

THE AP UNITED STATES GOVERNMENT COURSE EXAMINATION

The study of government and politics in the United States is an important and intriguing sojourn. After all, democracy will not work if a citizenry does not understand political issues and processes. With that goal in mind, the College Board's Advanced Placement Program established a curriculum and examination for United States Government in the mid-1980s. Today the course is one of the largest and fastest growing of all AP programs, reflecting our nation's resurging interest in government and politics. Young people in particular seem to have a special enthusiasm for political participation not readily apparent in the recent past. In the election campaign of 2004, young voters, along with all others, supported new types of interest groups and came out to vote in much larger numbers than in previous elections. You, as a high school student almost old enough to vote, have a unique opportunity to learn about your political system because you are studying the AP Government and Politics curriculum. No matter what your political views, it is important to understand concepts and facts that form the basis of government and politics in the United States. It is in this spirit that this book is written.

In the pages that follow are a description of the course, the major topics of the curriculum, an overview of the examination and the skills you will need to do well, and a section on how the exam is scored. Read through this part very carefully because it will provide you with a general outline of the course that will help keep you from getting lost in the complexities and challenges that the study of American government always presents.

A DESCRIPTION OF THE COURSE

The most important thing to keep in mind as you study the U.S. Government and Politics curriculum is that it is not all about facts. Yes, information about specific government policies, laws, court cases, political tactics, and demographical features of voters can help you to better understand the concepts. However, the course is really all about analyzing concepts that will help you to keep up with government and politics throughout your lifetime no matter how much the particular landscapes may change over the years. This analysis may be broken down into six major content areas that you will be responsible for. These content areas are outlined below in the proportion that they will be tested on the examination.

CONTENT AREA I: CONSTITUTIONAL UNDERPINNINGS OF UNITED STATES GOVERNMENT (5-15%)

This content area is more history based than any of the other areas because it examines the kind of government established by the Constitution, paying particular attention to federalism and the separation of powers. However, don't assume that you know this material already because you have studied it in history class. You do have to know something about the historical situation surrounding the Constitutional Convention, but you also have to understand the ideological and philosophical traditions that shaped the framers' work. For example, theoretical perspectives you will need to know are democratic theory, theories of republican government, pluralism, and elitism.

CONTENT AREA II: POLITICAL BELIEFS AND BEHAVIORS (10-20%)

This section starts with a study of U.S. political culture: the complex mix of beliefs, values, and expectations that shape our political system. Here you will examine how these political beliefs and values were formed over time, as well as the modern day results. Topics include political socialization, political ideologies, and factors that shape political opinions. You should comprehend and appreciate how political beliefs and behaviors differ, as well as the political consequences of these differences. A second focus of this content area is political participation, including voting behavior. You should understand why individuals engage in various forms of political participation and how that participation affects the political system.

CONTENT AREA III: POLITICAL PARTIES, INTEREST GROUPS, AND MASS MEDIA (10-20%)

This content area focuses on "linkage institutions," or organizations that link citizens to the government, such as political parties, interest groups, and mass media. You should be able to answer these important questions once you study this section: How did our party system evolve historically? What are the functions and structures of political parties, and what effects do they have on the political system? What are the processes and consequences of political campaigns for office, and what reforms have been attempted in recent years? What election systems are used on the state and national levels, and what are their consequences? What roles do interest groups and PACs play in the political process and in shaping public policy? Which people are better represented to government by interest

groups, and why? What role does the media play in the political system, and what impact does media have on public opinion, voter perceptions, campaign strategies, electoral outcomes, agenda development, and the images of officials and candidates?

CONTENT AREA IV: INSTITUTIONS OF NATIONAL GOVERNMENT (35-45%)

This section is by far the longest, and you should study it in proportion to the percentage that it will be represented on the exam. It includes the “branches” of government, including the legislature, the executive, the bureaucracy, and the judiciary. You should be familiar with the organization and powers, both formal and informal, of these major political institutions in the United States. However, it is not enough to understand the institutions individually, but you must know basically how they interact to make public policy. Powers are separated, but they also are shared, checked, and balanced. You should also have a general idea about how their powers and relationships have evolved over time. Additionally, you should understand how these institutions are tied to linkage institutions (Content Area III), such as interest groups, political parties, and the media.

CONTENT AREA V: PUBLIC POLICY (5-15%)

Politicians and institutions interact with one another to bring about public policy. How are agendas set for policy? In other words, why and how are some issues addressed and not others? The very nature of our political system determines that policies are made by numerous players and institutions. Congress interacts with the President who interacts with the bureaucracy that in turn communicate their wishes back to Congress. Political parties set agendas and run candidates that will give voice to their opinions. Interest groups pressure members of Congress and executive branch bureaucrats to pay attention to their needs. State governments interact with national and local levels to represent their citizens. You should investigate policy networks, iron triangles, and other forms of policy sub-governments in the domestic and foreign policy areas.

CONTENT AREA VI: CIVIL RIGHTS AND CIVIL LIBERTIES (5-15%)

You probably will find this content area particularly interesting to explore. It focuses on the development of individual rights and liberties and their impact on citizens. Since the courts have been prime shapers of policy in this area, you can put to work your knowledge of Supreme Court procedures (learned in Content Area IV) through examining significant decisions that have defined civil rights and liberties of American citizens. You will need to be able to analyze judicial interpretations of freedom of speech, assembly, and expression (civil liberties); the rights of the accused, and the rights of minority groups and women. At the end of this unit, you should be able to assess the strengths and weaknesses of Supreme Court decisions as tools for social change.

THE EXAMINATION

The AP United States Government and Politics Examination is 2 hours and 25 minutes long. It consists of a 45-minute multiple-choice section and a free-response section that consists of four questions. The time allotted for the free-response questions is 100 minutes, with the expectation that you will spend approximately 25 minutes on each one. You must answer ALL questions; you will have no choices. The multiple choice section is worth 50% of your grade on the exam, and the four free-response questions collectively count for the other 50%. In other words, each free-response question is equally weighted against the others and counts 12.5% of your total grade.

Time	Type of questions	Number of questions	Percent of grade
45 minutes	Multiple choice	60	50%
100 minutes	Free response	4	50%

SKILLS AND ABILITIES

What do the questions require you to know, and what skills do you need?

- First, you need to know your facts, concepts, and theories. Content knowledge is very important!
- Next, you need to understand patterns, principles, and consequences of political processes and organizations. Constantly ask yourself *why* particular behaviors and organizations are important. For example, what consequences do voter patterns have on who gets elected to office? The fact that people with higher levels of education are likely to vote does make a difference on who gets to make policy in this country. Why is it important that each state is represented equally in the Senate and in proportion to

population in the House of Representatives? You can memorize those facts, but you also need to be able to consider what effect that organization has on policy decisions.

- You must be able to analyze and interpret data on charts and tables, and to occasionally interpret political cartoons.
- Pay close attention to the structure and wording of the free-response questions. Never begin to answer a question until you are absolutely sure what the question is asking. For example, don't read through a question and say to yourself, "This question is about campaign finance reform," and just begin writing. Be sure that you answer *precisely* and *completely* what the question is asking. Answer the whole question and nothing but the question!

THE MULTIPLE CHOICE QUESTIONS

This book is full of sample multiple-choice questions modeled after the ones that you will have on the exam. Practice is important, as is a careful reading of the question stem and all choices available. Since you will be penalized (see the next section) for questions you miss, it is usually best to skip questions that you have no idea how to answer.

However, if you can eliminate one or more choices, it will usually benefit you to select the best answer from the remaining choices. Most of the questions are straight-forward, and all of them have five answer choices. A few questions will be based on charts, tables, and/or cartoons.

FREE-RESPONSE QUESTIONS

For free-response questions, follow this mantra carefully: Answer the whole question, and nothing but the question! Spend a minute of your allotted time to literally tear the question apart and take note of *everything* that it asks you to do. If you don't get around to answering part of the question, you will be punished in the score, sometimes severely. A special caution: when a question asks you to explain something, be sure that you do that as thoroughly as possible. Many rubrics give two points for an explanation, and if you cut yours short, you may end up with only one point credit, a frustrating situation, especially if you know the answer.

Each free response question will come from a different content area. In other words, you will not get two questions about political parties, or two questions about Congress. Of course, you probably will not be questioned in all six content areas, although some questions require you to bring together knowledge from two different areas. For example, you may have one question from Constitutional Underpinnings, one from Political Beliefs and Behaviors, one from Institutions, and one from Civil Liberties and Rights. Since the institutions area is so broad, you might have to answer questions about two different branches of government.

In all likelihood, you will be more confident of some questions than others. Most students remember some content areas better than others. Be prepared to expect that, and most importantly, don't panic. Answer each question the best that you can, and don't miss some parts of the question that you know just because you are concerned about a part that you are unsure of.

Writing style matters only in the sense that you need to express your answers clearly, accurately, and completely. You will not be evaluated on the quality of a thesis statement, although including one will often insure that you get some of the points of the question. The most important thing is that you answer *everything* that the question asks as clearly and completely as you have time for. Be sure to keep up with the time and allocate approximately 25 minutes for each question. If you finish before the time limit, be suspicious that your answers might not be as complete as they should be, and go back to fill out any explanations that you need.

HOW YOUR EXAM WILL BE SCORED

You will receive 0 to 60 points in Section I (Multiple Choice), and 0 to 60 points in Section II (Free-Response). You will not see your raw scores in these sections. Instead, your scores will be converted to grades on an AP 5-point scale, with a 5 being the highest.

- **Multiple-choice section** - To adjust for guessing, 1/4 of the number of wrong answers is subtracted from the number of right answers. This fraction is based on the five-choices that each question has, so that the expected score from random guessing will be zero.
- **Free-response section** - The free-response questions are assigned a certain number of points when they are designed, generally ranging from 5 to 8 points. No matter what the point scale, each question is equally weighted against the others, so that each is worth 12.5% of your total grade (or 25% of the 50% that the free response section is worth.)

The multiple-choice section is graded by a machine, but the free-response questions are graded by real people – faculty members from high schools and colleges from around the country that gather in one place to grade questions in a marathon 7-day effort that takes place in early June after you take the exam in May. Each of your four questions will be graded by a different person, so don't worry that the grader will be influenced by one weak answer when evaluated another question. He or she will only see and grade one free-response question. After the grading of free-response questions is completed, your exam will be shuffled back to the College Board and Educational Testing Service to calculate a composite score. The maximum composite score is 120. Finally, you will receive your grade in the mail sometime in July.

OVERVIEW OF THE REVIEW

Part II of this review takes each of the six content areas of the AP United States Government and Politics curriculum and addresses the major points that each area requires you to know. Each content area is broken into chapters focused on a review narrative and review terms. At the end of each unit are practice multiple-choice questions in proportion to the weight of the section. For example, Units One and Six have 25 questions each to reflect the 5-15% weight of each section, but Units Two and Three have 30 questions to reflect the 10-20% weight. Each unit also includes one free-response question based on the material reviewed.

The purpose of this review is to help students make their way through the myriad of information presented by college textbooks for United States government and politics. Additionally, you will have the opportunity to test and improve your test-taking skills that will help you to understand the content. The review is as concise as possible, and it provides help in making connections among all the various content areas that make up the study of the all-important world of government and politics in the United States.

CHAPTER TWO: CONSTITUTIONAL UNDERPINNINGS

The Founders created the Constitution during the late 18th century: an era when European philosophers were strongly criticizing governments dominated by imperialism and monarchy. The design of the Constitution reflected the influence of the European Enlightenment and the newly emerging beliefs in democracy, liberty for more individuals in society, and the importance of checking the self-interest inherent in ordinary human interactions. At the same time, the founders were far from unanimous in their admiration for direct democracy, and the Constitution they created reflects restraints on democracy. While they believed that monarchies were repressive, they knew that complete freedom would lead to disorder. Their main challenge was to fashion a government that struck a balance between liberty and order.

THE INFLUENCE OF THE EUROPEAN ENLIGHTENMENT

The **European Enlightenment** grew out of the Scientific Revolution of the 16th and 17th centuries, a time of amazing discoveries that form the basis of modern science. Scientific success created confidence in the power of reason, which enlightenment thinkers believed could be applied to human nature in the form of natural laws. Every social, political, and economic problem could be solved through the use of reason.

THE SOCIAL CONTRACT

A seventeenth century English thinker of the 1600s - **John Locke** - believed that in the "**state of nature**" people are naturally free and equal, but that freedom led inevitably to inequality, and eventually to chaos. Locke agreed with other philosophers of the day (such as Thomas Hobbes) that the state of nature changes because humans are basically self-centered. However, he believed that they could be rational and even moral. Even though people serve self-interests first, they fear violence, particularly violent death. He argued that people have **natural rights** from the state of nature that include the right to "life, liberty, and property." In his *Second Treatise of Government*, Locke stated that people form governments to protect these natural rights, giving up their freedom to govern themselves through a social contract between government and the governed. The only valid government is one based on the **consent of the governed**. This consent creates a **social contract** - an agreement between rulers and citizens - that both sides are obligated to honor. If for any reason the government breaks the contract through neglect of natural rights, the people have the right to dissolve the government.

LOCKE IN THE DECLARATION OF INDEPENDENCE

The founders generally were educated men who had read Locke and Hobbes, as well as French philosophers, such as Montesquieu, Voltaire, and Rousseau, who were concerned with freedom, equality, and justice. John Locke, in particular, directly influenced the thinking of the founders, as reflected in the Declaration of Independence. Compare the words of Jefferson with those of John Locke:

LOCKE IN SECOND TREATISE OF CIVIL GOVERNMENT	JEFFERSON IN THE DECLARATION OF INDEPENDENCE
"When any one, or more, shall take upon them to make laws whom the people have not appointed so to do, they make laws without authority, which the people are not therefore bound to obey; by which means they come again to be out of subjection, and may constitute to themselves a new legislature."	"When in the course of human events, it becomes necessary for one people to dissolve the political bands that 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..."
"Whosoever uses force without right...puts himself into a state of war with those against whom he so uses it, and in that state all former ties are canceled, all other rights cease, and every one has a right to defend himself, and to resist the aggressor..."	"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..."
"A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another..."	"We hold these truths to be self-evident: That all men are created equal;"

"[men] have a mind to unite for the mutual preservation of their lives, liberties, and....property."	" that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness."
" To great and chief end, therefore, of men uniting into commonwealths, and putting themselves under government, is the preservation of their property...."	" that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

THEORETICAL PERSPECTIVES

John Locke and other Enlightenment thinkers, such as Voltaire, Montesquieu, and Jean Jacques Rousseau, created theories of democracy, republican government, pluralism, and elitism that guided the Founders as they shaped the new government of the United States in the late 18th century.

DEMOCRATIC THEORY

At the time of the founding of the United States almost all other political systems in the world were **authoritarian regimes** in which rulers fully controlled the government, and often held sway over economic and social institutions as well. Ironically, the European country with the most controls on the power of its monarchs was England, the very political system that the Americans so protested for its oppressiveness. In fact, democratic theory has very strong roots in British history, although it may be traced back to much earlier civilizations, such as Ancient Greece.

Democracy is a form of government that places ultimate political authority in the hands of the people. Democratic theory has two basic models:

- **Direct democracy** – In this form of democracy, citizens debate and vote directly on all laws. In Ancient Athens, the legislature was composed of all of the citizens, although women, slaves, and foreigners were excluded because they were not citizens. Direct democracy requires a high level of participation, and is based on a high degree of confidence in the judgment of ordinary people. Many of the Founders of the United States were skeptical about the ability of the masses to govern themselves, being too prone to the influence of demagogues (charismatic leaders who manipulate popular beliefs) and too likely to overlook the rights of those with minority opinion. The latter leads to **majoritarianism**, or the tendency for government to do what the majority of people want.
- **Representative Democracy** - The Founders chose to establish a **republic**, or an indirect democracy in which people elect representatives to govern them and to make laws and set policies. This form is also referred to as an **indirect democracy**. In the United States, the people came to hold the ultimate power through the election process, but all policy decisions were to be made by elected officials or those that they appoint. A representative democracy, then, is a compromise between a direct democracy and an authoritarian rule, and has become the most accepted form of democracy in the world today.

ELITE THEORY

How can a republic claim to be a democracy if only a few people actually make political decisions, even if they are elected by the people? **Elite theory** holds that a “representative democracy” is not really based on the will of the people, but that there is a relatively small, cohesive elite class that makes almost all the important decisions for the nation. Another version of elite theory argues that voters choose from among competing elites. New members of the elite are recruited through a merit-based education system, so that the best and brightest young people join the ranks of the elite. Elite theorists argue that the founders believed that a privileged majority should rule in the name of the people with a controlled amount of input from citizens.

PLURALIST THEORY

Another theoretical perspective is **pluralism**, the argument that representative democracies are based on group interests that protect the individual’s interests by representing him or her to the government. The theory is grounded in the notion that in a diverse society such as the United States, too many interests exist to allow any one coherent group of elites to rule. Government decisions are made in an arena of competing interests, all vying for influence and struggling to speak for the people that they represent. Some pluralists have argued that the founding fathers represented different interests (such as rural vs. urban, or north vs. south), and that many points of view were actually represented. The model still works today, as pluralists argue, creating strong links between government officials and their popular base.

THE CONSTITUTION

The Constitution reflects the founders' attempt to balance order with freedom. They generally did not believe that people were fully capable of ruling themselves, but they also wanted to check any tendency toward monarchy. The Constitution is based on five great principles designed to achieve this balance:

- **Popular Sovereignty**- the basic principle that the power to govern belongs to the people and that government must be based on the consent of the governed.
- **Separation of Powers** - the division of government's powers into three separate branches: executive, legislative, and judicial
- **Checks and Balances** - a political system in which branches of government have some authority over the actions of the others.
- **Limited Government** - the basic principle that government is not all-powerful, and that it does only those things that citizens allow it to do.
- **Federalism** - the division of governmental powers between a central government and the states.

These principles resulted from the agreements and compromises made at the Constitutional Convention in 1787.

BACKGROUND TO THE CONVENTION

During the Revolutionary War, the Continental Congress wrote the **Articles of Confederation** to provide unity for the separate states that loosely formed the new country. The Articles allowed state governments to retain their powers, and the newly formed central government had severe limitations:

- The central government consisted only of a Congress in which each state was represented equally.
- No executive or judiciary branches were created.
- The central government could not levy taxes. It could only request money from the states.
- The central government could not regulate commerce between states. The states taxed each other's goods and negotiated trade agreements with other countries.
- No law enforcing powers were granted to Congress.
- No process for amending the Articles was provided.
- States retained all powers not specifically granted to Congress.

When the war was over, the immediate need for unity was past, and chaos threatened to undo the new nation. States quarreled over borders and tariffs, the country was badly in debt, and foreign countries saw the lack of a strong central government as weakness that could easily be exploited. Many leaders began to push for a government strong enough to settle disputes, to regulate commerce, and levy limited taxes. An important turning point occurred when farmers in western Massachusetts, in debt and unable to pay their taxes, rebelled against foreclosures, forcing judges out of court and freeing debtors from jails. **Shay's Rebellion** was eventually controlled, but it encouraged leaders to seek a stronger central government.

THE CONSTITUTIONAL CONVENTION

Fifty-five delegates arrived from the thirteen states in May 1787. Most were important men in their states: planters, bankers, businessmen, and lawyers. Many were governors and/or Congressional representatives, and most had read works by Hobbes, Locke, and

French philosophers, such as Voltaire and Montesquieu. Several famous delegates were:

- **Alexander Hamilton**, the leading proponent of a strong, centralized government.
- **George Washington**, the chairman of the Convention, and the most prestigious member, who also was a strong supporter of a centralized government.
- **James Madison**, a young, well-read delegate from Virginia, who is usually credited with writing large parts of the Constitution
- **Benjamin Franklin**, the 81-year-old delegate from Pennsylvania, who had also attended the Continental Congress in 1776

Absent were **Thomas Jefferson**, serving as ambassador to France, and **John Adams**, ambassador to England. Other absent leaders were **Patrick Henry**, who refused to come because he "smelt a rat," and **Samuel Adams**, who was not selected by Massachusetts to attend. The absence of Patrick Henry and Samuel Adams almost certainly tilted the balance of the convention toward order and freed the delegates from criticism as they created a stronger central government.

Agreements and Compromises

The founders' common belief in a balanced government led them to construct a government in which no single interest dominated. They were concerned with the "excesses of democracy" (Elbridge Gerry, delegate from Massachusetts), demonstrated by Shay's Rebellion, and they agreed with Locke that government should protect property.

Benjamin Franklin - a strong proponent of liberty and equality - proposed that all white males have the right to vote, but most delegates believed that only property owners should have the franchise. In their view, ordinary people would either scheme to deprive property owners of their rights or become the "tools of demagogues." In the end the founders did not include specific voting requirements in the Constitution, leaving each state to decide voter qualifications for its citizens.

A major issue at the convention was the balance of power between the large states and the small. The large states favored a strong national government that they believed they could dominate, and the small states wanted stronger state governments that could avert domination by the central government. These different interests are apparent in the first discussions of representation in Congress. Most favored a bicameral, or two-house, legislature, similar to the organization of most state legislatures since colonial times.

The Great Compromise (The Connecticut Compromise)

The delegates from Virginia opened the Convention with their **Virginia Plan** that called for a strong central government. Although proposed by James Randolph, the plan was almost certainly the work of James Madison, who, along with Alexander Hamilton, reasoned that a suggestion as boldly different from the current government would not be accepted, but might at least inspire major revisions. Their plan succeeded beyond their hopes. The delegates took the plan seriously, and began the debate with the assumption that the central government would be strengthened greatly. The plan called for

a bicameral legislature: the larger house with members elected by popular vote and the smaller, more aristocratic house selected by the larger house from nominees from state legislatures. Representation in both houses was to be based on wealth or numbers, giving the large states a majority in the legislature. The Virginia Plan also called for a national executive and a national judiciary.

Delegates from the small states countered with the **New Jersey Plan**, presented by William Paterson. Just as Madison and Hamilton had hoped, the counter plan did not argue with the need for a stronger central government, giving Congress the right to tax, regulate, and coerce states. The legislature would be unicameral, and each state would have the same vote. The delegates from small states were determined that the new legislature would not be dominated by the large states, and the debate between large and small states deadlocked the Convention. Finally, a committee was elected to devise a compromise, which they presented on July 5.

The Great Compromise (also called the Connecticut Compromise) called for one house in which each state would have an equal vote (The Senate) and a second house (The House of Representatives) in which representation would be based on population. Unlike the Virginia Plan, the Senate would not be chosen by the House of Representatives, but would be chosen by the state legislatures. The House of Representatives would be directly elected by all voters, whose eligibility to vote would be determined by the states. The Compromise was accepted by a very slim margin, and the Convention was able to successfully agree on other controversial issues.

Other Compromises

Another disagreement at the Convention was based on North/South differences, particularly regarding the counting of slaves for purposes of apportioning seats in the House. The South wanted to count slaves in order to increase its number of representatives, and the North resisted. The delegates finally agreed on the **Three-fifths Compromise**, which allowed southern states to count a slave as three-fifths of a person, allowing a balance of power between North and South.

Another debate concerned the selection of the president. The initial decision was for the president to be selected by Congress, but the delegates were concerned about too much concentration of power in the legislature. On the other hand, they feared direct election by the people, especially since the House of Representatives were to be popularly elected.

The Compromise was to leave the selection of the president to an **electoral college** - people selected by each state legislature to formally cast their ballots for the presidency.

All but three of the delegates signed the document on September 17, 1787, with others who opposed it leaving before that. The drafting of the Constitution took about three months, but the document has lasted for more than two hundred years, making it the longest lasting Constitution in world history.

AMENDING THE CONSTITUTION

The Founders designed the amendment process to be difficult enough that Congress could not add so many amendments that the original document would end up with little meaning. The process requires action by BOTH the national government and the states before an amendment may be passed.

Formal Amendments

The Constitution may be formally amended in four ways:

- Amendments may be proposed by a 2/3 vote of each house of Congress and ratified by at least 3/4 of the state legislatures. All but one of the amendments have been added through this process.
- Amendments may be proposed by a 2/3 vote of each house of Congress and ratified by specially called conventions in at least 3/4 of the states. This method was used once for the 21st Amendment that repealed Prohibition because Congress believed that many state legislatures would not vote for it.
- Amendments may be proposed by a national constitutional convention requested by at least 2/3 of state legislatures and ratified by at least 3/4 of the state legislatures.
- Amendments may be proposed by a national constitutional convention and ratified by specially called conventions in at least 3/4 of the states.

The last two methods have never been used to amend the Constitution.

Informal Amendments

The Constitution is written broadly enough that change can occur within our political system through interpreting the words to fit changing needs and events. All three branches have contributed to informal amendment of the Constitution.

- **Legislature** : Congress has passed laws that reinterpret and expand Constitutional provisions. For example, the Commerce Clause allows Congress to regulate and promote interstate and international commerce. Over time, Congress has passed many laws that define the Commerce Clause, including regulations on forms of commerce that didn't exist in 1789, such as railroad lines, air routes, and internet traffic.
- **Executive Branch**: Presidents may negotiate executive agreements with other countries, an authority not mentioned in the Constitution. The Constitution requires that foreign treaties be ratified by the Senate, but executive agreements do not. These agreements are used to circumvent the formal process, especially for routine matters that might simply slow the work of the Senate down.
- **Judicial Branch**: Of all the branches, the judiciary has been the most influential in interpreting the Constitution. Article III defines the power of the judiciary very broadly, but does not specifically mention **judicial review**; the power of the courts to declare statutes unconstitutional and interpret the Constitution when disputes arise. That power was first established in *Madison v. Marbury* in 1803, when Chief Justice John Marshall claimed judicial review as a prerogative of the court in his famous majority opinion issued in the case.

BEARD'S CRITICISM OF THE FOUNDERS

The founders' interest in protection of property has led some scholars to question their personal interests as motives in writing the Constitution. Charles Beard argued in *An Economic Interpretation of the Constitution*, written in 1913, that the founders created a constitution that benefited their economic interests. According to Beard, the major conflicts and compromises resulted from the clash of owners of land as property, and owners of business or commercial interests. Many scholars today disagree with Beard because voting at the Convention did not follow these divisions closely. For example, Elbridge Gerry, a wealthy Massachusetts merchant and politician, refused to sign the Constitution. James Madison and James Wilson, men of modest means, were two of its biggest proponents. However, the founders did tend to base their votes on the economic interests of their states, as reflected in the famous compromises at the convention.

FEDERALISTS VERSUS ANTIFEDERALISTS

The delegates agreed that the Constitution would go into effect as soon as popularly elected conventions in nine states approved it. The debate over **ratification** of the formal approval of the Constitution by the states raged throughout the country, with supporters of the new government calling themselves **Federalists**, and their opponents, the **Anti-Federalists**. Federalists supported the greatly increased powers of the central government and believed that the Constitution adequately protected individual liberties. The Anti-Federalists believed that the proposed

government would be oppressive and that more individual freedoms and rights should be explicitly guaranteed. Pamphlets, newspapers, and speeches supported one view or the other.

THE FEDERALIST PAPERS

Ratification of the Constitution was defended by the **Federalist Papers**, written by Alexander Hamilton, James Madison, and John Jay. These documents contain some of the most basic and brilliantly argued philosophical underpinnings of American government. Two famous papers are *Federalist #10* and *Federalist #51*.

The *Federalist #10* argued that separation of powers and federalism check the growth of tyranny: If "factious leaders...kindle a flame within their particular states..." leaders can check the spread of the "conflagration through the other states." Likewise, each branch of the government keeps the other two from gaining a concentration of power. *Federalist #10* also argues that Constitutional principles guard against the dangers of a direct democracy, or the "common passion or interest-felt by a majority of the whole-such [direct] democracies have ever been spectacles of turbulence and contention." Madison argues that a long-lived democracy must manage its interest groups, even though these "factions" can never be eliminated.

The *Federalist #51* explained why strong government is necessary: "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary."

THE BILL OF RIGHTS

A compromise between Federalists and Anti-Federalists was reached with the agreement to add ten amendments that guaranteed individual freedoms and rights. With this agreement, the Constitution was finally ratified by all the states in 1789, and the **Bill of Rights** was added in 1791. Without these crucial additions, the Constitution would not have been ratified in several key states. Many of the recommendations from state ratifying conventions were considered by James Madison as he wrote the Bill, and he and a specially appointed committee submitted seventeen amendments to Congress. Congress eliminated five of them, and two were not immediately ratified by the states. These two did not become part of the original Bill of Rights, with one (dealing with apportionment of representatives) later clarified by Supreme Court decisions, and one (addressing salaries of members of Congress), added as an amendment 203 years later in 1992.

IMPORTANT DEFINITIONS AND IDENTIFICATIONS:

Anti-Federalists	Federalist Papers	pluralism
Articles of Confederation	<i>Federalist #10</i>	ratification
authoritarian regimes	Federalists	representative democracy
Bill of Rights	formal amendment process	Second Treatise on Government
consent of the governed	The Great Compromise	Shay's Rebellion
direct democracy	informal amendment process	social contract
An Economic Interpretation of the Constitution	judicial review	a state of nature
elite theory	John Locke	Three-fifths Compromise
electoral college	majoritarianism	Virginia Plan
European Enlightenment	natural rights	
	New Jersey Plan	

CHAPTER THREE: POLITICAL CULTURE

Every country has a **political culture** - a set of widely shared beliefs, values, and norms concerning the ways that political and economic life ought to be carried out. The political culture defines the relationship of citizens to government, to one another, and to the economy. A good understanding of a country's political culture can help you make sense of the way a country's government is set up, as well as the political decisions its leaders make. The American political culture may share beliefs, values, and norms, with those of other countries, but the sum and configuration of each political culture is unique. A **conflictual political culture** is one in which different groups (or subcultures) clash with opposing beliefs and values; a **consensual political culture** experiences less conflict. No matter how broadly the consensus is held, any culture contains values that overlap and conflict; the American political culture is no exception. Although many conflicts exist within the political system in the United States, American political culture is generally consensual because we have a broad base of shared political values. Most of our conflicts occur because we disagree on how these values should be implemented, not on the basic beliefs themselves.

ALEXIS DE TOCQUEVILLE

Alexis de Tocqueville: an early observer of American political culture who came to the United States during the 1830s to investigate why the American democracy seemed to be so successful, especially since his native France seemed to be having so much trouble with it. Tocqueville recorded his observations in *Democracy in America*, a book that remains today a classic study of American political values. He identified several factors that he believed to be critical in shaping America's successful democracy:

1. Abundant and fertile land
2. Countless opportunities for people to acquire land and make a living
3. Lack of a feudal aristocracy that blocked others' ambitions
4. An independent spirit encouraged by frontier living

Although many years have passed since Tocqueville made his famous observations about American political culture, these factors shaped our basic values of liberty, individualism, equal opportunity, democracy, rule of law, and civic duty.

SHARED VALUES

The values of the American political culture are grounded in the eighteenth century Enlightenment philosophy that so heavily influenced the founders. Over the years other values have been added, some supporting the original ones, some conflicting. American political beliefs and behaviors today reflect an accumulation of these values throughout United States history.

CORE VALUES

The following values have shaped the political culture since the founding of the country:

- **Liberty** - The value of liberty probably was the most important inspiration to the American Revolution, and it remains a core value today. Liberty was one of the natural rights first cited by John Locke and later by Thomas Jefferson: "...that among these [rights] are life, liberty, and the pursuit of happiness.."
- **Equality** - Again, Thomas Jefferson refers to this basic value in the Declaration of Independence: "We hold these truths to be self evident, that all men are created equal.." Although most Americans don't believe that everyone is equal in every sense of the word, the basic beliefs in equality of opportunity and equal treatment before the law have influenced the political system greatly.
- **Individualism** - The values of equality and liberty are complemented by a commitment to the importance and dignity of the individual. Under our system of government, individuals have both rights and responsibilities. "**Rugged individualism**" is a reflection of this value: the belief that individuals are responsible for their own well-being and that the strength of our system lies in the ability of individuals to be left alone to compete for success. This value is associated with the belief in the "common sense" of ordinary people and their ability to not only take care of themselves, but choose their government leaders as well.
- **Democracy** - Most Americans believe that government should be based on the consent of the governed, or that legitimacy ultimately lies in the hands of the people. We also believe in majority rule, but our emphasis on liberty and individualism causes us to believe that the rights of the minority should be protected as well.

- **Rule of law** - The belief that government is based on a body of law applied equally, impartially, and justly is central to American political culture. Rule of law stands in opposition to **rule by an individual**, which to many Americans implies following the whims of a dictator.
- **Civic duty** - Tocqueville noted that Americans of the early 19th century had a well-developed sense of community and individual responsibility to support community efforts. Although critics today observe that sense of community is not as strong in modern day, most Americans believe that they *ought to* be involved in local affairs and help out when they can.

Some international studies show that Americans by comparison tend to be more nationalistic, optimistic, and idealistic than people in other countries, although the scope of these studies is limited.

CHANGING AMERICAN VALUES

The firmly entrenched values of the late eighteenth and early nineteenth centuries were altered radically by the Industrial Revolution of the late 1800s. The most profound economic change was the increase in the inequality in the distribution of wealth and income. By the end of the century great wealth lay in the hands of a few people - the entrepreneurs or "robber barons." In a sense, the economic development brought out some inherent conflicts between the core values already established.

"Capitalism" Before the late 1800s, most personal wealth was based on land ownership. The commitment to **capitalism** -- wealth based on money and other capital goods - became an additional shared political value during the Industrial Revolution, one that complements individualism and freedom.

"Free enterprise" During this same time period, American beliefs in freedom and individuals came to embrace **free enterprise** -- economic competition without restraint from government.

These values reinforced the older emphasis on individualism. Just as early Americans had sought their fortune by claiming and farming new land by their own individual efforts, entrepreneurs of the late 19th century were flexing their muscles in the new industrial economy. However, the new commitment conflicted with the old value of equality, and tensions resulted. For example, robber barons were accused of exploiting workers and limiting competition in order to get ahead themselves, not only challenging equality, but other people's liberty as well. Monopolies also caused many to question equality of opportunity. The era illustrated inherent conflicts among the core values that had been in place for more than a century. The resolution was to legislate new government regulations to ensure fair treatment in the marketplace, and another belief was added to our political culture: government responsibility for the general welfare.

VALUE CHANGES DURING THE 1930s

Although the Preamble to the Constitution states that "**promotion of the General Welfare**" is a major purpose of government, the meaning of that value was transformed during the 1930s. The Great Depression brought about the near-collapse of capitalism, and the New Deal was an affirmation of the government's responsibility for the welfare of its people. In Roosevelt's 1944 inaugural address, he outlined a "**Second Bill of Rights**" that reflected his firm commitment to "economic security and independence." For example, he asserted everyone's rights to a useful job, food, clothing, a decent home, adequate medical care, and the right to a good education. These beliefs played a major role in the creation of the civil rights and welfare legislation of the 1960s, and as recently as the early 1990s, Clinton referred to Roosevelt's Second Bill of Rights when he said, "Health care is a basic right all should have." The defeat of his health care plan indicates that Americans don't always agree on the meaning of this value. Again, the movement created tension over the value of individualism, or the individual's responsibility to take care of himself. The government's responsibility for the general welfare became a major issue of the 2000 election campaign as candidates George W. Bush and Al Gore debated the merits of a government-sponsored prescription plan for the elderly, and again in 2004, as President Bush supported privatization of Social Security programs, and challenger John Kerry did not.

POLITICAL TOLERANCE

Another American value that is easily misunderstood is **political tolerance**. Democracy depends on citizens being reasonably tolerant of the opinions and actions of others, and most Americans believe themselves to be fairly tolerant. Studies show that political tolerance is much more complex a value than it appears on the surface. Among their findings are:

- The overwhelming majority of Americans agree with freedom of speech, religion, right to petition - at least in the abstract.
- People are not as politically tolerant as they proclaim themselves to be.
- Americans are willing to allow many people with whom they disagree to do a great deal politically.
- Americans have become more tolerant over the last few decades.
- Most people dislike one or another group strongly enough to deny it certain political rights, although people are not always inclined to act on their beliefs. As a general rule, people are willing to deny rights to people on the opposite end of the political spectrum. For example, liberals are most likely to deny right-wing groups, such as neo-Nazis or self-styled militia groups their rights, and conservatives are most likely to deny them to groups they may disapprove of, such as gays, atheists, or black militants. In conflict with popular opinion, research does not show that liberals are necessarily more tolerant than conservatives.

MISTRUST OF THE GOVERNMENT

A recent trend in changing American political values and beliefs is that of growing **mistrust of the government**. Although the trust reflected in the 1950s and early 1960s may have been artificially high, trust in government and its officials has declined significantly since the mid-1960s. Many scholars blamed the Vietnam War and Watergate for the initial, dramatic drops, but the trend is persistent into the early 21st century, with Americans in record numbers expressing disgust with politics and politicians.

Accompanying the mistrust of government has been a drop in **political efficacy**, a citizen's capacity to understand and influence political events. Political efficacy has two parts:

- **Internal efficacy** - the ability to understand and take part in political affairs
- **External efficacy** - the belief of the individual that government will respond to his or her personal needs or beliefs.

Most studies find little difference over the last half-century in the levels of internal efficacy in the United States.

However, there has been a big change in external efficacy, with most Americans believing that the government is not very responsive to the electorate. The levels dropped steadily during the 1960s and 70s, with many political scientists blaming the Vietnam War and Watergate for the growing belief that government officials operate without much concern for beliefs and concerns of ordinary people. The patterns continues until today, and may be one reason that incumbent presidents have had a difficult time getting reelected in recent years.

Americans seem to have come to the conclusion that government is too big and pervasive to be sensitive to individual citizens. However, international studies show that Americans feel significantly higher levels of political efficacy than do citizens of many European nations. Americans are less likely to vote than most Europeans, but they are more likely to sign petitions, work to solve community problems, and regularly discuss politics.

CULTURE WARS

Despite the fact that Americans share broad cultural and political values, some observers believe that conflict has increased since the mid-20th century, so that today we see two cultural camps in this country in constant combat with one another. The country has split on explosive political issues, such as abortion, gay rights, drug use, school prayer, terrorism, and the U.S. role in world affairs. On the one hand, some Americans believe that the United States is subject to relatively unchanging standards that are relatively clear - belief in God, laws of nature, and the United States in general as a force for good in the world. The opposite camp emphasize that legitimate alternatives to these standards do exist, and that the U.S. has at times had a negative; or at best neutral - effect on world affairs.

The question is whether or not these differences of opinion actually amount to a big divide in the broad American political culture. One view is that they do because they strike at the very heart of the meaning of our democracy, but others believe that we are doing what we always have done - argue about how our core values should be implemented.

IMPORTANT DEFINITIONS AND IDENTIFICATIONS:

Conflictual political culture	Free enterprise	Rugged individualism
Consensual political culture	Political culture	Rule of law
Core American values	Political efficacy	Second Bill of Rights
Alexis de Tocqueville	Political tolerance	

CHAPTER FOUR: PUBLIC OPINION

Public opinion is the distribution of individual attitudes toward a particular issue, candidate, or political institution. Although the definition is simple enough, public opinion encompasses the attitudes of millions of diverse people from many racial, ethnic, age, and regional groups. As a result, the study of American public opinion is especially complex, but also very important. For American government to operate democratically, the opinions of the American public must reach and become an integral part of the political process.

MEASURING PUBLIC OPINION

The measurement of public opinion is a complex process that involves careful interviewing procedures and question wording. To complicate the task further, people are often not well informed about the issues, and may comment on topics they know little about. Public opinion polls must be constructed and executed carefully in order to accurately reflect the attitudes of the American public.

Public opinion polling is a relatively new science, first developed by **George Gallup**, who did some polling for his mother-in-law, a candidate for secretary of state in Iowa in 1932. Gallup founded a firm that spread from its headquarters in Princeton, New Jersey throughout the democratic world. Today, other well-known private firms conduct polls, and big television networks, magazines and newspapers, such as CNN, *Time*, and *The New York Times*, conduct their own polls. Pollsters are also hired by political candidates to determine their popularity, and the results of their polls often shape the direction of political campaigns. The national government even sponsors opinion polls of its own.

Polls generally start when someone wants a political question answered. For example, a candidate running for the House of Representatives may wonder, "What do people in the district need?" or "How strong a candidate do they think I am?" Or a newspaper may want to know, "How do people in this country feel about the threats of bioterrorism?" The candidate or publisher may commission a poll, and a reporter may base a story on the research findings. The pollsters then follow several important principles in gathering accurate statistics:

- **Representative sample** -The sample of those interviewed must be representative of the entire population. Every citizen cannot be polled regarding his or her opinion on a whole range of issues, but those selected must allow the pollster to make accurate assessments of public opinion. The most common technique employed is **random sampling**, which gives everyone in the population an equal probability of being selected. Most national surveys sample between a thousand and fifteen hundred persons. The pollster most commonly makes a list of groups, using criteria such as region, age, ethnic and racial groups, gender, and religion. From these groups, people are selected randomly for interviews. The disastrous Literary Digest Poll of 1936 provides a famous example of what can happen if the random sampling principle is ignored. That poll predicted that Alf Landon would beat Franklin Roosevelt by a landslide, but the results were the opposite. The Digest sample was biased because it was based on telephone books and club membership lists at a time when only well-to-do people had phones.
- **Respondent's knowledge** - People must have some knowledge of the issues they are asked about. If the issue is complex (such as American policy toward Afghanistan), people should be allowed to say "I don't know", or "I haven't thought about it much." Still, people are often reluctant to admit a lack of knowledge about political issues, so pollsters always must allow for the fact that people often pretend to know things that they don't.
- **Careful and objective wording** - The structure and wording of the question is very important in obtaining an accurate response. "Loaded" or emotional words should not be used, and the pollster must not indicate what the "right" answer is. For example, consider a question like, "How much do you dislike leaders of Middle Eastern countries?" You could hardly expect an accurate answer. The categories of answers also determine the results of the poll. A yes or no question, such as, "Do you think the president is doing a good job?" will give very different results than a question that gives the interviewee a chance to rank the president's performance (excellent, very good, good, average, poor, very poor).
- **Cost efficiency v. accuracy**: Almost all polls have a budget, but accuracy should not suffer as a result. For example, a **straw poll** that asks television viewers to call in their opinions is not very expensive, but it

generally is not very accurate either. The people that call in usually feel very strong about the issue. And some of them call in more than once.

- **Variations between samples** - The same poll conducted with a different random sample almost certainly will produce slightly different results. These slight variations are known as **sampling errors**. A typical poll of about fifteen hundred usually has a sampling error of + or - 3 percent. This means that 95% of the time the poll results are within 3 percentage points of what the entire population thinks. If 60% of the population supports a candidate for office, in actuality, 57-63% of the population supports him or her. Usually, the larger the sample in proportion to the population, the smaller the sampling error.

FACTORS THAT INFLUENCE POLITICAL ATTITUDES

When pollsters divide people into groups before they conduct random samples, they are acknowledging a well-proven fact: group identifications often influence political attitudes. Political attitudes are shaped by **political socialization**, a lifelong process through which an individual acquires opinions through contact with family, friends, coworkers, and other group associations. Today the media also plays a major role in political socialization, with political news and opinions widely available on TV, radio, and the internet. Political attitudes in turn determine how individuals participate, who they vote for, and what political parties they support. Many factors – including family, gender, religion, education, social class, race and ethnicity, and region – all contribute to American political attitudes and behavior.

FAMILY

The family is probably the most important source of political socialization, and so it plays a major role in shaping political attitudes, particularly of party identification. Polls show that the majority of young people identify with their parents' political party. The process begins early in life (by the age of ten or eleven), and even though individuals generally become more independent as they grow older, the correlation between adult party identification and the parents' party is still very high. A parallel trend, however, is a tendency for this correlation to be lower than it has in the past. This trend may be related to another trend: the growing number of voters who call themselves "independents" rather than Democrats or Republicans.

Logically, the more politically active your family, the more likely you are to hold the same beliefs. For example, most members of the extended Kennedy family are Democrats, and most Bush family members are Republicans. The relationship weaker on specific issues – like gun control, school prayer, and government welfare programs – but still holds strong for overall political views and identifications.

GENDER

A person's gender also influences political views. For example, more women consider sexual harassment in the workplace to be a serious problem than do men, and more men than women tend to support military actions and spending in foreign affairs.

Party identification is also affected by gender, but the relationship has shifted through the years. In the 1920s when women first began to vote, they were more likely to support the Republican Party than were men. Some experts explain this correlation by pointing out that the Republicans tended to be more the party of "hearth and home" in the 20s. Whatever the explanation, the tendency for women to vote for Republicans continued through the 1930s. Although most women supported the Democrat Franklin Roosevelt over his Republican opponents, the percentage of women supporters was lower than the percentage of men who supported Roosevelt.

The trend held until the late 1960s, when the correlation reversed. Since that time women have been more likely than men to vote for Democrats. This "gender gap" has been explained by the advent of the modern women's rights movement and the Democrats' tendency to support points of view women support: equal opportunity for women, abortion rights, and welfare programs. On the other hand, some experts argue that Republicans are more concerned about defense issues, and thus they attract more men to their party. In the election of 2004, the gender gap appeared to be closing, with Republican George W. Bush garnering about 48% of all women's votes. However, Bush's support among men was significantly higher.

A more recent gender-related issue has to do with male vs. female support for women political candidates. Although common sense may tell us that women would be more likely to support women candidates, the research does not show a clear correlation. One problem is that relatively few women run for political office. Although their numbers have increased in recent elections, more women candidates run as Democrats than as Republicans, so it is difficult to know if the candidate's gender alone affects voting patterns of women and men.

MARRIED VS. UNMARRIED

Pollster John Zogby has pointed out that the gender gap (especially as evidenced in the 2004 presidential election) is not nearly so significant as the gap between married and unmarried voters. He found that on most issues single and married voters were often 25-30 points different, with singles more likely to vote for Democratic candidates, and married voters more likely to support Republicans.

RELIGION

An individual's religion is a factor in determining his or her political attitudes. Although the relationships are not as strong as they once were, these patterns still hold:

- Protestants are more conservative on economic matters (such as minimum wage and taxes) than are Catholics and Jews.
- Jews tend to be more liberal on both economic and social issues (such as civil liberties and rights) than are Catholics or Protestants.
- Catholics tend to be more liberal on economic issues than they are on social issues.

Some special research on fundamentalist Christians indicates that they tend to support more conservative candidates for public office, and that they are more likely to contribute to the Republican Party than to the Democratic Party. This more conservative tendency is stronger for attitudes about social issues (such as abortion, civil rights for minorities, and women's rights), than it is for foreign affairs and economic issues (such as government services and job guarantees).

In recent elections, a distinction has emerged between the political attitudes of those that attend religious services regularly and those that don't. The trend was particularly apparent in the election of 2004, when churchgoers were more likely to vote for Republicans, and non-churchgoers were more likely to support Democrats.

EDUCATION

A person's level of education also affects political attitudes, but the evidence provides conflicting results. In general, the higher the individual's educational level, the more likely they are to hold conservative political points of view. However, many studies show that college education often influences an individual to have more liberal social and economic attitudes than they had before they started college. These studies show that the longer students stay in college and the more prestigious the institution they attend, the more liberal they become. The reasons for the correlation are unclear, but some experts believe that the liberal attitudes of professors may influence students. Others believe that the differences lie not in the schooling itself, but in the characteristics of people who attend college vs. those that don't.

SOCIAL CLASS

A number of years ago, the relationship between social class and political attitudes was clear: the higher the social class, the more conservative the individual, and the more likely he or she was to belong to the Republican party. Today, that relationship is much less clear, perhaps partly because of the correlation cited above between college education and liberalism. Even though the broad affiliations between blue-collar workers and the Democratic Party and businessmen and the Republican Party still have some credibility, those relationships are much weaker than they once were.

RACE AND ETHNICITY

Much research has focused on the relationship between an individual's race and ethnicity and his or her political attitudes. The oldest and largest numbers of studies focus on black Americans, who tend to identify with the Democratic Party and are still the most consistently liberal group within that party. In recent presidential elections, blacks have voted in overwhelming numbers (close to 90%) for the Democratic candidate.

Much less research has been conducted with Hispanic Americans, but preliminary results indicate that they too tend to be more liberal than the majority, with a tendency to affiliate with the Democratic Party. However, the correlation appears to be weaker than that of black Americans.

A very limited amount of research among Asian Americans indicates that they are more conservative than blacks or Hispanics, although attitudes of the various nationalities of Asians fluctuate widely. For example, preliminary research indicates that Korean Americans are more liberal than are Japanese Americans. Overall, more Asian Americans voted in the 2000 presidential election for Democrat Al Gore than for Republican George W. Bush, so the influence of Asian ethnicity on political attitudes is still not clear.

GEOGRAPHIC REGION

As a general rule, people on either coast tend to be more liberal than those in the middle of the country. However, there are many problems in defining that tendency because the rule is overbroad. For example, many Californians are very conservative, as are a number of New Englanders. However, part of the reason for the trend is probably an urban/rural differentiation, with coastal cities inhabited by minorities, recent immigrants, and members of labor unions. Cities in the “rust belt” of the Great Lakes region also tend to vote Democratic, partly because they have strong labor constituencies.

The Southeast presents some special problems with applying the rule, partly because party affiliations of Southerners have been changing over the past fifty years or so. Since the 1950s, many southerners have broken their traditional ties with the Democratic Party. From the time of Reconstruction until the 1950s, the “**Solid South**” always voted Democratic. Virtually all representatives, senators, governors, and local officials in the South belonged to the Democratic Party. Since the 1950s, more and more political leaders have affiliated with the Republicans, so that today, in most Southern states, both parties have viable contenders for public office. Some experts explain this phenomenon by pointing out that many southerners disagreed with the Democratic Party’s support for the black civil rights movement starting in the 1950s, with the result that many white southerners changed their party affiliation. Although some research indicates that white southerners tend to be less liberal than others on social issues, such as aid to minorities, legalizing marijuana, and rights of those accused of crimes, southern attitudes on economic issues (government services, job guarantees, social security) are very similar to those from other regions. Although there is some evidence that southerners are more conservative than they were fifty years ago, political views today of white southerners are less distinct from those in other regions than they used to be.

POLITICAL IDEOLOGY: LIBERALS AND CONSERVATIVES

A **political ideology** is a coherent set of values and beliefs about public policy. In U.S. politics, ideologies generally are thought to fall into two opposite camps: liberal and conservative. While there are general guidelines for determining the nature of liberalism and conservatism, the differences between the two are not always obvious. Following and describing ideologies is also complicated by the fact that they change over time, so that being “conservative” or “liberal” today is not necessarily the same as it was a few years ago.

How Ideological are American Citizens?

The classic study of the 1950s, *The American Voter*, investigated the ideological sophistication of the American electorate. The authors created four classifications of voters:

- **ideologues** - 12 % of the people connected their opinions and beliefs to policy positions by candidates and parties. In other words, only 12% of the American voting populations voted along primarily ideological lines.
- **group benefits voters** - 42% of the people voted for parties based on which one they thought would benefit groups they belonged to or supported. ("Democrats are more supportive of labor union members like me.")
- **nature of the times voters** - 24% of the people linked good times or bad times (usually based on economics) to one political party or the other and vote accordingly. ("The Republicans can get us out of this recession.")
- **no issue content** - 22% of the people could give no issue-based or ideological reasons for voting for a party or a candidate. ("_____ is better looking than the other candidate.")

Follow up studies conducted through 1988 reveal some variation in percentages among the groups, with ideologues faring somewhat better than they did in the 50s, but they are still a relatively small group (18% in 1988).

Liberalism vs. Conservatism

The terms “**liberal**” and “**conservative**” are confusing partly because their meaning has changed over the course of American history. In early American history, liberals disapproved of a strong central government, believing that it got in the way of ordinary people reaching their ambitions. They saw the government as a friend of business and the political elite. Conservatives, on the other hand, believed that government was best left to political elites, although they did not deny the rights of individual voters to contribute to the political system.

That trend reversed during the 1930s with Franklin Roosevelt’s New Deal – big government programs to help ordinary people get back on their feet during the Great Depression. During that era, Democrats began to see the government as a friend to the “little people”; one that provided much needed support during bad economic times. Republicans came to support the belief in “rugged individualism”; the responsibility of all people to take care of themselves. Although Democrats are not always liberal and Republicans are not always conservative, liberals since Roosevelt have generally supported a larger, more active role for the central government than conservatives have.

However, some observers believe that this distinction between liberals and conservatives may be changing in the early 20th century. Conservative President George W. Bush is often seen as supportive of “big government,” a fact that more traditional conservatives have criticized.

Even though the terms liberal and conservative are more meaningful for political activists than they are for the rank-and-file voter, the concepts are roughly, if inconsistently, understood by most Americans.

The following table summarizes some of the political beliefs likely to be preferred by liberals and conservatives:

ISSUE	LIBERALS	CONSERVATIVES
Health Care	Health Care should be more widely available to ordinary people and not necessarily tied to work Tendency to support a national health care system	Health care is best handled by private insurance companies and are most logically tied to work place benefits.
Crime	Cure the economic and social reasons for crime.	Stop coddling criminals and punish them for their crimes.
Business Regulation	Government should regulate businesses in the public interest	Businesses should be allowed to operate under free market conditions
Military Spending	Spend less.	Spend more.
Taxes	The rich should be taxed more; the government is responsible for reducing economic inequality.	Taxes should be kept low.
Welfare State	The government is responsible for helping the poor find employment and relieving their misery.	People are responsible for their own well-being; welfare takes away the incentive to take care of themselves
Civil rights	Support for pro-active civil rights government policies	Limited government role in promoting social equality
Abortion	Pro-choice	Pro-life
Religion	Clear separation of church and state	Support for faith-based political initiatives

Individuals may have political beliefs that are a combination of liberalism and conservatism. Most commonly they may divide their opinions about economic and social issues. For example, an economically liberal, socially conservative person might believe in government support for health and welfare, but may oppose gay rights and/or equal opportunity programs for ethnic/racial minorities.

The “Neo-Cons”

After the terrorist attacks of September 11, 2001, the term “**Neo-Con**” began to emerge to describe the emergence of a post-Cold War conservative movement. Their main goal has been to counter global terrorism, especially as carried out by radical Islamists. Although neo-cons may be from either political party, they tend to affiliate as Republicans. Prominent neo-cons are Vice-President Dick Cheney and Secretary of Defense Donald Rumsfeld, who led the drive to war in Iraq in 2003. Neo-cons advocate the breakup of global terrorist networks, and some endorse the spread of President George W. Bush’s “war on terrorism” to include Iran, Syria, and Saudi Arabia, as well.

IMPORTANT DEFINITIONS AND IDENTIFICATIONS:

The American Voter	Political ideology	Sampling error
Conservatism	Political socialization	“Solid South”
George Gallup	Public opinion	Straw poll
Liberalism	Random sample	

CHAPTER FIVE: POLITICAL PARTICIPATION

Political participation encompasses the various activities that citizens employ in their efforts to influence policy making and the selection of leaders. People participate in politics in many ways. They may write their representative or senator, or work for a candidate or political party. Or they can make presentations to their local school board or city council, or call the police to complain about the neighbor's dog. Partly because of our federalist system, people have many opportunities to participate in our democracy on national, state, and local levels. Some forms of participation are more common than others and some citizens participate more than others. Americans in general are comparatively active in politics, but the United States is notorious among modern democracies for its low voter turnout rates, although the rates went up significantly in the election of 2004. However, the turnout for the previous two U.S. presidential elections was just about 50%. By contrast, most western democracies in Europe have vote rates well above 70%.

TYPES OF PARTICIPATION

Researchers have found for years that American citizens most commonly participate in national politics by following presidential campaigns and voting in the presidential election. According to the National Election Studies from the Center for Political Studies at the University of Michigan, Americans reported the following types of political participation during the campaign for the election of 2000:

- 82% watched the campaign on television
- 73% voted in the election
- 34% tried to influence others how to vote
- 10% put a sticker on their car or wore a button
- 9% gave money to help a campaign
- 5% attended a political meeting
- 3% worked for a party or candidate

These statistics can be deceptive because they reflect how people *say* they participate. For example, despite the fact that 73% said they voted in the 2000 election, less than 50% actually did. One explanation is that people know that they should vote and don't want to admit it if they didn't.

WHO PARTICIPATES?

Experts have found several demographic characteristics to be strongly associated with high levels of political participation

- **Education:** The single most important characteristic of a politically active citizen is a high level of education. Generally, the more education an individual has, the more likely he or she is to vote. Why? Perhaps because the well educated better understand complex societal issues, or maybe they better understand the importance of civic responsibility. Or it could just be that their occupations are more flexible in allowing them to take time to go to the polls.
- **Religious Involvement** - As religious involvement increases, so does political participation. Regular churchgoers are more likely to vote than those that do not attend. Why? Some possibilities are that church involvement leads to social connectedness, teaches organizational skills, and increases one's awareness of larger societal issues
- **Race and Ethnicity**- If only race and ethnicity are considered, whites have higher voting rates than do blacks and Latinos. However, that tendency is somewhat deceptive. Some studies that control for income and education differences have found that the voting rates are about the same for whites, blacks, and Latinos.
- **Age:** Despite the big push in the early 1970s to allow 18 year olds to vote, voting levels for 18-24 year olds are the lowest of any age category. Older people are more likely to vote than are younger people. The highest percentages of eligible voters who actually vote are in those groups 45 and above.
- **Gender:** For many years women were underrepresented at the voting booths, but in recent elections, they have turned out in at least equal numbers to men. In fact, since 1992, turnout among women voters has exceeded that of men. However, this trend is relatively new, so in general we can say that men and women vote at about the same rates.
- **Two-party competition** - Another factor in voter turnout is the extent to which elections are competitive in a state. More competitive elections generally bring higher turnouts, and voter rates increase significantly in years when presidential candidates are particularly competitive .

It is important to note that an individual is affected by many factors: his or her age, social class, education level, race, gender, and party affiliation. Thus factors form **cross-cutting cleavages**, making it very important to control for other factors that may produce a counter influence. For example, in order to compare gender differences in voting rates, a researcher would have to compare men and women of similar ages, education level, race, and party affiliation. Otherwise, the voting behavior may be caused by a factor other than gender.

VOTING

Voting is at the heart of a modern democracy. A vote sends a direct message to the government about how a citizen wants to be governed. Over the course of American history, voting rights have gradually expanded, so that today very few individuals are excluded. And yet, expanding suffrage is countered by a current trend: that of lower percentages of eligible voters in recent presidential elections actually going to the polls to cast their votes. For example, less than 50% of eligible voters actually voted in the 2000 presidential election. The trend did reverse itself in the election of 2004, when record numbers of Americans turned out to vote. Both parties worked hard to get new voter registrations and to encourage their base to actually get to the polls to vote.

EXPANDING SUFFRAGE

Originally the Constitution let individual states determine the qualifications for voting, and states varied widely in their laws. All states excluded women, most denied blacks the franchise, and property ownership was usually required. The expansion of the right to vote resulted from constitutional amendment, changing federal statutes, and Supreme Court decisions. Changes in suffrage over American history include:

- **Lifting of property restrictions** – At first, all states required voters to be property owners, with varying standards for how much property a man had to own to merit the right to vote. During the 1830s when Andrew Jackson was president, most states loosened their property requirements to embrace **universal manhood suffrage**, voting rights for all white males. By the end of Jackson’s presidency, all states had lifted property restrictions from their voting requirements.
- **Suffrage for Black Americans and former slaves** - After the Civil War three important amendments intended to protect civil rights of the newly freed former slaves were added to the Constitution. The last of the three was added in 1870 - the **15th Amendment**, which said that the “right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.” Despite the amendment, many states passed **Jim Crow laws**; such as literacy tests, poll taxes, and the grandfather clause – that prevented many blacks from voting until well past the mid-20th century. During the Civil Rights movement of the 1950s and 60s, the Supreme Court declared various Jim Crow laws unconstitutional. The Voting Rights Act of 1965 and other federal laws prohibited states from using discriminatory practices, such as literacy tests.
- **Women’s Suffrage:** In contrast to black Americans, women were kept from the polls by law more than by intimidation. An aggressive women’s suffrage movement began before the Civil War, but it brought no national results until social attitudes toward women changed during the Progressive Movement of the early 20th century. The result was the passage of the **19th Amendment**, which extended the vote to women in 1920. The 19th Amendment doubled the size of the electorate.
- **18-21-year-olds:** A final major expansion of voting rights occurred in 1971 when the **26th Amendment** changed the minimum voting age from 21 to 18. A few states – such as Georgia, Kentucky, Alaska, and Hawaii; had allowed younger people to vote before 1971. The increased political activism of young people, particularly on college campuses during the 1960s, almost certainly inspired this expansion of voting rights.

VOTER TURNOUT

Voter turnout can be measured in two different ways: by showing the proportion of the **registered voters** that actually voted in a given election, and by showing the percentage of the **eligible voters** that vote. According to recent figures, American statistics look much better if the first method is employed. If we take the proportion of registered voters, between 75 and 80% voted in recent presidential elections; if we take the percentage of the voting-age population, only about 50% actually voted in 1996 and 2000, a figure much lower than most other democracies. The figure increased significantly in 2004, but it still remained lower than those in many countries. For example, in Great

Britain and Canada, about 3/4 of all eligible voters vote in major elections, and in Italy and Australia, approximately 90% vote.

Because the results of the two methods differ so widely in the U.S., many observers believe that the main problem with getting people to the polls is the cumbersome process of voter registration.

Voter Registration

Laws vary according to state, but all states except North Dakota require voter registration. Until a few years ago some states required voters to register as much as six months before the election. In other words, if someone moved into the state, forgot to register, or passed their eighteenth birthday, he or she would be ineligible to vote in any elections for six months. These rigid requirements were the result of voting abuses of the early 20th century (ballot box stuffing, people voting twice, dead people voting), but in recent times, they are believed to be responsible for low voter turnout. Federal law now prohibits any state from requiring more than a 30-day waiting period.

Most recently, in 1993 Congress passed the National Voter Registration Act - the "**motor-voter**" bill - that allows people to register to vote while applying for or renewing a driver's license. The act also requires states to provide assistance to facilitate voter registration. Removal of names from voting rolls for nonvoting is no longer allowed. Supporters of the law claim that it will add some 49 million people to the voting rolls, but of course it remains to be seen whether or not the actual percentages will increase. In general, Democrats have been more supportive of the bills than Republicans because they believe that the demographics of new voters might favor the Democratic Party. However, the tremendous increase in voter registrations in 2004 did not particularly benefit the Democrats, as many of the new voters supported the Republicans.

Neither the 1996 nor 2000 presidential elections showed increases in voting percentages, with only some 50% of eligible voters actually voting, a figure even lower than those for most other recent elections. The voting increase in 2004 was generally attributed to hard work by the political parties to get people registered and to the polls, and not to the motor-voter bills.

Other Reasons for Low Voter Turnouts

Several other reasons are often cited for low voter turnout in the United States:

- **The difficulty of absentee voting:** Even if citizens remember to register ahead of time, they can only vote in their own precincts. If a voter is out of town on election day, he or she has to vote by absentee ballot. States generally have stringent rules about voting absentee. For example, some states require a voter to apply for a ballot in person.
- **The number of offices to elect:** Some critics argue that because Americans vote for so many officials on many different levels of government, they cannot keep up with all the campaigns and elections. As a result, they don't know who to vote for, and they don't vote. Americans vote for more public officials and hold more elections by far than any other modern democracy. In most states, primary elections, general elections, and special elections are held every year or two.
- **Weekday, non-holiday Voting** - In many other democracies, elections take place on weekends. Others that hold elections on weekdays declared election day a national holiday so that no one has to go to work. By law, national general elections in the United States are held on the Tuesday after the first Monday in November in even-numbered years. Most state and local elections are also held during the week, and only a few localities declare election day a national holiday. Many people find it difficult to get off work in order to vote.
- **Weak political parties:** In many countries, parties make great efforts to get people to the polls. Even in earlier days in the United States, parties called their members to ensure that they register and that they vote. Parties also would often provide transportation to the polls. Although parties still stage 'get-out-the-vote campaigns', parties today are not as strongly organized at the "grass roots"; or local- level as they used to be. However, this may be changing, since the parties did actively get out the vote in 2004, and they were aided by groups known as "527s" (for the part of the tax code that allows them to be tax-free). These groups financed massive get-out-the-vote campaigns for both presidential candidates.

In some studies that compare political participation rates in the United States with other countries, Americans tend to engage more frequently in non-electoral forms of participation, such as campaign contributions, community involvement, and contacts with public officials.

Does it really matter that the U.S. has a low voter turnout rate? Some say no because they think it indicates that Americans are happy with the status quo. On the other hand, others say that a low voter turnout signals apathy about our political system in general. If only a few people take the time to learn about the issues, we are open to

takeover and/or manipulation by authoritarian rule. The higher voter turnout in 2004 did not result in a change of presidents, but may have resulted from a two-sided struggle over whether or not a change should take place. Or, it may indicate that citizens are indeed becoming more interested in taking part in the political process.

Did the expansion of suffrage lead to lower voting rates by widening the voting base? Will the Motor-Voter Law eventually improve voting rates? Is voter registration still too difficult a process? Do we need to move elections to weekends? Do we need fewer elected positions? Or do low voter turnouts just indicate that people are happy with government and don't feel the need to vote? Do the higher voting rates in the election of 2004 indicate a turnaround in political participation, or do they simply reflect an enthusiasm for that particular presidential race? Whatever the reasons, the United States today still has a lower voting rate than most other modern democracies.

IMPORTANT DEFINITIONS AND IDENTIFICATIONS:

Crisscross voting influences	Political participation	15 th Amendment
Jim Crow Laws	Registered vs. eligible voters	19 th Amendment
Motor voter laws	Universal manhood suffrage	26 th Amendment

CHAPTER SIX: POLITICAL PARTIES

Today many Americans take pride in their status as “independent voters,” partly because they see parties as lacking vision for the country. Since many people think that each of the major parties only cares about defeating or humiliating the other, they avoid identification as a “loyal Democrat” or a “staunch Republican.” These negative attitudes toward parties are rooted in the roles that they play in American politics.

In most democracies political parties are important institutions that link citizens to their government. The founders of the U.S. political system hoped to avoid the “mischief” of political factions when they envisioned a government with enough points of influence to make parties unnecessary. James Madison reflected in his famous Federalist #10 that political factions are necessary evils to be controlled by federalism and separation of powers, but the founders still believed that political parties such as those that dominated British politics could and should be avoided at all costs. Of course, parties appeared almost as soon as the new government was created, with their origins in the disagreements between two of Washington's cabinet members, Thomas Jefferson and Alexander Hamilton. Some observers believe that modern avoidance of political party labels may have been reversed by the election of 2004. Voter participation increased dramatically in that year, partly because of almost unprecedented efforts by both Republicans and Democrats, again reflecting that parties are an integral part of the American political system.

FUNCTIONS OF POLITICAL PARTIES

Political parties fulfill the following functions in the American political system:

- **Connecting citizens to their government** - Parties are one of several **linkage institutions** that connect people in a large democracy to the government. In any country with a population large enough to form a representative democracy, institutions that link the people to government are a necessity. Modern linkage institutions include interest groups, the media, elections, and political parties. Party ideology and organization increase **political efficacy** by helping citizens to make sense of government decisions and processes and to feel that government listens to them.
- **Running candidates for political office** - Parties pick policymakers and run campaigns. Most elected officials, whether at the local, state, or national level, run as nominees of a major political party. Whereas personal wealth certainly helps, most candidates rely on the party organization to coordinate and fund their political campaigns.
- **Informing the public** - Parties articulate policies and give cues to voters. Although both major parties are by necessity broadly based, they each convey an image and endorse policies that help voters decide which candidates to support.
- **Organizing the government** - Parties often coordinate governmental policy-making that would be more fragmented among the three branches and the local, state, and federal levels. Informal relationships between officials in different parts of government but with similar partisan ties can make policy-making go more smoothly.

WHY A TWO PARTY SYSTEM?

Most modern democracies have a multi-party system, so the United States is definitely in the minority with its two party system, one of only about fifteen in the world today. Even though a number of third parties have emerged in the course of U.S. history, none have endured, and with the exception of a short period in the early 1800s, two major political parties have always competed with one another for power in the system. Three important reasons for the American two-party system are:

- **Consensus of values** - It is easy to complain about petty bickering between Democrats and Republicans. What we sometimes forget is that Americans share a broad consensus, or agreement, of many basic political values. Both parties believe in liberty, equality, and individualism. Neither advocates that the Constitution be discarded, and both accept the election process by conceding defeat to the winners. In many countries with multi-party systems, the range of beliefs is greater, and disagreements run deeper.
- **Historical influence** - The nation began with two political parties – the Federalists and the anti-Federalists. During early American history politicians tended to take sides, starting with the debate over the constitution,

and continuing with the disagreements within George Washington's cabinet. The tendency has persisted throughout American history.

- **The Winner-Take-All System** - The single most important reason for a two-party system is the **winner-take-all** or **pluralist** electoral system. This system contrasts to those with **proportional representation** where the percentage of votes for a party's candidates is directly applied as the percentage of representatives in the legislature. The winner in American elections is the one who receives the largest number of votes in each voting district. The winner does not need to have more than 50 percent, but only one vote more than his or her closest competitor. This process encourages parties to become larger, embracing more and more voters. So third parties have almost no hope of getting candidates into office, and their points of view tend to fall under the umbrella of one or both of the big parties.

ORGANIZATION OF THE TWO-PARTY SYSTEM

In contrast to most large economic organizations, such as corporations, the people at the top of the party organizations do not have a lot of power over those at the lower levels. Instead, the parties have strong "**grass roots**," or state and/or local control over important decisions. To be sure, each has a national committee that organizes a convention every four years to nominate a president. Each party has a national chairperson who serves as spokesperson, and it least nominally coordinates the election campaign for the presidential candidate. In reality, however, the candidate runs his own campaign, with the help of multiple advisers, including the party chairman. Local party organizations are still very important in political campaigns because they provide the foot soldiers that hand out party literature, call on citizens to register and to come to the polls on election day. In 2004 both parties ran active get-out-the-vote campaigns at the grass roots level, resulting in a very high voter turnout.

The organization of both parties looks very much the same on paper. Both have:

- a national committee composed of representatives from each state and territory.
- a full-time, paid national chairman that manages the day-to-day work of the party.
- a national convention that meets formally every four years during the summer before a presidential election in November.
- a congressional campaign committee that assists both incumbents and challengers
- a broad, not always consistent, ideological base since they must appeal to a large number of voters.

HISTORICAL DEVELOPMENT OF THE PARTIES

Historically, the two-party system has been characterized by long periods of dominance by one party followed by a long period of dominance by the other. The eras begin and end with shifts in the voting population called **realignments** that occur because issues change, and new schisms form between groups.

THE EARLY YEARS

The first two political parties to emerge during Washington's term of office were the **Federalists** and the **Anti-Federalists**. The major issue in the beginning was the ratification of the Constitution, with the Federalists supporting it and the Anti-Federalist wanting guarantees of individual freedoms and rights not included in the original document. The issue was resolved with the addition of the Bill of Rights, but the parties did not disappear with the issue.

The Federalists were led by Alexander Hamilton, the Secretary of the Treasury, and they came to represent urban, business-oriented men who favored elitism and a strong central government. The Federalists supported Hamilton's establishment of the Bank of the United States because they saw it as forwarding their interests and beliefs. The Anti-Federalists came to be known as the **Democratic-Republicans**, led by Thomas Jefferson. They favored strong state governments, rural interests, and a weaker central government. They opposed the bank as an enemy of state control and rural interests.

With Hamilton's death and John Adams' unpopularity as president, Jefferson emerged as the most popular leader at the turn of the nineteenth century. As president he gradually became more accepting of stronger central government, and the two parties' points of view seemed to merge most notably in the "**Era of Good Feeling**" presided over by James Monroe, one of Jefferson's protégés. The Democratic-Republicans emerged as the only party, and their dominance lasted until the mid-1800's, though under a new name, the **Democrats**.

JACKSONIAN DEMOCRACY

The two-party system reemerged with the appearance of Andrew Jackson, who represented to many the expanding country, in which newer states found much in common with the rural southern states but little with the established northeast. A new party emerged, the **Whigs**, who represented many of the interests of the old Federalist party. Jackson's election in 1828 was accomplished with a coalition between South and West, forming the new **Democratic Party**. Jackson's Democrats were a rawer sort than Jefferson's, who were primarily gentlemen farmers from the South and Middle Atlantic states. With the Jacksonian era's **universal manhood suffrage**, virtually all men could vote, so rural, anti-bank, small farmers from the South and West formed the backbone of the Democratic Party. During this era the Democrats initiated the tradition of holding a **national convention** to nominate a presidential candidate. Delegates selected from state and local parties would vote for the candidate, rather than a handful of party leaders who met in secret (called a caucus). The Whigs were left with not only the old Federalist interests, but other groups, such as wealthy rural Southerners, who had little in common with other Whigs. The party was not ideologically coherent, but found some success by nominating and electing war heroes, such as William Henry Harrison and Zachary Taylor.

NORTH/SOUTH TENSIONS

As economic and social tensions developed between North and South by the 1840's and 50's, Whig party unity was threatened by splits between the southern and northern wings.

As the Whigs were falling apart, a new **Republican Party** emerged from the issue of expansion of slavery into new territories. The election of 1860 brought the first Republican - Abraham Lincoln - into office, setting off the secession of southern states, and with them, many supporters of the Democratic Party. The Civil War, then, ended the era of dominance of the Democrats, and ushered in a new Republican era. Voters realigned, then, according to regional differences and conflicting points of view regarding expansion of slavery and states' rights.

THE REPUBLICAN ERA: 1861-1933

With the exception of Grover Cleveland and Woodrow Wilson, all presidents from Abraham Lincoln (1861-1895) through Herbert Hoover (1929-1933) were Republicans. During most of that time, Republicans dominated the legislature as well. By 1876 all of the southern states had been restored to the Union, but their power, as well as that of the Democratic Party, was much diminished.

The Republicans came to champion the new era of the Industrial Revolution, a time when prominent businessmen, such as John Rockefeller and Andrew Carnegie, dominated politics as well as business. The Republican Party came to represent *laissez-faire*, a policy that advocated the free market and few government regulations on business. Ironically, *laissez-faire*, meaning "to leave alone", was the old philosophy of the Jacksonian farmers, who wanted government to allow them to make their own prosperity. The Republican philosophy of the late 1800's favored the new industrialists, not the small farmer of the earlier era.

THE SECOND DEMOCRATIC ERA: 1933-1969

The prosperous, business-oriented era survived several earlier recessions but not the Great Depression that gripped the country after the stock market crash of 1929. The cataclysmic economic downturn caused major realignments of voters that swung the balance of power to the Democrats. The Republican president, Herbert Hoover, was rejected in the election of 1932 in favor of the Democrat's Franklin Roosevelt. Roosevelt's victory was accomplished through forging the "**Roosevelt Coalition**" of voters, a combination of many different groups that wished to see Herbert Hoover defeated. The coalition was composed of eastern workers, southern and western farmers, blacks, and the ideologically liberal.

In their efforts to bring the country out of the depression, Roosevelt's Democrats established a government more actively involved in promoting social welfare. Ironically, the formerly states rights oriented Democrats now advocated a strong central government, but one dedicated to promoting the interests of ordinary people. Democrats dominated both legislative and executive branches. Even the Supreme Court had to rein in its conservative leanings, although it did check Roosevelt's power with the famous "court-packing" case. (In an effort to get more support for his New Deal programs from the Supreme Court, Roosevelt encouraged Congress to increase the number of justices from nine to fifteen and to require mandatory retirement of justices by the age of 70. Roosevelt eventually withdrew his plan).

Roosevelt was elected for an unprecedented four terms and was followed by another Democrat, Harry Truman. Even though a Republican, Dwight Eisenhower, was elected president in 1952, Congress remained Democratic. The Democrats regained the White House in 1960 and retained it throughout the presidencies of John F. Kennedy and Lyndon Johnson. But a new era began with the presidency of Richard Nixon in 1969.

THE ERA OF DIVIDED GOVERNMENT: 1969-2003

Richard Nixon's election in 1968 did not usher in a new era of Republican dominated government. Instead, a new balance of power between the Democrats and Republicans came into being. With a few exceptions, control of the legislature and the presidency has been "divided" between the two major political parties since the late 1940s. When one party holds the presidency, the other has dominated Congress, or at least the Senate.

The division brings with it the problem of "**gridlock**", or the tendency to paralyze decision making, with one branch advocating one policy and the other another, contradictory policy. Scholars have various theories about the causes of the new division of power, but one cause may be the declining power of political parties in general.

The Republican Hold on the Presidency: 1969-1993

From 1969 through 1993, the Republicans held the Presidency except during the Carter Presidency from 1977-1981. Starting in the late 1960's, Republicans began to pay more attention to the power of electronic media and to the importance of paid professional consultants. They converted into a well-financed, efficient organization that depended heavily on professionals to help locate the best candidates for office.

Some experts believe that these changes were largely responsible for Richard Nixon's victory in 1968. Nixon was carefully coached and his campaign was carefully managed to take advantage of electronic media. The campaign made extensive use of public opinion polls to determine party strategy. The new emphasis also influenced the party's choice of candidates in 1980 and 1984, with former television and film actor Ronald Reagan as master of the media. The party also took advantage of new technology and generated computerized mailings to raise large sums of money for campaigns. By the mid-1980's, the Republicans were raising far more money than the Democrats were.

During the same time period, the Democrats were changing in many almost opposite ways from the Republicans. The Democrats became more concerned with grass roots, or common man, representation. The Democrats were reacting at least partly to the break-up of the old Roosevelt Coalition, but also to the disastrous 1968 convention in Chicago that showed the party as highly factionalized and almost leaderless. As a result, they gained a reputation for being unorganized and disunited.

In 1969, the Democratic party appointed a special **McGovern-Fraser Commission** to review the party's structure and delegate selection procedures. The commission determined that minorities, women, youth, and the poor were not adequately represented at the party convention. The party adopted guidelines that increased the representation and participation of these groups. The number of super-delegates, or governors, members of Congress, and other party leaders was reduced substantially. The 1972 convention selected as their candidate George McGovern, a liberal who lost in a landslide to Republican Richard Nixon. Although Democrat Jimmy Carter won the Presidency in 1976, he was defeated by Ronald Reagan in 1980, and the Republican Party held the Presidency until 1993.

Divided Government Today

During the Reagan presidency, the Democrats began to adopt some of the Republican strategies, including computerized mailing lists, opinion polls, and paid consultants. The party managed to get their candidate, Bill Clinton, to the White House in 1993, a position that he held for two terms. However, government remained divided because the Republicans won both houses of Congress in 1994 and held them until 2001, when the Senate regained a Democratic majority. By this time, Republican George W. Bush had been elected President, so the tradition of divided government established in 1969 continued. However, Republicans regained control of the Senate in the election of 2002, and they swept the presidency and both houses of Congress in the election of 2004. These recent events have led some observers to speculate that a new Republican era is beginning, and that divided government as a persistent phenomenon may be ending.

MINOR PARTIES

Whereas two parties have always dominated the American system, minor or third parties have also played a role. Minor parties may be divided into two categories:

- **those dominated by an individual personality**, usually disappearing when the charismatic personality does. One example is Theodore Roosevelt's Bull Moose, or Progressive Party, that was largely responsible for

splitting the Republicans and throwing the 1912 election to the Democrats. Another example is George Wallace's American Independent Party in 1968 and 1972, starting as a southern backlash to the civil rights movement, but eventually appealing to blue collar workers in other parts of the country.

- **those organized around a long-lasting goal or ideology.** Examples are the Abolitionists, the Prohibitionists, and the Socialists. The Abolitionists and Prohibitionists disappeared after their goals were accomplished. The Socialists have remained a minor ideological party throughout the twentieth century, winning almost a million votes in the election of 1912.

Probably the most influential third party in American history was the **Populist Party** of the late nineteenth and early twentieth centuries that first represented the interests of farmers, but was responsible for wide-ranging democratic reforms. The Populists' best known leader was William Jennings Bryan, who was enticed to accept the nomination of the Democratic party first in 1896. The fate of the Populists was the same as for most other third parties: their goals adopted by a major party, deferring to the "winner-take-all, or pluralist system, that supports a two party system. In 1992 Ross Perot, a wealthy Texas businessman, tried to defy the two party system by running for president as an independent without the support of a political party. He hired professional campaign and media advisers, created a high profile on national television interviews, bought a massive number of TV ads, and built a nationwide network of paid and volunteer campaign workers. In the election, he gained 19% of the vote, but did not capture a single electoral vote. In 1996, he again entered the race, but also announced the birth of a third party that fizzled when he received less than half as many votes as he did in 1992. In 2000 Ralph Nader ran for the Green Party, but he won only about 3% of the vote. In 2004 Nader ran as an independent, and the Green Party fielded their own candidates for office, but neither managed to garner many votes.

Minor parties have sometimes had a big impact on American politics when their platforms have been taken over by major parties. For example, Populist reforms for 8-hour workdays for city workers and farm subsidies for rural areas were later pushed forward by the Democratic Party. Third parties have almost certainly affected election outcomes, most obviously in 1912, when Theodore Roosevelt ran for the Progressive Party, splitting the Republican vote and throwing the election to Democrat Woodrow Wilson. Many Democrats believe that Al Gore would have won the election of 2000 had Ralph Nader not run. Likewise, some Republicans claim that Ross Perot was responsible for George H. Bush's loss of the election of 1992.

PARTY POWER: THE EFFECTS OF DEALIGNMENT

In the modern era voter realignments do not appear to be as clear-cut as they once were, partly because of the phenomenon of **dealignment**. Over the past fifty years party identification appears to be weakened among American voters, with more preferring to call themselves "independents." Not only have ties to the two major parties weakened in recent years, but voters are less willing to vote a **straight ticket**, or support all candidates of one party for all positions. In the early 1950s only about 12% of all voters engaged in **ticket splitting**, or voting for candidates from both parties for different positions. In recent years, that figure has been between 20 and 40%. If dealignment indeed is occurring, does this trend indicate that parties are becoming weaker forces in the political system? Many political scientists believe so.

EARLY 20TH CENTURY REFORMS

During the late 1800s party machines, organizations that recruited members by the use of material incentives - money, jobs, places to live - exercised a great deal of control by party "bosses." These machines, such as Tammany Hall in New York City, dictated local and state elections and distributed government jobs on the basis of support for the party, or patronage. The reforms of the early twentieth century Progressive movement, first inspired by the Populist movement, took control of nominations from party leaders and gave it to the rank-and-file. Several important changes - the establishment of primary elections in many states, the establishment of the civil service, the direct election of senators, and women's suffrage - all gave more power to voters and less to the parties.

LATE 20TH CENTURY DEVELOPMENTS

The growing emphasis on electronic media campaigns, professional consultants, and direct-mail recruitment of voter support also may have decreased the importance of parties in the election process. In addition, partly as a result of media influence, candidate organizations, not party organizations, are the most powerful electoral forces today. Office seekers, supported by consultants and media, organize their personal following to win nominations. If they win

office, they are more responsive to their personal following than to the party leadership. The result is less party clout over politicians and policy.

On the other hand, the national party organizations are significantly better funded than they were in earlier days and make use of electronic media and professional consultants themselves. They often function as advisers and all-important sources for campaign funds. Moreover, parties are deeply entrenched organizational blocks for government, particularly Congress. Although they may not be as strong an influence as they once were, parties form a basic building block for the American political system, and they still give candidates labels that help voters make decisions during election time.

THE REALIGNMENT OF 2004?

The Republican sweep of the presidency and Congress in 2004 may be an indication that a major realignment of Americans is underway. The split between the “Red States” (Republican) and the “Blue States” (Democrats) separated states along the west coast, the Northeast, and the Midwest (blue states) from the rest of the country that supported Republican George W. Bush. Voters of both parties appeared to have stronger party loyalties than in recent years, and divisions were especially apparent between rural (Republicans) and urban voters (Democrats). The breakup of the Solid South also appeared to be complete, with long-time Democratic senators resigning and being replaced by Republican. It is too early to tell whether the new divisions will be long-lasting.

IMPORTANT DEFINITIONS AND IDENTIFICATIONS:

Anti-Federalists	gridlock	Straight ticket
Dealignment	Linkage institutions	Ticket splitting
Democratic Republican Party	McGovern-Fraser Commission	Universal manhood suffrage
Divided Government	Political efficacy	Whig Party
Era of Good Feeling	Populist Party	Winner-take-all electoral system
Federalist Party	Proportional representation	
Grass-roots organization	Roosevelt Coalition	

CHAPTER SEVEN: ELECTIONS AND CAMPAIGNS

Elections form the foundation of a modern democracy, and more elections are scheduled every year in the United States than in any other country in the world. Collectively on all levels of government, Americans fill more than 500,000 different public offices. Campaigns: where candidates launch their efforts to convince voters to support them precede most elections. In recent years campaigns have become longer and more expensive, sparking a demand for campaign finance reform. No one questions the need for campaigns and elections, but many people believe that the government should set new regulations on how candidates and parties go about the process of getting elected to public office.

FUNCTIONS OF ELECTIONS

Elections serve many important functions in the United States. Most obviously, elections choose political leaders from a competitive field of candidates. But elections are also an important form of political participation, with voting in presidential elections one of the most common types of participation by the American public in the political process. Elections give individuals a regular opportunity to replace leaders without overthrowing them, thus making elected officials accountable for their actions. Elections legitimize positions of power in the political system because people accept elections as a fair method for selecting political leaders.

GUIDELINES FOR ELECTIONS IN THE UNITED STATES

The Constitution sets broad parameters for election of public officials. For example, the Constitution provides for the election of members of the House of Representatives every two years, and it creates and defines the Electoral College. By law Congress sets the date for national elections – the Tuesday after the first Monday in November. However, most electoral guidelines and rules are still set by the individual states.

ROLE OF POLITICAL PARTIES

Candidates for political office almost always run with a political party label; they are either Democrats or Republicans, and they are selected to run as candidates for the party. The party, however, is not as important as it is in many other democracies. Running for the presidency or Congress requires the candidate to take the initiative by announcing to run, raising money, collecting signatures to get his or her name on the ballot, and personally appealing to voters in primary elections.

In many other democracies, the party controls whether to allow candidates to run and actually puts their names on the ballot. Campaigns become contests between political parties, not individuals. In United States history, parties once had much more control over elections and campaigns than they do today. In the nineteenth century, the Democratic and Republican members of Congress would meet separately to select their nominees for the presidency. Congressional candidates were often chosen by powerful local party bosses, and citizens were more likely to vote a "straight party ticket" than they do now. The power of the party has dwindled as campaign techniques have changed.

WINNER-TAKES-ALL

In most American elections, the candidate with the most votes wins. The winner does not have to have a majority (more than 50%), but may only have a **plurality**, the largest number of votes. Most American elections are **single-member districts**, which means that in any district the election determines one representative or official. For example, when the U.S. Census allots to each state a number of representatives for the U.S. House of Representatives, virtually all state legislatures divide the state into several separate districts, each electing its own single representative.

This system ensures a two-party system in the U.S., since parties try to assemble a large coalition of voters that leads to at least a plurality, spreading their "umbrellas" as far as they can to capture the most votes. The winner-takes-all system contrasts to proportional representation, a system in which legislative seats are given to parties in proportion to the number of votes they receive in the election. Such systems encourage multi-party systems because a party can always get some representatives elected to the legislature.

PRIMARIES AND GENERAL ELECTIONS

Political leaders are selected through a process that involves both primary and general elections.

Primaries

The **primary** began in the early part of this century as a result of reforms of the Progressive Movement that supported more direct control by ordinary citizens of the political system. A primary is used to select a party's candidates for elective offices, and states use three different types:

- **closed primaries** - A voter must declare in advance his or her party membership, and on election day votes in that party's election. Most states have closed primaries.
- **open primaries** - A voter can decide when he or she enters the voting booth which party's primary to participate in. Only a few states have open primaries.
- **blanket (or free-love) primaries** - A voter marks a ballot that lists candidates for all parties, and can select the Republican for one office and a Democrat for another. Only three states have this type - Louisiana, Washington, and Alaska

The state of Iowa has a well-known variation of a primary - a **caucus**. Under this system, local party members meet and agree on the candidate they will support; the local caucuses pass their decisions on to regional caucuses, who in turn vote on candidates, and pass the information to the state caucus, who makes the final decision. In both the primary and caucus, the individual party member has a say in who the party selects to run for office. A number of other states make at least limited use of the caucus in making their choices of candidates.

General Elections

Once the candidates are selected from political parties, they campaign against one another until the general election, in which voters make the final selection of who will fill the various government offices. More people vote in a general election than in the primary, with about 50% voting in recent presidential year elections, as compared to about 25% in primary elections.

CONGRESSIONAL VS. PRESIDENTIAL CAMPAIGNS AND ELECTIONS

Presidential and congressional races follow the same basic pattern: they announce for office, the people select the party candidates in primary elections, party candidates campaign against one another, and the official is chosen in the general election. But presidential and congressional elections differ in many ways.

- Congressional elections are regional (by state for senators and by district for representatives); presidential elections are national.
- Elections to the House of Representatives are less competitive than are those for the Senate or for the presidency. Between 1932 and 1992, incumbents typically won with over 60 percent of the vote. In contrast, the presidency is seldom won with more than 55 percent, with George W. Bush winning with less than 49% of the vote in 2000 and 51% in 2004. During the 1990s, a record number of new freshmen were elected to the House, but the incumbency tradition is still strong.
- Fewer people vote in congressional elections during off years (when there is no presidential election). The lower turnout (about 36%) means that those that vote are more activist, and thus more ideological, than the average voter during presidential years.
- Presidential popularity affects congressional elections, even during off years. This tendency is known as the **coattail effect**. In recent years, presidential popularity does not seem to have as much effect as it used to, with the Democrats suffering a net loss of ten seats when Bill Clinton won the 1992 election. Two years later in 1994 the Republicans retook majorities in both the House and Senate, proving Bill Clinton's coat to have no tails at all. In 2000 Republican George W. Bush narrowly won the White House, but Republicans lost seats in both House and Senate in that election year. However, in 2004, Bush's coattails were substantial, with Republicans gaining seats in both the House and the Senate.
- Members of Congress can communicate more directly with their constituents, often visiting with many of them personally and making personal appearances. The president must rely on mass media to communicate with voters and can only contact a small percentage of his constituents personally.
- A candidate for a congressional seat can deny responsibility for problems in government even if he or she is an incumbent. Problems can be blamed on other members of Congress or better still the president. Even though the president may blame some things on Congress, he must take responsibility ultimately for problems that people perceive in government.

THE ROAD TO THE PRESIDENCY

Campaigns can be very simple or very complex. If you run for the local school board, you may just file your name, answer a few questions from the local newspaper, and sit back and wait for the election. If you run for President, that's another story. Today it is almost impossible to mount a campaign for the Presidency in less than two years. How much money does it take? That is currently an open question, but it certainly involves millions of dollars.

Step 1: Deciding to announce

Presidential hopefuls must first assess their political and financial support for a campaign. They generally start campaigning well before any actual declaration of candidacy. They may be approached by party leaders, or they may float the idea themselves. Many hopefuls come from Congress or a governorship, but they almost never announce for the presidency before they feel they have support for a campaign. Usually the hopeful makes it known to the press that he or she will be holding an important press conference on a certain day at a certain time, and the announcement serves as the formal beginning to the campaign.

Step 2: The Presidential Primaries

Candidates for a party's presidential nominees run in a series of presidential primaries, in which they register to run. By tradition, the first primary is held in February of the election year in New Hampshire. States hold individual primaries through June on dates determined ahead of time. Technically, the states are choosing convention delegates, but most delegates abide by the decisions of the voters. Delegates may be allocated according to proportional representation, with the Democrats mandating this system. The Republicans endorse in some states a winner-take-all system for its delegates. In several states, the delegates are not pledged to any certain delegate. No matter what the system, however, the candidates who win early primaries tend to pick up support along the way, and those that lose generally find it difficult to raise money, and are forced to drop out of the race. The tendency for early primaries to be more important than later ones is called **frontloading**. By the time primaries are over, each party's candidate is almost certainly finalized.

Step 3: The Conventions

The first party convention was held during the presidency of Andrew Jackson by the Democratic Party. It was invented as a democratic or "grass roots" replacement to the old party caucus in which party leaders met together in "smoke-filled rooms" to determine the candidate. Today national party conventions are held in late summer before the general election in November.

Before primaries began to be instituted state by state in the early part of this century, the conventions actually selected the party candidates. Today the primaries determine the candidate, but the convention formally nominates them. Each party determines its methods for selecting delegates, but they generally represent states in proportion to the number of party members in each state.

Even though the real decision is made before the conventions begin, they are still important for stating party platforms, for showing party unity, and for highlighting the candidates with special vice-presidential and presidential candidates' speeches on the last night of the convention. In short, the convention serves as a pep rally for the party, and it attempts to put its best foot forward to the voters who may watch the celebrations on television.

Step 4: Campaigning for the General Election

After the conventions are over, the two candidates then face one another. The time between the end of the last convention and Labor Day used to be seen as a time of rest, but in recent elections, candidates often go right on to the general campaign. Most of the campaign money is spent in the general campaign, and media and election experts are widely used during this time. Because each party wants to win, the candidates usually begin sounding more middle-of-the-road than they did in the primaries, when they were appealing to the party loyalists.

Since 1960 **presidential debates** are often a major feature of presidential elections, giving the candidates free TV time to influence votes in their favor. In recent campaigns, the use of electronic media has become more important, and has had the effect of skyrocketing the cost of campaigns.

CAMPAIGN AND ELECTION REFORM

Two major types of criticisms have emerged in recent years concerning U.S. campaigns and elections: campaign spending and local control of the voting process.

CAMPAIGN SPENDING

Spending for campaigns and elections are criticized for many reasons. Major reforms were passed in 1974 largely as a result of abuses exposed by the Watergate scandal. Other important milestones have been the **1976 Amendments**, ***Buckley vs. Valeo***, and the **Bipartisan Campaign Reform Act of 2002**.

The Reform Act of 1974 has several important provisions:

- A six-person Federal Election Commission was formed to oversee election contributions and expenditures and to investigate and prosecute violators.
- All contributions over \$100 must be disclosed, and no cash contributions over \$100 are allowed.
- No foreign contributions are allowed.
- Individual contributions are limited to \$1,000 per candidate, \$20,000 to a national party committee, and \$5,000 to a political action committee.
- A corporation or other association is allowed to establish a PAC, which has to register six months in advance, have at least fifty contributors, and give to at least five candidates.
- PAC contributions are limited to \$5,000 per candidate and \$15,000 to a national party.
- Federal matching funds are provided for major candidates in primaries, and all campaign costs of major candidates in the general election were to be paid by the government.

The 1976 Amendments allowed corporations, labor unions, and special interest groups to set up **political action committees** (PACs) to raise money for candidates. Each corporation or labor union is limited to one PAC.

Also in 1976 the Supreme Court ruled in **Buckley vs. Valeo** that limiting the amount that a candidate could spend on his or her own campaign was unconstitutional. “The candidate, no less than any other person, has a First Amendment right to engage in the discussion of public issues and vigorously and tirelessly to advocate his own election.”

After the election of 1996 criticisms of campaigns became so strong that special congressional hearings were called to investigate them. Among the criticisms was the overall expense of both Democratic and Republican campaigns, since more money was spent in 1996 than in any previous campaign. President Clinton and Vice-President Gore were criticized for soliciting campaign funds from their offices and the White House, and Attorney General Janet Reno was called on to rule on the legality of their activities. Another major accusation was that contributions were accepted from foreigners, who were suspected of expecting favors for themselves or their countries in return.

Election finance reform was the major theme of Senator John McCain’s campaign for the presidency in 2000. McCain particularly criticized **soft money**: funds not specified for candidates’ campaigns, but given to political parties for “party building” activities. McCain and many others claimed that this money made its way into campaigns anyway. Although McCain did not win the Republican nomination, he carried his cause back to the Senate where he had championed the cause for several years previous to the election. Partly as a result of the publicity during McCain’s campaign, a major reform bill passed in 2002.

The Bipartisan Campaign Reform Act of 2002 banned soft money to national parties and placed curbs on the use of campaign ads by outside interest groups. The limit of \$1000 per candidate contribution was lifted to \$2000, and the maximum that an individual can give to all federal candidates was raised from \$25,000 to \$95,000 over a two-year election cycle. The act did not ban contributions to state and local parties, but limited this soft money to \$10,000 per year per candidate.

ELECTION 2000: LOCAL CONTROL OF THE VOTING PROCESS

The problems with counting the votes in Florida during the 2000 presidential election led to widespread criticism of a long accepted tradition in American politics: local control of the voting process. When Florida’s votes were first counted, Republican George W. Bush received only a few hundred more votes than did Democrat Al Gore. An automatic recount narrowed the margin of victory even further. Since the outcome of the election rested on Florida’s vote counts, the struggle to determine who actually won was carried out under a national spotlight.

America watched as local officials tried to recount ballots in a system where local voting methods and regulations varied widely. Some precincts had electronic voting machines known for their accuracy and reliability. Others used paper punch ballots that often left “hanging chads” that meant that those ballots might not be counted by the machines that processed them. The recount process was governed by the broad principle of determining “intent to vote” that precincts interpreted in different ways. Important questions were raised. Are all votes counted? Are votes in poor precincts that cannot afford expensive voting machines less likely to be counted than are those in affluent areas? Do variations in voting processes subvert the most basic of all rights in a democracy – the right to vote?

The fact that these problems exist in most states across the country caused many to suggest national reform of the voting process. Some advocate nationalizing elections so that all voters use the same types of machines under the same uniform rules. Others have pressured Congress to provide funds for poor precincts to purchase new voting machines. Even the Supreme Court - in its *Bush v. Gore* decision that governed the outcome of the election – suggested that states rethink their voting processes.

THE “527s” OF THE ELECTION OF 2004

The 2002 restrictions of contributions to parties led to the “527” phenomenon of the 2004 presidential campaign. These independent but heavily partisan groups gathered millions of dollars in campaign contributions for both Democratic and Republican candidates. So named because of the section of the tax code that makes them tax-exempt, the 527s tapped a long list of wealthy partisans for money, and so set off a debate as to their legality. The Democrats were the first to make use of the 527s, largely because George W. Bush had a much larger chest of hard money for his campaign. However, the Republicans eventually made use of the 527s too. The groups included America Coming Together and the Media Fund on the Democratic side, and Swift Vets and POWs for Truth and Progress for America Voter Fund for the Republicans.

CRITICAL REALIGNING ELECTIONS

Elections may be important milestones in political history, either marking changes in the electorate, or forcing changes themselves. The strength of one political party or another may shift during critical or realigning periods, during which time a lasting shift occurs in the popular coalition supporting one party or the other. A **critical realigning election** marks a significant change in the way that large groups of citizens votes, shifting their political allegiance from one party to the other.

Realignments usually occur because issues change, reflecting new schisms formed between groups. Political scientists see several realignments from the past, during or just after an election, with the clearest realignments taking place after the elections of 1860, 1896, and 1932.

- **The election of 1860** - The Whig party collapsed due to strains between the North and South and the Republicans under Lincoln came to power. Four major candidates ran for the Presidency, but the country realigned by region: North vs. South.
- **The election of 1896** - The issue was economically based. Farmers were hit hard by a series of depressions, and they demanded reforms that would benefit farmers. The Democrats nominated William Jennings Bryan, a champion of the farmers, and in so doing, alienated the eastern laborers, and creating an East/West split rather than the old North/South split of the post Civil War Era.
- **The election of 1932** - The issues surrounding the Great Depression created the New Deal coalition, where farmers, urban workers, northern blacks, southern whites, and Jewish voters supported the Democrats. As a result, the Democrats became the dominant party.

Since 1932 political scientists agree on no defining realignments, but a **dealignment** seems to have occurred instead. Rather than shifting loyalties from one party to another, people recently have seemed less inclined to affiliate with a political party at all, preferring to call themselves "independents." The trend may have reversed with the election of 2004, when voters lined up according to “red states” (Republicans) and “blue states” (Democrats). In that election the alignments were not only regional, but also urban vs. rural. Many analysts believe that a new alliance may have formed among highly religious people that cuts across traditional faiths, drawing from fundamentalist Protestantism, Catholicism, and even Judaism. These voters identified themselves through their regularly church-going habits, and tended to support Republican candidates for office in 2004.

The expense and length of modern American elections and campaigns have become major issues in politics today. Some recommend that political party spending be more closely monitored, and others believe that overall spending caps must be set. Still others advocate national, not state, control of the primary process in order to reduce the length and expense of campaigns. Whatever the criticisms, American elections and campaigns represent a dynamic and vital link between citizen and government.

IMPORTANT DEFINITIONS AND IDENTIFICATIONS:

527s	Closed primaries	PACs
Bipartisan Campaign Reform Act of 2002	Coat tail effect	Plurality
Blanket primaries	Critical realigning election	Presidential debates
<i>Buckley vs. Valeo</i>	dealignment	Single-member districts
Campaign reform act of 1974	frontloading	Soft money
caucuses	General election	Winner-take-all system
	Open primaries	

CHAPTER EIGHT: INTEREST GROUPS

Imagine a person with an intense devotion to a social cause. Let's say that he or she believes strongly in animal rights, or is distressed about the deteriorating earth environment. Or think of someone else whose work is seriously undervalued, who works very hard but is paid very little money. What can any of these imagined people do to improve their situation? One solution is to start or join a group with similar interests, with the idea that people together can do more to bring about change than people alone. They could organize an **interest group** to put pressure for change on elected officials and policy makers on all levels of government.

An interest group is an organization of people who enter the political process to try to achieve their shared goals. Almost from the beginning, Americans have joined political groups, as noted by Alexis de Tocqueville in 1834, "In no country of the world has the principle of association been more successfully used than in America." Today about 2/3 of Americans belong to such groups. However, Americans historically have distrusted the motives and methods of interest groups. James Madison called interest groups and political parties factions, and he saw federalism and separation of powers as necessary to control their "evils." Since the number of interest groups and the people who participate in them have increased greatly over the past half century, they appear to be even more important today than they have been in the past.

PARTIES, INTEREST GROUPS, PACS, AND 527S

Interest groups, like political parties, are organizations that exist outside the structure of government, but they interact with government in such a way that it is impossible to separate them. Policy making is intertwined with both parties and interest groups so that government would operate very differently without them. In recent years two other type of outside organizations, **political action committees (PACs)** and **527s**, have joined parties and interest groups as major influence on policy making in this country.

PARTIES VS. INTEREST GROUPS

Parties and interest groups have a great deal of common because they represent political points of view of various people who want to influence policy making. This similarity has led some observers to suggest that interest groups may someday even replace parties as linkage institutions to the electorate. However, some significant differences still exist.

- Parties influence government primarily through the electoral process. Although they serve many purposes, parties always run candidates for public office. Interest groups and PACs support candidates, but they do not run their own slate of candidates.
- Parties generate and support a broad spectrum of policies; interest groups support one or a few related policies. So, whereas a party may take a position on gun control, business regulations, campaign finance reform, and U.S. involvement in conflicts abroad, an interest group almost always focuses on one area.

PACS AND 527S

Political action committees (PACs) are the political arms of interest groups, legally entitled to raise voluntary funds to contribute to favored candidates or political parties. Like political parties, PACs focus on influencing election results, but their interest in the candidates is narrowly based because they are almost always affiliated with particular interest groups. The number of PACs has mushroomed over the past 30 years, especially since the Campaign Reform Act of 1974, which limited individual contributions to campaigns. The Act did allow PACs to exist, and most large interest groups formed them as ways to funnel money to their favorite candidates for office. Today more than 4000 PACs represent corporations, labor unions, and professional and trade associations, but the biggest explosion has been in the business world, with more than half of them representing corporations or other business interests. 527 groups, named after a section of the United States tax code, are tax-exempt organizations created primarily to influence the nomination, election, appointment, or defeat of candidates for public office. Although PACs were also created under Section 527 of the Internal Revenue Code, 527s are not regulated by the Federal Election Commission and not subject to the same contribution limits as PACs. During April of 2004, the Federal Election Commission (FEC) held hearings to determine whether or not 527s should be regulated under campaign finance rules, but they decided to delay any ruling until after the 2004 presidential election. During that election 527s, such as Swift Boat Veterans for Truth, Texans for Truth, The Media Fund, America Coming Together, and Moveon.org Voter Fund, raised large sums of money for both parties.

THEORIES OF INTEREST GROUP POLITICS

Are interest groups good or bad for American politics? Different points of view can be separated into three theories with different answers to that question.

ELITIST THEORY

Elitist theory argues that just a few interest groups have most of the power. Although many groups exist, most of them have no real power. The government is run by a few big groups trying to preserve their own interests. Furthermore, an extensive system of interlocking directorates (the same people sitting on several boards of corporations, foundations, and universities) fortifies the control. Elitists believe that corporate interests control a great many government decisions.

PLURALIST THEORY

Pluralist theory claims that interest groups benefit American democracy by bringing representation to all. According to pluralists, some of the benefits of interest groups are:

- Groups provide linkage between people and government. They allow people's voices to be heard in ways that otherwise would be lost.
- The existence of many groups means that any one group can't become too powerful because others counterbalance it.
- Groups usually follow the rules, and those that don't get bad publicity that helps to keep them in line.
- No one set of groups dominates because those weak in one resource are strong in others. So although business interest groups usually have more money, labor groups have more members.

HYPERPLURALIST THEORY

Hyperpluralist theory says that too many groups are trying to influence the political process, resulting in political chaos and contradiction among government policies.

Hyperpluralists argue that the political system is out of control because the government tries to please every interest and allows them to dictate policy in their area. Since all interest groups try to protect their self-interest, the policies that result from their pressure are haphazard and ill-conceived.

THE GROWTH OF INTEREST GROUPS

Interest groups have been a part of American politics since the beginning, but their numbers have grown incredibly in recent years. Some well-known groups, such as the Sierra Club and the National Association for the Advancement of Colored People have existed for a century. Many interest groups, however, are relatively new, with more than half forming after World War II.

Interest groups seems to exist for everyone. Some are broad-based, like the National Association of Manufacturers, but others are almost unbelievably specific, such as the American Cricket Growers Association. Many groups base their organization on economics. More than three-fourths originated from industrial, occupational, or professional membership. In recent years more groups have moved their headquarters to Washington to be as close to the source of power as possible. Today very few occupations or industries go without interest groups to represent them in Washington.

TYPES OF MEMBERSHIP

Membership in interest groups may be classified in two ways: institutional and individual. A group's members may be composed of organizations, such as businesses or corporations, or they may be composed of individuals.

- **Institutional Interests** - The most usual organization represents a business or corporation. Over five hundred firms have lobbyists, public-relations experts, and/or lawyers in Washington, most of them opening offices since 1970. Other institutions represented in Washington are universities, foundations, and governments. For example, city governments are represented through the National League of Cities, and counties through the National Association of Counties. The National Council on Education speaks for institutions of higher learning.
- **Individual Interests** - Individual Americans are much more likely to join religious and political associations than are citizens in other democracies. Many of the organizations they join are represented in Washington and lobby the government for favorable policies for their interest. Many of the largest interest groups have individual, not institutional, membership. For example, the American Federation of Labor - Congress of Industrial Organizations (AFL-CIO), one of the most powerful labor unions, has more than 13 million members. Other well-know groups, such as the NAACP, the Sierra Club, and the National Organization for

Women (NOW), have very large memberships. Religious organizations are also well-represented, such as the influential Christian Coalition.

TYPES OF INTEREST GROUPS

Interest groups may be divided broadly into three general types: economic interests, consumer and public interests, and equality and justice interests. Every interest group does not fit easily into this classification, but many do.

ECONOMIC INTERESTS

Economic groups are concerned primarily with profits, prices, and wages. Although government does not set them directly, government can significantly affect them through regulations, subsidies and contracts, trade policy, and tax advantages.

- **Labor unions** focus on better working conditions and higher wages. To ensure their solidarity, unions have established the **union shop**, which requires new employees to join the union representing them. Employers, on the other hand, have supported right-to-work laws, which argue that union membership should be optional. Some, but by no means all, states have adopted right-to-work laws, but many union members today work in a union shop. In 1970 about 25 percent of the work force belonged to a union, but membership has been declining over the past 25 years or so. By 2000 unions were losing support among the general population, and many strikes were proving to be unsuccessful. However, national labor unions remain today as powerful lobby groups in Washington.
- **Agriculture groups** were once more powerful than they are today, since this once most usual occupation now employs only a small fraction of the American public. For many years, government policies that deal with acreage controls, price supports, and import quotas have been important to farmers. There are several broad-based agricultural groups, such as the National Farmers' Organization and the American Farm Bureau Federation, but equally important are the specialized groups. Different crops have different groups, such as the National Potato Council, the National Peanut Council, and the American Mushroom Institute. As proof of the lobby power of agricultural groups, in May 2002, President George W. Bush signed the Farm Security and Rural Investment Act, which authorized the largest agricultural subsidy in U.S. history.
- **Business groups** - Large corporations, such as General Motors and AT&T, exercise considerable political influence, as do hundreds of smaller corporations. Since the late 1800s government has regulated business practices, and those regulations continue to be a major concern of business interest groups. A less visible type represents trade associations, which are as diverse as the products and services they provide. Examples are life insurance groups, tire manufacturers, restaurants, real estate dealers, and moviemakers. The broadest trade association is the Chamber of Commerce of the United States, a federation of several thousand local chambers of commerce representing more than 200,000 of business firms. The pharmaceutical lobby, which represents many drug manufacturers is one of the most powerful business lobbies with over 600 registered lobbyists. The industry spent close to \$200 million in 1999-2000 for lobbying and campaign purposes.
- **Professional groups** - Some of the most powerful interest groups are **professional groups** that represent various occupations. Some well-known ones are the American Medical Association, the American Bar Association, the American Association of University Professors, and the National Education Association. These groups are interested in the many government policies that affect their professions. For example, lawyers are licensed by states, which set up certain standards of admission to the state bar. The American Bar Association is interested in influencing those standards. Likewise, the American Medical Association has been very involved in recent government proposals for nationally sponsored healthcare reforms, especially as they affect doctors.

CONSUMER AND PUBLIC INTEREST GROUPS

Today over two thousand groups champion causes "in the public interest." They differ from many other interest groups in that they seek a collective good, benefits for everyone, not just the members of the interest groups themselves.

- **Public interest groups** began during the 1960s under the leadership of consumer advocate Ralph Nader. Nader first gained national attention with his book, *Unsafe at Any Speed*, which attacked General Motors'

Corvair as a dangerous and mechanically deficient automobile. Public Interest Research Groups (PIRGs) actively promote environmental issues, safe energy, consumer protection, and good government. PIRGS have a national membership of more than 400,000, making them one of the largest individual membership organizations in the country. Another well known public interest group is Common Cause, founded in 1970 to promote electoral reform and a political process that is more open to the public. The League of Women Voters, a nonpartisan public interest group, sponsored presidential debates until 2000, when the candidates did not agree with debate rules set by the League.

- **Environmental interests** - A special type of public interest group focuses on **environmental interests**. A few, like the Sierra Club and Audubon Society, were founded in the late 19th century, but most were created after 1970. Environmental groups promote pollution control, wilderness protection, and population control. They have opposed strip-mining, oil pipelines, offshore oil drilling, supersonic aircraft, and nuclear power plants. Their concerns often directly conflict with those of corporations whose activities they wish to control. Energy producers argue that environmentalists oppose energy projects necessary to keep our modern society operating.

EQUALITY AND JUSTICE INTERESTS

Interest groups have championed equal rights and justice, particularly for women and minorities. The oldest and largest of these groups is the National Association for the Advancement of Colored People (NAACP). The NAACP has lobbied and pressed court cases to defend equal rights in voting, employment, and housing. The most prominent women's rights organization is the National Organization for Women (NOW) that pushed for ratification of the Equal Rights Amendment (ERA) in the 1970s. Although the amendment did not pass, NOW still lobbies for an end to sexual discrimination. Other organizations that support equal rights are the National Urban League and the National Women's Political Caucus.

HOW INTEREST GROUPS WORK

Interest groups generally employ four strategies for accomplishing their goals: lobbying, electioneering, litigation, and appealing to the public for support.

LOBBYING

To **lobby** means to attempt to influence government policies. The term was originally used in the mid-seventeenth century to refer to a large room near the English House of Commons where people could plead their cases to members of Parliament. In early United States history, lobbyists traditionally buttonholed members of Congress in the lobbies just outside the chambers of the House or Senate. In the nineteenth century lobbyists were seen as vote buyers who used money to corrupt legislators. Today lobbying is regarded less negatively, but the old stereotypes still remain.

Lobbyists today influence lawmakers and agency bureaucrats in many different ways than cornering them outside their work places. Some of their activities include:

- contacting government officials by phone or letter
- meeting and socializing at conventions
- taking officials to lunch
- testifying at committee hearings.

Members of Congress have learned to rely on lobbyists for information and advice on political strategy. How effective is lobbying? Lobbying clearly works best on people already committed to the lobbyist's point of view, so much of it is directed at reinforcing and strengthening support.

ELECTIONEERING

In order to accomplish their goals, interest groups need to get and keep people in office who support their causes. **Electioneering**, then, is another important part of the work that interest groups do. Many groups aid congressional candidates sympathetic to their interests by providing money for their political campaigns.

Today PACs do most of the electioneering. As campaign costs have risen, PACs have helped pay the bills. About half of the members of the House of Representatives get the majority of their campaign funds from PACs. PACs overwhelmingly support incumbents, although they sometimes play it safe by contributing to the campaigns of

challengers as well. Incumbents, however, have voting records to check and also are likely to be reelected. Most candidates, including incumbents, readily accept PAC money.

LITIGATION

If interest groups cannot get what they want from Congress, they may sue businesses or the federal government for action. Environmentalist groups have used this tactic successfully to force businesses to follow government regulations. Even the threat of lawsuits may force businesses to change their ways.

Lawsuits were used successfully during the 1950s by civil rights groups. Civil rights bills were stalled in Congress, so interest groups, such as the National Association for the Advancement of Colored People, turned to the courts to gain a forum for school desegregation, equal housing, and labor market equality.

Interest groups may influence court decisions by filing **amicus curiae** ("friends of the court") briefs, which consist of written arguments submitted to the courts in support of one side of a case or the other. In particularly controversial cases, many briefs may be filed on both sides of the issue. For example, in the case of *Regents of the University of California v. Bakke*, which challenged affirmative action programs as reverse discrimination, over a hundred different groups filed amicus briefings.

Groups may also file **class action lawsuits**, which enable a group of similar plaintiffs to combine their grievances into a single suit. A famous example is *Brown v. the Board of Education of Topeka* in 1954, which not only represented Linda Brown in Topeka, Kansas, but several other children similarly situated around the country.

APPEALING TO THE PUBLIC

Interest groups sometimes may best influence policy making by carefully cultivating their public image. Labor interests may want Americans to see them as hard-working men and women, the backbone of the country. Farmers may favor an image that represents old-fashioned values of working close to the earth in order to feed everyone else. Groups that suffer adverse publicity, like meat and egg producers whose products have been criticized for their high cholesterol and fat content, often advertise to defend their products. Their goal may be not only to promote business and sell their products, but to keep a favorable position among lobby groups in Washington. Because these ads do not directly affect the lobbying process, it is difficult to tell just how successful they are, but more and more groups are turning to high-profile ad campaigns.

THE "RATINGS GAME"

One well-known activity of interest groups is "rating" members of Congress in terms of the amount of support they give to legislation that is favorable to their causes. Many interest groups use these rating systems to describe members' voting records to interested citizens, and other times they use them to embarrass members. For example, environmental groups identified the twelve representatives that were most likely to vote against environmental bills, and named them "the Dirty Dozen." The typical scheme ranges from 0 to 100 percent, reflecting the percentage of times the member supports the group's legislative agenda.

WHERE DO INTEREST GROUPS GET THEIR MONEY?

Most interest groups have to work hard to raise money, but individual membership organizations have more trouble than most. In addition to dues collected from members, groups receive money from three important sources: foundation grants, federal grants and contracts, and direct mail.

- **Foundation grants** - Public interest groups particularly depend on **foundation grants**, funds established usually by prominent families or corporations for philanthropy. The Ford Foundation, for example, contributes to liberal public-interest groups, and the Rockefeller Family Fund almost single-handedly supports the Environmental Defense Fund. The Bill and Linda Gates Foundation supports many endeavors, including public education.
- **Federal grants and contracts** are not granted directly to organizations for lobbying purposes, but they may be given to support a project the organization supports. For example, Jesse Jackson's community-development organization called PUSH was heavily supported by federal grants from various agencies. The Reagan administration reduced grants to interest groups, at least partly because much of the money was going to liberal causes.

- **Direct solicitation** - Most groups heavily rely on direct mail to solicit funds. By using computers, groups can mail directly to selected individuals identified from lists developed by staff or purchased from other groups. Many groups maintain websites that encourage visitors to contribute to their causes.

EFFECTIVE INTEREST GROUPS

Many factors contribute to the success of an interest group, including its size, intensity and financial resources.

- **Size** - It seems logical that large interest groups would be more effective than small ones, but almost the opposite is true. If a group has a large membership, it tends to have a **free rider** problem. Since there are so many members, individuals tend to think someone else will do the work. It is inherently easier to organize a small, rather than a large, group for action, and interest groups are no exception. The problem is particularly acute for public interest groups who seek benefits for all, not just for themselves. In contrast, smaller business-oriented lobbies often provide tangible, specific advantages for their members.
- **Intensity** - Groups that are intensely committed to their goals are quite logically more successful than those that are not. A single-issue group, devoted to such causes as pro-life, anti-nuclear energy, or gun control, often is most intense. Their members often are willing to actively protest or push for legislation. For example, the proponents of gun control gathered their forces more intensely after the presidential advisor Jim Brady was shot and almost killed during the assassination attempt on Ronald Reagan in 1982. They gathered support from Brady's wife and launched a campaign to regulate guns that culminated in the passage of the Brady Bill in 1993
- **Financial resources** - An interest group has only a limited influence if it does not have financial resources adequate to carry on its work. Most of their activities - such as lobbying, electioneering, and writing amicus curiae briefs - cost money, so successful fund-raising is crucial to the success of any type of interest group.

THE "REVOLVING DOOR"

Interest groups are often criticized for a type of interaction with government known as the "**revolving door**." Through this practice, government officials - both in Congress and executive agencies - quit their jobs to take positions as lobbyists or consultants to businesses. Many people fear that the "revolving door" may give private interests unfair influence over government decisions. For example, if a government official does a favor for a corporation because he or she is promised a job after leaving government, then the official is not acting for the good of the public.

How widespread is this practice? Does it compromise the government's ability to act only for the public good? The evidence is uncertain. There are high-profile cases, such as that of Michael Deaver, Ronald Reagan's deputy chief of staff who was convicted of perjury after he left his position to work in the private sector. An investigation found that he used government contacts to help the clients of his public-relations firm. On the other hand, businesses argue that former government officials seldom abuse their jobs while in office, and that there is nothing wrong with seeking advice from those who have been in government. According to this point of view, former government employees should be able to use their expertise to gain employment in the private sector.

So, are interest groups contributors or distracters from the democratic process? Do they help or hinder the government in making good decisions that benefit citizens of the country? Does our system of checks and balances work well in keeping the influence of particular groups in proportion to that of others? Whatever your point of view, it is clear that interest groups have had a long-lasting influence on the American political system, and they show no signs of weakening now or in the near future.

IMPORTANT DEFINITIONS AND IDENTIFICATIONS:

527s

amicus curiae

class action lawsuits

electioneering

Elitist theory

Foundation grants

Free rider problem

Hyperpluralist theory

Individual interests

Institutional interests

Interest groups

lobbying

Pluralist theory

Political action committees

Public interest groups

The "ratings game"

Revolving door

Union shop

CHAPTER NINE: MASS MEDIA

Any study of linkage institutions would be incomplete without a consideration of the role that mass media plays in the American political system. Political parties and interest groups serve as important links between citizens and government, but an increasingly important component is mass media that provides information, and also shapes, fosters, or censors it. Mass media has become such an integral part of the political system that it is sometimes called “**the fourth branch**” of government, and it both reflects and influences public opinion. The media link public opinion and the government, and the influence of the mass media on politics is enormous.

THE FUNCTIONS AND STRUCTURE OF THE MEDIA

Mass media may be broken down into three major components: print media, electronic media, and the internet. Print media has played a role in American politics almost from the beginning, when the early political parties published their own, very partisan newspapers. Electronic media became a force during the 20th century, first with the invention of radio, and later the invention and widespread access to television. The internet first came to be used in the early 1970s by the government, and developed into a major medium of communication by the century’s end.

FUNCTIONS OF THE MEDIA

The mass media perform a number of functions in American society, and all have an impact on the political system.

- **Entertainment** - Radio and television both emphasize entertainment, with prime-time ratings for television often making or breaking the overall success of the networks and individual stations. Particularly in recent years politics has been a topic for entertainment, with numerous movies focused on the president as the star of fictional political sagas. A popular TV series, *The West Wing*, began as an obvious take-off on the real White House Office of President Bill Clinton, but it survived the transition to the very different style and personnel of George W. Bush’s staff. Popular late-night shows, such as *Saturday Night Live*, also entertain people with their humorous treatment of political figures and events. This type of entertainment may play an important role in political socialization, shaping opinions of political institutions and practices at the same time they are entertaining us.
- **News Reports** - Reporting the news has been a major function of print media since the early 19th century, and newspapers and magazines remain an important source for people interested in simply finding out what is happening in the country and the world outside. Today more people rely on television than on newspapers and magazines to provide news. In the early days of television, news was generally reported early every evening in a fifteen-minute segment before the night’s entertainment began. Today network news has expanded to thirty and sixty minute segments, but cable television has made round-the-clock news reporting possible, with CNN, Fox News, and MSNBC focusing on news stories and commentaries virtually 24 hours a day.
- **Agenda Setting**- One important source of political, social, and economic power is the ability of the media to draw public attention to particular issues. Equally important are the issues that the media *doesn’t* focus on. For example, the media may promote terrorism as a major issue in American society by airing the latest tape by Osama bin Laden, but Americans may remain unconcerned about the AIDS epidemic in Africa because the media is silent about that issue. The media may promote a president’s agenda by focusing on his proposals, or they may distract from a president’s agenda by focusing on a “sideshow,” such as they did with Bill Clinton’s personal and financial life. Conservative radio hosts, such as Rush Limbaugh, have developed large audiences that are influenced not just by the opinions expressed, but are also encouraged to focus on some issues but not on others.
- **Creation of Political Forums** - Politicians have learned to use the mass media to make important announcements or to encourage citizens to focus on their issues. The media wants to make politics interesting so that viewer ratings remain high, so politicians often respond by “making news” that will draw attention from the media. A presidential candidate may dress up in hunting gear, or pose in a “photo op” with a respected former president, as John Kerry did in 2004. Members of Congress may call attention to their causes through filibusters or public announcements of popular legislation passed. The individual that has the most direct access to the media is the president, who may command prime time for important

announcements and speeches. Presidential press conferences usually get extensive coverage, and the president's daily activities are followed carefully.

THE STRUCTURE OF THE MEDIA

In the past 50 years, the broadcast, or electronic, media have gradually replaced the print media as the main source of political information. Today, the internet is the most rapidly growing type of mass media.

- **Print Media** - Most newspapers today are still locally based, although many of them are part of massive media conglomerates, such as Gannett, Knight, Ridder, and Newhouse. However, papers such as *The New York Times* and *The Washington Post* have a national readership that makes them an important force in policymaking. Most magazines do not focus on politics, but news magazines, such as *Time*, *Newsweek*, *U.S. News and World Report*, *Nation*, and *New Republic*, have considerable influence on American government and politics.
- **Electronic Media** - Radio was first invented in 1903, but made its big debut in politics when a Pittsburgh station broadcast the 1920 election returns. President Franklin Roosevelt used radio successfully in his "fireside chats" to the nation. Despite the advent of television in the mid-20th century, radio remains an important linkage institution, especially since many Americans spend time in their cars for work commutes and travel. Conservative talk shows provide commentary on national politics, and National Public Radio puts a great deal of focus on political events and personalities. Television's influence on the American public is tremendous, especially with the advent of cable television. Americans not only get information from television, but they also listen to commentaries and analysis of the news.
- **The Internet** - Internet technology and access has transformed communications in a very short period of time, particularly during the late 1990s and early 21st century. The internet has become a tool for researching almost any topic under the planet, and also serves as a major entertainment outlet for millions. People across the globe may instantaneously contact one another by e-mail, and written letters have almost become a thing of the past. Today "**blogs**" and list serves devote much time to political topics, and provide an interactive forum for people to express and react to political opinions. Internet communications played an integral role in the election campaign of 2004, when candidates raised unprecedented amounts of money on campaign websites. In addition, 527s established internet sites that not only raised money, but spread their influence through interactive "chats." On election day in 2004, electronic news media pledged to not make public reports from exit polls until everyone had voted. However, internet sources made no such commitment, and strong rumors passed around the websites that predicted victory for Democratic candidate John Kerry. The predictions were wrong, and President George W. Bush was reelected, but the election affirmed the growing political influence of the internet.

GOVERNMENT REGULATION OF THE MEDIA

As a general rule, print media has much fewer government restrictions than does electronic media. The First Amendment to the Constitution has been interpreted to mean that no government, federal or state, can place "**prior restraint**" on the press before stories are published. Once something is published, a newspaper or magazine may be sued or prosecuted for libel or obscenity, but these charges are very difficult to prove. Most journalists value **confidentiality of sources**, or the right to keep the sources for their information private. However, the Supreme Court has upheld the right of the government to compel reporters to divulge information as part of a criminal investigation, so the conflict between reporters and the government is still an issue.

In contrast, broadcasting is carefully regulated by the government. No one may operate a radio or television station without a license from the **Federal Communications Commission**. The government must renew licenses, and until recently the FCC used its power of renewal to influence what the station put on the air. For example, they might require a network to change their depictions of racial or ethnic groups, restrict the number of commercials aired, or decrease the number of shows that emphasize violence. In recent years a movement to deregulate both television and radio has taken hold. With the increasing choice of television and radio shows available to the American public, supporters of deregulation argue that competition should be allowed to determine how each station defines and serves community needs. Now many of the old rules are less vigorously enforced. Radio broadcasting has been deregulated more than televisions, and in 1996 the **Telecommunications Act** allowed one radio company to own as many as eight stations in large markets and as many as it wished nationally.

Despite these recent trends, the content of radio and television is still regulated in ways that newspapers and magazines are not. One example is the **equal time rule** that requires a station selling time to one candidate for office to make the same amount of time available to another. Also in force is the **right-of-reply rule** that allows a person who is attacked on a broadcast the right to reply over that same station. A candidate may also reply if a broadcaster endorses an opponent. For many years a **fairness doctrine** was in place, which required broadcasters to give time to opposing views if they broadcast a program giving one side of a controversial issue. The FCC abolished the doctrine in 1987, arguing that it inhibited the free discussion of issues. However, most broadcasters still follow the rule voluntarily.

THE IMPACT OF MEDIA ON POLITICS

The media influences the political system in many ways, as reflected in the functions of the media summarized earlier in this chapter. Electronic media has been criticized for forcing political figures and events to conform to “**sound bites**,” or comments compressed into several-second segments. Although newspapers and magazines have longer formats, most Americans today are much more reliant on television and radio for their news. As a result, stories are boiled down to their basics, and those that don’t fit are not covered. The impact of the internet is yet to be seen, but the interactive nature of the medium allows the user to spend as much or little time with an issue as he or she likes.

THE MEDIA AND POLITICAL CAMPAIGNS

Media influence is probably most obvious during political campaigns for office, especially during presidential years. Because television is the primary news source for Americans, candidates and their consultants spend much of their time strategizing as to how to use it to their benefit. Television is widely used by presidential and senatorial candidates, and increasingly by candidates for the House of Representatives.

- **Advertising** - Television advertising is very expensive, and as a result, the cost of campaigns has skyrocketed. Most campaign ads are negative, making them even more controversial. The typical pattern is for one candidate to “attack” the other, who in turn “counterattacks.” Even though most people claim to dislike these ads, political consultants believe that they work, so it appears as if negative ads have become the norm. Critics worry that this type of advertising reduces political participation and encourages citizens to be cynical about politics.
- **News Coverage**- Television ads cost money, but news coverage -- as long as you can get it -- is free. So candidates and consultants spend a great deal of time planning “news events” that will be covered on the evening news and by cable news shows. They may also arrange to be invited to appear on news shows to comment on particular issues or events. As a result, an invitation to appear on CNN’s *Larry King* show can be worth thousands of dollars in campaign ads. Some campaign staff specialize in media techniques, such as camera angles, necessary equipment, timing, and deadlines, so that even if the news coverage is free the advice is not. An important position on any campaign staff is that of **spin doctor**, or one who tries to influence journalists with interpretations of events that are favorable to a particular candidate.
- **Presidential Debates** - The most famous series of television events in American politics are the presidential debates. The television precedent was set in 1960, when the Democratic candidate, John Kennedy, was generally perceived to “defeat” the sitting Vice President Richard Nixon. Challengers generally benefit more than incumbents from the debates because they are not as well known. However, the results are often unpredictable, since usually the differences come down to style. Both candidates are prepared extensively for the debates, and usually don’t make any serious mistakes. An exception occurred in 1976 when President Gerald Ford argued that eastern European countries were not communist. In 2004 President George W. Bush was criticized for inconsistent performances over the course of the debates, but challenger John Kerry was widely criticized by the media (and the Republican Party) for bringing up the sexual orientation of Vice President Cheney’s daughter. The debates give the public an opportunity to see both candidates together, and even though the ability of debates to change votes has been questioned, they are now a part of political campaigning tradition.

THE MEDIA AND GOVERNMENT OFFICIALS

The media impacts all officials in government on local, state, and national levels. Town newspapers often cover local school board candidates, and town meetings often appear in full broadcasts on local television stations. Governors ö

particularly those in large states ö often have staff members that help them with news coverage. On the national level, members of Congress must share the stage with 534 others. However, party leaders and committee chairmen often play to media events. The importance of the presidency is reflected in the existence of the **White House press corps** that is assigned full-time to cover the activities of the president. Once or twice a day they are briefed by the president’s **press secretary**, who is responsible for handling the press corps. Because the reporters are in close proximity to the president, they tend to report almost every visible action he takes. Presidents, then, live their lives in public view, a situation that they may use to their benefit since they have a built-in audience. However, the need to get a story may lead reporters to emphasize the trivial and leave a president frustrated by a focus on matters he considers to be unimportant.

The media do not make direct policy decisions, but their influence on American government and politics is tremendous. Whether they manipulate the policymakers or are manipulated by the politicians is a matter of some dispute, but their presence is an integral part of American society. They link the public to government and often set the public agenda, two very important components of the political system.

IMPORTANT DEFINITIONS AND IDENTIFICATIONS:

agenda setting	Federal Communications	right of reply
“blogs”	Commission	sound bites
confidentiality of sources	“fourth branch”	spin doctor
equal time rule	press secretary	Telecommunications Act of 1996
fairness doctrine	prior restraint	White House press corps

CHAPTER TEN: CONGRESS

The founding fathers intended for Congress to be the central policy-making body in the federal government. Although the power of Congress has fluctuated over the years, today it shares with the presidency and the judiciary the responsibility of making key policy decisions that shape the course of the nation.

THE PEOPLE'S INFLUENCE

Although the founders saw Congress as the body most directly in touch with the people, most people today have negative overall views of both houses. Approval ratings have hovered for years at about 30%, although in recent years those ratings have climbed somewhat higher. Yet the majority of voters express higher approval ratings (60 to 70%) for the members of congress from their districts. Members of Congress are seen as working for their constituents, but Congress as a whole supposedly represents the nation as a whole. These seemingly contradictory expectations create different pressures on members of Congress.

Americans elect their senators and representatives. This direct link between the legislature and the people is a very important part of our democracy. Should Congress, then, reflect the will of the people? Or should they pay attention to their own points of view, even if they disagree with their constituents? Many considerations influence the voting patterns of members of Congress, including the following:

- **Constituents' Views.** Members of congress often visit their home districts and states to keep in touch with their constituents' views. They also read their mail, keep in touch with local and state political leaders, and meet with their constituents in Washington. Some pay more attention than others, but they all have to consider the views of the folks back home.
- **Party Views.** Congress is organized primarily along party lines, so party membership is an important determinant of a member's vote. Each party develops its own versions of many important bills, and party leaders actively pressure members to vote according to party views. It is not surprising that representatives and senators vote along party lines about three-fourths of the time.
- **Personal Views.** What if a representative or senator seriously disagrees with the views of his constituents on a particular issue? How should he or she vote? Those who believe that personal views are most important argue that the people vote for candidates that they think have good judgment. Representatives should feel free to exercise their own personal views. After all, if the people don't like it, they can always vote them out of office.

CONGRESS IN THE CONSTITUTION

At its creation in 1789 the legislative branch was a unique invention. Rule by kings and an emperor was an old style of government, and the legislature in many ways represented the new. Almost certainly, the founders intended that Congress have more important powers than they granted to the president and the judiciary. However, they placed many checks and balances on the legislature that have shaped what we have today. They controlled power not only by checks from the other branches, but by creating a **bicameral (two-House) Congress** – the Senate and the House of Representatives. The powers of Congress are both constitutional and evolutionary.

THE STRUCTURE OF CONGRESS

Originally, the Constitution provided for members of the House of Representatives to be elected directly by the people and the Senate to be chosen by the legislatures of each state. The membership of the House was based on population with larger states having more representatives, and the Senate was to have equal representation, two senators per state. In 1913 the 17th amendment provided for direct election of senators.

A representative was required to be 25 years old, seven years a citizen of the United States, and a citizen of the state represented. A representative's term was set at two years. A senator served a six year term and was to be at least 30 years old, nine years a citizen, and a citizen of the state represented. The number of terms either representatives or senators could serve was not limited. The original number of representatives was 65; in 1911, the size was limited to 435. Representatives are reapportioned among the states every ten years after the census is taken.

CONSTITUTIONAL POWERS

The powers of Congress are defined in Article I, section 8 of the Constitution:

- To lay and collect taxes, duties, imports, and excises
- To borrow money

- To regulate commerce with foreign nations and among the states
- To establish rules for naturalization and bankruptcy
- To coin money
- To fix the standard of weights and measures
- To establish a post office and post roads
- To issue patents and copyrights
- To create courts (other than the Supreme Court)
- To define and punish piracies
- To declare war
- To raise and support an army and navy
- To provide for a militia
- To exercise exclusive legislative powers over the District of Columbia and other federal facilities

In addition the "**elastic clause**" (also called the "necessary and proper" clause) allowed the government 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."

The Constitution also gives each house of Congress some special, exclusive powers. Such powers given to the House of Representatives are:

- **Revenue bills** must originate in the House of Representatives. Although this power is still honored today, it tends to have blurred over the years. Often budget bills are considered simultaneously in both houses, and tax policy has also become a major initiative of the President.
- **Impeachment power**, the authority to charge the president, vice president, and other "civil officers" with "high crimes and misdemeanors" is given to the House. The Senate conducts trials for impeachment, but only the House may make the charge.

Special, exclusive powers given to the Senate are

- **Major presidential appointments** must be confirmed by the Senate. The Senate offers "advice and consent" to the president by a majority vote regarding the appointments of federal judges, ambassadors, and Cabinet positions.
- **Treaties with other nations** entered into by the President must be approved by a two-thirds vote of the Senate. This provision is an illustration of checks and balances, and it has served as a very important restriction to foreign policy powers of the American President.

<i>Important Constitutional Differences between the House and the Senate</i>	
<i>House</i>	<i>Senate</i>
Initiates all revenue bills	Must confirm many major presidential appointments
Initiates impeachment procedures and passes articles of impeachment	Tries impeachment officials
Two-year terms	Six-year terms (One-third up for reelection every two years)
435 members (apportioned by population)	100 members (two from each state)
Members at least 25 years of age, 7 years a citizen	Senators at least 30 years of age, 9 years a citizen
	Approves treaties

EVOLUTIONARY POWERS

The "elastic" (or "necessary and proper" clause) gives Congress the authority to pass laws it deems "necessary and proper" to carry out its enumerated functions. Many congressional powers that have evolved over the years are based on this important clause.

Two important evolutionary powers are:

- **Oversight of the budget.** Congress reviews and restricts the annual budget prepared by the executive branch. When a law is passed setting up a government program, Congress must pass an **authorization** bill that states the maximum amount of money available. When the nation's budget is set, only Congress can set the **appropriations** to the actual amount available in a fiscal year for each program that it has authorized.

- **Investigation.** Congress may investigate both issues that warrant study and wrong doings by public officials. Through committee hearings, Congress has examined issues such as crime, consumer safety, health care, and foreign trade. Although Congress must abide by protected individual rights, their committees have examined many allegations against elected officials. Famous recent investigations include the Watergate and the Clinton-Lewinsky hearings.

LEADERSHIP

Political parties are very important in both the House of Representatives and the Senate today. Even though political parties don't play as big a role in elections as they once did, they still provide the basic organization of leadership in Congress.

After each legislative election the party that wins the most representatives is designated the "**majority**" in each house, and the other party is called the "**minority**." Usually, the same party holds both houses, but occasionally they are split. For example, from 1983-85, the House majority was Democratic and the Senate majority was Republican. The split happened again in 2001, when an evenly divided Senate became Democratic when Senator Jim Jeffords dropped his affiliation with the Republican Party to become an independent. These designations are important because the majority party holds the most significant leadership positions.

LEADERSHIP IN THE HOUSE OF REPRESENTATIVES

The **Speaker of the House** is the most important leadership position in the House. This office is provided for in the Constitution, and even though it says "The House of Representatives shall choose their Speaker and other Officers," in truth the majority party does the choosing. Before each Congress convenes the majority party selects its candidate, who almost always is the person selected. The Speaker typically has held other leadership positions and is a senior member of the party. Around the turn of the century, the Speaker was all powerful, especially under the leadership of Joe Cannon and Thomas Reed. A revolt by the membership in 1910 gave some of the Speaker's powers to committees, but the Speaker still has some important powers:

- recognizing members who wish to speak
- ruling on questions of parliamentary procedure
- appointing members to select and conference committees
- directs business on the floor
- exercising political and behind-the-scenes influence
- appointing members of the committees who appoint members to standing committees
- exercising substantial control over which bills get assigned to which committees
- appointing the party's legislative leaders

The Speaker's most important colleague is the **majority leader**, whose position is often a stepping-stone to the Speaker's position. The majority leader is responsible for scheduling bills and for rounding up votes for bills the party favors.

The **minority leader** is the spokesperson for the minority party, and usually steps into the position of Speaker when and if his or her party gains a majority in the House. Assisting each floor leader are the **party whips**, who serve as go-betweens for the members and the leadership. They inform members when important bills will come up for a vote, do nose-counts for the leadership, and pressure members to support the leadership.

LEADERSHIP IN THE SENATE

The Senate is characterized by its highest positions actually having very little power. By Constitutional provision, the **president of the Senate** is the vice-president of the United States. A vice-president can vote only in case of a tie and seldom attends Senate sessions. The Senate selects from among the majority party a largely ceremonial **president pro tempore**, usually the most senior member in the party. The *president pro tempore* is the official chair, but since the job has no real powers, the job of presiding over the Senate is usually given to a junior senator.

The real leaders of the Senate are the **majority leader** and the **minority leader**. The Senate majority leader is often the most influential person in the Senate, and has the right to be the first senator heard on the floor. The majority leader determines the Senate's agenda and usually has much to say about committee assignments. The majority leader may consult with the minority leader in setting the agenda, but the minority leader generally only has as much say as the majority leader is willing to allow. The Senate also has **party whips** that serve much the same functions as they serve in the House.

COMMITTEES AND SUBCOMMITTEES: CONGRESS AT WORK

Most of the real work of Congress goes on in committees and subcommittees. Bills are worked out or killed in committees, and committees investigate problems and oversee the executive branch.

TYPES OF COMMITTEES

There are four types of committees:

- **Standing committees** are the most important type because they handle bills in different policy areas, thus shaping legislation it a very critical point. The Senate and the House have separate standing committees: the Senate currently has 16 and the House has 19. The numbers may fluctuate slightly, but they tend to "stand" for a long time.
- **Select committees** are formed for specific purposes and are usually temporary. A famous example is the select committee that investigated the Watergate scandal. Other select committees, like the Select Committee on Aging and the Select Committee on Indian Affairs, have existed for a number of years and actually produce legislation. Sometimes long-standing select committees eventually become standing committees.
- **Joint committees** have similar purposes to select committees, but they consist of members from both the House and Senate. They are set up to conduct business between the houses and to help focus public attention on major issues. They investigate issues like the Iran-Contra affair in the 1980s, and they oversee institutions such as the Library of Congress.
- **Conference committees** also consist of members from both the House and Senate, but they are formed exclusively to hammer out differences between House and Senate versions of similar bills. A bill goes to a conference committee after it has been approved in separate processes in the two houses, and a compromise bill is sent back to each house for final approval.

<i>Standing Committees of Congress</i>			
<i>House Committees</i>		<i>Senate Committees</i>	
Agriculture	Judiciary	Agriculture, Nutrition, and Forestry	Finance
Appropriations	Resources	Appropriations	Foreign Relations
Armed Services	Rules	Armed Services	Governmental Affairs
Budget	Science	Banking, Housing, and Urban Affairs	Health, Education, Labor, and Pensions
Education and the Workforce	Small Business	Budget	Judiciary
Energy and Commerce	Standards of Official Conduct	Commerce, Science, and Transportation	Rules and Administration
Financial Service	Transportation and Infrastructure	Energy and Natural Resources	Small Business and Entrepreneurship
Government Reform	Veterans Affairs	Environment and Public Works	Veterans Affairs
House Administration	Ways and Means		
International Relations			

THE WORK OF COMMITTEES

More than 11,000 bills are introduced in the House and Senate over the two-year life span of a Congress, and all of them cannot possibly be considered by the full memberships. Each bill is submitted to a committee that has life or death control over its future. The majority of bills are **pigeonholed**, or forgotten for weeks or forever, and never make it out of committee. They are submitted to a subcommittee that will discuss them and possibly hold hearings for them. About 3000 staff assist the various committees and subcommittees, conducting research and administrative and clerical work. Supporters and critics of the bill appear at the hearings and are questioned by subcommittee members.

The bills that survive this far into the process are then **marked up** (changed or rewritten) and returned to the full committee where they may be altered further. If the committee approves a bill, it will then be sent first to the Rules Committee in the House, and then to the floor. The bill is sent directly to the floor in the Senate

COMMITTEE MEMBERSHIP

Committee membership is controlled by the parties, primarily by the majority party. The chairman and a majority of each standing committee come from the majority party. The remaining committee members are from the minority party, but they are always a minority on the committee. In the House of Representatives, a Committee on Committees places Republicans on committees, and the Steering and Policy Committee selects the Democrats. In the Senate, each party has a small Steering Committee that makes committee assignments. Assignments are based on the personal and political qualities of the member, his or her region, and whether the assignment will help reelect the member.

Getting on the right committee is very important to most members of Congress. A member from a "safe" district whose reelection is secure may want to serve on an important committee that promotes a power base in Washington. On the other hand, a member who has few ambitions beyond his or her current position and whose reelection is less secure may want to serve on a committee that suits the needs of constituents. For example, a less secure representative from rural Kansas may prefer to serve on the Agriculture Committee.

COMMITTEE CHAIRMEN

Committee chairmen are the most important shapers of the committee agenda. Their positions were made more powerful in the House by the 1910 revolt which transferred power from the Speaker to the chairmen. From 1910 until the early 1970s, chairmen were strictly chosen by the **seniority system**, in which the member with the longest continuous service on the committee was placed automatically in the chairmanship. In the early 1970s, the House decided to elect committee chairmen by secret ballots from all the majority members. As a result, several committee chairmen were removed, and although most chairmen still get their positions through seniority, it is possible to be removed or overlooked.

THE RULES COMMITTEE IN THE HOUSE

The Rules Committee in the House of Representatives plays a key role in shaping legislation because it sets very important rules for debate when the bill is presented to the House after it leaves the committee.

- A **closed rule** (sometimes called a "gag rule") sets strict time limits on debates and forbids amendments from the floor, except those from the presenting committee. Under closed rule, members not on the committee have little choice but to vote for or against the bill as it is.
- An **open rule** permits amendments and often has less strict time limits, allowing for input from other members. The Rules Committee is controlled by the Speaker, and in recent years, has put more and more restrictions on bills, giving Rules even more power.

CAUCUSES

Although Congress is organized formally through its party leadership and committee system, equally important is the informal network of **caucuses**, groupings of members of Congress sharing the same interests or points of view. There are currently more than seventy of these groups, and their goal is to shape the agenda of Congress, which they do by elevating their issues or interests to a prominent place in the daily workings of Congress.

Some caucuses are regionally based, such as the Conservative Democratic Forum (also known as the Boll Weevils because they are mostly from the South), the Sunbelt Caucus, and the Northeast-Midwest Congressional Coalition. Others share racial, ethnic, or gender characteristics, such as the Congressional Black Caucus, or the Women's Caucus. One of the oldest is the Democratic Study Group, which encourages unity among liberal Democrats. Others share specialized interests, such as the Steel Caucus and the Mushroom Caucus.

Within Congress caucuses press for committees to hold hearings, and they organize votes on bills they favor.

Caucuses also pressure agencies within the bureaucracy to act according to the interest of the caucus.

STAFF

More than 30,000 people work in paid bureaucratic positions for Congress. About half of them serve as personal staff for members of Congress or as committee staff members. The personal staff includes professionals that manage the member's time, draft legislation, and deal with media and constituents. Staffers also must maintain local offices in the member's home district or state. The average Senate office employs about thirty staff members, but senators from the most populous states commonly employ more. House office staffs are usually about half as large as those of the Senate. Overall, the number of staff members has increased dramatically since 1960.

WHO IS IN CONGRESS?

Members of Congress are far from typical Americans, but they have a number of characteristics in common:

- 90% are male.
- Most are well educated.
- Most are from upper-middle or upper income backgrounds.
- Most are Protestants, although in recent years, a more proportional number have been Roman Catholic and Jewish.
- Most are white, with only a handful of African Americans, Asian Americans, Hispanics, and Native Americans
- The average age of senators is about 60; representative average about 55.
- 40% are lawyers; others are business owners or officers, professors and teachers, clergy, and farmers.

The fact that members of Congress represent privileged Americans is controversial. Some argue that the composition of Congress does not provide adequate representation for ordinary Americans. Others believe that a group of demographically average Americans would have difficulty making major policy decisions and that elites can represent people who have different personal characteristics from themselves.

It is important to note that Congress has gradually become less male and less white. Between 1950 and 2005 the number of women senators rose from 2 to 14, and female representatives have increased from 10 to 68. There were 40 black representatives in the 109th Congress, as compared to 2 in the 82nd (1951-52). Although there is only one black senator in the 109th Congress, there were none in the 82nd Congress. Today, the House has 23 Hispanics, and the Senate has 2. The 109th Congress also has 5 Asian Representatives and 2 Asian senators.

INCUMBENTS

During the 1800s most members of Congress served only one term, returning home to their careers when they completed their service. During the 20th century, serving in Congress has become a lifetime career for most members, and the number of incumbents, or those who already hold the office, with secure seats, has increased dramatically.

Scholars do not agree on all the reasons for the incumbency trend. Some believe that with fewer voters strongly attached to parties, people are voting for individuals, not for candidates because they are Democrats or Republicans. Incumbents have more name recognition than challengers; therefore are more likely to be elected. Incumbents enjoy free mailings (called the franking privilege), more experience with campaigning, and greater access to the media. They also raise campaign money more easily than challengers, because lobbyists and political action committees seek their favors. Today \$8 of every \$10 of PAC money is given to incumbents.

REPRESENTATION

For many years, any state with more than one representative has elected their representatives from single-member districts. Two problems emerged from single-member districting:

- **malapportionment** - For many years states often drew districts of unequal sizes and populations. As a result, some citizens had better access to their representatives than other did. The problem was addressed by the Supreme Court in the 1964 case, *Wesberry v. Sanders*, in which the Court ordered that districts be drawn so that one person's vote would be as equal as possible to another (the "one man one vote" decision).
- **gerrymandering** - This common practice was originally meant to give one political party an advantage over the other. District boundaries are drawn in strange ways in order to make it easy for the candidate of one party to win election in that district). The term "gerrymandering" is derived from the original gerrymanderer, Eldrige Gerry, who had a Massachusetts district drawn in the shape of a salamander, to ensure the election of a Republican. Over the years both parties were accused of manipulating districts in order to gain an advantage in membership in the House.

MINORITY/MAJORITY DISTRICTING

Gerrymandering continues to be an issue today. A more recent form that appeared shortly after the 1990 census is **minority/majority districting**, or rearranging districts to allow a minority representative to be elected, is just as controversial as the old style party gerrymandering. The Justice Department ordered North Carolina's 12th district to redraw their proposed boundaries in order to allow for the election of one more black representative. This action resulted in a Supreme Court case, *Shaw v. Reno*, which the plaintiffs charging the Justice Department with reverse

discrimination based on the equal protection clause of the 14th Amendment. The Court ruled narrowly, but allowed the district lines to be redrawn according to Justice Department standards.

During the 1990s several cases were brought to the Supreme Court regarding racial gerrymandering. The Court ruled in "*Easley v. Cromartie*" (2001) that race may be a factor in redistricting, but not the "dominant and controlling" one. An important result of the various decisions has been a substantial increase in the number of black and Latino representatives in the House.

HOW A BILL BECOMES A LAW

Creating legislation is what the business of Congress is all about. Ideas for laws come from many places – ordinary citizens, the President, offices of the executive branch, state legislatures and governors, congressional staff, and of course the members of Congress themselves. Constitutional provisions, whose primary purposes are to create obstacles, govern the process that a bill goes through before it becomes law. The founders believed that efficiency was the hallmark of oppressive government, and they wanted to be sure that laws that actually passed all the hurdles were the well-considered result of inspection by many eyes.

Similar versions of bills often are introduced in the House and the Senate at approximately the same time, especially if the issues they address are considered to be important. The vast majority of bills never make it out of committee, and those that survive have a complex obstacle course to run before they become laws.

INTRODUCTION OF A BILL

Every bill must be introduced in the House and Senate by a member of that body. Any member of the House simply may hand a bill to a clerk or drop it in a "hopper". In the Senate the presiding officer must recognize the member and announce the bill's introduction. House bills bear the prefix "H.R.", and Senate bills begin with the prefix "S." If a bill is not passed by both houses and signed by the president within the life of one Congress, it is dead and must be introduced again during the next Congress.

In addition to bills Congress can pass **resolutions**, which come in several types:

- A **simple resolution** is passed by either the House or the Senate, and usually establishes rules, regulations, or practices that do not have the force of law. For example, a resolution may be passed congratulating a staff member for doing a good job or having an anniversary. Sometimes simple resolutions set the rules under which each body operates.
- A **concurrent resolution** comes from both houses, and often settles housekeeping and procedural matters that affect both houses. Simple and concurrent resolutions are not signed by the president and do not have the force of law.
- A **joint resolution** requires the approval of both houses and the signature of the president, and is essentially the same as a law. Joint resolutions are sometimes passed when the houses of Congress react to an important issue that needs immediate attention. For example, after the terrorist attacks on New York and Washington on September 11, 2001, Congress passed a joint resolution condemning the attacks and authorizing President George W. Bush to take preliminary military actions.

BILLS IN COMMITTEE

After introduction, a bill is referred to committee, whether in the House or the Senate. The Constitution requires that "all bills for raising revenue shall originate in the House of Representative," but the Senate can amend bills almost beyond recognition. However, because of this special power, the committee in the House that handles revenue legislation - the Ways and Means - is particularly powerful.

Most bills die in committee, especially if they are only introduced to satisfy constituents or get publicity for the member of Congress that introduces it. In the House a **discharge petition** may be signed by 218 members to bring it to the floor, but the vast majority of bills are referred to the floor only after committee recommendation.

CALENDARS

For a bill to come before either house, it must first be placed on a calendar: five in the House, and two in the Senate. The Congressional Calendars are as follows:

House

- **Union Calendar** - Bills to raise revenue or spend money
- **House Calendar** - Nonmoney bills of major importance

- **Private Calendar** - private bills that do not affect the general welfare
- **Consent Calendar** - Noncontroversial bills
- **Discharge Calendar** - Discharge petitions

Senate

- **Executive calendar** - Presidential nominations, proposed treaties
- **Calendar of Business** - all legislation

Before a bill can go to the floor in the House of Representatives, it must first go to the Rules Committee that sets time limits and amendment regulations for the debate. Bills in the Senate go straight from committee to the floor.

FLOOR DEBATE

Important bills in the House, including all bills of revenue, must first be referred to a **Committee of the Whole** that sits on the floor, but is directed by the chairman of the sponsoring committee. The quorum is not the usual 218 members, but 100 members, and the debate is conducted by the committee chairman. Sometimes bills are significantly altered, but usually the bill goes to the full floor, where the Speaker presides, and debate is guided by more formal rules. The bills are not changed drastically, largely because many are debated under closed rules. If amendments are allowed, they must be **germane**, or relevant to the topic of the bill.

Bills in the Senate go directly to the floor where they are debated much less formally than in the House. Senators may speak for as long as they wish, which leads more and more frequently to a **filibuster**, the practice of talking a bill to death. Although one-man filibusters are dramatic, usually several senators who oppose a bill will agree together to block legislation through delay tactics, such as having the roll called over and over again. A filibuster may be stopped by a **cloture**, in which three-fifths of the entire Senate membership must vote to stop debate. For example, Democratic senators have filibustered several of Republican President George W. Bush's nominees to the judiciary, resulting in those judgeships going unfilled. No limit exists on amendments, so riders, or nongermane provisions, or often added to bills from the floor. A bill with many riders is known as a **Christmas-tree bill**, and usually occurs because individual senators are trying to attach their favorite ideas or benefits to their states.

VOTING

Voting is also more formal in the House than in the Senate. House members may vote according to several procedures:

- **teller vote**, in which members file past the clerk, first the "yeas" and then the "nays"
- **voice vote**, in which they simply shout "yea" or "nay".
- **division vote**, in which members stand to be counted
- **roll call vote** which consists of people answering "yea" or "nay" to their names. A roll call vote can be called for by one-fifth of the House membership.
- **electronic voting**, that permits each members to insert a plastic card in a slot to record his or her vote. This form is the most commonly one today.

The Senate basically votes in the same ways, but it does not have an electronic voting system.

CONFERENCE COMMITTEE ACTION

If a bill is passed by one House and not the other, it dies. If a bill is not approved by both houses before the end of a Congress, it must begin all over again in the next Congress if it is to be passed at all. When the House and the Senate cannot resolve similar bills through informal agreements, the two versions of the bill must go to **conference committee**, whose members are selected from both the House and the Senate. Compromise versions are sent back to each chamber for final approval.

PRESIDENTIAL ACTION

A bill approved by both houses is sent to the president who can either sign it or **veto** it. If the president vetoes it, the veto may be overridden by two-thirds of both houses. The president has ten days to act on a proposed piece of legislation. If he receives a bill within ten days of the adjournment of the Congress, he may simply not respond and the bill will die. This practice is called a **pocket veto**.

CRITICISMS OF CONGRESS

Congress is criticized for many things, but these practices are particularly controversial:

PORK-BARREL LEGISLATION/LOGROLLING

By the 1870s members of Congress were using the term “**pork**” to refer to benefits for their districts, and bills that give those benefits to constituents in hope of gaining their votes were called pork barrel legislation. The term comes from the pre-Civil War days when it was the custom in the South to take salt pork from barrels and distribute it among the slaves, who would often rush on the barrels. Critics point out that such actions do not insure that federal money goes to the places where it is most needed, but to districts whose representatives are most aggressive or most in need of votes. A particularly controversial example was the mammoth 2005 Consolidated Appropriations Act, which funded about 11,000 projects, from building a Civil War Theme Park, renovating and building museums and health care facilities, constructing several different halls of fame, and funding community swimming pools and parking garages. The act was criticized largely because so much of the money went to constituencies well represented on the Appropriations Committees in Congress.

Logrolling occurs when a member of Congress supports another member's pet project in return for support for his or her own project. The term comes from pioneer days when neighbors would get together to roll logs from recently cleared property to make way for building houses. This "cooperation" occurs in Congress in the form of "You scratch my back, I'll scratch yours." As with **pork barrel legislation**, bills may be passed for frivolous reasons.

THE TERM-LIMITS DEBATE

The Constitution imposes no limits on the number of terms members of Congress can serve. Just as an amendment was passed during the 1950s to limit the term numbers of presidents, many argue that terms of members of Congress should be limited as well.

With the growing prevalence of incumbency, supporters of **term limits** believe that popular control of Congress has weakened and that members may become dictatorial or unresponsive to their constituents. Others believe that the most experienced members would be forced to leave when their terms expire, leaving Congress without their expertise. The seniority system and methods of selected party leaders would be seriously altered with questionable results. The demand for term limits increased during the 1990s under House Speaker Newt Gingrich's leadership, but Congress did not vote to impose them.

INEFFICIENCY

Particularly in this age where gridlock often slows the legislative process, many people criticize Congress for inefficiency. Some believe that the long process that bills must go through in order to become laws does not work well in modern America. However, the process affirms the Constitutional design put in place by the founders. Their vision was that only well-reasoned bills become law and that many voices should contribute to the process. From that viewpoint, then, the nature of democratic discourse does not insure a smoothly running, efficient Congress, but rather one that resolves differences through discussion, argument, and the eventual shaping of legislation

IMPORTANT DEFINITIONS AND IDENTIFICATIONS

appropriation	gerrymandering	pigeonholing
authorization	incumbency	pork barrel legislation
bicameral	joint committees	<i>president pro tempore</i>
caucuses	logrolling	resolutions: simple, concurrent, joint
“Christmas-tree bill”	majority leader of the House	revenue bills
closed rules, open rules	majority leader of the Senate	select committees
cloture	malapportionment	seniority system
Committee of the Whole	marking up	Speaker of the House
conference committees	minority leader of the House	standing committees
<i>Easley v. Cromartie</i>	minority leader of the Senate	term limits
“elastic clause”	minority/majority districting	votes: teller, voice, division, roll call,
filibuster	oversight	electronic
germane amendments	party whips	

CHAPTER ELEVEN: THE PRESIDENCY AND THE EXECUTIVE BRANCH

When the founders created the three branches of the government, they disagreed about the amount of power to be vested in the executive. Many feared more than anything a strong president whose powers could be compared to those of the king of England. Others believed, in the words of Alexander Hamilton, that "energy in the executive is a leading characteristic of good government." As the modern presidency has evolved, Hamilton's point of view seems to prevail today, as the president is the single most powerful individual in the American political system. Although the checks and balances set in motion in 1787 still operate, the presidency described in the Constitution is much different from the one that we have today.

THE EVOLUTION OF THE PRESIDENCY

Constitutional provisions limited the early presidency, although the personalities of the first three presidents: George Washington, John Adams, and Thomas Jefferson shaped it into an influential position by the early 1800s. However, all through the 1800s up until the 1930s, Congress was the dominant branch of the national government. Then, in the past seventy years or so, the balance of power has shifted dramatically, so that the executive branch currently has at least equal power to the legislative branch. How did this shift happen?

THE PRESIDENCY IN THE CONSTITUTION

Article II of the Constitution defines the qualifications, powers, and duties of the president and carefully notes some important checks of the executive branch by the legislature.

Qualifications

- The president must be a "natural-born citizen." Only individuals born as citizens may seek the presidency; all others are excluded from consideration. This provision has become controversial in recent years, with a movement backing California Governor Arnold Schwarzenegger, a naturalized citizen, for president. Recent Secretaries of State Madeline Albright and Henry Kissinger were also unqualified for the presidency under this constitutional provision.
- The president must have lived in the United States for at least 14 years before his election, although the years don't have to be consecutive.
- The president must be at least 35 years old (in contrast to a minimum age of 30 for a senator and 25 for a representative). This provision has never been seriously challenged, since presidents tend to be considerably older than 35. The youngest presidents were Theodore Roosevelt and John F. Kennedy, who both took office at the age of 43.

Powers and Duties

The Constitutional powers and duties of the president are very limited. Those specifically granted are as follows: According to Article II, Section One, the president holds "the executive power" of the United States. The "executive" was meant to "execute", or administer the decisions made by the legislature. This phrase at least implies an executive check on the legislature, and in fact, has been the source of presidential power over the years.

- **Military power** - The president is commander in chief of the armed services. The intention of the founders was to keep control of the military in the hands of a civilian, avoiding a military tyranny. In Madison's words (Federalist No. 51), "Ambition must be made to counteract ambition." As commander in chief, the president has probably exercised more authority than in any other role. Although Congress has the sole power to declare war, the president can send the armed forces into a country in situations that are the equivalent of war. Congress has not officially declared war since December 8, 1941 (one day after the attack on Pearl Harbor), yet the Country has fought wars in Korea, Vietnam, and the Middle East. Congress attempted to control such military activities when it passed the **War Powers Resolution** in 1973, requiring the president to consult with Congress when activating military troops. The president must report to Congress within forty-eight hours of deploying troops, and unless Congress approves the use of troops within sixty days or extends the sixty-day time limit, the forces must be withdrawn. Even so, the president's powers as commander in chief are more extensive today than they have ever been before.
- **Diplomatic power** -The president makes treaties with foreign nations, but only with the "**advice and consent**" of the Senate. Two-thirds of the Senate must approve a treaty; a president's signature is not enough to make it binding. This provision is a check of the executive by the legislature. However, presidents have gotten around this provision by using **executive agreements** made between the president and other heads of state. Such agreements do not require Senate approval, although Congress may withhold funding to implement them. Whereas treaties are binding on future presidents, executive agreements are not. The

Constitution also gives the president the power of **diplomatic recognition**, or the power to recognize foreign governments. When twentieth century presidents have withheld this recognition, it has often served as a powerful comment on the legitimacy of governments. For example, the U.S. did not recognize the U.S.S.R. government created in 1917 until the 1930s, nor did the president recognize the People's Republic of China (created in 1949) until the early 1970s.

- **Appointment power** - The president appoints ambassadors, other public officers, and judges of the Supreme Court, but again, only with the "**advice and consent**" of the Senate. Two-thirds must confirm the appointments. The president may appoint many lower positions without Senate approval, but those positions are created and defined by Congress. The appointment power is generally limited to cabinet and subcabinet jobs, federal judgeships, agency heads, and about two thousand less jobs. Most government positions are filled by civil service employees, who compete for jobs through a merit system, so presidents have little say over them. Presidents generally have the power to remove executives from power, with a 1926 Supreme Court decision affirming the president's ability to fire those executive-branch officials whom he appointed with Senate approval. Judges may be removed only through the impeachment process, so presidents have little power over them once they have been appointed.
- **Veto power** - A president can veto a legislative bill by returning it, along with a veto message or explanation, within ten days to the house in which it originated. Congress in turn may override the veto by a two-thirds vote. The president may also exercise the pocket veto. If the president does not sign the bill within ten days and Congress has adjourned within that time, the bill will not become law. Of course, the **pocket veto** can only be used just before the term of a given Congress ends.

STRENGTHENING THE PRESIDENCY

From the very beginning, informal influences have shaped the presidency. The framers almost certainly fashioned the president in the image of George Washington, the man unanimously selected to first occupy the office. Washington's qualities of wisdom, moderation, and dignity defined the more formal duties and powers, and his nonpartisan attitudes created expectations for behavior in presidents that followed. Other strong presidents have contributed to the presidency as it exists today, such as Andrew Jackson, who first used the veto power extensively; Abraham Lincoln, who carried the meaning of "commander in chief" to new heights during the Civil War; and Franklin Roosevelt, who formulated sweeping New Deal policies that were finally checked by the Supreme Court. Many informal qualifications, powers, and duties of the president have evolved that are not mentioned in Article II of the Constitution.

Executive Privilege

The Constitution says nothing about presidential rights to keep private communications between himself and his principal advisers, but presidents have traditionally claimed the privilege of confidentiality: **executive privilege**. Their claim is based on two grounds.

- separation of powers keeps one branch from inquiring into the internal workings of another branch.
- Presidents and advisers need the assurance of private discussions to be candid with one another without fear of immediate press and public reaction. This need for privacy is especially important with matters of national security.

Even though Congress has never liked executive privilege, the right was not questioned seriously until 1973 when the Supreme Court addressed the issue directly. As a part of the Watergate investigations, a federal prosecutor sought tape recordings of conversations between Richard Nixon and his advisers. Nixon refused to give the tapes over, claiming executive privilege. In *United States v. Nixon* the Court held that there is no "absolute unqualified presidential privilege of immunity from judicial process under all circumstances." In this case, executive privilege would block the constitutionally defined function of federal courts to decide criminal cases.

Executive privilege has been further defined by *Nixon v. Fitzgerald* (1982), which states that presidents cannot be sued for damages related to official decisions made while in office. In 1997 President Clinton tried to extend this protection to cover all civil suits, but in *Clinton v. Jones* the Court ruled against his argument that civil suits against a chief executive distract him from presidential duties. These decisions have restricted executive privilege, but they have not eliminated it. In all cases the Court has assumed that the president has the right of executive privilege.

Impoundment of Funds

Impoundment is the presidential practice of refusing to spend money appropriated by Congress. Although many previous presidents impounded funds, the test case came with Richard Nixon. A major goal of his administration was

to reduce federal spending, and when the Democratic Congress passed spending bills, he responded by pocket-vetoing twelve bills and then impounding funds appropriated under other laws that he had not vetoed. Congress in turn passed the **Budget Reform and Impoundment Act of 1974** that required the president to spend all appropriated funds, unless Congress approved the impoundment. Federal courts have upheld the rule that presidents must spend money that Congress appropriates.

The President as Morale Builder

The founders had no way of knowing the evolutionary importance of the symbolic and morale-building functions a president must perform. People turn to their presidents for meaning, healing, assurance, and a sense of purpose. This function is particularly important during times of crisis, such as the period following the attacks on the World Trade Towers and the Pentagon on September 11, 2001. The president is expected to help unify the nation, represent our common heritage, and create a climate that encourages diverse elements to work together.

Agenda Setting

The Constitution provides the basis for the important power of **agenda setting** – or determining policy priorities – for the nation. According to Article Two, Section Three,

"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."

Even though Congress is charged with passing legislation, the president is expected to make policy proposals in many areas. Presidents often initiate foreign policy, economic goals and plans, and programs that improve the quality of life of citizens. Franklin Roosevelt set a precedent when he shepherded his New Deal policies through the legislature, taking responsibility for programs to get the country out of the Great Depression.

Sometimes initiatives are outlined as campaign issues and are refined by the executive office staff, special task forces, and by Congress. For example, President George W. Bush introduced Social Security reform in the 2000 presidential campaign, an issue that he promoted as president, especially after his reelection in 2004. Initiatives may fail, as did President Clinton's health care proposals in 1993. Presidents generally have more leeway in foreign policy and military affairs than they have in domestic matters, largely because the founders anticipated a special need for speed and unity in our relations with other nations.

The Power of Persuasion

An effective president is a good politician, a mobilizer of influence in the American political system. Because his formal powers are limited, he must spend much time persuading people to support his agenda.

The president's persuasive powers are aimed at three audiences: fellow politicians and leaders in Washington, party activists and officeholders outside Washington, and the public, with its many different views and sets of interests. All three audiences influence the decision-making process, and the president has the visibility and power to persuade them to listen to his priorities. A powerful president is often at the center of the give-and-take negotiations among these groups, and an effective persuader can be the catalyst that makes it all work.

Executive Orders

Congress allows the president to issue **executive orders** that have the force of law. These executive orders may enforce the Constitution, treaties, or legislative statutes, or they may establish or modify rules and practices of executive administrative agencies. The only restriction on executive orders is that they must be published in the *Federal Register*, a daily publication of the U.S. Government.

The Changing Veto Power

In recent years many critics have suggested a **line-item veto** reform that would allow presidents to veto sections of bills without rejecting the whole thing. Congress passed the Line-Item Veto Act in 1996, which allowed the president to veto sections of appropriations bills only. When President Clinton exercised this new provision, the law and the president's action were challenged in *Clinton v. City of New York* (1997). The Supreme Court ruled both the law and the action unconstitutional, criticizing them for permitting the president to construct legislation – an abuse of the principle of separation of powers.

PRESIDENTIAL CHARACTER

Just as early presidents were held to the standards of Washington's personal qualities, modern presidents are judged in terms of the public perception of their personality and character. In his book *The Presidential Character*, Professor James Barber assessed presidents by two character-based criteria:

- active vs. passive inclinations
- positive vs. negative points of view

He concluded that these basic personality characteristics shape a president's approach to his job and largely determine important decisions. For example, Franklin Roosevelt's positive, activist character forged the New Deal programs and U.S. foreign policy during World War II. Likewise, Richard Nixon's negative, activist character made it difficult for him to mobilize support from Congress, the media, and the public, even though he actively pursued his ambitious foreign policy goals. A passive, positive president, such as Gerald Ford, may be genial and well liked, but the lack of aggressive goals and administration of policy make his presidency an undistinguished one. Scholars disagree over whether Barber's theories work, but few deny the importance of personality and character in presidential decisions.

THE ISSUE OF GRIDLOCK

Over the past fifty years, a significant trend has developed: **divided government**, or a government in which one party controls the White House and a different party controls one or both houses of Congress. Until 2003, only two exceptions occurred. Between 1993 and 1995, the Democrats controlled both branches, and for a few months in early 2001, when the Republicans briefly dominated. However, with the midterm election of 2002, Republicans gained control of both houses, putting both branches under Republican control. The election of 2004 affirmed this arrangement, leading many to speculate that a new Republican era was dawning.

Many people criticize divided government because it produces "**gridlock**," or the inability to get anything done because the branches bicker with one another and make decisions difficult. A unique illustration of gridlock occurred in 1995 and 1996 when Congress and the president could not agree on the federal budget, thus shutting down many government operations, including national parks and federal offices, until an agreement could be reached. Even though gridlock may slow the process of decision-making, some supporters of divided government believe that it is not necessarily bad because better balanced policies may result. Others believe that a unified government is a myth, with struggles between the branches a natural part of the give and take of checks and balances. In this scenario, gridlock is just as likely to occur when one party controls both branches as it is when a "divided government" exists. Democratic filibusters in 2003 and 2004 against judicial nominees put forward by President George W. Bush support the notion that gridlock between the branches is an ongoing process.

OTHER IMPORTANT MEMBERS OF THE EXECUTIVE BRANCH

Just as the power of the presidency has grown tremendously in recent years, so have the numbers of people that surround him in high-level jobs in the executive branch. George Washington began his first term with only his nephew to help him with office work. Washington paid even that salary out of his own pocket. Today many advisors in the White House Office, the cabinet, and the Executive Office assist the president in his work. The vice president and the "first lady" also have large staffs that complement all the president's aides.

THE VICE-PRESIDENT

"I do not choose to be buried until I am already dead."

A nineteenth century presidential hopeful, Daniel Webster, declined the vice presidency with the above words, expressing a sentiment repeated by many vice presidents over time. The founders paid little attention to the office and assigned it only two formal duties:

- to preside over the Senate, but without a vote except to break a tie. This power is seldom claimed by the vice president who defers to the president *pro tempore* who in turn usually hands the responsibility to a junior senator.
- to help decide the question of presidential disability, as provided in the 25th Amendment in 1967. To date, the vice president has never had to decide a question of presidential disability.

The most important function of the vice president is to take over the presidency if the president is unable to fill his term. That has only happened nine times in history, but of course, the vice president must be qualified to take over the presidency.

A vice president's role in any administration is almost entirely up to the president. Although the original constitution designated the runner-up for the presidency as the vice president, the **12th Amendment** was passed in 1804, which provided for electors to vote for a president/vice-president slate. Traditionally, a presidential candidate chooses a vice presidential partner, usually based on a "balance" to the ticket (region, age, popular base, party subgroup). In recent years, presidents have given more and more important duties to vice presidents. They often represent the president for important ceremonies, sit on boards or projects, and advise him on major, sometimes specialized,

issues. For example, Vice President Al Gore advised President Bill Clinton on environmental issues and headed a national review of the federal bureaucracy. President George W. Bush has involved Vice President Dick Cheney in many policy areas, including those shaped in reaction to the terrorist acts of September 11, 2001.

The vice president is often considered as a presidential candidate when the President's term expires, although George H. Bush was the first Vice President to succeed immediately to the presidency since Martin Van Buren succeeded Andrew Jackson in 1837. Even though a vice president may receive his party's nomination, he doesn't always win the general election. Examples include Richard Nixon in 1960, Hubert Humphrey in 1968, Walter Mondale in 1984, and Al Gore in 2000.

THE WHITE HOUSE OFFICE

Some of the most influential people in government are in the president's White House Office. The organization of the staff is entirely up to the president, and their titles include "chief of staff," "counsel," "counselor," "assistant to the president," "special consultant," or "press secretary." These aides are appointed by the president without Senate confirmation, and they may be fired at will. Often they do not serve an entire presidential term.

The organization of the White House Office has been analyzed according to two models:

- **the "pyramid" model** – In this organizational model, most assistants report through a hierarchy to a chief of staff and/or a chief aide. This model is relatively efficient and it frees the president's calendar for only the most important issue. On the other hand, the president may become isolated or his top advisers may gain a great deal of power, as happened to President Richard Nixon in the early 1970s
- **the "circular" model** – Presidents that use this model have more direct contact with their staff members, with many cabinet secretaries and assistants reporting directly to the president. Bill Clinton employed this structure, especially in the early years of his presidency, when many task forces, committees, and informal groups of friends and advisers dealt directly with the President. This model allows better access to the president, and ideas are not filtered through one or two top aides. Critics say that the model promotes chaos and that the president's time is not well used.

THE EXECUTIVE OFFICE OF THE PRESIDENT

The Executive Office consists of agencies that report directly to the president and perform staff services for him. Some agencies are large bureaucracies. The president appoints the top positions, but unlike the White House Staff members, these Executive Office appointees must be confirmed by the Senate. The Executive Office agencies include the following:

- **The National Security Council** advises the president on American military affairs and foreign policy. The NSC consists of the president, the vice president, and the secretaries of state and defense. The president's national security adviser runs the staff of the NSC and also advises the president.
- **The Office of Management and Budget (OMB)** is the largest office in the EOP, and it has the job of preparing the national budget that the president proposes to Congress every year. The OMB also monitors the spending of funds approved by Congress and checks the budgets and records of executive agencies.
- **The National Economic Council** helps the president with economic planning. The council consists of three leading economists and is assisted by about 60 other economists, attorneys, and political scientists. The NEC is the president's major source of advice and information about the nation's economy.

THE CABINET

The cabinet is the oldest traditional body of the executive branch. The first cabinet members were appointed by Washington to serve as secretary of state, secretary of the treasury, secretary of war, and attorney general. From the earliest feuds between Thomas Jefferson and Alexander Hamilton, the cabinet almost never has served as a deliberative body of presidential advisers. In truth, the cabinet does not have much influence over presidential decisions, nor does it help the president to gain control over the bureaucracy.

Cabinet officers are the heads of fourteen major departments. The order of their creation is important for protocol. When the cabinet meets, the secretary of state sits on one side and treasury on the other, and so forth down the table so that the newest departments are the farthest away from the president. They are appointed by the president and must be confirmed by the Senate. The original four positions (secretary of war is now called "secretary of defense"), are known as the "**inner cabinet**," as still generally have the most power and influence.

The president has very little power over cabinet departments partly because he cannot appoint more than a small number of all a department's employees. The most important reason that the departments operate independently from the president is that cabinet members spend the large majority of their time on departmental business, and seek to defend and promote their own organizations in cabinet meetings. What results is that they often compete with one another for precious resources and attention, and represent the departments to the president rather than functioning as the president's representative to the departments.

INDEPENDENT AGENCIES AND COMMISSIONS

The president also appoints people to agencies and commissions that by law often have an independent status. In contrast to the heads of "executive" agencies, the heads of independent agencies serve by law for fixed terms of office and can be removed only "for cause." The agencies are created by Congress, and include such well-known bodies as the Federal Reserve Board, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Interstate Commerce Commission, and the Securities and Exchange Commission.

SELECTION OF THE PRESIDENT

One very important characteristic of the American political system is that no one seriously questions the process of selecting a president. Nor have we ever had anything other than a peaceful transition between presidents. Of course, people criticize the men that we choose, not to even mention the fact that we have never chosen a woman. What people accept almost completely is *how* a president is chosen or *that* he should leave office when his time is up.

THE ELECTORAL COLLEGE

The method of selection of the president was one of the most controversial topics at the Constitutional Convention. Most of the framers did not trust the public to directly elect the president, but under the checks and balances system, neither could Congress be allowed to select the head of the executive branch. The solution to the dilemma was to create an **electoral college**, a group of electors chosen by each state who would meet in their respective state capitals to vote for president and vice president. Many framers believed that states would vote for favorite sons and that often the election would be decided by the House of Representatives. It did not work out as they expected, largely because they did not foresee the important role that political parties would play in presidential selection. Today, all major presidential candidates are selected by their political parties, even though Ross Perot tried to capture the presidency in 1992 without the backing of a party. In 1996, he proved the importance of political parties in the selection process when he tried to run again, but as head of a third party. Presidential candidates are chosen through presidential primaries, and are nominated at a party convention in the summer before a general election in November. The electoral college members in each state vote either by law or tradition - for the same candidate that the majority of voters in the state chose.

RECENT CONTROVERSY

Until the election of 2000, the electoral college was regarded primarily as a formality that didn't affect the outcomes of presidential election. However, in 2000 Democratic candidate Al Gore won the popular vote, but George W. Bush became President because he won the electoral vote. The situation opened a debate, with electoral college supporters arguing that the system protects regional and local balance, and its critics claiming that the electoral college voting system is undemocratic. In the election of 2004 a few thousand changes of votes from George W. Bush to John Kerry would have created the situation again, but in reverse. However, President Bush's narrow victory in Ohio meant that he gained both a popular and electoral majority.

PRESIDENTIAL DISABILITY AND SUCCESSION

According to the Constitution, the president's elected term of office is four years, but no mention is made of the number of terms a president may serve. By a precedent set by George Washington, who retired after two terms, no president before Franklin Roosevelt served longer than two terms. However, in the midst of economic depression and a world war, Roosevelt ran for and won a third and fourth term of office, although he died before he completed the last one. Because the tradition was seen as a safeguard against tyranny, Congress added the **22nd Amendment** to the Constitution, limiting a president to election to two terms and/or serving no more than ten years. A vice president who becomes president with less than two years remaining in the previous president's term may run for the office two times on his own.

Presidential Disability

Among twentieth century Presidents, Woodrow Wilson became incapable of carrying out his job after he suffered a stroke, and his wife apparently made many presidential decisions. Likewise, Dwight Eisenhower was unable to function as President for several weeks after a debilitating heart attack. The **25th Amendment** (1967) to the Constitution covers this important problem concerning the presidential term: disability and succession. It permits the vice president to become acting president if the vice president and the cabinet determine that the president is disabled. If the president challenges the executive decision, Congress decides the issue. The amendment also outlines how a recovering president can reclaim the Oval Office.

Presidential Succession

The 25th Amendment also created a method for selecting a vice president when the office is vacated. The president nominates a new vice president, who assumes office when both houses of Congress approve the nomination by a majority vote. A vice president who assumes the presidency then nominates a new vice president who is also confirmed by Congress. If there is no vice president, then a 1947 succession law governs: next in line are the speaker of the house, the Senate *pro tempore*, and the thirteen cabinet officers, beginning with the secretary of state. The disability provision has never been used, but the vice presidential succession policy has. In 1973, Vice President Spiro Agnew resigned amidst charges of bribery, and President Nixon appointed Gerald Ford in his place. The next year, Nixon resigned as a result of the Watergate scandal, Ford became president, and he appointed Nelson Rockefeller as vice president. For the first time in history, both the presidency and vice presidency were held by appointed, not elected, officials.

THE IMPEACHMENT PROCESS

The Constitution provides a way to remove a president before his term is over, but it is not an easy process. The House of Representatives may, by majority vote, impeach the president for "Treason, Bribery, or other high Crimes and Misdemeanors." Once the House impeaches the president, the case goes to the Senate, which tries the president, with the chief justice of the Supreme Court presiding. By a two-third vote, the Senate may convict and remove the president from office. Only two presidents have been impeached:

- Andrew Johnson was impeached by the House in 1868 in the wake of the post-Civil War politics, but the Senate failed to convict him (by a one vote margin), and he remained in office.
- Bill Clinton was impeached by the House in 2000 on two counts: committing perjury and obstructing justice in the investigation of sex scandals surrounding the President's relationships with Paula Jones and Monica Lewinsky.

Richard Nixon came close to impeachment when on July 31, 1974, the House Judiciary Committee voted to recommend his impeachment to the House as a result of the Watergate scandal. Nixon avoided impeachment by resigning from the presidency a few days later.

Other civil officers besides the president may be impeached, but the provision has had the most meaning for federal judges, who serve for life and are constitutionally independent of the president and Congress. Fifteen judges in U.S. history have been impeached by the House, and seven have been convicted by the Senate.

Despite gridlock, the recent impeachment process, and the disputed election of 2000, the institution of the presidency has survived. The responsibilities and privileges have changed over time so that the office is much more powerful than the one created by the Constitution. Even though events of recent years have checked presidential power, few people would argue that the president is still the most influential and respected single political leader in the country.

IMPORTANT DEFINITIONS AND IDENTIFICATIONS:

"advice and consent"	executive agreements	Nixon v. Fitzgerald
agenda setting	Executive Office of the President	presidential succession
Budget Reform and Impoundment Act of 1974	executive orders	The Presidential Character
circular v. pyramid model	executive privilege	<i>United States v. Nixon</i>
Clinton v. Jones	gridlock	War Powers Resolution
diplomatic recognition	impeachment process	White House Office
divided government	impoundment	12 th Amendment
electoral college	inner cabinet	22 nd Amendment
	line-item veto	25 th Amendment

CHAPTER TWELVE: THE BUREAUCRACY

Many Americans have a negative view of the federal bureaucracy. The very mention of the word “bureaucracy” often conjures up a memory of an important document lost, or a scolding for some alleged misconduct of personal business. Bureaucratic power is felt in almost all areas of American life, and yet bureaucracies are barely mentioned in the Constitution. Bureaucratic agencies are created and funded by Congress, but most of them report to the president, who supervises them as he takes “care that the laws shall be faithfully executed” (Article II, Section 3 of the Constitution). This dual responsibility to Congress and to the president is an indication of the complex nature of the organization and functioning of federal government bureaucracies.

BUREAUCRACY IN MODERN GOVERNMENTS

A **bureaucracy** is a large, complex organization of appointed, not elected, officials. Bureaucracies exist in many countries in many areas of life, including corporations, universities, and local and state governments. The term actually comes from the French word “bureau,” a reference to the small desks that the king’s representatives set up in towns as they traveled across the country doing the king’s business. So “bureaucracy”: literally means something like “government with small desks.”

MAX WEBER’S BUREAUCRACY

Max Weber was one of the first people in modern times to think seriously about the importance of bureaucracy. He wrote in Germany during the early 20th century, when developing capitalism was spawning more and more large businesses. The changing economic scene had important implications for government. He created the classic conception of bureaucracy as a well-organized, complex machine that is a “rational” way for a modern society to organize its business. He did not see them as necessary evils, but as the best organizational response to a changing society.

According to Weber, a bureaucracy has several basic characteristics:

- **hierarchical authority structure** - A chain of command that is hierarchical; the top bureaucrat has ultimate control, and authority flows from the top down.
- **task specialization** - A clear division of labor in which every individual has a specialized job
- **extensive rules** - Clearly written, well-established formal rules that all people in the organization follow
- **clear goals** - A clearly defined set of goals that all people in the organization strive toward
- **the merit principle** - Merit-based hiring and promotion; no granting of jobs to friends or family unless they are the best qualified
- **impersonality** - Job performance that is judged by productivity, or how much work the individual gets done

Weber emphasized the importance of the bureaucracy in getting things done and believed that a well-organized, rational bureaucracy is key to the successful operation of modern societies.

THE AMERICAN FEDERAL BUREAUCRACY

The American federal bureaucracy shares common characteristics with other bureaucracies, but it has its own characteristics that distinguish it from others.

1. **Divided supervision** - Congress has the power to create, organize, and disband all federal agencies. Most of them are under the control of the president, although few of them actually have direct contact with him. So the bureaucracy has two masters: Congress and the president. Political authority over the bureaucracy is shared, then, according to the principles of separation of powers and federalism. On the national level, both Congress and officials in the executive branch have authority over the bureaucracy. This divided authority encourages bureaucrats to play one branch of government against the other. Also, to complicate things even more, many agencies have counterparts at the state and local level. Many federal agencies work with other organizations at state and local levels of government.
2. **Close public scrutiny** - Government agencies in this country operate under closer public scrutiny than they do in most other countries. The emphasis in American political culture on individual rights and their defense against abuse by government makes court challenges to agency actions more likely. About half of the cases that come to federal court involve the United States government as either defendant or plaintiff.

3. **Regulation rather than public ownership** - United States government agencies regulate privately owned enterprises, rather than operate publicly owned ones. In most Western European nations the government owns and operates large parts of the economy; the U.S. government prefers regulation to ownership.

THE GROWTH OF THE FEDERAL BUREAUCRACY

The Constitution made little mention of a bureaucracy other than to make the president responsible for appointing (with the "advice and consent of the Senate") public officials, including ambassadors, judges, and "all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law" (Article II, Section 3). No provisions mentioned departments or bureaus, but Congress created the first bureaucracy during George Washington's presidency.

PATRONAGE

The bureaucracy began in 1789 when Congress created a Department of State to assist the new Secretary of State, Thomas Jefferson. From 1789 to about 1829, the bureaucracy was drawn from an upper-class, white male elite. In 1829, the new President Andrew Jackson employed a **spoils system** to reward party loyalists with key federal posts. Jackson believed that such rewards would not only provide greater participation by the middle and lower classes, but would insure effectiveness and responsiveness from those who owed their jobs to the president. The spoils system ensured that with each new president came a full turnover in the federal service.

THE PENDLETON ACT

Late in the nineteenth century the spoils system was severely criticized because it allowed people with little knowledge and background to be appointed to important government positions. Some accused presidents of "selling" the positions or using them as bribes to muster support for their election campaigns. After President James Garfield was assassinated in 1881 by a disappointed office seeker, Congress passed the **Pendleton Act**, which set up a limited merit system for appointing federal offices. Federal service was placed under the **Civil Service Commission**, which supervised a testing program to evaluate candidates. Federal employees were to be selected and retained according to merit, not party loyalty, but in the beginning the merit system only covered about 10 percent of all federal employees.

THE MODERN BUREAUCRACY

By the 1950s the merit system had grown to cover about 90 percent of all federal employees, and in 1978, the functions of the Civil Service Commission were split between two new agencies:

- **The Office of Personnel Management** administers civil service laws, rules, and regulations. The OPM administers written examinations for the competitive service, which includes about two-thirds of all appointed officials. The OPM is in charge of hiring for most agencies. When a position opens, the OPM sends three eligible names to the agency, and the agency must hire one of them, except under unusual circumstances. Once hired, a person is assigned a **GS (General Schedule) Rating**, ranging from GS 1 to GS 18, which determines salaries. At the top of the civil service system is the Senior Executive Service, executives with high salaries who may be moved from one agency to another.
- **The Merit Systems Protection Board** protects the integrity of the federal merit system and the rights of federal employees. The board hears charges of wrongdoing and employee appeals against agency actions and orders disciplinary actions against agency executives or employees.

The federal bureaucracy grew tremendously as a result of Roosevelt's New Deal programs and World War II, but the number of federal bureaucrats has leveled off in the years since then. Whereas the number of employees of state and local governments has grown tremendously in the past fifty years, the number of federal employees has remained a relatively constant three percent of all civilian jobs. One reason for the growth on the state and local levels is that many recently created federal programs are administered at the lower levels of government, not by federal employees.

WHO ARE THE BUREAUCRATS?

Bureaucrats work in the executive branch in the fourteen cabinet-level departments and in the more than fifty independent agencies, including about 2,000 bureaus, offices, services, and other subdivisions of the government.

The five biggest employers are the Departments of Army, Navy, and Air Force, the Department of Veterans Affairs, and the U.S. Postal Service. A total of about 3.2 million civilians and 1.8 million military are employed by the executive branch of the federal government.

Most people still think of a bureaucrat as being a white, middle-aged man, but the permanent bureaucracy today is more representative of the American people than are members of Congress, judges, or presidential appointees in the executive branch.

Consider the following statistics for federal civilian employees:

- About 57% are male, 43% are female.
- About 73% are white, 27% are minority (includes blacks, Asians, native Americans, and Hispanics).
- About 33% are hired by the Defense Department, 26% by the Postal Service, and 41% in other agencies.
- Only about 10% work in the Washington area, 90% work in other parts of the United States.
- The average age is about 42.
- The number of federal employees per 1,000 people in the U.S. population has *decreased* from over 14 in the early 1970s to a little over 10 by the late 1990s.
- Bureaucrats hold a huge variety of jobs, but most federal employees are white-collar workers, such as secretaries, clerks, lawyers, inspectors, and engineers.
- Nearly 20,000 federal civilian employees work in U.S. territories, and another 100,000 work in foreign nations.

THE ORGANIZATION OF THE BUREAUCRACY

Agencies of the executive branch may be organized into four basic types:

THE CABINET DEPARTMENTS

Each of the fifteen cabinet departments is headed by a secretary, except for the Department of Justice, which is headed by the attorney general. All of the heads are chosen by the President and approved by the Senate, and each manages a specific policy area. Responsibility is further divided among undersecretaries and assistant secretaries, who manage various agencies. The fifteen cabinet departments, in order of creation, are:

- The Department of State (founded in 1789)
- The Department of Treasury (founded in 1789)
- The Department of Defense (created in 1947, but replaced the Department of War, founded in 1789)
- The Department of Justice (created in 1870 to serve the attorney general, a position created by George Washington in 1789)
- The Department of the Interior (created in 1849)
- The Department of Agriculture (created in 1862)
- The Department of Commerce (created in 1903 as the Department of Commerce and Labor)
- The Department of Labor (separated from the Department of Commerce in 1913)
- The Department of Health
- and Human Services (created as the Department of Health, Education, and Welfare in 1953)
- The Department of Housing and Urban Development (created in 1966)
- The Department of Transportation (created in 1966)
- The Department of Energy (created in 1977)
- The Department of Education (separated from the Department of Health, Education, and Welfare in 1979)
- The Department of Veterans Affairs (created in 1988)
- The Department of Homeland Security (created in 2002)

Each department is organized somewhat differently, but the real work of a department usually is done in the bureaus (sometimes called services, offices, or administrations). Until the 1970s, the largest department was the Department of Defense, but today the Department of Health and Human Services spends more money, although the Department of Defense still has more employees.

THE 2004 INTELLIGENCE BILL

In late 2004 President George W. Bush signed the Intelligence Reform and Terrorism Prevention Act that called for the most sweeping overhaul of the nation's intelligence-gathering apparatus in a half-century. The legislation created

a position for a Director of National Intelligence, a move recommended by a special commission that spent 20 months investigating the pre-September 11, 2002 intelligence failures. The legislation put 15 intelligence agencies under the control of the director, including the CIA and the FBI, and it created a National Counterterrorism Center to serve as the primary organization that processes all terrorism-related intelligence. The reorganization will impact many of the cabinet departments, as well as the operation of several independent agencies.

THE INDEPENDENT REGULATORY AGENCIES

These agencies regulate important parts of the economy, making rules for large industries and businesses that affect the interests of the public. Because regulatory commissions are “watchdogs” that by their very nature need to operate independently, they are not part of a department, and most are not directly controlled by the President. Some examples are:

- **The Interstate Commerce Commission (ICC)** - Founded in 1887, the ICC is the oldest of the regulatory agencies. It first regulated railroads, but now oversees trucking as well.
- **The Federal Trade Commission (FTC)** - The FTC regulates business practices and controls monopolies
- **The National Labor Relations Board (NLRB)** - The NLRB regulates labor-management relations.
- **The Federal Reserve Board (FRB)** - The FRB governs banks and regulates the supply of money.
- **The Securities and Exchange Commission (SEC)** - The SEC polices the stock market.

The regulatory agencies are governed by small commissions - five to ten members appointed by the president and confirmed by the Senate. These commissioners are somewhat more "independent" than are the cabinet secretaries because they cannot be removed by the president during their terms of office.

THE GOVERNMENT CORPORATIONS

Government corporations are a blend of private corporation and government agency. They were created to allow more freedom and flexibility than exists in regular government agencies. They have more control over their budgets, and often have the right to decide how to use their own earnings. Since they still ultimately are controlled by the government, they do not operate like true private corporations.

Some examples are:

- **The Corporation for Public Broadcasting** - This controversial government corporation still operates public radio and television stations. Although largely funded by private donations, the government still provides policies and money to support their programs.
- **The Tennessee Valley Authority** - This corporation was created as one of Franklin Roosevelt's New Deal programs. Its mission is to harness the power of the Tennessee River to protect farmlands and provide cheap electricity.
- **The U.S. Postal Service** - The post office is a corporation that competes with private services.
- **Amtrak** - Congress created Amtrak to provide railroad passenger service that is heavily subsidized by the federal government. Part of the motivation for its creation was the lack of private companies providing the service, and Amtrak has suffered some huge financial losses. Recently, in an attempt to make the corporation more profitably, Congress has allowed Amtrak to drop some of its less popular routes.

INDEPENDENT EXECUTIVE AGENCIES

Other agencies that do not fall into the first three categories are called independent executive agencies. Independent agencies closely resemble Cabinet departments, but they are smaller and less complex. Generally, they have narrower areas of responsibility than do cabinet departments. Most of these agencies are subject to presidential control and are independent only in the sense that they are not part of a department. Their main function is not to regulate, but to fulfill a myriad of other administrative responsibilities.

Some well known examples are

- **The General Services Administration (GSA)** - The GSA operates and maintains federal properties, handling buildings, supplies, and purchasing.
- **The National Science Foundation (NSF)** - The NSF supports scientific research.
- **The National Aeronautics and Space Administration (NASA)** - NASA administers the United States space program, financing ventures into space since 1958.

WHAT DO BUREAUCRATS DO?

Most people think that bureaucrats only follow orders. Of course, anyone who works in the executive branch is there to implement decisions, but the reality of their work is more complicated. The power of the bureaucracy depends on how much **discretionary authority** they have. Congress passes laws, but they cannot follow through on all the little decisions that have to be made as laws are translated into action. Bureaucrats, then, may make policies and choose actions that are not spelled out in advance by laws.

Their main function is to do the nuts and bolts of "executing" policies that are made by Congress, the president, and the Supreme Court.

IMPLEMENTATION

Most policies do not implement themselves. After the President signs a bill into law, the bureaucracy must implement it. Bureaucrats develop procedures and rules for implementing policy goals, and they manage the routines of government, such as delivering mail and collecting taxes.

Usually Congress announces the goals of a policy, sets up a broad administrative apparatus, and leaves the task of working out details to the bureaucracy. The implementers take a policy handed down to them from Congress, the president, or the Court, and actually put it into effect, with real consequences for real people.

Implementation involves more power in the policymaking process than is readily apparent. During this stage, many key decisions are made. Congress often passes ambiguous legislation, or the supporters of a bill that is passed into law get involved with other bills and lose contact with laws passed on to the executive branch. By the very nature of the compromise that passed the bill into law in Congress, it often sets general goals and passes the responsibility for interpretation on to the bureaucrats. As a result, the bureaucracy is given latitude in translating general guidelines into specific directives.

REGULATION

The function of regulation of private sector activities has developed over the course of the twentieth century. The earlier function of service (the Post Office, benefits to veterans, agriculture) dominated the bureaucracy until the early twentieth century Progressive Movement, when the government began to regulate businesses.

As early as 1877 the Supreme Court upheld the right of government to regulate business in *Munn v. Ohio*, a case that upheld the rights of the state of Illinois to regulate the charges and services of a Chicago warehouse. The New Deal legislation of the 1930s created more regulatory agencies, and World War II allowed government a great deal more regulation than ever before.

Today all sorts of activities are subject to federal regulation from automobile production to buying and selling stock to the production and distribution of meat and poultry. Hundreds of agencies supervise and enforce a vast array of regulations.

As regulators, agencies first receive a grant of power from Congress to sketch out the means of executing broad policy decisions. Next, the agency develops a set of guidelines to govern an industry, usually in consultation with people who work in those industries. Next, the agency must apply and enforce its rules and guidelines, often through its own administrative procedures, but sometimes in court. Sometimes it reacts to complaints, and other times it sends inspectors out to the field. Regulation may be executed by requiring applicants to acquire a permit or license to operate under their guidelines and Congressional policies.

ACCOUNTABILITY

The biggest difference between a government agency and a private organization is the number of constraints placed on agencies from other parts of government and by law. A government bureau cannot hire, fire, build, or sell without going through procedures set by Congress, often through law. Presidents also exert considerable power over the bureaucracies.

CONGRESS

Congress often acts as the problem-solving branch of government, setting the agenda and then letting the agencies decide how to implement them. On the other hand, Congress serves as a check on the activities of the bureaucracy. Congress oversees the bureaucracy in a number of ways.

- 1) **Duplication** - Congress rarely gives any one job to a single agency. For example, drug trafficking is the task of the Customs Services, the FBI, the Drug Enforcement Administration, the Border Patrol, and the Defense Department. Although this spreading out of the responsibility often leads to contradictions among agencies and sometimes inhibits the responsiveness of government, it also keeps any one agency from becoming all powerful.
- 2) **Authorization** - No agency may spend money unless it has first been authorized by Congress. Authorization legislation originates in a legislative committee, and states the maximum amount of money that an agency may spend on a given program. Furthermore, even if funds have been authorized, Congress must also appropriate the money. An **appropriation** is money formally set aside for a specific use, and it usually is less than the amount authorized. The Appropriations Committees in both houses of Congress must divide all available money among the agencies, and almost always they cut agency budgets from the levels authorized.
- 3) **Hearings** - Congressional committees may hold hearings as part of their oversight responsibilities. Agency abuses may be questioned publicly, although the committee holding the hearings typically has the oversight responsibility, so a weak agency may reflect weak oversight.
- 4) **Rewriting legislation** - If they wish to restrict the power of an agency, Congress may rewrite legislation or make it more detailed. Every statute is filled with instructions to its administrators, the more detailed the instructions, the better able Congress is to restrict the agency's power. Still, an agency usually finds a way to influence the policy, no matter how detailed the orders of Congress.

THE PRESIDENT

Agencies are also accountable to the chief administrator of the U.S. government: the president. Presidents use a number of methods to impress their policy preferences on the bureaucracy.

- **Appointments** - The most obvious control the president has over the executive branch is his power to appoint the senior bureaucrats, including agency heads and subheads. If a president disagrees with the policies of an agency, he can appoint a head that agrees with him. This strategy may lead to problems because the agency can work against the new head, possibly seeking support in Congress. Also, because agencies tend to have strong points of view, a new head may sometimes be swayed to their beliefs.
- **Executive Orders** - A president may issue executive orders to agencies that they must obey. More typically, aides may pass the word informally to agencies as to the president's wishes. Even though agencies may resist, they usually pay attention to the president's preferences.
- **Economic powers** - The president may exercise authority through the Office of Management and the Budget, which is the president's own final authority on any agency's budget. The OMB may cut or add to an agency's budget, although Congress ultimately does the appropriating.
- **Reorganization** - The president may reorganize or combine agencies to reward or punish them. This power is limited, however, because entrenched bureaucracies, Congress, and supporting interest groups may keep a president from acting as he might like.

THE BUREAUCRACY AND INTEREST GROUPS

Although interest groups have no formal control over agencies, the informal ties between them may greatly influence the implementation of policy. Interest groups may provide agencies with valuable information they need to execute a policy. Interest groups may pressure agency bureaucrats to interpret policy in ways that are favorable to the interests they represent. Bureau chiefs may also recruit interest groups as allies in pursuing common goals. They often share with them a common view that more money should be spent on federal programs run by the bureau in question.

IRON TRIANGLES

Alliances among bureaucrats, interest groups, and congressional subcommittee members and staff sometimes form to promote their common causes. Such an alliance is sometimes described as an **iron triangle**. These triangles are sometimes so strong that they are referred to as sub-governments - the place where the real decisions are made. For example, an important issue that government has recently addressed is the effect of tobacco on health and the government's role in regulating it. The tobacco farmers and industry have numerous interest groups, a "tobacco lobby" that provide information to the tobacco division of the Department of Agriculture and to subcommittees of

the House and Senate agricultural committees. They support the agency's budget requests and make contributions to the election campaigns of the subcommittee members. The subcommittees pass legislation affecting tobacco farmers and other members of the industry and approval higher budget requests from the agency. The agency gives the subcommittees information, help with constituents' complaints, and develop rules on tobacco production and prices. They all have a common interest - the promotion of tobacco farming and industry, and they can help one another achieve their goals. As a result, the president and Congress beyond the subcommittee have little decision-making power.

ISSUE NETWORKS

The iron triangle may be criticized because interest groups today are so prolific that they are bound to create cross-demands on subcommittees and the bureaucracy. In the tobacco issue discussed above, interest groups have formed demanding that tobacco products be banned or heavily restricted by the federal government. With these counter-demands, the policymaking process would not run so smoothly and would broaden the number of people involved in the system. The issue is discussed on many levels, both inside and outside government. An agency, then, can be described as being embedded, not in an iron triangle, but in an **issue network**. These issue networks consist of people in interest groups, on congressional staffs, in universities, and in the mass media who regularly debate an issue. The networks are contentious, with arguments and disagreements occurring along partisan, ideological, and economic lines. When a president appoints a new agency head, he will often choose someone from the issue network who agrees with his views.

REFORMING THE BUREAUCRACY

Throughout American history, presidents and Congress have attempted to reform the bureaucracy to make it work better and cost less. The Intelligence Reform and Terrorism Prevention Act of 2004 is a recent example. Many other reforms have been suggested for the future.

THE MERIT SYSTEM AND THE HATCH ACT

The merit system tries to ensure that the best-qualified people get government jobs and that party politics (patronage) has nothing to do with the hiring process. In 1939 Congress passed the **Hatch Act**, which required employees, once they were hired, to have as little to do with political parties as possible. The Hatch Act forbids employees from engaging in many party activities. For example, they could not run for public office or raise funds for a party or candidate, nor could they become officers in a political organization or a delegate to a party convention. In the early 1970s some bureaucrats complained that their 1st amendment rights were being violated. The issue made its way to the Supreme Court, where the justices ruled that the Hatch Act did not put unreasonable restrictions on employees' rights. However, in 1993 Congress softened the Hatch Act by making many forms of participation in politics permissible. Federal bureaucrats still cannot run as candidates in elections, but they may be active in party politics.

CRITICISMS OF THE BUREAUCRACY

Americans criticize their political bureaucracies in many ways, but some frequently mentioned ones are:

- **“red tape”**: the maze of government rules, regulations, and paperwork ö makes government so overwhelming to citizens that many people try to avoid any contact.
- **conflict** : agencies that often work at cross purposes with one another
- **duplication** : a situation in which two agencies appear to be doing the same thing
- **unchecked growth** : the tendency of agencies to grow unnecessarily and for costs to escalate proportionately.
- **waste** : spending more on products and/or services than is necessary.
- **lack of accountability** : the difficulty in firing or demoting an incompetent bureaucrat

SUGGESTIONS FOR REFORM

Some suggestions for reforming the bureaucracy are:

- **Limiting appointments to 6-12 years**. After the appointment expires, the bureaucrat would then have to go through reexamination and their performance would be reviewed for possible rehire.
- **Making it easier to fire a bureaucrat**. Civil service rules that are meant to protect workers from partisan politics have made it difficult to fire anyone for poor performance. Reformers want to remove those rules.

- **Rotating professionals between agencies and from outside.** Reformers believe that this practice would bring new blood to agencies and encourage workers to get a broader view of government service.
- **Rewarding employee initiatives and fewer rules.** The bureaucracy is criticized for having rigid rules that restrict new ideas and individual initiatives. Reformers suggests that rules be streamlined and modernized, and that suggestions from employees should be encouraged and rewarded.
- **Emphasizing** customer satisfaction. Government bureaucrats are often criticized for not caring about their customers. Unlike private businesses, government agencies do not have to compete for customers, so their clients are not given the attention they deserve.

Finding the practical solutions that everyone can agree on is a difficult process in our government, largely because our system of checks and balances is not particularly efficient. But that doesn't stop presidents and many others from suggesting and implementing reform of the bureaucracy.

IMPORTANT DEFINITIONS AND IDENTIFICATIONS

accountability	GS Rating	Merit principle
appropriations	Hatch Act	<i>Munn v. Ohio</i>
authorizations	Independent executive agencies	patronage
Bureaucracy	Independent regulatory agencies	Pendleton Act
Discretionary authority	Iron triangle	"red tape"
Duplication	Issue network	spoils system
Government corporations	Max Weber	

CHAPTER THIRTEEN: THE JUDICIARY

In most modern democracies the executive and legislative branches hold considerable power, but most grant little policymaking power to the judicial branch. A most important exception to this general rule is the United States, whose judiciary is truly a coequal branch with as much power as the other two. And yet our government did not begin with this almost equal balance of power; the founders almost certainly saw the judiciary as an important check on the legislative and executive branches, but not as a policymaking body.

The court system is a cornerstone of our democracy. According to our ideals, judges make impartial and wise decisions that elected officials find difficult to make. Members of Congress, state governors, and the President must always worry about elections and popular opinion. As a result, they may lose sight of the need to preserve our values, and they sometimes set hasty or unjust policies. Under the guidance of Constitutional principles, the courts serve as watchdogs of the other branches of government.

THE COMMON LAW TRADITION

Although the U.S. judiciary differs in many ways from the British system, the tradition of English common law is still very important to both. **Common law** is a collection of judge-made laws that developed over centuries and is based on decisions made by previous judges. The practice of deciding new cases with reference to former decisions is called **precedence**. The doctrine of **stare decisis** (let the decision stand) is based on [precedent, and is a cornerstone of English and American judicial systems. So, when a Court overturns a previous court's decision, it is a major event, because to do so breaks the strong tradition of *stare decisis*.

THE JUDICIARY IN THE CONSTITUTION

The Constitution painstakingly defines the structure and functions of the legislative branch of the government. It clearly, although less thoroughly, addresses the responsibilities and powers of the President. However, it treats the judicial branch almost as an afterthought. Article III specifically creates only one court (the Supreme Court), allows judges to serve for life and to receive a compensation, broadly outlines original and appellate jurisdiction, and outlines the procedure and limitations for those accused of treason. Article III consists of three sections:

- **Section 1:** The only court mentioned in the Constitution is the Supreme Court, and Congress is given the right to create all other federal courts. Judgeships are to be held "during good Behavior" (in other words, there are no terms of office), and judges' compensations are not allowed to be diminished while they hold office.
- **Section 2:** The jurisdiction of the courts is defined, with all cases affecting ambassadors, ministers, and consuls going automatically to federal courts. Also, federal jurisdiction is held in cases of admiralty and maritime jurisdiction, cases involving the U.S. as a party, controversies between two or more states or between citizens of different states, and cases of states or their citizens against foreign countries. **Original jurisdiction** (The court has the first hearing) is given to the Supreme Court in cases involving ambassadors, ministers, and consuls and in cases in which a state is a party. **Appellate jurisdiction** is given in all other cases. In other words, they can only be appealed to the Supreme Court after first being heard in a lower court. Section 2 also provides for trial by jury for all criminal (not civil) cases.
- **Section 3:** Treason is defined as not only waging war against the United States, but as "adhering to their enemies" and "giving them aid and comfort." A person may be convicted for treason only if he or she confesses in court or on the testimony of two witnesses. Punishment for treason is declared by Congress, but "corruption of blood" (paying for the treason of a relative) and forfeiture of property after the individual is dead are forbidden.

Surprisingly, nothing else is said. Article III clearly reflects the traditional 18th century view of courts: they judge disputes between people and decide which of the two parties is right, usually awarding the wronged party "damages," or money. The role of judges, then, is simply to find and apply existing law. Under this scenario, judges cannot make laws, but they are required to interpret them in order to apply them. This power of interpretation implies a limited judiciary role in "checking and balancing" the other two branches: laws passed by Congress and actions by the president and other executives.

JUDICIAL REVIEW

The early Supreme Court gave few indications that the judicial branch would someday be coequal to the legislative and executive branches. Their first session began in 1790, and lasted only ten days. No cases were heard, and their time was spent admitting lawyers to practice before the Court. Not until the early 1800s did the fourth Chief Justice, John Marshall, claim the power for the court in the famous ***Marbury v. Madison*** case. The power he claimed was **judicial review**, a concept implied by but not mentioned in Article III of the Constitution. Judicial review allows the courts to rule on the constitutionality of laws and actions, giving them the power to strike down or reinforce policy, not just to apply and interpret it. Judicial review is the key to understanding the unusual power of the United States judiciary.

MARBURY V. MADISON (1803)

When President John Adams failed to win reelection in 1800, he was forced to cede the office to his political rival Thomas Jefferson. For the first time in U.S. history, a president from one political party (the Federalists) had to step down for one from the opposite party (the Democratic Republicans). Fearing that Jefferson would undo Federalist policies, Adams worked hard to "pack the courts" with 57 Federalist judges before he had to leave office. All but seventeen letters of appointment were delivered before the change of office, but these letters were left for the incoming secretary of state - James Madison - to send out. Madison never delivered the letters. Four of the seventeen men (one was named Marbury) who never received their letters sued Jefferson and Madison, calling on the Supreme Court to issue a writ of mandamus ordering Madison to make the appointments.

The Chief Justice of the Court, Federalist John Marshall, was put in a bind by the lawsuit. The Court had been given the power to issue **writs of mandamus** (from the Latin "I command") by the Judiciary Act of 1789, but its influence was largely untested. What if the Court issued the order to Madison and he refused to comply, what could the Court do? It had no troops to enforce its orders. Even if Madison cooperated, the Democratic Republican Congress almost certainly would impeach him. On the other hand, if he allowed Madison to get away with it, the power of the Supreme Court would be seriously compromised.

Marshall's solution not only avoided a constitutional crisis, a standoff among the three branches, but it changed the nature of judicial power completely. The court refused to issue the writ of mandamus, but in his majority opinion, Marshall claimed that the Judiciary Act of 1789 was unconstitutional. According to Article III, original jurisdiction is given to the Supreme Court only in certain cases; the Judiciary Act gave original jurisdiction for the Court to issue writs not mentioned in the Constitution; therefore, the law was unconstitutional. As a result, a showdown was avoided, Jefferson and Madison were happy, and Marshall awarded the Court an unprecedented power: judicial review. From then on, no one seriously questioned the Court's right to declare laws unconstitutional, and Marshall's 34 years as Chief Justice were spent building on that power.

THE STRUCTURE OF THE FEDERAL COURT SYSTEM

The only federal court required by the Constitution is the Supreme Court. Article III left it up to Congress to establish lower federal courts, which they began to do in the Judiciary Act of 1789. The Constitution also does not specify how many justices shall be on the Supreme Court (originally there were six; now there are nine). Congress created two general types of lower federal courts: constitutional and legislative.

Constitutional Courts

Constitutional courts exercise the judicial powers found in Article III, so their judges are given the constitutional protection of lifetime terms. There are 94 district courts, with at least one in each state, the District of Columbia, and Puerto Rico; and 13 courts of appeals, one of which is assigned to each of 12 judicial circuits, or region. A special appeals court called the U.S. Court of Appeals for the Federal Circuit hears cases regarding patents, copyrights, and trademarks, claims against the United States, and international trade.

- **District courts** are trial courts of original jurisdiction, the starting point for most litigation in the federal courts. They hear no appeals, and they are the only federal courts in which trials are held and juries may sit. Each district court has between two and twenty-seven judges, depending on their caseloads. Their jurisdiction includes federal crimes, civil suits under federal law, and civil suits between citizens of different states where the amount exceeds fifty thousand dollars.
- **Courts of appeal** have appellate jurisdiction only; no cases go to them first. They review any final decisions of district courts, and they may review and enforce orders of many federal regulatory agencies, such as the

Securities and Exchange Commission. Most cases come from the district courts. Each court of appeals normally hears cases in panels of three judges, but important cases may include more. Decisions are made by majority vote of the participating judges.

Legislative Courts

Congress also has set up legislative courts for specialized purposes. These courts include the Court of Claims, the Court of International Trade, the Tax Court, and the Court of Military Appeals. Legislative courts are sometimes called Article I courts because they help carry out the legislative powers the Constitution has granted to Congress. Because they do not carry out Article III judicial powers, their judges are not protected for life; they serve fixed terms of office, can be removed without impeachment, and may have their salaries reduced.

PARTICIPANTS IN THE JUDICIAL SYSTEM

The major participants in the courtroom are the judge, the litigants, the lawyers, sometimes a jury, and the audience, such as the press, interest groups, and the general public.

LITIGANTS

The litigants include the **plaintiff**, or the person bringing the charges, and the **defendant**, or the person charged. In **criminal law** cases an individual is charged with violating a specific law; in **civil law** cases no charge of criminality is made, but one person accuses another of violating his or her rights. Civil law defines the relations between individuals and defines their legal rights. Litigants wind up in court for many reasons. Plaintiffs may be seeking justice and/or compensation; defendants may be brought to court reluctantly, particularly if they are accused of a crime, or they may see themselves as defending their rights against a lawsuit.

The United State government is involved in about two-thirds of the cases brought to federal court, either as a plaintiff or defendant. In criminal cases the government is the plaintiff, but in a large number of civil cases, the government defends itself against lawsuits.

Litigants must always have **standing to sue**, or a serious interest in the case, usually determined by whether or not they have personally suffered injury or are in danger of being injured directly. Just being opposed to a law does not generally provide standing; the individual must be directly affected by it. The concept of standing to sue has been broadened in recent years by **class action suits**, which permit a small number of people to represent all other people similarly situated. For example, *Brown v. Board of Education of Topeka* was a class action suit in 1954, when Linda Brown of Topeka, Kansas, represented black students from several school districts around the country suing for discrimination in public education.

LAWYERS

Lawyers have become virtually indispensable in the judicial system. In criminal cases federal lawyers are the prosecutors, or those who formally charge an individual of a crime. Prosecution falls to the Department of Justice: the attorney general, the **solicitor general** (who represents the government to the Supreme Court), other attorneys, and assistant attorneys, who must also serve as defense lawyers if the government is being sued.

The federal government also provides **public defenders** for people who cannot afford personal lawyers. The 1964 case *Gideon v. Wainwright* determined that all accused persons in state as well as federal criminal trials should be supplied with a lawyer, free if necessary. Prosecutors negotiate with the defense lawyers and often work out a plea bargain, in which a defendant agrees to plead guilty to avoid having to stand trial.

THE JURY

The right to a trial by jury is fundamental to our justice system, but most trials do not involve them. In many cases, but not all, a jury, a group of citizens (usually twelve), is responsible for determining the innocence or guilt of the accused. Trial by jury is used less often today than in the past. Defendants and their lawyers either make plea bargains or elect to have their cases decided by a judge alone. Even in criminal cases, only a small number are actually tried before a jury. Trials by jury take more time and money than do bench trials, which are heard before judges only.

THE AUDIENCE

Interest groups sometimes seek out litigants to represent a cause they support. One of the most successful groups is the National Association for the Advancement of Colored People, which has defended numerous civil rights cases, including *Brown v. Topeka*. The American Civil Liberties Union is another interest group that actively seeks litigants to protect principles of individual liberties. The press actively influences sensational cases, particularly if a celebrity or a highly publicized case is involved. The press corps is often instrumental in getting the public interested in a case.

THE JUDGES

The central figure in the court room is of course the judge, who must draw upon his or her background and beliefs to guide decision making. Whether a jury is involved in the trial or not, it is up to the judge to make the final decision of innocence or guilt and to pronounce the sentence if the individual is found guilty.

THE JURISDICTION OF THE FEDERAL COURTS

The United States has a **dual court system** - one federal, as outlined above, and one state. The Constitution gives certain kinds of cases to federal courts, and by implication leaves all the rest to state courts. Federal courts hear cases "arising under the Constitution, the law of the United States, and treaties" (**federal-question cases**) and cases involving citizens of different states (**diversity cases**).

Some kinds of cases may be heard in either federal or state courts. For example, if citizens of different states sue one another in a civil case where more than \$50,000 is involved, their case may go to either federal or state court. If a state bank with federal insurance is robbed, the case may be tried in either type of court. Sometimes defendants may be tried in both state and federal courts for the same offense. Under the doctrine of **dual sovereignty**, state and federal authorities can prosecute the same person for the same conduct. Also, some cases that go to state courts can be appealed to the U.S. Supreme Court if they involved a significant **constitutional question**. For example, if the highest court in a state has held a law to be in violation of the Constitution or has upheld a state law that a plaintiff has claimed to be in violation of the Constitution, the matter may be appealed to the Supreme Court.

Most cases considered in federal courts begin in the district courts, where the volume of cases is huge and growing larger. Most cases involve straightforward application of law; very few are important in policymaking. Likewise, the vast majority of cases heard in state courts do not reach federal courts, with each state having its own Supreme Court that serves as the final judge for questions of state law.

THE SELECTION OF JUDGES

Legendary Justice Oliver Wendell Holmes once said that a Supreme Court justice should be a "combination of Justinian, Jesus Christ, and John Marshall." Why do we look to venerable former justices for guidance in understanding necessary qualities for federal judges and justices? The main reason is that the Constitution is silent on their qualifications. The Constitution meticulously outlines qualifications for the House of Representatives, the Senate, and the Presidency, but it does not give us any help with judicial appointments, other than the fact that justices should exhibit "good behavior." As a result, the question of who is chosen is governed primarily by tradition.

THE NOMINATION PROCESS

The Constitution provides broad parameters for the nomination process. It gives the responsibility for nominating federal judges and justices to the President. It also requires nominations to be confirmed by the Senate. But let's do the numbers. Hundreds of judges sit on district courts and courts of appeals, and nine justices make up the Supreme Court. Since they all have life terms, no single President will make all of these appointments, but certainly many vacancies will occur during a President's term of office.

Appointing judges, then, could be a President's full time job. Logically, a President relies on many sources to recommend appropriate nominees for judicial posts. Recommendations often come from the Department of Justice, the Federal Bureau of Investigations, members of Congress, sitting judges and justices, and the American Bar Association. Some judicial hopefuls even nominate themselves.

The Lower Courts

The selection of federal judges for district courts and sometimes for courts of appeal is heavily influenced by a tradition that began under George Washington: **senatorial courtesy**. Usually the Senate will not confirm a district court judge if the senior senator from the state where the court is located objects, nor a court of appeals judge not

approved by the senators from the judge's home state. As a result, presidents usually check carefully with senators ahead of time, so the Senate holds a great deal of power in the appointment of federal judges.

The Supreme Court

The president is usually very interested in opportunities to appoint justices to the Supreme Court, and a great deal of time and effort go into the nominations. Because justices retire at their own discretion, some presidents are able to appoint more than others. For example, Richard Nixon was able to nominate four justices in his first three years in office, but Jimmy Carter wasn't able to appoint any.

SENATE CONFIRMATION

Because senators suggest most nominees for federal district courts, the Senate confirmation required by the Constitution is only a formality for most. However, for appointments to appeals courts and especially to the Supreme Court, the confirmation process may be less routine. The Senate Judiciary Committee interviews the nominee before he or she goes before the entire Senate. If the Judiciary Committee does not recommend the candidate, the Senate usually rejects the nomination. Through 2001, 28 of the 146 individuals nominated to be Supreme Court justices have not been confirmed by the Senate.

SELECTION CRITERIA

Presidents use a number of criteria in selecting their nominations:

Political ideology : Presidents usually appoint judges that seem to have a similar political ideology to their own.

In other words, a president with a liberal ideology will usually appoint liberals to the courts. The same goes for conservative presidents. However, Presidents have no real way of predicting how justices will rule on particular issues. Behavior doesn't always reflect ideology, and political views also change. For example, President Dwight Eisenhower: a Republican - appointed Earl Warren and William Brennan, who surprised him by becoming two of the most liberal justices in recent history.

Party and personal loyalties : A remarkably high percentage of a President's appointees belong to his political party. Overall, about 90 percent of judicial appointments since the time of Franklin Roosevelt have gone to members of the President's party. Although it isn't as common today as it once was, Presidents still appoint friends and loyal supporters to federal judgeships.

Acceptability to the Senate -Because the Senate must confirm judicial nominations, the President must consider candidates that are acceptable to the Senate. Even if he does informally consult with the Senate, he may still run into problems with the Senate Judiciary Committee, who first interrogates nominees and recommends them to the full Senate. If a nominee runs into trouble in the confirmation process, they often withdraw their names from consideration. If this happens, the President must start all over again, as happened to Ronald Reagan in 1988 when he nominated Douglas Ginsburg, who was criticized for using marijuana while a law professor at Harvard.

Judicial experience - Typically justices have held important judicial positions before being nominated to the Supreme Court. Many have served on courts of appeals, and others have worked for the Department of Justice. Some have held elective office, and a few have had no government service but have been distinguished attorneys. The work of the Supreme Court is so unique that direct judicial experience is often less important than it is for the other courts of appeals.

Race and gender - The first black American, Thurgood Marshall, was appointed to the Supreme Court by Lyndon Johnson in 1967, and the first woman, Sandra Day O'Connor, was appointed in 1981 by Ronald Reagan. Since then one other black, Clarence Thomas, and one woman, Ruth Ginsburg, have been appointed as well. Before 1967 all justices were white and male. The percentage of women and minority federal judges appointed has increased significantly in recent years.

The "Litmus Test" - Although most senators and presidents deny it, some observers believe that candidates must pass a "litmus test," or a test of ideological purity, before they may be nominated and/or confirmed to the Supreme Court. One recent litmus test supposedly has been the individual's attitude toward abortion rights. Nominees David Souter and Clarence Thomas both were grilled by the Senate Judiciary Committee about their opinions on prominent abortion cases.

HOW THE SUPREME COURT WORKS

The power of the Supreme Court is reflected in the work that they do, and their decisions often shape policy as profoundly as any law passed by Congress or any action taken by the president. The Court does much more than decide specific cases. It resolves conflicts among the states and maintains national supremacy. It also ensures uniformity in the interpretation of national laws, and many of the most important cases that determine the constitutionality of laws and government actions are decided in the Supreme Court.

There are nine justices on the Supreme Court: eight associates and one chief justice. The number is set by law and has varied from six to ten over the course of history, but it has remained at nine since the 1870s. All the justices sit together to hear cases and make decisions.

Supreme Court justices are in session from the first Monday in October through the end of June. They listen to oral arguments for two weeks and then adjourn for two weeks to consider the cases and write their opinions. In the event of a tie (if one or more justices is not present), the decision of the lower court remains, although on rare occasions a case may be reargued.

SELECTION OF CASES

Most cases come to the Supreme Court by means of a **writ of certiorari**, a Latin phrase that means "made more certain." The court considers all petitions it receives to review lower court decisions. If four justices agree to hear a case, cert (a shortened reference) is issued and the case is scheduled for a hearing. This practice is known as the **rule of four**. Only a tiny fraction of cases appealed to the Supreme Court are actually accepted. The Court also hears the few cases in which it has original jurisdiction according to Article III of the Constitution, but for the vast number of cases, the Court has control of its agenda and decides which cases it wants to consider.

BRIEFS AND ORAL ARGUMENTS

Before a case is heard in court, the justices receive printed briefs in which each side presents legal arguments and relevant precedents (previous court decisions). Additionally, the Supreme Court may receive briefs from *amicus curiae* ("friends of the court") individuals, organizations, or government agencies that have an interest in the case and a point of view to express. When oral arguments are presented to the court counsel for each side generally is limited to 30 minutes, a policy that often aggravates the lawyers, since justices often interrupt them to ask questions.

THE CONFERENCE

Wednesday afternoons and all day Friday the justices meet in conference. Before every conference, each justice receives a list of the cases to be discussed, and the discussions are informal and often spirited, with the chief justice presiding. No formal vote is taken, but at the end of discussion, each justice is asked to give his or her views and conclusions.

OPINIONS

Once decisions have been made in conference an opinion, or statement of the legal reasoning behind the decision, must be formally stated. The most senior justice in the majority assigns the task of writing the **majority opinion**, the official opinion of the court. Unless the decision is unanimous, the most senior justice on the losing side decides who will write the **dissenting opinion** of those justices who do not agree with the Court's majority decision. A justice may write a **concurring opinion** if he or she agrees with the majority decision but does so for different reasons than stated in the majority opinion.

The content of an opinion may be as important as the decision itself. For example, John Marshall established judicial review in his majority opinion in the *Marbury v. Madison* case. Opinions also instruct the judges of all other state and federal courts on how to decide similar cases in the future.

IMPLEMENTING COURT DECISIONS

Court decisions carry legal authority, but courts have no police officers to enforce them. They must rely on the other branches, or state officials, to enforce their decisions. **Judicial implementation**, then, refers to the translation of court decisions into actual policy that affects the behavior of others.

Although Congress or a President may ignore or side-step a Supreme Court ruling, decisions whose enforcement requires only the action of a central governmental agency usually become effective immediately. Implementation is

more difficult if a decision requires the cooperation of a large number of officials. For example, when the Court ruled required prayers in public schools unconstitutional, some school boards continued their previous practices. Also, despite the fact that the Court ruled segregated schools unconstitutional in 1954, public schools remained largely segregated for more than ten years after the first ruling.

THE COURTS AND DEMOCRACY

Of the three branches of government, the courts are the least democratic. Justices are not elected (except for some positions on the local level), they may not be removed from office except by the drastic means of impeachment, and the decisions of the courts may only be reversed by higher courts.

POPULAR INFLUENCE

The courts are not entirely independent of popular influence for two reasons.

- 1) The justices are appointed by the President, at least partly because they agree with his political points of view and ideologies. Therefore, even though they do not have the pressure to seek reelection, they are chosen at least partly because of their political biases.
- 2) Justices follow election returns, read newspapers, get mail supporting both sides of the issues they must decide, and understand that their decisions either support or refute popular opinion. Justices are aware that court orders that flagrantly go against public opinion are likely to be ignored. Such a case was the *Dred Scott* decision, which infuriated the North because it supported slaveholders outside the South.

CONSERVATISM AND LIBERALISM

Although justices are theoretically “above politics,” they do have personal ideologies, and their points of view often influence their decisions. For example, the Supreme Court under Earl Warren (1953-1969) and Warren Burger (1969-1986) made decisions that were notably liberal, most famously is *Brown v. Board of Education of Topeka* (1954) and *Roe v. Wade* (1973). Since William Rehnquist became Chief Justice in 1989, the court has taken a rightward shift. Currently, three justices are consistently conservative (Rehnquist, Antonin Scalia, and Clarence Thomas); four are liberal to moderate (Ruth Ginsberg, Steven Breyer, and John Paul Stevens); and two are moderate to conservative (Sandra Day O’Connor and Anthony Kennedy). As a result, the two in the middle often serve as “swing” votes, and decisions rest on their points of view.

CONSTRAINTS ON THE POWER OF THE FEDERAL COURTS

Judicial review gives the federal courts a power unmatched in any other modern democracy, but the courts operate under a number of constraints.

- 1) Policy must be made within the setting of an **adversarial system**, a neutral arena in which two parties present opposing points of view before an impartial arbiter (a judge.) The system is based on the assumption that justice will emerge from the struggle. Judicial power, then, is passive - the case must come to the court, and not vice versa.
- 2) The case must represent a **justiciable dispute** - an actual situation rather than a hypothetical one, and one that may be settled by legal methods.
- 3) Courts have developed a doctrine of **political questions**, which provides grounds to avoid settling disputes between Congress and the president, or requires knowledge of a nonlegal character. A political question is a matter that the Constitution leaves to another branch of government, like deciding which group of officials of a foreign nation should be recognized as the legitimate government.

The other two branches of government provide some important checks on the power of the courts.

- The president controls the nature of the courts with his power to appoint all federal judges.
- Congress must confirm presidential appointments
- Congress may alter the very structure of the court system, determining the numbers of courts and justices that serve on them.
- Congress has the power to impeach justices, with two federal justices being removed from office most recently in 1989.
- Congress may also amend the Constitution if the Courts find a law unconstitutional, though this happens only rarely. For example the Sixteenth Amendment was added to make it constitutional for Congress to pass an income tax.

THE POLICYMAKING POWER

Although the vast majority of cases decided by the federal courts only apply existing law to specific cases, courts do make policy on both large and small issues. Opinions differ widely on the question of how strong the policymaking role of the judicial branch should be.

Many favor a policy of **judicial restraint**, in which judges play minimal policy-making roles, leaving policy decisions to the other two branches. Supporters of judicial restraint believe that because the judicial branch is the least democratic, judges are not qualified to make policy decisions. According to judicial restraint, the other branches should take the lead because they are more closely connected to the people. According to Justice Antonin Scalia, "The Constitution is not an empty bottle; it is like a statute, and the meaning doesn't change."

On the other side are supporters of **judicial activism**, in which judges make policy decisions and interpret the Constitution in new ways. Judicial activists believe that the federal courts must correct injustices that the other branches do not. For example, minority rights have often been ignored, partly because majorities impose their will on legislators. Prayers in public schools support the beliefs of the majority, but ignore the rights of the minority. The Constitution, then must be loosely interpreted to meet the issues of the present. In the words of former Justice Charles Evans Hughes: "We are under a Constitution, but the Constitution is what the judges say it is."

Despite the debate over what constitutes the appropriate amount of judicial power, the United States federal courts remain the most powerful judicial system in world history. Their power is enhanced by life terms for judges and justices, and they play a major role in promoting the core American values of freedom, equality, and justice.

IMPORTANT DEFINITIONS AND IDENTIFICATIONS:

Adversarial system	Federal question cases	Political question
Appellate jurisdiction	Gideon v. Wainwright	Precedence
Civil law	Justiciable dispute	Public defenders
Class action suits	Judicial activism vs. judicial restraint	Rule of four
Common law	Judicial implementation	Senatorial courtesy
Constitutional question	Judicial review	Solicitor general
Criminal law	Legislative courts	Standing to sue
defendant	"litmus test"	Stare decisis
District Courts	Marbury v. Madison	Writ of certiorari
Diversity cases	Opinions: majority, dissenting,	Writ of mandamus
Dual court system	concurring	
Dual sovereignty	Original jurisdiction	

CHAPTER FOURTEEN: POLICYMAKING

One of government's primary roles is to make policy that will solve society's problems. In the United States all three branches of government and the bureaucracy make policy. Many other organizations try to influence government decisions and programs, including special interest groups, research institutes, corporations, state and local governments, as well as individual citizens.

THE POLICYMAKING PROCESS

The policymaking process regularly makes news headlines, but it is not easy to understand how the overall process works. Every policy has a unique history, but each one generally goes through five basic stages:

1. **Recognizing the problem/agenda setting** - Almost no policy is made unless and until a need is recognized. Many different groups and people may bring a problem or issue to the government's attention through interest group activities or court cases. People within the government itself have their own agendas that they push, including the president, bureaucratic agencies, and members of Congress. Of course, these sources do not agree on which issues are most important, so getting the government to set an agenda that prioritizes problems is quite a challenge.
2. **Formulating the policy** - If enough people agree that government needs to act, then a plan of action must be formulated. At this stage, generally several alternative plans from various political groups are formed. For example, if the issue is gun control, interest groups from both sides will push for different solutions, and reaching a solution almost always involves compromise all around.
3. **Adopting the policy** - In this third stage, the policy becomes an official action by the government. It may take the form of legislation, an executive or bureaucratic order, or a court decision. Policy is often built in a series of small steps passed over time, so this stage may be quite complex.
4. **Implementing the policy** - For an adopted policy to be effective, government must see that it is applied to real situations. For example, if new gun control laws are set in place, government officials must make sure that the general public knows about them. They must also put enforcement in place and see that violators are punished appropriately.
5. **Evaluating the policy** - Evaluation of the good or the harm created by a policy usually takes place over an extended period of time. Policies that may seem sound at the start may have unforeseen negative consequences or unexpected costs. Inevitably, some will call for changes and/or corrections, and others will disagree. The whole process occurs again, starting with recognition or re-recognition of the problem. As a result, policymaking is a continuous process, and government at any given time is at various stages with numerous issues.

ECONOMIC POLICY

How much responsibility should the government have for keeping the United States economy healthy? That question has been answered in many different ways throughout our history. Until the twentieth century the country followed the *laissez-faire* (literally, "to leave alone") policy, which required a free market without any intervention from government. With President Franklin Roosevelt's New Deal era of the 1930s came **Keynesian economics**, or the opposite belief that the government should manage the economy. Today the U.S. economic policy lies somewhere in between - government should regulate and sometimes manage, but should allow a free market whenever possible. Political and business leaders disagree on how much control is enough.

The budgeting of public funds is one of the most important decision making processes of government. Nothing reflects the growth in public policy and the rise of big government more clearly than the increased spending by the federal government. For example, in 1933, the annual federal budget was about \$4 billion. Today the national budget is more than \$2.5 trillion, or about 20 percent of the gross domestic product. The national debt is about \$4 trillion, and in 2004 the **deficit** (amount overspent in a given year) was about \$412 billion.

FISCAL POLICY

Fiscal policy affects the economy by making changes in government's methods of raising money and spending it.

Where the Money Comes From

Not surprisingly, most government revenue comes from taxes, but some comes from interest, fees, and borrowing.

- **Federal Income Taxes** - The income tax is the largest single source of federal revenue today, providing almost 40% of the national government's total revenues. It is a **progressive tax**: the higher the income and ability to pay, the higher the tax rate. Not only individuals pay income taxes, corporations do, too. About 10 percent of federal government revenues come from corporate income taxes. Today tax codes are so complex that most ordinary citizens don't understand them. As a result, many critics have called for tax codes to be simplified.
- **Social Insurance Taxes** - The largest social insurance taxes are for Social Security and Medicare. Employers apply these taxes to their employees, who are then eligible to receive Social Security benefits when they get older. Social insurance taxes fund the Social Security and Medicare programs. These taxes account for almost 1/3 of the total federal government revenues collected.
- **Borrowing** - The government regularly borrows money - most of it from its own taxpayers - to fund its expenses. **Deficit spending** occurs when the government spends more money than it takes in within any given fiscal year. Starting in the early 1990s Congress began considering required balanced budget amendments/ legislation in order to cut the national debt. With increased tax revenues from the economic boom of the 1990s, deficit spending decreased and turned into a surplus, but governments generally borrow more money during wartime than during peace, so the war on terrorism and the war in Iraq put the country back into deficit spending during the early 2000s.
- **Other Taxes** - A small percentage of revenue comes from other taxes, such as excise taxes, estate taxes, customs, duties, and tariffs. Excise taxes are levied on goods and services, such as liquor, gasoline, cigarettes, air travel, and telephones. These are regressive taxes, meaning that they are the same for everyone, and are not based on income. Estate taxes are levied on the money and property that are inherited when an individual dies, but are generally only levied on large estates. Customs, duties, and tariffs are levied on goods imported into the United States.

Where the Money Goes

The government now spends more than \$2.5 trillion a year, as provided in the federal budget. Each year the President submits a federal budget for approval by Congress for money to be spent starting in October of that year.

Government spends its revenue on many different things, but three major categories are entitlements, national defense, and the national debt.

- **Entitlement Programs** - These payments are required by law, and are given to people meeting particular eligibility requirements. The largest programs are Social Security (pensions for older Americans), unemployment insurance, Medicare (medical benefits), and federal retirement pensions. Social Security and Medicare amount to about 41 percent of federal spending per year.
- **National Defense** - The second largest amount goes for national defense. Today about 18 percent of the total budget goes for defense, in contrast to 28 percent in 1987, when the cold war was still going on. However, the current war on terrorism and the war in Iraq have escalated defense expenditures again, up from about 16% in 2001.
- **National Debt** - The third largest amount-- about 8 percent -- pays interest on the **national debt**, a figure that has also decreased in recent years.

Other expenditures are highway construction, education, housing, and foreign aid.

MONETARY POLICY

Monetary policy is the government's control of the money supply. The government can control how much or how little is in circulation by the amount of money that they print and coin. If too much money is out there, it tends to cause **inflation**, or the devaluation of the dollar. Too little money in circulation and the opposite (**deflation**) occurs. The powerful arm of government that controls the money supply is the **Federal Reserve System**, which is headed by the **Federal Reserve Board**. The board is designed to operate with a great deal of independence from government control. One important way that the "Fed" controls the money supply is by adjusting interest rates - high rates discourage borrowing money, and low ones encourage it.

The Federal Reserve Board's seven members are appointed by the president and are approved by the Senate for 14-year, nonrenewable terms, and the president may not remove them from office before their terms are up. The chair is elected by the board for four years, and may be reelected. The Board heads the Federal Reserve System, which was

created by Congress in 1913 to regulate the lending practices of banks. It consists of 12 regional banks, which in turn supervise a total of about 5,000 banks across the United States.

FOREIGN POLICY

Until the 20th century, the United States was generally guided by an **isolationist foreign policy**, or the philosophy that we should avoid “entangling alliances” (the words of George Washington) whenever possible. Then, in the 20th century our involvement in World War I and World War II thrust us onto the world stage.

In the years after World War II, the United States was guided generally by **containment**, the policy of keeping communism from spreading beyond the countries already under its influence by about 1950. The policy applied to the United States’ role in the **cold war**, a struggle between the United States and the Soviet Union for world power. With the collapse of the Soviet Union in 1991, containment no longer made sense, so in the past ten years, the U.S. has been redefining its foreign policy.

We have been active participants in many international organizations, such as the United Nations, but Americans disagree on just how much world involvement is appropriate. And then with the September 11 attacks on the World Trade Towers and the Pentagon, the United States finds itself spearheading an international war on terrorism. These developments conjure up the old questions within a very different set of circumstances. How actively should we fight terror? What, if any, are the limits? President Bush’s decision to invade Iraq in 2003 to remove Saddam Hussein from power was controversial, and remains so, especially as the cost of the war has escalated.

FOREIGN POLICY GOALS

To try to redefine foreign policy under the new set of circumstances brought about in 2001, we can begin with the Department of State, whose primary duty has always been the security of the nation. State Department goals include:

- Protecting national security
- Providing international leadership in developing world peace
- Insuring a balance of power; keeping aggressive nations from overpowering weaker ones
- Cooperating with other nations in solving international problems
- Promoting human rights and democratic values
- Fostering cooperative foreign trade and globalization of trade through international organization

These goals are both national and international in nature, and the 2001 attacks on the World Trade Towers and the Pentagon confirm the fact that national and international interests are not easily separated any more. President George W. Bush used a policy of **preemption** to justify the war in Iraq, or the principle of attacking before being attacked. A major reason for invading Iraq presented by the Bush administration was to locate and destroy weapons of mass destruction within the country’s borders. However, such weapons were never found during the U.S. occupation of the country.

WHO MAKES FOREIGN POLICY?

Many people and organizations within government have a hand in setting United States foreign policy. The main objective of foreign policy is to use **diplomacy** – conferences, meetings, and agreements – to solve international problems. They try to keep problems from developing into conflicts that require military settlements.

- **The President** – The leader in foreign policy is almost always the president. Presidents, or their representatives, meet with leaders of other nations to try to peacefully solve international problems. According to the Constitution, presidents sign treaties with other nations with the “advice and consent” of the Senate. So the Senate, and to a lesser extent, the House of Representatives, also participate in shaping foreign policy. Presidents may also make **executive agreements** with other heads of state that do not require Senate approval.
- **The Secretary of State** As the head of the State Department, the Secretary is the chief coordinator of all governmental actions that affect relations with other countries. The State Department also includes the **Foreign Service**, which consists of **ambassadors** and other official U.S. representatives to more than 160 countries. Ambassadors and their staffs set up embassies in the countries and serve as the major American presence in their respective assigned countries. They protect Americans abroad and are responsible for harmonious relationships with other countries.

- The **National Security Council** - As part of the Executive Office of the President, the Council helps the president deal with foreign, military, and economic policies that affect national security. Its members are the president, the vice president, the secretary of state, the secretary of defense, and any others that the president designates. The **national security adviser** coordinates the Council, and often has as much influence as the secretary of state, depending on his or her relationship to the president.
- The **Central Intelligence Agency** - One of the most famous of all government agencies, the CIA gathers, analyzes, and transmits information from other countries that might be important to the security of the nation. Although the CIA is best-known for its participation in “spy” cases and “top secret” investigations, much of its work is public and routine. The CIA director is appointed by the President and confirmed by the Senate

With the passage of a major intelligence bill in late 2004, intelligence gathering was altered significantly. The bill created a national intelligence director, who certainly will play a major role in shaping foreign policy in the future.

MILITARY POLICY

Until 1947 the Cabinet-level official most directly responsible for military policy was called the secretary of war. The name changed to “secretary of defense,” and the department that this official heads has more federal employees than any other in the government. The department of defense is headquartered in the Pentagon, where about 25,000 military and civilian personnel work. The secretary of defense is always a civilian, and he supervises three large military departments – Army, Navy, and Air Force.

Under the Constitution, the president is commander-in-chief of the armed forces, and he has used that authority to order American military forces into combat on many occasions. During peacetime, his most important military powers are those he exercises through the secretary of defense in managing the Department of Defense. The president and secretary of defense make important decisions regarding the military budget and distribution of funds among the military services.

The most important military advisory body to the secretary of defense is the **Joint Chiefs of Staff**. Its five members are the chiefs of staff of the three military departments, the commandant of the Marines, and a chair. All of the service chiefs are appointed by the president and must be confirmed by the Senate. Only the secretary of defense, however, sits on the president’s cabinet and on the National Security Council.

SOCIAL POLICY

The preamble to the Constitution states that “We the People of the United States, in Order to create a more perfect Union, establish Justice... promote the general Welfare...do ordain and establish this Constitution...” Social policy is set with this important charge in mind.

The interpretation of the government’s responsibility for the welfare of its citizens has changed over time and remains controversial today. The government currently assumes major responsibilities in three key social policy areas: health care, welfare, and education.

Health Care

Health care is controversial today concerning the issue of a national health insurance program. In 1993 Congress defeated President Bill Clinton’s proposed plan to provide all citizens with basic insurance coverage for doctor fees, hospitalization, and prescription drugs. On the other hand, most people accept government’s role in medical research and regulating food and drugs. **The Public Health Service** researches, gathers information, and monitors health care. **The Food and Drug Administration** regulates the labeling and processing of most foods, drugs, and cosmetics. The **Center for Disease Control** gained a new importance during the 2001 Anthrax scare following the September 11 attacks on the World Trade Towers and the Pentagon.

Welfare

To many Americans, the phrase “welfare”-- right out of the preamble to the Constitution - often conjures images of irresponsible recipients who take welfare payments from the government instead of working. In truth, most Americans during their lifetimes will be the recipients of government welfare. The most extensive single welfare program is **Social Security**, a social insurance plan for the elderly, poor, and disabled. Employees and employers contribute to a fund through payroll taxes, and virtually everyone who contributes for at least ten years is eligible for payments. Most Americans support the program as long as it’s called “Social Security,” and not “welfare.” Other public assistance programs include Medicare, Medicaid, Aid to Families with Dependent Children, and food stamps.

Education

Public education is generally regarded as the responsibility of states and local communities, so the federal government's role in this area is limited. Today most federal funds go to higher education, primarily in the form of student loans and grants. Since the 1950s the federal government has provided funds for public education grades 1-12, particularly for programs to upgrade science, language, and mathematics. Other programs, such as **Head Start** for preschoolers, focus on helping underprivileged children. However, the federal government today funds less than 10 percent of the total amount spent on education in the United States. A recent initiative by President George W. Bush is *Leave No Child Behind*, a comprehensive program that sets standards and schedules for testing, curriculum, and teacher qualifications. The program has been controversial, partly because it has imposed unfunded mandates on the states.

REGULATORY POLICY

The U.S. government first began regulating individuals, businesses, and its own agencies during the late 1800s. Since then, the government's regulatory role has grown rapidly, so that today most activities are regulated in some way by the federal government. Important regulatory activities of the government include:

- **Regulating business.** The national government began regulating business in the late 1800s in order to eliminate **monopolies**, businesses that have exclusive control of an industry. Government now regulates a wide array of business practices, including elimination of competition and fraudulent product offerings.
- **Regulating labor.** Labor regulations became a major focus of the government during the 1930s. Then as now, most labor policies have been made to protect the American worker. The government has promoted equal employment opportunities, safe and sanitary workplace standards, and fair bargaining practices between employer and workers.
- **Regulating energy and the environment.** Energy policies are coordinated by the **Department of Energy**, created in the late 1970s in the wake of worldwide oil and gas shortages. A major concern of energy policy makers is maintaining a supply of cheap energy that the country depends on for most of its activities. Many are alarmed by the country's dependence on Middle-Eastern Oil, and others keep a watchful eye on depletion of U.S. natural resources and damage to the environment. Environmental policy, on the other hand is the responsibility of many different government departments and agencies. Especially important is the **Environmental Protection Agency**, which enforces policies on water and air pollution, pesticides, radiation, and waste disposal.

Many different people take part in setting U.S. public policy. Some groups that form close links to individual citizens participate in policy making, particularly interest groups, the media, and political parties. Within the government itself, all three branches have a say, and in any one area, policies are usually set by any number of people having input at many points in the process.

IMPORTANT DEFINITIONS AND IDENTIFICATIONS:

Center for Disease Control	Federal Reserve System	monopolies
Central Intelligence Agency	fiscal policy	national debt
containment	Food and Drug Administration	national Security Advisor
customs, duties, tariffs	Foreign Service	National Security Council
deficit spending	Head Start	preemption
deflation	inflation	progressive tax
diplomacy	isolationism foreign policy	Public Health Service
entitlement programs	Joint Chiefs of Staff	regressive tax
Environmental Protection Agency	Keynesian economics	social insurance taxes
estate taxes	laissez-faire policy	Social Security
excise taxes	Leave No Child Behind	
Federal Reserve Board	monetary policy	

CHAPTER FIFTEEN: CIVIL LIBERTIES

A respect for civil liberties and civil rights is one of the most fundamental principles of the American political culture. The founders were very concerned with defining and protecting liberties and rights, and their efforts are reflected in the Declaration of Independence, the Constitution, and the Bill of Rights. Civil liberties and rights have continued to evolve through the years by means of additional amendments (particularly the Fourteenth), court decisions, and legislative actions.

THE DECLARATION OF INDEPENDENCE

"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."

Thomas Jefferson, 1776

The Declaration clearly reflects the founders' belief that governments are responsible for protecting the "unalienable rights" of "life, liberty, and the pursuit of happiness." Since people are clearly capable of abusing the "natural rights" of others, the government must protect the rights of its citizens.

THE ORIGINAL CONSTITUTION

Most of the framers believed that the basic "natural rights" were guaranteed by the original Constitution before the Bill of Rights was added. Rights specifically mentioned in the body of the Constitution are:

- *writ of habeas corpus*
- no bills of attainder
- no *ex post facto* laws
- trial by jury in federal courts in criminal cases
- protection as citizens move from one state to another
- no titles of nobility
- limits on punishment for and use of the crime of treason
- no religious oaths for holding federal office
- guarantee of republican government for all states

THE WRIT OF HABEAS CORPUS

"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."

Article One, Section Nine

The Constitution of the United States

Habeas Corpus literally means "produce the body." The writ is a court order requiring government officials to present a prisoner in court and to explain to the judge why the person is being held. Suspension of *habeas corpus* is a right of Congress, since the passage above appears in Article One, which defines the powers of Congress.

Originally, the writ was only a court inquiry regarding the jurisdiction of the court that ordered the individual's confinement, but today it has developed into a remedy that a prisoner can formally request. A federal judge may order the jailer to show cause why the person is being held, and the judge may order the prisoner's immediate release.

The Supreme Court under Chief Justice Rehnquist has severely limited the use of *habeas corpus* partly because prisoners on death row have used it to delay their executions, sometimes for years. Supporters of *habeas corpus* believe that judges should be allowed to use their own judgment in issuing the writs because they are protecting constitutional rights.

EX POST FACTO LAWS AND BILLS OF ATTAINDER

The Constitution forbids both national and state governments from passing ***ex post facto laws***. An *ex post facto* law is a retroactive criminal law that affects the accused individual negatively. Such laws may make an action a crime that

was not a crime when committed, or they may increase punishment for a crime after it was committed. On the other hand, the restriction does not apply to penal laws that work in favor of the accused.

A bill of attainder is a legislative act that punishes an individual or group without judicial trial. The Constitution forbids them because the founders believed that it is the job of the Courts, not Congress, to decide that a person is guilty of a crime and then impose punishment

THE BILL OF RIGHTS

The overwhelming majority of court decisions that define American civil liberties are based on the Bill of Rights, the first ten amendments added to the Constitution in 1791.

Even though most of the state constitutions in 1787 included separate bills of rights for their citizens, the original Constitution mentioned only the rights listed above. These rights were scattered throughout the articles, with most of the attention focused on defining the powers of the branches of government, not on preserving individual rights. Many people were widely suspicious of these omissions, and in order to gain ratification, the founders agreed to add ten amendments in 1791, the **Bill of Rights**.

- The **First Amendment** guarantees freedom of speech, press, assembly and petition. In addition, it prohibits Congress from establishing a national religion.
- The **Second Amendment** allows the right to bear arms.
- The **Third Amendment** prohibits the quartering of soldiers in any house.
- The **Fourth Amendment** restricts searches and seizures ("the right of the people to be secure in their persons, houses, papers, and effects").
- The **Fifth Amendment** provides for grand juries, restricts eminent domain (the right of the government to take private property for public use), and prohibits forced self-incrimination and double jeopardy (being tried twice for the same crime).
- **Amendment Six** outlines criminal court procedures.
- **Amendment Seven** guarantees trial of jury in civil cases that involve values as low as twenty dollars.
- **Amendment Eight** prevent excessive bail and unusual punishment
- The **Ninth Amendment** allows that Amendments 1-8 do not necessarily include all possible rights of the people.
- The **Tenth Amendment** reserves for the states any powers not delegated to the national government specifically in the Constitution.

OTHER SOURCES OF CIVIL LIBERTIES AND CIVIL RIGHTS

The Constitution and the Bill of Rights form the basis of Americans values concerning civil liberties and civil rights, but they have been supplemented through the years by other amendments, court decisions, and legislative action.

THE FOURTEENTH AMENDMENT

Civil rights are also protected by the **Fourteenth Amendment**, with protects violation of rights and liberties by the state governments.

"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.ä

Amendment Fourteen, Section One

Although the Fourteenth Amendment was originally passed in the post-Civil War era specifically to protect the rights of ex-slaves, the famous Section One protects many citizens' rights from abuse by state governments Whereas the Bill of Rights literally applies only to the national government, the Fourteenth Amendment is intended to limit the actions of state governments as well. Section One includes:

- a citizenship clause that protects "**privileges and immunities**"
- a **due process clause** that prohibits abuse of "life, liberty, or property"
- an **equal protection clause** that has been an important basis of the modern civil rights movement

One important consequence of the Fourteenth Amendment is the **incorporation** of the Bill of Rights to apply to the states. The Bill of Rights originally only limited the powers of the federal government. For example, in 1833 in **Barron**

vs. Baltimore the U.S. Supreme Court ruled that the Bill of Rights did not apply to state laws. It was assumed that the states' bills of rights would protect individuals from abuse by state laws. However, the 14th Amendment nationalized the nature of civil rights with this statement:

"No State shall deprive any person of life, liberty, or property, without due process of law."

Incorporation happened gradually over time through individual court decisions that required states to protect most of the same liberties and rights that the Bill of Rights protects from federal abuse. These changes are reflected in numerous court decisions made between 1925 and 1969. Two examples of cases that reflect incorporation are:

- **Gitlow v. New York** (1925) - Benjamin Gitlow was arrested and found guilty of breaking a New York state sedition act when he passed out pamphlets that supported socialism and overthrow of the government. Gitlow believed that his freedom of speech was violated, and the case was appealed to the Supreme Court. Even though the Court did not declare the New York law unconstitutional, the majority opinion stated that "fundamental personal rights" were protected from infringement by states by the Due Process Clause of the Fourteenth Amendment.
- **Gideon v. Wainwright** (1963) - Clarence Gideon appealed the decision of a Florida court to send him to prison for breaking and entering a pool hall. He based his appeal on the right to counsel (guaranteed in the Sixth Amendment) because in the original trial he could not afford to hire a lawyer and was not provided one by the state court. The Supreme Court ruled in his favor, again applying the Due Process Clause of the Fourteenth Amendment to require states to provide counsel to anyone charged with a felony who was too poor to afford a lawyer.

COURT DECISIONS

The Supreme Court continues to shape the definition and application of civil rights and civil liberties. Although the court has always played an important role in the protection of civil rights and civil liberties, it has been particularly active in the modern era since about 1937. The Supreme Court sets precedents that influence legislation and subsequent court decisions. The Court's influence is based largely on **judicial review**, the power to judge the constitutionality of a law or government regulation.

LEGISLATIVE ACTION

The Constitution, the Bill of Rights, and the Fourteenth Amendment protect individuals from actions of government, but court decisions and legislation protect individuals from discriminatory actions by private citizens and organizations. Legislative action is an essential component of the modern civil rights era, although the courts took the earliest initiatives.

The activist court of the 1960s set precedents that broadly construe the commerce clause, which gives Congress the power to regulate interstate and foreign commerce. As a result, through laws like the Civil Rights Act of 1964, the legislature has played a major role in combating discrimination.

The Constitution, the Bill of Rights, the Fourteenth Amendment, Supreme Court decisions, and legislative actions all define the nature of civil rights and civil liberties in American society, but issues arise which constantly cause reinterpretations of the sources. Conflicts arise largely because issues often involve one citizen's or group's rights versus another's.

FIRST AMENDMENT LIBERTIES

"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."

The First Amendment

The Constitution of the United States

The **First Amendment** protects several basic liberties: freedom of religion, speech, press, petition, and assembly. Interpretation of the amendment is far from easy, as court case after court case has tried to define the limits of these freedoms. The definitions have evolved throughout American history, and the process continues today.

FREEDOM OF RELIGION

The 1st Amendment protects freedom of religion in two separate clauses: the “**establishment**” clause, which prohibits the government from establishing an official church, and the “**free exercise**” clause that allows people to worship as they please. Surprisingly, the First Amendment does not refer specifically to the “separation of church and state” or a “**wall of separation.**” Those phrases evolved later, probably from letters written by Thomas Jefferson, but the First Amendment does prohibit the establishment of a government sponsored religion, such as the Anglican Church in England.

The Establishment Clause

The *Everson v. Board of Education* case in 1947 challenged a New Jersey town for reimbursing parents for the cost of transporting students to school, including local parochial schools. The plaintiffs claimed that since the parochial schools were religious, publicly financed transportation costs could not be provided for parochial students. The challenge was based on the establishment clause. The court in this case ruled against the plaintiffs, claiming that busing is a “religiously neutral” activity, and that the reimbursements were appropriate. However, the majority opinion declared that states cannot support one religion above another.

Aid to church-related schools has been a topic at issue with the establishment clause. In 1971 in *Lemon v. Kurtzman*, the Supreme Court ruled that direct state aid could not be used to subsidize religious instruction. The Court’s opinion stated that government aid to religious schools had to be secular in aim, and that “an excessive government entanglement with religion” should be avoided. However, in recent years the Court has relaxed restrictions on government aid to religious schools. For example, in 1997 the Supreme Court overturned *Aquilar v. Felton*, a 1985 decision that ruled unconstitutional state aid for disadvantaged students who attend religious schools.

A current establishment clause issue is that of **school vouchers** that allow individuals to “purchase” education at any school, public or private. School districts in several states, including Florida, Ohio, and Wisconsin, have experimented with voucher programs. In 2002 the Supreme Court held that the Cleveland voucher system was constitutional, although almost all the students used the vouchers to attend religious schools.

The most controversial issue of the separation of church and state has been school prayer. The first major case was *Engle v. Vitale* (1962). In this case, the Court banned the use of a prayer written by the New York State Board of Regents. It read, “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our country.” Later decisions overturned laws requiring the saying of the Lord’s Prayer and the posting of the Ten Commandments in classrooms. In 1985, *Wallace v. Jaffree* banned Alabama’s “**moment of silence**” law that provided for a one-minute period of silence for “meditation or voluntary prayer.”

In recent years prayer outside the classroom has become an issue, with student initiated prayer at graduation ceremonies and sports events at its focus. In 2000 the Supreme Court affirmed a lower court ruling that school prayer at graduation did not violate the establishment clause, but that prayer over loud speakers at sports events did.

The Free Exercise Clause

The free exercise clause does not allow any laws “prohibiting the free exercise of religion.” The courts have interpreted the 14th Amendment to extend the freedom to protection from state governments as well. Religions sometimes require actions that violate the rights of others or forbid actions that society thinks are necessary. The Supreme Court has never allowed religious freedom to be an excuse for any type of behavior. It has consistently ruled that people have the absolute right to believe what they want, but not necessarily the right to religious practices that may harm society.

Some outlawed practices have been polygamy, the use of poisonous snakes in religious rites, and prohibiting medical treatment to children based on religious beliefs. On the other hand, Courts have disallowed some government restrictions of religious exercise, such as forcing flag salutes and requiring Amish parents to send their children to school after eighth grade.

FREEDOM OF SPEECH

Citizens of modern America almost take for granted the responsibility of the government to guarantee freedom of speech. In reality, the definition of freedom of speech has changed dramatically over the years, with an ever-increasing emphasis on protection of free speech, often at the expense of other liberties and rights. Until recently, especially during times of war and crisis when national security is at stake, the government has passed laws that control free speech.

Free Speech v. National Security

Early in United States history the government almost certainly did not put high priority on the government's responsibility to protect freedom of speech. John Adams, when faced with an international crisis that threatened war with France, saw that Congress passed the **Sedition Act of 1798**, making it a crime to write, utter, or publish anti-government statements with the "intent to defame." The Federalists, who favored strong government authority and emphasized order at the expense of liberty, believed that the First Amendment did not forbid punishing newspapers for libel. The Anti-Federalists did NOT argue that the press should be free of government controls; they protested the act on the grounds that state, not federal government should have control. Thomas Jefferson, a prominent Anti-Federalist, allowed the twenty-year limitation of the Act to run out during his presidency, and the Act died during peace time with little protest.

Presidents, such as Abraham Lincoln during the Civil War, continued to support the government's right to restrict freedom of speech during national security crises through the 19th century and into the 20th. During World War I, the U.S. Congress passed two controversial laws that restricted freedom of speech: **The Espionage Act of 1917** and the **Sedition Act of 1918**.

The Espionage Act of 1917 forbid false statements that intended to interfere with the U.S. military forces or materials to be mailed if they violated the law or advocated resistance to government. The Sedition Act of 1918 forbid individuals to utter, print, write or publish language intended to incite resistance to the U.S. government. Under the mandate of the Sedition Act, thousands were arrested and convicted, and some were deported from the country. The most famous Supreme Court case that resulted from the World War I restrictions was **Schenck v. U.S.** Charles Schenck, a socialist who mailed circulars to young men urging them to resist the military draft, was convicted of violating the Espionage Act. The Supreme Court upheld his conviction; with Oliver Wendell Holmes writing the precedent-setting opinion that any language that directly caused an illegal act was not protected by the First Amendment. Holmes distinguished between language that was merely critical of the government and that which was directly a "clear and present danger" to national security. **The "clear and present danger"** test became a standard by which to balance national security and freedom of speech.

Even before the U.S. entered World War II, Congress passed the **Smith Act**, intending to protect the country from the influence of Nazism and Communism. The Act contained two clauses:

- punishment for willfully advocating the overthrow of the government
- punishment for membership in a group that advocated the overthrow of government (the membership clause)

A few cases were tried for wartime behavior, but the real impact of the Smith Act came after World War II was over with the fear of Communist espionage in the Red Scare, or McCarthyism. The U.S. experienced a dramatic reaction to the Cold War, fueled by the fear that communists were infiltrating the U.S. government and passed security secrets to the Russians. The Internal Security Act of 1950 required Communist organizations to register and to publish membership lists. Many were questioned by Congressional Committees and many were arrested.

By the late 1950s, with McCarthyism subsided and a new Supreme Court under the direction of Earl Warren, the Court leaned more and more toward freedom of speech. No laws were passed restricting speech during the Vietnam War, and the **Brandenburg v. Ohio** case established that speech would have to be judged as inciting "imminent" unlawful action in order to be restricted. The case involved a Ku Klux Klan leader convicted of attempting to incite mob action when he said "We'll take the (expletive deleted) street later." The conviction was overturned by the Supreme Court because Brandenburg did not call for an **"imminent" action**.

Restrictions on Free Speech

Today, the following forms of speaking and writing are not granted full constitutional protection

- 1) **Libel**, a written statement that attacks another person's character, is not automatically protected, although it is very hard to sue for libel. Public figures must prove that a statement is not only false but that it intended "actual malice," a condition that is very hard to define.
- 2) **Obscenity** is not protected, but the Court has always had a difficult time defining obscenity. The current Court leaves local governments to decide restrictions for hard-core pornography, but if they choose to restrict it, they must meet some strict constitutional tests. One common reaction has been for a local government to establish areas where pornography can and can't be sold. A new issue concerns pornography on the internet. In 1997 the Supreme Court ruled the Communications Decency Act unconstitutional because it infringed too much on free speech.

- 3) **Symbolic speech**, an action meant to convey a political message, is not protected because to protect it would be to allow many illegal actions, such as murder or rape, if an individual meant to send a message through the action. The Court made an exception to the action of flag-burning in *Texas v. Johnson* (1989), when it declared that the Texas law prohibiting flag desecration was unconstitutional. Since flag-burning has no other intent than to convey a message, the Court has ruled that it does not incite illegal actions. Symbolic speech includes advocacy of illegal actions, as well as "fighting words," or inciting others to commit illegal actions. However, in 2003 the Supreme Court ruled that a Virginia law that prohibited the burning of a cross with "an intent to intimidate" did not violate the First Amendment. The Court reasoned that a burning cross is an instrument of racial terror so threatening that it overshadows free speech concerns.

PRIVACY RIGHTS

The phrase "**right to privacy**" does not appear anywhere in the Constitution or the Bill of Rights. The idea was first expressed in the 1965 *Griswold v. Connecticut* case in which a doctor and family-planning specialist were arrested for disseminating birth control devices under a little-used Connecticut law that forbid the use of contraceptives. The Supreme Court ruled against the state, with the majority opinion identifying "penumbras" - unstated liberties implied by the stated rights - that protected a right to privacy, including a right to family planning.

The most important application of privacy rights came in the area of abortion as first ruled by the Court in *Roe v. Wade* in 1973. Jane Roe (whose real name was Norma McCorvey) challenged the Texas law allowing abortion only to save the life of a mother. Texas argued that a state has the power to regulate abortions, but the state overruled, forbidding any state control of abortions during the first three months of a pregnancy and limiting state control during the fourth through sixth months. The justices cited the right to privacy as the liberty to choose to have an abortion before the baby was viable. The *Roe v. Wade* decision sparked the controversy that surrounds abortion today.

Since the late 1980s the Supreme Court has tended to rule more conservatively on abortion rights. For example, in *Webster v. Reproductive Health Services* (1989) the Court upheld a Missouri statute that banned the use taxpayer-supported facilities for performing abortions. In 1992, the Court upheld a Pennsylvania law that required pre-abortion counseling, a waiting period of twenty-four hours, and for girls under eighteen, parental or judicial permission. In 2000 the court reviewed a Nebraska act that banned "partial birth" abortion, a procedure that could only take place during the second trimester of a pregnancy. The Court declared the act unconstitutional because it could be used to ban other abortion procedures. The majority opinion also noted that the law did not include protection of the health of the pregnant women. In 2003, the U.S. congress passed a national law similar to the Nebraska act, and it was immediately challenged in court.

RIGHTS OF DUE PROCESS

The **due process** clauses in the Fifth and Fourteenth Amendment forbid the national and state governments to "deny any person life, liberty, or property without due process of law." Although the Supreme Court has refused to define precisely what is meant by due process, it generally requires a procedure that gives an individual a fair hearing or formal trial. Although due process is most often associated with the rights of those accused of crimes, it is required for protecting property rights as well.

PROPERTY RIGHTS

The founders saw the government as not only the protector of property but also the potential abuser of property rights.

The Fifth Amendment allows the government the right to **eminent domain** (the power to claim private property for public use), but the owner must be fairly compensated. The Court has interpreted this clause to be a direct taking of property, not just a government action that may result in a property losing value, such as a rezoning regulation. Also, the government and the property owner sometimes interpret "just compensation" differently. In such a case, the courts are the final arbitrators.

THE FOURTH AMENDMENT AND SEARCH AND SEIZURE

Freedom from "**unreasonable search and seizure**" is guaranteed by the Fourth Amendment. To prevent abuse by police, the Constitution requires that searches of private property are permissible only if "probable cause" exists that indicates that a crime may have taken place.

An important limitation was set on police searches by **Mapp v. Ohio**, a 1961 case in which the police broke into the home of Dollree Mapp, a woman under suspicion for illegal gambling activities. Instead, they found obscene materials and arrested Mapp for possessing them. She appealed her case, claiming that the Fourth Amendment should be applied to state and local governments, and that the evidence had been seized illegally. The police, she claimed, had no probable cause for suspecting her for the crime she was arrested for. The court ruled in her favor, thus redefining the rights of the accused.

FIFTH AMENDMENT RIGHTS

The Fifth Amendment forbids self-incrimination, stating that no one "shall be compelled to be a witness against himself." The rights for protection against self-incrimination originated from a famous 1966 Court decision **Miranda v. Arizona**. Ernesto Miranda was arrested as a prime suspect in the rape and kidnapping of an eighteen year old girl. During a two hour questioning by the police, he was not advised of his constitutional right against self-incrimination nor his right to counsel. His responses led to his conviction, but the Supreme Court reversed it, and set the modern **Miranda Rights**: to remain silent, to be warned that responses may be used in a court of law, and to have a lawyer present during questioning.

A very important principle related to both the 4th and 5th Amendments is the **exclusionary rule**, which upholds the principle that evidence gathered illegally cannot be used in a trial. Critics of the exclusionary rule, including Chief Justice William Rehnquist, express doubts that criminals should go free just because of mistakes on the part of the police. However, the Courts continue to apply the exclusionary rule.

THE EIGHTH AMENDMENT AND CRUEL AND UNUSUAL PUNISHMENT

The 8th amendment prohibits "**cruel and unusual punishments**" a concept rooted in English law. By far, the most controversial issue that centers on the 8th Amendment is capital punishment, or the practice of issuing death sentences to those convicted of major crimes.

In general, states are allowed to pursue their own policies regarding capital punishment. The Supreme Court did not challenge the death penalty until 1972 in **Furman v. Georgia**.

Even then, it did not judge capital punishment to be cruel and unusual punishment. It simply warned the states that the death penalty was to be carried out in a fair and consistent way.

RIGHT VS. RIGHT

Most of us think of civil rights and liberties as principles that protect freedoms for all of us all the time. However, the truth is that rights listed in the Constitution and the Bill of Rights are usually *competing* rights. Most civil liberties and rights court cases involve the plaintiff's right vs. another right that the defendant claims has been violated. For example, in 1971, the *New York Times* published the "Pentagon Papers" that revealed some negative actions of the government during the Vietnam War. The government sued the newspaper, claiming that the reports endangered national security. *The New York Times* countered with the argument that the public had the right to know and that its freedom of the press should be upheld. So, the situation was national security v. freedom of the press. A tough call, but the Court chose to uphold the rights of *The Times*.

IMPORTANT DEFINITIONS AND IDENTIFICATIONS:

<i>Aquilar v. Felton</i>	<i>Ex post facto</i> laws	Privileges and immunities clause
<i>Barron vs. Baltimore</i>	Exclusionary rule	Right to counsel
Bills of attainder	First Amendment rights	Right to privacy
Bill of rights	Fourteenth Amendment	Roe v. Wade
Brandenberg. V. Ohio	Furman v. Georgia	<i>Schenck v. U.S.</i>
Clear and present danger test	Free exercise clause	school vouchers
Cruel and unusual punishment	Gideon V. Wainwright	Sedition Act of 1798
Due process clause of the 5 th and 14 th Amendments	Griswold v. Connecticut	Sedition Act of 1918
Eminent domain	Habeas corpus	Smith Act
Engle v. Vitale	Imminent action	Symbolic speech
Equal protect clause	Lemon v. Kurtzman	Texas v. Johnson
Espionage Act of 1917	Mapp v. Ohio	Unreasonable search and seizure
Establishment clause	<i>Miranda v. Arizona</i>	
Everson v. Board of Education	Miranda Rights	
	Moment of silence	

CHAPTER SIXTEEN: CIVIL RIGHTS

One of the most influential Constitutional clauses during the mid to late 20th century has been the equal protection clause of the Fourteenth Amendment that forbids any state to "deny to any person within its jurisdiction the equal protection of the laws." This clause has not been interpreted to mean that everyone is to be treated the same, but that certain divisions in society, such as sex, race, and ethnicity are **suspect categories**, and that laws that make distinctions that affect these groups will be subjected to especially strict scrutiny. In recent years, these suspect categories have been expanded to include discrimination based on age, disability, and sexual preference.

CIVIL RIGHTS FOR RACIAL AND ETHNIC MINORITIES

The United States has always been home to many different racial and ethnic groups that have experienced varying degrees of acceptance into American society. Today major racial and ethnic minorities include African Americans, Latinos, Asians, and Native Americans.

EQUALITY FOR AFRICAN AMERICANS

The history of African Americans includes 250 years of slavery followed by almost a century of widespread discrimination. Their efforts to secure equal rights and eliminate segregation have led the way for others. After the Civil War, civil rights were guaranteed for former slaves in the Fourteenth and Fifteenth Amendments. However, many discriminatory laws remained in states across the country, and the states of the defeated Confederacy passed **Jim Crow laws**, which segregated blacks from whites in virtually all public facilities including schools, restaurants, hotels, and bathrooms. In addition to this *de jure* (by law) segregation, strict *de facto* (in reality) segregation existed in neighborhoods in the South and the North.

The 1896 court decision *Plessy v. Ferguson* supported the segregation laws. Homer Plessy sued the state of Louisiana for arresting him for riding in a "whites only" railroad car. The Court ruled that the law did not violate the equal protection clause of the 14th Amendment, as Plessy claimed. The majority opinion stated that segregation is not unconstitutional as long as the facilities were substantially equal. This "**separate but equal**" doctrine remained the Court's policy until the 1950s.

The Modern Civil Rights Movement

In 1909 the National Association for the Advancement of Colored People (**NAACP**) was founded to promote the enforcement of civil rights guaranteed by the Fourteenth and Fifteenth Amendments. The NAACP struggled for years to convince white-dominated state and national legislatures to pass laws protecting black civil rights, but they made little progress until they turned their attentions to the courts. The NAACP decided that the courts were the best place to bring about change, and they assembled a legal team that began to slowly chip away at the "separate but equal" doctrine.

From the mid-1930s to about 1950, they focused their attention on requiring that separate black schools actually be equal to white schools. Finding little success with this approach, **Thurgood Marshall**, an NAACP lawyer for Linda Brown in *Brown v. Board of Education of Topeka* in 1954, argued that separate but equal facilities are "inherently unequal" and that separation had "a detrimental effect upon the colored children." The Court overturned the earlier *Plessy* decision and ruled that "separate but equal" facilities are unconstitutional. Following this landmark case was over a decade of massive resistance to desegregation in the South, but organized protests, demonstrations, marches, and sit-ins led to massive *de jure* desegregation by the early 1970s.

De jure desegregation was insured by the **Civil Rights Act of 1964**, the **24th Amendment**, and the **Voting Rights Act of 1965**. The 1964 act banned discrimination in public facilities and voter registration and allowed the government to withhold federal funds from states and local areas not complying with the law. The 24th Amendment banned paying a tax to vote (the poll tax) – a practice intended to keep blacks from voting. The 1965 act outlawed literacy tests and allowed federal officials to register new voters. As a result, the number of registered black voters increased dramatically, and today registration rates of African Americans are about equal to those of whites. The Johnson Administration also set up as part of the "Great Society" an **Office of Economic Opportunity** that set guidelines for equal hiring and education practices. To comply with the new guidelines, many schools and businesses set up quotas (a minimum number of minorities) for admission or employment.

School Integration

Schools were not integrated overnight after the *Brown* decision, and active resistance continued through the early 1960s. In 1957 Arkansas Governor Orville Faubus used the state's National Guard to block the integration of Central High School in Little Rock. President Dwight Eisenhower responded by federalizing the Arkansas National Guard and sending in 500 soldiers to enforce integration. In 1962 James Meredith, an African American student, was not allowed to enroll at the University of Mississippi, prompting President John F. Kennedy to send federal marshals to protect Meredith.

To break down *de facto* school segregation caused by residential patterns, courts ordered many school districts to use **busing** to integrate schools. Students were transported from areas where they lived to schools in other areas to achieve school diversity. The practice proved to be controversial, but the courts upheld busing plans for many years. However, by the late 1990s and early 2000s federal courts had become increasingly unwilling to uphold busing or any other policies designed to further integration. For example, in 2001 a federal court determined that the Charlotte-Mecklenburg school district in North Carolina no longer had to use race-based admission quotas because they had already achieved integration.

Today *de facto* school segregation still exists, especially in cities, where most African American and Hispanic students go to schools with almost no non-Hispanic whites. So by the early years of the 21st century, the goal of integration expressed in *Brown v. Topeka* in 1954 has not been realized.

RIGHTS FOR NATIVE AMERICANS

Of all the minorities in the United States, Native Americans are one of the most diverse. Almost half of the nearly 2 million people live on **reservations**, or land given to them as tribes by treaties with the U.S. government. 308 different tribes are formally registered with the government, and among them, almost 200 languages are spoken. Enrolled members of tribes are entitled to certain benefits (such as preferred employment or acceptance to college) administered by the Bureau of Indian Affairs of the Department of the Interior. The benefits are upheld by the Supreme Court as grants not to a "discrete racial group, but rather, as members of quasi-sovereign tribal entities." Poor living conditions and job opportunities on reservations have been the source of growing Native American militancy. Tribes have demanded more autonomy and fewer government regulations on reservations. Some recent cases have involved the right of tribes on reservations to run and benefit from gambling operations that the government has regulated. Some tribes are demanding better health care facilities, educational opportunities, decent housing, and jobs.

Under Article I, Section 8, Congress has full power under the commerce clause to regulate Indian tribes. Congress abolished making treaties with the tribes in 1871, but until recent times tribal governments were weak, many reservations were dissolved, and many tribes severed their relationship with the U.S. government. During the past twenty years, both the tribes and the government have shown revived interest in interpreting earlier treaties in a way to protect the independence and authority of the tribes. With the backing of the **Native American Rights Fund** (funded in part by the Ford Foundation), more Indian law cases have been brought in the last two decades than at any time in our history. Colorado elected the first Native American (Ben Nighthorse Campbell) to Congress in 1992.

LATINO RIGHTS

Latinos compose the fastest growing minority group in the United States today. The approximately 35 million Latinos (an increase of about 60 percent since 1980) may be divided into several large subgroups:

- **Mexican Americans** - About 15 million are Mexican Americans who live primarily in the Southwestern United States: Texas, New Mexico, Arizona, and California. Traditionally, Mexican Americans are strong supporters of the Democratic Party
- **Puerto Ricans** - The second largest group consists of 2.7 million Puerto Ricans, living primarily in northern cities, such as New York and Chicago. Since Puerto Rico is a commonwealth of the United States, many Puerto Ricans move back and forth between island and homeland.
- **Cubans** - A third group has come since the early 1960s from Cuba, many fleeing to Florida from Castro's regime. The immigration has continued over the years. In many areas of southern Florida, Cuban Americans have now become the majority group. In contrast to Mexican Americans, Cubans tend to be politically conservative and support the Republican Party.

- **Central and South American countries** - A rapidly growing number are emigrating from political upheaval in Central American countries, such as Nicaragua and Guatemala. As political unrest in these areas continues, people are coming to live near relatives already in the United States.

A major issue for Latinos centers on English as a Second Language education in U.S. public schools. Latino children often find language a barrier to success in school, and schools have struggled to find the best ways to educate them. Supporters of ESL education believe that Spanish instruction should be provided and encouraged, whereas critics claim that such education hampers the learning of English, a necessary skill for success in the United States. In recent years, bilingual programs established in the 1960s have come under increasing attack. In 1998, California residents passed a ballot initiative that called for the end of bilingual education in the state. After the courts backed the initiative, the states of Arizona and Massachusetts also banned bilingual education.

Latinos, like blacks, have become increasingly involved in politics, and by the 1998 election 19 Latinos were members of the House of Representatives. Two Latinos were elected to the Senate in 2004.

THE RIGHTS OF ASIAN-PACIFIC ISLANDERS

About 8 million Americans are of Asian origin, a number that is rapidly increasing. Asian Americans come from many different countries with different languages and customs. About 40 per cent of our immigrants now are from Asia, mostly from the Philippines, China, Taiwan, Korea, Vietnam, Cambodia, Pakistan, and India. The Chinese were the first major group of Asians to come to the United States, attracted by expansion in California and the opportunities to work in mines.

Until recently, Asians were severely limited by U.S. immigration policies. Discriminatory immigration and naturalization restrictions were placed on the Chinese in 1882, and remained in place until after World War II. In 1906 The San Francisco Board of Education excluded all Chinese, Japanese, and Korean children from neighborhood schools. During World War II, Japanese Americans on the West Coast were placed in internment camps because of the fear that they would conspire with a Japanese attack from the Pacific Ocean. A major influx of Asians began in response to new U.S. immigration laws passed in the 1960s, which based immigration quotas more on occupation and education than on region of origin. Immigration policies now favor many Asians, especially those with high educational and professional qualifications enforced by current immigration laws.

A number of groups have come at least partly as a result of Cold War politics since World War II. Koreans are a growing group, concentrated in southern California, Hawaii, Colorado, and New York City. Korean businesses have been the object of violent attacks, such as in the 1992 Los Angeles riots and separate, more recent incidents in New York City. The most recent arrivals are refugees from the political upheavals in Vietnam, Laos, and Cambodia. Some estimates suggest that by 2050 as many as 10 percent of all Americans will be of Asian-Pacific Islands origins.

WOMEN AND EQUAL RIGHTS

Before the 1970s the Court interpreted the equal protection clause of the Fourteenth Amendment very differently for women than it did for blacks. Whereas the legal tradition clearly intended to keep blacks in a subservient position, the legal system claimed to be protecting women by treating them differently.

In the late eighteenth century, not only were women denied the right to vote, but they had few legal rights, little education, and almost no choices regarding work. The legal doctrine known as **coverture** deprived married women of any identity separate from that of their husbands. Circumstances began to change in the mid-nineteenth century.

THE SUFFRAGE MOVEMENT

A meeting in Seneca Falls, New York in 1848 is often seen as the beginning of the women's **suffrage** (right to vote) **movement**. The meeting produced a **Document of Sentiments** modeled after the Declaration of Independence signed by 100 men and women that endorsed the movement.

It took 72 years till the goal of voting rights was reached. With the passage of the **Nineteenth Amendment** in 1920, the suffrage movement that had begun in the early 1800s came to a successful end. The Amendment was brief and to the point: "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."

However, other legal rights were not achieved until the late 20th century, partly because the Courts sought to protect women from injustice. In 1908 the Court upheld an Oregon law that limited female (but not male) laundry workers to a ten-hour workday. The Court claimed that "The two sexes differ in structure of body, in the functions to be

performed by each, in the amount of physical strength, in the capacity for long-continued, labor, particularly when done standing...." So biological differences justified differences in legal status, an attitude reflecting protective paternalism.

THE MODERN WOMEN'S RIGHTS MOVEMENT

Other legal rights were not addressed until the 1970s, when the women's movement questioned the Court's justification for different treatment of the sexes under the law. A unanimous Court responded by setting down a new test, **the reasonableness standard**: a law that endorses different treatment "must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstances shall be treated alike."

The "reasonableness" standard was much looser than the "**suspect**" standard used to judge racial classifications: some distinctions based on sex are permitted and some are not. For example, a state cannot set different ages at which men and women are allowed to buy beer, nor can girls be barred from Little League baseball teams, and public taverns may not cater to men only. However, a law that punishes males but not females for statutory rape is permissible, and states can give widows a property-tax exemption not given to widowers. Other practices generally endorsed by the court but now being challenged are the acceptability of all-boy and all-girl public schools and the different rates of military officer promotions (men generally have been promoted earlier than women).

Women and the Military Draft

One of the most controversial issues defining women's rights is the implication of equal rights for the military draft. Should women be treated differently than men regarding military service? The Supreme Court decided in **Rostker v. Goldberg** (1981) that Congress may require men but not women to register for the draft without violating the due-process clause of the Fifth Amendment. However, other laws passed by Congress regarding differential treatment in the military have recently been challenged. For many years Congress barred women from combat roles, but in 1993, the secretary of defense opened air and sea combat positions to all persons regardless of sex. Only ground-troop combat positions are still reserved for men.

The Equal Rights Amendment

The controversial issues surrounding the military draft contributed to the ultimate failure of **the Equal Rights Amendment**, which read "Equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex." Congress passed this amendment in 1972, but it ran into trouble in the ratification process. By 1978, thirty-five states had ratified, three short of the necessary three-fourths. Many legislators and voters worried that the ERA would require women to be drafted for combat duty. Meanwhile, the time limit for ratification ran out, the Republican Party withdrew its endorsement, and Congress has not produced the two-thirds majority needed to resubmit it to the states.

Abortion Rights

Roe v. Wade (1973) broke the tradition of allowing states to decide the availability of abortions within state boundaries. In this case the Court struck down a Texas law that banned abortion except in cases when the mother's life was threatened. The Court argued that the due-process clause of the Fourteenth Amendment implies a "right to privacy" that protects a woman's freedom to "choose" abortion or not during the first three months (trimester) of pregnancy. States were allowed freedoms to regulate during the second and third trimesters.

The decision almost immediately became controversial, with those supporting the decision calling themselves "**pro-choice**" and those opposing "**pro life**." Although the Roe decision still holds, its critics still fight for its reversal. The Court has declared unconstitutional laws that require a woman to have the consent of her husband, but it has allowed states to require underage girls to have the consent of her parents. In the 1989 **Webster v. Reproductive Health Services** case, the Court upheld some state restrictions on abortions (such as a twenty-four hour waiting period between request for and the performance of an abortion), but the Court has since refused to overturn Roe.

Discrimination in the Workplace

Since the 1960s laws have been passed that protect women against discrimination in the workplace. **Title VII** of the Civil Rights Act of 1964 prohibits gender discrimination in employment, and has been used to strike down many previous work policies. In 1978, Congress amended Title VII to expand the definition of gender discrimination to include discrimination based on pregnancy. The Supreme Court later extended Title VII to include **sexual harassment**, which occurs when job opportunities, promotions, and salary increases are given in return for sexual favors.

One of the most important recent issues regarding women's rights is "equal pay for equal work." In 1983, the state Supreme Court of Washington ruled that its government had discriminated for years against women by not giving them equal pay for jobs of "comparable worth" to those that men held. This doctrine of **comparable worth** requires that a worker be paid by the "worth" of his or her work, not by what employers are willing to pay. Although the system is difficult to implement, many large companies have adopted sophisticated job evaluation systems to determine pay scales for jobs within their structures.

OTHER CIVIL RIGHTS MOVEMENTS

The gains made by racial groups, ethnic groups, and women have motivated others to organize efforts to work for equal rights. Three of the most active are older Americans, the disabled, and homosexuals. All three groups have organized powerful interest groups, and all have made some progress toward ensuring their rights.

RIGHTS FOR OLDER AMERICANS

The baby boomers born after World War II are now swelling the ranks of Americans over 50, and with their numbers, discrimination against older Americans has gained the spotlight. A major concern is discrimination in the workplace. Congress has passed several age discrimination laws, including one in 1975 that denied federal funds to any institution discriminating against people over 40. The Age Discrimination in Employment Act raised the general compulsory retirement age to 70. Since then, retirement has become more flexible, and in some areas compulsory retirement has been phased out entirely.

One of the most influential interest groups in Washington is the American Association of Retired Persons (**AARP**). With more than 30 million members, the organization successfully lobbies Congress to consider the rights of older Americans in policy areas such as health, housing, taxes, and transportation.

RIGHTS FOR DISABLED AMERICANS

Disabled Americans make up about 17 percent of the population, and they have organized to fight discrimination in education, employment, rehabilitation services, and equal public access.

The first rehabilitation laws were passed in the late 1920s, but the most important changes came when the Rehabilitation Act of 1973 added disabled people to the list of groups protected from discrimination.

Two important anti-discrimination laws are:

- **The Education for All Handicapped Children Act of 1975** - This law gave all children the right to a free public education.
- **The Americans with Disabilities Act (ADA)** • This law, passed in 1990, extended many of the protections established for racial minorities and women to disabled people. However, beginning in 1999, the Supreme Court has issued a series of decisions that effectively limit the scope of ADA, excluding conditions such as nearsightedness and carpal tunnel syndrome as disabilities.

These laws have been widely criticized because they require expensive programs and alterations to public buildings. Activists for the movement criticize the owners of public buildings and the government for not enforcing the laws consistently.

HOMOSEXUAL RIGHTS

In the last two decades, homosexuals have become much more active in their attempt to gain equal rights in employment, education, housing, and acceptance by the general public. In recent years several well-organized, active interest groups have worked to promote the rights of homosexuals and lobby for issues such as AIDS research funding. Many cities have banned discrimination, and many colleges and universities have gay rights organizations on campus.

Despite these changes, civil rights for homosexuals is still a controversial issue, as reflected in 1993 by the resistance to the Clinton administration's proposals to protect gay rights in the military. The resulting "don't ask, don't tell" policy has not resolved the ambiguous status of gays in the military, and the Supreme Court has not yet ruled on its constitutionality.

The Supreme Court first addressed homosexual rights in 1986 when it ruled in *Hardwick v. Georgia* that Georgia's law forbidding homosexual relations was constitutional. The Court based its decision on **original intent** (the intent of the founders), noting that all 13 colonies had laws against homosexual relations, as did all 50 states until 1961. Most

recently, in *Romer v. Evans* (1996) the Court provided some support to homosexuals when it struck down a Colorado amendment to the state constitution that banned laws protecting homosexuals. In the majority opinion, Justice Anthony Kennedy wrote that “a bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.” The Court reversed *Hardwick v. Georgia* in 2003 with **Lawrence v. Texas**, when it held that laws against sodomy violate the due process clause of the 14th amendment. In the word of the Court,

“The liberty protected by the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their own private lives and still retain their dignity as free persons.”

Currently, a controversial topic is state recognition of homosexual marriages and “civil unions.” After courts in Massachusetts upheld the right in that state in 2004, a number of homosexual marriages were conducted in other areas of the country, including San Francisco and New York City. In reaction, several states passed initiatives in the election of 2004 that banned recognition of homosexual marriages.

REVERSE DISCRIMINATION

By the 1970s the focus of concern turned to racial balance as opposed to mere nondiscrimination, or **equality of opportunity vs. equality of result**. Do civil rights required merely the absence of discrimination, or do they required that steps be taken to insure that blacks and whites enroll in the same schools, work in the same jobs, and live in the same housing?

The Courts helped define the issue in the 1978 **Bakke v. California** case that questioned the quota practices of the University of California medical school at Davis. Bakke, a white student denied admission to the school, sued the state, claiming **reverse discrimination**, since minorities with lesser qualifications were admitted to the medical school. In a divided decision, the court ruled in Bakke's favor, declaring quotas unconstitutional although allowing race as one criterion for admission to a public institution.

Many cases followed that further defined reverse discrimination. Two examples are:

- **United Steelworkers v. Weber** (1979) - Kaiser Aluminum was sued for reverse discrimination in its hiring practices. This time the courts ruled that a private company could set its own policies, and the government could not forbid quotas in the case
- **Richmond v. Croson** (1989) - The court struck down the city of Richmond's plan to subcontract 30% of its business to minority companies, but the decision was bitterly opposed by three members of the Court.

In 2003 in two cases involving policies at the University of Michigan, the Supreme Court's ruling supported the constitutionality of affirmative action programs and the goals of diversity. The Court struck down the university's plan for undergraduate admission, saying that it amounted to a quota system. However, they upheld the plan used by the law school, which took race into consideration as part of a broad consideration of applicants' backgrounds. As the United States continues to become a more and more diverse country, the nature of civil rights issues for minority groups certainly will change. Despite the changes, the pursuit of equality undoubtedly will remain a constant in the American political culture.

IMPORTANT DEFINITIONS AND IDENTIFICATIONS:

AARP	<i>Hardwick v. Georgia</i>	<i>Richmond v. Croson</i>
Bakke v. California	Jim Crow laws	Roe v. Wade
Brown v. Board of Education of Topeka	Lawrence v. Texas	Roster v. Goldberg
Civil Rights Act of 1964	NAACP	Separate but equal doctrine
Comparable worth	Native American Rights Fund	Sexual harassment
Covertures	Nineteenth Amendment	Suffrage movement
De facto segregation	Office of Economic Opportunity	Suspect categories
De jure segregation	Original intent	Thurgood Marshall
Declaration of Sentiments	Plessy v. Ferguson	Title VII
Equal Rights Amendment	Pro-choice v. pro-life	<i>United Steelworkers v. Weber</i>
Equality of opportunity	Reasonableness standard	Voting Rights Act of 1965
Equality of result	Reservations	24 th Amendment
	Reverse discrimination	