistakenly believe they are casting their ballots for presidential candidates. In fact, they are casting them for slates of electors, 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 its number of seats in Congress (as shown in Figure 10.1 below). Pennsylvania, for instance, had 19 electors in 2024, two for its senators and 17 for its representatives. (Members of Congress themselves are constitutionally ineligible to serve as electors, to ensure the independence of the executive branch from Congress.) In 1960, the Twenty-Third Amendment added three additional electors chosen by the District of Columbia, bringing the total number of electors to 538.

Almost all states, as well as the District of Columbia, choose their electors on a winner-take-all basis. A presidential candidate can win a state by only one popular vote—that is, one vote by an average citizen—and still receive all of that state’s electoral votes. The two exceptions to this rule are Maine and Nebraska, which allow candidates who lose the statewide race to receive one electoral vote for each congressional district they win. Each of these states has split its electoral votes this way thrice. Nebraska’s 2nd congressional district went Democratic in 2008, 2020, and 2024, despite the state as a whole going Republican. Maine’s 2nd congressional district turned Republican red in 2016, 2020, and 2024 while the state overall remained Democratic blue.

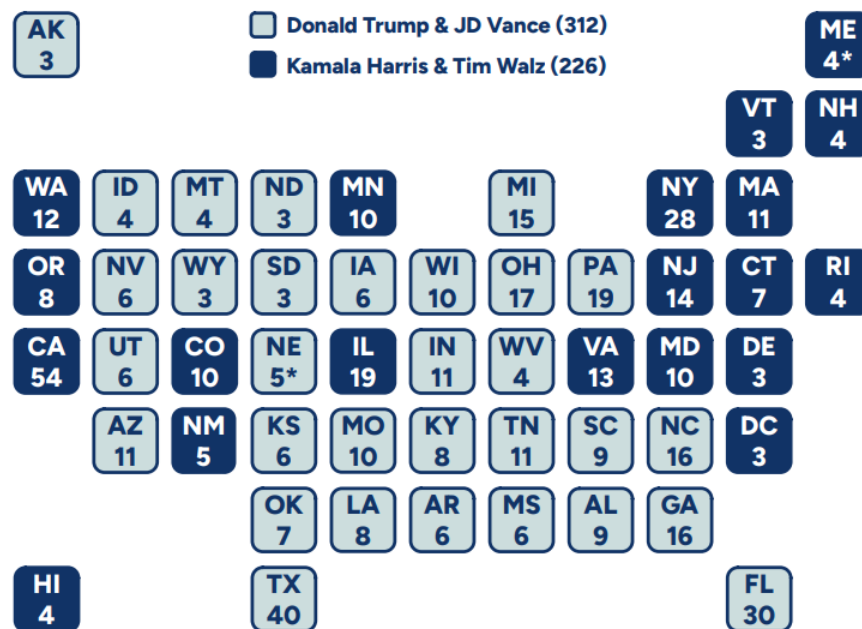


Figure 10.1: Electoral College results, 2024 (Note: Harris and Walz won one of Nebraska’s electoral votes and Trump and Vance won one of Maine’s, as indicated by asterisks.)

Red and blue are commonly used to symbolize Republicans and Democrats, respectively. This color code dates to the 2000 presidential election, when major television networks settled on this color scheme to display the Electoral College map. Since then, politicians, journalists, and citizens have described America’s political divide as being between “red states” and “blue states.”

Although states do differ in politics and culture, the red/blue divide is something of a mirage. Every state has both Democratic-leaning and Republican-leaning regions, and many are closely split between the two. Upon closer examination, America in general and most states in particular turn out to be more purple than red or blue.

A candidate must earn a majority of electoral votes to win the Electoral College. Since 1960, there have been 538 electors in total, making 270 the “magic number” to clinch the presidency. If no candidate wins 270 electoral votes, the House of Representatives chooses the president (with each state voting as a bloc) while the Senate chooses the vice president (with each senator voting individually). This tiebreak system was established by the Twelfth Amendment in 1803. However, it has only been used once, in 1824, when the House elected John Quincy Adams after no candidate won an electoral majority.

The Electoral College is highly controversial because it enables a candidate to lose the popular vote but still become president. The winner-take-all system, 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 spread efficiently across the states. 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.

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, offer several defenses of the status quo. Compared to a national popular vote, the Electoral College is more consistent with the American federal structure that reserves the power to administer elections for the states. It also prevents candidates from ignoring rural parts of the country in favor of major population centers. From a practical standpoint, the Electoral College tends to produce clear winners with large margins of victory and limits the potential negative impacts of recounts and voter fraud by confining them to the state or states in which they occur.

Opponents of the Electoral College are unpersuaded by these arguments. They contend that all of these perks 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 be greater than the costs.



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.

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10.6: Voter Behavior

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, D.C. key to winning any elected office in the United States, from city council all the way up to the presidency, is votes. Every election cycle, millions of dollars are spent trying to predict and influence American voters. As with public opinion, it may be impossible to fully explain any individual American’s vote, but it is possible to identify trends in voter participation and choice that 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 at a higher rate than members of other racial and ethnic groups. Women, who could not vote in most states prior to the Nineteenth Amendment, now vote at a higher rate than men.

Electoral rules and campaign contexts also affect turnout. Strict voter registration and voter ID laws make voting harder; 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.

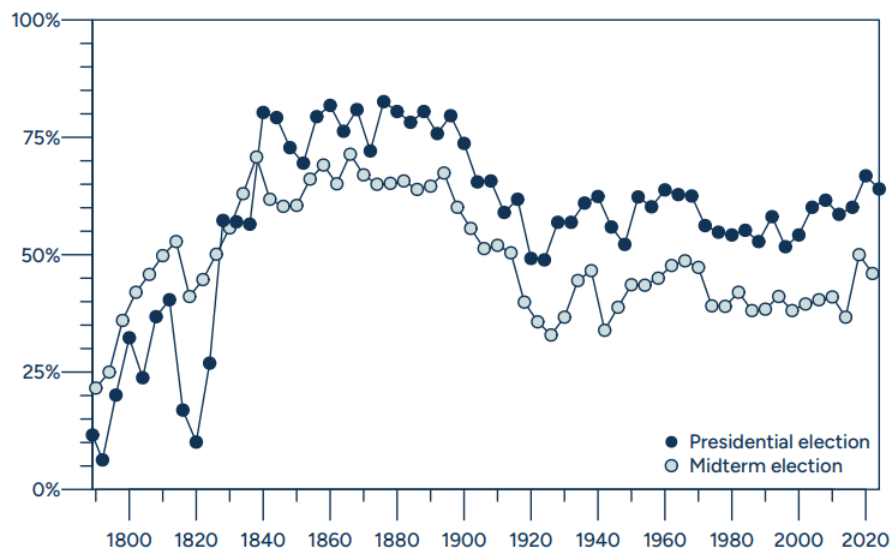


Figure 10.2: Turnout among eligible voters, 1789-2024 (Source: United States Elections Project)

The strongest predictor of how Americans will vote is partisanship. The Democratic and Republican parties count on the backing of distinct voting blocs (as depicted in Figure 9.2). Democrats tend to earn more support than Republicans do from young voters, racial and ethnic minorities, union members, and residents of the East and West coasts. Republicans earn more support than Democrats do from old 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 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 to influence 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. This 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 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 vote.

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10.7: 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, and modern campaigns, littered with gaudy yard signs and vicious attack ads, can seem crasser and more 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 popular sovereignty, majority rule, and the responsibility of each citizen 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 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 would have been shunned in the Middle Ages. Still, many of us 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.

In the end, 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 citizens’ input. No matter the specific rules, 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 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 others.

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CHAPTER OVERVIEW

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11.1: Introduction



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

Congress Beneath the dome of the U.S. Capitol, a marble statue of George Washington guards the corridor to the House of Representatives. is broken—at least that’s what everyone seems think. The legislative branch of the American government has long been its least popular, even as its members continue to be reelected at high rates (as illustrated in Figure 11.1 below). Citizens decry it as 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 it of playing politics and obstructing progress, sometimes threatening to use executive orders to go around it. Even its members join in on the dogpile, claiming that Washington is dysfunctional and that only they (and certainly not their electoral opponents) can fix it.

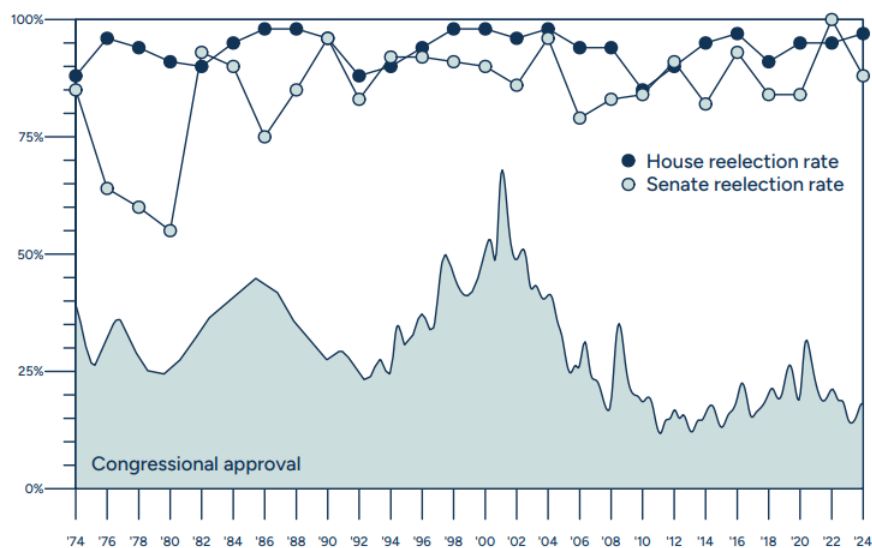


Figure 11.1: Congressional approval and reelection rates, 1974–2024 (Sources: Gallup, Open Secrets)

It is easy to wonder why anyone ever thought Congress could function efficiently. Thomas Jefferson himself expressed skepticism, admitting, “That one hundred and fifty lawyers should do business together ought not to be expected.” Yet the Founders clearly expected Congress to “naturally predominate” (in the words of Federalist No. 51). Moreover, they intended for it to do so, regarding it as a safer repository of power than either the presidency or the judiciary.

Many current traits and features of Congress were not anticipated by the Founders who originally formulated it. They would probably regard some of those traits and features as negative developments. Yet much of what Americans dislike about Congress is

also what the Founders expected and hoped would happen. Squaring its original purpose with its modern reputation requires an awareness of both how Congress was designed in 1787 and how it operates more than two centuries later.

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11.2: Bicameralism

The Congress of the Constitution is an expansion of the Congress of the Articles of Confederation from one chamber to two. The “lower,” larger chamber is the 435-member House of Representatives, with one per congressional district. The “upper,” smaller chamber is the 100-member Senate, with two members per state.

In crafting a **bicameral** (two-chamber) national legislature, the Founders had in mind the British Parliament, which is divided into the House of Commons and the House of Lords. Many other world legislatures are bicameral, including Germany’s parliament, Japan’s National Diet, and Russia’s Federal Assembly. Forty-nine of America’s 50 state legislatures are also bicameral, with Nebraska’s being the only (unicameral) exception.

In most bicameral legislatures, the lower chamber predominates. In the United Kingdom, for example, the House of Commons is led by the Prime Minister and handles virtually all lawmaking. (The House of Lords mainly debates policy and holds inquiries.) American legislatures are unusual in that their lower and upper chambers both have lawmaking authority. In Congress, both representatives and senators can introduce bills, which need both chambers’ support to become laws. This makes Congress less efficient than many comparable bicameral legislatures, whose upper chambers are often bypassed in the lawmaking process.

The House of Representatives and 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). Only the Senate 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 an impeached president. If 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 they would play distinct roles in the American government. The House, popularly elected every two years and with most members representing fewer constituents than senators do, was viewed as closer and therefore more beholden to average Americans. The Senate, with its six-year terms, was designed to be more independent of public opinion. In fact, before the Seventeenth Amendment in 1913, senators were elected by state legislatures rather than directly by voters. The idea was to have the people’s will represented in the House while their passions were held in check by the intervention of the more aloof Senate.

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11.3: Congressional Leadership

The American two-party system extends to Congress. Nearly all of its members are elected by the plurality-rule process that mostly prevents minor-party candidates from winning. Of the 535 seats in the 119th Congress, only two are occupied by independents: Senator Angus King of Maine and Senator Bernie Sanders of Vermont. All of the remaining members are either Democrats or Republicans.

The duopoly of the Democratic and Republican parties in American politics influences Congress's leadership structure. The highest-ranking representative is the **Speaker of the House**, elected by a vote of all representatives. , elected by a vote of all members. The Speaker presides over the House and organizes its agenda. 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 with a majority of seats in the House.

Most Speaker of the House elections are uneventful. The majority party usually rallies around its highest-ranking current member as its candidate for Speaker, and the protest votes for someone else tend to be too few to prevent that candidate from winning.

The January 2023 Speaker election was not so uneventful. With 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. McCarthy was ousted less than a year later and replaced by fellow Republican Mike Johnson, who himself nearly lost a speakership election in 2025 before two members switched their votes at the last minute to give him a majority.

In addition to presiding over the House, the Speaker is also the leader of his or her party within the chamber. On the other side of the aisle, the minority party is led by the House Minority Leader. There is also a House Majority Leader who, ironically, does not lead his or her party in the House, instead serving as its second-in-command 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.

In the congressional pecking order, 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 his or her party to vote in unison. Whips become especially important when their chambers are closely divided. If the Senate is about to vote on a major bill and the final vote is expected to be tight, 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. Likewise, the Senate Minority Whip will deploy his or her deputy whips to ensure minority party members vote the opposite way.

Except for the Speaker of the House, none of these congressional leadership positions are specified in the Constitution. Like the parties they serve, they evolved naturally due to the rules of the institution. The major parties established these positions because they serve valuable organizational functions within Congress.

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11.4: The Legislative Process

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

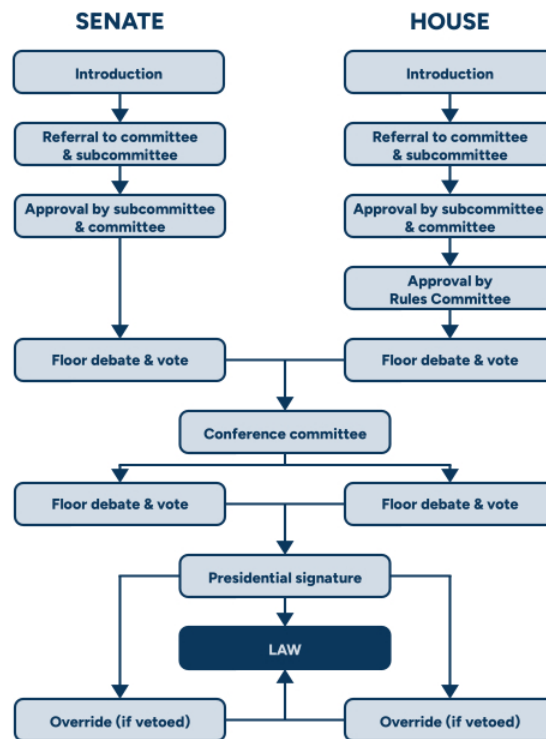


Figure 11.2: How a bill becomes a law (simplified)

The process begins when a member of Congress introduces a bill. This bill need not be written by the member who introduces it. Many bills are written by a representative's or senator's staff, the president or other executive branch employees, or an interest group, after which they are given to a member of Congress to introduce. Any bill can originate in either the House or the Senate, except for tax bills, which can only originate in the House.

Once a bill is introduced, it is referred to a committee and then a subcommittee for review. These are small groups of members tasked with considering bills proposed on particular topics. (For example, an immigration bill introduced in the House that would change deportation policy 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 reviews the bill, amends it as desired, and votes on whether to send it back to the committee. If the vote passes, the full committee gets a 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 a 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 amendments to it. Eventually, the chamber votes on whether to pass the bill. The same process, from introduction to passage, must occur in the other chamber as well. Typically, the second chamber to consider a bill won't introduce it until the first chamber has passed it. This allows them to start out with any amendments made by the first chamber (and to avoid wasting their time on a bill that couldn't pass the first chamber).

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** of members from both chambers is appointed to reconcile those differences and combine the two bills into one. The reconciled version is then returned to both the House and the Senate. For the reconciled bill to move forward, both chambers must pass it unamended, as an amended bill would have to be re-reconciled with the other chamber's version.

Once both chambers pass identical versions of a bill, it is sent to the president. The president 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.

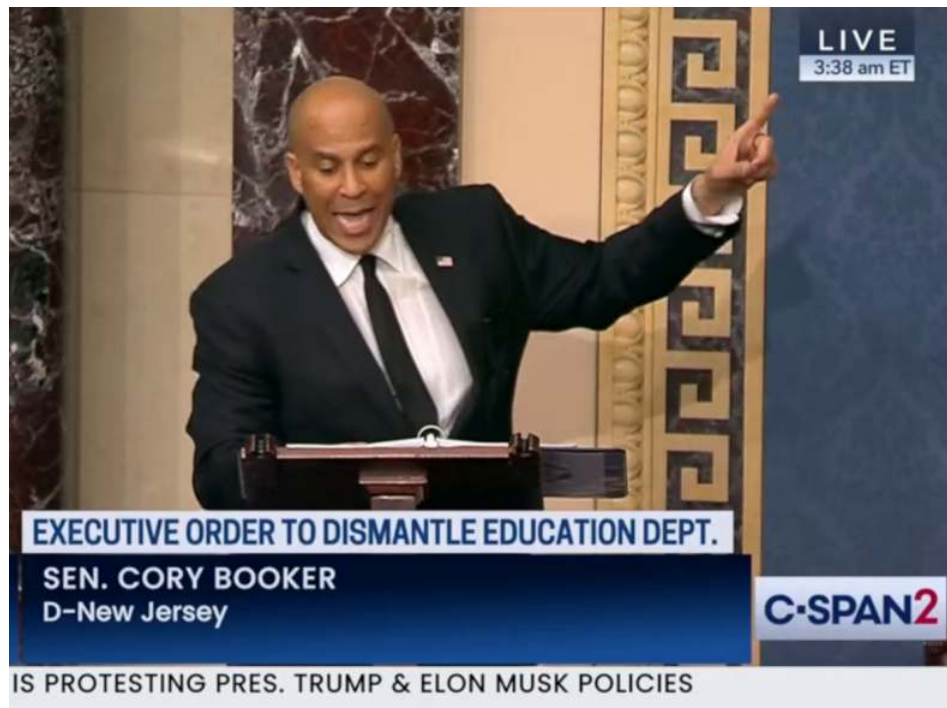
The many steps of the lawmaking process explain why Congress often seems slow or unable to pass laws. There are many ways a bill can fail. Most bills “die in committee” by not clearing the committee or subcommittee stage. Others are voted down by the chamber in which they originate, or pass one chamber 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. 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 these many pitfalls, 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, or the reauthorization of existing policies due to expire often pass with little fight or fanfare. Major bills—the ones most discussed by politicians and the public alike—have a much harder time, and a much lower success rate, of becoming law.

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11.5: Legislator Behavior

Representatives and senators are often referred to as *legislators* or *lawmakers* in recognition of their primary role. Though much of what Congress does is making laws, members also regularly engage in activities less connected to the legislative process.



New Jersey Senator Cory Booker takes advantage of his chamber's high cloture threshold to speak for 25 hours and 5 minutes, setting the record for the longest speech in Senate history.

In keeping with their role of representation, members of Congress and their staffs often use their authority to provide services to constituents on an individual basis. This **casework** generally involves members contacting bureaucratic agencies to resolve issues brought to their attention by their constituents. Many of the letters, phone calls, and emails representatives and senators receive from constituents are not demands to vote for or against bills but rather requests for help with personal matters. These matters include lost or delayed Social Security checks, stalled immigration paperwork or payments for government contracts, and letters of recommendation to military academies. Each case may only really matter to a single person or family, but members nevertheless try to fulfill as many requests as possible. This helps them 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 is suspected of 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 may be “hauled before a committee” to account for their actions or those of their subordinates. These hearings are not formal trials where the accused is subject to legal punishment if found guilty. Still, they can embarrass the subpoenaed officials (as well as the presidents who oversee them) and may lead to firings or demotions.

How and how much individual members of Congress choose to engage in the activities available to them depends upon many competing motivations. Contrary to the stereotype of the out-of-touch politician, many members want to be true public servants and advocate for the interests of their constituents and the country as a whole. However, they also want to promote the success of their party (both within the chamber and in American politics overall), 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.

Times when these public, partisan, and personal motivations conflict 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 compromise. 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 seem more like undeserved giveaways than wise uses of taxpayer dollars, but they allow members of Congress to brag about having brought funding back to their constituents the next time they run for reelection. Members also sometimes buck their party's position on controversial votes to avoid taking positions 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 focusing on reelection need not prevent a member from being an honest or good legislator. Senators and representatives can only wield power for as long as they retain their seats, so reelection is a prerequisite for most of their other goals. Moreover, caring about reelection can be a good thing if it motivates members to act in the interests of the constituents on whose votes their legislative careers depend. Reelection is not just 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. In some ways, we should be glad 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 polls, and several states term-limit their state legislators. Supporters of term limits argue that forced retirement after a specified number of terms prevents legislators 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 encourages good behavior.

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11.6: 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 plurality or majority support to go forward. Some aspects of Congress, however, allow minorities to thwart majorities. Unsurprisingly, these same aspects are among Congress's most controversial.

The distribution of congressional seats to states is not precisely proportional to those states' populations. Some disproportionality is inevitable in any legislature, but the equal Senate (each electing two senators) exacerbates this disproportionality. California (the most populous state) 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 Wyomingite has roughly four times as much representation in Congress as a Californian does. Just as this disproportionality enables the Electoral College (as discussed in the previous chapter) to award the presidency to the popular vote loser, it allows parties and policies supported by a minority of citizens to find majority support in Congress, even if each member of Congress votes how a majority of his or her constituents would.

Gerrymandering can exacerbate the disproportionate nature of congressional elections. 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. If one party controls a state's legislature, it can improve its performance in congressional elections by cleverly crafting maps that maximize the efficiency of its votes relative to its opponent's. Illinois Democrats used gerrymanders when redrawing their congressional districts in 2021. Under the squiggly new map (displayed on the right in Figure 11.3 below), Democrats won 82% (14 out of 17) of Illinois's U.S. House seats in the 2024 elections, despite only earning 53% of the statewide popular vote.

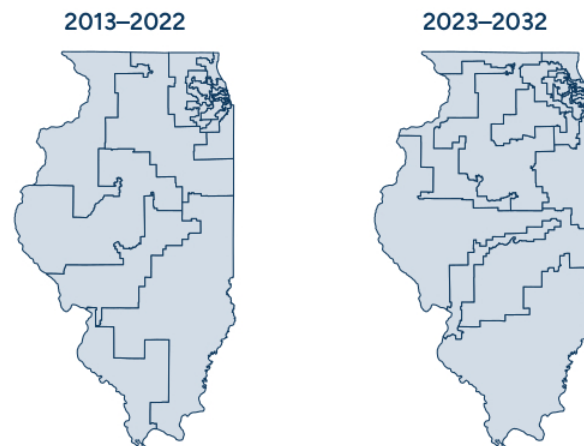


Figure 11.3: Illinois congressional districts, 2013–2032 (Source: U.S. Census Bureau)

Because state boundaries are not periodically redrawn the way congressional districts are, the Senate is immune to the gerrymandering that afflicts the House. But the Senate has its own unique antimajoritarian quirk in the form of the **filibuster**. Under Senate rules, a supermajority of 60 votes is usually required 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 a majority, either by giving interminably long speeches (sometimes many hours long) or, more often, by simply refusing to vote for cloture. The majority party has some procedural tools at its disposal to get around filibusters, but these are rarely used, generally only in extreme circumstances. Thus, for most Senate business, a simple majority is not enough to proceed if the minority is committed to obstruction.

Some antimajoritarian aspects of Congress are established in the Constitution, making them hard to change. The disproportionate nature of the Senate 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 are far more pliable. Some states delegate the task of district-drawing to independent, nonpartisan commissions, and the Senate can amend its rules to limit or abolish the filibuster. The fact that these aspects persist suggests that a sufficient number of those who could change them perceive some advantage in maintaining the status quo, even if it means curtailing majority rule.

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11.7: The Broken Branch?

An old saying muses that, if con is the opposite of pro, then Congress must be the opposite of progress. Lacking the quick, decisive action of the presidency and the impartial, detached aura of the Supreme Court, America's national legislature can seem mired in a perpetual quarrel, one from which it only occasionally emerges to pass a major policy 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. They fashioned 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. Good laws would be easier to pass with a more streamlined system, but so would bad laws. The Founders decided that the possibility of the former wasn't worth the risk of the latter.

This is not to say that Congress is perfect. The strength of today's congressional parties, the ever-increasing size of the national budget, the democratization of the Senate through popular 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 Senate, and the ability of members to serve unlimited terms—should be done away with to modernize Congress.

Every congressional reform, whether it was enacted in the past or may be enacted in the future, involves trade-offs. Even the good or necessary reforms will come with negative side effects. The trick to reforming Congress—or, for that matter, any institution—is knowing whether the cure is worse than the disease.

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CHAPTER OVERVIEW

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12.1: Introduction



President Donald Trump signs a tariff on aircraft parts at his desk in the Oval Office in March 2025.

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 one of the most arduous and grueling 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, but only 45 have ever actually held it. Of those 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.

In spite of this danger, the American presidency is highly sought after. It was designed by men who were wary of any political system which so empowered any one person. Yet today the chief executive they established can't leave the White House without "the nuclear football," a briefcase containing codes which could launch nuclear weapons at any world capital. This would have seemed surreal in the early days of the republic. Nowadays, Americans expect nothing less.

The presidency's evolution from a mostly subservient functionary of Congress to the major player in American foreign and domestic policy parallels the United States' evolution from a fledgling gaggle of ex-colonies to the most powerful country on the planet. America asks far more of its presidents now than it did in the past. It also offers them far greater 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.

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12.2: Presidential Roles

The president plays important roles in America's political and civic life. Americans tend to be most familiar with his role as **head of government**. It is the president's duty, according to Article II of the Constitution, to "take Care that the Laws be faithfully executed." Congress makes laws, but it is up to the president – and the departments, agencies, and offices over which he presides – to enforce them. From IRS auditors collecting taxes to CIA operatives tracking suspected terrorists to NPS rangers monitoring national parks, the president's 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 ceremonial ways, 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, combine the roles of head of state and head of government the way America does. Others keep them separate. In the United Kingdom, the Prime Minister is head of government while the King is head of state. A similar division occurs in Iran: the secular President is head of government, but the religious Supreme Leader is head of state. Ethiopia, Germany, India, and many other countries have both an elected head of government and a separately elected head of state.

Aside from head of government and head of state, the President of the United States is commander-in-chief of the military, responsible for both overall strategy and specific tactical operations. The president is also America's chief diplomat, negotiating political and economic treaties with other countries, often with the aid of the Department of State. Finally, the president is the unofficial head of his party (as its highest-ranking member in government) and sets the tone for the party's policy agenda and electoral strategy.

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12.3: The Executive Branch

Besides the president and vice president, the executive branch of the national government consists of millions of other civilian and military employees, making 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 13.3 on page 148 for a list of Cabinet departments.)

Cabinet department heads are chosen by the president and confirmed by the Senate. Each holds the title of Secretary (Secretary of State, Secretary of the Treasury, Secretary of Defense, and so on), except for the head of the Department of Justice, whose title is Attorney General. Cabinet secretaries advise the president on policy and implement presidential and congressional directives. The Department of Agriculture, for instance, 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. If the president is unable to carry out his duties due to death, incapacitation, resignation, or removal from office, the vice president becomes president. If the vice president is unable to do so, the presidency passes to the Speaker of the House, then to the president pro tempore of the Senate (which is typically the longest-serving member of the majority party in the Senate). Next in line are the Cabinet officials in order of their departments' creation, starting with the Secretary of State and ending with the Secretary of Homeland Security. The current line of succession after the vice president was established by Congress in 1947, but it has never been used. Nine vice presidents have ascended to the presidency upon a president's death or resignation, but America has never needed to go further down the list.

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. During President Joe Biden's administration, two Cabinet secretaries were not natural-born U.S. citizens. Had the United States been forced to proceed that far down the line of succession to find a new president, those secretaries would have been skipped over.

The President also oversees 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. Various independent agencies, including the Central Intelligence Agency, the Environmental Protection Agency, and the National Aeronautics and Space Administration, also fall under the president's purview. The sheer number of departments and agencies under the president's command reveals how much Americans expect out of their national government and how much those expectations have grown over time.

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12.4: Presidential Powers

The president derives authority from the Constitution and from laws passed by Congress. His 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 are tucked away in other parts of the Constitution. One such 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).

The Constitution also empowers the president to appoint Cabinet secretaries, federal judges, agency heads, and ambassadors. These appointees generally must be confirmed by the Senate before they can take office, but they can serve on a temporary, provisional basis if appointed while Congress is not in session. As commander-in-chief, the president cannot declare war (only Congress can), but he can initiate certain military actions in both wartime and peacetime.

One of the president's less frequently used constitutional powers is the power to pardon convicted criminals. Pardons often occur near the end of a president's term, when he is no longer up for reelection and less concerned about their potential impact on his approval rating. 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 has the constitutional authority to issue an **executive order**, which has the 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 unilaterally, provided these orders are not themselves unconstitutional. (Congress can pass laws overturning executive orders, but it rarely does so.)

Aside from constitutional powers, the president possesses statutory powers bestowed upon him by 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 laws. Congress may also delegate certain responsibilities to the president. Trade policy is one such responsibility. Knowing that it would struggle to craft effective policies for the whole country, Congress 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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12.5: The President versus Congress

Congress does not always freely grant the president new statutory powers. Separation of powers and checks and balances were intended by the Founders to set Congress and the president against one another, and it's clear that this design has succeeded in creating conflict.

Modern presidents run for office promising many policy changes, but many of those promises cannot be fulfilled without the cooperation of the legislative branch. This is most easily obtained – though not guaranteed – under **unified government**, when the president's party also has majorities in the House of Representatives and the Senate. Under **divided government**, when the president's party lacks control of the House, the Senate, or both, policymaking often seems to be at a standstill. Laws passed under divided government tend to be smaller in scope and limited to the set of issues on which the Democratic and Republican parties can agree. As polarization has increased, that set has shrunk. Over the past century, the United States has experienced roughly equal amounts of unified and divided government (as depicted in Figure 12.1 below).

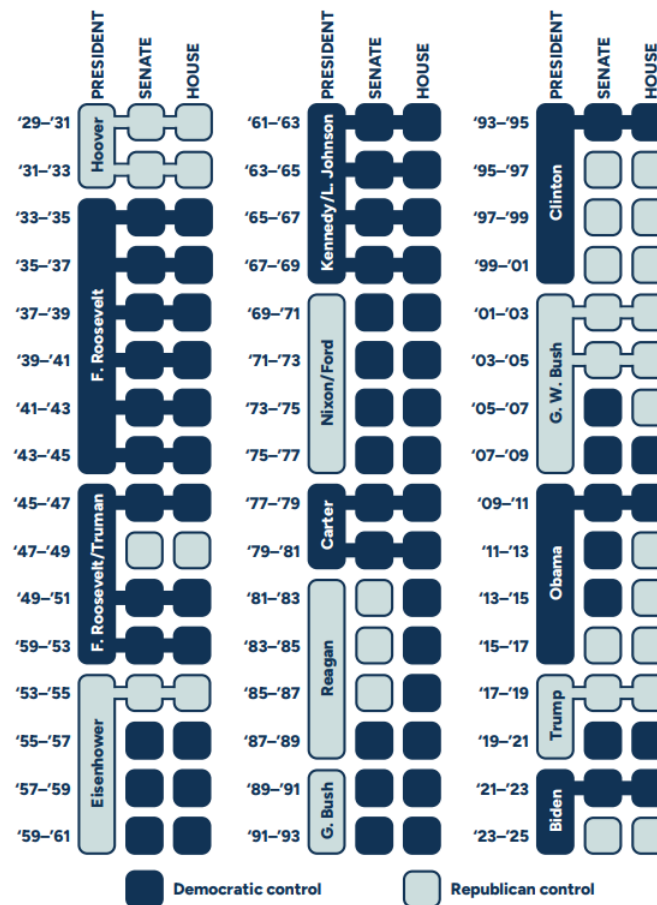


Figure 12.1: Unified and divided government, 1929–2025

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 12.2 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. The president cannot outright refuse to comply with or openly defy laws passed by Congress, but his executive authority lets him decide how vigorously to enforce those laws.

Besides overriding vetoes, Congress can thwart the president through other means. With the power of the purse, it can withhold funding from the president's preferred policies. The president proposes budgets to Congress, but Congress is free to ignore those proposals. 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 **impeachment**. To impeach is to formally accuse someone of wrongful conduct. The House of Representatives can, by 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 United States presiding if (and only if) the president is the one being impeached. A two-thirds majority vote of the Senate is required to remove an impeached president from office. (Article II specifies that presidential pardons do not apply in cases of impeachment, so impeached presidents cannot thwart their removal with a pardon.)Note

The Constitution does not specify what exactly counts as “high crimes and misdemeanors” for impeachment purposes. It is up to the House to determine whether a presidential action constitutes an impeachable offense.

Impeachment has only been used against a president four times in American history. Andrew Johnson was impeached in 1868 for firing his Secretary of War. Bill Clinton was impeached in 1998 for lying to Congress about his sexual affair with a White House intern. Donald Trump was impeached twice, once in 2019 for abusing his power to arrange a foreign investigation of his electoral opponent Joe Biden, and once in 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 1974, anticipating an impeachment for his involvement in the Watergate burglary, Richard Nixon instead chose to resign, becoming the only president ever to do so.)

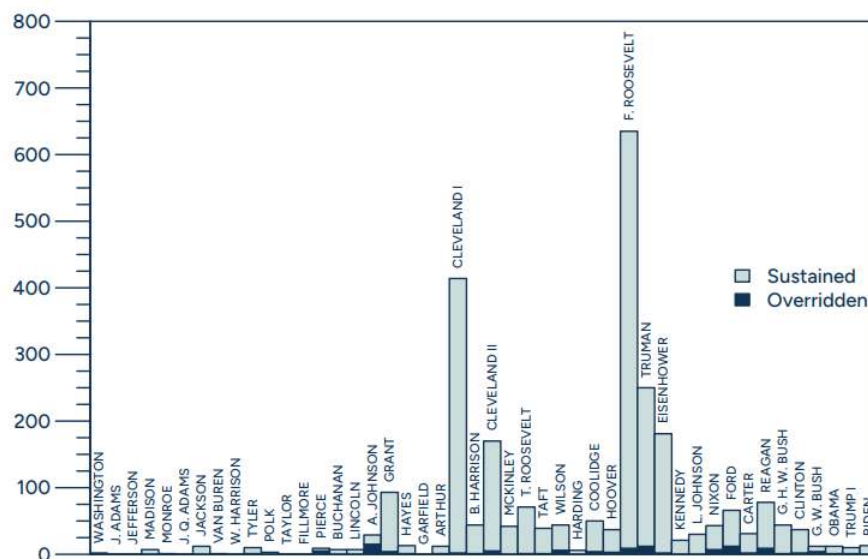


Figure 12.2: Total vetoes by president (Source: U.S. Senate)

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12.6: The Imperial Presidency?

The Founders who designed the presidency at the Constitutional Convention knew that George Washington, a nationally beloved war hero, would almost certainly be the first person to occupy it. They trusted Washington not to make himself a tyrant. Still, they settled on a limited chief executive because they did not know what kind of president would succeed him.

Over America's history, the presidency's power has gradually increased as individual presidents have stretched the boundaries of the office. Thomas Jefferson authorized the Louisiana Purchase in 1803, practically doubling the size of the country without congressional approval. Abraham Lincoln mobilized the U.S. military to fight the Civil War while Congress was not in session. Theodore Roosevelt's aggressive diplomacy in Latin America and his fifth cousin Franklin's ambitious New Deal both tested the limits of their authority. These and many other large and small presidential actions expanded the presidency beyond its original limits.



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 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” in 1944. major development in the military power of the presidency occurred in 1973 when Congress passed the **War Powers Act**. This law permits the president to initiate military actions without a congressional declaration of war or authorization for use of military force. The president must inform Congress of such actions within 48 hours of when they 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 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 become an “imperial presidency,” in which the president essentially rules as an emperor would with mostly unchecked authority. Modern presidents do have powers that dwarf those of their predecessors. They also have ample ways to circumvent Congress, such as signing an executive order (instead of a law) or an **executive agreement** (instead of a treaty). The controversial 2024 Supreme Court case *Trump v. United States*, which ruled that presidents have absolute immunity from criminal prosecution for their official acts, was widely criticized for contributing to the presidency's imperial nature.

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 the current president. In 2016, 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. His successor, Donald Trump, was able to withdraw from the agreement in 2017 without congressional approval, because it had never been ratified as a treaty. Trump's successor, Joe Biden, was able to reenter the agreement just as easily in 2021, only for Trump to again withdraw from it in 2025. Furthermore, although modern presidents issue many executive orders (as shown in Figure 12.3 below), most are symbolic or procedural. Executive orders commemorating holidays or historical events hardly seem like major power grabs.

Even though the executive branch has increased its power since the 18th century, it would be wrong to suggest that this increase was entirely the presidents' doing. Many powers added to the executive branch's arsenal since the days of George Washington have not been seized but rather handed over willingly by Congress, usually to achieve some policy objective Congress would not or could not achieve on its own. 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. Congress and the public frequently complain about presidents acting like kings, but both have enabled unilateral presidential behavior over the years.

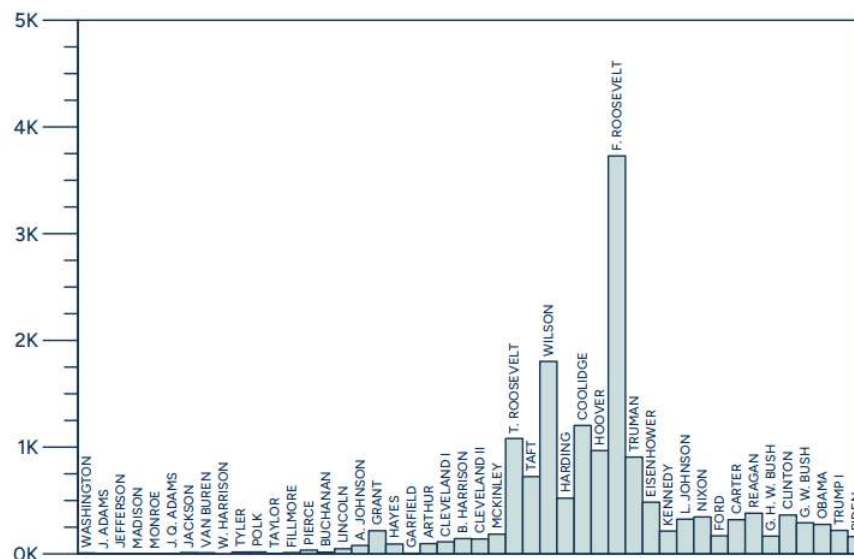


Figure 12.3: Total executive orders by president (Source: Federal Register)

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12.7: Calibrating the Presidency

The term *president* – meaning one who presides over a meeting – was chosen for America’s chief executive largely for its implied weakness. John Adams, who would eventually succeed George Washington as president, considered it too feeble a name. Adams worried any man calling himself by such a label would be mocked by the kings and queens of Europe and disregarded by his own citizens as unimportant and ineffectual. In Adams’s view, *magistrate*, *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 the other branches, the presidency has become the world’s most powerful office. Once deemed weak, president 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.”

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

Many Americans long for a more powerful presidency when they support the current president, 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

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13.1: Introduction



Elon Musk brandishes a chainsaw, a gift from Argentine president Javier Milei, in anticipation of cutting government waste with the new Department of Government Efficiency.

One week after winning the 2024 U.S. presidential election, Donald Trump announced the creation of the Department of Government Efficiency, DOGE for short. Trump heralded DOGE as “‘The Manhattan Project’ of our time” (comparing it to the race to build the atomic bomb during World War II) and pledged that it would significantly shrink and simplify government. Though not an actual Cabinet department, DOGE would advise the Trump administration on how to root out waste, fraud, and excessive regulation. Elon Musk, the business mogul and world’s richest man, would oversee the project, leveraging his knowledge of the automotive and tech industries to bring a businesslike efficiency to American government.

From an outside perspective, DOGE’s mission may have seemed very doable, if not necessarily easy. Between civilians (as depicted in Figure 13.1 below) and military personnel, the U.S. government employs roughly four million people and spends trillions of dollars each year. Any organization of that magnitude is bound to have inefficiencies: all DOGE had to do was identify them. Moreover, polls routinely show that the Americans see their government as wasteful and oversized. Getting government to do more with less was therefore not only possible but popular. How hard could it be?

Quite hard, in fact. DOGE’s attempts to reduce the number of government workers through buyouts, layoffs, and reorganizations were swiftly met with protests and legal action. When DOGE did succeed in cutting positions and spending, it often did so in a hamfisted way, creating new inefficiencies and sometimes having to rehire some of the people it fired to fix them. Many of the cuts proved unpopular: yes, Americans wanted government to spend less money, but not on those things. By the time Musk stepped back from DOGE in the summer of 2025, even the most optimistic estimate of its total savings paled in comparison to the trillions of new dollars Congress was preparing to spend on tax cuts and border security. Government was getting more expensive, not less.

The contrast between DOGE’s ambitions and its accomplishments demonstrates some of the fundamental frustrations of bureaucratic organization. Trump, Musk, and the American people were correct to point out that the U.S. government is inefficient. Though there is widespread disagreement over which dollars are wasted and which are well-spent, some of this inefficiency is fixable, at least in theory. At the same time, many of the things Americans dislike most about their government are either natural parts of any such structure or necessary to support the things Americans like about their government. Some of the challenges that bedeviled DOGE may have been of its own making, but others were inevitable facets of how government works.

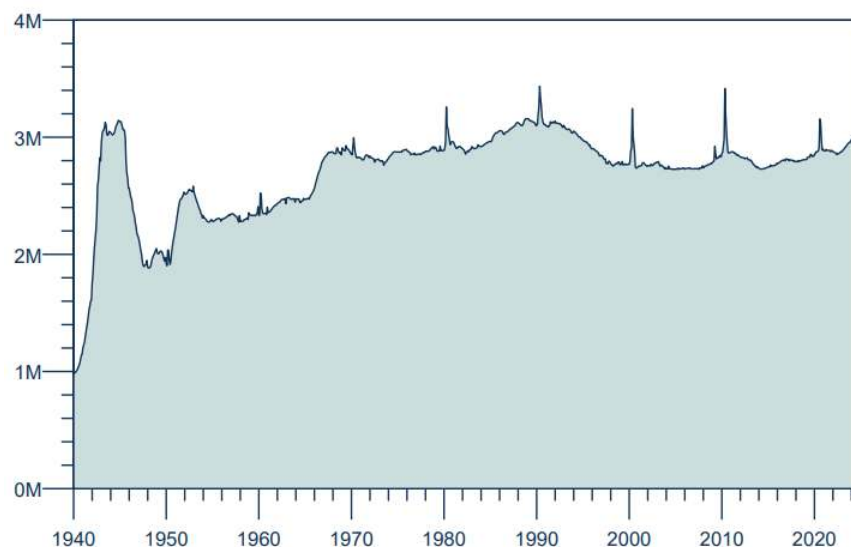


Figure 13.1: Millions of civilian U.S. government employees, 1940–2025 (Source: U.S. Bureau of Labor Statistics)

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13.2: 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 state, which was administered by many offices staffed by professional government workers. Contrasted with democracy, or rule (kratia) by the people (demos), bureaucracy is rule by officials, bureau being the French word for “desk” or “office.” (The undemocratic implication, of course, is that bureaucracy takes power from the people and gives it to officials.)

In the context of American politics, “the bureaucracy” usually refers to the vast network of departments and agencies within the executive branch. 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 operates more or less according to bureaucratic principles, with a leadership structure 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 them to manage governmental affairs, Weber examined bureaucracies to determine what 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**, a structure in which each individual bureaucrat is superior or inferior to at least one other bureaucrat. Hierarchy 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 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 manageable. (See Figure 13.2 below for an example of hierarchy in the U.S. Department of the Interior.)

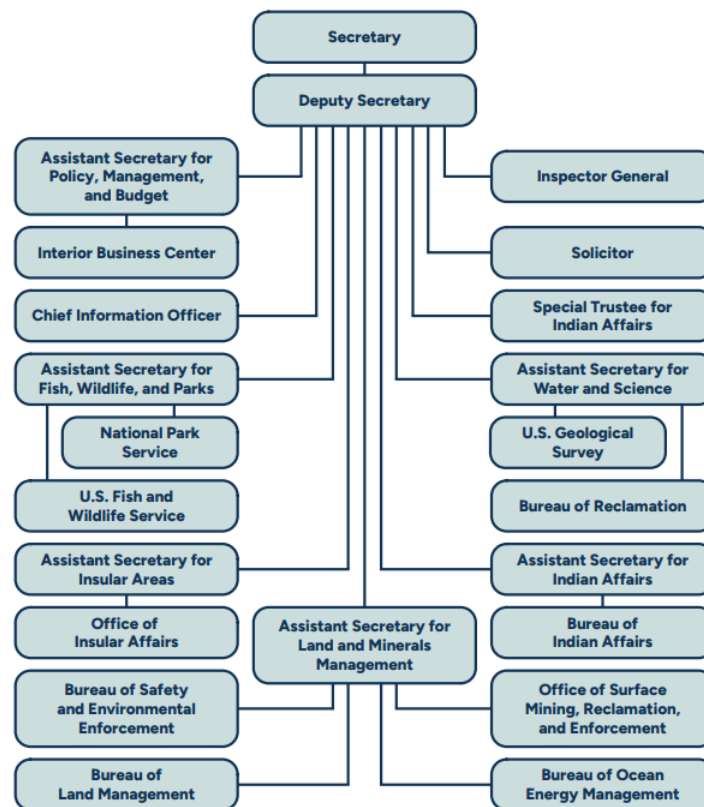


Figure 13.2: Hierarchy of the U.S. Department of the Interior, simplified (Source: U.S. Department of the Interior)

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 should be concentrate on mastering a small number of skills. For a similar reason, bureaucracies should be staffed with expert officials selected for their

ability to perform the duties of their positions, and their continued employment and potential promotion should likewise be based on the quality of their performance.

Effective bureaucracies endeavor to adhere as much as possible on rulebased decision-making. Any task performed by bureaucrats should be done according to well-defined standard operating procedures. Some discretion may be unavoidable, but bureaucrats should follow strict protocols as much as possible rather than improvising. This minimizes bias and ensures 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 can have a dehumanizing effect if it makes people feel more like animals or objects 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. (Doubly so if, for cost-cutting reasons, your experience was with an artificial intelligence agent rather than a human representative.)

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13.3: America's Evolving Bureaucracy

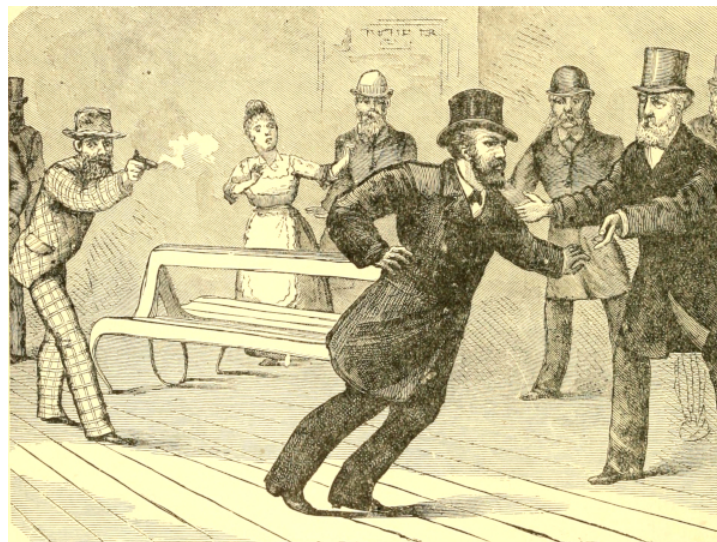
At its founding, America's national government was much smaller than it is today. The Founders, firm believers in limited government, designed a system in which the national government retained only those powers considered to be indispensable, such as waging wars, coining money, and conducting diplomacy. The national bureaucracy began small: President George Washington's Cabinet had only three departments—State, Treasury, and War—plus the office of the Attorney General. Almost 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 1828, 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 salaries) on the condition that they won the election. This led many positions to be 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 would likely be replaced within four to eight years by an ally of the next president, probably one 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." Traditionally, spoils were 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. Charles Guiteau, an obsessed supporter of President James Garfield who falsely believed himself to have been crucial to Garfield's victory, demanded to be appointed as a consul (a position akin to an ambassador) in Europe. After being rebuffed repeatedly, Guiteau approached Garfield at a train station and shot him twice in the back, assuming that Vice President Chester A. Arthur would reward him with a patronage job in gratitude for elevating him to the presidency. Following Garfield's assassination, Congress took action to dismantle the spoils system by passing the **Pendleton Act** in 1883. The Pendleton Act prevented presidents from firing certain bureaucrats without cause and instituted qualifications-based procedures for filling many positions. These reforms led to the development of a **civil service** of bureaucrats employed for their merit and expertise, not based on political favoritism.

The American bureaucracy evolved further in the early 20th century with the advent of **Progressivism**. Though it had already grown by hiring more personnel to deal with the nation's increased territory and population, it mostly performed the same tasks as before, just 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 the responsibility of state governments or nongovernmental actors.



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.

The Progressives' political philosophy contrasted starkly with the Founders' belief in the virtues of limited government. Fearful of concentrating power, the Founders separated it 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—which the Founders couldn't have anticipated. Franklin D. Roosevelt's New Deal, a set of programs aimed at combating the Great Depression, constituted 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.

Today, Americans expect their government to do many things that Americans two hundred years ago never would have. The bureaucracy has grown to accommodate those expectations, as evidenced by the increasing size of the president's Cabinet (shown in Figure 13.3 below). Many of the government's new 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 spirited debate.

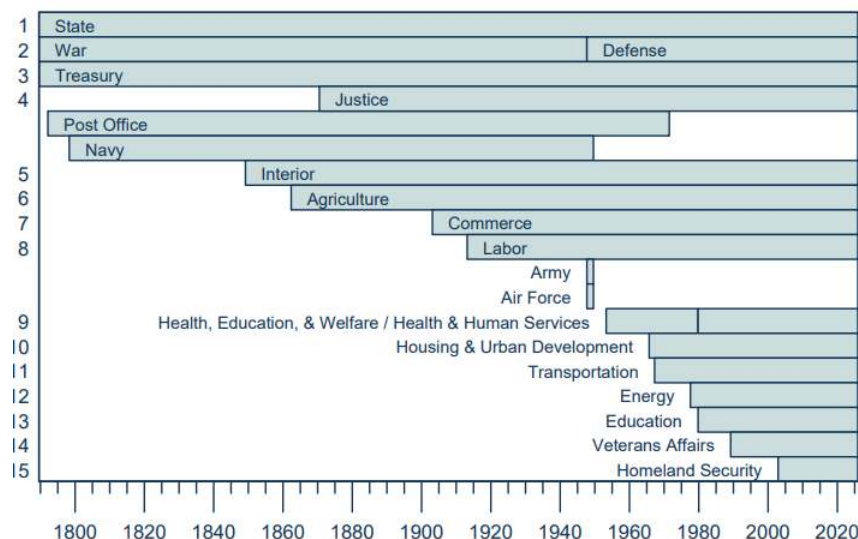


Figure 13.3: U.S. Cabinet departments by date and precedence, 1789–2025 (Note: Justice, as an expansion of the older Attorney General's office, takes precedence over Interior and Agriculture.)

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 worrying about suddenly being fired for political reasons. It also makes it difficult to remove incompetent or corrupt bureaucrats from office, even when their failures or misdeeds are readily apparent (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. No two divisions of the bureaucracy are identical, but they can be grouped into several 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 at will. 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). As their name suggest, these are intended to be more 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: Making Rules

When Congress passes a law or the president issues an executive order, they don't always specify how to enforce them. Many of those details are left up to the bureaucracy to determine. A healthcare bill, for example, might conclude by authorizing the Secretary of Health and Human Services to take steps to ensure that the specified policy changes be executed. The bill would tell the secretary what to do but not how to do it.

Bureaucratic agencies make rules to accomplish the tasks delegated to them by Congress and the president. This rulemaking typically happens through the **notice and comment** procedure, as outlined in the Administrative Procedure Act of 1946. First, an agency proposes a new rule and publishes its proposal in the Federal Register, thereby giving notice to the public. Members of the public (whether individual citizens, interest groups, or other organizations) may then comment on the proposal. The agency can then revise the rule based on those comments (though they need not accept every suggested change). The rule is then published again in the Federal Register, this time in its final form, after which it goes into effect.

The ability of the bureaucracy to establish policies in this way has both pluses and minuses. If the rulemaking agency is staffed by experts, it may bring with it the advantage of **technocracy**. By outsourcing the finer details to agencies with specialized expertise, Congress and the president can achieve better policies than if they tried to handle the nitty-gritty themselves. However, bureaucrats are unelected and thus not directly accountable to citizens at the ballot box. Excessive delegation by elected officials to the bureaucracy could enable the creation of a deep state deep state: A system of powerful bureaucratic actors who operate largely outside of the control by elected officials or the public. with the power to advance its own policy agenda, even if that agenda contradicts the will of the public and the politicians it elected.

Delegating to the bureaucracy can be especially fraught when the delegator's intentions are unclear. For example, the Clean Air Act of 1963 required that new sources of air pollution be approved by the Environmental Protection Agency. The meaning of the word source in this law was unclear, and the EPA's working definition of it changed from one presidential administration to the next. This led to the 1984 Supreme Court case *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, which established that courts should defer to the bureaucracy's interpretation of statutes when determining whether its rules are consistent with them. The resulting doctrine, known as "Chevron deference," gave bureaucratic agencies broad discretion in rulemaking. The Supreme Court eventually reversed Chevron in 2024, declaring in *Loper Bright Enterprises v. Raimondo* that the courts, not the bureaucracy, had the authority to interpret ambiguous laws.

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13.6: Principal-Agent Problems

Concerns about the bureaucracy becoming too powerful and out of control might seem incongruous with complaints about its wastefulness and inefficiency. However, both critiques stem from the same fundamental feature of bureaucracies: they are rife with principal-agent problems. A **principal-agent problem** occurs when someone (a **principal**) asks someone else with different motivations (an **agent**) to do something. This difference in motivations 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 can 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, you become a principal by enlisting 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. 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 provide the bare minimum in pet upkeep because of how busy or lazy she is. In each case, the agent wouldn't perform the task exactly how you would like it to be performed because your motivations differ.

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

Fortunately, principals are not helpless when confronted with agents who do not share their motivations. First, they can monitor agents' performance. 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 could mean 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 high crimes and misdemeanors.

Neither monitoring nor reward or punishment is by itself sufficient to solve a principal-agent problem. If agents don't expect to be rewarded or punished for their performance, it won't matter how closely they are being monitored. Likewise, 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.

When Congress and the president delegate rulemaking and law enforcement to the bureaucracy, they become the principals and the bureaucrats become the agents. Monitoring bureaucratic performance is possible but challenging. Congress can conduct oversight and the president can demand reports, but it's hard to keep track of what millions of bureaucrats are doing, especially for elected officials who are non-experts in the relevant policy areas and busy with other duties. Reward and punishment is also complicated by protections like the Pendleton Act which insulate bureaucrats from political pressure. They might still be fired for gross incompetence or corruption, but mediocrity is unlikely both to draw attention and to cost them their jobs.

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13.7: Big Government

When Americans complain about “big government” they are mostly complaining about the bureaucracy under the executive branch. Critics deride the bureaucracy as expansive, 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 much as Americans dislike big government’s problems, though, 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 larger it needs to be to meet those expectations. The larger government gets, the more prone it becomes to principal-agent problems.

Bureaucratic efficiency is not an oxymoron. Some bureaucracies are more efficient than others, and we know from the work of Weber (and others who followed in his footsteps) ways to encourage that efficiency. At the same time, many of the things Americans want out of their bureaucracy are essentially incompatible. The United States cannot spend more while also taxing less and balancing its budget. It cannot cultivate more expertise in its departments and agencies while also subjecting those experts to greater democratic accountability. And it definitely can’t solve all its bureaucratic issues by running government “like a business.” Businesses outperform governments in many ways, but they do so in response to the pressures of market competition and without many of the limitations we insist be placed on our democracy.

Perhaps a future iteration of DOGE will be more successful in its attempts to tame bureaucratic bloat. Perhaps the United States will simply continue to lament the problems of bureaucracy without ever mustering the political will necessary to implement effective solutions. Either way, Weber was right about one thing: a modern political machine like America 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

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14.1: Introduction



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.

On May 2, 2022, Amy Coney Barrett was sworn in as a Supreme Court justice by Justice Clarence Thomas, as Barrett's husband Jesse and President Donald Trump look 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 constitutionally protected. A month later, the reversal became official. The court ruled in *Dobbs v. Jackson Women's Health Organization* that no such right exists in the Constitution, and that *Roe* was "egregiously wrong" for having claimed otherwise. The legality of abortion was once again a question for the states to decide.

The *Dobbs* ruling was a landmark victory for pro-life advocates, who had spent nearly half a century attempting to reverse *Roe*. Although *Dobbs* was technically a 6–3 decision, only five justices—the barest 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 to replace the recently deceased Justice Ruth Bader Ginsburg. Nominating Barrett (a staunch conservative) to succeed Ginsburg (widely considered the court's archliberal) made the 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 a 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 endorse or support parties or candidates, preferring 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—the federal courts suddenly intrude upon America's political consciousness. These intrusions often spark bitter disputes over the court's intervention (or nonintervention) in areas where 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 courts and their judges are anything but apolitical.

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14.2: The American Federal Judiciary

Article III of the Constitution establishes the judicial branch of America's national government and tasks it with interpreting the Constitution and 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 to adjudicate interstate disputes, competing territorial claims and conflicting economic policies threatened to fracture the Union. State courts could not be relied upon to impartially resolve these matters. A federal court could settle them without being obviously biased toward one side or the other.

The Constitution only names one federal court, the **Supreme Court**, but it grants Congress the power to “ordain and establish” inferior courts as it sees fit. Using this power, Congress has created 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*) hears appeals from a different 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 other two 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.

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 split into multiple districts. The District of Columbia and the Commonwealth of Puerto Rico have their own district courts. The U.S. territories of Guam, the Northern Marianas Islands, and the U.S. Virgin Islands have territorial courts which are functionally equivalent to district courts.

In addition to these main three tiers of federal courts, Congress has also used its Article I power to “constitute Tribunals [courts] inferior to the Supreme Court” for handling special issues. One example is bankruptcy courts, which hear bankruptcy cases in each of the districts. Another is the U.S. Court of Appeals for the Armed Forces, which hears appeals from courts-martial within the branches of the military. Judges on these courts are appointed for fixed terms whose lengths depend on the statutes that created the courts. By contrast, Supreme Court justices, appellate-court judges, and district-court judges are appointed for life (unless they are impeached, retire, or are promoted to another position).

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. Because it is the “court of last resort,” 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 later cases.

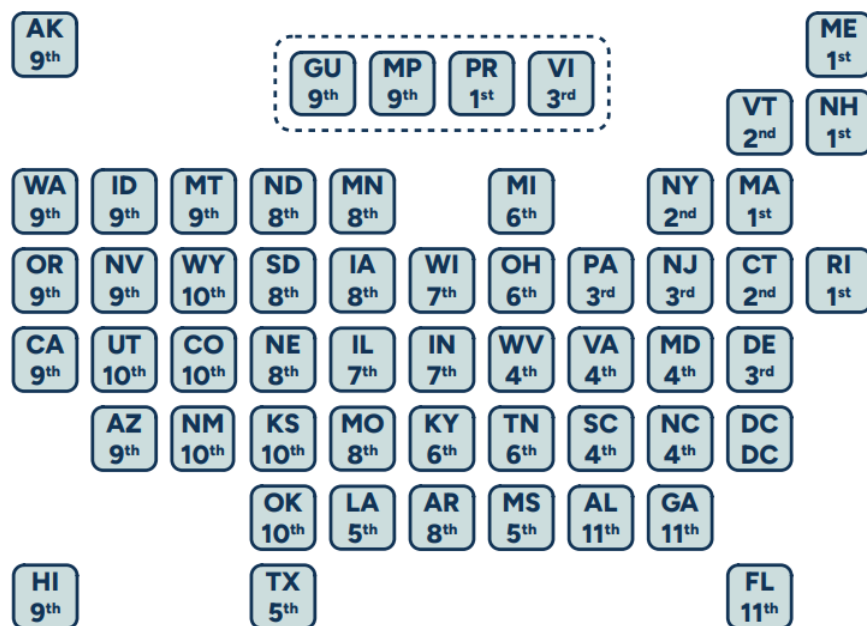


Figure 14.1: U.S. states and territories by appellate court jurisdiction (Not pictured: Federal Circuit).

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14.3: Federal and State Court Jurisdiction

The federal judiciary is not the only court system in the United States. American federalism empowers both the national government and state governments to establish and administer courts. Each state, therefore, 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. Typically, 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 national laws (including the U.S. Constitution) originate in federal courts, as do cases in which the U.S. government is a party, cases involving foreign parties, and cases in which one state is suing another 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 that state courts across the country handle daily. 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. 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 based on Florida’s unconstitutional denial of his Sixth Amendment right. Because it involved a right guaranteed in the U.S. Constitution, his appeal was for the federal courts to decide.

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14.4: Judicial Review

Originally, the judicial branch was decidedly the weakest of the three. Preoccupied with debates over Congress and the presidency, the Founders spent little time at the Constitutional Convention debating the structure of the federal courts. Many of its powers were left undefined. Alexander Hamilton, writing in *Federalist No. 78*, remarked that the judiciary had “no influence over either the sword or the purse.” In other words, it had 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 court ruled that the section of the Judiciary Act which gave it jurisdiction over Marbury’s case was unconstitutional, thereby striking it down and rendering the question of his appointment moot.

Although Adams signed Marbury’s judicial commission while he was still president, his Secretary of State John Marshall failed to deliver it to Marbury before Adams’s successor, Thomas Jefferson, took office. At the time, Marshall was already serving on the Supreme Court as chief justice (having been nominated by Adams). Thus, when Marbury came before the Supreme Court, Marshall was called to rule on a case prompted by his own actions as Secretary of State.



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.

In *Marbury*, the court asserted for the first time its power of **judicial review**, which allows it to strike down both laws passed by Congress and executive actions by the president if it deems them unconstitutional. At the time, this ruling was controversial for boosting the court’s authority. Today, more than two centuries hence, judicial review is 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, it often sparks controversy. Critics frequently accuse courts of engaging in **judicial activism** when they make sweeping rulings, overturn previous decisions, interfere with the actions of the legislative and executive branches, or seem to rule based more on their personal opinions about what the law should be than on an unbiased assessment of what the law is. Exactly what counts as judicial activism is disputed. Those who accuse judges of activist behavior tend to be displeased with a court’s decision, which makes it hard to disentangle principled objections to judicial conduct from dissatisfaction with the results of that conduct. As with presidential behavior, Americans tend to be much more forgiving of potentially improper judicial behavior when the outcome is one they like.

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14.5: Supreme Court Decision-Making

The first decision the Supreme Court makes in a case is whether to hear it. Each year, it receives thousands of petitions 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. Customarily, 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 controversial cases with significant implications for constitutional or statutory law.

Once a writ of *certiorari* is issued, the Supreme Court schedules oral arguments. During these, 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 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. These interruptions are carefully scrutinized by legal experts for clues about which side of the case the justices favor.

After oral arguments, the justices confer and determine, by majority vote, which side has won. Most decisions are not made public immediately. Instead, the court designates several days in June when rulings will be issued. Justices spend the interim period writing opinions stating which side of the case they agree with and why. The **majority opinion** represents the official statement of the court's opinion. Majority opinion authorship is assigned by the Chief Justice (if he sided with the majority) or by the senior justice in the majority (if the Chief Justice sided with the minority). Other justices who supported the winning side may join with the majority opinion if they agree with its reasoning. They can also 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 write a dissenting opinion, or **dissent**, expressing their disagreement with the majority opinion and the reasons for it, and other justices can join a dissent or write their own.

The chief justice of the United States is the highest-ranking justice on the Supreme Court. This position entails certain procedural responsibilities but is otherwise equivalent to that of the other (associate) justices. The chief justice's vote counts the same as that of an associate judge when deciding a case.

The majority opinion in a Supreme Court case becomes a **precedent**, which carries the force of law unless and until it is overturned. Oral arguments and opinions by the justices make frequent reference to precedents 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 as a default. When the court does overturn a precedent, the majority opinion will specifically describe what errors were made when the precedent was set that justify its overturning.

Agreement is more common on the Supreme Court than what news coverage tends to imply. In fact, unanimous verdicts are much more common than narrow 5–4 splits (as shown in Figure 14.2 below). Still, justices often disagree, not just about the specifics of individual cases but about how they should approach cases in general. One of these approaches is **originalism**, which contends that laws should be interpreted based on what their authors understood them to mean when they were written. Originalists don't believe that laws should never be changed, but they feel those changes should be made through democratic methods—like acts of Congress and constitutional amendments—rather than by unelected judges.

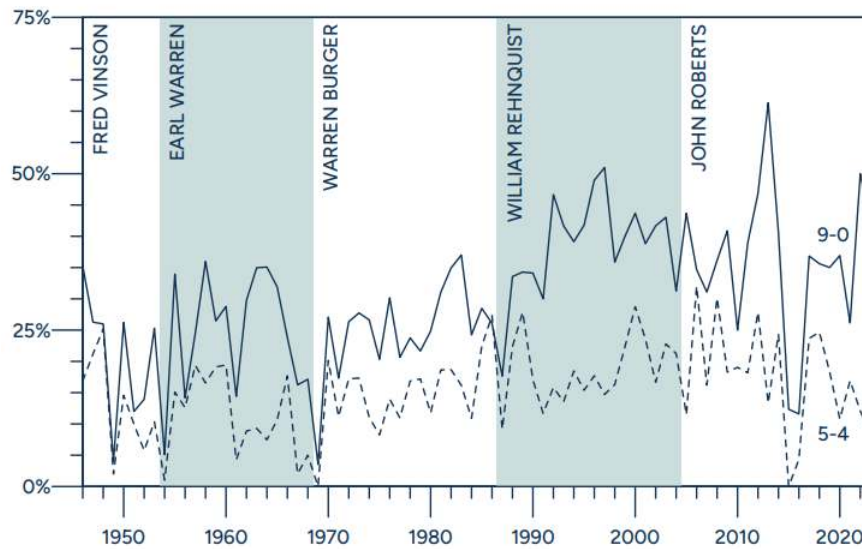


Figure 14.2: 9–0 and 5–4 Supreme Court decisions by term, 1946–2023 (Source: Supreme Court Database)

A competing approach to judicial interpretation is that of the **living constitution**. Unlike originalists, living constitutionalists view the Constitution (and other laws) as “living” documents whose meanings evolve over time alongside society. In their view, interpreting laws in a modern context is both more practical from a policy standpoint and consistent with the Founders’ intentions. Living constitutionalists point to the relatively vague language of the Constitution as evidence that it was designed to be flexible to accommodate unforeseen changes.

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14.6: Judicial Appointments

At the state level, procedures for filling courts' benches vary. Some states assign their governors or legislatures the responsibility of nominating judges. Most allow citizens to choose their own judges through 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 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 appointment process begins when a vacancy opens on a court. This can occur when Congress creates a new court or a new seat on an existing court, but usually it happens when a sitting judge or justice dies, retires, is impeached and removed from office, or is promoted to a higher court. Once a seat opens, the president nominates someone (usually a judge or other person with extensive legal experience) to fill it. The nominee is first reviewed by the Senate Judiciary Committee, which may call him or her to testify. If the committee approves 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 become fiercely partisan battles. 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 opposition coming from Democratic senators. (Thomas and Kavanaugh were eventually confirmed to the Supreme Court; Bork was not.) Polarization in Congress has contributed to this conflict, as shown in Figure 14.3 below. Whereas in the past Supreme Court nominees could usually count on votes from both parties, recent nominees have been entirely or almost entirely supported by members of the president's party.

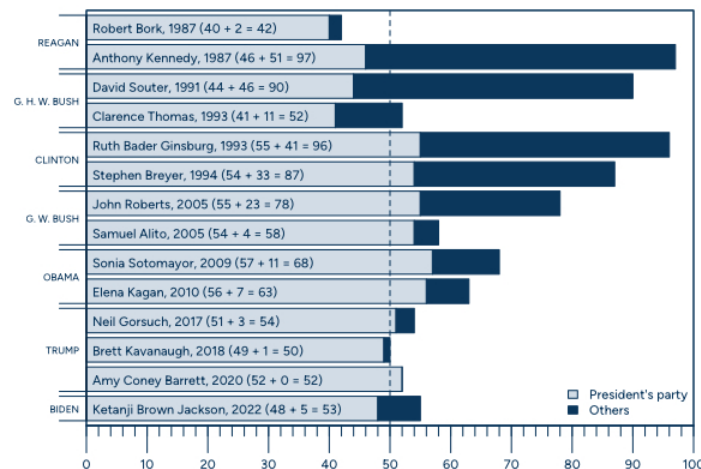


Figure 14.3: Supreme Court confirmation votes, 1987–2022 (Source: U.S. Senate)

Polarization has also led to changes in the nomination process. During Barack Obama's presidency, Senate Republicans frequently 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. Republicans preferred to gamble that a victory in the 2016 presidential election would allow them to nominate a judge more conservative than Garland. When this gamble paid off, embittered Democrats closed ranks to filibuster Donald Trump's first Supreme Court nominee, Neil Gorsuch. In response, Senate Republicans lowered the cloture threshold for Supreme Court nominations to 51 votes as well.

The contentiousness of modern Supreme Court nominations stems from the court's influence. In recent decades, the Supreme Court has decided 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*). Because Supreme Court justices serve for life unless resignation, impeachment,

or promotion foreshortens their service, presidents who install one or more justices can impact American politics long after their terms come to an end.

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14.7: The Politicized Court

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

At its inception, the federal judiciary was rather unformed and ill-defined. Two-hundred-plus years of jurisprudence later, it has grown in 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 justice happens to be the eldest or most infirm. Or observe 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. A Supreme Court vacancy 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 regard the judicial branch as one of the quickest and surest paths to policy change. 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 can be 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. Atop this branch sits a panel of nine unelected men and women with law degrees from elite universities, lifetime appointments, and little to no accountability 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

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15.1: Introduction



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

When British statesman Edmund Burke described reporters as a “fourth estate” in 1771, he placed them on the same level as the three estates (the church, the nobles, and the commoners) which had traditionally determined the course of European politics. Over a century later, American journalist Douglass Cater deemed the press “the fourth branch of government.’ Though they operate largely outside of formal government institutions, news media have long been recognized as a formidable political force.

Despite this powerful reputation, Americans pay surprisingly little attention to the media. We consume media, of course—staggering amounts, in fact. But when we do, we almost never look at the media. Instead, we look through them at the events on the other side. Intellectually, we know the media are there, with their journalists and anchors and cameras and graphics. Yet they become for all practical purposes invisible, like the glass pane separating us from what we see 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. Worse, we might mistakenly attribute those qualities to something other than the window itself. Similarly, what we observe through media is not reality but merely one version of it, filtered through a lens that, whether by accident or intention, does not always faithfully render the world as it is.

A media environment completely free of these distortions is impossible. Nor can we do away with media entirely and perceive the world directly. The world is too big, and we are too small, to personally encounter everything that matters to us. What we can do is will ourselves to think about media themselves as our windows to the world. In doing so, we can discover what media are, how they work, and how they shape our politics.

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15.2: Mass Media

We experience almost none of “the news” firsthand. Occasionally we are in the right place at the right time to witness it with our own eyes and ears. The soldier knows the outcome of the battle from having personally fought it. The congressional intern hears the roll-call vote leading up to the passage of a major bill. The victim of a tornado emerges from a basement to find a neighborhood reduced to rubble. These stories might appear in the same nightly news broadcast, but it would be unlikely (and unlucky) for anyone to personally witness more than one of them that day. Most people will have had direct experience with none.

We encounter most news through 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. It exists in the space between us and the world we cannot experience directly.

Almost anything can be a medium. When your friends tell you about a party you didn’t attend, they place themselves between you and the party. Most of the time, though, media refers to **mass media**, which can reach large audiences relatively quickly. Your friends can only tell so many people about the party by themselves. However, if they post about it on a mass medium like Instagram, millions 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. We react not to the world as it is but rather to the world as media present it. American journalist Walter Lippmann referred to this presentation as a *pseudo-environment*. It is a picture in our heads, partly based on the real world but supplemented and distorted by assumptions, misinterpretations, and stereotypes. (Lippmann was the first to use the word stereotype to refer to prejudices about people or places.)

Pseudo-environments help explain why people frequently react to the same news in drastically different ways. We are often baffled when others’ reactions to news seem wholly unnatural and unreasonable, whereas ours seem eminently sensible to us. We forget that what we are reacting to is not the world itself but rather a pseudo-environment shaped both by the media we consume and by our own preconceptions and prejudices. The seemingly inexplicable behavior of other people may be entirely sensible responses to their pseudo-environments.

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15.3: The Evolution of News

Something like news has existed since at least 59 B.C., when Julius Caesar ordered that government deeds be publicized in the *Acta Diurna* (“Daily Acts”), stone carvings displayed on regularly updated public message boards. Publishing technology improved over the centuries, but by the time of the American Revolutionary War information still traveled very slowly by today’s standards. Pamphlets passed from reader to reader were popular in the colonies, but it might take two months for news from Boston to travel to Savannah this way. When Paul Revere 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 those days. This and many other journalistic terms derived from the newspaper industry (such as *headline* and *column*) are still used today, even for nonprint media.

For the first century-and-a-half of the United States, 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, but it did offer the option to listen to news rather than read it. During the Great Depression, Franklin D. Roosevelt’s “fireside chats” brought the president’s voice into Americans’ homes in a way that was impossible before radio. When Roosevelt addressed Congress in 1941 to call for a declaration of war with Japan after the bombing of Pearl Harbor, almost four out of every five American households were tuned in.

On the heels of radio came television, which enabled Americans to not only listen to but also watch 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 at the start of the decade, but over 85% did by the end of it. By the 1960s, television had dethroned newspapers as Americans’ main news source. (Around the same time, total newspaper circulation began to plateau and then decline.)

In its early days, 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. The rest of their airtime was reserved for more profitable entertainment programming, unless there were election results or other big news events to cover. The popularization of cable television greatly increased the number of channels from which viewers could choose and led to the creation of 24-hour news networks, beginning with CNN in 1980. (CNN’s initials stand for “Cable News Network,” because at the time it was the only one of its kind.) Unlike network news, cable news was available anytime, though at first much of the 24-hour news cycle consisted of repeat broadcasts.

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 American households gained broadband Internet access. Much of the news consumed online was (and still is) produced by “legacy” media that predate the Internet. These include the New York Times, National Public Radio, and CNN, which publish online content in addition to their print, radio, and television offerings. However, the low cost of setting up a website compared to starting a newspaper or television network paved the way for “digitally native” news outlets, such as *Breitbart News*, *HuffPost*, or *Politico*, to become influential producers and disseminators of news. Today, Internet sources are the preferred news medium for Americans under 50 years of age (as shown in Figure 15.1 below).

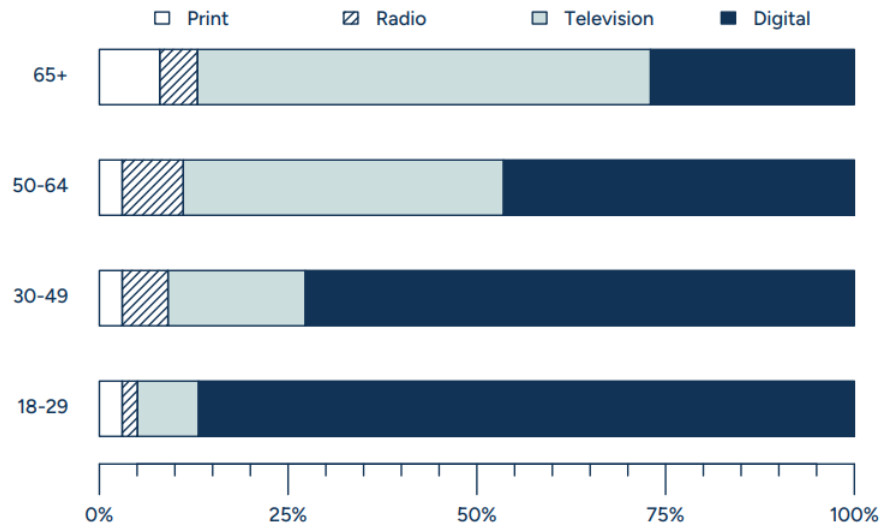


Figure 15.1: Preferred news medium by age group, 2024 (Source: Pew Research Center)

Widespread Internet access paved the way for another revolution in news consumption: social media. The meteoric rise of social networks such as Facebook, Instagram, and X was not primarily motivated by a desire for news consumption. Still, they 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, which are much likelier to “go viral” on social media than on other media. Fears of so-called “fake news” have not dimmed social media’s popularity. Today, over half of all Americans say they often get news from social media.

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15.4: Media Effects

Americans have long been suspicious of media's influence on their audiences. Early scholars of political communication shared these suspicions, especially when the horrors the Holocaust came to light after World War II. Many feared that the extent to which the German public seemed to have condoned atrocities proved the power of **propaganda** to manipulate public opinion. They worried that similar messages could likewise warp America's democracy into a totalitarian regime.

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 produce were generally short-lived. These studies quelled scholars' fears of hyper-effective propaganda. They also raised another question: if Americans were so impervious to media effects, how could media inform them about the issues they were expected to understand as citizens and voters?

Modern assessments of media effects have concluded that media do influence their audiences, primarily through **agenda setting**. Covering a topic in the news increases its perceived importance, especially when the coverage is particularly prominent, lengthy, or repeated. News consumers, in turn, become more likely to think about the topic, and to consider it when evaluating other political objects, such as the president's job performance. One explanation for this effect is priming: just seeing or hearing something in the news can increase its salience. Another is that people take cues from news media: if a topic is discussed on the news, someone must have thought it was important enough to discuss.

In the context of agenda setting, timing is crucial. Candidates and their campaigns live in rightful fear of the dreaded "October surprise," a news story that breaks right before Election Day and casts them in a bad light. A story that might have been easily debunked, rebutted, or simply forgotten about had it cropped up a month or two earlier could dramatically alter the race by being fresh in voters' minds when they cast their ballots.

The 2016 presidential election between Donald Trump and Hillary Clinton featured dueling October surprises. On October 7, the Washington Post published an 11-year-old clip from the television show Access Hollywood showing Trump making lewd comments and acting dismissive about sexual assault. Three weeks later, the FBI announced it was looking into newly discovered emails sent by Clinton to determine whether she had divulged classified information in them. Some analysts blamed Clinton's narrow loss to Trump on the FBI's announcement, which may have led voters to focus more on Clinton's carelessness than on Trump's crassness in the campaign's final week.

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15.5: 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. Politicians brusquely refuse to comment or question reporters' professionalism or integrity. Reporters delight in exposing scandals for the world to see. Politicians relish when their journalistic foes make embarrassing errors and are forced to eat crow. (Sometimes this animosity gets physical: Montana Governor Greg Gianforte once body-slammed a reporter the day before an election.)

It can be challenging to see this relationship between politicians and reporters as a healthy one. But this tension, like many other seemingly dysfunctional aspects of American politics, is mostly by design. The freedom of the press was enshrined in the First Amendment because the Founders recognized that media had to be a formidable adversary to government. It had to be capable of holding politicians accountable by asking tough questions and getting on their nerves (if not goading them into body slams). 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 freedom. With very few exceptions (such as military secrets which could endanger the lives of Americans if published), information is not subject to **prior restraint**: the government cannot prevent its publication. Post-publication, news outlets may be used for publishing false information that damages someone's reputation (which is called **libel** when published in print and **slander** otherwise). However, libel and slander laws are notoriously loose in the United States, particularly when public figures are involved. This gives 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 newspapers' ability 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.



White House Press Secretary Karine Jean-Pierre prepares to take questions from reporters during a White House daily briefing in 2024.

A crucial component of the American news media's ability to check the government is its private nature. A few news outlets, including National Public Radio and the Voice of America, depend wholly or partly on government funding, but most are owned

and operated by private individuals or corporations. This privatization contrasts starkly with much of Europe, where public media make up a large share of the media ecosystem. Proponents of private media argue that public ownership makes 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 public media effectively hold politicians accountable in some countries (such as Denmark, South Korea, and the United Kingdom), other countries (such as Hungary, Iran, and North Korea) clearly suffer from a lack of privatization and media independence.

Yet media privatization is not a panacea. Private media may be freer 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 can be influenced by their owners also raises concerns. Amazon founder Jeff Bezos’s purchase of the Washington Post in 2013 led to speculation that he might dissuade it from reporting negatively on Amazon’s business practices. When 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 primary opponents. In 2022, Elon Musk’s acquisition of Twitter (which he renamed X) brought controversial changes to the platform. When Musk became a major player in the 2024 U.S. presidential election, some worried his ownership of X would prompt the platform to limit political expression. These and other incidents demonstrate the potential for conflicts of interest to influence private media.

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15.6: Media Bias

One of the central tenets of journalism is objectivity. A reporter's first loyalty, according to this ideal, should always be to the truth, warts and all. Objective news is fair, 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. If the facts clearly favor one side, the news can say so, but it should not cherry-pick facts to promote a specific viewpoint or opinion.

Objectivity has not always been the norm for media in the United States. Early American newspapers gave little thought to appearing fair and impartial. In fact, they openly advocated for and against parties, candidates, and policies, demonstrating little concern for 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 incentives for objectivity. To prevent competing signals from crowding the airwaves, 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. (Cable television, which wasn't broadcast over the airwaves, was exempt from the fairness doctrine.) Such 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 advent of cable television and the Internet brought new business models to the media industry. Cable channels were sold in bundles, making channels dedicated to cooking, golf, or other niche interests commercially viable. To turn a profit, television news outlets now only needed to attract enough viewers to justify their inclusion in a cable package. This allowed cable news to cater to partisan or ideological groups more than ABC, CBS, or NBC ever could. As it turned out, many Americans preferred news coverage that tilted toward their side of the issues. The Fox News Channel, launched in 1996, quickly became recognized as a conservative news alternative, leading all cable news channels 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 America today the difference between it and partisan bias is slight.) Left-leaning media make Democrats look good and Republicans look bad, and right-leaning media 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. 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.)

A less discussed but still important form of media bias is **newsworthy bias**. Whether a news outlet leans to the left, right, or center, it must draw enough readers, listeners, or viewers to remain attractive to advertisers or subscribers (if it is private) or justify continued government funding (if it is public). 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 stories in appealing ways. 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 magazine copies and get far more clicks than the former. Bad news holds the public's attention better than good news. Violence is especially irresistible, hence the old reporter's adage: “If it bleeds, it leads.” And, of course, all of it will captivate news consumers more if accompanied by slick graphics and dramatic music. (Check YouTube for a stale Walter Cronkite broadcast from the 1970s and compare it to a flashy modern one. You'll easily see how much this presentation can add to—and subtract from—the news.)

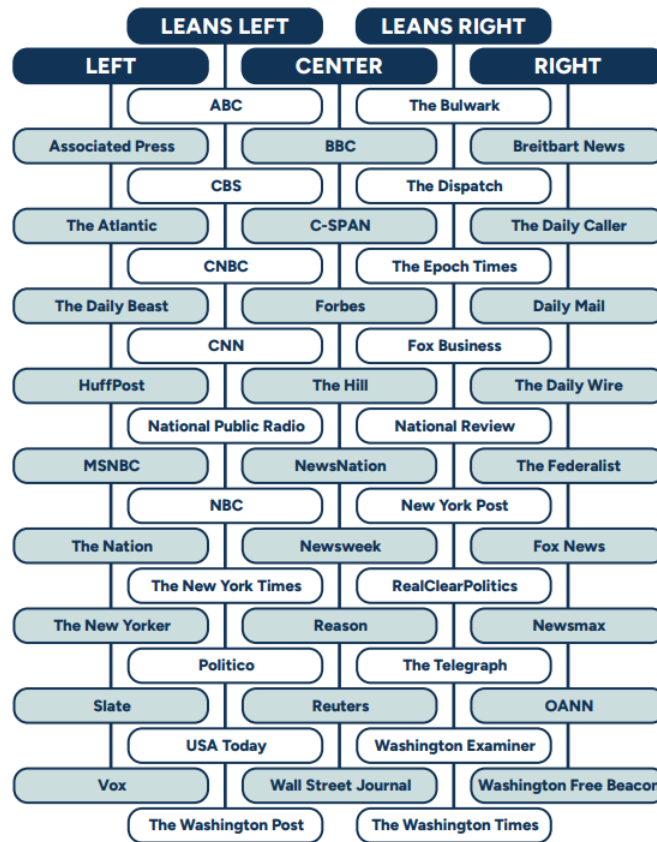


Figure 15.2: Selected online news sources by bias, 2025 (Source: AllSides. Note: Ratings apply to news only, not opinion pieces.)

Americans' trust in news media has eroded since its peak in the mid-20th century, in part because of concerns about media bias. But media bias of one form or another is inevitable. Every news outlet 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. Every day, there are far more events than any outlet 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 reflect their preferences, prejudices, and biases, no matter how hard they strive to suppress them.

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15.7: Politics, Filtered

Our ability to assess how well our government works depends on our ability to see it in action through media. In that sense, media function somewhat like a control panel or dashboard for the American political machine. We tend to instinctively trust indicators and gauges on machines to alert us when an issue requires our attention. We rarely 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.

The nature of news is such that any image of the world it can provide us will necessarily be incomplete, simplified, and warped by some combination of partisan, ideological, governmental, and commercial influences. The end result might faithfully recount what actually happened, or it might bear little to no resemblance to reality. Occasionally, these distortions are so blatant that we can't ignore them, but the vast majority slip past our radars.

As powerful as media are, they do not determine the news entirely on their own. The private media environment in the United States ensures that news outlets are constantly guessing what their audiences want so that they can give it to them and keep them tuned in. This 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 by what they think the public wants them to cover.

The relationship between 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), media will offer it to us. If instead we are content with dubious, one-sided, shallow, and trivial coverage—the media equivalent of junk food that satisfies without nourishing—media have already proven they are more than willing to give us that instead.

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CHAPTER OVERVIEW

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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	Tho ^s Nelson Jr.	Rich Stockton
Lyman Hall	Francis Lightfoot Lee	John Witherspoon
Geo Walton.	Carter Braxton.	Fra ^s Hopkinson
W ^m Hooper	Rob Morris	John Hart
Joseph Hewes	Benjamin Rush	Abra. Clark
John Penn	Benj. Franklin	Josiah Bartlett
Edward Rutledge	John Morton	W ^m Whipple
Tho ^s Heyward Jun ^r .	Geo Clymer	Sam Adams
Thomas Lynch Jun ^r .	Ja ^s Smith.	John Adams
Arthur Middleton	Geo. Taylor	Rob ^t Treat Paine
Samuel Chase	James Wilson	Elbridge Gerry
W ^m Paca	Geo. Ross	Step. Hopkins
Tho ^s Stone	Caesar Rodney	William Ellery
Charles Carroll of Carrollton	Geo Read	Roger Sherman
George Wythe	Tho McKean	Sam ^{el} Huntingdon
Richard Henry Lee	W ^m Floyd	W ^m Williams
Th Jefferson	Phil. Livingston	Oliver Wolcott
Benj Harrison	Fran ^s 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	
<i>Delaware</i>	<i>South Carolina</i>	<i>Connecticut</i>
Geo: Read Gunning Bedford jun John Dickinson Richard Bassett Jaco: Broom	J. Rutledge Charles Cotesworth Pinckney Charles Pinckney Pierce Butler	Wm. Saml. Johnson Roger Sherman
	<i>Georgia</i>	<i>New York</i>
<i>Maryland</i>		Alexander Hamilton
James McHenry Dan of St Thos. Jenifer Danl. Carroll	William Few Abr Baldwin	<i>New Jersey</i>
	<i>New Hampshire</i>	Wil: Livingston David Brearley Wm. Paterson Jona: Dayton
<i>Virginia</i>	John Langdon Nicholas Gilman	
John Blair James Madison Jr.	<i>Massachusetts</i>	<i>Pennsylvania</i>
<i>North Carolina</i>	Nathaniel Gorham Rufus King	B Franklin Thomas Mifflin Robt. Morris Geo. Clymer Thos. FitzSimons Jared Ingersoll James Wilson Gouv Morris
Wm. Blount Richd. Dobbs Spaight Hu Williamson		

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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affirmative action	A formal, hierarchical organization for delegating tasks and duties.	concurrence
Preferential treatment of members of underrepresented groups in employment, college admissions, and other situations to compensate for past discrimination.	Cabinet	An opinion agreeing with the majority opinion but for additional or different reasons.
agenda setting	A group of advisers to the president, consisting of the vice president and the secretaries of the 15 Cabinet departments.	concurrent powers
The power of news media to influence what the public considers important by covering or not covering it.	casework	Powers that are shared by the national government and the state governments.
agent	Services rendered to individual constituents by members of Congress and their staffs.	confederal system
Someone who is asked by someone else to do something.	categorical grant	A system of government in which power is concentrated at the subnational level.
amicus curiae	An amount of money issued to a state by Congress to spend for a specific purpose and according to specific guidelines.	conference committee
A brief filed by an individual or group not directly involved in a court case in order to influence the court's ruling.	caucus	A committee consisting of both representatives and senators, created to reconcile two versions of a bill into one.
Anti-Federalists	A type of primary election in which voters gather at meetings before voting for a nominee.	conservatism
Opponents of the Constitution during the time when states were debating its ratification.	checks and balances	An ideology which generally prioritizes freedom over equality and favors limited government, free markets, and maintenance of traditional social norms.
appellate court	A system in which each branch of government can limit or block the actions of the other branches.	constitution
A court ranking below the Supreme Court in the federal judiciary.	civil liberty	A set of basic laws that structure a government.
Articles of Confederation	A protection from government overreach that is considered essential to the functioning of a liberal democracy.	Constitutional Convention
The first constitution of the United States, which loosely united the 13 states under a weak central government from 1781 to 1789.	civil right	The 1787 meeting in Philadelphia where the Constitution was written.
attitude	A protection from discrimination or unequal treatment.	cooperative federalism
An orientation or predisposition toward an object.	civil service	A system in which national and state governments exercise their powers collaboratively.
bicameral	A system in which bureaucrats are employed based on merit.	coverage error
Consisting of two chambers.	club good	Survey inaccuracy caused by some members of the population being more likely to be sampled than others.
Bill of Rights	A benefit that is excludable and nonrivalrous.	Declaration of Independence
The first ten amendments to the Constitution.	collective action problem	The document which formally declared the United States of America to be independent from Great Britain in 1776.
block grant	The challenge of providing or sustaining a good for a group when members would rather free-ride than contribute.	deep state
An amount of money issued to a state by Congress with fewer restrictions than a categorical grant.	common good	A system of powerful bureaucratic actors who operate largely outside of the control by elected officials or the public.
bureaucracy	A benefit that is nonexcludable and rivalrous.	democracy

A form of government in which the people rule, either directly or indirectly.

direct democracy |

A democracy in which citizens vote directly on government policy.

dissent |

An opinion 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 plurality rule in single-member 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 doctrine |

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 enjoys a 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 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 proposed and voted on directly by citizens.	Attempting to persuade government officials to act in a certain way.
A policy agenda spearheaded by President Lyndon B. Johnson to address issues of poverty, education, and racial discrimination.	interest group	majority opinion
gridlock	An organized group seeking to influence public policy which does not nominate its own candidates to run in elections.	The official statement of a court's decision in a case.
Absence or slowness of congressional action due to internal disagreement.	iron triangle	majority rule
head of government	A mutually beneficial relationship between a congressional committee or subcommittee, a bureaucratic agency, and an interest group.	The principle that a group should take the actions supported by most of its members.
The practical role of leading the government of a country.	Jim Crow laws	margin of error
head of state	Laws passed after the Civil War to discriminate against blacks and preserve the existing racial order in the South.	The range around a polling result within which the true value of public opinion is likely to be found.
The symbolic role of fulfilling ceremonial duties on behalf of a country.	judicial activism	mass media
heuristic	Action by judges that goes beyond neutral and impartial interpretation of the law.	Modes of communication with the power to quickly reach a large audience.
A mental shortcut for making decisions based on limited information.	judicial review	measurement error
hierarchy	The judiciary's power to strike down acts of Congress or the president if it deems them unconstitutional.	Survey inaccuracy caused by members of the sample providing incorrect answers, whether intentionally or unintentionally.
A structure in which each member is superior or inferior to at least one other member.	<i>Lemon</i> test	mobilization
identity	A three-part test of whether a government action violates the establishment clause of the First Amendment.	The act of encouraging citizens to turn out to vote.
A stable, defining characteristic of a person.	libel	necessary and proper clause
ideology	Written falsehoods that damage someone's reputation.	The clause in Article I of the Constitution which authorizes Congress to make whatever laws are "necessary and proper" to carry out its duties.
A system of beliefs about how to improve society.	liberalism	New Deal
impeachment	An ideology which generally prioritizes equality over freedom and favors government intervention, redistributive programs, and non-maintenance of traditional social norms.	The set of programs initiated by President Franklin D. Roosevelt which increased the national government's economic powers in response to the Great Depression.
The charging of a federal officer with treason, bribery, or high crimes and misdemeanors.	literacy test	newsworthy bias
incitement	A requirement to prove one's ability to read and write in order to vote.	Favoritism for stories that will attract and maintain the audience's attention.
Speech that advocates (and is likely to provoke) imminent lawless action.	living constitution	nonresponse error
Incorporation	A judicial philosophy that permits the meaning of legal language to evolve over time.	Survey inaccuracy caused by some members of the sample being more likely to respond than others.
The process by which the Supreme Court rules that a right mentioned in the Bill of Rights must be respected by the states.	lobbying	notice and comment
indirect democracy		A procedure of bureaucratic rulemaking in which the public is notified and invited
A democracy in which citizens vote for representatives who, in turn, determine government policy.		
initiative		

to make suggestions about proposed rules.	persuasion	An election to determine the nominee of a party for an elected office.
obscenity	The act of encouraging citizens to vote for a particular candidate, party, or issue position.	priming
Offensive depictions of sexual conduct with no redeeming social value.	pluralism	The process by which a particular consideration is made more salient.
opinion	A theory of democracy as a competition among interest groups.	principal
A measurable manifestation of an attitude.	plurality	Someone who asks someone else to do something.
originalism	More than anyone else has of something.	principal-agent problem
A judicial philosophy that prioritizes the intended meaning of legal language at the time it was written.	polarization	When a principal asks an agent to do something but the agent's motivations differ from the principal's motivations.
override	Increasing ideological distance between parties.	prior restraint
To make a vetoed bill law without the president's signature by a two-thirds vote of both the House and the Senate.	political action committee	Censorship of information prior to its publication.
oversight	An interest group whose sole purpose is to raise money and spend it on political campaigns.	private good
Congressional monitoring of the actions of executive branch officials.	Politics	A benefit that is excludable and rivalrous.
partisan bias	The contest over and exercise of power.	privileges and immunities clause
Favoritism for (or opposition to) a particular party.	poll	The clause in Article IV of the Constitution which prohibits states from denying basic rights to citizens from other states.
partisanship	A process by which people are asked to give their opinions on a topic.	Progressivism
Stable personal attachment to a party.	popular sovereignty	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.
party	The principle that people should have a say in how they are governed.	propaganda
An organized group that seeks to influence public policy by nominating candidates in elections.	population	Information or misinformation disseminated for the purpose of manipulating public opinion.
party-as-organization	The set about which a pollster wants to make inferences.	public good
The formal administrative structure of a party.	pork	A benefit that is nonexcludable and nonrivalrous.
party-in-government	National funding for projects in individual states or congressional districts.	referendum
The members of a party who hold official government positions.	power	A policy proposed by a legislature and voted on directly by citizens.
party-in-the-electorate	The ability to cause someone to do something he or she would not otherwise do.	representative sample
The average citizens who support or consider themselves members of a party.	precedent	A sample that resembles the population from which it is drawn.
Pendleton Act	A past decision by a judge in a court case.	reserved powers
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.	primary	
	A type of primary election in which voters vote for a nominee similarly to how they would in a general election.	
	primary election	

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

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